

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED

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S.C. Supreme Court

APPELLATE CASE NO.: 2014-001649

Michael J. Lackey #340933 Appellant

v.

State of South Carolina Respondent

APPENDIX
VOLUME I

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

Original

-VS-

MICHAEL JERROD LACKEY,

MARIO TYNES, and

JOSHUA READON.

) 2008-GS-26-216,
) 217, 214 & 215.
) 2008-GS-26- 207,
) 208, 205 & 206
) 2008-GS-26-659,
) 660, 661 & 662
)
)
)

DEFENDANTS.

THE FOLLOWING PROCEEDINGS WERE HELD BEFORE THE HONORABLE

THE HONORABLE LARRY B. HYMAN, JR.;

IN THE CIRCUIT COURT OF HORRY COUNTY, BEGINNING AT 2:02

PM ON THE 17TH DAY OF MAY, 2010, AT THE HORRY COUNTY

COURTHOUSE, 15TH JUDICIAL DISTRICT, HORRY COUNTY GENERAL

SESSIONS COURT, CONWAY, SOUTH CAROLINA.

REPORTED BY: H. EUGENE BUCKNER, CVR

ORIGINAL

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OFFICIAL COURT REPORTER AT LARGE
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VOLUME 1

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1 BAILIFF:

2 Order in the court. All Rise.

3 THE COURT:

4 Good morning everyone. It's
5 good to see you; or, afternoon, rather. Please be
6 seated.

7 Okay.

8 What do we have gentlemen;
9 ladies?

10 MR. MONCKTON:

11 Your Honor, at our last
12 conversation, there was a plea offer extended by the
13 State.

14 I've had opportunity to speak
15 with my client, Mario Tynes, about the plea offer.

16 Uh --

17 THE COURT:

18 And who -- Is this -- Mr. Tynes
19 there with you? Okay, I see Mr. Tynes.

20 MR. MONCKTON:

21 That's right, Your Honor. I'm
22 waiting for Mr. Hazzard.

23 THE COURT:

24 Okay. Let's -- uh -- I was
25 just trying to count heads. And I do believe Mr. Hazzard

1 is missing.

2 THE COURT:

3 How about the co-defendants?

4 MR. WILSON:

5 Yes sir. Your Honor, I

6 represent --

7 THE COURT:

8 I see Mr. Wilson --

9 MR. WILSON:

10 Yes sir.

11 THE COURT:

12 -- is sitting there with his

13 yellow tie. (Referring jokingly to Mr. Ralph Wilson, Jr.)

14 Oh, that one. I was thinking it

15 was this one over here to your -- (laughter).

16 MR. WILSON:

17 He's my next Defendant.

18 THE COURT:

19 And Mr. Hazzard's Defendant? Is

20 Mr. Hazzard's client here?

21 MR. HAZZARD:

22 I was outside looking for him.

23 DEFENDANT TYNES:

24 Uh -- He was downstairs Uh --

25 talking to his mother on the phone. So I think he's --

1 when I was walking in -- He should be coming.

2 THE COURT:

3 All right.

4 Let's just go ahead and get
5 everybody here.

6 Can -- uh -- someone check on
7 him?.

8 All right.

9 I think we have three
10 Defendants.

11 Uh -- Counsel, if you would,
12 please identify yourselves -- uh -- for the record.

13 Uh -- Of course, Mr. Buckner
14 knows who you all are. But let's put it on record, and
15 who you represent.

16 MR. HAZZARD:

17 Your Honor, Ronald Hazzard of
18 the Horry County and Georgetown County Public Defender's
19 Office.

20 And I represent Joshua Malachi
21 Readon; R-e-a-d-o-n. Malachi is M-a-l-a-c-h-i.

22 THE COURT:

23 Readon, R-e-a-d-e-n.

24 MR. HAZZARD:

25 D-o-n, Your Honor.

1 THE COURT:

2 D-o-n?

3 MR. HAZZARD:

4 Yes sir.

5 THE COURT:

6 Joshua. Okay.

7 MR. WILSON:

8 Your Honor, Ralph Wilson and

9 Ralph Wilson, Jr., and we represent Michael Lackey.

10 THE COURT:

11 Michael -- What's his name?

12 MR. WILSON:

13 L-a-c-k-e-y.

14 THE COURT:

15 L-a-c-k-e-y. Okay.

16 Mr. Monckton?

17 MR. MONCKTON:

18 Yes, sir, Your Honor.

19 May it please The Court? Billy

20 Monckton; and I represent Mr. Mario Tynes, T-y-n-e-s,

21 Your Honor.

22 THE COURT:

23 Very well. Okay.

24 And Ms. -- uh -- Livesay, I

25 believe, this is -- uh -- your prosecution; is it not?

1 MS. LIVESAY:

2 Yes sir. It will be and Ms.

3 Lively.

4 THE COURT:

5 And Ms. Lively's assisting you?

6 Is that correct?

7 MS. LIVELY:

8 Yes, sir, Your Honor.

9 THE COURT:

10 All right.

11 I have had an opportunity to --

12 uh -- pre-trial -- uh -- this case would the defense

13 counsel and the prosecution.

14 So I am aware of the

15 circumstances -- uh -- the State's position and the

16 Defense's position on the case.

17 I have a jury coming in first

18 thing in the morning -- uh -- for selection and trial of

19 these codefendants.

20 But I believe now, we have some

21 motions and things of that nature that we needed to take

22 care of preliminarily -- uh -- this afternoon.

23 Is that correct, Ms. -- Ms.

24 Livesay?

25 MS. LIVESAY:

1 Yes sir.

2 THE COURT:

3 Okay.

4 Who's first?

5 MR. MONCKTON:

6 Your Honor --

7 THE COURT:

8 The State have any outstanding
9 motions?

10 MS. LIVESAY:

11 Just some cleanup matters; Your
12 Honor, that I'm sure can be handled after they make their
13 motions.

14 THE COURT:

15 Very well. Then we'll let Mr.
16 Monckton sort of kick-off here.

17 MR. MONCKTON:

18 Your Honor, if we could, on
19 behalf of Mr. Hazzard and Mr. Wilson, and all three
20 Defendants?

21 We would like to place on the
22 record -- uh -- that an additional plea offer was made by
23 the State in chambers this morning; wherein -- uh --
24 Defendant would be allowed to plead guilty to armed
25 robbery; and I believe it was possession with intent to

1 distribute?

2 MS. LIVESAY:

3 Yes sir.

4 MR. MONCKTON:

5 Uh -- Your Honor -- uh -- with a
6 recommendation -- uh -- from the State of 12 years.

7 At this time on behalf of my
8 client, and I believe on behalf of Mr. Wilson and Mr.
9 Hazzard's clients, we would ask that Your Honor arraign
10 them.

11 Explain to them for the record
12 exactly what that means and inquire as to each one of
13 them, Your Honor, if they are inclined to accept that?

14 If not, then we will prepared to
15 just go into motions.

16 THE COURT:

17 Very well. Okay.

18 MR. HAZZARD:

19 Okay, Your Honor. And if I
20 might be heard at this point before we go any further.

21 I've spoken with my client. And
22 my client and his girlfriend had a chance to think about
23 this and speak over the lunch break.

24 I believe my client has had a
25 chance to with some family members over the phone.

1 He indicates now that he wants
2 an opportunity to speak with me a little bit further --
3 uh -- before making that ultimate decision.

4 I have indicated to him you were
5 doing the motions today. Uh -- But that this offer is
6 for today only.

7 And I indicated I would speak
8 with him after we do the motions; and then advise The
9 Court whether he accepts or rejects.

10 THE COURT:

11 All right.

12 I understand the motions for
13 today; I mean, the offer, okay.

14 And you represent -- uh -- Mr. -
15 - uh -- Lackey --

16 MS. LIVESAY:

17 Readon.

18 MR. HAZZARD:

19 Joshua Readon, Your Honor.

20 THE COURT:

21 Oh. Excuse me. Readon?

22 MR. HAZZARD:

23 Yes sir.

24 THE COURT:

25 Okay.

1 Uh -- And Mr. Readon, please
2 stand.

3 And Mr. Lackey, please stand.

4 And Mr. Tynes, please stand.

5 Gentlemen -- uh -- it's my
6 understanding that you are codefendants in each -- uh --
7 or in this case; and each of you share -- uh -- the same
8 charges.

9 The charges that you are
10 presently looking at are armed robbery -- uh -- which
11 carries 10 -- uh -- to 30 years; burglary first, which
12 carries 15 years to life; and possession with intent to -
13 -- uh -- distribute marijuana, which carries zero to 5
14 years; and also unlawful carrying of a pistol.

15 Is that correct?

16 They're charged with that as
17 well?

18 MS. LIVELY:

19 Yes, Your Honor.

20 THE COURT:

21 Which is a one year -- a one-
22 year sentence.

23 Uh -- I've had an opportunity to
24 listen -- uh -- to your attorneys and to -- uh -- the
25 prosecution in this case..

1 Let me say first of all that:
2 The quality of the
3 representation and the Defense at the Defense Table is --
4 uh -- exceptional.

5 I've known Mr. Hazzard for 20
6 years?

7 MR. HAZZARD:

8 Yes sir.

9 THE COURT:

10 I've known Mr. Wilson, Junior;
11 and practiced with them for 30 years, Mr. Wilson?

12 MR. WILSON:

13 Yes sir.

14 THE COURT:

15 Okay.

16 I've known Mr. Monckton, again,
17 for probably close to 20 years.

18 Is that correct?

19 MR. MONCKTON:

20 That's correct, Your Honor.

21 THE COURT:

22 They have extensive backgrounds
23 in the criminal law.

24 They have negotiated a -- an
25 arrangement where the State is willing to dismiss the

1 burglary first, which carries life, and the unlawful
2 carrying of a pistol; and allow you to plead to the armed
3 robbery and possession with intent to distribute
4 marijuana based on a recommendation of 12 years sentence.

5 Let me tell you this.

6 I'm not bound by the State's
7 recommendation -- uh -- just like I would not be bound by
8 any recommendation of the State if you were found guilty
9 at trial.

10 I could go over that. But your
11 attorneys will tell you that:

12 For me to exceed that
13 recommendation would be extremely out of character for
14 me.

15 I believe that the parties to
16 these matters have a better understanding of what the
17 give-and-take is from each side; and what an appropriate
18 sentence would be.

19 I will tell you that offer is
20 armed robbery and possession with intent; and does not
21 include burglary first, which is a life -- up to a life
22 sentence with a minimum of 15 years.

23 I understand that at this time
24 you are not in a position to accept the State's offer.

25 Is that correct, Mr. Tynes?

1 DEFENDANT TYNES:

2 Yes sir.

3 THE COURT:

4 Is that correct, Mr. Lackey?

5 DEFENDANT LACKEY:

6 Yes sir.

7 THE COURT:

8 Is that correct Mr. Readon?

9 DEFENDANT READON:

10 Yes sir.

11 THE COURT:

12 Okay.

13 Let me tell you this:

14 Uh -- I practiced criminal law
15 for 30 years, about the length that Mr. Wilson Senior
16 has.

17 I will tell you that:

18 Oftentimes, I had clients who
19 felt that by some miracle -- uh -- their situation was
20 going to resolve itself. -- uh -- It was going to go
21 away.

22 Let me tell you this.

23 This case will not go away.

24 This case is going to be tried
25 this week.

1 If you are convicted of all of
2 these offenses, do not believe -- do not even hesitate to
3 think that I would impose a sentence as offered by the
4 State.

5 Uh -- These are extremely
6 serious counts -- uh -- crimes.

7 There are extremely aggravated
8 circumstances.

9 I view them as so.

10 When I had situations like that,
11 it was very frustrating to me, as I believe it is
12 frustrating to your attorneys today; because we had
13 clients who did not want -- uh -- who -- who would not
14 listen and take our advice.

15 And that's frustrating; because
16 that's what you're being paid to do. That's what you're
17 trained to do. That's what -- uh -- you want to do.

18 You want to get the best
19 resolution possible for your client.

20 And I can tell you:

21 Every attorney on every case
22 wants the best resolution that he can get from -- uh --
23 The Court for his client.

24 You can forget what you see on
25 TV, or what the jokes might say.

1 I'm telling you.

2 These attorneys are doing
3 everything they can to get the absolute best resolution
4 they can.

5 They have gotten to a point with
6 the Solicitor's Office that the solicitor cannot in good
7 faith -- This solicitor -- or these solicitors are
8 experienced solicitors.

9 They cannot in good faith do any
10 better than what they have done.

11 They have bent over backwards.

12 They have been worn down.

13 They have cooperated with your
14 attorneys, and what The Court, in a resolution of this
15 matter.

16 I want you to understand that:

17 This is a life changing event.

18 What happens in the next few

19 days is going to determine how your life turns out.

20 You may spend the rest of your
21 life in prison.

22 You may spend the next 30 years
23 of your life in prison; all on no-parole situations.

24 I suggest to you that you have a
25 heart to heart with your family.

1 As I said, this is an unusual
2 case.

3 I have been over the facts of
4 the case -- or the evidence in the case -- with your
5 attorneys and with the -- uh -- the prosecutors.

6 This is not, in my view, a
7 difficult case for the prosecution.

8 And if you are convicted, This
9 Court is obligated to consider this matter as it is
10 handled by the jury.

11 If the jury returns a guilty
12 verdict for burglary and armed robbery on a home
13 invasion, you are in a situation where you are making me
14 do something that I will find distasteful, but
15 nevertheless I must follow through with.

16 Your attorneys are going to make
17 some motions before me.

18 I'm going to hear your motions
19 this afternoon.

20 I have purposely delayed
21 bringing this jury in to -- until tomorrow, because I
22 felt that there was something going wrong here.

23 And I wanted an opportunity for
24 you young men to discuss this fully with your family and
25 fully with your attorney, with my advise that you listen

1 carefully to these attorneys.

2 If I had to pick you three
3 attorneys to represent you from the Horry County Bar, or
4 from the State Bar, I cannot do any better than what you
5 got.

6 You got excellent attorneys;
7 excellent job skills; excellent experience; or extensive
8 experience.

9 Listen to your attorneys.
10 They are trying to help you.
11 Do what's in your heart. But you
12 must at least listen, and try to understand what your
13 attorneys are doing for you.

14 They're trying to do the best
15 thing for you.

16 They don't plead you just get
17 out of trying a case.

18 They plead you to try to save
19 you.

20 All right.

21 Mr. -- uh -- Readon?

22 Do you understand that this
23 solicitor's offer to dismiss that burglary first and that
24 gun charge and allow you to plead to armed robbery and
25 PWID marijuana with a 12 year recommendation is good for

1 today?

2 That doesn't mean tomorrow
3 morning.

4 It means today, through five
5 o'clock. She needs to be notified.

6 Do you understand that, sir?

7 DEFENDANT READON:

8 Yes sir.

9 THE COURT:

10 Mr. Tynes?

11 Mr. Tynes, do you understand
12 what I just told Mr. Readon?

13 DEFENDANT TYNES:

14 Yes sir.

15 THE COURT:

16 Okay.

17 Mr. Lackey?

18 DEFENDANT LACKEY:

19 Yes sir.

20 THE COURT:

21 Do you understand that?

22 DEFENDANT LACKEY:

23 Yes sir.

24 THE COURT:

25 Do you gentlemen have anything

1 that you need to ask me about the process of trial?

2 Anything that I can offer you?

3 Anything that I can tell you

4 about this procedure that will help you in making your
5 decision?

6 Any at all?

7 DEFENDANT READON:

8 No sir.

9 DEFENDANT LACKEY:

10 No sir.

11 DEFENDANT TYNES:

12 No sir.

13 THE COURT:

14 All right, sir.

15 Thank you, gentlemen. You may
16 sit down.

17 DEFENDANT READON:

18 May ask a question?

19 THE COURT:

20 Yes sir.

21 DEFENDANT READON:

22 All right. If we accept the
23 plea, would -- could you put us in Boot Camp or something
24 like drop down our time, or -- you know what I'm saying?

25 THE COURT:

1 Well, these are 85 percent
2 charges, armed robbery. You are not parole-eligible.

3 I don't know what other programs
4 are going to be available during your period of
5 incarceration; but you will end up serving, as best I
6 know -- and you go by what your attorneys tell you.

7 Let your attorneys tell you what
8 their opinion is; probably eight and a half years.

9 All right.

10 Anything further?

11 THE COURT:

12 Okay. All right. Have a
13 seat.

14 Uh -- Mr. Monckton, are you
15 speaking for the group; or are their individual motions
16 that need to --

17 MR. MONCKTON:

18 Your Honor, I think they're
19 going to be some individual motions that we will join in
20 together.

21 I think preliminarily, we'd like
22 to make a motion to sequester all witnesses -- uh --
23 during pendency of the trial.

24 And I think Mr. Hazzard and Mr.
25 Wilson will join in that with us.

1 THE COURT:

2 I -- uh -- usually do.

3 Uh -- But in this case, you got
4 something like five or six victims, don't we?

5 MS. LIVESAY:

6 Yes sir. We've actually about
7 eight victims. And we have two that want to be present
8 for the entire trial.

9 And we just want Alan Large, our
10 investigating officer, to be able to be present; because
11 he was there from the --

12 THE COURT:

13 Doesn't the victim have the
14 right to be present?

15 MR. MONCKTON:

16 Uh -- Yes, sir, Your Honor. I
17 don't have an objection to that.

18 I would just like to ask:

19 Uh -- In the indictment against
20 -- On the arm robbery count, it only lists one victim --

21 THE COURT:

22 Uh-huh.

23 MR. MONCKTON:

24 -- that being Sean Barrett.

25 THE COURT:

1 Right. And the burglary first
2 degree? Is that correct?

3 MR. MONCKTON:

4 Yes sir, Your Honor.

5 THE COURT:

6 So you got burglary first degree
7 and armed robbery showing one victim.

8 And the possession of marijuana,
9 of course, is one.

10 Uh -- Pistol; I mean, there's
11 nothing there.

12 MS. LIVESAY:

13 Your Honor, that indictment is
14 merely to put the Defense on notice of the charge.

15 They have discovery. And in
16 fact, the discovery included two statements from two of
17 the victims --

18 THE COURT:

19 Well, we have, as I understand
20 it, several people that were at this residence.

21 They were held at gun point.

22 They -- uh -- uh -- were present
23 during the burglary and were held hostage?

24 And Ms. -- I want to make this
25 clear. This occurred to me over lunch.

1 Ms. Livesay, as part of your
2 agreement, it's my understanding that you will not charge
3 any of these principles, if they enter into a plea
4 agreement, with any kidnapping charge?

5 MS. LIVESAY:

6 Yes sir.

7 THE COURT:

8 Okay.

9 MS. LIVESAY:

10 No. No further charges will be
11 pursued by the State.

12 THE COURT:

13 If --

14 MS. LIVESAY:

15 Once this case is the deposed
16 of, if it's by a guilty plea, that would be it.

17 THE COURT:

18 Okay. Otherwise, you may?

19 MS. LIVESAY:

20 Honestly, we don't have any
21 intentions at this point due to the serious charges they
22 are already charged with --

23 THE COURT:

24 Okay.

25 MS. LIVESAY:

1 -- in anticipation that we are
2 looking at a possibility of --

3 THE COURT:

4 You're not saying that you're
5 not going to do it, are you?

6 MS. LIVESAY:

7 Yes sir.

8 THE COURT:

9 Okay. All right.

10 Okay.

11 What about the sequestering, Mr.
12 Monckton?

13 I mean -- uh -- these -- these
14 people were victim of these crimes.

15 I --

16 MS. LIVESAY:

17 Your Honor, just to -- to
18 correct an error. I don't know if this I'm going to make
19 a difference or not.

20 But the two victims that won't
21 be present are Sean Barrett, the victim that was upstairs
22 --

23 THE COURT:

24 Right.

25 MS. LIVESAY: -- that was pistol-whipped; and.

1 the other victim was actually downstairs.

2 So we don't have a problem where
3 we're lining up testimony, because one victim was
4 upstairs and the other victim was downstairs.

5 So neither had any witnessing of
6 what was going on in that other room.

7 THE COURT:

8 Well, I understand; okay.

9 MS. LIVESAY:

10 The victim --

11 THE COURT:

12 But those are the only two
13 witnesses who want to be hear?

14 MS. LIVESAY:

15 Right.

16 So if there's an issue, I'm
17 assuming we won't --

18 THE COURT:

19 How about that, Mr. Monckton?

20 MR. MONCKTON:

21 I don't have an objection to
22 that, Your Honor.

23 THE COURT:

24 Okay.

25 MR. MONCKTON:

1 I -- I don't know about Mr.

2 Wilson --

3 THE COURT:

4 How about it Mr. Wilson --

5 MR. MONCKTON:

6 -- or Mr. Hazzard.

7 THE COURT:

8 -- Senior?

9 MR. WILSON:

10 I have no objection.

11 THE COURT:

12 How about it, Mr. Hazzard?

13 MR. HAZZARD:

14 Well, Your Honor, my objection
15 is that:

16 Uh -- Again, the indictments
17 indicated one victim. I have not received any victim
18 impact statement indicating --

19 THE COURT:

20 But we know --

21 MR. HAZZARD:

22 -- anyone else who claimed to be
23 a victim.

24 Also the -- the way to cure the
25 issue between the Defendant's right to a fair and -- and

1 -- uh -- unbiased trial and unbiased testimony, and the
2 victim's right to be present, is simply:

3 Call those victims first.

4 Put them on the stand first.

5 Get them out of the way. And then, they can be in the
6 courtroom for all the rest of --

7 THE COURT:

8 Well, you know, I can't make the

9 -- the State try its case. They just going to try it
10 any way they want.

11 These -- These two victims know
12 nothing about what occurred with the police officers who
13 made the stop.

14 MS. LIVESAY:

15 Yes sir.

16 THE COURT:

17 They know nothing about what
18 each other had.

19 I mean, they were in two
20 different places in the house.

21 MS. LIVESAY:

22 Right.

23 THE COURT:

24 I don't think that the
25 corroboration of those witnesses would make any

1 difference whatsoever on this.

2 I understand you even had
3 Defendants in different places?

4 MS. LIVESAY:

5 Yes sir.

6 THE COURT:

7 Different Defendants.

8 MS. LIVESAY:

9 Yes sir.

10 THE COURT:

11 Some upstairs and some
12 downstairs.

13 MS. LIVESAY:

14 Yes sir.

15 THE COURT:

16 I mean, they're entirely
17 different people. So even an identification would be
18 different.

19 I'm going to let these two
20 victims stay; okay.

21 MR. MONCKTON:

22 Thank Your Honor.

23 Also these are motions in
24 limine, Your Honor.

25 Obviously, I want to bring

1 these two matters to The Court's attention so that -- you
2 know -- they will also have to be heard again at the
3 appropriate time.

4 THE COURT:

5 Okay. What do you have, Mr.

6 Monckton, here?

7 I see that both motions were
8 yours; okay.

9 MR. MONCKTON:

10 That's correct, Your Honor.

11 The first motion is a motion in
12 limine to prevent the in-court identification of the
13 Defendant Mario Tynes.

14 And I've listed the witnesses
15 who I'm asking to --

16 THE COURT:

17 Right.

18 MR. MONCKTON:

19 -- to move on. I don't know if
20 the State's intending at this time to have these
21 witnesses identify the client in court.

22 I know from reviewing the
23 discovery -- uh -- these individuals were not shown any
24 photo lineups? That has been conferred by Ms. Livesay
25 to me.

1 I just want to make The Court
2 aware that I think there is a process by which we need to
3 go through if the State intends to allow these witnesses
4 to identify the clients -- my client specifically, Mario
5 Tynes, in open court.

6 Because to my knowledge, there
7 has not been any previous indentation, Your Honor.

8 THE COURT:

9 All right. And -- And Mr.
10 Monckton -- uh -- I'll get right with you, Ms. Livesay.

11 I'm always concerned about when
12 you bring a defendant in and there's been no
13 confrontation between the defendant and the witness until
14 he sees the witness -- I mean the witnesses sees the
15 defendant at the -- uh -- defense table.

16 However, there are other factors
17 must be considered, such as:

18 The length of time that the
19 witness was in the presence of the defendant.

20 Under what circumstances it
21 occurred.

22 What the lighting was.

23 And there -- there are many
24 other factors that we're going to have to consider. And
25 that's going to lead us to -- uh -- a reservation of --

1 of -- of any ruling on this motion in limine until we get
2 to that point.

3 MR. MONCKTON:

4 And Your Honor --

5 THE COURT:

6 I'm going to need to hear the
7 testimony as to what occurred; what opportunity; how long
8 the observation was; whether possibly they knew or had
9 seen the -- uh -- the defendant before?

10 I understand that a lot of these
11 people were Coastal Carolina. Is that correct?

12 MR. MONCKTON:

13 That's correct, Your Honor.

14 THE COURT:

15 Victims and -- uh -- defendants?

16 MR. MONCKTON:

17 That's correct; yes, sir.

18 THE COURT:

19 It may be a situation where you
20 know it and -- uh -- or knew the person; or had seen the
21 person around; or recognized the person. And that was
22 certainly off-set any possibility of misidentification
23 that would occur because they saw the -- the defendant
24 for the first time in the -- in the courtroom.

25 I'm going to wait and see what

1 can develop here; okay.

2 MR. MONCKTON:

3 And I agree, Your Honor. I'm
4 just bringing it to your attention and to the State's
5 attention.

6 THE COURT:

7 I understand.

8 MR. MONCKTON:

9 I don't know if the State's
10 intending to do that with these witnesses. But, if they
11 are, I want us to be able to address them appropriately
12 at the time.

13 THE COURT:

14 Okay.

15 MR. MONCKTON:

16 And I believe that Mr. Hazzard
17 and Mr. Wilson were joining in that one as well, Your
18 Honor.

19 THE COURT:

20 All right. Very well.

21 And I'll have that noted for the
22 record, Mr. Wilson and Mr. Hazzard.

23 MR. WILSON:

24 Thank Your Honor.

25 THE COURT:

1 Is that correct?

2 MR. WILSON:

3 Yes sir.

4 MR. HAZZARD:

5 Thank you, Your Honor. Yes sir.

6 THE COURT:

7 Okay.

8 MR. MONCKTON:

9 Your Honor, the other motion in
10 limine I have -- uh -- is a SLED analysis report that was
11 done by a Ms. Katy Coy (phonetic), Your Honor.

12 And I just want to put you on
13 notice that when she comes to testify, the Defendant
14 Mario Tynes would be objecting to the State's trying to
15 elicit any information from her that Mr. Tynes is a
16 possible minor contributor to a DNA sample.

17 Uh -- I would ask Your Honor to
18 wait; that we rule on that matter when she comes up. And
19 I would also like Your Honor to ask the State not to
20 mention that until we have the appropriate time to have a
21 hearing on that matter.

22 THE COURT:

23 All right.

24 It's -- It's my understanding,

25 Ms. Livesay, and I'm going to -- want to make sure that I

1 understand fully what this is.

2 From -- From -- From what we
3 discussed in pretrial -- uh -- apparently one of the
4 victims, Mr. Barrett, was pistol-whipped.

5 There was a -- a stop of a -- a
6 vehicle -- uh -- some short time thereafter.

7 Uh -- The Defendants were
8 occupying -- Were all the Defendants occupying the
9 vehicle?

10 MS. LIVESAY:

11 Yes sir.

12 THE COURT:

13 All the Defendants were in the
14 vehicle.

15 Located in the vehicle were two
16 firearms.

17 MS. LIVESAY:

18 Yes sir.

19 THE COURT:

20 One firearm -- uh -- which was
21 tested.

22 Uh -- There were blood -- There
23 was blood found on that firearm.

24 First, the blood matched the
25 victim, Mr. Barrett, who was struck. And Mr. Barrett's

1 head had been slit open or something of that nature; or
2 he was bleeding.

3 But there was a -- a possibility
4 for a minor contributor that could have been Mr. Tynes?

5 Is that correct?

6 MS. LIVESAY:

7 Yes sir.

8 THE COURT:

9 And --

10 MS. LIVESAY:

11 Obviously, I've talked to our
12 people from SLED.

13 They give us this statistical
14 analysis of what the chances are this could belong to
15 someone else.

16 They're not going to say:

17 Yes, it's a match.

18 He's going to say:

19 There's a more than quadrillion
20 chance that it belongs to somebody other than the victim;
21 and that there is a --

22 THE COURT:

23 I'm not worried about victim.

24 MS. LIVESAY:

25 Right.

1 THE COURT:

2 I'm worried about Mr. Tynes'
3 match.

4 MS. LIVESAY:

5 And that there is a possibility
6 that Mr. Tynes was a minor contributor.

7 We also sent up the DNA from
8 every other codefendant. And she was able to exclude all
9 of those codependents as a possibility as a minor
10 contributor.

11 THE COURT:

12 But can she include Mr. Tynes?

13 MS. LIVESAY:

14 She can say that he is -- he
15 cannot be excluded. And the reason is, is because it is
16 a minor contributor.

17 So there is not enough there to
18 make any sort of statistic from that contribution like --

19 THE COURT:

20 So, basically, all we're saying
21 is like a hair sample:

22 It's similar to Mr. Tynes.

23 Is that correct?

24 MS. LIVESAY:

25 Well, what we can say is that:

1 He's a possibility; and no other
2 codefendant is a possibility.

3 THE COURT:

4 Okay.

5 And I would probably admit it
6 for that limited purpose, with a curative charge to the
7 jury that it could only be used for that purpose.

8 I might do that. I'll have to
9 see.

10 MR. MONCKTON:

11 I would just ask to be heard, so
12 we can develop --

13 THE COURT:

14 I will -- I will let you be
15 heard on it as -- as it develops.

16 We'll see what -- I'm not ruling
17 on it.

18 MS. LIVESAY:

19 Okay.

20 THE COURT:

21 I'm just telling you which way
22 I'm looking right now.

23 MS. LIVESAY:

24 Right.

25 THE COURT:

1 I want to see how it develops;
2 okay. I want to see what comes out; all right.

3 MS. LIVESAY:

4 Okay.

5 MR. MONCKTON:

6 That's all I have at this time,
7 Your Honor.

8 THE COURT:

9 All right.

10 Mr. Wilson, Senior; or Junior;
11 either one?

12 MR. WILSON:

13 Your Honor, I don't have any
14 additional motions.

15 I would like to revisit the
16 identification issue.

17 I think that -- uh -- one of
18 their -- one of the witnesses in particular that the
19 State, I'm sure, I'm going to use in the case is Ms.
20 Arnold, who was one of the females who was downstairs at
21 the time.

22 And in one of the statements
23 that she gave, I think she indicated that she had gone on
24 to the Internet or something and saw some pictures of the
25 Defendants after they had been arrested; and that from

1 that, she identified them as being the people who -- uh -
2 - who had committed the crime.

3 And I would --

4 THE COURT:

5 Did -- Did Ms. Arnold see all of
6 them; or just the ones who were upstairs or downstairs?

7 MR. WILSON:

8 Well, that's unclear -- uh --
9 because part of her story is that she was under the
10 covers for most of the time.

11 But -- So I don't know what she
12 saw.

13 But, I know that you she didn't
14 make any identification to the police immediately after
15 the crime happened.

16 But, several days later, she
17 said she went on the Internet; found the arrest -- where
18 they had been arrested and photographs of them in the
19 newspaper; or in a newspaper article.

20 And then from that, she said:

21 Aha, these are the -- these are
22 the guys who -- who robbed us.

23 And -- And so what I'm objecting
24 to is, is that being the basis for identification.
25 Because obviously, there were five -- four or five guys

1 on the photograph, which is in the paper.

2 And that's -- that's where she
3 says she got the information.

4 THE COURT:

5 They're J. Reuben Long Mug
6 Shots.

7 MR. WILSON:

8 Yes sir.

9 THE COURT:

10 It seems to be a -- a countywide
11 hobby now --

12 MR. WILSON:

13 Yes sir.

14 THE COURT:

15 -- to -- to -- uh -- look at the
16 -- uh -- at the arrest every morning, doesn't it?

17 MR. WILSON:

18 Yes sir. Yes sir.

19 But that -- that would be my
20 only -- uh -- objection, in addition to what -- uh --

21 THE COURT:

22 Okay. Let's see -- Let's see
23 what develops on that; okay.

24 I mean, you're telling me what
25 Ms. Arnold I'm going to say. But let's see what Ms.

1 Arnold says; all right.

2 MR. WILSON:

3 Yes sir.

4 THE COURT:

5 All right.

6 Mr. Hazzard, do you have
7 anything?

8 MR. HAZZARD:

9 Yes. Thank Your Honor. Very
10 briefly:

11 On behalf of Joshua Readon, we
12 first move to exclude any and all testimony regarding any
13 activities that might have occurred on the first floor of
14 that townhouse.

15 The Defense bases that motion
16 upon the fact that:

17 All of the indictments
18 specifically charge Mr. Readon with activity involving
19 Sean Barrett as a defendant.

20 THE COURT:

21 That would be the second floor
22 group?

23 THE COURT:

24 That would be the second floor
25 group, Your Honor. That is correct.

1 All of the evidence and
2 testimony -- or all of the discovery information I've
3 seen from the State -- indicates that their witness, Eric
4 Brown, as the allegations made by Mr. Tynes, were the
5 ones who went up to the second floor.

6 I would submit that Mr. Readon
7 is not charged with any activities that might have
8 occurred on the first floor.

9 There is no allegation made in
10 that regard.

11 THE COURT:

12 Well, where -- where did the
13 latest assault on Mr. Barrett occur?

14 MR. HAZZARD:

15 On the second floor, Your Honor.

16 THE COURT:

17 Okay. All right.

18 Well, if -- if we get that far,

19 Mr. Hazzard, don't we have: hand of one is the hand of
20 all?

21 I mean --

22 MR. HAZZARD:

23 Your Honor, hand of one is the
24 hand of all is a jury charge; but is not an element --

25 THE COURT:

1 I understand that.

2 MR. HAZZARD:

3 -- of the States case to be
4 proven --

5 THE COURT:

6 But it would certainly make --
7 If we're looking at the offense of burglary, okay?

8 Whether he was on the first or
9 second floor; does it make any difference?

10 MR. HAZZARD:

11 It would make a difference with
12 regard to -- he is alleged to have burgled Sean Barrett
13 on the second floor.

14 THE COURT:

15 But burgled, it happens to do
16 with a -- a building -- a -- a residence in the nighttime
17 -- uh -- for burglary first.

18 When they entered that door with
19 intent to commit a crime, if they did that, that was the
20 offense of burglary.

21 They didn't have to even carry
22 through with it; just intend to have done it.

23 So does it make any difference
24 what went on upstairs?

25 You know, it -- it might

1 conceivably make some difference as to the armed robbery,
2 perhaps.

3 Did they rob anyone downstairs?

4 MS. LIVESAY:

5 Yes, sir, Your Honor. They
6 took cell phones and a little cash.

7 THE COURT:

8 Allegedly robbed anyone?

9 MS. LIVESAY:

10 Yes sir.

11 THE COURT:

12 Uh --

13 MR. HAZZARD:

14 And my issue:

15 Obviously, they were not charged
16 with that.

17 THE COURT:

18 I understand. But I am not ==

19 MR. HAZZARD:

20 And my position is that:

21 It has, therefore, absolutely no
22 relevance and no probative value. But it is extremely
23 prejudicial.

24 THE COURT:

25 Are you going to argue to the

1 jury:

2 My client only robbed the people
3 downstairs; and not the people upstairs?

4 Are you prepared to do that?

5 MR. HAZZARD:

6 No, Your Honor. That is not --

7 THE COURT:

8 I didn't think so.

9 MR. HAZZARD:

10 -- my argument.

11 My argument would be that:

12 My client didn't rob anyone.

13 THE COURT:

14 All right. And I think that's
15 the way you ought -- you ought to and probably would
16 proceed.

17 And in that case, it doesn't
18 make any difference whether it was upstairs or
19 downstairs, does it?

20 MR. HAZZARD:

21 No sir. It's --

22 THE COURT:

23 Isn't it part of the res gestae
24 which is going to be required to -- to tell the story in
25 this case.

1 MR. HAZZARD:

2 Well, the --

3 THE COURT:

4 Doesn't it come in under the
5 real estate gestae?

6 MR. HAZZARD:

7 Res gestae ace is a good point
8 that The Court raises.

9 However, I think in State v
10 Wiles, 383 South Carolina 151 679 Southeastern Second,
11 172 --

12 COURT REPORTER:

13 I'm sorry. I'm losing you.
14 Your back's to me a little bit. Can you -- Can you say
15 that --

16 THE COURT:

17 State versus Riley.

18 MR. HAZZARD:

19 State versus Wiles, W-i-l-e-s.

20 That is 383 South Carolina 151
21 679 Southeastern Second, 172, Supreme Court of the State
22 of South Carolina 2009.

23 That case says"

24 Even where the res gestae, which
25 is simply explaining the events surrounding the alleged

1 activity itself is concerned, when that explanation is
2 more prejudicial than probative, even the res gestae can
3 be excluded, Your Honor.

4 But --

5 THE COURT:

6 And we are --

7 MR. HAZZARD:

8 -- The Court does raise a very
9 good point.

10 THE COURT:

11 And -- And we are going to be
12 talking about possession of a quantity of marijuana with
13 intent to distribute also; and where it came from.

14 MR. HAZZARD:

15 Your Honor --

16 THE COURT:

17 Aren't we going to be talking
18 about it?

19 MR. HAZZARD:

20 We are Your Honor. But I
21 believe all of the charges --

22 THE COURT:

23 I'll tell you what, Mr. Hazzard,
24 we'll -- we'll revisit it; okay?

25 MR.. HAZZARD:

1 Fair enough, Your Honor. Fair
2 enough.

3 THE COURT:

4 All right.

5 MR. HAZZARD:

6 I want to keep -- As long as The
7 Court keeps an open mind, we can come back --

8 THE COURT:

9 I'll keep an open mind.

10 Ms. Livesay, you -- you even
11 wanted to speak?

12 MS. LIVESAY:

13 Yes sir. And we just had a
14 couple of clean-up motions -- uh --

15 THE COURT:

16 I mean on that issue.

17 MS. LIVESAY:

18 Oh, no.

19 THE COURT:

20 Okay.

21 MS. LIVESAY:

22 No sir. We'll go on the hand
23 of one, hand of all.

24 THE COURT:

25 Okay. All right.

1 MR. HAZZARD:

2 The second Defense motion:

3 We do, indeed, on behalf of Mr.
4 Readon, join in on the motion to sequester that The Court
5 that already addressed for Mr. Monckton.

6 The Defense, on behalf of Mr.
7 Readon, would make an additional motion:

8 Uh -- We are informed and
9 believe that one of the five individuals who was in the
10 car that night, a guy by the name of Eric Brown --

11 THE COURT:

12 A codefendant.

13 MR. HAZZARD:

14 --- a codefendant --

15 THE COURT:

16 Right.

17 MR. HAZZARD:

18 -- will be testifying for the
19 State.

20 I believe he will be. If he --

21 THE COURT:

22 I understand that they are.

23 MR. HAZZARD:

24 Yes. If he does testify, we
25 ask that this individual be sequestered both before and

1 after his testimony.

2 In other words, we ask that the
3 only time he be in the courtroom is when he is on the
4 witness stand.

5 The Defense bases this motion on
6 the scuttle-ly (phonetic) information provided by the
7 State, a statement made by a young dude by the name of
8 Greg Collins, another indicted conspirator, as it were;
9 where he says:

10 You know, I was cool with Mario.
11 But everybody knew Eric Brown was a bad man who would rob
12 you and who was dangerous.

13 And I would not want this case
14 to be a situation where Mr. Brown, who is a fairly large
15 individual, after his testimony, can sit out there and
16 scowl at anyone else taking the witness stand, and
17 possibly in imitate their testimony.

18 He is not a victim in this case.

19 His interest is only at the call
20 of The Court, and at the whim of the State to have him
21 testify --

22 THE COURT:

23 Well, I've already said I would.
24 sequester the witnesses other than the victims, and I'll
25 stick with that.

1 And I think that's a reasonable
2 request that they're making Ms. Livesay; okay.

3 MS. LIVESAY:

4 Yes sir.

5 THE COURT:

6 I want to hear you for this
7 reason. But I will -- I will -- I will grant it.

8 MR. HAZZARD:

9 Thank you, Your Honor.

10 THE COURT:

11 Of course Mr. -- The other
12 witness may be called first anyway.

13 MR. HAZZARD:

14 Normally at this time, Your
15 Honor, the Defense would go into the issue of the
16 admissibility or inadmissibility of the defendant's prior
17 record.

18 My understanding is that Mr.

19 Readon only has a prior record for simple assault.

20 THE COURT:

21 Ms. Livesay, you're not going to
22 use that, are you?

23 MS. LIVESAY:

24 Uh -- We've got his NCIC. I
25 think that that is what he has.

1 None of these gentlemen have any
2 sort of real outstanding trial records.

3 THE COURT:

4 At this juncture, you don't have
5 any -- uh -- record that you intend to use for
6 impeachment purposes?

7 MS. LIVESAY:

8 No sir.

9 THE COURT:

10 Okay.

11 MR.. HAZZARD:

12 That would be all preliminary
13 motions on behalf of Defendant Joshua Readon, Your Honor.

14 THE COURT:

15 Okay.

16 Mr. Monckton? Mr. Wilson?

17 MR. MONCKTON:

18 That's all I have at this time,
19 Your Honor.

20 THE COURT:

21 That's all you have?

22 MR. WILSON:

23 Nothing further, Your Honor.

24 THE COURT:

25 Okay. All right.

1 Gentlemen, again let me stress
2 upon you the quality of your attorneys and their
3 experience.

4 I implore you to listen to your
5 attorneys. Follow their advice, if it just doesn't offend
6 your sensibilities -- uh -- about this case. That's what
7 they're there for; okay.

8 MS. LIVESAY:

9 Your Honor, if we may?

10 Just to clear up --

11 THE COURT:

12 Yeah. You had some things as
13 well, didn't you, Ms. Livesay?

14 MS. LIVESAY:

15 Yes, Your Honor.

16 We just want to go ahead and --
17 and make sure we're all on board and let them know that
18 the State plans on introducing that in-car-camera, as
19 well as the 911 tape.

20 THE COURT:

21 The Highway Patrol camera?

22 MS. LIVESAY:

23 Uh -- the Horry County video
24 camera?

25 THE COURT:

25 | About half and half.

1 THE COURT:

2 About half and half? Okay.

3 MS. LIVELY:

4 Well, we -- Originally, I think
5 whenever they -- uh -- the first couple that were taken --
6 -- uh -- were done by, I believe, an order.

7 And then the -- Most recently,
8 the ones that were done when -- uh -- we didn't believe
9 we were going to find any DNA, which came back to be the
10 case -- uh -- those were done by consent -- uh -- through
11 the defense attorneys.

12 THE COURT:

13 So -- So what -- what you are
14 asking them to consent to is the chain on each of the
15 three defendants and Mr. Barrett swabs?

16 MS. LIVESAY:

17 Yes sir.

18 THE COURT:

19 Is that correct?

20 MS. LIVESAY:

21 Yes sir.

22 THE COURT:

23 And as to the firearm? Is that
24 correct?

25 MS. LIVESAY:

1 Yes sir.

2 THE COURT:

3 Do you have any other evidence -
4 - physical evidence in this case that will require a
5 chain? MS. LIVESAY:

6 Yes sir.

7 THE COURT:

8 So what else you got?

9 MS. LIVESAY:

10 There was some swabs on some
11 hats that came back. Nothing came back on those.
12 A hat were dropped at the scene.

13 THE COURT:

14 Well, you don't even need that,
15 do you?

16 MS. LIVESAY:

17 No. No sir.

18 THE COURT:

19 You don't even need it?

20 MS. LIVESAY:

21 No sir. And --

22 THE COURT:

23 Okay. All right.

24 MS. LIVESAY:

25 -- there was a chain. And I

1 don't know if -- Normally, we don't require -- a chain is
2 not required. But just so we'll be clear on it:

3 Downstairs, one of the
4 defendants racked the gun. Some bullets was extracted
5 from the gun.

6 We sent the gun and the bullets
7 to evidence where that was able to be matched up
8 together.

9 THE COURT:

10 The -- The bullet had been in
11 the chamber of that particular firearm?

12 MS. LIVESAY:

13 Right.

14 THE COURT:

15 All right. So you want -- uh -
16 - consent as to the chain on that firearm and that
17 projectile, or -- or bullet -- excuse me -- as well?

18 Is that correct?

19 MS. LIVESAY:

20 Yes sir. And the chain as to
21 the possibilities on the gun.

22 THE COURT:

23 What do you mean possibilities?

24 MS. LIVESAY:

25 As: Who could be a contributor

1. on the gun; as to whose DNA that belonged to.

2 THE COURT:

3 Okay. You say you checked that
4 firearm too?

5 MS. LIVESAY:

6 Yes sir.

7 THE COURT:

8 There was more than one firearm?

9 MS. LIVESAY:

10 Both firearms.

11 THE COURT:

12 Okay, gentlemen. You tell me
13 what you want to do in this -- in -- in regard to this.

14 Have they been provided with the
15 chain evidence?

16 MS. LIVESAY:

17 Yes sir. I understand --

18 THE COURT:

19 Okay. You got the chain
20 evidence, gentlemen.

21 Do you want us -- want them to
22 produce the -- uh -- the individual -- uh -- parties --
23 uh -- the custodians of the evidence that held the
24 evidence until it got -- got to SLED.

25 Right?

1 MS. LIVESAY:

2 Yes sir. If --

3 THE COURT:

4 You're going to have whoever
5 recovered it; right?

6 MS. LIVESAY:

7 Yes sir.

8 THE COURT:

9 You have the person that
10 recovered it in each case. And then you're going to
11 have it going to SLED.

12 And you want them to consent to
13 the middle ground?

14 MS. LIVESAY:

15 Yes. Right.

16 THE COURT:

17 All right.

18 They're telling you they're
19 going to put up the person who recovered the piece of
20 evidence. Then, they're going -- uh -- If you would
21 require them to do so, they'll have the chain involved.

22 It's your call.

23 I -- Is there any -- any break?

24 Let me first ask you that.

25 Mr. Wilson, have you seen any

1 break in the chain as to the documents they have given
2 you?

3 MR. WILSON:

4 I have not. But --

5 THE COURT:

6 Okay. So, that should make the
7 decision easier.

8 MR. WILSON:

9 And Your Honor, in -- in regards
10 to the DNA -- uh -- I have no objections on behalf of the
11 defendant Lackey -- uh -- to any -- to the chain.

12 I have absolutely no objections,
13 Your Honor.

14 I have no objections to the hat
15 -- the DNA on the hat in regards to -- uh -- this
16 defendant.

17 Now, on the bullet, I do have
18 objections.

19 And the reason that I have an
20 objection is:

21 Because Sean Barrett would be
22 one of the people in that link. And I want to make sure
23 that we not waive that.

24 THE COURT:

25 Okay.

1 Mr. Barrett is going to be here
2 anyway?

3 MS. LIVESAY:

4 Your Honor, it's actually the
5 gun -- What we're looking at is the strike marks on the
6 bullet from the ejection of the gun -- of the bullet.

7 So there's nothing. There's no
8 possible way to temper with --

9 THE COURT:

10 Well, what I -- what I think is
11 -- Mr. Wilson is telling me is:

12 Mr. Barrett probably found the
13 bullet.

14 MS. LIVESAY:

15 He found the bullet --

16 MR. WILSON:

17 That's correct.

18 THE COURT:

19 Okay.

20 MS. LIVESAY:

21 He found the bullet on the
22 floor. And the gun was found that night --

23 THE COURT:

24 Well, you said you we're going
25 to have him here to testify as finding the bullet --

1 recovering the bullet?

2 MS. LIVESAY:

3 Yes sir.

4 THE COURT:

5 Okay. Mr. Barrett's going to
6 be here anyway?

7 MR. WILSON:

8 Yes sir.

9 MS. LIVESAY:

10 That's right.

11 THE COURT:

12 Would you waive anyone else?

13 MR. WILSON:

14 Yes sir. I don't have any
15 objection to anybody else.

16 THE COURT:

17 All right.

18 Mr. Barrett will be here to
19 testify that he did it.

20 If you don't have him, I'm not
21 going to let him testify that he recovered a bullet;
22 okay.

23 All right. So that one -- That
24 won't be a problem for you.

25 Okay. How about it, Mr.

1 Hazzard?

2 MR. HAZZARD:

3 Your Honor, my only problem with
4 the DNA:

5 None of it comes back tied to
6 Joshua Readon. Although, there is one swab where, again,
7 the language of "cannot be excluded" is used.

8 And as The Court and I have
9 discussed in the past, my understanding about DNA is
10 that:

11 If it's -- For it to truly be
12 DNA science, it tells you conclusively.

13 And if they --

14 THE COURT:

15 Well, never conclusively.

16 MR. HAZZARD:

17 -- will agree not to have -- If
18 they will agree not have the SLED person say:

19 Cannot be excluded.

20 Then, I have no problem with
21 whether they're bring in one or not.

22 But if someone is going to get
23 up there and say:

24 He cannot be excluded.

25 And damn him with that faint

1 phrasing, then yes, the Defense is going to put them
2 through the proof of every possible test whatsoever, Your
3 Honor.

4 THE COURT:

5 All right, Ms. Livesay?

6 MS. LIVESAY:

7 First of all, we can just bring
8 all the SLED people.

9 But I think it's ridiculous to
10 have it so they can stand up and say:

11 Excluded. My client cannot be a
12 contributor.

13 And then -- And hinder us from
14 saying:

15 Who could possibly be a
16 contributor.

17 I don't see how that's --

18 THE COURT:

19 Well, he not asking you to
20 exclude the evidence right now.

21 What -- What you're asking me to
22 do -- and of course you know the rule and Ms. Lively
23 knows the rule that:

24 You got to establish the chain.

25 And we were trying to get to the

1 point where you didn't have to -- uh -- to -- uh -- to
2 prove your chain.

3 Well, they wants to prove the
4 chain, or want you to prove the chain.

5 So unless they agree, we'll
6 prove -- or you'll have to prove the chain -- or I'll
7 require the chain be proven.

8 There's no way around it; okay.

9 MS. LIVESAY:

10 That's fine.

11 THE COURT:

12 All right.

13 MS. LIVESAY:

14 Thank Your Honor.

15 THE COURT:

16 Okay.

17 Mr. Monckton, we didn't even
18 talk to you, did we?

19 MR. MONCKTON:

20 Your Honor, I think you've
21 ruled. I'd just be filling up your ears with boring
22 stuff.

23 THE COURT:

24 All right; thank you.

25 Okay. Uh --

1 MS. LIVESAY:

2 Your Honor, if I could just
3 briefly?

4 Uh -- When we have to do the
5 chain, that's -- I'm not opposed to it. But there's
6 about 5 or 6 chain witnesses that will be required from
7 SLED.

8 I certainly don't want to bring
9 them here for us to exclude the testimony of Katy Coy.

10 The whole reason we are
11 establishing the chain, is so our forensic science can
12 say:

13 These are the possible people
14 that it could belong to. And these people are excluded.

15 I don't want to bring them all
16 here, and then, not have her be able to testify.

17 I think it's going to --
18 prejudicial in front of the jury for us.

19 THE COURT:

20 Well, I thought you told me a
21 moment ago that she was going to say:

22 The blood on the gun that came
23 from the car was Sean Barrett's -- the victim's blood
24 okay.

25 Now whatever else she may say,

1 okay. But that's powerful.

2 I mean I think it's relevant.

3 And I -- I don't think it's
4 prejudicial. Well it's prejudicial. But certainly the
5 probative value is there to override that.

6 MS. LIVESAY:

7 Exactly, Your Honor.

8 THE COURT:

9 I understand that's what she
10 going to say.

11 MS. LIVESAY:

12 Yes sir.

13 THE COURT:

14 Anything else she says, we'll
15 look and see; okay.

16 MS. LIVESAY:

17 That's fine. Thank Your Honor.

18 THE COURT:

19 All right.

20 Anybody got anything else?

21 MR. HAZZARD:

22 Nothing further on behalf of
23 Defendant Joshua Readon, Your Honor.

24 THE COURT:

25 How about it, Mr. Wilson?

1 MR. WILSON:

2 Nothing further from the
3 Defendant Lackey.

4 THE COURT:

5 And Monckton, as well?

6 MR. MONCKTON:

7 Nothing further, Your Honor.

8 And I --

9 THE COURT:

10 Well, okay.

11 Ms. Livesay, you're done as
12 well; okay.

13 MS. LIVESAY:

14 Yes sir.

15 THE COURT:

16 Thank you all for -- uh -- your
17 cooperation.

18 Does anyone know any reason why
19 we'd not be able to just start right up in the morning?

20 MR. HAZZARD:

21 I do not Your Honor. I would
22 simply ask -- uh -- for some clarification from Ms.
23 Livesay as to whether she will be here until five
24 o'clock?

25 I've indicated to The Court, as

1 soon as This Court adjourns this motion hearing, I'm
2 going to speak with Mr. Readon at length regarding his
3 request to speak to me about a possible plea.

4 THE COURT:

5 Okay.

6 MR. HAZZARD:

7 And I would want to know how
8 long she'll be here so that I can get to her before five
9 o'clock.

10 THE COURT:

11 She'll be here to five.

12 MS. LIVESAY:

13 Absolutely, Your Honor.

14 THE COURT:

15 If she's not, call Claire.

16 MS. LIVESAY:

17 We'll be here, Your Honor.

18 THE COURT:

19 And -- And just let The Court be
20 aware of it.

21 I would -- Gentleman, if you
22 would, please have witness lists ready -- uh -- in the
23 morning; ladies.

24 Uh -- And if -- if this case
25 does not work out, let's have witness lists ready; and --

1 uh -- anything specific voir dire that you might have
2 other than what I usually ask -- just general -- uh --
3 voir dire that -- recommended by the Court
4 Administration; okay.

5 Thank you again.

6 We'll see you in the morning.

7 MS. LIVESAY:

8 Thank you, Your Honor.

9 MR. WILSON:

10 Thank you, Judge.

11 MR. HAZZARD:

12 Thank Your Honor.

13 (WHEREUPON: The court was
14 declared in recess at 2:49 PM, May 17th, 2010.)

15 (WHEREUPON: The proceedings of
16 May 17th, 2010 in this case were concluded.)

17 (Please see following page for
18 May 18th, 2010, proceedings.)
19
20
21
22
23
24
25

1 (WHEREUPON: The court was called
2 to order in this particular case by the Bailiff at 10:05
3 AM AM, May 18, 2010, 2010.)

4 THE COURT:

5 All right. Are we ready?

6 MS. LIVELY:

7 I believe that -- uh -- well the
8 State's ready, Your Honor.

9 All right. Where are all of the
10 Defendants could?

11 MR. MONCKTON:

12 Your Honor, my client, Mr. Tynes
13 is sitting -- seated in the back row with his mother.

14 Bring your clients up. We're
15 calling this case.

16 I want to make sure that we don't
17 have any preliminary matters we need to -- uh -- we need
18 to take up.

19 Where is Mr. Wilson?

20 There's Mr. Wilson.

21 Okay. All right.

22 (WHEREUPON: All pertinent
23 parties, along with their counsel, were now back and
24 present in the courtroom.)

25 THE COURT:

1 Uh -- Madam Solicitor, any
2 preliminary matters before we begin the qualification of
3 the jury in these cases?

4 MS. LIVESAY:

5 Sir, just the matter of Joshua
6 Readon's plea, Your Honor.

7 THE COURT:

8 Joshua Readon. He's represented
9 by Ms. Hazzard. Is that correct?

10 MR. HAZZARD:

11 Your Honor, at this time, Joshua
12 Readon indicates that he wishes to change his plea from
13 not guilty to an Alford plea on the charges of armed
14 robbery and possession with intent to distribute
15 marijuana.

16 MS. LIVESAY:

17 Thank you.

18 Your Honor -- uh -- Mr. Readon was
19 charged with armed robbery under Indictment 2008-GS-26-
20 659.

21 He is here to guilty to that
22 charge, Your Honor. And it has been true-billed by the
23 grand jury.

24 He's also here to plead guilty to
25 the Possession With Intent to Distribute Marijuana.

1 That's Indictment 2008-GS-26-662.

2 Your Honor, that also has been
3 true-billed.

4 Uh -- There is no recommendation
5 at this time by the State, Your Honor.

6 We are awaiting to see whether or
7 not he is going to be able to cooperate with the State.

8 THE COURT:

9 All right.

10 Mr. Hazzard, you represent -- uh

11 -- Mr. Readon?

12 MR. HAZZARD:

13 That is correct, Your Honor.

14 THE COURT:

15 And have you had an opportunity to
16 -- uh -- discuss with Mr. Readon the -- uh -- possible
17 penalty in this matter as well as any defenses that might
18 be available, and the elements of these offenses?

19 MR. HAZZARD:

20 Your Honor, Mr. Readon and I have
21 discussed several times the facts regarding the case.

22 We have discussed the different
23 penalties for all of the charges that he is facing:
24 burglary first, armed robbery, possession with intent to
25 distribute marijuana, and unlawful possession of a

1 handgun.

2 He is well aware that the maximum
3 possible penalties for those offenses was life plus 30
4 years if The Court were to decide to run them consecutive
5 and give him the maximum on each.

6 We have discussed any and all
7 possible defense.

8 We have discussed trial strategy
9 -- uh -- procedural aspects of -- uh -- these court
10 proceedings, Your Honor, in full.

11 THE COURT:

12 And have you explained to him that
13 the charges that he is going forward with are armed
14 robbery and possession of marijuana with intent to
15 distribute? Is that correct?

16 MR. HAZZARD:

17 I have, Your Honor.

18 And as the sentencing sheet
19 indicates, that he executed, I have explained to him the
20 significance of the -- uh -- boxes defining the armed
21 robbery as being both a violent offense and a most
22 serious offense -- uh -- should there be any -- uh --
23 subsequent convictions of most serious offenses.

24 THE COURT:

25 All right. And -- uh -- have you

1 had an opportunity to review the discovery materials in
2 this case?

3 MR. HAZZARD:

4 Yes sir, at length.

5 THE COURT:

6 Okay. And -- uh -- I believe he
7 had a pretrial the other day where it seemed to me there
8 was overwhelming evidence that the State alleges that
9 they can offer?

10 MR. HAZZARD:

11 Yes sir.

12 THE COURT:

13 Based on your review of the -- the
14 evidence, do you feel the State has sufficient evidence
15 to convince a jury of his guilt beyond a reasonable doubt
16 as to these charges?

17 MR. HAZZARD:

18 Yes sir.

19 THE COURT:

20 Okay. All right.

21 Mr. Readon, how old are you sir?

22 DEFENDANT:

23 21, Your Honor.

24 THE COURT:

25 Are you married?

1 DEFENDANT:

2 Not yet, but is going to be.

3 THE COURT:

4 Do you have any children?

5 DEFENDANT:

6 Yes sir.

7 THE COURT:

8 All right. Let's place him under
9 oath.

10 WHEREUPON: The Defendant was
11 placed under oath by the Clerk in open court at 10:09 AM.

12 THE COURT:

13 Mr. Readon, let me ask you again:

14 You said you had some children?

15 DEFENDANT:

16 Yes sir.

17 THE COURT:

18 How many?

19 DEFENDANT:

20 I've got one.

21 THE COURT:

22 And where is that child?

23 DEFENDANT:

24 With his mother. She's over
25 there.

1 THE COURT:

2 Okay. And -- uh -- do you
3 support the child?

4 DEFENDANT:

5 Yes sir.

6 THE COURT:

7 Are you employed, Mr. Readon?

8 DEFENDANT:

9 Yes sir.

10 THE COURT:

11 What kind of work do you do?

12 DEFENDANT:

13 I'm a cook.

14 THE COURT:

15 Okay. A cook?

16 DEFENDANT:

17 Yes sir.

18 THE COURT:

19 All right. And where do you
20 work?

21 DEFENDANT:

22 I work at (inaudible).

23 THE COURT:

24 All right. How far did you go in
25 school?

1 DEFENDANT:

2 The 12th.

3 THE COURT:

4 Did you finish high school?

5 DEFENDANT:

6 Yes sir.

7 THE COURT:

8 Okay. All right.

9 Mr. Readon, have you ever been
10 treated for any mental health issues?

11 DEFENDANT:

12 No sir.

13 THE COURT:

14 Have you ever been treated for any
15 alcoholism; drug addiction; anything of that nature?

16 DEFENDANT:

17 No sir.

18 THE COURT:

19 Have you taken any drugs or
20 alcohol within the last 24 hours?

21 DEFENDANT:

22 No sir.

23 THE COURT:

24 Have you taken any medications?

25 DEFENDANT:

1 No sir.

2 THE COURT:

3 All right, sir.

4 Is there any reason whatsoever why
5 you would not fully and completely understand what we're
6 doing here today?

7 Are you having a physical or
8 mental issue; anything going on in your life that would
9 keep you from understanding what we're doing?

10 DEFENDANT:

11 No.

12 THE COURT:

13 Now, Mr. Hazzard, have you
14 explain to Mr. Readon the effect of an Alford plea?

15 MR. HAZZARD:

16 Yes sir, Your Honor. I explained
17 to him specifically that The Court considers it the same
18 as a guilty plea; that specifically the Defendant is
19 saying that:

20 He is not admitting guilt.

21 However, he has seen the evidence against him. He
22 believes that if he goes to trial, he will be most likely
23 convicted. And he does not want to lose the benefit of
24 the offer -- uh -- that was made by the State.

25 And he just wants to take the

1 chance that The Court will not give HIM the maximum
2 sentence.

3 THE COURT:

4 All right.

5 And -- uh -- is that your
6 understanding, Mr. Readon?

7 DEFENDANT:

8 Yes sir.

9 THE COURT:

10 I think it's a wise choice in this
11 case.

12 Ms. Livesay, if you would, give me
13 the facts in this case.

14 MS. LIVESAY:

15 Yes, Your Honor.

16 Uh -- In Horry County on or around
17 October 13th of 2007, there were five Defendants,
18 including Mr. Readon.

19 They got in a vehicle and drove
20 over to the victim's house in [REDACTED]
21 where four of them got out of the vehicle; entered the
22 house without consent; broke in.

23 Two of them came downstairs.

24 Two other Defendants ran upstairs.

25 The two downstairs, one had a gun;

1 held the gun on the victims while the other collected the
2 -- uh -- money and cell phones.

3 The other two Defendants ran
4 upstairs where they met two other victims.

5 One of those Defendants had a gun.

6 There was an altercation between
7 him and the other victim, while the other Defendant
8 collected the marijuana and the money out of the house.

9 All four then left the residence;
10 being pulled over with in about one or two minutes from
11 the scene. where the evidence was located in their
12 vehicle, Your Honor.

13 THE COURT:

14 I believe there was DNA evidence
15 as well?

16 MS. LIVESAY:

17 Yes, Your Honor.

18 The -- uh -- We've actually talked
19 to Dan DeFreese, an expert at SLED. They were able to
20 match the bullet that was left in the victim's apartment
21 with one of the guns in the vehicle.

22 The other gun -- the second gun --
23 we were able to place the victim's blood on that gun that
24 was found in the vehicle.

25 THE COURT:

1 All right.

2 Mr. Readon, I know that you're
3 pleading under Alford. But do you understand the factual
4 basis for -- uh -- this plea?

5 Do you understand the evidence
6 that the State has against you?

7 DEFENDANT:

8 (Nods in the affirmative.)

9 THE COURT:

10 All right, sir. Is that a "yes?"

11 DEFENDANT:

12 Yes sir.

13 THE COURT:

14 All right. Do you still believe
15 that a conviction would be most likely in your case?

16 DEFENDANT:

17 Yes sir, I do.

18 THE COURT:

19 All right.

20 Now, Mr. Readon, do you understand
21 that you do not have to plead guilty. You have a right
22 to a jury trial.

23 DEFENDANT:

24 Yes sir.

25 THE COURT:

1 And in a jury trial you don't have
2 to testify, but you certainly can. But you have a Fifth
3 Amendment right not to testify.

4 And if you chose not to testify,
5 I'd tell the jury they could not hold that against you.
6 Do you understand that?

7 DEFENDANT:

8 Yes sir.

9 THE COURT:

10 Do you also understand you would
11 have the right to be represented by MR. Hazzard, who
12 stands here with you today.

13 You could challenge all the
14 evidence that the State has against you and put up
15 evidence that might be helpful to you.

16 Do you understand that?

17 DEFENDANT:

18 Yes sir.

19 THE COURT:

20 In spite of that, do you still
21 wish to plead guilty and thereby waive your right to a
22 jury trial?

23 DEFENDANT:

24 Yes sir.

25 THE COURT:

1 Or plead under Alford?

2 DEFENDANT:

3 Yes sir.

4 THE COURT:

5 I want to correct that.

6 All right, sir.

7 Do you understand that I could
8 give you for the armed robbery up to 30 years; and I
9 could give you for the possession with intent to
10 distribute marijuana up to five years.

11 Do you understand that?

12 DEFENDANT:

13 Yes sir.

14 THE COURT:

15 And knowing this, do you still
16 wish to plead guilty?

17 DEFENDANT:

18 Yes sir.

19 THE COURT:

20 Okay.

21 Now, are you satisfied with Mr. --
22 uh -- Hazzard's representation?

23 DEFENDANT:

24 Yes sir.

25 THE COURT:

1 Has he answered all your
2 questions?

3 DEFENDANT:

4 Yes sir.

5 THE COURT:

6 And cooperated with you?

7 DEFENDANT:

8 Yes sir.

9 THE COURT:

10 Do you feel that he's had your
11 best interests at heart?

12 DEFENDANT:

13 Yes sir.

14 THE COURT:

15 All right.

16 Do you -- Has any threatened you
17 or intimidated you in any way to make you plead guilty --
18 or plead under Alford?

19 DEFENDANT:

20 No sir.

21 THE COURT:

22 Are you entering that plea freely
23 and voluntarily?

24 DEFENDANT:

25 Yes sir.

1 THE COURT:

2 Has anyone threatened you or
3 coerced you in any way to get you to plead guilty?

4 DEFENDANT:

5 No sir.

6 THE COURT:

7 Or to plead under Alford?

8 DEFENDANT:

9 No sir.

10 THE COURT:

11 Now, I am told by the Solicitor
12 that: as a result of your plea, they are going to dismiss
13 a burglary first charge that carries life -- or up to
14 life.

15 DEFENDANT:

16 Yes sir.

17 THE COURT:

18 And also, they're going to dismiss
19 -- Wasn't there another charge?

20 MS. LIVESAY:

21 The unlawful carrying, Your Honor.

22 THE COURT:

23 The unlawful carrying of a
24 firearm, which I believe is one year. Is that correct?

25 MS. LIVESAY:

1 Yes sir.

2 THE COURT:

3 And she's dismissing those.

4 Have they promised you anything

5 other than that?

6 DEFENDANT:

7 No sir.

8 THE COURT:

9 Is that the full deal, Mr.

10 Hazzard?

11 MR. HAZZARD:

12 That is, Your Honor.

13 THE COURT:

14 That's the promise that's been

15 made?

16 MR. HAZZARD:

17 Yes sir.

18 THE COURT:

19 All right.

20 Mr. Readon, do you believe that

21 this is in your best interest? This is the -- the

22 intelligent thing for you to do?

23 DEFENDANT:

24 Yes sir.

25 THE COURT:

1 And this is what you want to do?

2 DEFENDANT:

3 Yes sir.

4 THE COURT:

5 You've had plenty of time to
6 discuss it with your family and friends?

7 DEFENDANT:

8 Yes sir.

9 THE COURT:

10 All right, sir.

11 Do you understand, Mr. Readon,
12 that you have 10 days from today's date in which to enter
13 or file a notice of intent to appeal.

14 Most people don't understand you
15 can appeal a guilty plea; but you can.

16 However, in order to perfect your
17 appeal or to have your appeal, you must file what is
18 called a notice of intent to appeal within the next 10
19 days.

20 If you don't, you waive your right
21 to appeal. Do you understand that?

22 DEFENDANT:

23 Yes sir.

24 THE COURT:

25 Now, I'm sure you don't know how

1 to do it or where to do it; but Mr. Hazzard does. And
2 Mr. Hazzard would be happy to do that for you if you gave
3 him adequate time in which to prepare your notice and to
4 file it.

5 Is that right, Mr. Hazzard?

6 MR. HAZZARD:

7 That's correct, Your Honor.

8 THE COURT:

9 All right, sir.

10 You understand that?

11 DEFENDANT:

12 Yes sir.

13 THE COURT:

14 I find that:

15 There is a substantial factual
16 basis for this plea.

17 I find that:

18 It was made freely, voluntarily,
19 knowingly, and intelligently, after the advice of a very
20 competent attorney with whom the Defendant is satisfied,
21 and I will accept the plea.

22 And you want to defer -- uh --
23 sentencing at this time?

24 MS. LIVESAY:

25 Uh -- Your Honor, at this time,

1 we're not going to sentence -- or make a recommendation
2 regarding Mr. Readon's case.

3 We're going to wait to see if he's
4 able to cooperate and give the State any assistance.

5 THE COURT:

6 All right.

7 So Mr. Readon may testify?

8 MS. LIVESAY:

9 Yes sir.

10 THE COURT:

11 Very well. All right.

12 Mr. Readon, you are in custody;
13 but -- uh -- you -- uh -- are -- uh -- uh -- will be
14 sentenced at a later date; okay. Thank you.

15 MR. HAZZARD:

16 Thank you.

17 MS. LIVESAY:

18 Thank Your Honor.

19 THE COURT:

20 Mr. Hazzard, will you withdraw
21 now?

22 MR. HAZZARD:

23 I will..

24 MR. WILSON:

25 Can I have one minute before we

1 start?

2 MR. MONCKTON:

3 Me as well, Your Honor.

4 THE COURT:

5 All right.

6 WHEREUPON: The court was at ease
7 from 10:17 AM until 10:25 AM.

8 (WHEREUPON: The court was called
9 to order by the Bailiff at 10:25 AM, May 18, 2010; and
10 all pertinent parties, along with their counsel, were
11 back and present in the courtroom.)

12 BAILIFF:

13 Order in the court.

14 THE COURT:

15 We need to make some room for this
16 jury I need to bring in.

17 Gentlemen, I asked if you had any
18 particular or specific voir dire from yesterday.

19 Have you shared this with Ms.

20 Livesay?

21 MR. MONCKTON:

22 Yes, sir, Your Honor.

23 MS. LIVESAY:

24 I do have a copy of the list, Your
25 Honor. Let me get another second to look at it.

1 I think there might have been one
2 question that I thought --

3 (WHEREUPON: Ms. Livesay begins
4 looking through documents.)

5 MR. WILSON:

6 May I approach, Your Honor?

7 (Whereupon: counsel conferred off
8 the record with The Court at the bench.)

9 MS. LIVESAY:

10 Your Honor, as far as the voir
11 dire questions, we've only got a problem with one of
12 them; and that's that third question.

13 And we're just questioning the
14 relevancy of such an intrusive -- intrusive question on
15 the jury.

16 THE COURT:

17 I -- I've got a problem with that
18 Mr. -- uh -- uh -- Monckton.

19 You're wanting me to ask the
20 jurors to stand up and tell me if they've ever had an
21 alcohol or drug addiction.

22 MR. MONCKTON:

23 Your Honor, the case is involving
24 drugs. And I'd ask that maybe they approach you
25 privately.

1 Obviously, anybody that has any --
2 uh -- predisposed emotions or biases towards the use of
3 drugs, I think in this case would be imperative for the
4 Defense to know.

5 MS. LIVESAY:

6 I would agree to some extent; only
7 that in this particular case, both the victim and the
8 Defendant are in a position where drugs are involved --
9 drug use is involved.

10 So I'm not sure how it would be
11 relevant.

12 THE COURT:

13 I guess there's no -- I -- I'm
14 just not going to ask that question.

15 I will ask the others.

16 Ms. -- uh -- Livesay, do you have
17 a witness list?

18 It looks like I've got one for Mr.
19 Wilson.

20 Uh -- Do I have a witness list for
21 Mr. Monckton?

22 MR. MONCKTON:

23 I added it on that voir dire, Your
24 Honor.

25 THE COURT:

1 Okay.

2 MS. LIVESAY:

3 I did not get a copy of that
4 witness list, Your Honor. I'm sorry.

5 THE COURT:

6 Well, it's just two names -- Mario
7 -- and it looks like the mother of the Defendant.

8 MS. LIVESAY:

9 Thank Your Honor.

10 THE COURT:

11 Okay.

12 And make room for my jury, all
13 right; if you would, Mr. Oliver?

14 (WHEREUPON: The jury venire
15 enters the courtroom at 10:30 AM, May 18, 2010.)

16 THE COURT:

17 Good morning. It's good to see
18 you all here. I'm glad that you made it back.

19 Uh -- I apologize for keeping you
20 -- uh -- in that other courtroom so long this morning.

21 But we had another issue that came
22 up before The Court -- uh -- an earlier case that we were
23 able to dispose of. And that's what we've been doing.

24 And we are about to begin the case
25 -- or the trial of the State of South Carolina versus

1 Mario Tynes and Michael Jarrod Lackey.

2 Mr. Lackey and Mr. Tynes are
3 seated here by the Defense table with their attorneys,
4 Mr. Billy Monckton, Mr. Ralph Wilson, Sr., and Mr. Ralph
5 Wilson, Jr.

6 The State in this case is going to
7 be represented by Ms. Nancy Livesay. And she's assisted
8 in this prosecution with Ms. Candice Lively, who are
9 seated over here at the prosecution table.

10 Our purpose this morning -- I
11 think I gave you a little bit of an idea of what we were
12 going to be doing this morning, is to select a jury in
13 the case.

14 And there's nothing more important
15 about a -- a trial than the selection of the jury. For
16 it is imperative that we have a jury that can be fair,
17 unbiased, and impartial, in its deliberations.

18 And that's what we're seeing to
19 do.

20 So I'm going to be asking you some
21 questions this morning about -- uh -- your qualifications
22 to sit on this particular jury.

23 In that regard -- uh -- these
24 questions are so important that we're going to place you
25 under oath again.

1 If you actually sit on a jury, you
2 end up taking an oath about three times -- uh -- before
3 you actually -- uh -- start your -- receiving evidence.

4 If you would, Madam Clerk, swear
5 this jury.

6 (WHEREUPON: The jury venire is
7 sworn in open court by the clerk at 10:32 AM, May 18,
8 2010.)

9 THE COURT:

10 All right.

11 Was there anyone who did not take
12 the oath?

13 And there is no response.

14 Let me begin by telling you a
15 little bit about this case; because I'm going to be
16 asking you specific questions about it. And you need to
17 know what we're talking about.

18 In this case, both Mr. Tynes and
19 Mr. Lackey are charged under indictments alleging the --
20 uh -- identical offenses.

21 Both have the same charges.

22 Let me begin by telling you this:

23 An indictment is not evidence of
24 guilt.

25 It should not even be considered

1 by you at any stage of this trial as evidence against the
2 Defendants.

3 An indictment is nothing more than
4 a legal document that -- by which a charge is brought to
5 The Court.

6 It informs The Court of what the
7 charge is. And it is designed to inform the Defendant of
8 what charge he is facing.

9 But it is not evidence.

10 Now I'm going to talk to you a
11 little bit about these indictments.

12 Again, remember:

13 What I'm telling you is simply
14 what the State alleges to have occurred.

15 And again, even though it's coming
16 from me, it is not evidence.

17 Now I'm going to go through one
18 set of indictments. But both Defendants are charged
19 identically, as I told you.

20 These indictments allege, number
21 one, that:

22 Both Mr. Tynes and Mr. Lackey,
23 did, on or about the 13th day of -- uh -- October of
24 2007, commit the offense of burglary in the first degree.

25 The State alleges that they did

1 enter the dwelling of Sean Barrett, located at Flint Lake
2 Apartments in Myrtle Beach, South Carolina; without
3 consent, and with the intent to commit a crime therein;
4 and their entry was in the nighttime; all in violation of
5 the laws of this State.

6 They are also charged, both, with
7 the offense of armed robbery.

8 The indictments allege that:

9 Both of them, along with
10 codefendants, did, in Horry County, on or about October
11 the 13th, 2007, while armed with a deadly weapon, to wit:
12 a handgun; and they did take -- uh -- and carry away
13 personal property of -- uh -- Sean Barrett -- uh -- from
14 his immediate -- uh -- possession with the intent to
15 deprive him of possession. And they did use force,
16 threats, or intimidation to do so; again, in violation of
17 the laws of this State.

18 And there is a -- a third
19 indictment that alleges that:

20 Each of these Defendants did, on
21 or about October the 13th, of 2007, possess with intent
22 to distribute -- uh -- in some form or fashion, a
23 quantity of marijuana, which is a controlled substance,
24 in violation of the laws of South Carolina.

25 And each of these Defendants are

1 charged with possession of marijuana with intent to
2 distribute.

3 And finally, each are charged
4 under indictments -- uh -- that allege that:

5 On or about October the 13th, they
6 did unlawfully carrying a pistol about their persons; and
7 that they had two pistols, a Ruger 9 millimeter and a
8 High Point .380 pistol; and that such carrying was not
9 authorized by law.

10 Now these are the offenses.

11 The things that -- that you
12 should remember is that:

13 It occurred back on October the
14 13th, of 2007 and it happened at [REDACTED]
15 And it was in the nighttime.

16 That should give you some idea of
17 when the alleged offense, or offenses, occurred.

18 Now, let me ask you these
19 questions:

20 I am advised that the victims in
21 this matter are, of course, Mr. Sean Barrett.

22 There were, it is alleged, several
23 other people who were present that are victims. And I'm
24 going to let Ms. Livesay tell you who those were.

25 Uh -- I have a list of all

1 witnesses; but I'm not exactly sure who the alleged
2 victims are.

3 MS. LIVESAY:

4 Thank Your Honor.

5 Just briefly:

6 Sean Barrett, Brook Lanham,
7 Catherine Arnold, Josh Lines, Nick Prater, Will Miller,
8 and Willy Joe Bottoms.

9 THE COURT:

10 Now, is any member of the jury
11 panel -- uh -- related or have -- by blood or marriage;
12 or have you ever been related by blood or marriage to
13 either of the Defendants?

14 And if you would, Gentlemen, have
15 your Defendants stand and tell them to face the jury.

16 I believe Mr. Monckton, who is on
17 your right -- uh -- is representing Mr. -- uh -- Tynes --
18 Tynes.

19 MR. MONCKTON:

20 Mario Tynes, Your Honor.

21 THE COURT:

22 And Mr. Wilson is representing Mr.
23 Lackey. And he's the gentlemen in the white shirt.

24 Thank you, gentlemen.

25 Are you related by blood or

1 marriage to either of the Defendants or the victims in
2 this matter?

3 And there is no response.

4 Has anyone ever had a close
5 personal or social relationship with the victims or the
6 Defendants in this matter?

7 (No response.)

8 THE COURT:

9 Now I'm going to read you're a
10 list of potential witnesses in this case.

11 I have asked the attorneys to
12 provide me with the names of anyone who might possibly
13 have any information about this case.

14 Oftentimes, we do not hear from
15 all these people. And it is certainly not -- uh --
16 important to you, and you should not consider the fact
17 that you hear a person's name called and that person does
18 not testify in -- in the trial.

19 These are merely potential
20 witnesses.

21 Now I ask you:

22 Have any of you -- uh -- ever been
23 related by blood or marriage or have a close personal or
24 social relationship with any of the following persons:

25 And I have three lists. And I'm

1 going to apologize but I might overlap a little bit, but:
2 Michael Lackey, Eric Brown, Mario Tynes, Joshua Readon,
3 Ricky Johnson, Craig Collins, Detective Alan large, Don
4 Gause, Officer Jack Stewart, Robbie Caulder, Officer
5 Larry Graham, Officer Justin Cole, Sergeant Thomas Del
6 Percio, Detective Mark Cooper, Sean Barrett, Catherine
7 Arnold, Brook Lanham, Willy Joe bottoms, Josh Lines, Nick
8 Prater, Will Miller, Michelle Morton, Katie Coy, Dan
9 DeFreese, Lori Rabon, Nikki Perry, Selena Kinard, Betty
10 Butler, Heather Brummett, Sharon Lilly, Amy Stephens,
11 Justin Tresslar, Pat Crooks, Sheree Brown, Robert Deal,
12 Peter Cestare, Yolanda Dozier, Charles Dozier, Terry
13 Harper, Joe A. Whitehead, Sr., and Tracy Tynes.

14 Is anyone related by blood or
15 marriage; or are you a close personal friend of any of
16 the people that I have named as potential witnesses?

17 And there is no response.

18 As I told you a moment ago, the
19 attorneys in this case are Mr. Monckton.

20 And Mr. Monckton, would you turn
21 around and tell who you practice with.

22 MR. MONCKTON:

23 Yes, sir, Your Honor. May it
24 please The Court?

25 My name is Billy Monckton. I

1 practice over in Myrtle Beach with Dean Mureddu and Fran
2 Humphries.

3 THE COURT:

4 All right.

5 And Mr. Wilson, Sr., is seated
6 here with his son, Mr. Wilson, Jr.

7 Is there anyone else in your
8 office, Mr. Wilson?

9 MR. WILSON:

10 No other attorneys, Your Honor.

11 THE COURT:

12 All right.

13 And Ms. Livesay -- uh -- is
14 employed by the 15th Judicial Circuit -- 15th Circuit --

15 MS. LIVESAY:

16 Yes sir.

17 THE COURT:

18 -- uh -- Solicitor's Office.

19 Uh -- She works for Mr. Craig --
20 uh -- Hembree. And so does Ms. Lively. They have been
21 doing that for some -- some time.

22 Uh -- Is anyone related by blood
23 or marriage; close personal friends of; or have you ever
24 been represented by these attorneys, or -- uh -- their --
25 uh -- associates in their firms?

1 And there is no response.

2 Okay. Now, has anyone on this
3 jury panel expressed an opinion about any issue or matter
4 involved in this case?

5 Do you know anything about this
6 case?

7 Do you remember when this case
8 occurred?

9 Have you read newspaper articles?

10 Have you been on the internet and
11 seen it?

12 Is there anything about this case
13 that you feel -- or any contact you've had about this
14 case that you -- or any information you might have
15 received that you feel would prevent you from being a
16 fair and effective juror?

17 MR. MONCKTON:

18 Your Honor, may we approach?

19 THE COURT:

20 Yes.

21 (WHEREUPON: Counsel for each party
22 conferred off the record with The Court at the bench at
23 10:45 AM.)

24 THE COURT:

25 In regard to my question, as I

1 said, this happened two years ago.

2 Uh -- It involved -- uh -- Some of
3 the Defendants were students at Coastal Carolina -- uh --
4 were involved in one of the athletic teams there.

5 Uh -- In that -- In that regard
6 again, do any of you know anything about this case?

7 Were you present?

8 Did you see what was going on?

9 Have you talked about it with
10 anyone; know anything about this case?

11 And there's no response.

12 Does any member -- uh -- of the
13 jury panel aware of any prejudice or bias he might have
14 towards either the State or the Defendant in this case?

15 And there's no response.

16 Is there any member of the jury
17 panel that was a member of the Horry County Grand Jury
18 that handed down these indictments?

19 And I think we covered that
20 yesterday. But I ask that question again.

21 And there is no response.

22 Is there any member of the jury
23 panel who is a member or contributor to any group which
24 has it's prime -- as its primary concern -- the promotion
25 of law enforcement or victims rights such as -- uh -- and

1 certainly not limited to -- uh -- MADD or SADD or CAVE,
2 which is citizens against violent crime; anything like
3 that?

4 Does -- And there is no response.

5 Does any member of the jury panel
6 know of any reason whatsoever why he or she should not
7 serve as a juror in this case, with particular emphasis
8 being placed on your ability to be a fair and impartial
9 juror; to give both the State and the Defendants a fair
10 trial in this case?

11 That's what we're looking for.

12 That's the ultimate question.

13 Anyone have any feelings like
14 that?

15 And there is no response.

16 Now, specifically, has any member
17 of the jury panel -- uh -- or does any member of the jury
18 panel have a close personal friend, family member, or
19 themselves, that's been a victim of a violent crime?

20 And there is no response.

21 (WHEREUPON: A member of the jury
22 venire raised her hand.)

23 THE COURT:

24 Has any member of the jury panel
25 or close personal friend -- Oh, I'm sorry.

1 Yes ma'am.

2 And what I want you to do is I
3 want you to come forward and let's talk about that right
4 here in front of me; okay.

5 And your name is?

6 JUROR GORE:

7 Takiyah Gore.

8 THE COURT:

9 Ms. Gore, what was your number?

10 JUROR GORE:

11 148.

12 THE COURT:

13 148. Come around, Ms. Gore.

14 WHEREUPON: The juror approached
15 the bench and in muffled voice whispered to The Court and
16 Counsel, the following:

17 JUROR GORE:

18 My sister was killed four years
19 ago.

20 THE COURT:

21 And was she murdered or what?

22 JUROR GORE:

23 Yes.

24 THE COURT:

25 And where was that?

1 JUROR GORE:

2 Myrtle Beach.

3 THE COURT:

4 Would that affect your ability to
5 be fair and impartial in this case?

6 JUROR:

7 No sir.

8 THE COURT:

9 Could you set that aside -- the
10 fact that your sister was the victim of a violent crime
11 -- and give both the defense and the State a fair trial
12 in this case?

13 JUROR GORE:

14 Yes sir.

15 THE COURT:

16 Okay. Very well.

17 Anything further?

18 (WHEREUPON: Defense Counsel

19 conferred with The Court at the bench.)

20 THE COURT:

21 How was she murdered?

22 JUROR GORE:

23 She was shot.

24 THE COURT:

25 And the facts of that case; was it

1 a drug rip-off.

2 JUROR GORE:

3 Yes.

4 THE COURT:

5 Is that right? It was a drug
6 rip-off?

7 JUROR GORE:

8 Yes.

9 THE COURT:

10 I'm going to set you aside on this
11 one; okay.

12 All right. Thank you.

13 (WHEREUPON: The conference with
14 this juror was concluded and she was excused from the
15 trial of this case by consent of parties and The Court.)

16 THE COURT:

17 All right.

18 Has any member of the jury panel,
19 or a close personal friend, or family member, ever been
20 the victim of an armed robbery or burglary?

21 And there is no -- no response.

22 And finally, is any member of the
23 jury panel -- uh -- uh -- related or associated by blood
24 or marriage, or close personal friends of anyone in the
25 Horry County Solicitor's Office or law enforcement?

1 (WHEREUPON: A juror raised her
2 hand.)

3 Yes ma'am?

4 JUROR SLOAN:

5 Uh -- My father and my (trails off
6 to inaudible) --

7 COURT REPORTER:

8 I'm sorry. Could you stand up
9 please?

10 JUROR SLOAN:

11 My father and my fiancé are in law
12 enforcement.

13 THE COURT:

14 And where are they?

15 JUROR SLOAN:

16 Myrtle Beach.

17 THE COURT:

18 In Myrtle Beach? Okay.

19 And your number?

20 JUROR SLOAN:

21 355.

22 THE COURT:

23 And -- uh -- your name?

24 JUROR SLOAN:

25 Lauren Sloan.

1 THE COURT:

2 Long?

3 JUROR SLOAN:

4 Sloan, S-l-o-a-n.

5 THE COURT:

6 Sloan; okay.

7 Ms. Sloan, would the fact that you
8 have family members that are police officers -- uh --
9 affect your ability to be fair and impartial?

10 JUROR SLOAN:

11 No sir.

12 THE COURT:

13 Could you give both the State and
14 the Defense a fair and impartial trial?

15 JUROR SLOAN:

16 Yes sir.

17 THE COURT:

18 Very well. Thank you.

19 Anyone else?

20 (WHEREUPON: Another juror stood
21 up.)

22 Yes sir. Back in the back?

23 JUROR RUMOLA:

24 Yes, Your Honor.

25 Uh -- 330 is my number. My name

1 is Michael Rumola.

2 I'm a retired police officer.

3 THE COURT:

4 And you are a retired police
5 officer? Where are you retired from, Mr. Rumola?

6 JUROR RUMOLA:

7 New Jersey? Down here living now;
8 good for you.

9 Would the fact that you are a
10 retired police officer prevent you from being a fair and
11 impartial juror?

12 JUROR RUMOLA:

13 No, it wouldn't.

14 THE COURT:

15 Could you be fair to both the
16 State and the Defense?

17 JUROR RUMOLA:

18 Yes, I would.

19 THE COURT:

20 Thank you sir. Good to have you from
21 you, Mr. Sloan (sic).

22 All right. Anyone else?

23 (WHEREUPON: Another juror stood
24 up.)

25 THE COURT:

1 Yes ma'am.

2 JUROR MIDDLETON:

3 Number 266, Holly Middleton, and
4 my father works for the Police Department.

5 THE COURT:

6 Police Department?

7 JUROR MIDDLETON:

8 Yes.

9 THE COURT:

10 Okay.

11 And would that affect your ability
12 to be fair and impartial?

13 JUROR MIDDLETON:

14 No.

15 THE COURT:

16 Could you give both the State and
17 the Defense a fair trial?

18 JUROR MIDDLETON:

19 Yes.

20 THE COURT:

21 Very well. Thank you.

22 All right. Anyone else?

23 (No response.)

24 THE COURT:

25 Good.

1 Any -- uh -- request for specific
2 voir dire that I have not been over, Mr. Monckton?

3 MR. MONCKTON:

4 None from the Defendant --

5 THE COURT:

6 Other than the one --

7 MR. MONCKTON:

8 -- Mr. Tynes, Your Honor.

9 THE COURT:

10 All right.

11 MR. WILSON:

12 None from Mr. Lackey, Your Honor.

13 THE COURT:

14 Very well. Thank you very much.

15 Now, let me tell you how we go
16 about selecting a jury in a -- a criminal case.

17 This is -- uh -- generally
18 referred to as The Court of Common Pleas -- Court of
19 General Sessions.

20 If it's sitting as The Court of
21 Common Pleas, that means we're trying civil cases.

22 Obviously by now, you know that we
23 are trying a criminal case today. And that would mean
24 we're sitting as The Court of General Sessions.

25 And the way a jury panel is

1 selected in the two different sides of The Court -- uh --
2 is different.

3 If this were a civil case, we have
4 a very nice clean way of doing it.

5 You would come in.

6 We would qualify you.

7 There'd be another list made up.

8 And that list would have the names of the potential
9 jurors that had been qualified.

10 And each juror would be given a
11 fresh number.

12 And the attorneys would strike
13 from that list using those new numbers. And you would
14 not even know if you had been on the final list.

15 You would never know if an
16 attorney had struck you.

17 But on the criminal side, you've
18 got to come forward. You got to come forward right up
19 here in front of me; and turn around and face the fellow
20 jurors and the attorneys in the case.

21 And the way the process works is:

22 The State goes first.

23 The State will either say:

24 Excuse the juror on this case.

25 If Ms. Livesay were to do that,

1 you would return to your seat.

2 If she were to say:

3 Present the juror, Your Honor.

4 That means she is offering you as
5 a juror.

6 Then the State -- I mean the
7 Defense would have an opportunity.

8 And Mr. Monckton or Mr. Wilson
9 could say:

10 Your Honor, seat the jury -- the
11 juror; which means that you would come and get in the
12 juror box.

13 Or -- Or they may even say:

14 Present the juror.

15 But usually, it's seat the juror.

16 IF they said:

17 Excuse the juror; you would remove
18 -- uh -- return to -- to you -- to your -- uh -- jury
19 box. And you would not serve.

20 Many people are somewhat
21 intimidated by that process because they have to come.

22 It's not very often you have to
23 come and stand in front of a bunch of people.

24 And some people are -- uh -- are
25 self-conscious about the fact that they may get struck

1 and they feel like they've done something wrong.

2 Let me assure you that that is not
3 the case.

4 I practiced law but for a very
5 long time here in -- uh -- Horry County with these same
6 lawyers.

7 I know every one of them. And let
8 me tell you:

9 They don't have a clue as to why
10 they are striking you, if they strike you.

11 It might be because of the way you
12 part your hair; or the fact that you don't have hair; or
13 your hair's on your gin like mine, instead of on your
14 head.

15 It's nothing but a gut feeling
16 that they have. And they -- It's the toughest thing
17 that a lawyer is called upon to do. Because it's very
18 difficult to size someone up and judge someone.

19 And it's usually simply this:

20 They do see someone on that jury
21 panel that they feel may be sympathetic to their
22 particular case; and they may be just trying to reach
23 that person.

24 You should not be upset at all.

25 I'm telling you this. And you're

1 probably all sitting out there thinking:

2 I hope they strike me.

3 (Laughter erupts in the
4 courtroom.)

5 THE COURT:

6 But -- uh -- if you -- uh -- uh --
7 a -- a thin person who would -- who would be upset by
8 that, please don't take offense; and don't hold it
9 against any of these attorneys that may strike you.

10 On the very next case, they might
11 be more than happy -- uh -- to get you on their jury.

12 Now, we're about to begin that
13 process.

14 And again:

15 As your name is called, first
16 bring with you any personal properties that you might
17 have. Because you may end up in the jury box.

18 Uh -- Come forward.

19 Stand right down here and turn
20 around, and face the music, so to speak.

21 And -- uh -- it -- And we'll move
22 right along and get this jury -- uh -- selected.

23 We're going to pick 12 jurors and
24 2 alternates.

25 Mr. -- Mr. Wilson, Mr. Monckton,

1 do you think that will be sufficient?

2 MR. WILSON:

3 Yes.

4 MR. MONCKTON:

5 Yes, sir, Your Honor.

6 THE COURT:

7 And two alternates; okay.

8 All right.

9 CLERK:

10 168, Charlene Hatfield. (WF)

11 THE COURT:

12 Come around Ms. Hatfield.

13 (WHEREUPON: The juror came

14 forward and turned and faced counsel table as

15 instructed.)

16 Now see how well Ms. Hatfield has

17 done? She's --

18 (Laughter erupts in the

19 courtroom.)

20 THE COURT:

21 She's come right up where she's

22 supposed to be. She's turning around. Perfect.

23 Perfect.

24 CLERK:

25 What say the State?

1 MS. LIVESAY:

2 Would you please present this
3 juror.

4 CLERK:

5 Defense?

6 (No response.)

7 CLERK:

8 Should I inquire of each one of
9 them, Judge?

10 THE COURT:

11 Yes.

12 CLERK:

13 Defense, Tynes?

14 (WHEREUPON: Mr. Monckton and Mr.

15 Wilson confer with each other at Defense table.)

16 MR. WILSON:

17 Your Honor, on behalf of Defendant
18 Tynes -- uh -- please present Ms. Hatfield.

19 CLERK:

20 Defense, Lackey?

21 MR. WILSON:

22 Seat the juror.

23 CLERK:

24 lease be seated in the jury box.

25 (WHEREUPON: This juror, having

1 been accepted by the parties, was seated as a juror in
2 this case.)

3 THE COURT:

4 Gentleman; Ms. Lively.

5 (WHEREUPON: Counsel for each party
6 conferred off the record with The Court at the bench at
7 10:57 AM.)

8 THE COURT:

9 All right.

10 CLERK:

11 Juror 319, William Rivers. (WM)

12 (WHEREUPON: The juror came
13 forward and turned and faced counsel table as
14 instructed.)

15 CLERK:

16 What say the State?

17 MS. LIVESAY:

18 Please present this juror.

19 CLERK:

20 Defense, Tynes?

21 MR. MONCKTON:

22 Please excuse Mr. Rivers from the
23 trial of this case.

24 CLERK:

25 You're excused from this

1 particular case.

2 THE COURT:

3 Return to your seat, Mr. Tynes --

4 I mean Mr. Rivers.

5 (WHEREUPON: This jury panel
6 member, not being accepted by all parties, returned to
7 the panel and was not seated as a juror in this case.)

8 CLERK:

9 44 -- 44, Jonathan Brock. (WM)

10 (WHEREUPON: The juror came
11 forward and turned and faced counsel table as
12 instructed.)

13 CLERK:

14 What say the State?

15 MS. LIVESAY:

16 Please present this juror.

17 CLERK:

18 Defense, Tynes?

19 MR. MONCKTON:

20 Please excuse Mr. Rivers -- Mr.
21 Brock from the trial of this case, Your Honor.

22 CLERK:

23 You're excused from this
24 particular case.

25 (WHEREUPON: This jury panel

1 member, not being accepted by all parties, returned to
2 the panel and was not seated as a juror in this case.)

3 CLERK:

4 416, Benjamin Weathersby. (OM)

5 (WHEREUPON: The juror came

6 forward and turned and faced counsel table as

7 instructed.)

8 CLERK:

9 What say the State?

10 MS. LIVESAY:

11 Please present this juror.

12 CLERK:

13 Defense, Tynes?

14 MR. MONCKTON:

15 Please present Mr. Weathersby.

16 CLERK:

17 Defense, Lackey?

18 MR. WILSON:

19 Seat the juror.

20 CLERK:

21 Please be seated in the jury box.

22 (WHEREUPON: This juror, having

23 been accepted by the parties, was seated as a juror in

24 this case.)

25 CLERK:

1 30, Joy Black. (WF)

2 (WHEREUPON: The juror came
3 forward and turned and faced counsel table as
4 instructed.)

5 CLERK:

6 What say the State?

7 MS. LIVESAY:

8 Please present this juror.

9 CLERK:

10 Defense, Tynes?

11 MR. MONCKTON:

12 Please present Ms. Black.

13 CLERK:

14 Defense, Lackey?

15 MR. WILSON:

16 Seat the juror.

17 CLERK:

18 Please be seated in the juror box.

19 (WHEREUPON: This juror, having
20 been accepted by the parties, was seated as a juror in
21 this case.)

22 CLERK:

23 395, Kori Turner. (WF)

24 (WHEREUPON: The juror came
25 forward and turned and faced counsel table as

1 instructed.)

2 CLERK:

3 What say the State?

4 MS. LIVESAY:

5 Would you please excuse this
6 particular juror.

7 CLERK:

8 You're excused from this
9 particular case.

10 (WHEREUPON: This jury panel
11 member, not being accepted by all parties, returned to
12 the panel and was not seated as a juror in this case.)

13 CLERK:

14 122, Philip Fletcher. (WM)

15 (WHEREUPON: The juror came
16 forward and turned and faced counsel table as
17 instructed.)

18 CLERK:

19 What say the State?

20 MS. LIVESAY:

21 Please present this juror.

22 CLERK:

23 Defense, Tynes?

24 MR. MONCKTON:

25 Please present Mr. Fletcher.

1 MR. WILSON:

2 Defense, Lackey?

3 MR. WILSON:

4 Please excuse the juror from the
5 trial of this particular case.

6 CLERK:

7 You're excused from this
8 particular case.

9 (WHEREUPON: This jury panel
10 member, not being accepted by all parties, returned to
11 the panel and was not seated as a juror in this case.)

12 CLERK:

13 393, Ronald Traupauer. (WM)

14 MR. WILSON:

15 What number again, Ms. Clerk?

16 CLERK:

17 393.

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 CLERK:

22 What say the State?

23 MS. LIVESAY:

24 Please present this juror.

25 CLERK:

1 Defense, Tynes?

2 MR. MONCKTON:

3 Please excuse Mr. Traupauer from
4 the trial of this case, Your Honor.

5 CLERK:

6 You're excused from this
7 particular case.

8 (WHEREUPON: This jury panel
9 member, not being accepted by all parties, returned to
10 the panel and was not seated as a juror in this case.)

11 CLERK:

12 189, Timothy Hucks. (WM)

13 MR. MONCKTON:

14 What's that number again, Madam
15 Clerk? I'm sorry?

16 CLERK:

17 189.

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 CLERK:

22 What say the State?

23 MS. LIVESAY:

24 Please present this juror.

25 CLERK:

1 Defense, Tynes?

2 MR. MONCKTON:

3 Please excuse Mr. Hucks from the
4 trial of the case, Your Honor.

5 CLERK:

6 You're excused from this
7 particular case.

8 (WHEREUPON: This jury panel
9 member, not being accepted by all parties, returned to
10 the panel and was not seated as a juror in this case.)

11 CLERK:

12 330, Michael Rumola. (WM)

13 (WHEREUPON: The juror came
14 forward and turned and faced counsel table as
15 instructed.)

16 CLERK:

17 What say the State?

18 MS. LIVESAY:

19 Please present this juror.

20 CLERK:

21 Defense, Tynes?

22 MR. MONCKTON:

23 Please present Mr. Ramona.

24 CLERK:

25 Defense, Lackey?

1 MR. WILSON:

2 Please excuse the juror from the
3 trial of this particular case.

4 CLERK:

5 You are excused from this
6 particular case.

7 (WHEREUPON: This jury panel
8 member, not being accepted by all parties, returned to
9 the panel and was not seated as a juror in this case.)

10 CLERK:

11 277, Karen Murphy. (WF)

12 (WHEREUPON: The juror came
13 forward and turned and faced counsel table as
14 instructed.)

15 CLERK:

16 What say the State?

17 MR. MONCKTON:

18 What was the number Madam Clerk?

19 CLERK:

20 277.

21 MS. LIVESAY:

22 Please present this juror.

23 CLERK:

24 Defense, Tynes?

25 MR. MONCKTON:

1 Please present Ms. Murphy.

2 CLERK:

3 Defense, Lackey?

4 MR. WILSON:

5 Please excuse the juror from the
6 trial of this particular case.

7 CLERK:

8 You are excused from this
9 particular case.

10 (WHEREUPON: This jury panel
11 member, not being accepted by all parties, returned to
12 the panel and was not seated as a juror in this case.)

13 CLERK:

14 95, Lorraine Dobbs. (WF)

15 (WHEREUPON: The juror came
16 forward and turned and faced counsel table as
17 instructed.)

18 CLERK:

19 What say the State?

20 MS. LIVESAY:

21 Please present this juror.

22 CLERK:

23 Defense, Tynes?

24 MR. MONCKTON:

25 Please excuse Ms. Dobbs from the

1 trial of this case.

2 CLERK:

3 You're excused from this
4 particular case.

5 (WHEREUPON: This jury panel
6 member, not being accepted by all parties, returned to
7 the panel and was not seated as a juror in this case.)

8 CLERK:

9 377, Ryan Suitter. (WM)

10 (WHEREUPON: The juror came
11 forward and turned and faced counsel table as
12 instructed.)

13 CLERK:

14 What say the State?

15 MS. LIVESAY:

16 Would you please excuse this
17 particular juror.

18 CLERK:

19 You're excused from this
20 particular case.

21 (Laughter erupts in the
22 courtroom.)

23 (WHEREUPON: This jury panel
24 member, not being accepted by all parties, returned to
25 the panel and was not seated as a juror in this case.)

1 CLERK:

2 399, Jeff Vallancey. (WM)

3 (WHEREUPON: The juror came
4 forward and turned and faced counsel table as
5 instructed.)

6 CLERK:

7 What say the State?

8 MS. LIVESAY:

9 Would you please present this
10 juror.

11 CLERK:

12 Defense, Tynes?

13 MR. MONCKTON:

14 Please present Mr. Vallancey.

15 CLERK:

16 Defense, Lackey?

17 MR. WILSON:

18 We'd excuse the juror from the
19 trial of this particular case.

20 CLERK:

21 You're excused from this
22 particular case.

23 (WHEREUPON: This jury panel
24 member, not being accepted by all parties, returned to
25 the panel and was not seated as a juror in this case.)

1 CLERK:

2 367, Jennifer Stewart. (WF)

3 (WHEREUPON: The juror came
4 forward and turned and faced counsel table as
5 instructed.)

6 CLERK:

7 What say the State?

8 MS. LIVESAY:

9 Please present this juror.

10 CLERK:

11 Defense, Tynes?

12 MR. MONCKTON:

13 Please present Ms. Stewart.

14 CLERK:

15 Defense, Lackey?

16 MR. WILSON:

17 Seat the juror.

18 CLERK:

19 Please be seated in the jury box.

20 (WHEREUPON: This juror, having
21 been accepted by the parties, was seated as a juror in
22 this case.)

23 CLERK:

24 378, Jason Summers. (WM)

25 (WHEREUPON: The juror came

1 forward and turned and faced counsel table as
2 instructed.)

3 CLERK:

4 What say the State?

5 MS. LIVESAY:

6 Please present this juror.

7 CLERK:

8 Defense, Tynes?

9 MR. MONCKTON:

10 Please excuse Mr. Summers from the
11 trial of this case.

12 You are excused from this
13 particular case.

14 (WHEREUPON: This jury panel
15 member, not being accepted by all parties, returned to
16 the panel and was not seated as a juror in this case.)

17 CLERK:

18 364, Claire Sprouse. (WF)

19 (WHEREUPON: The juror came
20 forward and turned and faced counsel table as
21 instructed.)

22 CLERK:

23 What say the State?

24 MS. LIVESAY:

25 Please present this juror.

1 CLERK:

2 Defense, Tynes?

3 MR. MONCKTON:

4 Please present Ms. Sprouse.

5 CLERK:

6 Defense, Lackey?

7 MR. WILSON:

8 We'd excuse the juror from the
9 trial of this particular case.

10 CLERK:

11 You are excused from this
12 particular case.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 266, Holly Middleton. (WF)

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 CLERK:

22 What say the State?

23 MS. LIVESAY:

24 Please present this juror.

25 CLERK:

1 Defense, Tynes.

2 MR. MONCKTON:

3 Please excuse Ms. Middleton from
4 the trial of this case.

5 You are excused from this
6 particular case.

7 (WHEREUPON: This jury panel
8 member, not being accepted by all parties, returned to
9 the panel and was not seated as a juror in this case.)

10 CLERK:

11 338, Laurel Schwinger. (WF)

12 (WHEREUPON: The juror came
13 forward and turned and faced counsel table as
14 instructed.)

15 CLERK:

16 What say the State?

17 MS. LIVESAY:

18 Please present this juror.

19 CLERK:

20 Defense, Tynes?

21 MR. WILSON:

22 Your Honor, may we approach?

23 THE COURT:

24 Sure.

25 (WHEREUPON: There was a bench

1 conference at 11:13 AM.)

2 MS. LIVESAY:

3 Please present Ms. Schwinger.

4 CLERK:

5 Defense, Lackey?

6 MR. MONCKTON:

7 We excuse the juror from the trial
8 of this particular case.

9 You are excused from this
10 particular case.

11 (WHEREUPON: This jury panel
12 member, not being accepted by all parties, returned to
13 the panel and was not seated as a juror in this case.)

14 CLERK:

15 250, Thomas Marzano. (WM)

16 (WHEREUPON: The juror came
17 forward and turned and faced counsel table as
18 instructed.)

19 CLERK:

20 What say the State?

21 MS. LIVESAY:

22 Please present this juror.

23 CLERK:

24 Defense, Tynes?

25 MR. MONCKTON:

1 Please present Mr. Marzano.

2 CLERK:

3 Defense, Lackey?

4 MR. WILSON:

5 Seat the juror.

6 CLERK:

7 Please be seated in the jury box.

8 (WHEREUPON: This juror, having
9 been accepted by the parties, was seated as a juror in
10 this case.)

11 CLERK:

12 347, Alan Shoop. (WM)

13 (WHEREUPON: The juror came
14 forward and turned and faced counsel table as
15 instructed.)

16 CLERK:

17 What say the State?

18 MS. LIVESAY:

19 Please present this juror.

20

21 CLERK:

22 Defense, Tynes?

23 MR. MONCKTON:

24 Please excuse Mr. Shoop from the
25 trial of this case, Your Honor.

1 CLERK:

2 You're excused from this
3 particular case.

4 (WHEREUPON: This jury panel
5 member, not being accepted by all parties, returned to
6 the panel and was not seated as a juror in this case.)

7 CLERK:

8 135, Sean Garcia. (WM)

9 (WHEREUPON: The juror came
10 forward and turned and faced counsel table as
11 instructed.)

12 CLERK:

13 What say the State?

14 MS. LIVESAY:

15 Please present this juror.

16 CLERK:

17 Defense Tynes?

18 MR. WILSON:

19 Your Honor, may I ask a question?

20 Could you inquire to where he
21 attends school? I think he said he's a student?

22 THE COURT:

23 Where are you a student, Mr.
24 Garcia?

25 JUROR GARCIA:

1 Uh -- Virginia Tech.

2 THE COURT:

3 Virginia Tech.

4 MR. WILSON:

5 Thank you.

6 MR. MONCKTON:

7 Please present Mr. Garcia.

8 CLERK:

9 Defense, Lackey?

10 MR. WILSON:

11 Seat the juror.

12 Please be seated in the juror box.

13 (WHEREUPON: This juror, having
14 been accepted by the parties, was seated as a juror in
15 this case.)

16 CLERK:

17 349, Donna Silvestri. (WF)

18 MR. WILSON:

19 The number again, please?

20 CLERK:

21 349.

22 (WHEREUPON: The juror came
23 forward and turned and faced counsel table as
24 instructed.)

25 CLERK:

1 What say the State?

2 MS. LIVESAY:

3 Please present this juror.

4 CLERK:

5 Defense, Tynes?

6 MR. MONCKTON:

7 Please present Ms. Silvestri.

8 CLERK:

9 Defense, Lackey?

10 MR. WILSON:

11 Seat the juror.

12 CLERK:

13 Please be seated in the jury box.

14 (WHEREUPON: This juror, having
15 been accepted by the parties, was seated as a juror in
16 this case.)

17 CLERK:

18 38, Patricia Bowen. (WF)

19 (WHEREUPON: The juror came
20 forward and turned and faced counsel table as
21 instructed.)

22 CLERK:

23 What say the State?

24 MS. LIVESAY:

25 Please present this juror.

1 CLERK:

2 Defense, Tynes?

3 MR. MONCKTON:

4 Please present Ms. Bowen.

5 CLERK:

6 Defense, Lackey?

7 MR. WILSON:

8 Excuse the juror from the trial of
9 this case.

10 CLERK:

11 You are excused from this
12 particular case.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 258, Ernest McCray. (BM)

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 CLERK:

22 What say the State?

23 MS. LIVESAY:

24 Please excuse this particular
25 juror.

1 CLERK:

2 You are excused from this
3 particular case.

4 (WHEREUPON: This jury panel
5 member, not being accepted by all parties, returned to
6 the panel and was not seated as a juror in this case.)

7 CLERK:

8 125, Roy Forster, Jr. (WM)

9 (WHEREUPON: The juror came
10 forward and turned and faced counsel table as
11 instructed.)

12 CLERK:

13 What say the State?

14 MS. LIVESAY:

15 Please present this juror.

16 MR. MONCKTON:

17 Defense, Tynes?

18 MR. MONCKTON:

19 Please excuse Mr. Forster from the
20 trial of this case.

21 You are excused from this
22 particular case.

23 (WHEREUPON: This jury panel
24 member, not being accepted by all parties, returned to
25 the panel and was not seated as a juror in this case.)

1 CLERK:

2 390, Sandra Todd (WF)

3 (WHEREUPON: The juror came
4 forward and turned and faced counsel table as
5 instructed.)

6 CLERK:

7 What say the State?

8 MS. LIVESAY:

9 Please present this juror.

10 CLERK:

11 Defense, Tynes?

12 MR. MONCKTON:

13 Please present Ms. Todd.

14 CLERK:

15 Defense, Lackey?

16 MR. WILSON:

17 Seat the juror.

18 CLERK:

19 Please be seated in the juror box.

20 (WHEREUPON: This juror, having
21 been accepted by the parties, was seated as a juror in
22 this case.)

23 CLERK:

24 318, Stephen Rishel. (WM)

25 (WHEREUPON: The juror came

1 forward and turned and faced counsel table as
2 instructed.)

3 CLERK:

4 What say the State?

5 MS. LIVESAY:

6 Please present this juror.

7 CLERK:

8 Defense, Tynes?

9 MR. MONCKTON:

10 Please present Mr. Rishel.

11 CLERK:

12 Defense, Lackey?

13 MR. WILSON:

14 Please excuse the juror from this
15 particular case.

16 You are excused from this
17 particular case.

18 (WHEREUPON: This jury panel
19 member, not being accepted by all parties, returned to
20 the panel and was not seated as a juror in this case.)

21 CLERK:

22 203, James Johnson. (WM)

23 MR. WILSON:

24 What number was that again?

25 CLERK:

1 203.

2 (WHEREUPON: The juror came
3 forward and turned and faced counsel table as
4 instructed.)

5 CLERK:

6 What say the State?

7 MS. LIVESAY:

8 Please excuse this particular
9 juror.

10 CLERK:

11 You are excused from this
12 particular case.

13 (WHEREUPON: This jury panel
14 member, not being accepted by all parties, returned to
15 the panel and was not seated as a juror in this case.)

16 CLERK:

17 47, Miranda Burton... (WF)

18 (WHEREUPON: The juror came
19 forward and turned and faced counsel table as
20 instructed.)

21 CLERK:

22 What say the State?

23 MS. LIVESAY:

24 Please present this juror.

25 CLERK:

1 Defense, Tynes?

2 MR. MONCKTON:

3 Please present Ms. Burton.

4 CLERK:

5 Defense, Lackey?

6 MR. WILSON:

7 Seat the juror.

8 CLERK:

9 Please be seated in the jury box.

10 (WHEREUPON: This juror, having
11 been accepted by the parties, was seated as a juror in
12 this case.)

13 CLERK:

14 100, Davis Duncan. (WM)

15 (WHEREUPON: The juror came
16 forward and turned and faced counsel table as
17 instructed.)

18 CLERK:

19 What say the State?

20 MS. LIVESAY:

21 Please present this juror.

22 CLERK:

23 Defense, Tynes?

24 MR. MONCKTON:

25 Present Mr. Johnson (sic).

1. CLERK:

2. Defense, Lackey?

3. MR. WILSON:

4. Please excuse the juror from the
5. trial of this particular case.

6. CLERK:

7. You're excused from this
8. particular case.

9. (WHEREUPON: This jury panel
10. member, not being accepted by all parties, returned to
11. the panel and was not seated as a juror in this case.)

12. CLERK:

13. 345, Geoffrey Shipman. (WM)

14. (WHEREUPON: The juror came
15. forward and turned and faced counsel table as
16. instructed.)

17. CLERK:

18. What say the State?

19. MS. LIVESAY:

20. Present this juror, please.

21. CLERK:

22. Defense, Tynes?

23. MR. WILSON:

24. Your Honor, may I ask a question?

25. In voir dire, he indicated he was

1 a student.

2 Can I ask where he is a student?

3 THE COURT:

4 Where are you a student?

5 JUROR SHIPMAN:

6 CCU.

7 MR. WILSON:

8 Coastal Carolina?

9 JUROR SHIPMAN:

10 Right.

11 THE COURT:

12 What year are you?

13 JUROR SHIPMAN:

14 I'm a senior. I graduate in the

15 Fall.

16 MR. WILSON:

17 Your Honor, may we approach?

18 THE COURT:

19 Okay.

20 (WHEREUPON: There was a bench

21 conference at 11:26 AM.)

22 MR. WILSON:

23 Thank you, Your Honor.

24 MR. MONCKTON:

25 Your Honor, please excuse Mr.

1 Shipman from the trial of this case.

2 CLERK:

3 You are excused from this
4 particular case.

5 (WHEREUPON: This jury panel
6 member, not being accepted by all parties, returned to
7 the panel and was not seated as a juror in this case.)

8 CLERK:

9 75, Alva Coles (BF)

10 (WHEREUPON: The juror came
11 forward and turned and faced counsel table as
12 instructed.)

13 CLERK:

14 What say the State?

15 MS. LIVESAY:

16 Please present this juror.

17 CLERK:

18 Defense, Tynes?

19 MR. MONCKTON:

20 Please present Ms. Coles.

21 CLERK:

22 Defense, Lackey?

23 MR. WILSON:

24 Seat the juror.

25 CLERK:

1 Please be seated in the jury box.

2 (WHEREUPON: This juror, having
3 been accepted by the parties, was seated as a juror in
4 this case.)

5 CLERK:

6 175, James Hewetson. (WM)

7 (WHEREUPON: The juror came
8 forward and turned and faced counsel table as
9 instructed.)

10 CLERK:

11 What say the State?

12 MS. LIVESAY:

13 Please present this juror.

14 CLERK:

15 Defense, Tynes?

16 MR. MONCKTON:

17 Please present Mr. Hewetson.

18 CLERK:

19 Defense, Lackey?

20 MR. WILSON:

21 Seat the juror.

22 CLERK:

23 Please be seated in the jury box.

24 (WHEREUPON: This juror, having
25 been accepted by the parties, was seated as a juror in

1 this case.)

2 CLERK:

3 73, Kimberly Coats. (WF)

4 (WHEREUPON: The juror came
5 forward and turned and faced counsel table as
6 instructed.)

7 CLERK:

8 What say the State?

9 MS. LIVESAY:

10 Please present this juror.

11 CLERK:

12 Defense, Tynes?

13 MR. MONCKTON:

14 Please present her. Ms. Coats.

15 CLERK:

16 Defense, Lackey?

17 MR. WILSON:

18 Seat the juror.

19 CLERK:

20 Please be seated in the jury box.

21 (WHEREUPON: This juror, having
22 been accepted by the parties, was seated as a juror in
23 this case.)

24 CLERK:

25 340, Rachel Seibert. (WF)

1 MR. WILSON:

2 Now, this the first alternate?

3 CLERK:

4 Yes sir.

5 MS. LIVELY:

6 I'm sorry; what number, Madam

7 Clerk?

8 CLERK:

9 Uh -- 340.

10 MS. LIVELY:

11 Thank you.

12 (WHEREUPON: The juror came

13 forward and turned and faced counsel table as

14 instructed.)

15 CLERK:

16 What say the State?

17 MS. LIVESAY:

18 Please present this juror.

19 CLERK:

20 Defense, Tynes?

21 MR. MONCKTON:

22 Please present Ms. Seibert.

23 CLERK:

24 Defense, Lackey?

25 MR. WILSON:

1 Seat Ms. Seibert.

2 CLERK:

3 Please be seated in the jury box.

4 (WHEREUPON: This juror, having
5 been accepted by the parties, was seated as a juror in
6 this case.)

7 CLERK:

8 268, Elizabeth Mitchell. (WF)

9 (WHEREUPON: The juror came
10 forward and turned and faced counsel table as
11 instructed.)

12 CLERK:

13 What say the State?

14 MS. LIVESAY:

15 Please present this juror.

16 CLERK:

17 Defense, Tynes?

18 MR. MONCKTON:

19 Please present Ms. Mitchell.

20 CLERK:

21 Defense, Lackey?

22 MR. WILSON:

23 We'd excuse the juror from the
24 trial of this particular case.

25 CLERK:

1 You are excused from this
2 particular case.

3 (WHEREUPON: This jury panel
4 member, not being accepted by all parties, returned to
5 the panel and was not seated as a juror in this case.)

6 CLERK:

7 33, Richard Blum. (WM)

8 (WHEREUPON: The juror came
9 forward and turned and faced counsel table as
10 instructed.)

11 CLERK:

12 What say the State?

13 MS. LIVESAY:

14 Please present this juror.

15 CLERK:

16 Defense, Tynes?

17 MR. MONCKTON:

18 Please excuse Mr. Blum from the
19 trial of the case, Your Honor.

20 CLERK:

21 You're excused from this
22 particular case.

23 (WHEREUPON: This jury panel
24 member, not being accepted by all parties, returned to
25 the panel and was not seated as a juror in this case.)

1 CLERK:

2 21, Teresa Bellamy. (BF)

3 (WHEREUPON: The juror came
4 forward and turned and faced counsel table as
5 instructed.)

6 CLERK:

7 What's say the State?

8 MS. LIVESAY:

9 Which one?

10 MS. LIVELY:

11 I'm sorry. What number was that,

12 Madam Clerk?

13 CLERK:

14 21.

15 MS. LIVELY

16 21.

17 MS. LIVESAY:

18 Oh, 21?

19 CLERK:

20 What say the State?

21 MS. LIVESAY:

22 Present this juror, please.

23 CLERK:

24 Defense, Tynes?

25 MR. MONCKTON:

1 Please present Ms. Bellamy.

2 CLERK:

3 Defense, Lackey?

4 MR. WILSON:

5 Seat the juror.

6 THE COURT:

7 Please be seated in the juror box.

8 (WHEREUPON: This juror, having
9 been accepted by the parties, was seated as a juror in
10 this case.)

11 (WHEREUPON: The full jury in this
12 case was seated at 11:32 AM.)

13 THE COURT:

14 All right. We have our jury.

15 And we have our alternate.

16 Ms. Bellamy, Ms. Seibert, if you
17 would always occupy those two seats.

18 Mr. Todd, if you would occupy that
19 seat. You'll be our Foreperson.

20 Mr. Roth, would you take this jury
21 to the jury room and make sure that they're comfortable;
22 okay.

23 (WHEREUPON: The jury empanelled
24 in this case exited the courtroom at 11:33 AM, May 18,
25 2010, and were not present during the following

1 proceedings.)

2 (WHEREUPON: Counsel for each party
3 conferred off the record with The Court at the bench at
4 11:34 AM.)

5 THE COURT:

6 Any challenge to the panel from
7 the State?

8 MS. LIVESAY:

9 No sir.

10 THE COURT:

11 Any from the Defense?

12 MR. MONCKTON:

13 None from the Defendant Tynes,
14 Your Honor.

15 MR. WILSON:

16 None from Defendant Lackey, Your
17 Honor.

18 THE COURT:

19 Very well.

20 All right. Ladies and gentlemen
21 of the jury -- those of you who remain -- uh -- you will
22 not be required to be here today.

23 You're free to go.

24 Thank you for your attendance.

25 Of course, you're welcome to stay,

1 if you would like.

2 Uh -- I would like for you to call
3 in today after six and see if we need you.

4 I'm not sure that we're going to
5 need any more jurors this week. But keep calling in and
6 make sure until you hear a message that says we won't
7 need some -- anyone; okay.

8 Thank you very much. You're free
9 to go.

10 WHEREUPON: The remaining jury
11 venire that were not chosen in this case exited the
12 courtroom at 11:35 AM, May 18, 2010.

13 THE COURT:

14 Okay.

15 Ladies and gentlemen -- uh --
16 it's 11:30. Uh -- I would anticipate that openings and
17 preliminary charge would take about an hour.

18 Uh -- I want to give the jury --
19 uh -- and you -- about a 15 minute break anyway.

20 So that would put us about 1:45.

21 Uh -- Had you rather do that?

22 Well, about 12:45?

23 Had you rather do that, or let
24 them go to lunch now and bring them back at 1:00?

25 MS. LIVESAY:

1 Your Honor, if we could -- uh -- I
2 was just thinking.

3 Some of our SLED people are only
4 available this afternoon.

5 So if we could probably, maybe
6 break now and start at 1:00, I think our chances of
7 getting them in are better.

8 THE COURT:

9 Okay. All right.

10 How about that Mr. -- uh -- uh --
11 Monckton? Mr. Wilson?

12 Let's -- uh -- Let's just take a
13 break. I'll bring the jury back in a minute; or I'll let
14 the jury go now to say one o'clock.

15 That would give them an hour and a
16 half; okay.

17 MR. WILSON:

18 Yes sir.

19 THE COURT:

20 All right.

21 Anyone have any objection to
22 letting Mr. Brooks go back and tell the jury that they
23 are free for lunch until one o'clock?

24 MR. WILSON:

25 None from the Defendant Lackey,

1 Your Honor.

2 MR. MONCKTON:

3 No sir, Your Honor.

4 THE COURT:

5 All right. Would you go do that
6 for me.

7 WHEREUPON: The deputy went to do
8 as instructed.

9 THE COURT:

10 We'll be at ease until one
11 o'clock.

12 MR. MONCKTON:

13 Thank Your Honor.

14 (WHEREUPON: The court was
15 declared in recess at 11:38 AM, May 18, 2010.)

16 (WHEREUPON: The court was called
17 to order by the Bailiff at 1:06 PM, May 18, 2010; and all
18 pertinent parties, along with their counsel, were back
19 and present in the courtroom.)

20 DEPUTY:

21 Order in the court. All Rise.

22 THE COURT:

23 Thank you.

24 (WHEREUPON: The Court remained at
25 ease while the Court Reporter marked numerous items as

1 State's Exhibits.)

2 MR. MONCKTON:

3 Your Honor, may we approach on a
4 matter?

5 THE COURT:

6 Sure.

7 (WHEREUPON: Counsel for each party
8 conferred off the record with The Court at the bench at
9 1:07 PM, May 18, 2010.)

10 THE COURT:

11 All right. Are we ready?

12 MS. LIVELY:

13 I believe that -- uh -- Well, the
14 State's ready, Your Honor.

15 We were just going to see if we
16 could find, for the purposes of the evidence, a table.
17 suspect that it will be a little bit easier to display
18 for the jury.

19 He was going to check and see if
20 there was a table.

21 (WHEREUPON: The deputies bring a
22 folding table into the courtroom to hold the numerous
23 exhibits.)

24 MS. LIVELY:

25 And he has one. Thank you so

1 much.

2 MR. MONCKTON:

3 And also, for the record, I've
4 informed the Solicitor's Office that we had initially
5 placed Ms. Tracy Tynes as a potential witness in this
6 case; therefore, she would've been subjected to
7 sequestration.

8 I've informed the Solicitor's
9 Office that she shall not be testifying. Uh -- And I
10 understand that by remaining in the courtroom, she would
11 not be allowed to testify, but she will be remaining in
12 the courtroom.

13 THE COURT:

14 Okay. And Ms. -- uh -- Livesay,
15 do you have your -- your folks, other than the two
16 victims that you previously identified?

17 (No response.)

18 THE COURT:

19 Ms. Livesay?

20 MS. LIVESAY:

21 I'm sorry, Your honor.

22 THE COURT:

23 How about the sequestration of
24 your witnesses?

25 MS. LIVESAY:

1 Uh -- That's fine, Your Honor
2 We've got -- The only issue I
3 have, Your Honor, if we can, some of our witnesses, who
4 are merely chain witnesses would like to stay in the
5 courtroom, if at all possible.

6 They're just going to be
7 testifying as to --

8 THE COURT:

9 Do you care about that, Mr.
10 Monckton; chain witnesses?

11 MR. MONCKTON:

12 Chain witnesses; no sir.

13 THE COURT:

14 Mr. Wilson?

15 MS. LIVESAY:

16 Thank Your Honor.

17 MR. WILSON:

18 I have no objection to chain
19 witnesses.

20 THE COURT:

21 Okay.

22 MS. LIVESAY:

23 Thank Your Honor.

24 THE COURT:

25 Okay. Now, we're clear on the

1 victims. You're going to let two of them stay; right?

2 MS. LIVESAY:

3 Yes sir.

4 THE COURT:

5 And we agreed on those two; okay.

6 MS. LIVESAY:

7 Yes sir.

8 THE COURT:

9 Okay. Let's bring in the jury..

10 MS. LIVELY:

11 Oh, yeah. We need to put the

12 trigger locks on the weapons.

13 THE COURT:

14 Okay.

15 MS. LIVELY:

16 We're going to put trigger locks

17 on these. Do you object to --

18 MR. MONCKTON:

19 I don't object to putting trigger

20 locks on.

21 MR. WILSON:

22 No objection.

23 MS. LIVELY:

24 Thank you.

25 (WHEREUPON: The two handguns

1 marked as exhibits were secured with trigger locks and
2 each placed back in the marked plastic bags.)

3 (WHEREUPON: The jury empanelled
4 in the case was escorted back into the courtroom at 1:11
5 PM, May 18, 2010; and was in fact present during the
6 following proceedings.)

7 THE COURT:

8 We'll be ready to go in just a
9 minute.

10 We just require that any firearms
11 that are going to be used in evidence -- uh -- have
12 trigger locks that the action is locked open to make sure
13 that when they're being passed around the courtroom they
14 cannot fire.

15 They have been secured now. And
16 they will be safe.

17 All right.

18 Ladies and gentlemen -- uh -- Ms.
19 Todd, I see that you have your jury here.

20 I appreciate your being back
21 promptly up.

22 And what I am going to tell you
23 now is not intended as an instruction on the law.

24 At the end of this trial, I will
25 give you a very complete and detailed instruction on what

1 the law to apply in this case is.

2 But what I give you now, is
3 basically a preliminary charge that would be more in the
4 line of an explanation of the procedures that we would
5 follow and what's going to be expected of you.

6 Now, as I told you during your
7 qualifications, the Defendants in this matter, Mr. Tynes
8 and Mr. Lackey, are both charged with the same offenses.

9 They are charged with burglary in
10 the first degree. They are charged with armed robbery.
11 They are charged with possession of marijuana with intent
12 to distribute. And they are charged with the unlawful
13 carrying of a pistol.

14 Let me again remind you that:

15 The fact that they are charged
16 with a crime; the fact that they are indicted; are of no
17 concern to you.

18 Those are -- Those facts are not
19 evidence in this case. And what may be spelled out in
20 the indictment is nothing more than an allegation made
21 against them.

22 It does not relieve the State in
23 any form or fashion of its duty to prove to you beyond a
24 reasonable doubt each and every element of these
25 offenses.

1 At the end of this trial, when I
2 do give you a full charge of the law, I will tell you
3 what all the elements are and what the State must -- uh
4 -- prove.

5 The indictment is simply a
6 charging document; a -- uh -- that brings the case before
7 The Court and puts the Defendants on notice of the charge
8 that they have against them.

9 It is your duty as a jury to find
10 and determine the facts in this case.

11 You are the sole judges of the
12 facts.

13 And if during this trial, I make
14 any comment on -- uh -- uh -- verbally, or by a
15 expression or otherwise -- uh -- if I make any -- uh --
16 uh -- comment about the -- the evidence in this case, or
17 the facts in this case, please disregard it. Because the
18 law does not permit me to even have an opinion about the
19 facts in this case.

20 That is simply what your duty as
21 jurors, as fact finders, is.

22 You are to determine the facts in
23 this case solely from the testimony and evidence that you
24 hear from this witness stand.

25 And it is especially important

1 that you perform your duty in determining the facts
2 conscientiously and diligently.

3 Because where The Courts of Appeal
4 can correct an error I make in the law, it's almost
5 impossible to correct an error in the determination of
6 the facts made by a juror -- uh -- the jury.

7 I am the sole judge of the law in
8 this case.

9 At the end of this case, as I
10 said, I will instruct you on the law. And you must be
11 guided by and follow the law exactly as I give it to you,
12 whether you agree with that law or not.

13 If you have some idea as to what
14 the law ought to be, or the law ought to be changed, you
15 got to just set that aside. Because as part of your
16 sworn duty, you must follow the law exactly as I give it
17 to you.

18 You must not begin your
19 deliberations in this case until you have heard all of
20 the evidence in this case and until I have also given you
21 the law.

22 You must not discuss it among
23 yourselves.

24 You must not, in the evenings,
25 discuss it with your -- your -- uh -- significant

1 other's, wives, children, friends. You are not to
2 discuss this case.

3 The attorneys and the parties in
4 this case, obviously, have been instructed not to speak
5 to you.

6 You might encounter one of these
7 attorneys in the hall. You might encounter me. And I
8 would not even speak to you, for fear that we might
9 influence you -- uh -- about your decision.

10 During the trial, please do not
11 read -- uh -- anything about this in the newspaper.

12 Do not listen to any news reports.

13 This case may be reported on the
14 news -- the evening news; the morning news. Please do
15 not listen to it..

16 You must make your decision from
17 what you hear -- uh -- from this witness stand.

18 Your solemn duty is to determine
19 the guilt or innocence of this Defendant from the
20 evidence and the law as I give it to you.

21 The deliberation process is a two-
22 part process.

23 First:

24 You determine what the facts are.

25 And only you can determine what

1 the facts are.

2 And in doing that, you must judge
3 the credibility of the witnesses who testify.

4 And in doing that, you can
5 consider anything that you have determined -- uh -- in
6 your daily lives, to lead you to the truth.

7 You can consider such things as
8 the opportunity a witness may have had to see or hear --
9 uh -- or perceive what he or she testifies to.

10 You can consider whether a
11 particular witness has any interest, prejudice, or bias
12 -- uh -- in the case.

13 You can consider whether or not --
14 uh -- or what this witnesses demeanor or appearance on
15 the stand is.

16 You can consider almost anything
17 that you believe will lead you to the truth in
18 determining whether to believe a witness or not to
19 believe a witness.

20 You can believe part of a
21 witness's testimony; reject the rest.

22 You can believe all of it; or none
23 of it, according to the weight that you think should be
24 applied to that particular witness's testimony.

25 Now just in a moment the Solicitor

1 will make what is called an opening remark.

2 That is not evidence; what she
3 says.

4 Uh -- She is going to tell you
5 what she thinks that she can prove to you through the
6 witnesses and the exhibits in this case.

7 She will give you the State's
8 position.

9 That will be followed, if they
10 choose to do so, by Defense making an opening remark.

11 They're not required to do so.

12 But if they choose to do so, they
13 again, will set out their position in this case.

14 They will explain to you what they
15 -- uh -- hope to show in this case.

16 And let me remind you that:

17 Not only are they not required to
18 make an opening remark or statement, they are not
19 required to any testimony whatsoever in this case.

20 They are not required to put up a
21 defense.

22 But if they choose to, they will.

23 Now let me remind you that:

24 The burden of proof in this State
25 -- uh -- in this -- uh -- case is much greater than what

1 you might have expected in a civil trial.

2 If this were a civil trial, the
3 Plaintiff would only have to convince you that his
4 position was more likely correct than not.

5 That is, the facts that he was
6 trying to prove were proven by what we call a
7 preponderance of the evidence.

8 You can think of it in terms of 51
9 percent of the evidence weighs in his favor.

10 The burden is much higher in a
11 criminal case. And this is, as I've told you earlier, is
12 a criminal case.

13 In this case the State has the
14 burden of proof.

15 The State must prove to you beyond
16 a reasonable doubt -- not beyond all doubt, but beyond a
17 reasonable doubt.

18 And I will explain further what a
19 reasonable doubt is when we get to the end of this trial.

20 But the State must prove to you
21 beyond a reasonable doubt that the Defendants committed
22 the offenses and are guilty of the offenses for which
23 they are charged.

24 I also tell you that during this
25 trial, the Defendants are presumed to be innocent.

1 And that presumption follows them
2 throughout the trial. It remains with them until such
3 time, and if, you find that they are guilty beyond a -- a
4 reasonable doubt.

5 Now during the trial of this case,
6 you might at sometime hear an attorney on either side say
7 something like:

8 Your Honor, we object.

9 Or:

10 Your Honor, we have a matter that
11 needs to be taken up outside of the jury.

12 In those cases, I will be quite
13 honest with you, it usually involves the admissibility of
14 some evidence where they want to talk about -- uh -- a
15 piece of evidence before it is entered in; or testimony
16 before it's entered into the -- to the record.

17 It's not that we're trying to keep
18 anything from you at all.

19 The reason that you're required to
20 leave is because:

21 In ruling on the invisibility of a
22 -- a piece of evidence or testimony, I might have to
23 express my opinion about whether I think that it is
24 valuable or probative, or whether it should be
25 introduced.

1 I may have to express an opinion
2 about that -- that evidence. And then, I would be
3 invading your area -- uh -- of -- as fact finders. I
4 might influence you.

5 So that's the reason that we send
6 -- uh -- you out.

7 Now, I'm going to ask you to
8 please party close -- close attention -- uh -- to the
9 evidence that is presented.

10 After the evidence is all
11 presented, we're going to have closing remarks.

12 And the State will have the option
13 to go first or second.

14 Uh -- Perhaps this may work out
15 that the Defense has the last argument. But, there will
16 be final arguments from the parties.

17 Again, that's not testimony, or
18 not evidence, what they tell you.

19 And that will be followed by my
20 charge on -- uh -- the law.

21 And at that time, you will
22 deliberate.

23 Now, that's the process that we
24 are going to follow in this case.

25 Uh -- Anything further, Ms.

1 Livesay?

2 MS. LIVESAY:

3 No sir; not from the State.

4 THE COURT:

5 Mr. Monckton?

6 MR. MONCKTON:

7 No sir, Your Honor.

8 THE COURT:

9 Mr. Wilson?

10 MR. WILSON:

11 No sir, Your Honor.

12 THE COURT:

13 All right. Swear the jury.

14 (WHEREUPON: the jurors selected
15 in this case were properly and duly sworn by the Clerk at
16 1:24 PM, May 18, 2010.)

17 THE COURT:

18 Ms. Livesay?

19 MS. LIVELY:

20 Actually, Your Honor, may it
21 please The Court?

22 THE COURT:

23 Ms. Lively; okay.

24 MS. LIVELY:

25 Yes sir.

1 I'll be handling the opening
2 remarks for the State.

3 THE COURT:

4 All right.

5 MS. LIVELY:

6 Thank you.

7 Hi, ladies and gentlemen. Thanks
8 for being here today.

9 Again, my name is Candace Lively.
10 This is Nancy Livesay. And we both work for the Horry
11 County Solicitor's Office.

12 I feel like there's an echo.
13 There is. Am I getting too close? Okay.

14 Well, basically what this case
15 boils down to, and the evidence will show, that Mario
16 Tynes, along with Michael Lackey and three other men, who
17 are not here today, broke into the home of Sean Barrett
18 with a plan.

19 The evidence will show that that
20 plan was contrived by Mario Tynes with the intent to go
21 into that home and steal drugs.

22 That is the case in a nutshell.

23 Now it is my job to bring you the
24 evidence; all the admissible evidence; all the relevant
25 evidence.

1 That's what you have to consider
2 in this case.

3 So, the first thing that you're
4 going to hear:

5 We're just going to lay out the
6 beginning of where this whole thing took place -- is a
7 911 call by someone by the name of Don Gause.

8 He doesn't know anybody in this
9 case.

10 He doesn't know any of the
11 Defendants. He didn't know any of the victims.

12 He just happened to be in the
13 right place at the right time; or the wrong place at the
14 wrong time, if you look at it from the Defendants' point
15 of view.

16 So, let me tell you:

17 October 13th, 2007, Coastal
18 Carolina University is having a homecoming weekend.

19 Family are in town. Friends are
20 in town. It's a festive occasion.

21 But at about 11:54 that night, a
22 911 call comes in. This is after the football game's
23 over with.

24 It's Don Gause.

25 And you're going to hear that

1 tape.

2 Mr. Gause tells the dispatcher:

3 I just saw a white Ford Crown Vic

4 go speeding out of the [REDACTED]

5 complex with five black males in the car waving guns.

6 He gives a further description.

7 There are no rims on the car.

8 It's an old model.

9 He's starts trying to tell the
10 dispatcher where they're going; what they're doing.

11 He just happened to be outside.

12 Just happened to see this.

13 Three minutes later, you're going
14 to hear, one of the officers from Horry County PD spots
15 the vehicle.

16 You've got to see pictures of that
17 vehicle; why it was obvious to the officer. Pulls them
18 over.

19 Five people are in that car, just
20 like Mr. Gause said.

21 Two of them were Mario Tynes; the
22 other one, Michael Lackey.

23 You're going to see Ricky Johnson,
24 Eric Brown, and Joshua Readon.

25 All five get out of the vehicle.

1 And the officer, for his own
2 safety, pats down; checks for weapons. Because:

3 Hey, these people were supposed to
4 be waving guns.

5 What did they find?

6 The evidence is going to show,
7 they found two guns in that vehicle. The evidence is
8 further going to show that they found marijuana in that
9 vehicle.

10 All five were arrested that night;
11 charged with possession with intent to distribute
12 marijuana, which they are charged with here today as
13 well; unlawful carrying of a weapon.

14 Now that would be the first part
15 of the story.

16 But what you don't know is what
17 happened earlier that night.

18 What happened when they went
19 speeding out of that [REDACTED] in [REDACTED]

20 That is the rest of the story.

21 So I'm going to take you back to
22 that; okay.

23 Before they are caught, they're
24 going to get into the apartment of Sean Barrett, and his
25 roommates, Brooks Lanham and Willie Miller.

1 These three guys are hanging out
2 in their apartment. It's a three-level apartment.

3 First level is nothing but walk-
4 in. There's a foyer, and immediately there's a
5 staircase.

6 And then there is a main level;
7 two bedrooms and TV; kind of a living area.

8 And in the very top floor, is were
9 Sean Barrett lives.

10 He's up there by himself, alone.

11 So, earlier that night, one of
12 these victims in the home -- completely unaware -- in
13 town for homecoming, having a good time, hanging out with
14 friends, noticed something suspicious outside.

15 And you are going to hear
16 testimony about that.

17 They go to the front door; one of
18 the individuals. Goes to lock the front door; when all
19 of a sudden, 4 home invaders come busting into the door,
20 holding him at gunpoint, making him go to the main level.

21 There were 4 home invaders; two of
22 them with guns. And then the two other, who are
23 following behind.

24 One of the gun-holders and one of
25 the other guys stay on that main floor, holding all of

1 those people at gunpoint.

2 The other two run up the other
3 stairs to Sean Barrett's room.

4 The evidence is going to show that
5 those other two individuals, one holding a gun, bust into
6 Mr. Barrett's room.

7 An altercation took place.

8 And you're going to hear testimony
9 about how Sean Barrett was pistol-whipped with the gun,
10 causing lacerations to his head; blood going everywhere,
11 and drugs were stolen.

12 Those two come running back
13 downstairs.

14 And what are the other two doing?

15 The with the gun is still holding
16 all of those people at gunpoint.

17 Catherine Arnold, Brooks Lanham,
18 Nick Prater, Willie Miller, Willie Joe Bottoms; all these
19 guys who are sitting there.

20 They'd just got back from dinner.

21 They are hanging out. It was one of their birthdays.

22 And they're being held at gunpoint.

23 Their cell phones were taken.

24 Their money was taken while a gun was pointed at their
25 heads.

1 And not only that, you're going to
2 testimony that just in case those victims weren't scared
3 enough, one of those Defendants racked the gun, and a
4 bullet flew out of that gun.

5 You're going to hear about that as
6 well.

7 That bullet was left on the scene.

8 All four of them run out.

9 Ricky Johnson, who has been
10 charged in this case -- and he's going to testify on
11 behalf of the State -- will tell you< he was waiting for
12 them in that car.

13 They took off out of Flint Lake
14 Apartments.

15 And guess what?

16 Their worst nightmare.

17 Don Gause just happened to be out
18 there walking around; makes a 911 call.

19 You see how those two things tie
20 together now.

21 Now we have, within three minutes
22 of that, the Defendants being pulled over; marijuana
23 found; guns found.

24 But this is the thing:

25 They robbed a drug dealer. So who

1 cares?

2 They bust into the home and put a
3 gun, and pistol-whipped a drug dealer, who is Sean
4 Barrett..

5 He's a student. But he will tell
6 you, he was dealing drugs back then.

7 But you will also hear evidence
8 and testimony that Mario Tynes knew that. And that's why
9 he was targeted. That's why they went to that home.

10 And you're going to hear about
11 that plan..

12 Now, ladies and gentlemen, the
13 State does not pick their victims.

14 The State cannot promise you that
15 I can put up in every time I have a case, a Sunday School
16 teacher, or a priest, or someone who is going to make the
17 best witness ever.

18 But I will take you this:

19 When you hear the evidence of what
20 happened, and you follow the law, it does not matter if
21 the victim is dealing drugs; if he was selling
22 counterfeit money; or whatever he may have been doing.

23 What you look at is what these
24 Defendants did.

25 Not only that, we have those

1 victims on that main floor who had nothing to do with it.
2 And they truly were innocent bystanders in this case.

3 So please keep that in mind.

4 The State I'm going to provide you
5 with a lot of evidence in this case.

6 Some of these witnesses are going
7 to have to be here just because we want to show you how
8 we did everything we could to protect the integrity of
9 the evidence that was seized; evidence that was found in
10 the car.

11 The guns were sent to SLED, our
12 law enforcement division.

13 We are going to have a DNA analyst
14 who looked at the weapons.

15 They're going to provide you with
16 their inclusions (sic) in this case.

17 Those conclusions, we believe the
18 evidence will show to you clearly -- tie the Defendants
19 to the home invasion on the night of October 13th, 2007.

20 And once you hear all of that
21 evidence, and you put everything together, it will be a
22 clear picture of exactly what happened that night; what
23 the plan was; how every single one of them were involved.

24 And not only that, the judge will
25 charge you at the end of the case, before all this is

1 stated, and he will tell you:

2 The hand of one is the hand of
3 all.

4 Every single one of those people,
5 those invaders that went in that home, whether they were
6 holding the gun or not, were acting together in what they
7 did; knew what they were doing; had a part in that plan.

8 And if you believe that all of
9 them were involved in the plan, and went in there with
10 the knowledge of what was going on, and played a part in
11 it, every one of them is guilty.

12 Now I'm just going to show you
13 briefly -- and I'll allow my co-counsel at the end of the
14 case, to bring this back up to you.

15 These are the elements that we
16 have to prove beyond a reasonable doubt.

17 And the reason why I like to show
18 this to a jury at the very beginning, is so, in the back
19 of your mind, maybe you will remember some of these
20 elements of what burglary first degree is.

21 Entering a dwelling without
22 consent and with the intent to commit a crime therein.

23 They went into that apartment, and
24 the evidence will show, obviously without consent, armed
25 with weapons, with the intent to steal drugs.

1 That's it. The aggravating
2 circumstances: a deadly weapon. Guns are a deadly
3 weapon.

4 Again, armed robbery:

5 Taking, or attempting to take and
6 carry away, the personal property of another.

7 Like I said before:

8 Yes, that property was drugs.

9 But also remember the ones on the
10 main level had their cell phones and their money taken as
11 well.

12 With the intent to deprive them of
13 possession.

14 Well, I think that one will become
15 obvious to you.

16 By force, threats, or
17 intimidation, the use of guns.

18 Ladies and gentlemen, when you
19 have the entire picture, the State believes it will
20 become a clear picture to you of a plan to rob, to
21 terrorize, to take advantage of, the people living in

22 [REDACTED]

23 So please listen carefully.

24 We really appreciate the fact that
25 you are all going to hear evidence that we can present to

1 you that make us feel like you will reach a just verdict.

2 That's my job. That's Ms.

3 Livesay's job. And we're going to give you every person
4 that had a hand in this thing to help you make your
5 decision.

6 Thank you.

7 MR. MONCKTON:

8 May it please The Court, Your
9 Honor?

10 My name's Billy Monckton. And I'm
11 an attorney. And I practice over in Myrtle Beach. And I
12 have the honor and privilege to represent Mario Tynes.

13 Please stand up for me, Mario.

14 WHEREUPON: Defendant Mario Tynes
15 stands as instructed.

16 MR. MONCKTON:

17 This is Mario Tynes.

18 By him being here today, he is
19 telling you, number one:

20 I did not do this.

21 And number two:

22 I was not involved with this.

23 He has pled not guilty.

24 We've known about those facts and
25 allegations for two and a half years now.

1 Our stance has not changed since
2 day one.

3 You're going to hear a lot of
4 testimony from the State's witnesses.

5 And a lot of the State's witnesses
6 have told numerous, conflicting, different, stories.

7 You're going to hear about all of
8 them.

9 You're also going to hear that
10 there've been some very unique deals made in this case.

11 We're going to uncover every one
12 of them for you.

13 And I'm going to tell you and show
14 you what each witness had to gain by pointing the finger
15 at Mario Tynes.

16 Mario Tynes was a football player
17 at Coastal Carolina.

18 He was on a scholarship. And he
19 comes from a good family out of Atlanta.

20 And they're seated over in the
21 courtroom with us.

22 One of the hardest things we have
23 to do is convince you to keep an open mind.

24 Today, tomorrow, and possibly into
25 Friday, the State gets to go first.

1 Me and Mr. Wilson over here, we
2 have to sit back and listen to everything before we can
3 present and argue our case.

4 Your oath that you took as a juror
5 is to keep an open mind as to everything.

6 You've already sworn to that
7 already.

8 I just want to remind you of your
9 obligation as we go through this trial.

10 Again, we are hear saying:

11 We did not do this.

12 I don't know how yell it any
13 louder than to say: not guilty, when we set over there
14 and start this trial.

15 You must keep an open mind in this
16 case and follow your oath.

17 Thank you.

18 MR. WILSON:

19 Ladies and children, my name is
20 Ralph Wilson. And I represent this young man, Michael
21 Lackey, who is from Atlanta.

22 Sit down, Michael.

23 He has pled not guilty to these
24 offenses.

25 But even greater than that, you

1 will see, and you will hear from the testimony, that he
2 is charged with armed robbery.

3 Not one single witness, I promise
4 you, will testify that he had a knife; that he had a gun;
5 that he did anything. Not one.

6 I tell you this:

7 The evidence will show that the
8 bad people -- the people who are really committing the
9 crimes in this case -- have been given deals.

10 Even the victim -- alleged victim,
11 who was a dope-dealer of great significance and
12 importance -- that he has been given immunity; that is
13 complete immunity from prosecution for selling pounds of
14 dope, in an effort to convict this young man:

15 You will hear lie after lie after
16 lie.

17 You will hear statements from
18 people who got deals, who've given 4 -- 3, 4, 5 different
19 statements, when they had already sworn and agreed to
20 tell the truth.

21 And in spite of that, the State is
22 going to bring those people in here and put them on the
23 witness stand and have them raise their right hand to The
24 Good Lord, and still tell another story, whatever that
25 might be.

1 That's what we have.

2 One of the things that you need to
3 know about:

4 There is a word in the law we call
5 credibility. Sounds fancy; but it's really not. It just
6 means believability. What are you're going to believe,
7 and who are you going to believe?

8 I invite you -- I urge you:

9 When these witnesses that the
10 State will bring in here and put on this witness stand,
11 when they testify, I urge you to listen to them.

12 And as His Honor said to you
13 earlier, that sometimes by paying attention to the
14 demeanor of the witness, that is:

15 Are they squirming up there?

16 Are they going back and forth?

17 Are they telling some different
18 now than they told before?

19 That goes to their credibility,
20 their believability.

21 Because I assure you, ladies and
22 gentlemen, when you hear these witnesses testify, you
23 would not want to use that testimony to affect your life.

24 If you are really going to make a
25 decision, would you want to make it based on the kind of

1 testimony that you're going to hear in this case?

2 If you were investing your life
3 savings, would you want to take the kind of information,
4 lie after lie after lie after lie from your broker; and
5 then, after the fifth lie he tells you:

6 Oh, but this is the one. So let's
7 go ahead and use this. And you take your life savings
8 and you just go in and invest it with him.

9 No.

10 But that's what you are asked to
11 do.

12 That's what you're being asked to
13 do in this case.

14 But not to yourselves; but to
15 Michael Lackey.

16 A crime is a crime.

17 Justice is justice.

18 You see, and I've said:

19 A good thing about justice, it
20 doesn't matter what color you are.

21 It doesn't matter how tall you
22 are.

23 It doesn't matter how rich you
24 are.

25 It shouldn't matter how poor you

1 are.

2 It is justice.

3 And you tell me that:

4 Selling 2, or 3, or 4 pounds of
5 marijuana, that's okay. That's okay, you know, as long
6 as nobody don't try to steal it from you.

7 Because if somebody tries to steal
8 it from you, God forbid, we might have to prosecute them.

9 That's what they're asking you to
10 do.

11 But, let me say this; and then,
12 I'm going to be through:

13 I urge you -- I don't ask anything
14 else of you at this point.

15 Just listen.

16 Keep an open mind.

17 Because one of the things I
18 learned a long, long, time ago:

19 There's usually the State's story;
20 the Defense story; and then the truth.

21 It's usually somewhere in there.

22 But, the key here is this:

23 The burden of proof is not on
24 these gentlemen.

25 It's not on Michael Lackey to come

1 in here and prove to you that he did not do something.

2 Because folks, I tell you:

3 Sometimes it's almost impossible
4 to prove that you didn't do something.

5 If you're home in your bed at 3:00
6 AM, and something happens 10 miles away, and there's
7 nobody home with you, how are you going to prove you
8 didn't do it?

9 The burden of proof is upon the
10 State.

11 They must bring you evidence which
12 proves beyond a reasonable doubt.

13 You say:

14 Well, that reasonable doubt. Here
15 we go. Here we go. Reasonable doubt.

16 Well, that is the standard which
17 is what His Honor has just explained to you.

18 This is not a civil case where:

19 If you come in and you got 51
20 percent, you win.

21 No.

22 This is a criminal case.

23 The burden is much greater. It's
24 beyond a reasonable doubt.

25 And a reasonable doubt is simply a

1 doubt which might cause you to hesitate to act; act on
2 the information that you receive.

3 When these witnesses testify, you
4 ask yourself:

5 Well, why would the witness say
6 that?

7 Why would that witness say that?

8 Why would that witness testify the
9 way he or she is testifying.

10 Or:

11 If -- Why did that witness -- How
12 did that witness know that it was this particular person
13 who did this?

14 Did they have good vision?

15 Were they able to see the person
16 clearly?

17 Did they give a good description
18 immediately after the incident occurred?

19 All those things go to
20 credibility; believability.

21 Would it make sense if I couldn't
22 do it on the night that it happened; but two weeks later
23 or a month later, I said:

24 Ups. Yeah. Yeah, I'll -- Sure, I
25 can identify him now. I know him now.

1 Would that make sense?

2 Well, maybe if you saw in the
3 newspaper, you might.

4 I simply ask you folks to give us
5 your time; to give us your patience.

6 The State goes first. That's the
7 order of the proceeding. So until they finish, nothing
8 else can happen.

9 So we just ask you to bear with
10 us. Hear what the State has to offer. Listen to the
11 cross-examination. And if you do that, if you do that,
12 at the end of this trial, you're going to be in a
13 position to render a verdict that speaks the truth.

14 And the truth is that the State
15 cannot and will not meet its burden.

16 Thank you.

17 THE COURT:

18 Ms. Livesay.

19 MS. LIVESAY:

20 Thank Your Honor.

21 At this time, the State would like
22 to call Mr. Don Gause to the stand.

23 WHEREUPON: DON L. GAUSE WAS DULY

24 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

25 CLERK:

1 Would you please state your full
2 name and spell your last name?

3 WITNESS:

4 Don L. Gause, G-a-u-s-e.

5 DIRECT EXAMINATION BY MS. LIVESAY:

6 Q. Mr. Gause, how old are you?

7 A. 37.

8 Q. And where are you from?

9 A. Uh -- Well, I'm originally from Marion, South
10 Carolina. But I've lived in Myrtle Beach for about 11
11 years.

12 Q. About 11 years?

13 A. Yes.

14 Q. So you basically from Myrtle Beach?

15 A. Yes ma'am.

16 Q. Are you married?

17 A. No ma'am.

18 Q. Do you have any children?

19 A. Yes; I have three.

20 Q. And where do you work?

21 A. Uh -- I have a -- a small -- uh -- trucking
22 business. And I have a -- Well, I have a repo-recovery
23 business too. Repo cars.

24 Q. Okay. And do you remember where you lived on or
25 around October 13th of 2007?

1 A. Yes. I was in Flint Lake.

2 Q. Okay. And is that in Horry County?

3 A. Yes.

4 Q. Okay. And do you remember what you were doing that
5 night?

6 A. I was outside walking my dog -- two dogs.

7 Q. Okay. And that night, did you have occasion to
8 call 911?

9 A. Yes.

10 Q. Okay. Could you tell the jury why you called 911
11 that night?

12 A. Well -- uh -- I was outside walking the dogs. And
13 -- uh -- I saw like five guys with in a -- you know --
14 sort of suspicious.

15 In other words -- uh -- it was
16 only Saturday night; maybe like 90° outside; and I had on
17 shorts and rainbow flip-flops.

18 And -- uh -- they had on hoodies
19 and all in black.

20 So, you know, it just looked
21 suspicious to me.

22 So, you know, I just started
23 watching them to see what they were doing.

24 Q. And what did you see? What else did you see --

25 A. Uh --

1 Q. -- when you started paying attention?

2 A. At the time, they were just standing right across
3 from my apartment. And -- uh -- they were just, like,
4 just looking at each other like they was planning on
5 doing something,

6 So, I just stayed there and
7 watched them and watched them.

8 And so eventually they walked
9 around the apartment.

10 And -- uh -- And so I kind of -- I
11 proceeded to follow them. But I kind of stayed a
12 distance.

13 Q. Uh-huh.

14 A. And then, as I walked around by the pool area, I see
15 someone running from out of -- from around the apartment.

16 Q. Uh-huh.

17 A. It looks like two guys. And -- uh -- I kind of like
18 backed up. Because, you know, I didn't really know what
19 really was happening at that time.

20 And so I heard a -- uh -- a
21 squealing of car tires.

22 Q. Uh-huh.

23 A. And so I proceeded by the car wash area.

24 Q. Uh-huh.

25 A. And then I saw -- uh -- the car come around the

1 parking lot.

2 Q. Did you get a good look at the car?

3 A. Yes. It was a white Crown Victoria with no hub
4 caps.

5 Q. Okay. Now, could you describe again what they were
6 wearing?

7 A. It was -- They was dressed in all black with
8 hoodies.

9 Q. Okay. Now, did you recognize any of these guys?

10 A. No ma'am.

11 Q. Okay. Did you -- Had you seen that vehicle before?

12 A. No ma'am. I -- I think I maybe seen it like -- uh
13 -- at Horry Georgetown Tech, because my girlfriend, she
14 was going to school there at the time.

15 Q. Okay.

16 A. In that area.

17 Q. Did you know who the car belonged to?

18 A. No.

19 Q. Okay. Did you know any of the guys that were in
20 that car?

21 A. No ma'am.

22 Q. Uh -- Don, I'm showing you a tape marked State's
23 Exhibit 1, which is your 911 call.

24 Have you heard this tape?

25 A. Yes, I have.

1 Q. Is that your voice on the tape?

2 A. Yes ma'am.

3 Q. And is that a recording of the phone conversation
4 you made that night?

5 A. Yes ma'am.

6 Q. Okay. And is it an exact recording of your voice?

7 A. Yes ma'am.

8 MS. LIVESAY:

9 Your Honor, at this time the State
10 wants to present State's Exhibit 1 as evidence and play
11 it for the jury.

12 THE COURT:

13 Mr. Monckton? Mr. Wilson?

14 MR. MONCKTON:

15 No objection, Your Honor.

16 MR. WILSON:

17 I have no objection.

18 THE COURT:

19 All right; without objection.

20 WHEREUPON: Plaintiff's Exhibit 1,
21 911 tape, previously marked by the court reporter for
22 identification, was now entered into evidence. without
23 objection.

24 MS. LIVESAY:

25 Thank your honor.

1 WHEREUPON: State's Exhibit Number
2 1, the 911 tape, was played for the jury at 1:51 PM, May
3 18, 2010.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Mr. Gause, did you know anybody in that vehicle?

6 A. No ma'am.

7 Q. Do you know Mario Tynes?

8 A. No ma'am.

9 Q. Do you know Michael Lackey?

10 A. No ma'am.

11 Q. Never met two gentlemen by that name ever?

12 A. No ma'am.

13 Q. And did not recognize any of the guys that were
14 there that night?

15 A. No ma'am.

16 MS. LIVESAY:

17 Okay; thank you. No further
18 questions.

19 THE COURT:

20 Who will go first?

21 MR. MONCKTON:

22 I'll go, Your Honor.

23 THE COURT:

24 All right.

25 CROSS-EXAMINATION BY MR. MONCKTON:

1 Q. Mr. Gause, thank you for being here today. I know
2 it's uncomfortable for you.

3 You -- You said you had seen
4 several black males all wearing dark hoodies?

5 Do you know what color they were?

6 A. Uh -- I know -- I know they was -- I know they was
7 black.

8 I mean, plus it was dark.

9 They had on hoodies.

10 They -- They was in like -- They
11 was in a shaded spot, you know.

12 It was like 12:00 o'clock -- maybe
13 11:30 or 12:00 o'clock at night.

14 Q. But it's fair to say they were all wearing dark --

15 A. Yeah. They were all wearing black hoodies. All
16 black.

17 Q. And you said you saw them flashing guns. Where did
18 you see the guns? Were they --

19 A. Uh -- Basically, you know, I saw -- I saw them like
20 when they were running from around the apartment.

21 It was like they was -- like they
22 was like concealing something.

23 But me personally, I've got robbed
24 before.

25 So I knew -- I kind of had an idea

1 what was going on.

2 And it was just they looked
3 suspicious.

4 So, that's why I said that, so
5 they would hurry and get there and check it out.

6 Q. So you didn't actually see the guns?

7 A. No, I didn't actually see the gun; but I could tell
8 they were concealing something.

9 Q. You could tell they were concealing something. But
10 you couldn't actually tell it was guns?

11 A. Yes.

12 Q. Let me ask you this:

13 Did you see a white Cadillac that
14 night?

15 A. No. I saw a white Crown Victoria.

16 MR. MONCKTON:

17 All right. Thank you.

18 No further questions.

19 THE COURT:

20 Mr. Wilson.

21 CROSS-EXAMINATION BY MR. WILSON:

22 Q. My understanding is, you said that you actually --
23 Well, you, in your 911 call, you said that you did see
24 guns. And that you saw them flashing out of the window.

25 A. (No response.)

1 Q. Isn't that what you said?

2 A. Yes.

3 Q. So which is it? You didn't see the guns or you did
4 see the guns?

5 A. It was -- They were concealing -- You could tell
6 they was holding something.

7 I didn't actually see a handgun;
8 but by their actions and their demeanor at that time of
9 night, that's what made me think that.

10 Q. Well, you said in the 911 call that you saw them
11 flashing guns out the window.

12 A. (No response.)

13 Q. Did you not?

14 A. No sir.

15 Q. No sir? You don't remember saying that on the tape
16 we just played?

17 A. Everything was happening so fast. And -- And I was
18 -- At the time, I was looking around the apartments.

19 So I saw somebody running.

20 And I saw the white car.

21 I saw the car take off.

22 And I seen a bunch of guys
23 running.

24 And it was like they were
25 concealing something.

1 Q. So if you said, in the 911 tape, that you saw guns
2 flashing, that wouldn't be the truth, would it?

3 A. No sir.

4 Q. Right.

5 A. Uh -- The main reason why I said that is because I
6 have three kids.

7 Q. Uh-huh.

8 A. My kids play at that pool every day during the
9 summer.

10 Q. Okay.

11 A. And -- And I knew something was going on.

12 Q. Okay.

13 A. And -- uh -- And that's why I wanted them to get
14 there just to check it out.

15 Q. So you lied to the police about seeing guns because
16 you wanted them --

17 A. No --

18 Q. -- You wanted to make sure --

19 A. No --

20 Q. -- they were coming --

21 A. No --

22 A. Let me finish my question please, sir.

23 You lied to the police so that
24 they would come and check it out?

25 A. No sir. I didn't exactly lie to the police. It's

1 like I seen -- uh -- like I seen them concealing
2 something.

3 I didn't know exactly what it was.
4 I just assumed it was a gun.

5 Q. Okay. Well -- But then, that's my question.

6 Why did you tell the police on the
7 911 tape that you saw them flashing the guns out of the
8 window of the car?

9 A. Because when I saw that run, well, that was the only
10 thing that I would think they would be having at that
11 time of night with black hoodies on.

12 It was not 90 degrees at night.

13 I had on shorts; flip-flops.

14 They were dressed in all black and
15 hoodies.

16 And -- And they had -- They was
17 concealing -- like they was concealing something.

18 Q. Well, let's talk about that for a minute. The black
19 hoodies thing:

20 You say that all five of the men
21 you saw were wearing black hoodies?

22 Is that right?

23 A. Yes sir.

24 Q. You're absolutely positive about that?

25 A. Yes sir.

1 Q. And that's just as true as what you said about a gun
2 flashing out the window; right?

3 A. Yes sir.

4 Q. Correct. And -- Now, these five men:

5 Do you know -- Do you recall one
6 of them having a white hat on?

7 A. Uh -- I didn't -- I didn't look like that. All I
8 saw was black.

9 Q. All you saw is black?

10 A. And at the time --

11 Q. And --

12 A. At that time, it was a kind of a night-lite out in
13 front of my apartment.

14 So they were really in a shaded
15 part.

16 And the part they were in was the
17 shaded part beside another apartment.

18 Q. Okay. Now, let me ask you this:

19 Did you see Michael Lackey over
20 there that night?

21 A. No.

22 Q. One of the five men that you say you saw?

23 A. I didn't see anyone. I didn't see -- I couldn't see
24 anyone's face. All I saw was black hoodies. And I saw
25 the white Crown Victoria.

1 Q. Okay. And -- Well, let me ask you this:

2 Was any of the guys wearing
3 football equipment?

4 A. No sir.

5 Q. No?

6 A. I know that that night it was a football game that
7 night.

8 Q. Okay. Well, what I'm asking you, though, is:

9 You said that they were all
10 dressed in black?

11 A. They had --

12 Q. I'm asking you --

13 A. They had on black hoodies. And it looked like some
14 dark colored jeans or something of that nature.

15 Q. Okay. And -- And that's your testimony; that all
16 five of them had on black hoodies and dark jeans -- or
17 dark pants of some type?

18 A. Yes sir.

19 Q. Right. And the hoodies:

20 Were the hoodies all over their
21 heads?

22 A. Yes sir. It was --

23 Q. All five of them had hoodies on there heads?

24 A. There was hoodies on their heads.

25 MR. WILSON:

1 Okay. I don't have any other
2 questions.

3 REDIRECT EXAMINATION BY MS. LIVESAY:

4 Q. Just one question. Don, you said it happened pretty
5 fast. How fast are we talking; within seconds?

6 A. Maybe no more than 10 minutes; 5 or 10 minutes.

7 Q. No more than 5 to 10 minutes?

8 A. No more than 5 -- 5 or 10 minutes.

9 Q. Okay.

10 A. It was no longer than 10, I know that.

11 Q. And had you ever called 911 before while you'd been
12 out there?

13 A. No ma'am.

14 MS. LIVESAY:

15 No further questions, Your Honor.

16 MR. WILSON:

17 Nothing further.

18 MR. MONCKTON:

19 Nothing further, Your Honor.

20 THE COURT:

21 All right. You may step down.

22 MS. LIVESAY:

23 Your Honor, at this time, the
24 State wishes to call Officer Justin Cole to the stand.

1 THE COURT:

2 Do you wish to keep Mr. Gause
3 under subpoena?

4 MS. LIVESAY:

5 Uh -- Can this gentleman be
6 relieved, Your Honor?

7 THE COURT:

8 Mr. Monckton and Mr. Wilson?

9 MR. MONCKTON:

10 No objection, Your Honor.

11 MR. WILSON:

12 No objection.

13 THE COURT:

14 Mr. Gause, you are released from
15 your subpoena. You may leave, if you wish; okay.

16 MS. LIVESAY:

17 Thank Your Honor.

18 WHEREUPON: OFFICER JUSTIN COLE

19 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

20 CLERK:

21 Please be seated.

22 Would you please state your full
23 name and spell your last name.

24 WITNESS:

25 My name's Officer Cole, Justin

1 Cole, C-o-l-e.

2 DIRECT EXAMINATION BY MS. LIVESAY:

3 Q. Officer Cole, where do you work?

4 A. I work for the Horry County Police Department.

5 Q. And how long have you worked for the Horry County
6 Police Department?

7 A. About -- uh -- over 4 years, ma'am.

8 Q. Okay. And what kind of training have you undergone
9 at the police department?

10 A. I have attended -- uh -- several -- uh -- traffic
11 related courses, Data-Master courses, and the Criminal
12 Justice Academy.

13 Q. And what are your responsibilities as an officer
14 with that Police Department?

15 A. My responsibilities are to patrol the areas and
16 respond to calls for service.

17 Q. Okay. And were you working as a Horry County
18 Officer on the night of October 13th, 2007?

19 A. Yes ma'am.

20 Q. And what were your responsibilities that evening?

21 A. That evening, I was assigned to a off-duty security
22 for the Forrest Brook Food Lion.

23 Q. Okay. And were you in uniform?

24 A. Yes ma'am.

25 Q. And were you in a marked patrol car?

1 A. Yes ma'am.

2 Q. Okay. And in that patrol car, is there a video
3 camera?

4 A. Yes ma'am. There is.

5 Q. Okay. And does that videotape the stops that you
6 make?

7 A. Yes ma'am.

8 Q. Uh -- On the night of October 13th, 2007, did you
9 happen to come across a white -- white Crown Vic vehicle?

10 A. Yes ma'am, I did.

11 Q. And tell the jury how you came across that vehicle
12 that night?

13 A. On that night, I responded -- I had received a call
14 on the radio in reference to a "be on the lookout" for a
15 older model white-colored Crown Vic -- uh -- LTD; didn't
16 have no hubcaps on it; with tinted windows; with several
17 black males in the vehicle, supposedly waving guns in the
18 air.

19 At that time -- uh -- I received a
20 call, it stated that the vehicle was traveling towards
21 Highway 501 -- on Burcale Road towards 501.

22 At that time, I went to the
23 intersection of Forrest Brook Road and Outlet Boulevard.

24 And, at that intersection,
25 approximately 30 seconds to a minute later, I saw a

1 vehicle matching the description that we got the "be on
2 the lookout for."

3 At the time, I got behind the
4 vehicle.

5 It turned on to Waccamaw
6 Boulevard.

7 It wasn't a very well-lit area.
8 So I waited until they got closer to a -- uh -- traffic
9 light.

10 At that time, I initiated a
11 traffic stop on the vehicle.

12 Q. Okay. And I'm sorry. And about how long did it
13 take you, in between the time you received that "be on
14 the lookout" until the time you actually saw a -- a white
15 Crown Victoria?

16 A. 1 to 2 minutes, ma'am.

17 Q. Okay. And where, again, was the location that you
18 pulled them?

19 A. The location I pulled them at was a Kangaroo gas
20 station located on Waccamaw Boulevard.

21 Q. Okay. And since you are an Horry County officer,
22 are you familiar with where [REDACTED] are at

23 [REDACTED]

24 A. Yes ma'am; I am.

25 Q. Okay. And could you approximate about how far

1 those apartments are from where you pulled them on that
2 Kangaroo?

3 A. Approximately 2 miles.

4 Q. Okay. Officer Cole, do you recognize what I'm
5 showing you?

6 A. Yes ma'am, I do.

7 Q. And what is it?

8 A. It's the Forest Brook area of Horry County.

9 Q. Okay. And are you familiar with this area?

10 A. I am.

11 Q. And the location that you pulled those defendants
12 at, is that on this map? And I know the writing is
13 small.

14 Q. No ma'am. I don't see Highway 501.

15 Q. Uh -- Do you see [REDACTED] on this map, Officer?

16 A. I do.

17 Q. Okay. And looking at [REDACTED] could you
18 approximate where those [REDACTED] are?

19 A. Approximately here, ma'am, in this area.

20 Q. Okay. And could you approximate where you stopped
21 them at?

22 A. It would be -- It would be approximately the top
23 part of the map over in the right-hand corner there.

24 Q. Okay. And how far is that distance?

25 A. Approximately 2 miles.

1 Q. Okay. And when you pulled that vehicle over, how
2 many males were in that car?

3 A. There was 5 of them.

4 Q. Okay. And could you describe what they looked like
5 that evening?

6 A. There was t black males in the vehicle that were
7 wearing black in color clothing.

8 Q. Okay. And where you're able to identify who was in
9 the vehicle?

10 A. Yes ma'am.

11 Q. Okay. And who was in that vehicle that evening?

12 A. Ricky Johnson, Eric Brown, Mario Tynes --

13 (hesitates) --

14 Q. I know it was 2007.

15 A. Joshua Readon. (Again, hesitates.) I don't recall
16 the last one right off hand.

17 Q. Okay. Uh -- Was Michael Lackey in that vehicle? A.

18 A. Yes ma'am.

19 Q. Okay. And did you -- What did you do next upon
20 pulling that vehicle over?

21 A. Upon pulling that vehicle, for officer's safety, we
22 ask them out of the vehicle and started patting them down
23 for the possibility of weapons, ma'am.

24 Q. Okay. Now when you pulled that vehicle over, at
25 that point did everything fit the subscription -- I mean,

1 the description that you had been given on the "be on the
2 lookout?:

3 A. Yes ma'am, it did.

4 Q. Okay. So the description, again, was:

5 White Crown Victoria with 5 black
6 males occupying it?

7 Q. Yes ma'am.

8 Q. Okay. Now, what did you do after you got the
9 gentlemen out of the vehicle?

10 A. We patted them down. We patted them down for
11 weapons to see if they had any weapons on them.

12 Q. Was there another officer present?

13 A. There was.

14 Q. Okay. And why was that other officer present?

15 A. For my safety ma'am.

16 Q. Okay. And once you got them out of the vehicle,
17 did you find any thing?

18 A. Once -- uh -- we got them out of the vehicle, my
19 backup, Officer Graham, told me that there was this -- uh
20 -- a green leafy substance --

21 MR. MONCKTON:

22 Objection, Your Honor, to hearsay.

23 MS. LIVESAY:

24 Your Honor --

25 THE COURT:

1 Lay the proper foundation for
2 that.

3 MS. LIVESAY:

4 Thank Your Honor.

5 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

6 Q. When you -- After you got the gentlemen out of the
7 car, did you or Mr. Graham, the other officer with you,
8 see anything in plain view?

9 A. Yes ma'am.

10 Q. And what did you see?

11 A. I was -- I was told that there was --

12 MR. MONCKTON:

13 Objection, Your Honor.

14 THE COURT:

15 Don't told me what the other
16 officer told you. You may say what you actually saw
17 there on the scene.

18 MS. LIVESAY:

19 That's actually what I asked him
20 Your Honor.

21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. What did you actually see in the vehicle?

23 A. I saw a magazine sitting on the -- uh -- back seat
24 of the vehicle --

25 Q. Okay.

1 A. -- for a gun.

2 Q. And then upon seeing that magazine, what did you do
3 next?

4 A. We secured the suspects.

5 Q. Okay. And did you search the vehicle?

6 A. We did.

7 Q. Were you present for the entire search of that
8 vehicle?

9 A. Yes ma'am.

10 Q. Okay. And what did you get out of that vehicle?

11 A. We obtained 2 firearms and 3 large plastic baggies
12 filled with a green-colored, leafy, substance.

13 Q. Okay. And upon seeing that in the vehicle, what
14 did you do next?

15 A. We placed -- uh -- all the suspects under arrest and
16 Mirandized them.

17 Q. Now, is that stop -- been recorded?

18 A. Yes ma'am.

19 Q. Okay. Was that recorded from the camera inside
20 your vehicle?

21 A. Yes ma'am.

22 MS. LIVESAY:.

23 May I approach, Your Honor?

24 THE COURT:

25 (Nods in the affirmative.)

1 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

2 Q. Do you recognize what I'm showing you?

3 A. Yes ma'am; it's the in-car-video of my traffic stop.

4 Q. And have you reviewed this video?

5 A. I have.

6 Q. And it's the stop from that night on this video?

7 A. Yes ma'am.

8 Q. Are you on this video?

9 A. I am.

10 Q. Okay. Are the 5 defendants that were in that car
11 on this video?

12 A. Yes ma'am.

13 Q. Has this video been changed in any way since the
14 night of that stop?

15 A. No ma'am.

16 MS. LIVESAY:

17 Your Honor, at this time, the
18 State wishes to put State's Exhibit 2 into evidence and
19 publish it for the jury.

20 THE COURT:

21 All right. What do you have to
22 say about that, Mr. Monckton?

23 MR. MONCKTON:

24 No objection Your Honor.

25 THE COURT:

1 What do you say about it, Mr.

2 Wilson?

3 MR. WILSON:

4 Subject to cross-examination, Your
5 Honor.

6 THE COURT:

7 All right.

8 MS. LIVESAY:

9 Thank Your Honor.

10 THE COURT:

11 All right. You may -- Do you
12 wish to publish it at this time?

13 MS. LIVESAY:

14 Yes, Your Honor.

15 THE COURT:

16 Very well.

17 WHEREUPON: THE VIDEO TAPE (WITH
18 NO TRANSCRIPTION PROVIDED), EARLIER MARKED BY THE COURT
19 REPORTER AS STATE'S EXHIBIT NUMBER 2, WAS ENTERED INTO
20 EVIDENCE WITHOUT OBJECTION.

21 THE COURT:

22 That won't work with the overhead
23 -- the overhead screen? Do you have to do it with that?

24 All right. Counsel, feel free to
25 move about the courtroom.

1 MR. WILSON:

2 Your Honor, while we're doing
3 this, can I have a minute to -- uh -- discuss something
4 with you?

5 THE COURT:

6 Certainly.

7 (WHEREUPON: Counsel for each party
8 conferred off the record with The Court at the bench at
9 2:14 PM, May 18, 2010, and the video, State's Exhibit
10 Number 2, was not yet shown.)

11 THE COURT:

12 Okay.

13 Mr. Roth, could you -- uh -- take
14 the jury back to their room.

15 Uh -- Uh -- Make sure they have
16 some refreshments.

17 We need to discuss something out
18 of their presence.

19 (WHEREUPON: The jury empanelled
20 in the case withdrew from the courtroom at 2:16 PM, May
21 18, 2007; and was no longer present during the following
22 proceedings.)

23 THE COURT:

24 All right.

25 Ms. Livesay, you want to -- on the

1 limited issue as to probable cause for arrest --

2 MS. LIVESAY:

3 Uh-huh.

4 THE COURT:

5 -- we're going to do a proffer.

6 Do you have anything else you want
7 to add with this witness?

8 Mr. Wilson?

9 MS. LIVESAY:

10 Your Honor, the only thing I could
11 ask him that would further it, would be to ask him what
12 Larry Graham saw; and then what Larry Graham notified him
13 that he saw, which prompted him to start taking steps to
14 arrest --

15 THE COURT:

16 And the jury's not here. I'm
17 going to -- I will allow you to do it. It's not before a
18 jury.

19 I want to know what his mindset
20 was.

21 MS. LIVESAY:

22 Thank you.

23 THE COURT:

24 That's the issue.

25 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS

1 LIVESAY:

2 Q. Uh -- You out there with Larry Graham; is that
3 correct?

4 A. Yes ma'am.

5 Q. Okay. When you guys were getting the -- the
6 Defendants out of the vehicle, did Larry Graham see
7 anything and indicate that to you?

8 A. Yes ma'am, he did.

9 Q. Okay. Is that on this video?

10 A. Not that you can hear, I don't believe; no.

11 Q. Okay. What did he notify you that he saw?

12 A. He looked at me and told me File-19, which means
13 there is illegal narcotics in the vehicle.

14 Q. Okay. And that that prompt you at that time to
15 start taking a closer look at -- as to what was inside
16 that vehicle? J

17 A. Yes ma'am.

18 Q. Okay. And then after that, what did you see in the
19 vehicle?

20 A. We saw three large clear in color plastic baggies
21 containing a green-leafy -- a green-leafy colored
22 substance.

23 Q. Okay. But Larry Graham indicated that to you
24 before everybody was even out of the vehicle; is that
25 correct?

1 A. Yes ma'am.

2 Q. That something was seen in the car?

3 A. Yes ma'am.

4 Q. Okay. Did he indicate to you where it was in the
5 car?

6 A. He did not.

7 Q. Okay. Who did you guys get out of the car first?
8 The people in the backseat or the front? Do you
9 remember?

10 A. I don't recall at this time; no.

11 Q. Okay. But he did indicate to you that he had seen
12 something in the back seat?

13 A. Yes ma'am.

14 Q. Okay. And the, upon that, you placed them under
15 arrest?

16 A. Yes ma'am.

17 Q. Now let me ask you this:

18 If none of that had been seen in
19 the vehicle, would you have placed those boys under
20 arrest?

21 A. No ma'am.

22 MS. LIVESAY:

23 No further questions, Your Honor.

24 THE COURT:

25 All right. Mr. -- Mr. Wilson?

1 Mr. Monckton? What order?

2 Mr. Wilson?

3 MR. WILSON:

4 Yes sir.

5 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.

6 WILSON:

7 Q. Officer, just let me ask you:

8 In your testimony earlier, when
9 you were on the stand, do you recall saying that you
10 found a magazine on the seat of the vehicle, and you
11 placed them under arrest?

12 A. I don't recall that, sir.

13 Q. Okay. So are you saying you didn't say that? Or
14 you that you just don't recall?

15 A. I just don't recall in what order I said that, sir.

16 MR. WILSON:

17 Your Honor, if I could; I would
18 ask -- I -- I hate to be a problem.

19 But I'd ask the court reporter to
20 playback his testimony on that particular issue.

21 THE COURT:

22 He's not -- You're not --

23 MS. LIVESAY:

24 Your Honor, if I may?

25 I'm not sure that it needs to be

1 played back.

2 Even if he did say that, the
3 problem is that:

4 I couldn't ask him what Larry
5 Graham saw.

6 And in fact, when I did, an
7 objection was made.

8 THE COURT:

9 And that --

10 MS. LIVESAY:

11 All he testified to was that he
12 saw the magazine; and then, they placed them under
13 arrest.

14 THE COURT:

15 I recall the objection being made.
16 And I then recall telling you to rephrase your question,
17 or --

18 MS. LIVESAY:

19 As to what he --

20 THE COURT:

21 -- lay a proper foundation. And
22 then you went back and asked him if you saw anything,
23 where he had been talking about the marijuana; or he was
24 attempting to do that, that Mr. Graham -- Is it Mr.
25 Graham?

1 MS. LIVESAY:

2 Yes sir.

3 THE COURT:

4 Mr. Graham seen it.

5 He went to where he saw a magazine
6 on the -- uh -- back of the seat.

7 MS. LIVESAY:

8 I remember distinctly rephrasing
9 the question to indicate to him to just tell us what he
10 saw. Because that was the whole issue, from my
11 understanding was.

12 And I rephrased it and said:

13 Tell them what you saw.

14 And at that time, he said:

15 I saw a magazine and then we
16 placed them under arrest.

17 Because I can get in what Larry
18 Graham saw; or even as to what Larry Graham told him he
19 saw.

20 That's -- That's where the problem
21 was.

22 THE COURT:

23 Well, let me just cut to the
24 chase?

25 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY THE

1 COURT:

2 Q. Officer?

3 A. Yes sir.

4 Q. You said that Mr. Graham indicated to you that there
5 was a 5-12? Is that what it's called?

6 A. File-19.

7 Q. Oh, File -- File-19?

8 A. File-19.

9 Q. File-19. And -- uh -- you told us a moment ago that
10 that meant: Narcotics in the vehicle; or narcotics that
11 he could see; right?

12 A. Yes sir.

13 Q. Okay. Now, the question here is:

14 Was that before or after you
15 placed these gentlemen under arrest?

16 A. That was before, Your Honor.

17 THE COURT:

18 Isn't that the question, Mr.
19 Wilson? Whether it was --

20 MR. WILSON:

21 That is the question, Your Honor.

22 THE COURT:

23 -- before or after --

24 MR. WILSON:

25 Yes sir.

1 THE COURT:

2 Well you can cross him on that.

3 MR. WILSON:

4 Yes sir.

5 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.

6 WILSON:

7 Q. Officer, let me ask you this:

8 At the time you -- and -- And let
9 me go back, because I don't want to misquote you.

10 A. Yes sir.

11 Q. My understanding of your testimony earlier was, was
12 that:

13 Once you got to the car, you asked
14 them to get out. And that they all got out the vehicle.

15 Is that fair?

16 A. Yes sir.

17 Q. All right. And that they was a second officer
18 present during the time.

19 A. Yes sir.

20 Q. It is also fair?

21 A. Yes sir.

22 Q. That during that time, that you then saw a magazine
23 on the seat of the vehicle?

24 A. Yes sir.

25 Q. All right. And that at point in time, you placed

1 them under arrest?

2 A. Yes sir.

3 MR. WILSON:

4 That's my point.

5 THE COURT:

6 All right. Was that before or
7 after you got had gotten the information about a File-19?

8 WITNESS:

9 Once I was told that there was a
10 File-19 in the vehicle, that's when we proceeded to
11 arrest the suspects.

12 THE COURT:

13 Okay. Was that before or --

14 WITNESS:

15 After.

16 THE COURT:

17 You are positive you had that
18 information before you initiated an arrest?

19 WITNESS:

20 Yes sir.

21 THE COURT:

22 All right. Do you remember
23 whether you got that information before or after you saw
24 the magazine?

25 WITNESS:

1 Can you ask that question again,
2 sir?

3 THE COURT:

4 Did you get that information about
5 File-19 -- get it before, or did you get it after you saw
6 the magazine?

7 WITNESS:

8 I got it before, Your Honor.

9 THE COURT:

10 Okay.

11 MS. LIVESAY:

12 From the time you got --

13 THE COURT:

14 You want to ask him anything else

15 Ms. Livesay?

16 MS. LIVESAY:

17 No sir.

18 THE COURT:

19 You want to ask him anything else,

20 Mr. Monckton?

21 MR. MONCKTON:

22 Not at this time.

23 Is Mr. Graham going to testify?

24 MS. LIVESAY:

25 Yes. He's testifying next, Your

1 Honor.

2 THE COURT:

3 Does Mr. Wilson want to testify?

4 I mean, ask him anything else.

5 (Laughter erupts in the
6 courtroom.)

7 THE COURT:

8 I'd love to have him testify. Mr.
9 Wilson, go ahead and ask any more questions.

10 MR. WILSON:

11 I don't think you have anymore
12 questions, Your Honor.

13 But I would ask -- I would, again,
14 go back to the record.

15 I understand what he is saying
16 now, you know, after he's been -- uh -- repressed by --
17 by -- by the Solicitor.

18 But, you know, my concern is that
19 was not the testimony that I recall.

20 THE COURT:

21 Why don't we do this:

22 Why don't we take -- take about 5
23 minutes. Let Ms. Buckner -- Mr. Buckner -- find that.
24 And we will -- I'll let you look at it -- uh -- or listen
25 to it.

1 In fact, I'll let you listen to it
2 while we're taking a break.

3 And if there is any part there you
4 and Ms. Livesay want to put back on the record or call to
5 my attention?

6 Right now, I'm satisfied. But
7 let's -- let's see; okay.

8 MR. WILSON:

9 All right, sir.

10 MS. LIVESAY:

11 Thank Your Honor.

12 MR. WILSON:

13 Thank Your Honor.

14 THE COURT:

15 All right, sir. We'll take a
16 break..

17 (WHEREUPON: The court was
18 declared in recess at 2:24 PM, May 18th, 2010.)

19 (REPORTER'S NOTE: During the
20 recess, because of problems with time constraints and
21 being able to promptly setup the proper speaker
22 equipment, along with some untimely software
23 compatibility problems, it was decided that instead of
24 testimony playback, that Mr. Wilson would further
25 question Officer Cole in regard to the limited proffer as

1 to the probable cause for arrest.)

2 (WHEREUPON: The court was called
3 to order by the Bailiff at 2:43 PM, May 18th, 2010; and
4 all pertinent parties, along with their counsel, were
5 back and present in the courtroom.)

6 THE COURT:

7 Go ahead, Mr. Wilson.

8 MR. WILSON:

9 Well, let me ask you a couple of
10 questions.

11 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.

12 WILSON AGAIN:

13 Q. As I understand your testimony now, what you're
14 saying is, is that:

15 You got these 5 gentlemen out
16 their vehicle; correct?

17 A. Yes sir.

18 Q. And -- uh -- you had a second officer there with you
19 who was an Officer Graham?

20 A. Yes sir..

21 Q. And -- And -- uh -- once you got them out of the
22 vehicle, that you then saw they a -- uh -- or I think you
23 say that Officer Graham then found -- What did you say;

24 M-19.

25 A. File-19.

1 Q. File-19. And he -- he told you File-19; right?

2 A. Yes sir.

3 Q. And then after he told you File-19, which meant that
4 he found narcotic drugs in the vehicle; that then, you
5 then placed them under arrest?

6 A. Yes sir.

7 Q. Now, did you find the magazine before or after you
8 had handcuffed --

9 MS. LIVESAY:

10 Your Honor, this question has been
11 -- been asked and answered five times.

12 THE COURT:

13 Well, let's -- let's go ahead and
14 let him finish. I'm going to let him go.

15 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.

16 WILSON CONTINUED:

17 Q. After you found -- After you cuffed them, did you
18 find the magazine before you cuffed them or after you
19 cuffed them?

20 A. After.

21 Q. After. Okay. Now, do you recall doing a report?

22 A. (No response.)

23 Q. Let me show you this. Take a look at that for me.

24 A. Okay.

25 Q. Do you recognize that?

1 A. Yes sir.

2 Q. Whose is that?

3 A. My report, sir.

4 Q. All right. And in that report, you say just the
5 opposite, don't you?

6 A. (No response.)

7 Q. You say that you found some marijuana; not Officer
8 Graham?

9 A. (No response.)

10 Q. Right?

11 A. I have to read it, sir.

12 Q. Read it.

13 A. (Witness reviews the document.) What was your
14 question, sir?

15 A. My question is:

16 Did you say in your report that
17 you found marijuana; not Officer Graham?

18 A. I did, sir.

19 Q. I'm sorry.

20 A. I did, sir.

21 Q. You did. In fact, in your report, you say you found
22 the marijuana; not Officer Graham.

23 And you also say that you saw the
24 magazine on the seat? Right?

25 A. I did.

1 Q. Right. Now today, you're testifying, as I
2 understand it, that that's not true. That what really
3 happened was:

4 Officer Graham found the
5 marijuana; told you File-19.

6 And then, you placed them under
7 arrest.

8 Now which story is the correct
9 story?

10 A. They're both correct, sir.

11 Q. Well, would you help me?

12 A. I was the one that found the clear in colored
13 plastic baggies and a green-leafy colored substance after
14 he told me it was there.

15 Q. You were the one that found it? You found it after
16 he told you it was there?

17 A. Yes sir.

18 Q. Well, how are you finding, if he -- if he's already
19 told you that it's there?

20 A. Because he didn't actually, physically, grab it,
21 sir.

22 Q. So you're saying -- What you're saying is that:

23 You picked it up.

24 But in your report, you say you
25 found it.

1 You don't mention anything in that
2 report about Officer Graham finding anything; do you?

3 | A. I do not, sir.

4 Q. All right. And what I want you to do for me is
5 just take that report and read the second page into the
6 records.

7 Just read the second page on what
8 you say.

9 A. A pistol laying on the seat. Upon having the front
10 passenger step out of the vehicle, I found several large
11 bags of a green-leafy substance under the passenger seat
12 along with --

13 Q. Where did you find it?

14	A. Under --

15	Q. Under?

16 A. -- the passenger seat.

17 Q. Under the passenger seat?

18 Now, you were searching the
19 vehicle; right?

20 A. Yes sir.

21 Q. Okay. And there's no question about that?

22 You were searching this vehicle.

23 You found the marijuana under the
24 passenger seat.

25 And the only thing you had found

1 at that point was a magazine; right?

2 A. Can you rephrase the question, sir.

3 A. What I'm simply asking you is:

4 The only thing that you had found
5 in that the vehicle before you find the marijuana under
6 the seat of the car, was the magazine?

7 A. Yes sir.

8 Q. Okay.

9 MS. LIVESAY:

10 Just a couple of questions, Your
11 Honor.

12 MR. WILSON:

13 I'm --

14 THE COURT:

15 He's not done.

16 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.

17 WILSON IS AGAIN CONTINUED:

18 Q. Now, once you find the marijuana under the seat of
19 the car, then you place them under arrest?

20 A. Yes sir.

21 Q. Okay. No question about that; is there?

22 A. No sir.

23 Q. Is there any question about the fact that the only
24 thing you'd seen before you found that marijuana up under
25 the seat of that car is, you found that magazine; right?

1 A. Yes sir.

2 Q. Once you find that magazine, you look under the seat
3 of the car, you found the marijuana, and you placed them
4 under arrest; right?

5 A. Yes sir.

6 Q. Is there any question about that?

7 A. No sir.

8 Q. Is that going to change now when I sit down?

9 A. No sir.

10 Q. No questions. Oh, one second. (Confers with Mr.
11 Monckton at Defense Counsel table.)

12 Well, let me ask you this:

13 Did you ask permission of any of
14 these guys to search the car?

15 A. I did not.

16 Q. Okay. And you didn't ask, because in your opinion
17 you didn't need to ask their permission?

18 A. No sir.

19 MR. WILSON:

20 I don't have any other questions.

21 MS. LIVESAY:

22 Can I --

23 THE COURT:

24 Yes.

25 MS. LIVESAY:

1 I have a couple of questions.

2 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS.

3 LIVESAY AGAIN:

4 Q. Uh -- Officer, who indicated to you that marijuana
5 was in the car?

6 A. Corporal Graham.

7 Q. Okay. And that was before any search is started;
8 is that right?

9 A. Yes ma'am.

10 Q. Okay. So that was in plain view?

11 A. Yes ma'am.

12 Q. Okay. And what else did you see after that in
13 plain view?

14 A. The magazine.

15 Q. Okay. So before the search was found, he saw that
16 when he was getting everybody out of the car?

17 A. Yes ma'am.

18 Q. Now were y'all both at the same time getting people
19 out of car?

20 A. Yes ma'am.

21 Q. Okay. So you were both getting people out of the
22 car and being aware of whether or not there were guns in
23 the car; is that right?

24 A. Yes ma'am.

25 Q. Okay. For safety purposes?

1 A. Yes ma'am.

2 MR. WILSON:

3 Let her ask --

4 MS. LIVESAY:

5 Was --

6 MR. WILSON:

7 The Solicitor is testifying. And
8 that's --

9 THE COURT:

10 Well, she's not testifying; but
11 she's getting close. She's kind of leading.

12 (Laughter erupts in the
13 courtroom.)

14 MS. LIVESAY:

15 Thank Your Honor.

16 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS.

17 LIVESAY, AGAIN, CONTINUED:

18 Q. So he note -- Did he notify you that he had seen
19 drugs in the car?

20 A. Yes ma'am.

21 Q. Okay. But at that time, had he taken the drugs out
22 of the vehicle?

23 A. No ma'am.

24 Q. Okay. Had y'all taken anything out of the vehicle
25 at that point?

1 A. No ma'am.

2 Q. Okay. So did y'all continue to get people out of
3 car?

4 A. Yes ma'am.

5 Q. Okay. What did you do after you secured all the
6 people that were in the vehicle?

7 A. Searched the vehicle.

8 Q. Okay. And then, when you searched the vehicle,
9 what did you take out of the vehicle?

10 A. Three large plastic baggies containing green -- uh
11 -- leafy substance, and two pistols.

12 MS. LIVESAY:

13 No further questions, Your Honor.

14 THE COURT:

15 Let -- Let me ask you something.

16 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY THE
17 COURT AGAIN:

18 Q. Officer Cole, when you were reading -- uh -- your
19 report to Mr. Wilson. I think you were reading the
20 second page.

21 You started out with -- You said
22 something about "pistol on the seat?"

23 A. Yes sir. He told me to read the second page. And
24 I started out --

25 Q. Well, read the first page to me. And what was that

1 about?

2 You were -- You were saying
3 something about a pistol.

4 I'd like to know what that was you
5 were saying.

6 A. You want me to read the whole thing, Your Honor?

7 Q. Yeah.

8 A. On October 13th, 2007 at 23:57, I received BOLO for
9 a older model Ford that had in its occupants waving
10 around the gun.

11 Upon turning onto Forrest Brook
12 Road, I witnessed a vehicle matching the description of
13 the BOLO headed towards Highway 501 in front of me.

14 Upon getting behind the vehicle, I
15 initiated a traffic stop on the vehicle.

16 On the vehicle stopping, myself
17 and Corporal Graham approached the vehicle and began to
18 question the suspects on where they were coming from.

19 At this point, we then asked all
20 the occupants to step out of the vehicle.

21 Upon the rear passenger getting
22 out of the vehicle, I noticed a magazine for a pistol
23 laying on the seat.

24 Q. Okay. All right. And that was the phrase; not
25 pistol?

1 A. Yes sir.

2 THE COURT:

3 All right. Okay.

4 Don't we have a video of this?

5 MS. LIVESAY:

6 I don't have any further
7 questions, Your Honor.

8 I think we've established that was
9 probable cause for the arrest.

10 MR. WILSON:

11 I -- I take exception to that.

12 Judge, I think, based on his
13 testimony, even in the light -- especially in the light
14 most favorable to the State in this particular situation,
15 his testimony is -- if it's truthful and if The Court
16 accepts it as being truthful -- is -- and I asked him
17 this repeatedly.

18 He says he found the marijuana
19 under -- and that's the key word here -- under the seats
20 -- the back seat.

21 That's what his -- That's what his
22 report said.

23 THE COURT:

24 I -- I find my shoes under the bed
25 about every night. But it's because I can see them

1 sticking out.

2 MR. WILSON:

3 But -- But --

4 THE COURT:

5 What I'd like to -- I'd like -- He
6 says -- If -- If it's -- uh -- If you say I take it in
7 the light most favorable to the State, what he says is:

8 That's where he found marijuana.

9 That's where he got it.

10 But he says that Corporal Brown
11 made a reference to him that he could see it.

12 Now I can understand that.

13 It can be under the seat and you
14 can still see it. It doesn't mean it's all the way under
15 the seat.

16 And that's what giving me the
17 problem.

18 Don't we have a -- the video here.

19 Can't we look at the video --

20 MS. LIVESAY:

21 Yes, Your Honor.

22 THE COURT:

23 -- and see what it says.

24 MS. LIVESAY:

25 Now, Your Honor?

1 THE COURT:

2 Yes.

3 MS. LIVESAY:

4 Thank you.

5 THE COURT:

6 You know, if this officer --

7 Taking in the light most favorable to the State, he says:

8 I was there. Corporal Graham --

9 Was it Corporal Graham?

10 MS. LIVESAY:

11 Corporal Graham.

12 THE COURT:

13 Corporal Graham says File-19. I

14 see some marijuana.

15 It might not have even been the
16 marijuana under the seat. It might have been some in the
17 ashtray. I haven't heard from Mr. Graham yet.

18 They may have been smoking it. I
19 don't know.

20 Let's -- Let's see what happens.

21 Or let's hear from Mr. Graham.

22 Let's -- Where is Mr. Graham; or

23 Corporal Graham?

24 MS. LIVESAY:

25 You to hear from him now, Your

1 Honor?

2 THE COURT:

3 Yeah, let's put him up. Let's
4 hear from him. I mean, that's going to be the key.

5 Officer Cole, why don't you just
6 step down for a minute.

7 Do you want to sequester him?

8 MS. LIVESAY:

9 Yes sir.

10 THE COURT:

11 Mr. Wilson, do you want him
12 sequestered while --

13 MR. WILSON:

14 Yes sir.

15 THE COURT:

16 -- while we --

17 MR. WILSON:

18 Yes, Your Honor.

19 THE COURT:

20 All right. Stay with us -- uh --

21 Officer Cole.

22 WITNESS:

23 Yes sir.

24 WHEREUPON: Officer Justin Cole

25 leaves the stand and exits the courtroom at 2:56 PM, May

1 18, 2010..

2 WHEREUPON: OFFICER LARRY GRAHAM
3 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

4 CLERK:

5 Please be seated.

6 Would you please state your full
7 name and spell your last name?

8 WITNESS:

9 My name is Larry Graham.

10 MS. LIVELY:

11 And Your Honor, for brevity I'm
12 going to cut right to the chase.

13 THE COURT:

14 Go right ahead.

15 MS. LIVELY:

16 Okay. Uh --

17 THE COURT:

18 That's what we could use in here,
19 some brevity.

20 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS.

21 LIVELY:

22 Q. Uh -- Are you Corporal Graham?

23 A. Sergeant Graham, now.

24 THE COURT:

25 Sergeant.

1 MS. LIVELY:

2 Sergeant Graham.

3 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS.

4 LIVELY CONTINUED:

5 Q. Sergeant Graham, you, on October 17th, two thousand
6 and -- or October 13th, 2007, did you have an opportunity
7 to conduct a traffic stop along with Officer Cole?

8 A. I did.

9 Q. All right. And -- uh -- please tell the judge
10 exactly how you became involved in that traffic stop.

11 A. There a -- uh -- information given over the police
12 radio to be a lookout for a white car with -- uh -- no
13 hubcaps on it, with -- uh -- 5 or 6 males, and they
14 waving guns out the window going down [REDACTED]
15 Boulevard.

16 I was in that area because I was
17 working the [REDACTED] Subdivision. So I followed that
18 route to try to find the car.

19 And Officer Cole spotted the car.
20 And I went to him to -- when he stopped the car; and
21 helped him conduct a traffic stop on that car.

22 Q. Okay. And --

23 THE COURT:

24 You were there actually when the
25 car stopped?

1 WITNESS:

2 Yes sir.

3 THE COURT:

4 Okay. All right.

5 MS. LIVELY:

6 Okay.

7 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS.

8 LIVELY CONTINUED:

9 Q. So when you arrived, had any of the occupants of the
10 vehicle been removed?

11 A. Not at the time. When I pulled up, hadn't -- nobody
12 had been from the vehicle at that time.

13 Q. All right. So when you pull up, what is the next
14 thing that happens?

15 A. We started to call people out because of the gun
16 issue that we were -- For officer safety, if somebody was
17 waving a gun, we didn't want to get ourselves injured.

18 So we started calling them out one
19 at a time.

20 Q. Okay. Now, was that your reason for removing the
21 occupants of the vehicle --

22 A. Yes ma'am.

23 Q. -- was for your safety?

24 A. Officer's -- Officer's safety --

25 Q. Okay.

1 A. -- so that we could eliminate the gun issue.

2 Q. All right. So after you are pulling them out of
3 the vehicle, was there anything that you saw that -- uh
4 -- caught your eye?

5 A. At the passenger side of the front of the vehicle, I
6 saw some marijuana -- loose marijuana laying in the
7 driver -- on the passenger side floor board.

8 Q. Okay.

9 A. And that caught my attention.

10 Q. And what if anything did you do or say at that time?

11 A. We -- We detained the subjects until we could
12 further investigate the -- the incident with the
13 marijuana.

14 Q. Okay. Now, when you detained the subjects -- uh --
15 who helped you detain those subjects?

16 A. Uh -- Officer Cole was there.

17 Q. Okay. Right. So, that by that time, it was you
18 and Officer Cole.

19 And were all 5 of the -- uh -- the
20 suspects out of the vehicle?

21 A. Yes ma'am.

22 Q. Okay.

23 A. They were all out.

24 Q. At what point were these Defendants -- or were the
25 suspects placed under arrest?

1 A. Once we determined that there was more marijuana, we
2 placed all the subjects under arrest.

3 Q. Okay. And -- uh -- at any time, did you tell
4 Officer Cole that you saw that marijuana?

5 A. Yes ma'am. When we were getting them out, I -- I
6 told him I observed some marijuana in the front
7 floorboard of the --

8 THE COURT:

9 How did you that? Did you use a
10 -- those words? Or do you use some sort of code?

11 WITNESS:

12 I -- I told him there was
13 marijuana on the floor, I believe, is what --

14 THE COURT:

15 You believed --

16 WITNESS:

17 Yes sir.

18 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MS.

19 LIVELY CONTINUED:

20 Q. Uh -- Did you see anything else -- uh -- at the time
21 of removing the occupants that gave you any concern?

22 A. Officer Cole told me he saw a clip. And I -- I did
23 see the clip on the back -- I believe it was on the back
24 seat of the car.

25 Q. Okay. All right. Okay. So, it's -- The

1 timeline of -- of what you're saying, is -- is -- from
2 what I can tell, is that:

3 You get there and none of the
4 occupants are out of the vehicle?

5 A. No ma'am. They're not out of the vehicle at that
6 time.

7 Q. As you're removing them out of the vehicle, it was
8 officer safety?

9 A. Yes --

10 Q. Is that correct?

11 A. Yes ma'am.

12 Q. Okay. And as that occurs, you then, in plain view,
13 see the marijuana on the floor?

14 A. Yes ma'am.

15 Q. Okay. Uh -- And is it correct at the time is when
16 you notify Officer Cole about the marijuana?

17 Q. Yes ma'am.

18 Q. All right. And -- uh -- he notifies you, in the
19 meantime, that there's a clip on the back seat?

20 A. Yes ma'am.

21 Q. All right. So at that time, are the Defendants --
22 or the suspects placed under arrest?

23 A. Yes ma'am. They are at that time. They were taken
24 from investigative detention and placed under custodial
25 arrest.

1 Q. When you have them in investigative detention, are
2 they cuffed; or were they -- or how were they be --

3 A. Yes ma'am. They were -- They were handcuffed in --
4 During the investigative detention, they were handcuffed.

5 Q. They were handcuffed?

6 A. Yes ma'am.

7 Q. Okay. And -- uh -- But once the marijuana was
8 found, or you saw the marijuana, it went from an
9 investigative detention to the arrest?

10 A. The actual arrest; yes ma'am.

11 Q. Okay. And -- uh -- at that time, did you continue,
12 along with Officer Cole, to search the vehicle?

13 A. Yes ma'am.

14 Q. All right. And these are the --

15 A. Yes ma'am.

16 Q. -- other remaining items?

17 A. Yes ma'am. That's correct.

18 MS. LIVELY:

19 All right. Thank you.

20 And any questions the judge or
21 the defense may have.

22 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY THE
23 COURT:

24 Q. How was the marijuana that you saw? Was it
25 packaged, or loose, or what was it?

1 A. It was loose marijuana, like -- like a type --
2 budding-type laying on the floor, that I noticed it --
3 kind of large pieces.

4 Q. All right. Now I -- I've seen around the courtroom
5 here somewhere today -- uh -- what looked like Ziploc
6 bags or sealed bags of marijuana.

7 Was that different from that
8 marijuana?

9 A. The -- The -- The marijuana was shoved up under the
10 passenger side seat --

11 Q. But --

12 A. -- and some of it had spilled out of the Ziploc bag.

13 Q. The bagged marijuana was under the seat?

14 A. Yes sir.

15 Q. And some of it had spilled out?

16 A. Yes sir.

17 Q. And you could see what had spilled out?

18 A. Yes sir.

19 THE COURT:

20 All right, sir.

21 Answer any questions that Mr.

22 Monckton or Mr. -- uh -- Wilson might have.

23 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.

24 WILSON:

25 Q. Sergeant --

1 A. Yes sir.

2 Q. Oh, I'm sorry. Go ahead. Go ahead. That's all
3 right.

4 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.
5 MONCKTON:

6 Q. Sergeant, did you prepare a report?

7 A. Yes sir. There was a written incident report.

8 Q. Did you prepare one?

9 A. Yes sir.

10 MR. MONCKTON:

11 Do you have a copy? Can I borrow
12 the original.

13 MS. LIVESAY:

14 I don't have the original; just
15 Coles.

16 EXAMINATION OF WITNESS AS TO THE LIMITED PROFFER BY MR.
17 MONCKTON:

18 Q. Do you have a copy of your incident report? Do you
19 have a copy?

20 A. Is that -- I don't have a copy of -- This is the --
21 the copy of mine.

22 Q. Is it anywhere contained in the report where you
23 identify seeing the marijuana?

24 A. No sir. Not on the written report; no sir.

25 Q. Is it written anywhere in any of your reports that

1 you saw the marijuana loosely on the floor?

2 A. No sir. It's not.

3 Q. Is it on the -- uh -- video tape --

4 A. I haven't --

5 Q. -- where you tell Officer Cole -- Was it File-19?

6 Is that correct?

7 A. That's the police code that we use, File-19; yes

8 sir.

9 Q. Is that going to be on the videotape?

10 A. I haven't seen the videotape, sir.

11 MR. MONCKTON:

12 No further questions.

13 THE COURT:

14 All right. Anything further?

15 Mr. Wilson; you --

16 MR. WILSON:

17 Yes sir. I -- I do. Just --

18 Just a --

19 I -- I'll wait.

20 THE COURT:

21 Till when?

22 MR. WILSON:

23 Till after the video is played.

24 (Laughter erupts in the

25 courtroom.)

1 THE COURT:

2 And you're certain we're going to
3 play that video; aren't you Mr. Wilson?

4 (Laughter erupts in the
5 courtroom.)

6 THE COURT:

7 All right.

8 Ms. Livesay, anything further?

9 MS. LIVESAY:

10 No sir.

11 THE COURT:

12 All right.

13 Well, let's spin it around and let
14 me see it.

15 Mr. Graham -- or Sergeant Graham.

16 WITNESS:

17 Yes sir.

18 THE COURT:

19 You may step down. And -- uh --
20 what do you want to do with Sergeant?

21 MR. WILSON:

22 I'd ask him to wait. I -- I --

23 THE COURT:

24 All right. We'll have him wait.

25 MR. WILSON:

1 -- have some questions.

2 WHEREUPON: Officer Larry Graham

3 sits back down in the witness chair.

4 THE COURT:

5 Okay, gentlemen, if you want to
6 bring your chairs around where you can see.

7 You may be able to see from where
8 you are. You may move your clients about.

9 MS. LIVESAY:

10 Now, there's no sound on it, Your
11 Honor. So it will just be -- There's no sound on this
12 video.

13 THE COURT:

14 No sound.

15 MS. LIVESAY:

16 So there will just be a --

17 THE COURT:

18 It's just a -- uh --

19 MS. LIVESAY:

20 Yes.

21 THE COURT:

22 Was -- Was there no sound
23 captured, or --

24 MS. LIVESAY:

25 No sound captured, Your Honor.

1 The mikes are on, but for whatever reason, no sound at
2 all was captured.

3 THE COURT:

4 Okay.

5 WHEREUPON: The first portions of
6 the video tape, State's Exhibit Number 2, was played in
7 the courtroom outside of the presence of the jury from
8 3:02 PM until 3:10 PM, May 18, 2010.

9 MS. LIVESAY:

10 Your Honor, is that sufficient; or
11 do you want to watch -- They just bag it up after this,
12 basically.

13 THE COURT:

14 Mr. Wilson?

15 MR. WILSON:

16 I'm fine.

17 THE COURT:

18 Mr. Monckton?

19 MR. MONCKTON:

20 I'm fine, Your Honor.

21 THE COURT:

22 Very well. Okay. All right.

23 I'll hear from you, Mr. Wilson.

24 MR. WILSON:

25 Looking at the video and -- and --

1 First of all, I think there's -- uh -- a couple of
2 things:

3 One:

4 Officers Cole's report.

5 It mirrors the video almost
6 identical.

7 But there is -- This officer,
8 Officer Graham -- Sergeant Graham -- I -- I --
9 personally, I never see him go to the front of the
10 vehicle.

11 THE COURT:

12 I did.

13 MR. WILSON:

14 Okay.

15 And I certainly -- And when he's
16 saying -- This is what his -- His story is, is that:

17 He saw some buds on the
18 floorboard of the vehicle?

19 THE COURT:

20 Uh-huh.

21 MR. WILSON:

22 That's what his testimony is. But
23 now --

24 THE COURT:

25 And his testimony was that he

1 removed a passenger on the front passenger side.

2 And I very clearly saw him take
3 him out. And he had flashlight there shining at what a
4 -- what appeared to me to be in the bottom of the -- the
5 -- the car front seat.

6 MR. WILSON:

7 Then where is the -- where is the
8 buds from the marijuana on the floorboard?

9 THE COURT:

10 Well, I have seen any of that
11 evidence. I haven't seen any of it.

12 MR. WILSON:

13 And -- And -- And there's been no
14 evidence -- To my knowledge, there's never been any
15 evidence or suggestion that any marijuana was found
16 anywhere but in the back until today.

17 There's not one word of testimony
18 or evidence or discovery produced that there was
19 marijuana anyplace other than under the back seat and the
20 floorboard of the car.

21 THE COURT:

22 Well, did it say the backseat, or
23 did it say the passenger seat?

24 Where was it, Ms. Livesay?

25 MR. WILSON:

1 On the back --

2 MS. LIVELY:

3 One minute, Your Honor.

4 THE COURT:

5 Where was it Mr. Graham; the back
6 seat or the front seat?

7 WITNESS:

8 I observed it under the front
9 seat, sir --

10 THE COURT:

11 Okay.

12 WITNESS:

13 -- on the floor board.

14 THE COURT:

15 All right.

16 And that's what I understood him
17 to say.

18 And I saw him shine it when he
19 took it out. I saw him look and stay there for a period
20 of time.

21 Then, I saw them complete the
22 search.

23 And then, I saw Officer Cole
24 immediately go directly to that spot; reach under the
25 seat; pull the marijuana out; place that on the car.

1 Everybody was placed under arrest.
2 And then, a search of the vehicle
3 was conducted; a more thorough search.

4 But Mr. Cole, from what I
5 observed, knew exactly where that marijuana was -- or
6 Officer Cole.

7 And I would assume -- or the
8 inference certainly is -- that he got that -- and the
9 testimony -- he got that information from Sergeant
10 Graham.

11 Because he went directly there;
12 sat it on top. Then they initiate the arrest. And a
13 thorough search is made of the vehicle.

14 But that's what it appeared to me.

15 MR. WILSON:

16 Yes sir.

17 Judge, my -- Let me -- Let me,
18 just so I'm clear for the record:

19 What I am doing at this point is:
20 I'm making a motion to disallow --

21 THE COURT:

22 I understand.

23 MR. WILSON:

24 -- any of the evidence; for The
25 Court to suppress all of the evidence that arose after

1 the alleged arrest. Because I --

2 THE COURT:

3 Okay; as fruits of the poisonous
4 tree?

5 MR. WILSON:

6 As fruits of the poisonous tree.

7 My argument being, Your Honor, for
8 the record, that -- that there is no marijuana found on
9 the front.

10 There is absolutely nothing in
11 this record, other than his testimony today, that there
12 was ever any buds of marijuana outside the plastic bags.

13 I ain't never heard that until
14 this day in this courtroom.

15 And -- And -- And the other thing
16 that I want to raise, is:

17 If I'm not mistaken, this officer
18 was standing in the hallway here during the time that
19 this other officer, Officer Cole, was testifying.

20 He was not sequestered with the
21 other witnesses.

22 He was in the hallway in there
23 while this testimony was being -- going on.

24 And there is people who saw him
25 standing inside the doorway there.

1 THE COURT:

2 Well, there's nothing to indicate
3 he heard it. And I didn't make any order as to where
4 people would be sequestered.

5 Mr. Wilson, your -- your motion is
6 well made. And I appreciate your -- uh -- your zealous
7 representation of your client.

8 But I find that:

9 This arrest was made on probable
10 cause -- cause; and that the search was made after -- uh
11 -- a lawful arrest.

12 MR. WILSON:

13 All right, sir.

14 THE COURT:

15 And I'm going to admit it; okay.

16 MR. WILSON:

17 Thank Your Honor.

18 THE COURT:

19 Thank you.

20 MR. MONCKTON:

21 Your Honor, for the record, I join
22 in that motion.

23 THE COURT:

24 All right. Thank you.

25 MS. LIVESAY:

1 Your Honor, at this time, can we
2 take Officer Graham off stand and put Officer Cole back
3 in and play that tape for the video -- I mean, for the
4 jury?

5 THE COURT:

6 I -- You -- You can do it any way
7 you want to do it.

8 MS. LIVESAY:

9 That's why we'd like to do it,
10 Your Honor.

11 MR. WILSON:

12 Your Honor, just -- and just for
13 the record, it's not necessary for us to renew our
14 objections once --

15 THE COURT:

16 No, it's not. Your -- uh -- uh --
17 objections are -- are well made. And they're
18 contemporaneous with the showing of the tape. So I --

19 MR. WILSON:

20 Thank Your Honor.

21 THE COURT:

22 There's no need to make that
23 again.

24 THE COURT:

25 All right. Are we ready?

1 MS. LIVELY:

2 I just want to make sure it's
3 ready to go.

4 THE COURT:

5 WHEREUPON: Officer Graham leaves
6 the stand and Officer Cole resumes the witness stand at
7 3:24 PM, May 18, 2010.

8 THE COURT:

9 Brooks, if you would, bring in the
10 -- uh -- jury.

11 WHEREUPON: The deputy does as
12 instructed by The Court.

13 THE COURT:

14 Before we got off the track there,
15 I think we were under direct examination of this Officer?

16 MS. LIVESAY:

17 Yes, Your Honor.

18 THE COURT:

19 Okay. All right.

20 (WHEREUPON: The jury empanelled
21 in the case was escorted back into the courtroom at 3:25
22 PM, May 18, 2010; and was in fact present during the
23 following proceedings.)

24 THE COURT:

25 All right. You may continue.

1 MS. LIVESAY:

2 Thank Your Honor.

3 DIRECT EXAMINATION OF OFFICER COLE BY MS. LIVESAY

4 CONTINUED:

5 Q. Officer Cole, that video I showed you earlier is a
6 recording of your stop. Is that correct?

7 A. Yes ma'am.

8 Q. Okay. And you are on that video? Is that correct?

9 A. Yes ma'am.

10 Q. And Larry Graham is on that video?

11 A. Yes ma'am.

12 Q. And the 5 -- And the 5 Defendants are on that video?

13 A. Yes ma'am.

14 MS. LIVESAY:

15 Okay.

16 Your Honor, at this time, I'd like
17 to play State's Exhibit 2, a video, into evidence, and
18 play it for the jury.

19 THE COURT:

20 All right. Subject to your
21 objections, gentlemen.

22 They are noted.

23 MR. MONCKTON:

24 Thank Your Honor.

25 MR. WILSON:

1 Yes sir.

2 MS. LIVESAY:

3 Thank Your Honor.

4 WHEREUPON: STATE'S EXHIBIT NUMBER

5 2, A VIDEO TAPE WITH NO TRANSCRIPT FURNISHED WAS PLAYED

6 TO THE JURY FROM 3:28 PM UNTIL 3:41 PM, MAY 18, 2010.

7 MS. LIVESAY:

8 Your Honor, at this time, I'm
9 going to stop the video. All of the suspects have been
10 apprehended.

11 THE COURT:

12 All right. Is that --

13 MS. LIVESAY:

14 It's just a matter of wrapping it
15 up and --

16 THE COURT:

17 Gentlemen, I think that's where we
18 stopped it before; okay?

19 All right. Thank you.

20 MS. LIVESAY:

21 Your Honor, at this time, the
22 State has no further questions for Officer Cole.

23 THE COURT:

24 All right.

25 Mr. Wilson -- uh -- Mr. Monckton

1 -- uh -- you may cross-examine.

2 MR. MONCKTON:

3 May it please The Court, Your
4 Honor?

5 CROSS-EXAMINATION BY MR. MONCKTON:

6 Q. Officer Cole, I noticed on the videotape that one
7 gentleman that was taken out of the video is Mario Tynes.
8 And he's wearing a white hoodie? Is that correct?

9 A. I don't recall at this time, sir.

10 Q. Did you watch the video?

11 A. I have previously. but I don't recall at this time
12 sir.

13 Q. You don't know if there was one gentlemen pulled out
14 of the vehicle with a white hoodie on?

15 A. I don't recall at this time, sir.

16 MR. MONCKTON:

17 No further questions, Your Honor.

18 THE COURT:

19 Mr. Wilson?

20 CROSS-EXAMINATION BY MR. WILSON:

21 Q. When -- When you made your report, did you indicate
22 in the report what the individuals were wearing, that you
23 -- that you arrested?

24 A. I did not, sir.

25 Q. Okay. Uh -- And you just don't have a recollection

1 of what they were wearing?

2 A. No sir. I do not.

3 Q. Do you know whether or not they were all dressed in
4 black?

5 A. I don't recall at this time, sir.

6 Q. You do not recall?

7 A. (Nods in the negative.)

8 MR. WILSON:

9 I don't think I have any other
10 questions. Thank you.

11 THE COURT:

12 All right, sir. You may step
13 down.

14 MS. LIVESAY:

15 Your Honor, the State, at this
16 time, ask that you relieve Officer Cole.

17 THE COURT:

18 Mr. Monckton?

19 MR. MONCKTON:

20 No objection, Your Honor.

21 THE COURT:

22 Mr. Wilson?

23 MR. WILSON:

24 I have no objection.

25 THE COURT:

1 You are relieved from your
2 subpoena, Officer Cole.

3 WITNESS:

4 Thank you, sir.

5 MS. LIVESAY:

6 Your Honor, at this time, the
7 State calls Larry Graham to the stand.

8 THE COURT:

9 All right.

10 Come around, Sergeant Graham.

11 WHEREUPON: OFFICER LARRY GRAHAM

12 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

13 CLERK:

14 Please be seated. Okay. If you
15 would, state your full name and spell your last name

16 WITNESS:

17 Larry Graham. Last name is G-r-a-
18 h-a-m.

19 DIRECT EXAMINATION BY MS. LIVELY:

20 Q. Yes. Uh -- Larry Graham, will you please tell us
21 what your status is that the Horry County Police
22 Department?

23 A. I'm a Sergeant. I supervise a shift of -- uh -- 7
24 people.

25 Q. And how long have you been working with Horry County

1 PD?

2 A. 13 years.

3 Q. All right. And -- uh -- in your -- uh -- job
4 duties, does that include assisting other officers on
5 traffic stops?

6 A. Yes ma'am, it does.

7 Q. Do you recall on October 13th into October 14th in
8 the morning -- uh -- hours being involved in a matter
9 with Officer Cole and the Defendants?

10 A. Yes ma'am; I do.

11 Q. Okay.. Will you please tell this jury what your
12 duties were on that evening?

13 A. I received a -- information that was -- information
14 put out over the radio from dispatch to be on the lookout
15 for white older model Ford four-door with no hub caps or
16 no rims on it -- uh -- going down [REDACTED] Boulevard
17 waving guns out of it; 5 of 6 peoples in the vehicle.

18 It was going down [REDACTED]
19 Boulevard.

20 I was in the area. So I started
21 going that way to try to locate the vehicle.

22 Q. And what was the next thing that happened?

23 A. Officer Cole spotted the vehicle on Waccamaw
24 Boulevard, I believe -- Waccamaw Boulevard -- and
25 conducted a traffic stop at the Kangaroo there -- uh --

1 near the pottery.

2 And I came up as a backup officer
3 to him.

4 Q. Okay. And is that standard procedure?

5 A. Yes ma'am.

6 Q. And when you arrived there, had any of the occupants
7 of the vehicle been removed from the car?

8 A. Not at the time. When I first arrived, they were
9 still sitting in the vehicle.

10 Q. And why would you do it that way?

11 A. We call them out one at a time for officers' safety.

12 Q. And -- uh -- why would there be an issue officer
13 safety?

14 A. Because it was a report of guns being waved out of
15 the vehicle when they were traveling down [REDACTED]
16 Boulevard.

17 Q. Okay. So based on that information, then you would
18 -- uh -- pull them out one at a time is what you're
19 saying?

20 A. Yes ma'am.

21 Q. Okay. So -- uh -- were they pulled out one at a
22 time?

23 A. Yes ma'am.

24 Q. And after being pulled out, will you just tell this
25 jury what it is that y'all did.

1 A. We patted each one down -- frisked them down to make
2 sure they didn't have a weapon on them at the time; and
3 detained them at the back of their vehicle until we could
4 further investigate the incident of the waving of the
5 handguns.

6 Q. Okay. And -- uh -- what if anything did you
7 observe while you were removing the occupants out of the
8 vehicle?

9 A. In the front passenger-side floorboard, I observed
10 some marijuana -- uh -- green-leafy substance that looked
11 like -- uh -- budded-type marijuana laying in the floor.

12 Q. Okay. And what if anything did you do whenever you
13 saw the -- uh -- what you believed to be marijuana?

14 A. I notified Officer Cole. And we still continued to
15 remove the passengers out of the vehicle.

16 Q. And were you still concerned about your safety?

17 A. Yes ma'am.

18 Q. All right. So, what did you do with the occupants
19 once you saw the -- uh -- buds of what you believed to be
20 marijuana; and they were removed from the car?

21 A. Went ahead and handcuffed them all, except one; had
22 a cast on his arm. I couldn't handcuff him.

23 Q. Okay. Do you know which individual that was?

24 A. I don't remember -- don't recall his name. But I do
25 know he had a cast on his -- his right arm.

1 Q. Okay. And -- uh -- Now Sergeant Graham, whenever
2 they had all been removed from the vehicle and you
3 recognized what you believed to be marijuana, were they
4 under arrest at that time?

5 A. At first they -- When we first initially got them
6 out the car; no.

7 Q. Okay.

8 A. And once I discovered the marijuana, I think that's
9 why we placed them under arrest.

10 Q. Okay. And -- uh -- once they were under arrest,
11 what did you do next in regards to the vehicle?

12 A. I -- I (hesitates) --

13 Q. What else did you -- What else did you do -- uh --
14 after the -- uh -- the Defendants were under arrest?

15 A. I -- I believe I showed Officer Cole where the
16 marijuana was at. I told him where it was at.

17 And then I -- Once he came over
18 there and started removing the stuff, I stood back there
19 with the persons and started handcuffing them.

20 Q. Okay. Did you have any other involvement in the
21 removal of any items of that -- in that vehicle?

22 A. Not that I recall, ma'am.

23 Q. Okay. Uh -- Did you see what was actually removed
24 from that vehicle?

25 A. Yes ma'am, I did.

1 Q. Okay. And what did you observe being removed from
2 that vehicle?

3 A. Two handguns.

4 Q. All right. Two handguns and what else?

5 A. Uh -- Some magazine clips that go into those
6 handguns.

7 Q. All right. And what else?

8 A. Several bags of marijuana.

9 Q. All right. And -- uh -- who was removing these
10 items out of the vehicle?

11 A. Officer Cole.

12 Q. Now -- uh -- Officer -- Sergeant Graham, were --
13 Those items that were removed out of the vehicle, did you
14 have an opportunity to actually look at them yourself?

15 A. Uh -- I didn't observe the -- look at the gun
16 specifically; but I did see the marijuana. I did look at
17 the marijuana.

18 Q. You did see the marijuana?

19 A. Yes ma'am.

20 MS. LIVELY:

21 Okay.

22 Your Honor, May I approach the
23 witness with -- with what's been marked as State's
24 Exhibit Number 11?

25 THE COURT:

1 Yes ma'am.

2 MS. LIVELY:

3 Thank you.

4 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

5 Q. Sergeant Graham, I'm going to hand you State's
6 Exhibit Number 11, and ask if you would please look
7 inside and tell me if you recognize what is in that bag?

8 A. Yes ma'am. It looks like the items removed out of
9 the vehicle.

10 Q. Okay; which items?

11 A. The marijuana.

12 Q. Okay; which you believed to be marijuana at the
13 time?

14 A. (Nods in the affirmative.)

15 Q. Okay. Now at any time then did you become aware of
16 what type of weapons were in the vehicle?

17 A. Uh -- I observed like it was a -- a black handgun. I
18 -- I didn't know what type or model, make or anything
19 like that.

20 But I did observe a black handgun
21 that Officer Cole removed from the vehicle.

22 Q. Okay. Did you see any other gun?

23 A. At one point in time I think I did. But I don't
24 recall what type it was.

25 Q. Oh. All right. But you do recall the black gun at

1 any rate?

2 A. Yes ma'am.

3 Q. Uh -- If I showed those guns to you, do you believe
4 that you could recognize them?

5 A. Possibly.

6 Q. Possibly? If not, just -- that's fine. But I'm
7 going to show them to you and see if you recognize what
8 was removed from the vehicle?

9 And if you can't recognize it --

10 THE COURT:

11 Ms. Lively, were the --

12 MS. LIVELY:

13 Yes, Your Honor.

14 THE COURT:

15 -- the matters in the -- uh -- or
16 materials in the bag, was -- was -- did you say that was
17 marked already; pre-marked?

18 MS. LIVELY:

19 It is Your Honor.

20 THE COURT:

21 Okay.

22 MS. LIVELY:

23 It's marked as State's Number 11.

24 THE COURT:

25 All right.

1 MS. LIVELY:

2 And we're waiting, of course --

3 THE COURT:

4 Okay.

5 MS. LIVELY:

6 -- to put it up later.

7 THE COURT:

8 All right.

9 MS. LIVELY:

10 If I may approach, Your Honor?

11 THE COURT:

12 Yes.

13 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

14 Q. I'm going to show you State's Exhibit Number 13, and
15 ask you if you recognize this handgun?

16 A. Yes ma'am. It appears to be the one that was
17 removed out of the vehicle.

18 Q. Okay. And does it appear, other than the trigger
19 safety, to be the weapon that you saw on that evening
20 removed from the vehicle?

21 A. Yes ma'am.

22 MS. LIVELY:

23 Okay.

24 THE COURT:

25 Mr. Wilson; objection?

1 MR. WILSON:

2 No. I have no objection.

3 THE COURT:

4 Okay.

5 MS. LIVELY:

6 Your Honor, at this time, the
7 States would move State's Exhibit Number 13 into
8 evidence.

9 THE COURT:

10 Very well.

11 I see you have a bag there that --

12 MS. LIVELY:

13 Yes sir.

14 THE COURT:

15 -- uh -- Mr. Buckner, do you think
16 we need to mark that again on the actual firearm?

17 I don't know that that bag's going
18 to stay with it or it'll hang.

19 MR. MONCKTON:

20 Your Honor, just a quick -- for the
21 record.

22 Uh -- I don't think he's identified
23 that being the exact weapon.

24 We would -- I would withhold
25 admission into evidence with -- until they lay a proper

1 foundation for it.

2 THE COURT:

3 Well, that's was what -- I asked if
4 there was an objection?

5 MR. MONCKTON:

6 Well --

7 MR. WILSON:

8 I thought she was ID-ing it. I
9 thought that it was ID and that -- but he never I-Deed
10 it.

11 He never even said that he could
12 recognize it.

13 That's the -- That's the problem.

14 THE COURT:

15 Well -- Well, that's why I had her
16 show it to you and ask.

17 MS. LIVELY:

18 Okay.

19 THE COURT:

20 All right. Are -- Are you
21 objecting to it then?

22 MR. MONCKTON:

23 Yes, sir, Your Honor.

24 THE COURT:

25 Okay. Mr. Wilson?

1 MR. WILSON:

2 Yes sir; unless he says he can
3 identify it.

4 THE COURT:

5 All right. Let's -- uh -- You may
6 ask him that. But -- uh -- I don't think he has -- uh --
7 completely identified it yet.

8 MS. LIVELY:

9 Okay.

10 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

11 Q. Uh -- And once again, I'm going to ask you -- uh --
12 Sergeant Graham, if you can identify this weapon as being
13 the one that was removed from the vehicle that evening.

14 A. It appears to look like the one removed out of it.
15 I didn't go up and look at it --

16 Q. Okay.

17 A. -- pick it up, et cetera.

18 MS. LIVELY:

19 That's fine.

20 THE COURT:

21 All right.

22 MS. LIVELY:

23 We'll just -- We'll wait for the --

24 THE COURT:

25 You can ID it.

1 MS. LIVELY:

2 That's fine. We can ID it.

3 THE COURT:

4 I'll let you ID it.

5 MS. LIVELY:

6 All right.

7 THE COURT:

8 Okay.

9 MS. LIVELY:

10 That's fine.

11 THE COURT:

12 But it's not in -- it's not in the
13 record, Mr. Buckner.

14 WHEREUPON: THE BLACK HANDGUN,
15 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT
16 NUMBER 13 WAS NOT ADMITTED INTO EVIDENCE AT THIS TIME;
17 BUT OFFERED FOR IDENTIFICATION ONLY.

18 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

19 Q. Now Officer Graham, after the -- uh -- suspects were
20 under arrest -- uh -- did you have anything else to do
21 with the investigation of this case?

22 A. I think I completed a tow-log for the vehicle being
23 towed at the time, and transported each one to the -- uh
24 -- van to be transported to J Rubin.

25 Q. Okay. All right. But, did you handle the evidence

1 or have anything to do with it -- uh --

2 A. Other than pointing it out to Officer Cole; no
3 ma'am.

4 MS. LIVELY:

5 Okay. Now -- uh -- I did want to
6 ask you -- just so that we -- uh -- can show to the jury
7 -- Where's the easel. I thought it was right there.

8 And I'm actually -- Your Honor, if
9 I may ask this witness to step down.

10 THE COURT:

11 Certainly.

12 MS. LIVELY:

13 For portions of this testimony.

14 THE COURT:

15 That will be fine.

16 WHEREUPON: The witness left the
17 witness stand and stood by an easel in front of the jury.

18 MS. LIVELY:

19 Okay. Thank you very much. And
20 please speak into here so the court reporter can get --
21 uh -- everything. Let's see where we are here. All
22 right.

23 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

24 Q. Now Officer Graham -- I'm sorry. Sergeant Graham,
25 if you could please -- uh -- show to the jury where the

1 [REDACTED] are on this map in the [REDACTED]
2 area?

3 I know you have to look at it for
4 a minute.

5 A. [REDACTED] is right here.

6 Q. Okay. And at that time --

7 THE COURT:

8 Did everyone see where he was
9 pointing?

10 Everyone see that? Okay.

11 MS. LIVELY:

12 Okay.

13 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

14 Q. And at that time, were you aware as to -- uh --
15 other than the BOLO that you got -- as to what had
16 occurred in [REDACTED]

17 A. No ma'am.

18 Q. You had no idea?

19 A. I had no idea.

20 Q. Okay. So if you would just place this red tack --
21 uh -- in the area?

22 Would this be fair, that it can --
23 it would be both of those?

24 A. Yes ma'am.

25 Q. All right. So that's the Flint Lake area.

1 A. (Nods in the affirmative.)

2 Q. Now can you please show this jury approximately
3 where it was that you pulled over the -- uh --
4 Defendants?

5 Is it on this map?

6 A. No ma'am, it's not.

7 Q. Okay.

8 A. It's not on this map.

9 Q. All right. Well, let me get the other map, because
10 we have two. And one of them is a close-up. And I
11 wasn't sure which one would be able to tell.

12 Now this one's a little bit more
13 difficult to see.

14 But let's see if you can find
15 Flint Lake again so the jury can see.

16 All right. Let's try this again.

17 Okay. Now, if you'll look at this
18 again and see if you can find the [REDACTED]

19 A. That's [REDACTED]

20 Q. [REDACTED] right here?

21 A. Yes ma'am.

22 Q. Okay. Now, if you could show the jury, then, where
23 it was that -- uh -- you and Officer Cole pulled over the
24 Defendants?

25 A. I believe this is the Kangaroo gas station on

1 Waccamaw Boulevard right there.

2 Q. And what is this -- So that's Waccamaw Boulevard?

3 A. That's Waccamaw Boulevard and that's U.S. 501.

4 Q. Okay. And U.S. 501..

5 A. Yes ma'am.

6 Q. Do you know how many miles it is from the Flint Lake
7 Apartments to there, approximately?

8 A. I would say 2 miles, maybe.

9 Q. Maybe 2 miles.

10 A. (Nods in the affirmative.)

11

12 MS. LIVELY:

13 Okay. Thank you. All right.

14 One moment, Your Honor.

15 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

16 Q. Sergeant Graham, I understand that's been two and a
17 half years ago regarding the stop.

18 A. Yes ma'am.

19 Q. I'm going to show you -- uh -- a document and ask
20 you if you recognize this? It's just for I.D. purposes?

21 Do you know if you recognize that
22 document?

23 A. Yes ma'am.

24 MS. LIVELY:

25 You do? Okay.

1 May I have you mark this as
2 State's Number 17.

3 MS. LIVELY:

4 Thank you.

5 THE COURT:

6 Let's see it.

7 MR. WILSON:

8 Your Honor, may we see whatever it
9 is?

10 MS. LIVELY:

11 Yeah. I'm -- I'm sorry. I'm
12 going to bring it to you. I was just trying to have him
13 mark it. It had not been marked for I.D. yet.

14 WHEREUPON: AN EVIDENCE LOG WAS
15 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 17
16 FOR IDENTIFICATION ONLY.

17 THE COURT:

18 Ladies and gentlemen, occasionally
19 during a trial, a -- an exhibit will be marked for
20 identification.

21 That's because it's not proper to
22 have it introduced at the time it's identified.

23 You only consider the exhibits at
24 the end of this trial that are introduced into evidence;
25 okay.

1 And that will be by marking it as
2 an exhibit and giving it an exhibit number; okay.

3 MS. LIVELY:

4 May I proceed?

5 THE COURT:

6 Go ahead:

7 MS. LIVELY:

8 Thank Your Honor.

9 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

10 Q. I'm going to show you State's Exhibit Number 17
11 again.

12 You -- You've already identified
13 that. And -- uh -- is your signature anywhere on that
14 document?

15 A. Yes ma'am, it is.

16 MS. LIVELY:

17 Okay.

18 Your Honor, at this time, the
19 State would move to introduce State's Exhibit Number 17
20 into evidence?

21 THE COURT:

22 He hasn't identified the document
23 yet.

24 MS. LIVELY:

25 Oh, I thought it -- I'm sorry. I

1 thought I asked him that question before. I apologize.

2 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

3 Q. And what is that document?

4 A. It's an Horry County Police Department evidence
5 record.

6 Q. Okay. And is that a standard form that is used by
7 your department in regards to evidence?

8 A. Yes ma'am. It's -- uh -- where we log in evidence
9 and we turn it into the evidence department.

10 Q. Okay. Do you turn --

11 A. That was a --

12 Q. You turn that into the evidence department to keep a
13 log?

14 A. Yes ma'am.

15 Q. All right. And is that a fair representation of
16 the log sheet that was kept for this case?

17 A. Yes ma'am.

18 Q. All right. And your signature is on that, I
19 believe you already testified?

20 A. Yes ma'am.

21 MS. LIVELY:

22 Okay.

23 Uh -- Your Honor, at this time we
24 would move to enter State's Exhibit 17 into evidence.

25 THE COURT:

1 Mr. Wilson and Ms. Monckton -- or
2 Mr. Monckton?

3 MR. MONCKTON:

4 No objection, Your Honor.

5 THE COURT:

6 Mr. Wilson?

7 MR. WILSON:

8 I don't think -- I do have an
9 opinion.

10 THE COURT:

11 All right.

12 MS. LIVELY:

13 Thank you.

14 THE COURT:

15 Admitted.

16 WHEREUPON: THE EVIDENCE LOG THAT
17 WAS EARLIER MARKED BY THE COURT REPORTER AS STATE'S
18 EXHIBIT NUMBER 17 (FOR IDENTIFICATION ONLY) WAS NOW
19 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

20 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

21 Q. Uh -- Now if you would please Sergeant Graham, would
22 you read what items -- uh -- were taken from the vehicle
23 occupied by Mario Tynes, Michael Lackey, Ricky Johnson,
24 Eric Brown and Josh Readon on that evening?

25 A. There was -- uh -- 5 one-dollar-bills. Uh -- 5 --

1 no. Two ten-dollar -- uh -- five-dollar-bills.

2 There was -- uh -- 3 ten-dollar-
3 bills.

4 Uh -- It looks like 50 twenty-
5 dollar-bills. And 3 one-hundred-dollars bills.

6 A Ruger 9 millimeter with a serial
7 number of 304 dash 63684.

8 Uh -- A High Point .380; serial
9 number P849033.

10 And two magazines.

11 5 bags of a green-leafy substance.

12 Q. Okay. And that's your signature at the bottom?

13 A. Yes ma'am.

14 Q. Correct.

15 A. Yes ma'am.

16 Q. And what was the purpose of your signature at the
17 bottom of that page?

18 A. To establish a chain of custody. And -- And once
19 I'd established that chain and took it into evidence
20 until I would relinquish it to another person.

21 Q. And who was that person you relinquished it to?

22 A. That's Detective Mark Cooper.

23 Q. Detective Mark Cooper; okay. And in the description
24 that you just read, you actually read the serial numbers
25 of the weapons. Do you recall doing that?

1 A. Yes ma'am.

2 Q. Okay. I'm going to show you State's Exhibit Number
3 12 and State's Exhibit Number 13. And ask you whether or
4 not the serial numbers match what's been marked for I.D.
5 purposes.

6 I'm going to show you State's 12
7 first.

8 A. That is still the correct serial number and gun
9 that's listed on the evidence sheet --

10 Q. Okay.

11 A. -- for the Ruger 9 millimeter.

12 Q. Okay. So the information that you placed on that
13 evidence log matches that weapon before you right now?

14 A. Yes ma'am; it does.

15 Q. Okay. And if it is on that evidence log, what does
16 it mean?

17 A. It -- It means it was received at the scene at that
18 -- that time and placed into evidence.

19 Q. And you signed that document?

20 A. Yes ma'am.

21 Q. Okay. So based upon the information you placed on
22 the -- uh -- the evidence log and the matching of the
23 serial number, is that the gun that was pulled out of the
24 vehicle that night?

25 A. Yes ma'am.

1 MS. LIVELY:

2 Thank you.

3 Your Honor, I would move to
4 introduce State's Exhibit Number 12 into evidence at this
5 time.

6 THE COURT:

7 All right. Mr. Monckton? Mr.
8 Wilson?

9 MR. MONCKTON:

10 No objection, Your Honor.

11 MR. WILSON:

12 And I withdraw my objection.

13 THE COURT:

14 All right; without objection.

15 MS. LIVELY:

16 Thank Your Honor.

17 WHEREUPON: THE RUGER 9 MILLIMETER
18 HANDGUN, EARLIER MARKED BY THE COURT REPORTER AS STATE'S
19 EXHIBIT NUMBER 12, WAS NOW ENTERED INTO EVIDENCE WITHOUT
20 OBJECTION.

21 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

22 Q. And now, I'm going to show you State's Exhibit
23 Number 13 and ask you to do the same thing if you would
24 please, sir?

25 A. Yes ma'am; it's the same High Point -- uh -- .380

1 that's listed on the evidence sheet.

2 Q. And when you say the same, what are you comparing it
3 to?

4 A. Okay. The serial numbers, and the type brand name,
5 and the model this is.

6 Q. That's -- That's on that weapon?

7 A. That's on this weapon.

8 MS. LIVELY:

9 Your Honor, the State would also
10 move to introduce State's Exhibit Number 13 into evidence
11 at this time?

12 THE COURT:

13 All right. Mr. Monckton?

14 MR. MONCKTON:

15 Withdraw my objection, Your Honor.

16 THE COURT:

17 Mr. Wilson?

18 MR. WILSON:

19 No objection.

20 THE COURT:

21 All right.

22 WHEREUPON: THE BLACK HIGH POINT

23 .380 HANDGUN THAT WAS EARLIER WAS MARKED BY THE COURT

24 REPORTER AS STATE'S EXHIBIT NUMBER 13 FOR IDENTIFICATION

25 ONLY WAS NOW ENTERED INTO EVIDENCE WITHOUT OBJECTION.

1 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

2 Q. And both of these guns were found in that vehicle;
3 correct?

4 A. Yes ma'am.

5 Q. And on that evidence log, once again, could you tell
6 me -- uh -- if there were any -- Were there any magazines
7 in the weapons that you're aware of?

8 A. There were two magazines located in the -- in the
9 car or in -- that I logged in.

10 Q. Okay. And -- uh -- those magazines, were they from
11 those guns?

12 A. Yes ma'am; they -- they would fit those two guns.

13 Q. Okay. All right. I'm going to show you what's been
14 marked --

15 COURT REPORTER:

16 Wait a minute. Wait a minute.

17 MS. LIVELY:

18 Yeah, I guess I need to wait.

19 COURT REPORTER:

20 I've got to mark the other two
21 here.

22 MS. LIVELY:

23 Thank you.

24 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

25 Q. Uh -- Now Sergeant Graham, will you please look at

1 items number 18, 19, 20, and 21?

2 And I'm going to show you your log
3 again, and ask you if those items were the ones retrieved
4 as a part of the weapons that were seized the night of
5 October the 13th, 2007?

6 A. Yes ma'am.

7 Q. Okay. Uh -- I'm going to specifically ask you
8 about each one.

9 Uh -- First of all, item 18, which
10 is obviously a magazine, do you recognize that?

11 A. Yes ma'am.

12 MS. LIVELY:

13 All right.

14 Your Honor, move to introduce 18
15 into evidence at this time.

16 MR. MONCKTON:

17 No objection, Your Honor.

18 THE COURT:

19 All right. Mr. Wilson?

20 MR. WILSON:

21 No objection.

22 THE COURT:

23 No objection.

24 WHEREUPON: THE MAGAZINE FROM THE
25 HIGH POINT .380, EARLIER MARKED BY THE COURT REPORTER AS

1 STATE'S EXHIBIT NUMBER 18, WAS ENTERED INTO EVIDENCE
2 WITHOUT OBJECTION.

3 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

4 Q. Then I'll ask you to look at State's Exhibit Number
5 19.

6 And, once again, do you recognize
7 that?

8 A. Yes ma'am.

9 Q. Okay. And it -- Was that a part of the gun -- one
10 of the guns that was seized that evening?

11 A. Yes ma'am.

12 Q. All right. And actually which gun does that one go
13 to?

14 A. That would be to the Ruger 9 millimeter.

15 Q. Okay. So Exhibit 19 is for the Ruger 9 millimeter?

16 A. (Nods in the affirmative.)

17 Q. Okay. All right. And then these bullets, 20 and
18 21?

19 20 first.

20 What gun would that go to?

21 A. This would be 9 millimeter bullets that would go to
22 the Ruger handgun.

23 MS. LIVELY:

24 Okay. Move to introduce these in
25 evidence.

1 MR. MONCKTON:

2 No objection.

3 MR. WILSON:

4 None.

5 THE COURT:

6 Okay. All right.

7 MS. LIVELY:

8 With the Ruger, that's 20, Your
9 Honor.

10 WHEREUPON: THE MAGAZINE FROM THE
11 RUGER AND THE PACKET OF SIX 9 MILLIMETER RUGER BULLETS,
12 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS
13 NUMBERS 19 AND 20, RESPECTIVELY, WERE ENTERED INTO
14 EVIDENCE WITHOUT OBJECTION.

15 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

16 Q. And then finally 21. What size bullets are those?

17 A. .380.

18 Q. .380? And --

19 A. Goes with that High -- High Point.

20 Q. From that High Point?

21 A. Yes ma'am.

22 MS. LIVELY:

23 Move to introduce 21 into evidence
24 at this time.

25 MR. MONCKTON:

1 No objection.

2 MR. WILSON:

3 No objection.

4 THE COURT:

5 All right; without objection.

6 MS. LIVELY:

7 Thank you.

8 WHEREUPON: THE PACKET OF 4 .380

9 ROUNDS, EARLIER MARKED BY THE COURT REPORTER AS STATE'S
10 EXHIBIT NUMBER 21, WAS ENTERED INTO EVIDENCE WITHOUT
11 OBJECTION.

12 MS. LIVELY:

13 Okay. That's all the questions I
14 have for you, Sergeant Graham.

15 Please answer any questions that
16 Defense has for you.

17 MR. MONCKTON:

18 Just a couple of questions,
19 Sergeant Graham.

20 CROSS-EXAMINATION BY MR. MONCKTON:

21 Q. You had an opportunity to view the videotape today,
22 earlier, didn't you?

23 A. Yes sir.

24 Q. And I believe from your viewing of the videotape,
25 you saw one individual removed from the backseat of the

1 car wearing a white hoodie? Is that correct?

2 A. I don't remember exactly what they were wearing.

3 But they were wearing -- some of them were wearing

4 hoodies, sir.

5 Q. Was there a gentleman wearing a white hoodie that
6 was removed from the vehicle in the videotape?

7 If I say it's in the videotape,
8 and it's in the videotape, it's there.

9 A. Okay. I -- I don't remember, sir. It could --
10 could have been.

11 Q. Okay. Now if I told you Mario Tynes was wearing a
12 white hoodie and removed from the middle backseat, you
13 don't have any information to contradict that; do you?

14 MS. LIVELY:

15 Objection, Your Honor. I think
16 the video speaks for itself.

17 He's already answered that
18 question.

19 THE COURT:

20 I -- I'm going to let -- He can
21 answer it.

22 MS. LIVELY:

23 Okay.

24 WITNESS:

25 Could you repeat the question sir?

1 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

2 Q. You don't have any information, if I told you that
3 Mario Tynes in the videotape was wearing a white hoodie,
4 taken out of the middle of the backseat; you don't have
5 any information to contradict that; do you?

6 A. No sir.

7 Q. And if it's on the videotape, it's on the videotape?

8 A. Yes sir.

9 Q. And you don't -- Do you have any other information
10 to contradict Officer Cole's report that the pistol and
11 the marijuana were found under the right front passenger
12 seat?

13 A. No sir. I do not have anything that contradict
14 that.

15 MR. MONCKTON:

16 All right. Thank you. No
17 further questions.

18 THE COURT:

19 Mr. Wilson?

20 CROSS-EXAMINATION BY MR. WILSON:

21 Q. Let me ask you if you -- Do you -- You said, I
22 think, that there were 5 people in the car; right?

23 A. Yes sir.

24 Q. And you did the stop based on information that you
25 receive from a BOLO?

1 A. Yes sir.

2 Q. And that information was, was that:

3 Guns were being dangled out the
4 window of the car?

5 A. Yes sir.

6 Q. Right. And had you not received that information,
7 you wouldn't have stopped the car?

8 A. No sir.

9 Q. All right. And so, even -- Well, did you ever --
10 Let me ask you this:

11 Did you ever check to find out if
12 that information was in fact correct that you had
13 received?

14 A. I don't understand what you're asking, sir.

15 Q. Whether or not the person who had told you -- You
16 receive some information apparently; right?

17 A. Yes sir.

18 Q. That -- That was --

19 A. A call over --

20 Q. And what I'm simply asking you is:

21 Did you ever make any effort to
22 determine whether or not the information that you had
23 received was in fact accurate at the time you received
24 it?

25 A. I'm going -- going based on what I was given over

1 the radio --

2 Q. Yes sir.

3 A. -- at that time.

4 Q. Okay. So you were just acting on what you were
5 told?

6 A. Yes sir.

7 Q. All right. And -- And let me ask you this:

8 There were 5 individuals in the
9 car. Is that correct?

10 A. Yes sir.

11 Q. All right. And do you know what order they got
12 into the car?

13 A. No sir, I do not.

14 Q. Do you know when they got into the car?

15 A. No sir.

16 Q. Do you know how long they'd been in the car prior to
17 your stopping the car.

18 A. Other than the time frame from dispatch giving the
19 information of the vehicle going down [REDACTED]
20 Boulevard, I do not know how long they were in the
21 vehicle.

22 Q. And -- And how long before -- uh -- you actually
23 arrived at the scene was it that you heard the BOLO come
24 over the air?

25 A. Within 5 or 10 minutes at the most.

1 Q. Okay. So a few minutes?

2 A. Yes sir.

3 Q. All right. And -- uh -- And you say it's only
4 about 2 miles from -- uh -- these apartments that we've
5 been discussing to where you pulled them over at the
6 station?

7 A. Roughly.

8 Q. Okay. Roughly? Right. And -- uh -- And do you
9 know whether or not that the car stopped at any point in
10 time, either to drop anybody off or pick anybody up,
11 before you stopped the car?

12 A. No sir, I do not.

13 Q. Right. Did you check to determine who owns the car?

14 A. I believe we ran the tag through the South Carolina
15 -- uh -- the national database to get the registrant
16 owner's information?

17 Q. Okay. Does Mr. Lackey own the car?

18 A. I don't recall who owns the car at the time.

19 Q. Okay. All right. Do you -- Did you make a record
20 of who owned the car?

21 A. Yes sir, when we towed the vehicle -- uh -- obtained
22 the information that it was registered out of North
23 Carolina.

24 Q. Okay. So it registered out of North Carolina?

25 A. Yes sir.

1 Q. All right. And now, at any point in time did you
2 make a determination as to whether or not -- or as to who
3 owned the guns that we've been talking about?

4 A. No sir.

5 Q. I'm -- I'm sorry.

6 A. No sir.

7 Q. Well, you can take the registration numbers on the
8 guns and run them, can -- can't you?

9 A. Yes sir, to see if they're stolen.

10 Q. To see if they're stolen?

11 A. Yes sir.

12 Q. Right. Well, if you -- if the gun is purchased, and
13 it has a registration number, that registration number is
14 on file somewhere; is it not?

15 A. I would think so, sir.

16 Q. Okay. Well, and my question is:

17 Did you, or anyone else to your
18 knowledge, check the registration based on the serial
19 numbers to determine who the owners of the guns were?

20 A. No sir. At the time, we checked to see to make
21 sure that the guns were not stolen.

22 Q. Okay. So -- So you did object to determine if
23 there were not stolen?

24 A. Yes sir.

25 Q. All right. And -- And -- But, what I'm asking you

1 is:

2 Did you ever determine who the
3 owners of the guns were?

4 A. No sir. I did not. Not myself. I did not.

5 Q. All right. Now, as I understand it, there was --
6 uh -- you said that you found, or saw, some marijuana in
7 the floorboard of the car?

8 A. Yes sir.

9 Q. Is that what your testimony was?

10 A. Yes sir.

11 Q. And then you found some marijuana -- or at least I
12 think Officer Cole found some marijuana -- under the seat
13 of the car?

14 A. Yes sir.

15 Q. Based on what you told him?

16 A. Yes sir.

17 Q. Is that -- Is that fair?

18 A. Yes sir.

19 Q. All right. Uh -- When you took Mr. Lackey out of
20 the car, did you find any drugs on Mr. Lackey, or in his
21 pockets; or a gun on his person?

22 A. None that I recall, sir.

23 MR. WILSON:

24 Okay. I -- I don't have any
25 other questions.

1 THE COURT:

2 Ms. Livesay -- I mean, Lively;
3 anything further?

4 MS. LIVELY:

5 Uh -- Yes.

6 REDIRECT EXAMINATION BY MS. LIVELY:

7 Q. In response to one question that Mr. Wilson asked
8 you:

9 He asked you about you following
10 up on the credibility of the -- uh -- 911 call?

11 Do you recall --

12 A. Yes ma'am.

13 Q. -- Mr. Wilson asking you that?

14 A. Yes ma'am.

15 Q. Okay. And your recollection was -- What was the
16 description of what you were looking for?

17 A. A older model white Ford with no -- they -- I --- I
18 took the impression that it had no rims and no hubcaps.
19 It didn't have hubcaps on the car.

20 Q. And how many people were in the vehicle?

21 A. There were 5 people in the vehicle.

22 Q. There were 5 people? And what were they supposedly
23 doing?

24 A. Waving guns out the window.

25 Q. And when you pulled over the Defendants, how many

1 people got out of the car?

2 A. 5 people.

3 Q. What did the car look like?

4 A. A white, Crown Vic, with no -- a white LTD with no
5 -- uh -- hub caps.

6 Q. And you found those two guns in that car?

7 A. Yes ma'am.

8 MS. LIVELY:

9 Thank you. That's all I have.

10 MR. MONCKTON:

11 Nothing further, Your Honor.

12 MR. WILSON:

13 No additional questions.

14 THE COURT:

15 All right. Call your next
16 witness.

17 THE COURT:

18 Will you need --

19 MS. LIVELY:

20 Your Honor --

21 THE COURT:

22 -- him any further?

23 MS. LIVELY:

24 No, Your Honor. Can he be
25 excused from his subpoena?

1 THE COURT:

2 Mr. Monckton?

3 MR. MONCKTON:

4 No objection, Your Honor.

5 THE COURT:

6 Mr. Wilson?

7 MR. WILSON:

8 None, Your Honor.

9 THE COURT:

10 All right. You're excused from
11 your subpoena Mr. Graham -- Sergeant Graham.

12 MS. LIVELY:

13 Mark Cooper.

14 WHEREUPON: DETECTIVE MARK COOPER

15 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

16 CLERK:

17 Thank you. Please be seated.

18 Please state your full name; and
19 spell your last name.

20 WITNESS:

21 Mark Cooper; last name's C-o-o-p-
22 e-r.

23 DIRECT EXAMINATION BY MS. LIVELY:

24 Q. Where do you work?

25 A. Horry County Police Department.

1 Q. And what are your duties there?

2 A. Uh -- Narcotic's Detective.

3 Q. Narcotic's Detective. Did you have an opportunity
4 to respond to a call on the evening of October 13th,
5 2007, involving Officer Cole and -- uh -- Sergeant
6 Graham?

7 A. Yes, I was. I was called to the scene -- uh -- to
8 basically on what they call adopt the case; get the
9 marijuana and anything else on scene; takes the evidence.

10 Q. Okay. So you -- you were advised that they
11 believed they had marijuana on that scene?

12 A. Yes.

13 Q. Okay. And whenever you arrived there, did you
14 actually -- uh -- come into contact with what you
15 believed to be marijuana?

16 A. Yes ma'am. There was approximately 5 bags -- uh --
17 probably about 3 pounds, altogether; total weight.

18 Q. Okay. And how were they packaged?

19 A. In big -- uh -- clear bags.

20 Q. I'm going to show you what's been marked as State's
21 Exhibit Number 11. And it has six bags in here.

22 I'm going to ask you if you
23 recognize what's in that bag?

24 A. Yeah; it looks like the marijuana.

25 Q. It looks like the marijuana?

1 A. Yes ma'am. A piece of trash fell out of it.

2 Q. Thank you. Okay. Now Detective Cooper, did you --
3 uh -- receive any other items that evening?

4 A. Uh -- Yes ma'am. Sergeant Graham turned over the --
5 uh -- marijuana -- uh -- pistols and the cash.

6 Q. Okay.

7 A. Uh -- So I could take it to the evidence locker and -
8 turn it in.

9 Q. And is that what you did?

10 A. Yes ma'am.

11 Q. Now, I'm going to show you State's Exhibit 17, which
12 is in evidence. It's an evidence record. Is your
13 signature on that -- uh -- report?

14 A. Yes ma'am.

15 Q. Okay. And in that report, it confirms what you
16 just testified to? Is that fair to say?

17 A. Yes ma'am.

18 Q. Regarding, you said money, guns --

19 A. The money, the guns, and the -- the dope.

20 Q. And the dope? Okay. Uh -- And what did you do
21 with those items?

22 A. Uh -- We have an evidence locker at the PD; and I
23 dropped it in there; and it's a secure locker back in the
24 evidence area.

25 Q. Okay. And is that standard procedure?

1 A. Yes ma'am.

2 Q. And in any way, shape, or form, did you manipulate,
3 contaminate, or change the -- uh -- the items whenever
4 they came into your possession?

5 A. No ma'am.

6 Q. Did you have any other contact with them, other than
7 by placing them into the evidence locker at Horry County
8 Police Department?

9 A. I did not.

10 MS. LIVELY:

11 Okay. That's all I have for this
12 witness, Your Honor.

13 THE COURT:

14 Mr. Monckton?

15 MR. MONCKTON:

16 No questions, Your Honor.

17 THE COURT:

18 Mr. Wilson?

19 MR. WILSON:

20 I only just have one question.

21 CROSS-EXAMINATION BY MR. WILSON:

22 Q. Let me show you -- uh -- and I don't think it's
23 marked. Oh, it is.

24 Uh -- I guess it's 11 for
25 identification.

1 And -- And you'll see there are
2 some bags inside.

3 A. Uh-huh.

4 Q. When -- When you received these bags -- they are all
5 sealed now -- were they sealed when you had them
6 initially?

7 A. Oh, no sir.

8 Q. Okay.

9 A. I guess -- I'm assuming evidence, or somebody else,
10 put that on it.

11 Q. All right. Did you seal them before you sent them
12 to SLED?

13 A. I didn't send them to SLED.

14 Q. Okay. Well did you seal them at any time?

15 A. They were not sealed by me.

16 Q. Okay.

17 A. They were the zip lock bags.

18 Q. Right. They were in zip lock bags?

19 A. (Nods in the affirmative.)

20 Q. Were the zip lock bags zipped when you received
21 them?

22 A. I don't recall.

23 Q. You don't recall?

24 A. No sir.

25 MR. WILSON:

1 No other questions.

2 THE COURT:

3 Ms. Lively?

4 MS. LIVELY:

5 Thank you. Your Honor, the State
6 has actually -- uh -- completed the examination of this
7 witness. If he may be excused from his subpoena?

8 THE COURT:

9 Mr. Wilson?

10 MR. WILSON:

11 I have no objection.

12 THE COURT:

13 Mr. Monckton?

14 MR. MONCKTON:

15 No objection, Your Honor.

16 THE COURT:

17 All right. You're excused --

18 WITNESS:

19 Yes sir.

20 THE COURT:

21 -- and relieved from your
22 subpoena.

23 MR. WILSON:

24 Your Honor, can we approach the
25 bench?

1 THE COURT:

2 Certainly.

3 (WHEREUPON: Counsel for each party
4 began to approach the bench at 4:21 PM, May 18, 2010.)

5 THE COURT:

6 Do you need a break?

7 FOREPERSON TODD:

8 Yes sir.

9 THE COURT:

10 Mr. Roth, take your jury -- uh --
11 to there room and let them refresh themselves; okay.

12 MR. MONCKTON:

13 That's what we were going to
14 asking for.

15 MR. WILSON:

16 That's what we were asking.

17 THE COURT:

18 That's what you were asking?

19 MR. WILSON:

20 Yes.

21 THE COURT:

22 (Laughter erupts in the
23 courtroom.)

24 THE COURT:

25 Was I keeping you longer than that

1 hour and a half? I didn't mean to.

2 (WHEREUPON: The jury empanelled
3 in the case withdrew from the courtroom at 4:22 PM, May
4 18, 2010; and was no longer present during the following
5 proceedings.)

6 THE COURT:

7 Okay. We'll be in recess.

8 (WHEREUPON: The court was
9 declared in recess at 4:23 PM, May 18, 2010.)

10 (WHEREUPON: The court was called
11 to order by the Bailiff at 4:43 PM, May 18, 2010; and all
12 pertinent parties, along with their counsel, were back
13 and present in the courtroom.)

14 DEPUTY:

15 Order in the court. All Rise.

16 THE COURT:

17 All right. Everyone had the
18 opportunity to take a little break. Please be seated.

19 Let's try to get another witness
20 or two in. What have we got?

21 MS. LIVELY:

22 Well, Your Honor, we do have -- uh
23 -- We do have a couple of SLED individuals.

24 One of them is Dan DeFreese, who
25 is actually the tool-marking -- uh -- expert.

1 And the --

2 MS. LIVESAY:

3 Firearms.

4 MS. LIVELY:

5 Firearm expert; sorry.

6 And -- uh -- in order to get his
7 -- uh -- testimony in, we have -- uh -- Jack Stewart here
8 and we've actually got the bullet that was racked.

9 And then we have Amy Stephens who
10 -- uh -- opened it at SLED and -- uh -- had it before it
11 was tested.

12 THE COURT:

13 All right. Well, let's just see
14 how it goes.

15 We'll go to about 5:30; all right.

16 MS. LIVESAY:

17 Your Honor, we've got -- We've got
18 to get -- I'll be honest, Dan DeFreese done today,
19 because he has another trial tomorrow that he's
20 testifying in.

21 THE COURT:

22 All right. Well, let's move it
23 along, then. Okay.

24 MS. LIVELY:

25 One thing, Your Honor, that -- to

1 put on the record really quick.

2 I did noticed from the cross --
3 the cross-examination by the Defense that there may be
4 some inkling or attempt to show that these Defendants --
5 the two sitting in here -- could have been picked up on
6 the way?

7 THE COURT:

8 Alibi.

9 MS. LIVELY:

10 Alibi; thank you.

11 THE COURT:

12 Were you given notice?

13 MS. LIVELY:

14 If they're going to do that, we
15 were not giving any notice. And I think by trying to
16 place that doubt in the -- uh -- in the mind of the jury
17 is prejudicial to the State, because we have not been
18 prepared to deal with an alibi.

19 THE COURT:

20 I know the rule.

21 MS. LIVELY:

22 Thank you.

23 THE COURT:

24 How about the rule, Mr. Monckton,
25 that she --

1 MR. MONCKTON:

2 Your Honor, I'm -- I'm not
3 intending to -- uh -- pursue an alibi defense.

4 THE COURT:

5 How about Mr. Wilson? You know
6 the rule; Rule 5.

7 MR. WILSON:

8 Judge, obviously, we can't pursue
9 an alibi defense. They were arrested at the -- at -- in
10 the car at the time.

11 THE COURT:

12 Okay. All right. Good.

13 MS. LIVELY:

14 Thank you.

15 THE COURT:

16 Bring them in, Mr. Hemmingway.

17 MR. WILSON:

18 Judge, what I was going to add to
19 what I just said:

20 I'm not arguing alibi. Uh -- I'm
21 not claiming alibi.

22 But I do say that it's -- the
23 burden's on the State to prove that they participated in
24 both crimes.

25 That is:

1 That they participated in whatever
2 occurred at the house; and that they were in the car at
3 the time of the arrest.

4 THE COURT:

5 This is what -- uh -- 5(e) says:

6 Upon written request of the
7 prosecution, stating the time, date, and place at which
8 the alleged offense occurred, the Defense shall -- uh --
9 serve within 10 days, or at such time as The Court may
10 direct, upon the prosecution, a written notice of his
11 intent to offer an alibi defense.

12 And those -- those shall state the
13 specific place, or places, at which the Defendant claims
14 to have been at the time of the alleged offense; and the
15 names and addresses of the witnesses upon which he
16 intends to rely to establish such alibi.

17 Okay. All right.

18 MS. LIVELY:

19 And --

20 THE COURT:

21 That's the rule.

22 MS. LIVELY:

23 And he's charged with the
24 burglary first-degree as well as armed robbery, which
25 encompasses the incident that happened at the apartments.

1 If they're going to try and say he
2 was picked up on the way to where the drugs and the guns
3 were found, then that's the problem.

4 And we would have pursued any time
5 of alibi that he was not at the apartment at the time the
6 robbery took place; and just happened to be in the car
7 when the drugs -- uh -- when they were pulled over for
8 the drugs and the -- uh -- weapons.

9 THE COURT:

10 Okay.

11 MS. LIVELY:

12 That's my point.

13 THE COURT:

14 All right. Let me ask you this:

15 Did you request -- uh -- it says:

16 Upon re -- written request of the
17 prosecution stating the time, the place -- the time,
18 date, and place at which the alleged offense occurred,
19 the Defense shall serve within 10 days.

20 What about that?

21 MS. LIVELY:

22 Yes; we always serve the Defense
23 what is reciprocal discovery request under Rule 5, Your
24 Honor, for that specific purpose?

25 THE COURT:

1 Well, did you?

2 MR. MONCKTON:

3 Your Honor --

4 THE COURT:

5 You always did. We know that.

6 MR. MONCKTON:

7 -- I -- I don't intend -- I don't
8 intend to produce any witnesses as to my client in an
9 alibi.

10 THE COURT:

11 Well, my -- my friend Mr. Wilson's
12 over there kind of waffling a little bit.

13 MR. WILSON:

14 No sir.

15 I'm just saying that they have the
16 burden of proof. And that they have to prove that my
17 client was at the house; and that he stayed in the car
18 until they were arrested.

19 That's their burden.

20 And -- And they have to prove
21 that.

22 Now, how they do it is their
23 business. But they have to prove that.

24 THE COURT:

25 Do you --

1 MR. WILSON:

2 It's not my job to --

3 THE COURT:

4 Do you believe that -- or recalled
5 being served with reciprocal request?

6 MR. WILSON:

7 Yes sir.

8 THE COURT:

9 Okay.

10 MR. WILSON:

11 Yes sir. Yes.

12 THE COURT:

13 All right. That's done.

14 MR. WILSON:

15 Absolutely.

16 MS. LIVELY:

17 Okay. Thank you, Your Honor.

18 THE COURT:

19 All right.

20 I just wanted to make sure there
21 wasn't an issue on that point.

22 MR. WILSON:

23 No sir.

24 THE COURT:

25 Thank you. Bring them in.

1 (WHEREUPON: The jury empanelled.
2 in the case was escorted back into the courtroom at 4:48,
3 May 18, 2010; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 Okay. Call your next witness.

7 MS. LIVELY:

8 Yes. Uh -- Officer Jack Stewart.

9 THE COURT:

10 Officer Stewart, come around.

11 WHEREUPON: OFFICER JACK STEWART

12 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

13 CLERK:

14 Thank you. Please be seated.

15 Okay. If you would please state
16 your full name and spell your last name.

17 WITNESS:

18 John Calvin Stewart the Third; S-
19 t-e-w-a-r-t.

20 DIRECT EXAMINATION BY MS. LIVELY:

21 Q. Officer Stewart, you work for Horry County PD?

22 A. Yes.

23 Q. What are your duties there?

24 A. I'm a lieutenant with the Horry County Police
25 Department assigned to the South Precinct.

1 Q. Okay. And how long have you worked there?

2 A. Uh -- I've worked with Horry County for 15 years.

3 I've been in law enforcement 19.

4 Q. Okay. On October 14th, 2007, did you have an
5 opportunity to get involved in the case that we have
6 before The Court today?

7 A. Yes.

8 Q. Will you please tell this jury what your involvement
9 was?

10 A. I received a complaint via a phone call to contact
11 an out-of-state -- uh -- lady in reference to her son
12 being released from Conway Hospital.

13 Uh -- She had been concerned that
14 her son was seen by the police at Conway Hospital; but
15 nobody had come by the house yet to talk with them.

16 Q. What was the name of that individual that -- uh --
17 that were to check up on?

18 A. I cannot recall at this time.

19 Q. Okay. Do you recall the name of the -- uh -- So,
20 you don't recall the name of the person that was at the
21 hospital?

22 A. Uh -- I don't recall it; no.

23 Q. Okay. Uh -- All right. Well, what did you do as a
24 result of the call that you received?

25 A. Well, she gave me his -- uh -- address. Uh -- Told

1 me that he had been release from the hospital.

2 And I went over there to -- uh --
3 talk with them.

4 Q. Where did you go?

5 A. [REDACTED]

6 Q. Okay. And when you were there, did you have the
7 occasion to run into this person?

8 A. Yes. He met me at the door.

9 Q. Okay. Would that person have been Sean Barrett?

10 A. I believe so. I believe that's the name.

11 Q. That's the --

12 A.. I recall now.

13 Q. Okay. All right. Okay. So, Officer Stewart,
14 whenever you got to the home, was anyone there, other
15 than Mr. Barrett?

16 A. No.

17 Q. And whenever you go there, what was the next thing
18 that happened?

19 A. Uh -- He handed me a white ball cap and a .380
20 cartridge; one single .389 cartridges and said:

21 Here's some stuff from the house.

22 Q. Just like that.

23 A. Yes.

24 Q. Okay. And what did you think?

25 A. Uh -- I was kind of confused at first. Uh -- It's

1 really now how we want something to happen going to a
2 potential crime scene; but it was one of those things
3 where it just happened all of a sudden and spontaneous.

4 And I took it; put it on the
5 table; and they were going to go with -- uh -- packaging
6 the evidence.

7 Q. Okay. I'm going to show you two items.

8 MS. LIVELY:

9 If I may approach, Your Honor?

10 THE COURT:

11 Yes.

12 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

13 Q. This is State's 14 and State's 15 for I. D. And you
14 can open that, if you need to.

15 Tell me please if you can
16 recognize those items?

17 A. This item here is the black hat that Mr. Barrett
18 handed to me.

19 Q. Okay.

20 A. And this is the single .380 cartridge he handed me.

21 Q. Okay. But he handed you both of these items as
22 soon as you got to the apartment?

23 A. Yes.

24 Q. And for the record, where was the apartment that you
25 went to?

1 A. I cannot recall the number. Uh -- It was in Flint
2 Lake Apartments.

3 Q. All right. What else happened while you -- or --
4 MS. LIVELY:

5 If I may, Your Honor, the State
6 would move to introduce State's 14 and 15 into evidence.

7 THE COURT:

8 Counsel?

9 MR. MONCKTON:

10 The hat is 14?

11 MS. LIVELY:

12 I'm sorry?

13 MR. MONCKTON:

14 The hat is 14?

15 MS. LIVELY:

16 The -- uh -- .380 bullet is 14.

17 The black hat is 15.

18 MR. MONCKTON:

19 I don't have any objection to that
20 hat, Your Honor. But I would like a further foundation
21 on the bullet.

22 MS. LIVELY:

23 Okay.

24 THE COURT:

25 All right.

1 Mr. Wilson?

2 MR. WILSON:

3 Same objection.

4 THE COURT:

5 Okay.

6 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

7 Q. Officer Stewart, whenever you got to -- uh -- the
8 apartment -- And you said that Sean Barrett handed you
9 the black hat Black hat and the -- and that bullet, which
10 he State's Exhibit Number 14.

11 Can you tell this jury -- uh --
12 what information you were able to obtain regarding that
13 particular item?

14 A. I spoke with Mr. Barrett. Uh -- He said the hat
15 came from one of the suspects inside the home from the --
16 uh -- occurrence the night before.

17 He also said that the cartridge
18 came from the gun that was inside, that one of the
19 suspects had.

20 Q. Okay. And that is the -- uh -- the cartridge or
21 the bullet that he handed to you?

22 A. Yes.

23 Q. Okay. And based upon that information, you placed
24 it into evidence?

25 A. Yes.

1 Q. And is that standard procedure?

2 A. Absolutely.

3 Q. Okay. Now, I'm going to show you, as a follow-up
4 to that -- uh -- State's Exhibit Number 22, which is the
5 evidence record.

6 Could you please -- uh -- identify
7 that and tell us if it has your name on it?

8 A. Yes. It has my name twice -- uh -- three times. Uh
9 -- As -- The first is for the initial report, and -- uh
10 -- the chain of custody for item 1, 2, and 3.

11 MS. LIVELY:

12 Okay.

13 Uh -- Your Honor, at this time,
14 the State would move to introduce State's Number 22 into
15 evidence.

16 THE COURT:

17 Mr. Monckton?

18 MR. MONCKTON:

19 No objection.

20 THE COURT:

21 Mr. Wilson?

22 MR. WILSON:

23 I have no objection, Your Honor.

24 THE COURT:

25 All right; without objection.

1 WHEREUPON: THE EVIDENCE RECORD OF
2 JACK STEWART, EARLIER MARKED BY THE COURT REPORTER AS
3 STATE'S EXHIBIT NUMBER 22, WAS ENTERED INTO EVIDENCE
4 WITHOUT OBJECTION.

5 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

6 Q. So, in this -- uh -- 22 which, is in evidence, what
7 is the date that you state that you received those items?

8 A. October 14th of 2007.

9 Q. And -- uh -- where did you place those items after
10 you received them?

11 A. In our CS -- uh -- evidence area, which is at the M.
12 L. Brown Public Safety Building.

13 Q. Okay. And when that -- uh -- cartridge was given
14 to you, did you change it, manipulate it, put inside of
15 one of your own weapons, or do anything to -- uh --
16 contaminate that item.

17 Q. No. The only thing I did was:

18 I put it on a table until I could
19 get this -- this plastic bag to put it in.

20 MS. LIVELY:

21 Okay. All right.

22 Your Honor, at this time, the
23 State would move to introduce 14 into evidence.

24 THE COURT:

25 Mr. Monckton?

1 MR. MONCKTON:

2 Your Honor -- uh -- We're going to
3 object at this time.

4 Uh -- Because I think that the
5 State is going to attempt to tie up some other evidence.
6 And I think the proper foundation needs to be tied to
7 that, Your Honor.

8 MS. LIVESAY:

9 Your Honor, if I may?

10 The bullets a non-fungible item.
11 The fact that he can identify it is going to make it into
12 evidence.

13 It's not DNA. So a full chain is
14 not required.

15 So, if he can identify it, it's
16 non-fungible.

17 THE COURT:

18 I'm --

19 MS. LIVESAY:

20 The proper foundation --

21 THE COURT:

22 I'm going to allow it.

23 WHEREUPON: THE .380 CALIBER
24 ROUND, EARLIER MARKED BY THE COURT REPORTER AS STATE'S
25 EXHIBIT NUMBER 14, WAS ENTERED INTO EVIDENCE OVER

1 OBJECTION.

2 THE COURT:

3 Okay. Go ahead.

4 MS. LIVELY:

5 Okay.

6 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

7 Q. I'm going to show you what's been marked as State's
8 Exhibit Number 23.

9 Do you recognize that document?

10 A. Yes. This is the statement that Mr. Barrett gave
11 me.

12 I had him -- uh -- write me a
13 statement concerning the investigation.

14 Q. Okay. And is your signature on that document?

15 A. Yes. My signature is below Mr. Barrett's signature.

16 Q. Did he -- uh -- provide you with that statement on
17 October 14th of 2007?

18 A. Yes. We sat at his -- uh -- kitchen table as he
19 wrote it.

20 MS. LIVELY:

21 Okay. All right.

22 Do you have a copy?

23 MR. WILSON:

24 Uh-huh. I've seen it.

25 MS. LIVELY:

1 Your Honor, move to introduce
2 State's Exhibit Number 23 into evidence at this time.

3 MR. MONCKTON:

4 Your Honor, I'd like to object.

5 MS. LIVELY:

6 I can wait.

7 THE COURT:

8 Okay.

9 MS. LIVELY:

10 That's fine.

11 THE COURT:

12 I would sustain that objection.

13 MS. LIVELY:

14 That's fine, Your Honor

15 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

16 Q. Now whenever you were there, did you come across any,
17 other items in -- uh -- the location of the apartment?

18 A. Yes. On my way out -- uh -- back to my patrol
19 vehicle, there was a white hat coming out of the
20 apartment to the left side.

21 Uh -- Mr. Barrett pointed at it
22 and said:

23 I think that might be involved. I
24 don't know.

25 Q. Okay.

1 A. Uh -- At that point, knowing what the information he
2 had given me inside the home, I felt like this was -- I
3 needed to take that also into evidence.

4 A. And so you did take that white hat into evidence as
5 well?

6 A. Yes ma'am.

7 Q. Okay. And it's actually on your evidence log as
8 being something that you -- uh -- you took and placed in
9 the evidence locker door at Horry County PD?

10 A. Yes. I believe it was Item 3.

11 Q. Okay. All right. I'm going to show you State's
12 15. And I'm sorry. I'm going to have to ask you to pull
13 it out of all the wrapping and tell me if that's the hat?

14 A. Yes. This is the hat that was outside of the
15 apartment.

16 MS. LIVELY:

17 Okay. Thank you, Officer Stewart.

18 And Your Honor, the State would
19 move to introduce Exhibit Number 16 into evidence at this
20 time.

21 MR. MONCKTON:

22 No objection.

23 MR. WILSON:

24 No objection.

25 THE COURT:

1 All right; without objection.

2 MS. LIVELY:

3 Thank Your Honor.

4 WHEREUPON: THE WHITE HAT, EARLIER

5 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER

6 16, WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

7 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

8 Q. Now Officer Stewart, when you at the apartment, did
9 you have an occasion to take any pictures?

10 A. Yes. I took -- uh -- pictures of the victims wounds
11 -- uh -- a picture of him, himself. And then he had a
12 laceration on his head; took some pictures.

13 And took some pictures on where he
14 showed me certain things had happened.

15 Q. If I showed you some pictures of the outside of the
16 apartment complex would you recognize those as well?

17 A. I believe so. Yes.

18 Q. Okay. I'm going to show you first, State's Exhibit
19 Number 3 and State's Exhibit Number 4; and ask you if you
20 recognize these photos and who those photos involved?

21 A. This is the picture of Mr. Barrett. It shows that
22 I'm taking a picture of Mr. Barrett; because the wound
23 does not show the identification.

24 And this is the picture of Mr.
25 Barrett's scalp, where he received medical treatment.

1 THE COURT:

2 All right. Have those been
3 marked?

4 MS. LIVELY:

5 They have Your Honor. Your Honor,
6 they are --

7 THE COURT:

8 What are the marks on them?

9 MS. LIVELY:

10 They're State's 3 and State's 4.

11 THE COURT:

12 All right.

13 MS. LIVELY:

14 And I would move to introduce
15 these --

16 THE COURT:

17 All right.

18 MS. LIVELY:

19 -- into evidence at this time?

20 THE COURT:

21 Mr. -- uh --

22 MR. MONCKTON:

23 No objection, Your Honor.

24 MR. WILSON:

25 No objection, Your Honor.

1 THE COURT:

2 All right; no objection; 3 and 4
3 admitted.

4 MS. LIVELY:

5 All right.

6 WHEREUPON: TWO PHOTOS, EARLIER
7 MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS NUMBERS
8 3 AND 4, WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION.

9 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

10 Q. So 3, then, you say, is the -- Sean Barrett standing
11 before you. And then, 4 actually shows the injuries to
12 his head?

13 A. Yes ma'am.

14 Q. And now I'm going to show you State's 5, 6, and 7.
15 And ask you if you recognize the location present in
16 those photos?

17 A. Picture Number 5 shows the front door access to Mr.
18 Barrett's apartment.

19 All three photos actually show the
20 outside of the apartments.

21 One shot is from the parking lot.

22 The other one is up on the
23 sidewalk.

24 MS. LIVELY:

25 Okay.

1 THE COURT:

2 Now is that 4, 5, and 6?

3 MS. LIVELY:

4 This, Your Honor, will be 5, 6,
5 and 7.

6 THE COURT:

7 5, 6, and 7; okay.

8 MS. LIVELY:

9 And I would move to introduce
10 these into evidence at this time.

11 MR. MONCKTON:

12 No objection, Your Honor.

13 MR. WILSON:

14 None.

15 THE COURT:

16 All right; without objection.

17 MS. LIVELY:

18 Okay.

19 WHEREUPON: THREE PHOTOS, EARLIER
20 MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS NUMBERS
21 5, 6, AND 7, WERE ENTERED INTO EVIDENCE WITHOUT
22 OBJECTION.

23 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

24 Q. Was that the extent of your part of the
25 investigation involving this matter?

1 A. Yes. Uh -- I did a supplemental report. Uh -- And
2 then took a statement from Mr. Barrett.

3 And that was with my business with
4 Mr. Barrett at that time after the evidence collection.

5 MS. LIVELY:

6 Okay. Thank you. Answer any
7 questions that --

8 THE COURT:

9 Mr. Monckton --

10 MS. LIVELY:

11 -- Defense may have.

12 THE COURT:

13 -- any questions?

14 MR. MONCKTON:

15 Yes, sir, Your Honor.

16 THE COURT:

17 Okay.

18 CROSS-EXAMINATION BY MR. MONCKTON:

19 Q. Detective Steward, do you have a -- I mean,
20 Lieutenant Stewart -- Do you have a copy of your report?

21 A. Not on me; no sir.

22 Q. Okay. Let me hand you up a copy of your report,
23 and specifically, with this item.

24 I believe you took possession of
25 that bullet from Mr. Barrett when you arrived at the

1 house?

2 A. Yes.

3 Q. And you also took possession of a hat from him when
4 you arrived at the house?

5 A. That's correct.

6 Q. And in your report, I think you indicate that:

7 Mr. Barrett stated to you that he
8 tampered with both the bullet and the hat before he
9 provided it to you?

10 A. Yes.

11 Q. And you also took a statement from him that has
12 already been shown to you. And I've got a copy of it.

13 Is that the statement you took
14 from him?

15 A. Yes sir.

16 Q. Okay. Well, let me ask you this, Lieutenant
17 Stewart:

18 After you took -- Prior to taking
19 that statement from him, did you advise him in any way
20 the County would look upon him if he provided a false
21 statement to the Horry County Police Department?

22 A. No sir; not at that time. No.

23 Q. He was not advised at that time?

24 A. Not that I can recall.

25 Q. So although you did not tamper with the -- the

1 bullet in Exhibit 14, Mr. Barrett told you he had
2 tampered with it?

3 A. Yes.

4 MR. MONCKTON:

5 Thank you. No further questions.

6 MR. WILSON:

7 I have no questions, Your Honor.

8 THE COURT:

9 All right. Anything further?

10 MS. LIVELY:

11 No, Your Honor. May this witness
12 be excused?

13 Yes, if there's no objection.

14 MR. MONCKTON:

15 No objection, Your Honor.

16 MR. WILSON:

17 None.

18 THE COURT:

19 All right. You may be excused.

20 MS. LIVELY:

21 The State will call Lori Rabon to
22 the stand.

23 WHEREUPON: LORI RABON WAS DULY

24 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

25 CLERK:

1 Thank you. Please be seated.

2 And if you will please state you
3 full name and spell your last name?

4 WITNESS:

5 Lori Rabon; R-a-b-o-n.

6 DIRECT EXAMINATION BY MR.

7 Q. Ms. Rabon, where do you work?

8 A. Horry County Police Department.

9 Q. And what are your duties there?

10 A. I am in charge of the property and evidence section
11 with there's Horry County Police.

12 Q. Did you have an opportunity -- uh -- to come across
13 some evidence involving the Defendants Merino Tynes and
14 Michael Lackey?

15 A. Yes, I did.

16 Q. Okay. Will you please tell the jury what items
17 particularly that you handled -- uh -- for the purposes
18 of the chain of custody on those particular items?

19 A. I had the opportunity to handle the black cap, the
20 white cap -- uh -- the guns -- the High Point, the Ruger,
21 the marijuana, the unfired cartridge casing, and two
22 magazines.

23 Q. Okay. I'm going to show you State's 12 and ask you
24 if that's the -- uh -- gun you handle?

25 A. Yes it is.

1 Q. Okay. And 13?

2 A. Yes it is.

3 Q. And then, I'm showing you State's 18 and 19.

4 A. Yes they are.

5 Q. Okay. And I'm going to show you State's Number 14.

6 A. Yes it is.

7 Q. And you also stated that you handled -- was it one
8 of the hats?

9 A. Both of the hats.

10 Q. Both of the hats? So that would be State's 15 and

11 16. Did you see where those items were removed out of
12 these bags?

13 A. Yes, I did.

14 Q. And are those the items you took?

15 A. Yes, they are.

16 Q. Out of all those items, that you have just testified
17 to, DC when the remote X.? I apologize I'm such a
18 justice which is State's Exhibits 12, 13, 14, 18, 19 --
19 and I'll have to go back -- 15 and 16, those are the
20 items that you handled?

21 And when I say handled, what does
22 that mean?

23 A. That simply means that they were dropped into our
24 evidence locker, which is a secure facility -- uh --
25 where the officers can drop it on one sided and lock it,

1 so that the next morning, or during the day, the evidence
2 technicians in our section can open it from our secure side
3 and log it into evidence by placing it in evidence for
4 court purposes or further testing.

5 Q. Okay. Did you in any way manipulate these items,
6 change them, or contaminate them in the process of doing
7 your duties?

8 A. No, I did not.

9 Q. Uh -- Whenever you had them, were they basically in
10 the same condition as you -- uh -- When you took them to
11 SLED, were they in the same condition as when you received
12 them?

13 A. Yes, they were.

14 Q. Okay. And you said something about handling the
15 marijuana?

16 What do you do with the -- uh --
17 with State's Exhibit Number 11?

18 What did you do in regards to the
19 marijuana?

20 A. The marijuana would have been logged in and put in our
21 -- uh -- narcotic's vault and awaited testing by our crime
22 scene section.

23 Q. Okay. Was that the only contact you had with the --
24 uh -- marijuana?

25 A. Yes it was.

1 MS. LIVELY:

2 Okay. One minute, Your Honor.

3 Okay. That's all the questions I
4 have of this witness, Your Honor.

5 THE COURT:

6 Mr. Monckton?

7 MR. MONCKTON:

8 Yes, sir, Your Honor. May it
9 please The Court?

10 CROSS-EXAMINATION BY MR. MONCKTON:

11 Q. Ms. Rabon, how long have you been the evidence
12 custodian of Horry County?

13 A. Uh -- Since 2001.

14 Q. And is it a fair statement:

15 The reason to have an evidence
16 custodian is to prevent tampering with evidence?

17 A.. Yes it is.

18 MR. MONCKTON:

19 Thank you. No further questions.

20 MR. WILSON:

21 No questions, Your Honor.

22 THE COURT:

23 All right. You may step down,

24 Ms. Rabon.

25 MS. LIVESAY:

1 Your Honor, at this time, The
2 Court calls Amy Stephens to the stand.

3 THE COURT:

4 All right. Do you any further
5 need for Mr. Rabon?

6 MS. LIVELY:

7 Oh, no, Your Honor. May she be
8 excused as well?

9 MR. WILSON:

10 Without objection.

11 MR. MONCKTON:

12 No objection.

13 MS. LIVELY:

14 Thank you.

15 THE COURT:

16 All right; without objection,
17 she's excused.

18 WHEREUPON: AMY STEPHENS WAS DULY
19 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

20 CLERK:

21 Thank you. Please be seated.

22 Will you please state your full
23 name; and spell your last name.

24 WITNESS:

25 Amy Stephens; S-t-e-p-h-e-n-s.

1 DIRECT EXAMINATION BY MS. LIVESAY:

2 Q. Ms. Stevens, where are you employed?

3 A. I employed with the South Carolina Law Enforcement
4 Division, which is also known as SLED.

5 Q. About how long have you been employed with SLED?

6 A. I've been employed with SLED since March 2nd of
7 2006.

8 Q. And what kind of training have you undergone to work
9 at SLED?

10 A. Well, in our department, we try kind of do hands-on
11 training and we have a training officer about a -- for
12 about a month when we first begin.

13 Q. Okay. And what department do you work in?

14 A. I work in the Evidence Control Department.

15 Q. Okay. And explain to the jury what you do in that
16 department? What are your responsibilities?

17 A. Our job responsibilities are to basically log-in and
18 package evidence for forensic analysis.

19 Q. Okay. And are you familiar with the Lab Number
20 0715254?

21 A. I am.

22 Q. Okay. Now, tell the jury how that number comes
23 about once the evidence gets to SLED.

24 A. Uh -- Once the evidence arrives at the SLED, we will
25 enter the information that is located on a request form

1 or a packing slip into our computer system.

2 And the computer system will
3 generate a unique lab number, which we then place on the
4 evidence.

5 And then, the evidence is
6 transferred into our evidence room.

7 Q. Okay. So, just so I'm clear:

8 You get the evidence in from
9 different police departments over South Carolina?

10 A. That's correct.

11 Q. Okay. Now when you get it in, you actually give it
12 a lab number and repackage it?

13 A. Our computer system -- uh -- provides the lab
14 number.

15 Q. Okay. And then you put it in another package?

16 A. That is correct.

17 Q. Okay. And it's identified in SLED through that lab
18 number?

19 A. Correct.

20 Q. Okay. Uh -- Now, when you get it in, does it
21 sometimes go to different departments --

22 A. Yes, it does.

23 Q. -- in SLED?

24 A. Yes.

25 Q. How many departments would you say are within SLED?

1 A. We have our DNA Department. We have a Questioned
2 Documents Department, a Toxicology Department, a Latent
3 Prints Department, a -- uh -- Polygraph Department.

4 Altogether, we probably have about
5 9 departments.

6 Q. Okay. Now, is evidence handled differently
7 depending upon which department it goes to?

8 A. Yes, it is.

9 Q. Okay. Would you please explain that to the jury?

10 A. Uh -- We have biological evidence which we package
11 in a heat-sealed pouch. Uh -- Weapons, we package in gun
12 boxes. And then clothing, we package in boxes.

13 And anything like a GSR Kit, or
14 latent lifts, we will package in an envelop.

15 Q. Okay. And how about -- uh -- if you received a
16 cartridge -- unfired cartridge?

17 A. We'll --

18 Q. How would that be packaged?

19 A. We'll either place it in the gun box, or separately
20 in an envelop.

21 Q. Okay. So that would not be packaged in some sort
22 of heat-sealed package?

23 A. It can be. But normal procedures, we will package
24 it in an envelop or the gun box.

25 Q. Okay. And why is that, Ms. Stephens?

1 A. It's just our policies and procedures to do so.

2 Q. Okay. Now are you familiar with the lab number I
3 just read you?

4 A. Yes, I am.

5 Q. Okay. And did you take into -- any evidence on
6 that lab number?

7 A. Yes, I did.

8 Q. Okay. Could you tell the jury what evidence you
9 took in regarding that lab number?

10 A. I received -- uh -- SLED Item Number 3, which was a
11 black cap; and SLED Item Number 4, which was described as
12 a white cap; SLED Item Number 5, which is a handgun
13 described as a High Point .380 with clip, serial number
14 P849033; SLED Item Number 6, which is the unfired
15 cartridge -- an unfired .380 caliber bullet; and SLED
16 Item Number 7, which was a buccal swab from Mario Tynes.

17 Q. Okay. Now specifically as to the buccal swab and
18 the gun and the unfired cartridge, how was the buccal
19 swab handled once it got to SLED?

20 A. Once I would have received it, I would have placed
21 it in a heat-seal pouch.

22 I would have sealed it; have the
23 submitting officer initial and date on the heat-seal, as
24 well as sign and date the front of the heat-sealed pouch.

25 I would have then placed a label

1 on the heat-sealed pouch and transferred that evidence to
2 our DNA refrigerator in our evidence room.

3 Q. Okay. Now why is it put in a heat-sealed pack --
4 packet?

5 Is there anything specific about
6 that packet?

7 A. It's our policies and procedures to do so.

8 Q. Okay. Now and is the label -- Is it labeled on the
9 outside?

10 A. We have a yellow sticker that has the lab number and
11 the item or container number located on that label.
12 That's how we identify it.

13 Q. Okay. And that's how everybody in SLED would
14 identify it?

15 A. Correct.

16 Q. Okay. Now, as to the gun and the unfired
17 cartridge, how would that handled?

18 A. The gun and the cartridge were placed in a gun box -
19 - in the same gun box, and packaged together.

20 Q. Okay. So that was not in any sort of heat-sealed
21 package?

22 A. No.

23 Q. Okay. And not put in any sort of refrigerator or
24 anything like that?

25 A. No.

1 Q. Okay. It was just put in a box?

2 A. Correct.

3 Q. Okay. Do you recognize this, Ms. Stephens?

4 A. I recognize our lab number, which is L0715254,
5 container B, which is located on the gun box.

6 Q. Okay. So that's how you would identify that that
7 was what was taken from Horry County?

8 A. Correct.

9 Q. Okay. And is that the box that the unfired
10 cartridge and the gun was placed into?

11 A. That is correct.

12 Q. Okay. Thank you, Ms. Stephens. Now, as to the
13 swab regarding -- I'm sorry.

14 I didn't ask you -- You took in
15 two hats as well?

16 A. Yes, I did.

17 Q. How were they packaged, Ms. Stephens?

18 A. I believe I packed them in a box. Let me refer to
19 my notes.

20 Actually, I packed them in a heat-
21 sealed pouch also.

22 Q. Okay. So when they come in from Horry County,
23 there are already in some sort of package. Is that
24 correct?

25 A.. That's correct.

1 Q. Okay. And then you repackage it according to
2 SLED's policy?

3 A. That's correct.

4 Q. And send it to the correct department?

5 A. That's correct.

6 Q. Okay. And after you heat-sealed Mario Tynes' swab,
7 was there an identification number on that swab?

8 A. Yes. We would have put the lab number located on
9 the sticker on the outside of the heat-sealed pouch.

10 Q. And what lab number was put on that heat-sealed
11 package?

12 A. L0715254.

13 Q. Okay. And after you did that, where did you
14 transfer that swab?

15 A. I transferred it to our DNA refrigerator, which is
16 located in our evidence room.

17 Q. Okay. And between the time you repackaged it and
18 put that label number and it went to the refrigerator, at
19 any time, did you tamper with, or change the quality of
20 that swab -- of that buccal swab?

21 A. No, I did not.

22 MS. LIVESAY:

23 Okay. No further questions of
24 this witness, Your Honor

25 MR. MONCKTON:

1 No questions, Your Honor.

2 THE COURT:

3 Mr. Wilson?

4 MR. WILSON:

5 I think I just have a couple of
6 questions.

7 CROSS-EXAMINATION BY MR. WILSON:

8 Q. Ma'am, at SLED, you have all these procedures in
9 place for what purpose?

10 A. To make sure that the integrity of the evidence is
11 kept.

12 Q. And -- But if the evidence is compromised or
13 tempered with before it comes to you, you wouldn't know
14 that; would you?

15 A. No, we would not.

16 MR. WILSON:

17 All right. I don't have any
18 other questions.

19 MS. LIVESAY:

20 No further questions, Your Honor.

21 And I'd like to ask Ms. Stephens be excused.

22 MR. MONCKTON:

23 No objection.

24 MR. WILSON:

25 No objection.

1 THE COURT:

2 All right; without objection,
3 she's excused.

4 Ms. Stephens you're released from
5 your subpoena.

6 WITNESS:

7 Thank you.

8 MS. LIVESAY:

9 Thank Your Honor.

10 At this time the State calls Dan
11 DeFreese to the stand. . .

12 WHEREUPON: DAN DEFREESE WAS DULY
13 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 Will you please state your full
17 name; and spell your last name?

18 WITNESS:

19 My name is Frank Dan DeFreese; And
20 it's capital D-e-Capital F-r-e-e-s-e.

21 DIRECT EXAMINATION BY MS. LIVESAY:

22 Q. Good afternoon, Mr. DeFreese. Could you tell the
23 jury where you're currently employed?

24 A. I work for the South Carolina Law Enforcement
25 Division in Colombia. But I'm assigned to the laboratory

1 division. And I work in the Firearm and Toolmark
2 Department.

3 Q. Okay. And how long have you worked for SLED?

4 A. For 43 years.

5 Q. And what kind of training have you undergone at
6 SLED?

7 A. All right. After my employment, I was assigned to
8 the Firearms Laboratory. And I began a -- a course of
9 instruction that lasted about three years in the
10 techniques of firearm and toolmark identification.

11 My principal instructor was a
12 gentleman named Millard Cate, who established the SLED
13 laboratory when SLED, itself, was established in 1947.

14 I also trained under a Lieutenant
15 Carl Stokes --

16 MR. WILSON:

17 Your Honor, I don't have -- I
18 don't have any objections to his qualifications.

19 In fact, I will stipulate to his
20 qualifications as an expert in the field of firearms and
21 toolmark identification.

22 THE COURT:

23 How about it, Mr. Monckton?

24 MR. MONCKTON:

25 I would agree, as well, Your

1 Honor.

2 THE COURT:

3 All right. He's admitted as an
4 expert in the field of firearms identification and
5 toolmarks.

6 MS. LIVESAY:

7 Just so the jury will know, Your
8 Honor.

9 DIRECT EXAMINATION BY MS. LIVESAY:

10 Q. How many cases have you testified in as an expert,
11 Mr. DeFreese?

12 A. I don't know exactly. I estimate between 600 and
13 700 cases.

14 Q. Okay. And that is as a firearms identification
15 expert?

16 A. Yes.

17 Q. Okay. Now, tell the jury what your
18 responsibilities are at SLED regarding your firearms
19 identification expertise?

20 A. Principally, we are asked to determine if fired
21 ammunition components were fired by a particular gun;
22 that is:

23 To identify a bullet back to the
24 gun barrel in which it was fired, or to identify a fired
25 cartridge case, or a fired shotgun shell, back to the gun

1 in which it was fired.

2 But we also do other analysis
3 having to do with safety and function -- uh -- some
4 trajectory of trajectory studies; and occasionally, the
5 identification of an unfired cartridge based on marks
6 that the gun leaves on the cartridge that's loaded into
7 it.

8 Q. Okay. So you are basically trying to match a
9 bullet or unfired cartridge to a particular gun?

10 A. Yes.

11 Q. Okay. And you have been able to do this
12 successfully umpteen times?

13 A. Many times.

14 Q. Okay. Uh -- Now, are you familiar with lab number
15 0715254, Mr. DeFreese?

16 A. Yes.

17 Q. Okay. Did you receive evidence from Horry County
18 on that lab number?

19 A. I did.

20 Q. And what evidence did you receive from us?

21 A. I received a High Point model CF .380 -- .380 RO
22 caliber pistol.

23 And I received an unfired .380
24 auto-caliber cartridge.

25 Q. Okay. And upon receiving that evidence, what did

1 you do next?

2 A. Well, I received the evidence in a sealed container,
3 which was still sealed at the time I got it.

4 I opened the container.

5 And I inspected the items to see
6 if the container actually had what it was said to
7 contain. And it did.

8 After that, I collected certain
9 information about the -- the -- the pistol and about the
10 cartridge; and documented that.

11 I left my markings on the pistol.

12 And I left my markings on the
13 cartridge..

14 I test-fired the pistol and
15 obtained test-fired -- uh -- bullets and cartridge cases
16 to enter in the computer.

17 And after that, I performed a
18 series of tests, wherein I loaded cartridges in the gun
19 to obtain cartridges that I knew had simply been loaded
20 into the gun without being fired. And I removed them.

21 Those were what I used to make a
22 side-by-side microscopic comparison with the unfired
23 cartridge that was submitted.

24 Q. Okay. Now, Mr. DeFreese, I'm going to show you
25 this gun.

1 Is this the gun that you received
2 that you did the analysis on?

3 A. Yes, it is.

4 Q. And I saw you looking -- looking at -- looking at
5 the gun Mr. DeFreese.

6 Is there some sort of
7 identification on that gun that allows you to identify
8 that as the gun?

9 A. Well, I -- I inspected both it's serial number
10 plate, which has the correct serial number on it; but I
11 also found the engravings which I had placed on -- uh --
12 the barrel, the frame, and the slide of the pistol prior
13 to my test firing it.

14 Q. Okay. So without a doubt, you know that that is
15 the gun that you ran the analysis on?

16 A. That's correct.

17 Q. Okay; thank you. Now, do you recognize this bullet,
18 Mr. DeFreese?

19 A. Yes I do.

20 Q. Okay. And how are you able to identify that
21 bullet?

22 A. It also -- uh -- bears the case number, its Item
23 Number, and my initials.

24 Q. Okay. So without a doubt this is the bullet that
25 you ran the analysis on?

1 A. It is.

2 Q. Okay. Now, tell the jury what the results of your
3 testing was?

4 A. The results were that:

5 The markings which I made on test
6 cartridges that I loaded into and ejected from that gun
7 matched striated markings that I found on the unfired
8 cartridge.

9 Uh -- From those matching striated
10 markings, I was able to conclude that that cartridge had
11 been loaded into that pistol at some prior time.

12 Q. Okay. Well, let me ask you this:

13 Is it normal for you to run a test
14 on a unfired cartridge; or is that unusual?

15 A. It's unusual in that we have so many cases submitted
16 that we don't normally inspect and analyze unfired
17 ammunition; because it usually is not probative.

18 In this case, there was a specific
19 request to see if -- if I could determine whether that
20 cartridge had been ejected from that gun.

21 Q. Uh-huh.

22 A. And in this case, I -- I could conclude it had been
23 loaded into the gun based on the markings on the side of
24 the cartridge case.

25 Q. Okay. Now, the marks on the cartridge -- the ones

1 that you found on that bullet -- would you say there was
2 anything in particular about those markings on that
3 bullet?

4 A. Well, the -- the markings were -- were really a
5 large area of unique markings that were on the -- the
6 side of the cartridge case portion of the cartridge just
7 below the case neck.

8 They were consistent with having
9 been placed there by the chamber or the loading ramp of
10 the gun during the process of the cartridges being moved
11 from the magazine into the chamber during the -- the
12 process of loading.

13 Uh -- But they were a -- a large
14 and unique area.

15 Q. Okay.

16 A. Uh -- More than sufficient to -- to make my
17 identification.

18 Q. Now, let me ask you this:

19 In your expert opinion, could this
20 bullet -- could the markings be placed by any gun that
21 was the same model as this gun?

22 Or are those markings particular
23 to this particular gun?

24 A. No; those markings are unique to that particular
25 pistol.

1 Q. Okay. So if it still was a different pistol; the
2 same type model, make, everything, would it make the same
3 markings as the ones that that pistol made?

4 A. No.

5 Q. Okay. Now, let me ask you some questions about the
6 bullet.

7 If that bullet had been in
8 somebody's pocket, or handled prior to when you received
9 it at SLED, would that have affected the markings on that
10 bullet?

11 A. Not to any degree. Uh -- The handling alone would
12 not have obliterated the markings that I used to base my
13 identification on.

14 If someone had taken and abraded
15 the cartridge, or rubbed -- you know -- some tool against
16 it, to -- to eradicate those markings, of course it
17 would.

18 But mere handling would not.

19 Uh -- Normal handling would not
20 affect it.

21 Q. Okay. Now when you ran the test on this gun and
22 this bullet, what you're telling us is:

23 When you ran the tests using
24 different bullets of the same caliber, that same marking
25 was made over and over by this particular gun that

1 matched the bullet that was sent to you by Horry County?

2 A. Yes. I -- I actually ran several series of test.

3 Q. Okay.

4 A. And -- uh -- in the -- in the initial series, I just
5 loaded one cartridge in the magazine and loaded it.

6 I loaded it several times.

7 Later, I loaded the magazine full,
8 except for one, and put my test-cartridge in the top of
9 the magazine; and found this left much, much, better
10 markings on the -- the cartridge.

11 Uh -- And then, I -- I repeated
12 the tests, using a magazine that I supplied --

13 Q. Uh-huh.

14 A. -- to make sure that the magazine was not really
15 what was leaving the marks.

16 And even in the magazine I
17 supplied, I still found the same -- uh -- toolmarks
18 present on my tests, as I found on the -- the unfired
19 cartridge submitted.

20 Q. Okay. So in your expert opinion, which you've
21 testified to -- you said over 600 times -- this bullet
22 belongs to that gun?

23 A. That cartridge --

24 Q. That --

25 A. -- was loaded into that gun at some prior time.

1 Q. Okay. And in your expert opinion,, holding that
2 bullet, or having it in your pocket, or handing it to
3 somebody else, would not change anything about the
4 markings that you were looking at for your identification
5 purposes?

6 A. Correct. Normal handling would not affect those
7 marks.

8 Q. Uh -- Let me ask you this, They miss you this Mr.
9 DeFreese:

10 How are guns registered in South
11 Carolina? Or are they registered in South Carolina?

12 A. There is no firearms registration in South Carolina.

13 Q. Okay.

14 A. There is a -- a Federal Form that one fills out and
15 executes at the time of -- of the original retail
16 purchase, or subsequent retail purchase for that matter.

17 If you buy it from a gun dealer,
18 there's a form to be filled out.

19 Q. Okay. But there is no registration from one buy to
20 the next?

21 A. Not in -- or from personal -- From person-to-person
22 sales, there's no requirement for any registration of a
23 firearm.

24 Q. Okay. So if we ran and tried to find out who that
25 gun is registered to, what you're telling me is:

1 That wouldn't be an accurate
2 depiction to show really who owned the gun?

3 MR. WILSON:

4 I object. I objection to the form
5 of --

6 THE COURT:

7 That's leading. Rephrase your
8 question.

9 MS. LIVESAY:

10 Thank Your Honor.

11 THE COURT:

12 Is that your objection, Mr.
13 Wilson?

14 MR. WILSON:

15 Yes sir.

16 DIRECT EXAMINATION BY MS. LIVESAY:

17 Q. As to registration, would it be possible for me to
18 be able to accurately find out who the owner of that gun
19 was through South Carolina registration?

20 A. Through the federal registration, you could find out
21 who the first retail purchaser was.

22 It could be traced from the
23 manufacturer through the distributor to the dealer that
24 sold it the first time.

25 Q. And that would be as far as that registration would

1 go?

2 A. Ordinarily, yes.

3 Q. Okay. And that is for the federal registration?

4 A. Right. That's not actually a registration. It's
5 just a record of the sale.

6 Q. Okay. So there is not even a per se registration
7 of a gun?

8 A. No.

9 Q. Okay. Just a record of the first sale?

10 A. Right. It would take you to the first sale --

11 Q. Okay. And --

12 A. -- only.

13 Q. Okay. And South Carolina has no per se
14 registration of the gun in South Carolina?

15 A. No. Records are -- have been kept by the State of
16 pistol sales for some years now.

17 Q. Okay. So all we really have is that first sale of
18 the gun from the store?

19 A. Correct.

20 MS. LIVESAY:

21 No further questions, Your Honor.

22 THE COURT:

23 Mr. Monckton?

24 MR. MONCKTON:

25 May it please The Court, Your

1 Honor?

2 CROSS-EXAMINATION BY MR. MONCKTON:

3 Q. To follow up with that, Mr. DeFreese -- Is it
4 DeFreese?

5 A. DeFreese.

6 Q. DeFreese. I just wanted to make sure I pronounced
7 that correctly. Uh -- The serial numbers on this gun,
8 were they obliterated?

9 A. No.

10 Q. Okay. And you routinely -- I'm sure working with
11 SLED -- work with ATF; Is that correct?

12 A. Yeah. From time to time; yes.

13 Q. And ATF could very easily track this weapon to the
14 original purchaser?

15 A. To the first retail purchaser; yes.

16 Q. And that would be either through a distributor,
17 through a -- a Federal Buyer Arms License an FFL?

18 A. Yeah. The -- The first federal -- Well, it goes
19 from manufacture through distributor to the first retail
20 dealer.

21 Q. Right.

22 A. Uh -- They can trace it that far.

23 Q. And they can trace -- And through that dealer, that
24 dealer can trace it to the first sale?

25 A. Right. The dealer would have a record of the first

1 person that bought it.

2 Q. So, if you had been asked to, you could have got
3 with ATF and found out who was the first person to
4 purchase this weapon?

5 A. I don't ordinarily; but I could have, yes.

6 Q. You could have. That's right. But you were not
7 asked to do that?

8 A. That's correct.

9 Q. Okay. Now with regard to the .380 caliber bullet
10 you were asked to examine -- or cartridge?

11 A. Cartridge.

12 Q. Uh -- I've got to get that correct.

13 Were you asked to send that to
14 anybody else at SLED for fingerprinting or DNA; or were
15 you the only person that got to work with that cartridge?

16 A. To my knowledge, yeah. It -- It may have gone
17 someone else before I got it.

18 But my knowledge, I'm the only one
19 that -- that analyzed anything about it.

20 Q. Okay. But there is no doubt in your mind we could
21 find the first purchaser of this handgun?

22 A. The first retail purchaser; there should be a record
23 of it; yes.

24 MR. MONCKTON:

25 Thank you, sir. No further

1 questions.

2 THE COURT:

3 Mr. Wilson.

4 MR. WILSON:

5 Just a couple of questions.

6 CROSS-EXAMINATION BY MR. WILSON:

7 Q. You -- You indicated -- uh -- Agent DeFreese, that
8 you thought that -- that you could only trace the first
9 purchaser -- retail purchaser?

10 A. The -- The federal records requirement more or less
11 ends at the first retail purchaser.

12 If the gun, for instance, went
13 back to a retail dealer and was sold again at a retail
14 dealer, then that retail dealer would have to have a
15 record after that point.

16 Q. Okay. So if I purchase that gun, and then I pawned
17 it later on. And then, someone else purchased it from
18 the pawn shop, there would be a record of that particular
19 sale also; would there not?

20 A. Yes, there would. If you could --

21 Q. Because when -- go ahead.

22 A. If you could make the connection between the first
23 retail purchaser to know to look at a particular pawn
24 shop to find that record; that pawn shop should have that
25 record.

1 Q. And if we don't check with the first purchaser, then
2 we don't know where we're going. And we don't know who
3 the first person was and what they've done with the gun;
4 or if it was pawned, or given away, or -- or if they
5 still think that they have it; or if they have it?

6 A. Well -- And sometimes you may not even know if you
7 do check with them.

8 But yeah, you -- you would need to
9 check with the first purchaser to see what -- what --

10 Q. Why would you not know, if you check with them
11 whether they still have it or --

12 A. Because they -- they may not know. You know, they
13 -- they may not know what the -- where the gun is
14 themselves.

15 They may have lost it or misplaced
16 it; or -- you know -- they may have had it stolen from
17 them.

18 Q. Okay.

19 A. You -- You don't know until you check.

20 Q. Okay. You don't know until you check?

21 A. Correct.

22 MR. WILSON:

23 All right. No other questions.

24 THE COURT:

25 Counsel.

1 MS. LIVESAY:

2 No further questions, Your Honor.

3 And we'd like to ask that Mr. DeFreese be excused.

4 THE COURT:

5 What about it, Mr. Monckton?

6 MR. MONCKTON:

7 No objection, Your Honor.

8 THE COURT:

9 Mr. Wilson?

10 MR. WILSON:

11 No objection, Your Honor.

12 THE COURT:

13 You're excused --

14 WITNESS:

15 Thank you.

16 THE COURT:

17 -- and released from your -- uh --

18 subpoena, Mr. DeFreese.

19 Okay. That was the witness you

20 were trying to reach, I believe.

21 MS. LIVESAY:

22 I -- I think we have one more

23 witness, Your Honor, that would be a quick witness --

24 THE COURT:

25 Okay.

1 MS. LIVESAY:

2 -- if we could finish up with that
3 one.

4 THE COURT:

5 Thank you, Mr. DeFreese.

6 MS. LIVESAY:

7 Your Honor, at this time, the
8 State calls Nikki Perry to the stand.

9 THE COURT:

10 Ms. Perry.

11 WHEREUPON: NIKKI PERRY WAS DULY

12 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

13 CLERK:

14 Thank you. Please be seated.

15 Will you please state your full
16 name and spell your last name.

17 WITNESS:

18 Nikki Perry; P-e-r-r-y..

19 CROSS-EXAMINATION BY MS. LIVELY:

20 Q. Ms. Perry, where do you work?

21 A. I'm currently employed with the South Carolina Law
22 Enforcement Division, commonly known as SLED.

23 Q. And what are your duties there?

24 A. I'm in the Evidence Controlled Department. I'm a
25 Forensic Technician.

1 Q. And -- uh -- in regard to being a Forensic
2 Technician, what are your specific duties?

3 A. In Evidence Control, we log-in and package evidence
4 brought into the lab for forensic analysis.

5 Q. Is your job similar to Amy Stephens, who just
6 testified?

7 A. Yes ma'am. We do the exact same thing.

8 Q. Okay. Well, then, we'll skip over all that.

9 Uh -- Will you tell me whether or
10 not you're familiar with the case involving SLED Number
11 1712 -- 15254?

12 A. Yes ma'am.

13 Q. Okay. And did you have an opportunity to come into
14 contact with some items that were to be -- uh -- analyzed
15 at and SLED under that lab number?

16 A. I did.

17 Q. Okay. Will you please tell this jury what items
18 you received in your duties as a Forensic Technician?

19 A. Well, according to my chain of custody -- If I may
20 refer to my chain of custody?

21 THE COURT:

22 Certainly.

23 CROSS-EXAMINATION BY MS. LIVELY:

24 Q. That's fine.

25 A. Uh -- I logged in Item Number 1, according to our

1 chain of custody, as swabs from gun.

2 Q. Does it have the particular kind of gun that that
3 was.

4 A. Uh -- Later -- uh -- Katie Coy of forensic sciences
5 and DNA, she itemized those into sub items that says --
6 uh -- they're all of Ruger, a 9 millimeter.

7 Q. Okay. So Item 1 is --

8 A. Well, when he came into me -- uh -- the -- per the
9 log-in sheet, which is what I go by, it just says swabs
10 from gun.

11 Q. Okay. Uh -- So "swabs from gun," that is listed as
12 Item 1.

13 A. Item -- SLED Item Number 1; yes ma'am.

14 Q. Okay. And that is later -- uh -- specified as the
15 Ruger gun?

16 A. Yes ma'am. It appears to be.

17 Q. Okay. And then what's the next thing that you --
18 uh -- that you packaged?

19 A. I also logged in -- uh -- on the first admission on
20 October 18th of '07, Item Number 2, which is described as
21 a buccal swab from Sean Barrett.

22 Q. Okay. So that's Item 2. And a buccal swab is just
23 an oral swab; correct?

24 A. Right. They -- They take swabs from the inside
25 cheeks of someone's mouth.

1 Q. Okay. What is the next item?

2 A. Are you -- Are you referring to just what I logged
3 in, or all items that I came in contact with?

4 Q. I'm referring to what actually came to you to
5 repackage under the lab number L0715254 to be then sent
6 for further analysis.

7 A. Okay. Uh -- I also logged in Item Number 10, which
8 is described as oral swabs from Michael Lackey.

9 Q. Okay.

10 A. And Item Number 11, described as oral swabs from
11 Joshua Readon.

12 Q. Okay. Now, when ever you say "logged in," what
13 does that mean?

14 A. Uh -- Submitting officers coming in to the lab; they
15 come into evidence control, and they -- uh -- bring in
16 the evidence that's going to be submitted for forensic
17 analysis.

18 They provide my department with a
19 SLED Forensic Services -- uh -- Request Form.

20 And on that form, it has all of
21 the case information.

22 Also -- uh -- it describes the
23 evidence that is going to be submitted to the lab.

24 Uh -- We work on a steady
25 contained basis. I type in -- uh -- I login to the

1 computer all of that information.

2 Uh -- At that point, our computer
3 generates a unique number and an item number for that
4 particular case. Uh -- Prints out a yellow barcode
5 label. And we place that on the evidence.

6 And that is used to track it
7 throughout the lab.

8 Uh -- Also, what we do is
9 repackage.

10 If the evidence comes in like the
11 oral swabs, we would place those into -- uh -- a heat
12 sealed pouch, where we will fill it; and we will have the
13 submitting officer -- uh -- place their initial and date
14 on the seal; and sign and date the front of the bag.

15 Q. Okay. And was that procedure the procedure that
16 was followed for Item 2, the oral swab from -- uh -- Sean
17 Barrett?

18 A. Yes ma'am.

19 Q. Okay. Did you manipulate, change it, or
20 contaminate it in any way whenever you received that from
21 -- uh -- the Horry County person that brought to you?

22 A. No ma'am; I did not.

23 Q. Okay. And how about Item 1, the swabs from the
24 gun, which was the Ruger?

25 Will you please tell me how you --

1 uh -- kept the integrity of that particular item?

2 A. Uh -- We do the same procedure for the swabs from
3 the gun.

4 Uh -- They come in sealed.

5 We will place them inside a SLED
6 heat sealed pouch; fill that; have the submitting officer
7 initial and date on the seal and sign the -- sign and
8 date the front of the bag of that as well.

9 Q. Okay. And that procedure, as you stated, was what
10 was done with the swabs from the Ruger?

11 A. Yes ma'am.

12 Q. Okay. Once you actually did your particular
13 protocol, would you tell us who those items were
14 transferred to?

15 A. After I -- uh -- completed the login process, I
16 transferred those items to Katie Coy, which is a DNA
17 Analyst in our DNA Department.

18 Q. Okay. And once they're transferred to Katie Coy,
19 who was the forensic scientist, I believe, for DNA; what
20 if anything else did you have to do with -- uh -- those
21 particular items?

22 A. I didn't have anything else to do with them after
23 that.

24 MS. LIVELY:

25 Thank you. Answer any questions --

1 THE COURT:

2 Mr. Monckton?

3 MS. LIVELY:

4 -- Defense may have for you.

5 MR. MONCKTON:

6 No questions, Your Honor.

7 THE COURT:

8 Mr. Wilson?

9 MR. WILSON:

10 I have no questions.

11 THE COURT:

12 All right. You may step down,

13 Ms. Perry.

14 Uh -- May Ms. Perry be excused?

15 MS. LIVESAY:

16 Thank Your Honor.

17 MR. MONCKTON:

18 Yes, sir, Your Honor.

19 MR. WILSON:

20 No objection.

21 THE COURT:

22 All right. You're excused.

23 WITNESS:

24 Thank you.

25 THE COURT:

1 Okay.

2 MS. LIVESAY:

3 Your Honor, these are all of the
4 out-of-town witnesses that we had that we needed to get
5 in tonight.

6 Obviously, it's up to your
7 discretion as to when you want us to break.

8 THE COURT:

9 Okay. Well, I want you to break
10 right now.

11 (Laughter erupts in the
12 courtroom.)

13 THE COURT:

14 I know this jury is ready to go
15 home.

16 I'm sorry we kept you over for
17 little bit. But we did have witnesses who had other
18 court appointments -- uh -- tomorrow in another --
19 another county. So -- uh -- we needed to get those taken
20 care of.

21 But we did make a lot of progress.
22 And I appreciate your attention and patience with us.

23 Now Mr. Roth is going to take you
24 back and let you leave.

25 I want you to be back at 9:30.

1 And Ms.. Todd, do you want -- do
2 you want ham biscuits or do you want doughnuts in the
3 morning?

4 (Laughter erupts in the
5 courtroom.)

6 FOREPERSON TODD:

7 We'll do doughnuts in the morning?

8 THE COURT:

9 Pardon?

10 FOREPERSON TODD:

11 We'll do doughnuts.

12 THE COURT:

13 Doughnuts. All right, Mr. Roth.
14 You make sure that they have fresh doughnuts back there
15 to go with their coffee in the morning; okay..

16 BAILIFF:

17 Yes sir.

18 THE COURT:

19 We'll see you about 9:30 -- uh --
20 and get started as soon as we can.

21 (WHEREUPON: The jury empanelled
22 in the case withdrew from the courtroom at 5:44 PM, May
23 18, 2010; and was no longer present during the following
24 proceedings.)

25 THE COURT:

1 All right. Ladies, gentlemen;
2 anything I can do for you tonight before we adjourn?

3 Mr. Monckton?

4 MR. MONCKTON:

5 No sir, Your Honor.

6 THE COURT:

7 Mr. Wilson?

8 MR. WILSON:

9 No sir, Your Honor.

10 MS. LIVELY:

11 Not from the State, Your Honor.

12 THE COURT:

13 Ms. Livesay, Ms. Lively?

14 MS. LIVESAY:

15 Not from the State.

16 THE COURT:

17 Okay. I'll see you all back here
18 in the morning. Please be here promptly at 9:30.

19 (WHEREUPON: The court was
20 declared in recess at 5:44 PM, May 18, 2010.)

21 (WHEREUPON: The court was called
22 to order by the Bailiff at 9:34 AM, May 19, 2010; and all
23 pertinent parties, along with their counsel, were back
24 and present in the courtroom.)

25 DEPUTY:

1 Order in the court. All Rise.

2 THE COURT:

3 Good morning, everyone. Good
4 morning. It's good to see you. Please be seated.

5 Where's my court reporter?

6 COURT REPORTER:

7 Right here.

8 THE COURT:

9 Come around here, Ashley.

10 Let's kind of -- Bobby -- or --
11 how about find me another chair for Ms. Ashley up here.

12 I'm going to have my interns
13 sitting up with me so they can learn something.

14 When Mr. -- uh -- Mr. Wilson and I
15 started, it was the school of hard knocks; wasn't it?

16 MR. WILSON:

17 That's exactly right, Your Honor.

18

19 Okay. Let's -- uh -- get a jury.

20 All right. If you would, bring them in.

21 (WHEREUPON: The jury empanelled
22 in the case was escorted back into the courtroom at 9:38
23 AM, May 19, 2010; and was in fact present during the
24 following proceedings.)

25 THE COURT:

1 Good morning, Ms. Todd.

2 Did -- uh -- Mr. Roth have
3 everything -- uh -- for your jury this morning?

4 Were you comfortable and you had
5 something --

6 FOREPERSON TODD:

7 He did a good job.

8 THE COURT:

9 Good. Good. Good. He'll take
10 care of you.

11 You know,, yesterday I failed to
12 introduce some folks to you. You may look up here and
13 think that I've got an entourage with me.

14 This young lady right here by me
15 is Ms. Claire Hall. Claire's my -- my law clerk. And
16 she assists me in -- in the trial of cases.

17 She's a great help to me. And the
18 Legislature provides a law clerk for me.

19 And these two young ladies sitting
20 back here behind me are second year law students.

21 They have finished their second
22 year. And this is Ms. Ashley Quinn and Ms. Heather
23 Moore.

24 Heather's actually working as an
25 intern; working free for the Public Defender -- uh --

1 this summer.

2 And -- uh -- And Ashley's trying
3 to figure out what she wants to do.

4 But I'm always happy to have -- uh
5 -- young lawyers or potential lawyers in the courtroom
6 with me.

7 And I make a practice of bringing
8 it up. Because occasionally they want to ask me why I
9 did something, or didn't do it, during a trial.

10 And that's a whole lot better than
11 asking somebody out in the audience why I did or didn't
12 do something.

13 So just bear with us.

14 And you'll probably see them in
15 and out. And you may see other people also this week.

16 But that's who those folks are.

17 Okay. Are we ready to proceed,

18 Ms. Livesay and Ms. Lively?

19 MS. LIVESAY:

20 Yes, Your Honor.

21 MS. LIVELY:

22 Yes, Your Honor. We are.

23 THE COURT:

24 Okay. Who's going to start out?

25 MS. LIVELY:

1 I will, Your Honor.

2 THE COURT:

3 All right. Thank you.

4 MS. LIVELY:

5 May it please the court?

6 The state calls Craig Collins to
7 the stand.

8 WHEREUPON: CRAIG COLLINS WAS DULY
9 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

10 CLERK:

11 Thank you. Please be seated.

12 Will you please state your full
13 name and spell your last name.

14 WITNESS:

15 Craig Everett Collins; C-o-l-l-i-
16 n-s.

17 DIRECT EXAMINATION BY MS. LIVELY:

18 Q. Craig, where do you live?

19 A. Uh -- I live in [REDACTED] right now.

20 Q. And where is that?

21 A. It's off of [REDACTED].

22 Q. Okay. And -- uh -- how old are you?

23 A. I'm 21 years old.

24 Q. Are you a student? Do you work? What do you do?

25 A. I'm a student at Coastal Carolina.

1 Q. All right. So you're still at Coastal Carolina?

2 A. Yes ma'am.

3 Q. What's your major?

4 A. Uh -- Sociality.

5 Q. All right. Now -- uh -- Mr. Collins, do you Mario
6 Tynes, the Defendant?

7 A. Yes.

8 Q. And have you ever met the Defendant, Michael Lackey?

9 A. Yeah. I met him one time...

10 Q. Okay. Now, Mr. Collins, will you tell this jury
11 where you were living in October of 2007?

12 A. I was living in -- uh -- the University Place,
13 campus housing.

14 Q. Campus housing. All right. And -- uh -- tell this
15 jury how you knew Mario Tynes.

16 A. Uh -- I knew Mario from my freshman year. roommate
17 and him were friends. And he introduced me to Mario
18 And Mario was a drug dealer. And
19 I used to buy marijuana from him.

20 Q. Okay. And how often would you buy marijuana from
21 Mr. Tynes?

22 A. Uh -- About -- About twice a week.

23 Q. Okay. So, you use marijuana as well?

24 A. Yes ma'am.

25 Q. Okay. Now, for how long did you actually know the

1 Defendant Tynes.

2 A. Uh -- Probably about a year.

3 Q. Uh -- Did you know him in any other capacity other
4 than buying drugs from him?

5 A. No ma'am.

6 Q. Okay. Now Mr. Collins, in October of 2007 -- uh --
7 are you familiar with why we are here and the incident ==
8 the incident that took place?

9 A. Yes.

10 Q. Will you tell this jury some -- uh -- if you have
11 any information prior to that incident as to what was
12 going to occur on October 13th, 2007?

13 A. Well, on October 13th -- uh -- early in the day, I
14 saw Mario at school. And -- uh -- he'd talked about
15 buying marijuana from Sean.

16 So I told them that Sean had --
17 had picked up; and had enough -- he had enough to sell.

18 And -- uh -- whenever Mario wanted
19 to buy it, he could.

20 Q. Okay. Well, let me just back up for a minute
21 there.

22 Had you lost contact with Mario
23 during the fall of 2007?

24 A. Yes ma'am. Uh -- I stopped buying marijuana from
25 Mario because I was buying it from Sean instead.

1 Because it was better and a little
2 bit cheaper.

3 Q. Okay. And what is Sean's last name? Do you
4 recall?

5 A. I don't know Sean's last name.

6 Q. Okay. That's fine. Do you know where he lived?

7 A. Yes, he lived in [REDACTED].

8 Q. In [REDACTED] Do you know what the name of the
9 apartment complex was?

10 A. No I don't.

11 Q. You don't recall? Have you ever been to his
12 apartment?

13 A. Yeah, on a couple of occasions.

14 Q. Okay. And whenever you would buy from Sean -- uh --
15 were you with anyone else?

16 A. Yeah. I always had to go with -- uh -- a friend of
17 mine, Justin.

18 Q. And why is that?

19 A. Well, Justin is the one who knew Sean.

20 Q. Okay. So Justin was your contact to Sean?

21 A. Yes ma'am.

22 Q. So you -- you had testified that you went into -- uh
23 -- Sean's apartment.

24 A. Yes. I went in a couple of times.

25 Q. Were you ever in Sean's room?

1 A. Yes.

2 Q. Were you familiar with the layout of that apartment?

3 A. Yes.

4 Q. So, how did you reconnect with Mario before that
5 incident in October of 2007.

6 Tell the jury what happened?

7 A. Well -- uh -- I asked Mario and them -- They -- They
8 kind of counted on my money.

9 And -- uh -- since I hadn't been
10 buying from them for awhile, they -- Mario just kind of
11 called me and asked -- you know -- what was up; where I'd
12 been.

13 And -- uh -- I told him I was
14 buying -- buying marijuana from Sean -- someone
15 different.

16 Q. Okay. And -- uh -- did you have any other
17 conversations regarding -- uh -- him -- Mario possibly
18 purchasing from Sean before the October 13th event?

19 A. Yes. Uh -- They had given me money. And I had
20 bought like small quantities from Sean to give to them.

21 Q. Okay. When you say, who are you referring to?
22 Mario and whom else?

23 A. Mario and his roommate -- uh -- Eric. Mostly just
24 Eric Brown.

25 Q. Eric Brown. Now after you bought just a little bit

1 for Eric Brown and the Defendant Tynes -- uh -- what
2 occurred after that?

3 A. Uh -- Well, they really like it; because it was
4 better.

5 And -- uh -- they started asking
6 about buying enough for them to sell.

7 Q. Okay. Uh -- Was there ever an occasion where you
8 discussed purchasing that for Mario through Sean?

9 A. Yes. Uh -- Yeah. They'd asked about it. And I
10 told him I'd talk to Justin and Sean; and that it -- it
11 should work out.

12 Q. Okay. Was there any prior plans made about
13 purchasing marijuana from Sean that you knew about before
14 October 13th, 2007?

15 A. Uh -- Nothing was like -- Nothing was definite; but
16 I knew they definitely wanted to buy some.

17 Q. Okay. And whenever they -- Were you ever in
18 Mario's room and discussed the -- uh -- buying of the
19 drugs from Sean?

20 A. Yes.

21 Q. Okay. And prior to October 13th, 2007, were you
22 ever in there -- Mario and --

23 MR. MONCKTON:

24 Your Honor, I'm just going to
25 object to the leading.

1 MS. LIVELY:

2 Okay.

3 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

4 Q. Uh -- How many times prior to October 13th, 2007,
5 where you Eric Brown and Mario's apartment to discuss the
6 purchase of drugs?

7 A. Uh -- Well, we used to hang out sometimes that I'd
8 buy weed or I'd buy weed for them. We'd smoke it
9 together sometimes; and just talk and hang out.

10 Q. Uh -- So you did talk -- and hang out with them --
11 about buying drugs?

12 A. Yes, occasionally.

13 Q. Okay. Uh -- When you were in Mario's room, was
14 there anything that he ever showed you that gave you
15 concern?

16 A. Yes. One time Mario showed me a pistol that he had
17 under his bed.

18 Q. Okay. What did he tell you about that pistol?

19 A. Uh -- Well, Mario and Eric, they always bragged
20 about being like gangsters and you know they did whatever
21 they wanted.

22 And -- uh -- you know -- he showed
23 me his gun, and -- and just told me that's -- you know --
24 how they -- how they did things.

25 Q. Okay. Did he ever -- When he showed to the gun,

1 did he ever use a gun in reference to Sean?

2 A. Uh -- Yes. He asked -- uh -- He kind of asked if
3 Sean had any heart -- you know -- if he was a tough kid;
4 or if he would just kind of fold over if he saw -- you
5 know -- something like a gun or something like this.

6 And he -- And he showed me his
7 pistol.

8 Q. So he asked you if Sean would fold if he saw
9 something like this -- this pistol?

10 A. Yes ma'am.

11 Q. How long before the incident October 13th, 2007, was
12 it that you had that conversation with Mario,
13 approximately?

14 A. Uh -- Probably a little over a week.

15 Q. Was that the last time you discussed -- uh -- buying
16 the drugs from Sean on behalf of Mario?

17 A. No. We ended up -- When it got closer to October
18 13th -- uh -- they told me they definitely wanted to; and
19 they just had to -- had to get their money together and
20 make sure they had enough.

21 But it was nothing about robbing
22 them or anything. It was purely about buying it.

23 Q. Purely about buying it. Okay. Now tell this jury
24 what happened on October 113th.

25 What conversation you had with --

1 uh -- Mario at that time?

2 A. Well, the first conversation was at school when I
3 told him that Sean had picked up marijuana; and -- uh --
4 he was -- you know -- he had enough he could sell.

5 And Mario told me he -- he wanted
6 to buy some. And -- uh -- later that --

7 Q. Was this buy going to be any different than any
8 other?

9 A. Beside -- Beside the fact that it was more, it
10 should have been exactly the same.

11 Q. Okay. All right. I'm sorry. Go ahead.

12 A. Uh -- After I talked to him like he continued the
13 rest of the day. Told me he had a football game that
14 night. It was homecoming.

15 And -- uh -- after homecoming --
16 October 13th is my girlfriend's birthday. So we were
17 supposed to go out and like do something.

18 But Mario called me first and was
19 like very insistent about -- uh -- about buying the
20 marijuana that night.

21 And I -- I told him -- I was like:

22 It's my girlfriend's birthday. I
23 want to hang out with her. You know, why can't we just
24 do it tomorrow?

25 And he just wouldn't take that for

1 an answer.

2 He just kept pushing and pushing
3 and pushing, until finally I said:

4 All right, let's just do it real
5 fast and it will be over with.

6 Q. Okay. So what did you do after that conversation
7 with Mario Tynes?

8 A. I walked from my apartment -- uh -- in UP to Mario's
9 apartment.

10 Q. Okay. So it's walking distance?

11 A. Yes ma'am. It was right next to -- like right next
12 to each other.

13 Q. Okay. When you got to Mario's apartment, tell this
14 jury who all was there?

15 A. Uh -- There was Mario and his roommates -- uh --
16 Ricky and Eric. And -- uh -- I think it was Eric's
17 little cousin Tory (phonetic) and his -- his two friends
18 from Atlanta.

19 Q. Okay. Could you tell this jury who one of those
20 two friends from Atlanta was?

21 A. Uh -- I think one boy -- one boy's name was Josh and
22 the other boy's name was Lackey.

23 Q. Michael Lackey?

24 A. Yes; I think so.

25 Q. Now, when you got to Mario and Eric and Ricky's

1 apartment, tell this jury exactly what was said by Mario
2 to you?

3 A. Well, when I first walked in, it was just like a
4 completely different atmosphere.

5 Usually they have a -- the TV on
6 and music playing or something. And it was like -- it
7 was dead silent. And everyone was just kind of like
8 sitting around.

9 And -- uh -- when I got there,
10 Mario pulled me into his room. And he just kind of
11 rattled off a check list.

12 He was like, you know:

13 Sean has marijuana; right. Okay.

14 Got it.

15 And he said.

16 Uh -- Sean went -- you know --

17 Sean's -- uh -- His bedroom's on the top floor at

18 [REDACTED] right?

19 I said:

20 Yeah. He's on the top -- you know

21 -- top level.

22 He was like:

23 The last time you were there, you
24 saw it all under his bed; right?

25 I said: Yeah.

1 And -- uh -- then he gave Tory the
2 money. Because Tory was in the money with me.

3 And he just told us --- you know:

4 Go pickup drugs and do everything
5 exactly how you would do, and -- uh -- you know, I'll --
6 I'll handle everything else.

7 Q. When you heard that, what did you think was
8 happening?

9 A. Uh -- I had a pretty good idea they we're going to
10 rob him. It clicked right then and there.

11 Q. And why?

12 A. Well, like I said, just -- just when I had been
13 there, the place was -- was different.

14 I'd never seen Mario act that way.

15 Like -- uh -- he was just --- he
16 was just a completely different person.

17 He was -- you know -- telling
18 people what to do.

19 Uh -- Everyone was just on edge.

20 And -- uh -- just the way he said
21 it. It -- It couldn't have been anything else.

22 I was pretty sure.

23 Q. Why didn't you leave at that time?

24 A. Well, since I was the only person who kind of knew
25 about it besides them, and I was the only person who

1 could set them up with Justin and Sean -- I don't know --
2 I was just kind of afraid just to leave and -- uh -- and
3 go home.

4 I live in the building over.

5 They knew exactly where I lived.

6 I knew they had guns.

7 I don't know. I just kind of like
8 froze up and just -- just did what I was told.

9 Q. On that evening, did you actually see any of the
10 guns?

11 A. No. Not -- Not that night.

12 Q. How were they dressed, do you recall?

13 Q. Uh -- Mario and Eric were still in their football
14 clothes -- uh -- like a warm-up.

15 But -- uh -- his friends from
16 Atlanta were in black sweatshirts and -- and hats.

17 Q. Earlier in your testimony, you said that you met
18 Michael Lackey once.

19 Is that the one time that you're
20 talking about?

21 A. Yes ma'am, on that night.

22 Q. Okay. What was he wearing that night?

23 A. Uh -- He was wearing a black sweatshirt and -- and a
24 hat.

25 Q. So, based on what you've told and what you saw that

1 night, was everybody there involved in this plan?

2 A. Yes.

3 Q. Would this plan have been able to take place without
4 your involvement?

5 A. Uh -- No. Because they -- they wouldn't have had a
6 connection to Sean and know Justin to get the marijuana.

7 Q. Tell this jury what happened next after the plan was
8 laid out by Mario?

9 A. Uh -- Eric gave his cousin his keys to his car. And
10 -- uh -- And he handed -- I don't know who handed him the
11 money because they -- they weren't really directing it
12 toward me.

13 But -- uh -- someone handed it --
14 Tory the money and said something like -- you know:

15 Don't let those crackers touch my
16 money.

17 And that's -- that's when I knew
18 they we're going to rob us -- or rob them.

19 And -- uh -- right -- you know --
20 after that, we got in the car. And we drove to pick up
21 Justin.

22 And then after we had Justin in
23 the car, we drove to [REDACTED]

24 Q. I'm going to stop you there because I want -- I want
25 you to be clear on something; okay.

1 Who was in the vehicle with you?

2 A. It was me, Tory, and Justin.

3 Q. And Justin; okay. And Justin's your connection to
4 Sean?

5 A. Yes; Justin was one of my friends.

6 Q. Uh -- Did you tell Justin what was happening, other
7 than buying the drugs?

8 A. No.

9 Q. Did you see who got in -- uh -- the other vehicle?

10 A. No I didn't.

11 Q. All right. At any time, did you see any vehicle
12 following you and Tory and Justin?

13 A. Yes. When we got to Justin's apartment, we had to
14 park and wait for him to come out.

15 And I saw Ricky's -- Ricky's car
16 circle the -- uh -- the parking lot.

17 Q. And what does Ricky's car look like?

18 A. It's -- uh -- an old kind of like big-body Ford.

19 It's an old white car with -- uh -- North Carolina tags
20 on it.

21 Q. And you saw that when you were picking up Justin?

22 A. Yes.

23 Q. After you picked up Justin, tell this jury what
24 happened next?

25 A. After we picked up Justin, we drove to [REDACTED]

1 And once we got to [REDACTED] -- uh
2 -- we backed into the parking spot. And -- uh -- Justin
3 told Tory he needed the money.

4 And -- uh -- me and Tory weren't
5 allowed to go inside.

6 And Tory was kind of upset about
7 that because he didn't want to give Justin the money
8 without seeing what he was getting in return.

9 So -- uh -- they kind of had an
10 argument in the car. And so, he reassured Tory.

11 And then once that happened,
12 Justin went inside the house.

13 And maybe 15 minutes later, I got
14 a call from him. And he was -- he was freaking out. He
15 was upset.

16 He said some black guys came in
17 and -- you know -- they both had -- they both had guns
18 and -- uh --

19 MR. MONCKTON:

20 Objection to the hearsay, Your
21 Honor.

22 THE COURT:

23 I'll sustain that objection.

24 MS. LIVELY:

25 Yes sir. Uh --

1 THE COURT:

2 Please disregard the answer and
3 the question.

4 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

5 Q. You can't tell me exactly what Justin said. He'll
6 testify later, okay.

7 A. Okay.

8 Q. All right. Just tell me what you observed. So
9 after that call from Justin, what happened next?

10 A. Well, I told Justin to come outside so we could
11 leave. But he -- He didn't want to come back out.

12 So -- uh -- me and Tory left.

13 And -- uh -- Tory dropped me back
14 off at my house, and said, you know:

15 If you ever see me again, you
16 don't know me.

17 MR. MONCKTON:

18 Objection, Your Honor.

19 MS. LIVELY:

20 Okay. You can't tell what --

21 THE COURT:

22 Sustained.

23 MS. LIVELY:

24 -- Tory said; all right.

25 THE COURT:

1 Again, ladies and gentlemen,
2 that's hearsay. Do not consider it in your deliberations
3 in any way.

4 MS. LIVELY:

5 That's fine.

6 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

7 Q. Uh -- After -- After Tory was gone, what did you do?

8 A. I just went back into my apartment and stayed in.

9 Q. When was the next time, if ever, that you heard from
10 Defendant Tynes?

11 A. I seen -- I saw Mario a couple of days later. And
12 -- uh -- he was with his family. They were packing up
13 his apartment.

14 He told me he got kicked out of
15 school and he lost his scholarship and he had to go back
16 home.

17 Q. Did you know at that time -- uh -- what he had been
18 arrested for?

19 A. Well, when we were leaving [REDACTED] I saw Ricky's
20 car pulled over by policemen. And the boys had their
21 hands on the car.

22 So I -- I assumed that they had
23 been arrested for the marijuana.

24 Q. Okay. Well, lets back up to that. I meant to ask
25 you:

1 Uh -- That evening, you mentioned
2 seeing Ricky's car pulling into -- uh -- where you were
3 picking up Justin from?

4 When was the next time, if ever,
5 that you saw Ricky's vehicle?

6 A. Well, when we got to [REDACTED], like I said, we
7 backed into the parking spot so we could see the parking
8 lot and -- uh -- the flow of traffic.

9 And that's when I saw Ricky's car
10 like drive past us.

11 Q. So you did it drive past you?

12 A. Yes.

13 Q. Did you see who was in the vehicle?

14 A. I couldn't see exactly. It was -- It was like a
15 full car.

16 Q. Okay. And was it -- uh -- well lit in the
17 apartment complex; or not?

18 A. Uh -- Not in the parking lot. But by the houses,
19 they all had porch lights.

20 Q. Okay. Uh -- And who told the Defendant Tynes
21 exactly where the apartment was?

22 MR. MONCKTON:

23 Objection, Your Honor.

24 MS. LIVELY:

25 I'll --]

1 THE COURT:

2 Let me --

3 MS. LIVELY:

4 I'll rephrase it.

5 THE COURT:

6 Lay a little foundation --

7 MS. LIVELY:

8 Sure.

9 THE COURT:

10 -- on that; okay.

11 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

12 Q. Do you know how Defendant Tynes was able to find the
13 apartment that night?

14 A. Well, I told him that -- uh -- that Sean lived in
15 [REDACTED]

16 But I think they followed us from
17 campus -- Campus Edge.

18 Q. And you already testified that you told him the
19 layout; correct?

20 A. Yes ma'am.

21 Q. So after you saw the car in the parking lot at Flint
22 Lake Apartments, when was the next time you saw Ricky's
23 vehicle?

24 A. Uh -- After we saw them at Sean's apartment, the
25 next time I saw them was -- We were on 501. And from

1 5k01, you can see the BP gas station.

2 And we saw their car was pulled
3 over at the gas station.

4 Q. So what did you do?

5 A. We didn't -- We didn't do anything. We just kept
6 driving.

7 Q. And -- uh -- to bring back to where we had gotten
8 before, you said you saw the Defendant Tynes leaving
9 school a couple of days later?

10 A. Yes ma'am.

11 Q. Now let me back up for just a minute.

12 You -- You keep mentioning the two
13 guys from Atlanta.

14 Uh -- And was one of them the
15 Defendant Lackey?

16 A. Yes.

17 Q. Okay. And did you know anything about the
18 Defendant Lackey at all? Like, was he a student? Did he
19 have a job?

20 A. Uh -- No. I -- I don't -- I knew they wasn't
21 students. And I knew they were from out of town.

22 But besides that, that was it.

23 Q. That was it. But he was in the apartment with Mr.
24 Tynes?

25 A. Yes ma'am.

1 Q. Now, Mr. Collins, when did you report this matter to
2 the police, if ever?

3 A. Uh -- I never reported it. But -- uh -- I guess it
4 was almost a year later, one of my teachers -- uh -- Ken
5 Davis -- he's a police officer -- uh -- he asked me about
6 it -- and asked me questions about it.

7 And I basically told him the same
8 story.

9 Q. Now, at the time that you provided that statement,
10 where you represented by attorney?

11 A. No ma'am.

12 Q. Uh -- Were you read your Miranda rights?

13 A. Yes.

14 Q. And at that time, was there any type of an agreement
15 between you and Officer Davis to provide this statement?

16 A. No.

17 Q. So why did you provide the statement to Officer
18 Davis at that time?

19 A. Well, he -- he knew most of the story. And -- uh --
20 he said he just needed some help kind of filling in some
21 gaps.

22 And -- uh -- And he was a good
23 guy. He was my teacher.

24 So I just -- I just thought it was
25 the right thing to do.

1 Q. So almost a year later, you give the Statement?

2 A. Yes ma'am.

3 Q. And he -- Was he the first -- uh -- law-enforcement
4 individual you spoke to about it?

5 A. Yes, he was.

6 Q. Since that time, have you hired an attorney to
7 represent you?

8 A. Yes I have.

9 Q. Okay. And why is that?

10 A. Well since the, I was arrested and -- uh -- there
11 was charges placed against me.

12 Q. And -- uh -- what are those charges?

13 A. Armed robbery.

14 Q. For your involvement in this case?

15 A. Yes ma'am.

16 Q. Okay. And -- uh -- And based upon those charges,
17 have you -- What prompted you to be a witness for the
18 State, Mr. Collins?

19 A. Well -- uh -- in my original statement, after
20 talking to a lawyer, I -- I incriminated myself just by
21 what I said.

22 So just -- It was just the right
23 thing to do. And I didn't really have any other options
24 except to just come clean and tell everyone what
25 happened.

1 Q. Uh -- I'm going to show you a document, which is
2 IDed as State's Exhibit Number 24, and ask if you
3 recognize this document, and if you would please identify
4 it for me?

5 A. I don't -- I don't know what it is.

6 Q. All right. Let me flip it to the next page.

7 A. Oh. Yeah. It was -- It was something I signed to
8 cooperate with the State.

9 THE COURT:

10 All right. Ms. --

11 MS. LIVELY:

12 Okay.

13 THE COURT:

14 Ms. Livesay -- Lively, before we
15 go any further, Counsel, let me -- let me see it.

16 Is that a proffer? Is that a
17 proffer agreement.

18 MS. LIVELY:

19 Yes sir.

20 THE COURT:

21 All right.

22 (Whereupon: counsel for each party
23 conferred off the record with The Court at the bench at
24 10:02 AM, May 19, 2010.)

25 THE COURT:

1 Let's take this jury out, okay.

2 (WHEREUPON: The jury empanelled
3 in the case withdrew from the courtroom at 10:03 AM, May
4 19, 2010; and was no longer present during the following
5 proceedings.)

6 THE COURT:

7 All right.

8 All right. Now, I have raised
9 the issue -- uh -- of the polygraph requirement in the --
10 the proffer.

11 I did so because I'm not going to
12 permit the State to enter that proffer with that in it,
13 because I think it is an impermissive (sic) bolstering of
14 the witness.

15 Polygraphs are clearly not
16 admissible in this State and we don't recognize
17 reliability.

18 I'm not going to allow that.

19 Now, Mr. Wilson?

20 MR. WILSON:

21 Yes sir.

22 THE COURT:

23 Let me hear from you. You -- You
24 had an issue with that?

25 MR. WILSON:

1 Yes sir.

2 Well -- Well, first of all Judge,
3 I have no objection to it being admitted -- the entire
4 document being admitted.

5 THE COURT:

6 I have the problem though.

7 MR. WILSON:

8 Judge --

9 MS. LIVELY:

10 I'm not going to move into
11 evidence.

12 MR. WILSON:

13 Judge -- Let me -- My concern is
14 this:

15 The record is now -- The record
16 now contains the fact that there is a written agreement
17 between the State and this Defendant -- I mean -- or this
18 witness.

19 The terms of that agreement are
20 going to be an issue.

21 And one:

22 As to whether or not the State has
23 lived up to the terms of the agreement; whether the
24 witness witnesses has lived up to the terms of the
25 agreement.

1 Part of the agreement is, is that:
2 He has to be truthful.

3 And -- And if there are issues
4 about his truthfulness, then the State says that it can
5 elect to have him take a polygraph to determine whether
6 or not --

7 THE COURT:

8 Right.

9 MR. WILSON:

10 That's one of the key issues.

11 And -- And there are inconsistent
12 things that this witness has said.

13 And the State has not polygraphed
14 him.

15 Not only did they not polygraph
16 him, they've not polygraphed any of these witnesses; one
17 of whom has given 4 or 5 separate statements, all
18 different.

19 And -- And to -- And for us not to
20 be able to go into that with the -- with these witnesses,
21 when they are getting a bargain from the State, I think
22 puts us at a huge, huge, disadvantage, and really is
23 unfair to the Defendants. Because we can't effectively
24 cross-examine the witness without that.

25 THE COURT:

1 Well, I think that generally it is
2 unfair to the Defendant to have that poly -- polygraph --
3 uh -- clause in a proffer.

4 That's the reason I'm always very
5 careful about that.

6 I think it's an improper
7 bolstering.

8 Now what, Mr. Wilson, would be --
9 uh -- the affect of them asking your clients, if they
10 take the stand, if they have submitted to a polygraph?

11 I'm not just going to allow
12 anybody --

13 MR. WILSON:

14 Well -- Well --

15 THE COURT:

16 -- anybody to talk about
17 polygraphs.

18 MR. MONCKTON:

19 Judge -- and I -- I would join in
20 Mr. Wilson.

21 But basically what The Court is
22 doing is:

23 It's not allowing us to go through
24 the terms of his agreement to cooperate.

25 THE COURT:

1 I'll let you go through every term
2 in it.

3 The -- The -- The polygraph is
4 just collateral.

5 I -- I don't know whether he's
6 been polygraphed or not. But I'm not going to let
7 anybody talk about polygraphs in this -- this trial.

8 I'm just not going to do it.

9 Now, if you want to put the
10 document in yourself, I'll redact it. I'll take it out.

11 Uh -- Ms. Lively's shaking her
12 head.

13 Ms. Lively, I'll let them do it if
14 they want to.

15 But I'm going to redact the part
16 about polygraphs.

17 MR. MONCKTON:

18 But Judge, I guess, we need to be
19 able to proffer through him.

20 Then, would I would ask is:

21 After we're allowed to proffer --

22 THE COURT:

23 I'll let you proffer it.

24 MR. MONCKTON:

25 -- put it in; because I think

1 you're severely -- It's not the agreement they got.

2 And you're handcuffing us when
3 they make the agreement with him.

4 It is the entire agreement. It's
5 almost -- That's their contract with him.

6 And you are preventing us by
7 taking a material term out of the contract.

8 And we are not able to show the
9 jury the entire agreement.

10 Now it's a -- Now, I agree with
11 The Court that I can't go into what the results of any
12 polygraph exam are.

13 But I think I should be allowed to
14 at least ask the question:

15 Were you ever given or did you
16 ever take a polygraph?

17 All their witnesses' answer to
18 that is going to be: No.

19 None of them were given it.

20 None of them were asked to take
21 one.

22 I think if I go into the point
23 where I start asking about what results were; yeah, I
24 agree with The Court.

25 I cannot ask about results.

1 But I think I'm entitled, when
2 they make an agreement as part of his deal, that I be
3 allowed to go in and ask:

4 Is a critical, material, term of
5 the agreement that you take a polygraph, if they so
6 desire?

7 Well the answer to that issue is:

8 Yes, that is a material term of
9 this agreement.

10 MR. WILSON:

11 Judge, in addition to that, one of
12 the other things is, is that:

13 One of the -- the -- The whole
14 purpose of this proffer is to give the jury the
15 impression that this witness is going to tell the truth;
16 and that these witnesses are going to be truthful and
17 honest and forthright with this jury.

18 The problem is, is that:

19 On one -- Just to give you one
20 example:

21 They have one witness who's given
22 4 conflicting statements -- written conflicting
23 statements.

24 THE COURT:

25 Mr. Wilson --

1 MR. WILSON:

2 But -- But --

3 THE COURT:

4 -- can you point me to any -- any
5 authority in this State where The Courts have permitted
6 the -- the use of -- of testimony concerning the offer --
7 uh -- or failure to take a polygraph test?

8 MR. WILSON:

9 I'm not -- But we're not -- we're
10 not -- I'm not --

11 THE COURT:

12 Talk to me.

13 MR. WILSON:

14 -- we're not -- We're not asking
15 The Court to allow us -- because I'll agree with you.
16 We are not entitled to ask them --
17 you know -- whether or not they passed a polygraph.

18 I'm not trying to ask them that.

19 What I am trying to point out --
20 What I want to be able to point out to the jury is, is
21 that:

22 The State knows that their
23 witnesses were not telling the truth; and that they
24 violated -- the State violated the terms of their own
25 agreement --

1 THE COURT:

2 All right. Mr. Wilson --

3 MR. WILSON:

4 -- by allowing --

5 THE COURT:

6 -- the agreement puts the
7 Defendant on notice that he may be required as a part of
8 his agreement to take a polygraph.

9 It's not compulsory.

10 The State doesn't have to do it.

11 MR. WILSON:

12 That's true.

13 THE COURT:

14 The State just says:

15 If we feel like it, essentially;
16 if it doesn't match up; if we've got some issues; we've
17 got some conflicting witnesses, we're going to -- we can
18 require you to take a polygraph for whatever it's worth.

19 Obviously, that polygraph
20 examination is not admissible in any --

21 MR. WILSON:

22 But you're absolutely right,
23 Judge. You're -- I -- I agree with you 100 percent.
24 That -- That's exactly the point.

25 And that's exactly the point; that

1 -- that the State elects, knowing that these witnesses
2 are not telling the truth, they elect not to do it;
3 knowing that their --

4 THE COURT:

5 But what you're going to do is
6 then make the prosecution attorneys witnesses.

7 Because then they're going to have
8 to come back and take the stand and justify the reasons
9 why they didn't think that it was necessary in this case.

10 MR. WILSON:

11 But that's their fault.

12 They created this proffer; we
13 didn't.

14 The Defendants have their Sixth
15 Amendment right to confront these witnesses; and to
16 confront them with whatever the State has brought to our
17 attention.

18 This was a part of the discovery
19 we received -- these documents.

20 THE COURT:

21 Uh-huh.

22 MR. WILSON:

23 We have every right -- I would
24 submit to The Court, Your Honor, to -- to put the State
25 on trial, if the State didn't do what it was supposed to

1 do.

2 And the State is saying in this
3 agreement:

4 We're not going to use you if
5 you're not truthful.

6 THE COURT:

7 But the State did -- didn't -- was
8 not supposed to do that.

9 The State would didn't have to do
10 that.

11 Mr. Wilson, you and I both have
12 both had cooperating witnesses many times.

13 MR. WILSON:

14 Yes sir.

15 THE COURT:

16 And it is actually probably the
17 rarer situation where -- uh -- they are required to
18 submit to polygraphs.

19 And as a prior prosecutor, I'm
20 sure you did it many times as well; and didn't polygraph
21 them.

22 MR. WILSON:

23 Yes sir. But -- But Judge, the --
24 the -- I --

25 THE COURT:

2 MR. WILSON:

14 THE COURT:

20 | MR. WILSON:

22 THE COURT:

25 I'll make it even better for you.

1 If you determine -- If you can
2 find me some authority. Like you said, it's been used in
3 the federal system as long as I practiced --

4 MR. WILSON:

5 Yes sir.

6 THE COURT:

7 -- and long as you practiced.

8 You find me a federal authority
9 for it. You find me some authority that will convince me
10 that it is appropriate in this case.

11 I will keep this witness under --
12 under -- uh -- under -- uh -- uh -- subpoena. And I'll
13 let you recall him without doing jeopardy to the fact
14 that -- uh -- uh -- I don't know whether you plan to put
15 up a defense or not.

16 I will still let you preserve your
17 right to make the -- the -- the closing argument.

18 I will just resume his testimony.

19 MR. WILSON:

20 All right, sir.

21 THE COURT:

22 Okay. Is that fair enough?

23 MR. WILSON:

24 That's fair enough.

25 THE COURT:

1 All right.

2 MR. WILSON:

3 That's fair enough.

4 THE COURT:

5 Okay.

6 Now, under that scenario, I see no
7 reason to do a proffer at this time.

8 MR. WILSON:

9 Well, Judge, we still would want
10 to do the proffer for the record, you know.

11 Even if we can't find any
12 authority -- Even -- And I don't know if we can or not..

13 THE COURT:

14 Okay. All right. Why don't we
15 do this:

16 Why don't we do this proper.

17 I'm going to let you break right
18 now.

19 MR. WILSON:

20 Yes sir.

21 THE COURT:

22 Question him about that right now;
23 okay.

24 MR. WILSON:

25 All right, sir.

1 THE COURT:

2 So let's -- While the jury's out,
3 let's go ahead and get that on the record.

4 Fair enough?

5 Is that okay with you, Ms.

6 Livesay, Ms. Lively.

7 MS. LIVESAY:

8 Yes sir.

9 MS. LIVELY:

10 That's fine, Your Honor

11 THE COURT:

12 Okay. Let's go ahead and proffer
13 it. Who wants to do it; or both of you?

14 MR. WILSON:

15 I'll let Mr. Monckton do it.

16 VOIR DIRE EXAMINATION AS TO THE PROFFER ISSUE BY MR.

17 MONCKTON:

18 Q. Mr. Collins, I'm going to show you what's been marked
19 as --

20 THE COURT:

21 And I -- And I recognize, Mr.
22 Lively, that you were not through.

23 MS. LIVELY:

24 Yes sir.

25 THE COURT:

1 I'm going to let you -- I'm just
2 going to let him proffer on this issue so we can save
3 some time with the jury; okay?

4 VOIR DIRE EXAMINATION AS TO THE PROFFER ISSUE BY MR.

5 MONCKTON CONTINUED:

6 Q. Mr. Collins, I'm going to show you what's previously
7 been marked as State's Exhibit Number 24.

8 MR. MONCKTON:

9 And for purposes of this proffer,
10 Your Honor, I ask that it may be part of the record as a
11 Court's Exhibit.

12 THE COURT:

13 All right. It is a Court's
14 Exhibit. It is marked for identification at this time;
15 is that correct?

16 MS. LIVELY:

17 Yes.

18 THE COURT:

19 All right. We'll make it Court's

20 1.

21 VOIR DIRE EXAMINATION AS TO THE PROFFER ISSUE BY MR.

22 MONCKTON CONTINUED:

23 Q. Mr. Collins, I think you have already previously
24 identified that this is your signature?

25 A. Yeah; that's mine.

1 Q. All right. And you signed that -- What was the
2 date you signed that, Mr. Collins?

3 A. February 9th, 2010.

4 Q. And if you would -- Let me see that.

5 MS. LIVELY:

6 We had to send him two, Billy, if
7 I may interject, because we thought we had lost the first
8 one.

9 I'm using the one that he signed
10 first. And they're both exactly the same.

11 MR. MONCKTON:

12 Okay. Mine -- Mine's dated March
13 22nd.

14 MS. LIVELY:

15 Yeah. See -- If I may --

16 THE COURT:

17 All right. May -- Well, may we
18 stipulate, then, that both agreements are identical --

19 MS. LIVELY:

20 They are.

21 THE COURT:

22 -- if it's just a matter of -- uh
23 -- whether he had received the first one?

24 MS. LIVELY:

25 Exactly.

1 THE COURT:

2 Okay.

3 MS. LIVELY:

4 Thank you.

5 THE COURT:

6 Is that all right, Mr. Monckton?

7 MR. MONCKTON:

8 If you can just give me a second,
9 Judge, just to make sure.

10 THE COURT:

11 I'll give you an opportunity to
12 look at it.

13 VOIR DIRE EXAMINATION AS TO THE PROFFER ISSUE BY MR.

14 MONCKTON CONTINUED:

15 Q. Mr. Collins, if you would, please read aloud
16 Paragraph Number 2 for The Court.

17 A. Uh -- Craig Everett Collins shall submit himself to
18 agents of the State for the purpose of debriefing
19 regarding this matter and all other matters materially
20 bearing on this matter.

21 He shall be completely truthful
22 concerning his involvement in the matter, and completely
23 truthful concerning the involvement of all other
24 individuals in this matter.

25 He shall truthfully and completely

1 answer all questions posed by agents of the State bearing
2 maternally (sic) on this matter, and shall provide,
3 without prompting, all information concerning this matter
4 in a complete and truthful manner, even if such
5 information is not elicited by agents of the -- of the
6 State by direct question.

7 Any and all in --

8 Q. Go ahead

9 A. Any and all information provided by Craig Everett
10 Collins under the terms of this proffer may be recorded
11 in any fashion at the election of the State.

12 Q. Okay. Then I want you to read Paragraph Number 2
13 for me -- that one.

14 A. Craig Everett Collins shall submit himself to
15 polygraph examinations to verify all information provided
16 to the State at the election of the State.

17 The polygraph examiner shall be
18 selected by the State; and for the purpose of this
19 proffer are designated agents of the State.

20 Upon examination by polygraph, if
21 Craig Everett Collins response showed deception, the
22 terms of the proffer are null and void at the election of
23 the State.

24 Any statement made by Craig
25 Everett Collins may be used against him by the -- by the

1 State for any purpose.

2 Q. And you understood when you sign this agreement that
3 you may have to take a polygraph; didn't you?

4 A. Yes.

5 Q. And your attorney, which is a very good attorney,
6 Mr. Morgan Martin; is that right?

7 A. Yes.

8 Q. And y'all sat down. And y'all discussed this entire
9 proffer agreement before you signed it?

10 A. Yes.

11 Q. And you understood that the paragraph involving the
12 polygraph was a material term to this agreement?

13 A. Uh -- Yes.

14 Q. And that, in signing this agreement, you agreed to
15 take one, if offered?

16 A. Yes.

17 Q. And you understood if you failed it, that you could
18 have this proffer removed and any cooperation and help
19 taken away? Is that right?

20 A. That's right.

21 MR. MONCKTON:

22 One second, Your Honor.

23 Your Honor, that would be the
24 proffer that -- at this time -- that we'd --

25 THE COURT:

1 All right. Mr. Wilson, do you
2 have any questions?

3 MR. WILSON:

4 Nothing as far as --

5 THE COURT:

6 All right.

7 The ruling of The Court will
8 stand.

9
10 I'm going to order that that be
11 appended as a proffer to your cross-examination.

12 MR. WILSON:

13 Thank Your Honor.

14 THE COURT:

15 Okay. All right.

16 Get the jury back in, please;
17 okay.

18 MS. LIVELY:

19 Your Honor, I'd just like to make
20 sure this witnesses understands he's not to mention the
21 polygraph, even though it's been brought up in the
22 proffer.

23 THE COURT:

24 Yes. Mr. Collins --

25 MS. LIVELY:

1 Nothing about a polygraph.

2 THE COURT:

3 -- you -- I don't know if you
4 understand my ruling or not. But I have ruled that
5 that's not permissible; okay.

6 WITNESS:

7 Yes.

8 THE COURT:

9 All right.

10 MS. LIVELY:

11 And may I retrieve the document?

12 Is not in --

13 THE COURT:

14 Uh -- Yes. Oh, you got it.

15 WITNESS:

16 I have it.

17 THE COURT:

18 And I will let you -- I will let
19 you each cross-examine him fully on all other matters
20 contained in the proffer; okay.

21 MR. WILSON:

22 Yes sir.

23 MR. MONCKTON:

24 Your Honor, I don't know if I
25 stated this; but I join Mr. Wilson in --

1 THE COURT:

2 Very well.

3 MR. MONCKTON:

4 -- the proffer.

5 THE COURT:

6 It's noted.

7 Ms. Lively, Ms. -- uh -- Livesay,

8 I -- as I have ruled, I want to keep this witness under
9 subpoena; okay.

10 MS. LIVELY:

11 Yes sir.

12 THE COURT:

13 Okay.

14 (WHEREUPON: The jury empanelled
15 in the case was escorted back into the courtroom at 10:20
16 AM, May 19, 2010; and was in fact present during the
17 following proceedings.)

18 THE COURT:

19 All right.

20 Ms. Lively, you may continue with
21 your direct examination.

22 MS. LIVELY:

23 Thank Your Honor.

24 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

25 Q. Uh -- Now, Craig, I'm just going to back up a little

1 bit again.

2 Uh -- I don't remember where I
3 was.

4 THE COURT:

5 You were examining him about his
6 proffer, Ms. -- uh -- Lively?

7 MS. LIVELY:

8 That's correct.

9 DIRECT EXAMINATION BY MS. LIVELY CONTINUED:

10 Q. Uh -- You had already testified that you gave a
11 statement willingly about a year after this occurred;
12 correct?

13 A. Yes.

14 Q. Okay. And you also testified that you're
15 represented by an attorney now? Is that right?

16 A. Yes I am.

17 Q. Okay. And who is that attorney?

18 A. Uh -- Mr. Morgan Martin.

19 Q. Okay. Now -- uh -- I'm going to show you what's
20 been marked for I.D. purposes only as State's Exhibit
21 Number 24, and ask you if you recognize this document?

22 A. Yes, I do.

23 Q. All right. And if you'll look at the second page.
24 Is your signature on there?

25 A. Yes.

1 Q. Who (sic) other signature is on there?

2 A. Uh -- My attorney's.

3 Q. Your attorney's; okay.

4 Now what does this -- uh --
5 document, as you understand, require you to do in regards
6 to -- uh -- your involvement in this case?

7 A. Uh -- Well, the way I understood it, I was just --
8 just supposed to tell the truth about everything, you
9 know, regardless.

10 If you guys ask about it or
11 anything, just to tell the whole story -- what happened.

12 Q. Okay. Have you been promise any kind of deals or
13 leniency as a result of your testimony here today
14 pursuant to that proffer?

15 A. No. Nothing.

16 Q. Has anybody even winked at you that you're going to
17 get a deal?

18 A. No.

19 Q. And you -- And what are you charged with, again?

20 A. Uh -- Armed robbery.

21 Q. And what's the status of those charges, Mr. Collins?

22 A. I -- I think they're still -- they're still pending.

23 Q. Now -- uh -- Mr. Collins, after you gave that
24 proffer, have you done -- base upon your testimony here
25 today, have you complied with that proffer?

1 A. Yes ma'am.

2 Q. Have you told the truth here today?

3 A. Yes I have.

4 Q. And the statement that you gave to Officer Davis,
5 was that completely prompted by yourself?

6 A. Well, I mean, he came and got me out of class.

7 But everything I said was because
8 I wanted to.

9 Q. Right. Without an attorney present?

10 A. No, there was no attorney.

11 Q. When you gave that statement to Officer Davis, did
12 you implicate yourself in a crime?

13 A. Yes.

14 Q. And what did you tell them about your part in the
15 crime?

16 A. Well, I told him that:

17 It probably wouldn't have been
18 able to happen if I wasn't there to introduce Mario to
19 Sean and Justin.

20 Q. Is anything materially different from what you
21 testified here to today than what you said back in
22 February of '09; do you recall?

23 A. Well, I wasn't as detailed with Officer Davis at
24 first, because I -- I didn't want to get myself in
25 trouble, or -- uh -- Mario and those guys in maybe more

1 trouble than they were already in.

2 So I just tried to answer the
3 questions he had.

4 Q. Okay. So -- And why didn't you tell every little
5 detail at that time, other than wanting to help yourself
6 out?

7 A. Uh -- I mean, I was just kind of nervous, if -- I
8 don't know -- the case didn't go forward; and Mario and
9 those guys all heard that -- you know -- I was giving
10 statements to the cops or something, they would get angry
11 with me and retaliate or -- you know -- come to my
12 apartment or something.

13 Q. And why were you afraid of Mario Tynes?

14 A. Well, I knew he had a begun. And I -- I had seen
15 him kind of be violent before.

16 So I knew he was kind of capable
17 of it; so --

18 MS. LIVELY:

19 Okay. Thank you, Mr. Collins.

20 Please answer the questions --

21 THE COURT:

22 All right. Mr. Monckton --

23 MS. LIVELY:

24 -- the Defense has for you.

25 THE COURT:

1 -- will you go first?

2 MR. MONCKTON:

3 Yes, sir, Your Honor.

4 CROSS-EXAMINATION BY MR. MONCKTON:

5 Q. Mr. Collins, you -- uh -- just said something that
6 caught me off guard.

7 You said you'd seen Mario be
8 violent before?

9 A. Yes sir.

10 Q. Here's your statement. I'll give you time.

11 Look through it and tell me where
12 you told Mr. Davis that.

13 A. I never told Mr. Davis that.

14 Q. You never told Mr. Davis that?

15 A. No sir.

16 Q. That's kind of a big thing; isn't it?

17 A. Well, it had nothing to do with this. It was a
18 different occasion that -- completely different like
19 circumstance.

20 Q. Did you report that incident to the police?

21 A. No sir.

22 Q. Have you called Mr. Davis up to tell him anything
23 about it?

24 A. No sir.

25 Q. This is the first time you've mentioned anything

1 about it; isn't it?

2 A. No. I said something to the prosecutors before.

3 Q. You did. When did you tell the prosecutors
4 something?

5 A. Uh -- One time when I was speaking to them with my
6 attorney.

7 MR. MONCKTON:

8 Just -- Indulgence, Your Honor.

9 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

10 Q. Did you write that statement down?

11 A. No sir.

12 Q. Who did you tell that statement to?

13 A. Uh -- My attorney and the prosecutors when we were
14 talking.

15 Q. And it's not contained in here?

16 A. No; it had nothing to do with this.

17 Q. Well, you sure you don't have that confused with
18 Eric Brown?

19 A. Uh -- That was to both of them.

20 Q. Okay. I'm going to refer you to your statement,
21 Page 14.

22 THE COURT:

23 Provide a witness with a copy, if
24 you're --

25 MR. MONCKTON:

1 I am, Your Honor.

2 I just want to make sure I've got
3 it correct here, myself.

4 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

5 Q. Page 14, Line 261. I'm going to read the question
6 to you:

7 All right. So did anybody tell
8 you that they'd ever done anything like that before; or
9 they were that way; or: This is how I am; or: You need
10 to understand that this is what I do; anything like that?

11 Read your answer.

12 A. I mean, I have heard stuff about -- not Mario; but
13 actually had a friend who said that he didn't like Eric
14 for that specific reason.

15 Q. You just were asked a direct question by Kenny
16 Davis, the police officer, who asked you:

17 Have you ever heard anything about
18 that, about Mario.

19 And what was your answer, again?

20 A. No. But that wasn't what I was talking about.

21 Q. I'll read the question again.

22 Or we'll go down to the next
23 question:

24 What friend said that?

25 A. His name is Chris.

1 Q. Okay. And what happened to Chris?

2 A. Uh -- He had been robbed by -- uh -- Eric.

3 Q. Eric? Eric Brown?

4 A. Yes sir.

5 Q. Mario Tynes or Eric Brown.

6 A. He only said Eric.

7 Q. And then we'll go on down.

8 What did he say?

9 A. Uh -- He just said that he knew people who -- uh --
10 who don't mess with Eric, just 'cause he strikes being
11 kind of shady.

12 Q. No. Read it verbatim.

13 A. All right. He said that he knew people who like,
14 you know, whatever, don't mess with Eric just 'cause he's
15 -- you know -- he'll rob you and he strikes being shady.

16 Q. And the next question:

17 Did Erick ever tell you, himself,
18 that he was like that?

19 A. Eric Bragged about it. I mean, he didn't say like
20 he was shady or anything like that. Uh -- He just kind
21 of bragged.

22 Q. What did Eric say?

23 A. He said they were gangsters or dragoons (phonetic)
24 -- kind of like that -- you know -- notorious.

25 Q. He told you that?

1 A. Yes.

2 Q. And that was Eric Brown that told you that?

3 A. Yes.

4 Q. Not Mario Tynes?

5 A. No; not at that time.

6 Q. And in fact, you testified on direct examination
7 with Ms. Lively that you had only seen Mario Tynes a
8 couple of days after this incident when he was leaving
9 Coastal Carolina? Is that correct?

10 A. Yes.

11 Q. So, between October of 2007 and the day you gave
12 this statement to Mr. Kenny Davis, you had not seen Mario
13 Tynes, had you?

14 A. Besides that one time, no.

15 Q. Yet, when you gave your statement to Mr. Davis, you
16 never said anything about Mario being violent.

17 In fact, you said just the
18 opposite. Is that correct?

19 A. Well, the time that I was talking about with Mario
20 had nothing to do with what Mr. Davis was asking about.

21 So I never brought it up.

22 Q. Again, your answer was:

23 I mean, I had heard stuff about --
24 not on Mario -- and then you go on to talk about Eric
25 Brown..

1 You specifically kept information
2 out of your statement that Mario did anything wrong. Is
3 that correct?

4 A. Well, I seen Mario get into a fight at a nightclub.
5 That was -- So it had nothing to do with this situation.

6 Q. Well, you --

7 A. And like I said, when I talked to Mr. Davis, I never
8 wanted to get Mario or those guys in any more trouble
9 than they were already in.

10 Q. So -- But your statement on Oct -- on July of 2008
11 or 2009, when you gave your statement -- February 2009,
12 you don't make anything about a fight?

13 A. No.

14 Q. And you're now saying it was just a bar fight?

15 A. Uh -- I was waiting inside -- outside a nightclub.
16 And Mario and Eric got bounced out for fighting.

17 And they continued fighting the
18 guys in the parking lot.

19 Q. Okay. You didn't report that?

20 A. No.

21 Q. And you said Justin is your good friend?

22 A. He's a friend of mine; yes.

23 Q. A good friend?

24 A. Not a -- a good friend.

25 Q. Yet, you testify today that you are the middle man

1 in this robbery?

2 Is that correct?

3 A. Yes sir.

4 Q. All right. Let me ask you this:

5 Has Coastal Carolina taken any
6 action against you?

7 A. I had a judicial hearing, but they said I was
8 allowed to stay in school.

9 Q. They didn't suspend you for armed robbery?

10 A. No sir.

11 Q. How much marijuana had you been buying from Sean?

12 A. Uh -- Nothing -- Nothing too big.

13 My roommates and -- uh -- Justin
14 and I, we'd all kind of pool our money together so we
15 could get more for out money.

16 And then we'd split it up.

17 But, nothing like we were buying
18 that one night.

19 Q. Well, how much were you buying?

20 A. About an ounce, at the most.

21 Q. How many time would you buy from Sean, if you had to
22 guess?

23 A. Uh -- No more than like 10 times at the most.

24 Q. So getting close to almost three quarters of a pound
25 of marijuana? 10 ounces?

1 A. Oh, we didn't buy an ounce every time. Sometimes it
2 was only like a gram.

3 Q. How long had you been buying marijuana from Sean?

4 A. Maybe two weeks -- three weeks.

5 Q. Three weeks? What were his prices?

6 A. Well, it was Southern (phonetic) Marijuana, so it
7 was a little bit more expensive. But it -- it was worth
8 the extra money.

9 Q. Give us an example. How much would he sell an ounce
10 for?

11 A. Maybe like \$300.00.

12 Q. 300 an ounce?

13 A. Yes sir.

14 Q. Now you rode over there, it's my understanding, in a
15 -- a white Cadillac?

16 A. Yes.

17 Q. Whose Cadillac was that?

18 A. That was Eric Brown's Cadillac.

19 Q. Did You Drive?

20 A. No.

21 Q. Where did you ride?

22 A. In the passenger seat.

23 Q. Now -- And I think you testified on direct
24 examination also that you saw a white Ford LTD over
25 there, Ricky Johnson's car?

1 A. Yeah. We saw Ricky's car.

2 Q. Did -- But you did not see the participants in the
3 car?

4 A. Nah, I couldn't pick them out.

5 Q. Okay. And it's my understanding that you could not
6 -- you parked

7 Is that right?

8 A. Well, we backed in. So we couldn't see the
9 apartment complex.

10 Q. Did you -- You were not able to see who got out of
11 the white LTD, did you?

12 A. No, I never saw who got out of it.

13 Q. And you never saw who got back in it, did you?

14 A. No I didn't.

15 Q. And your only indication that something went wrong,
16 or that your plan had gone in effect, was when you got
17 the phone call from Justin?

18 A. Well Justin called me and told me they got robbed by
19 a bunch of black guys.

20 Q. Now, had Mario, to your knowledge, ever been to that
21 apartment before?

22 A. No.

23 Q. If they had never been there, how did they know
24 where to go?

25 A. I think they followed us.

1 Q. Okay. But you -- you did not go into the
2 apartment?

3 A. No I didn't.

4 Q. So you don't know how they got to the apartment?

5 A. I'm not sure. I'm -- I think -- I assume they
6 followed Justin in.

7 MR. MONCKTON:

8 All right.

9 No further questions at this time;
10 but subject to previous objection, Your Honor.

11 THE COURT:

12 All right.

13 CROSS-EXAMINATION BY MR. WILSON:

14 Q. Mr. Collins, you consider yourself a drug dealer?

15 A. No sir.

16 Q. No sir? And -- But, now you admit, you were the
17 one who went to Sean and got the dope and took it over to
18 these fellows?

19 You say Eric and Mario; right?

20 A. Yes sir.

21 Q. They didn't go get it. You went and got it. And
22 you tool it over to them.

23 So that makes you the delivery
24 boy; right?

25 A. (No response.)

1 Q. Right?

2 A. You asking me?

3 A. Yes sir.

4 A. Uh -- Well, I guess so.

5 Q. You guess?

6 A. I mean, it's not like I like worked for Sean or
7 anything.

8 Q. Well, you went over to Sean, who is your dope
9 dealer; right?

10 A. (No response.)

11 Q. Right?

12 A. Yes.

13 Q. And you got the dope. And then you say, you took it
14 back to campus to where these fellows were in there room.

15 They weren't with you when you
16 went to pick up the dope from Sean, were they?

17 A. No.

18 Q. And you went and got it. Then you come back over to
19 their room with the dope. And then y'all smoke it?

20 A. No. I was going there anyway for myself. And they
21 would give me money. And they wouldn't be allowed to go.

22 I would buy their marijuana for
23 them --

24 Q. Oh.

25 A. -- and then bring it back to them.

1 Q. So now -- So actually they paid you. They bought it
2 from you.

3 They gave you money. Then you got
4 the dope and gave it to them?

5 A. They didn't pay me. They paid Sean.

6 I never made any money off of it.

7 Q. So -- Well, now I thought you said earlier that they
8 couldn't go to Sean's house. And they couldn't meet with
9 Sean.

10 Only you could do that; you and
11 Justin?

12 A. I wasn't allowed to go by myself. I had to always
13 go with Justin.

14 Q. So you got money. And -- And you're saying that
15 doesn't make you a dope dealer; the fact that you take
16 money?

17 You go to a guy and buy drugs for
18 somebody and take them back and deliver them to them.
19 And that doesn't make your drug dealer?

20 A. I wasn't making any money off of it. I wasn't
21 getting marijuana to sell.

22 Q. And how -- how many other people did you go and buy
23 dope for from Sean?

24 A. No one; just me and my roommate and Mario and his
25 roommate.

1 Q. All right. So, how often did you and your roommate
2 buy dope from Sean, without Mario being involved, or
3 Eric?

4 A. Maybe once a week; occasionally.

5 Q. And now, during all these transactions, where you
6 buying all this dope and taking it back on campus, was
7 Michael Lackey ever over there when you were buying dope
8 and bringing it over there?

9 A. No. Michael Lackey was never there.

10 Q. In fact, until that -- and let me go -- let me go
11 back.

12 Now, you said earlier that you --
13 uh -- had known Mario and Eric for oh, about a year or
14 so?

15 A. I've known Mario for about a year.

16 Q. Okay. And -- And you thought Eric was a bad dude?

17 A. Yes.

18 Q. Okay. And you still think that Eric is a bad dude?

19 A. Uh -- I don't-- yeah, may be.

20 Q. Would he lie?

21 A. I don't know.

22 Q. Well, now he was your friend. Y'all were doing dope
23 together back-and-forth over there at the campus instead
24 of studying.

25 So, was he a bad guy or not?

1 A. Never did anything to me.

2 Q. Never did anything to you. But you told the police
3 that he was bad and that he -- that your friend told you
4 he was bad and he'd rob you.

5 A. He robbed my friend.

6 Q. Robbed your friend? But you don't think he's bad;
7 and he robbed your friend?

8 A. I said he never done anything to me.

9 Q. Did Michael Lackey rob your friend?

10 A. No.

11 Q. Oh? And how many times had you ever met Michael
12 Lackey?

13 A. I never met him. I only met him that one night.

14 Q. Met him that one night? And that one night when you
15 got there, he had a gun in his pocket?

16 Did you see a gun with Michael
17 Lackey?

18 A. I never saw that that night.

19 Q. Did you have a discussion with Michael Lackey about
20 robbing anybody?

21 A. I never talked to Michael.

22 Q. Never had a conversation with him?

23 A. No.

24 Q. But, now let's go back and talk about this robbery.

25 Now you had been going over to

1 Eric and Mario's apartment, according to you; right?

2 A. Yes.

3 Q. And weeks -- weeks before this alleged robbery
4 occurred, you had been discussing doing it?

5 In fact, you given them
6 information about how to get in the house; right?

7 A. No sir.

8 Q. You didn't tell them how -- where he kept the dope
9 upstairs in a room someplace?

10 A. Not in regards to robbing him. I was -- like I
11 said -- I had a good connection with -- with Sean.

12 And I was -- I was bragging to
13 him, like -- exactly what I said was -- you know:

14 Sean has more weed than I've ever
15 seen in my life. You know, he pulled up his mattress.
16 And there was just a -- there was a ton of it.

17 Q. Right.

18 A. It was never in terms of:

19 You guys should go stick him up.

20 Q. Well, you told the police, did you not, that at
21 least a week prior to this incident, that you saw the gun
22 in a duffel bag?

23 A. Yes.

24 Q. That you say Mario had?

25 A. Yes.

1 Q. And at that point, he was asking you:

2 Well, won't -- If I show him this,
3 is he going to be afraid of me; and is he going to just
4 give up the dope once that happens.

5 What did you think that meant?

6 A. Well, they had talked about that -- They always
7 bragged about sticking up people and robbing people --

8 Q. I understand. I'm asking you, though:

9 When he showed you a gun and told
10 you, according to you, that -- that -- ask you whether or
11 not your friend Sean was going to be afraid of that gun
12 and just give over the dope, what did you think that to
13 have to meant?

14 That they we're going to have a
15 picnic?

16 A. No. I thought they were just talking. I think they
17 were -- They're scholarship athletes. Why would they rob
18 someone.

19 You know, like I never even
20 fathomed that they would stick up Sean.

21 Q. And -- And there's one central truth in all this, is
22 there not?

23 Without you -- Without your
24 involvement -- Without the information that you provided;
25 none of this would have even been possible, would it?

1 A. Well, the only way that they would have met Justin
2 or Sean was through me; but the information that they
3 extracted from me was never in terms of robbing anyone.

4 Q. Well, now let's go back to that.

5 You told the police, did you not,
6 Officer Davis, that the night that you went over there,
7 you were certain that there was going to be a robbery?

8 A. Not until I got to Mario's house. Once I got inside
9 the apartment, and I saw the way everyone was acting and
10 behaving, and --

11 Q. Okay. Well --

12 A. -- after what Mario said to me, I was pretty sure.

13 Q. All right. So what -- Mario was acting strange or
14 whatever it was; but you knew.

15 You knew at that point, in your
16 mind, there was going to be a robbery; right?

17 A. Yes.

18 Q. But you didn't leave; right?

19 A. (No response.)

20 Q. You didn't leave. In fact, what you do then, is
21 call your buddy, Justin, and say:

22 Hey, look, we can make some money
23 here.

24 We got -- We got -- We can make
25 some money. We can -- We can get some dope here.

1 And you had \$1300.00 to buy it
2 with, didn't you?

3 A. No. It wasn't my money at all.

4 Q. Well, you were in the car with the \$1300.00 to buy
5 the dope?

6 A. I never touched the money. They gave it to Tory and
7 told me -- told him specifically to:

8 Never let any of the crackers
9 touch the money.

10 Q. Who was driving the car?

11 A. Tory.

12 Q. And whose car was it?

13 A. Eric's.

14 Q. And who -- Where were you seated?

15 A. In the passenger seat.

16 Q. All right. And who was giving directions to get to
17 the apartment?

18 A. I was.

19 Q. That's right. And you knew Tory had the money?

20 A. Well, Justin was giving directions too.

21 Q. You knew Tory had the money to buy the dope; didn't
22 you?

23 A. Yes.

24 Q. And in fact, when y'all got there, Tory didn't even
25 want to do it.

1 He didn't even want to get the
2 money. He didn't want to do nothing.

3 And you and Justin talked him into
4 it, and got the money from him; didn't you?

5 A. No; he wanted to go inside. And we convinced him
6 that he couldn't.

7 Q. But whatever happened; no question about the fact:

8 Y'all got the money from Tory?

9 A. Yes.

10 Q. The \$1300.00?

11 A. He gave Justin the money; yes.

12 Q. And that's when the problem started, isn't it?

13 When y'all got the money and went
14 inside the house with the money -- because the money was
15 never supposed to leave Tory's hands.

16 That was the deal when y'all left
17 the house; wasn't it?

18 A. It was never said to me.

19 Q. Well, what -- Didn't you just say that they told you
20 that Tory was to always keep the money; it was never to
21 leave his hands.

22 A. He didn't say it to me. I overheard him saying it.

23 Q. Okay. But my point is:

24 You understood that was the deal;
25 right?

1 A. Yes.

2 Q. Okay. And -- But, when y'all got there, y'all knew
3 to change the deal for whatever reason?

4 And you and Justin decided that it
5 wasn't going to work that way now.

6 So Justin wanted to take the money
7 was go inside to make the deal without Tory; right?

8 A. Right. Tory wasn't allowed in.

9 Q. And that was when -- And Tory got upset about it;
10 did he not?

11 A. Yes.

12 Q. Okay. And -- And -- And now, we're y'all having
13 phone conversations back and forth with the people in the
14 other car?

15 A. No.

16 Q. Okay. So they didn't know what y'all were doing;
17 right?

18 A. No; I don't think so.

19 Q. Okay. Now when -- The night when you went over to
20 the -- to the house -- when you went over to the house to
21 -- well, to the apartment -- and you say it's Mario's
22 apartment?

23 And -- And Mario had some
24 roommates; right.

25 A. Yes.

1 Q. All right. And you get over to the apartment. And
2 y'all -- And they start having these conversations.

3 And this is your girlfriend's
4 birthday.

5 And it's homecoming weekend;
6 right?

7 A. Yes.

8 Q. And in spite of that -- in spite of that, Mario, you
9 say, called you and said:

10 Hey, look, let's go get a dope
11 deal going.

12 And you're going to leave your
13 girlfriend; right?

14 A. (No response.)

15 Q. But you're not a dope dealer. But you're going to
16 leave your girlfriend on her birthday; because this is
17 what?

18 11:00 o'clock at night? 11:30?
19 12:00 o'clock?

20 A. I don't think it was that late; but --

21 Q. Well, what time? It was after the football game;
22 right?

23 A. Yeah. But the football game started in the
24 afternoon.

25 Q. Okay. So what time of night was it that y'all were

1 going over to do the deal?

2 A. I mean, it was three years ago. I don't know the
3 exact time.

4 Q. Well, it was dark; right?

5 A. Yes.

6 Q. All right. And it was a night. And you got a
7 call to come over and:

8 Let's go buy this dope.

9 And in spite of the fact it's your
10 girlfriend's birthday as you testified earlier, and in
11 spite of the fact that it's homecoming weekend, and
12 family and friends have come down for the -- for the
13 game, you rather chose to be with these fellows, you say;
14 and go and buy the dope.

15 A. No. I told Mario that I didn't want to do it that
16 night and we could do it the next day or at any other
17 time because Sean has plenty of it.

18 Q. Well, he --

19 A. He wouldn't -- He didn't -- He didn't take that for
20 an answer. He --

21 Q. He didn't take that for an answer? He didn't take
22 that for an answer.

23 So it's all his fault, because he
24 didn't take it for answer so it's his fault?

25 He should have just taken that for

1 an answer.

2 He drew a gun on you?

3 A. No.

4 Q. He threaten you?

5 A. No.

6 Q. He beat you up?

7 A. No.

8 Q. No. You did it because it's what you wanted to do;
9 because that what you do.

10 You are a drug dealer; right?

11 A. No.

12 Q. No. Now let's -- let's talk about this.

13 You -- For how long -- And the
14 Solicitor asked you:

15 Oh, well, you are charged now with
16 armed robbery; aren't you?

17 A. Yes.

18 Q. Yeah. Well, when did they charge you?

19 How many years after this incident
20 was it before they decided:

21 Oh, well, we might need to charge
22 him with armed robbery too?

23 How many years?

24 A. Two years later.

25 Q. Two years later. Just before time for this trial.

1 You think that might have anything
2 to do with the fact that you're testifying up here today?

3 A. I don't know, sir.

4 Q. Ummm. Two years.

5 And they knew about you for two
6 years. And they didn't indict you. They didn't charge
7 you.

8 But, lo and behold, the trial gets
9 here, and you get charged.

10 A. Well, Officer Davis said he charged me because I was
11 in contact with him up until I went home.

12 And then he said he couldn't get
13 in contact with me, so they put a warrant out.

14 Q. You were in his class. You were in the class of
15 this particular officer at the time the crime occurred,
16 were you not?

17 A. No. I was in his class afterwards.

18 Q. Okay. Well, afterwards. How many -- How -- How
19 long after?

20 A. It was a semester after.

21 Q. Semester after? You were in his class for a whole
22 semester. You never breathed a word to him about it.

23 A. No sir.

24 Q. And you knew -- You said that:

25 Well, old big bad Mario, here, he

1 wasn't even at school anymore. He had gotten kicked out
2 of school; right?

3 A. Yes.

4 Q. So he couldn't hurt you.

5 A. (No response.)

6 Q. Eric Brown had gotten kicked out of school. He
7 couldn't hurt you. He wasn't there anymore either; was
8 he?

9 A. No.

10 Q. You still didn't tell anybody?

11 A. (No response.)

12 Q. And you got the deal of the century, didn't you?

13 A. (No response.)

14 Q. You got your proffer; right?

15 A. (No response.)

16 Q. Right?

17 A. Uh -- Yes.

18 Q. Yeah. Yeah. You got your proffer.

19 And you don't expect to go to
20 jail, do you?

21 A. I have no idea.

22 Q. Yeah.

23 A. They said I could go to jail for 18 months.

24 Q. Yeah. You expect to go to jail for 18 months?

25 A. I mean, I'm planning for the worst to be honest.

1 Q. So -- And the worst you see is 18 months for armed
2 robbery?

3 A. I never went in the house. I never had a gun.

4 Q. You never --

5 A. And I never planned for it.

6 Q. You knew that there was going to be a robbery? And
7 instead of backing up, you decided to go anyway; right?

8 A. Well, when I found out, I was in the house. There
9 was five of them and one of me.

10 They knew exactly where I lived.

11 They had guns.

12 Q. Well, what about --

13 A. What was I supposed to do?

14 Q. What about after they got arrested, put in jail, and
15 kicked out of school?

16 A. They had already gotten in trouble. I mean, I -- I
17 wasn't trying to make any more trouble for anyone else.

18 They --

19 Q. I'm talking about you. I'm not talking about them.

20 They were in jail.

21 They were kicked out of school.

22 A. Well, why would I want to tell on myself?

23 Q. That's a good question. That's a good question.

24 A. I didn't --

25 Q. You -- You never intended to tell on yourself. And

1 the only reason that you're doing it now is because the
2 officer told you when he came to you:

3 We already know that you're
4 involved. We already know what you did.

5 We just trying to get you to admit
6 to it?

7 He already knew when he came to
8 you.

9 And he told you:

10 I need you to fill in the pieces.

11 Isn't that what he told you?

12 A. Something like that, yeah.

13 Q. Yeah. Because he already had it at that point.

14 He didn't need you.

15 He just wanted you to fill in the
16 pieces, before he -- And then -- And that was -- When was
17 that?

18 When was that that he had you fill
19 in the pieces?

20 A. I don't remember the exact date.

21 Q. Well, I mean, how many years ago? A year and a half
22 ago?

23 A. About that.

24 Q. A year?

25 A. A year and a half.

1 Q. A year and a half ago?

2 And a year and a half ago, they
3 did that.

4 And you still didn't get charged,
5 even then; right?

6 A. No. Not right away.

7 Q. No. No. You continued to go to school. You
8 continue to smoke dope?

9 A. No sir.

10 Q. That what year old --

11 A. No sir.

12 Q. Yeah. Sell dope; whatever it is that you were
13 doing; with impunity?

14 A. (No response.)

15 Q. Let me ask you just one other thing. And I'm going
16 to be through. You said you -- the worst you're going to
17 get is 18 months.

18 Do you know armed robbery carries
19 a minimum mandatory 10 years in prison?

20 MS. LIVELY:

21 Objection Your Honor, as to --

22 MS. LIVESAY:

23 Your Honor --

24 THE COURT:

25 I'm --

1 MS. LIVESAY:

2 Your Honor, that is --

3 THE COURT:

4 I -- I -- I'm going to let him
5 answer it.

6 MS. LIVESAY:

7 That's extremely prejudicial,
8 considering --

9 THE COURT:

10 I'm -- I'm going to let him answer
11 it. I'm going to let him answer it.

12 CROSS-EXAMINATION BY MR. WILSON CONTINUED:

13 Q. Yes sir?

14 A. I have no idea.

15 MR. WILSON:

16 Okay. I don't have anything
17 else. Thank you.

18 REDIRECT EXAMINATION BY MS. LIVELY:

19 Q. So now you know how much time armed robbery carries.
20 Have we promised you anything in
21 regards to that?

22 A. No ma'am

23 Q. Okay. And you understand that you can go to prison
24 for a mandatory amount of time?

25 A. I do now.

1 Q. Okay. Would that change anything you told this jury
2 here today?

3 A. No ma'am

4 Q. Now -- uh -- let's be clear, Mr. Collins.

5 Who was your dope dealer and
6 supplier before you started buying from Sean?

7 A. Mario.

8 Q. Mario who?

9 A. Mario Tynes.

10 Q. Is that the Defendant seated at that table?

11 A. Yes.

12 Q. And getting to the Defendant Lackey:

13 You said you met him that one time
14 that weekend?

15 A. Yes ma'am.

16 Q. Now tell this jury, in your own words, how insistent
17 Mario said it had to be to buy that weekend.

18 A. Well, I -- I told him it was my girlfriend's
19 birthday and we were going to go out to Broadway and --
20 and celebrate that.

21 And he wouldn't -- he wouldn't let
22 me hang up the phone.

23 Like -- Like I said, it was just
24 that he wouldn't take no for an answer. It just be that
25 night, like.

1 It -- It was -- There was nothing
2 I could do.

3 He just kept saying it over and
4 over:

5 It's got to be tonight. It's got
6 to be tonight.

7 And I would try to explain. And
8 he would just cut me off. He goes:

9 It's got to be tonight.

10 Q. And you were asked about how much drugs you would
11 normally buy for yourself -- uh -- prior to this event?

12 Why were you buying so -- such a
13 quantity of marijuana this particular evening?

14 A. Well, Mario wanted to buy enough so we could sell
15 it.

16 Q. Did he tell you that?

17 A. Not specifically. But I did know a drug dealer, so
18 -- I mean, no one buys that much to smoke.

19 Q. And when you originally spoke to him before he
20 started talking about Sean, when you spoke to Mario Tynes
21 that day when you had not seen him in a long time; what
22 was the conversation about?

23 A. Well, I told him Sean had finally picked up enough
24 to sell him that much; because originally he didn't even
25 have that much.

1 But he had picked up enough to
2 sell Mario -- you know -- at least 4 ounces.

3 Q. And when you got to Mario's apartment after he
4 insisted on your being there, which you just testified
5 to, was Defendant Lackey in the apartment?

6 A. Yes, he was.

7 Q. And how was everybody dressed, other than -- Well,
8 let me ask you this:

9 How was he dressed?

10 A. He had a black sweatshirt and a -- and a baseball
11 hat.

12 Q. Oh, and by the way:

13 Who did that money that you
14 received for this -- uh -- drug buy from the robbery; who
15 -- whose money was that?

16 A. Mario and Eric's.

17 MS. LIVELY:

18 That's all I have, Your Honor.

19 MR. MONCKTON:

20 Just a couple of questions, Your
21 Honor.

22 RECROSS-EXAMINATION BY MR. MONCKTON:

23 Q. And you were actually -- You stated, when Mr. Wilson
24 was talking to you, you were actually given -- or Tory
25 actually had the money to buy the drugs.

1 Is it your understanding?

2 A. Yes, Tory had the money.

3 Q. All right. Now one question about armed robbery:

4 You are charged with armed
5 robbery?

6 A. Yes.

7 Q. And you understand it carries a minimum mandatory 10
8 to 30 years?

9 A. I do Now.

10 Q. And you understand that it's a serious offense; that
11 you must -- non-parolable offense; and you must serve --

12 MS. LIVESAY:

13 Your Honor, I have to object at
14 this time.

15 THE COURT:

16 Mr. Monckton --

17 MS. LIVESAY:

18 It's very prejudicial to --

19 THE COURT:

20 -- you're pushing it way too far.

21 I gave you some latitude.

22 MR. MONCKTON:

23 May I ask to be heard, Your Honor?

24 MS. LIVESAY:

25 Your Honor, it's very prejudicial

1 considering these Defendants --

2 THE COURT:

3 No, Mr. Monckton, I'm not.

4 Terminate that line of questioning. We've had enough
5 about it.

6 RECROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

7 Q. Who told you, you're -- you're looking at 18 months?

8 A. No one. I just keep knowing I was locked up. And
9 that was just my on, like, assumption. I don't know.

10 I never knew how much -- I never
11 knew how long you went to jail for.

12 I mean, I'm not a lawyer or
13 anything.

14 Q. You never knew, until I told you, what you looking
15 at in this crime?

16 A. Not for sure; no.

17 Q. But it's your understanding that you're -- you could
18 get 18 months?

19 A. Well, I was never armed. And I never went into the
20 house.

21 So I don't see how they're going
22 to charge me with armed robbery.

23 Q. But you're charged with armed robbery right now?

24 A. Yes sir.

25 Q. Is it your understanding your charges are going to

1 be reduced or dismissed?

2 A. No sir.

3 MR. MONCKTON:

4 No further questions, Your Honor,
5 But, I would like to be heard on
6 that other matter.

7 THE COURT:

8 All right. I will. I'll let you
9 the next break.

10 Mr. Wilson, anything further?

11 MR. WILSON:

12 Nothing further, Your Honor.

13 THE COURT:

14 All right.

15 MS. LIVELY:

16 And I believe this witness will
17 remain under subpoena --

18 THE COURT:

19 He certainly will.

20 MS. LIVELY:

21 -- per your earlier ruling.

22 THE COURT:

23 Okay. You may step down, Mr.
24 Collins.

1 MS. LIVELY:

2 Thank you.

3 THE COURT:

4 Thank you very much.

5 Next witness.

6 MS. LIVESAY:

7 Thank you.

8 Your Honor, at this time, the
9 State calls Justin Tresslar to the stand..

10 WHEREUPON: JUSTIN TRESSLAR WAS
11 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

12 CLERK:

13 Thank you. Please be seated.

14 And if you would please state your
15 full name; and spell your last name.

16 WITNESS:

17 Justin Scott Tresslar; T-r-e-s-s-
18 l-a-r.

19 DIRECT EXAMINATION BY MS. LIVESAY:

20 Q. Mr. Tresslar, how old are you?

21 A. 22

22 Q. And are you currently in school or working?

23 A. School and work.

24 Q. Okay. Where you go to school?

25 A. Coastal Carolina University.

1 Q. Okay. And where do you work?

2 A. Up in Pennsylvania at a golf course.

3 Q. Okay. How long have you been at Coastal?

4 A. Three years.

5 Q. What is your major?

6 A. Business management.

7 Q. Okay. And while you were at Coastal, did you know
8 Craig Collins?

9 A. Yes.

10 Q. Okay. Tell the jury how you knew Mr. Collins?

11 A. I met him freshman year -- uh -- just around campus,
12 smoking cigarettes together; smoked a couple of times.

13 Q. Okay. And did you know Sean Barrett?

14 A. Yes.

15 Q. Okay. Tell the jury how you knew Mr. Barrett.

16 A. Uh -- Me and Mr. Barrett played golf together many
17 times.

18 Q. Okay.

19 A. I met him on the school grounds.

20 Q. Okay. Now, did you ever buy any drugs from Mr.
21 Barrett?

22 A. Yes.

23 Q. Okay. And did you ever buy any from Craig Collins?

24 A. Yes.

25 Q. Okay. Now, tell the jury, how that procedure went

1 when you would buy drugs from Sean Barrett?

2 A. Uh -- I would call him up and tell him what I
3 needed. And then we'd -- we would either meet somewhere,
4 or I would go to his house.

5 Q. Okay. Now let me ask you this:

6 Was Mr. Collins buying drugs from
7 Sean Barrett?

8 A. No.

9 Q. Okay. Was he allowed to go in that apartment
10 without you?

11 A. No.

12 Q. Okay. Tell me how that worked. Was anybody
13 allowed to go in that apartment and buy from Sean
14 Barrett?

15 A. No, just me.

16 Q. Okay. And why was that?

17 A. For his safety and security.

18 Q. Okay. So, Craig Collins couldn't go in that
19 apartment without you? Is that right?

20 A. Correct.

21 Q. Okay. How well did you know Sean Barrett?

22 Would you say you guys were
23 friend?

24 A. Yes. We played golf many times.

25 Q. Okay. And you bought drugs from him? Is that

1 correct?

2 A. Yes.

3 Q. Okay. And you knew where he lived?

4 A. Correct.

5 Q. Where does he live?

6 A. [REDACTED]

7 Q. Okay. And how many times -- times have you been
8 his apartment over there?

9 A. Between one and 2000.

10 Q. Okay. Uh -- Do you remember what the inside of
11 that apartment -- the layout was like?

12 A. Yes.

13 Q. Okay. And tell the jury what that layout looked
14 like?

15 A. Uh -- When you came in the front door, there was a
16 flight of stairs. And then there was a living room to
17 your left, and a kitchen further to the left.

18 And then you will go up another
19 flight of stairs to his bedroom on the left.

20 And then there was a bathroom on
21 the right.

22 Q. Okay. So the apartment was actually three stories?
23 Is that right?

24 A. Two -- Yes.

25 Q. Okay. But when you first walk in, is there

1 anything on the floor?

2 A. No.

3 Q. Okay. That's just a closet type area.

4 A. Correct.

5 Q. Then you go up a flight of steps?

6 A. Correct.

7 Q. Okay. And that's like a kitchen, living area, and
8 a couple of bedrooms?

9 A. Correct.

10 Q. Okay. Then you go up a second flight. Is that
11 correct?

12 A. Yes.

13 Q. And then there's just one bedroom and one bathroom.

14 A. Yes.

15 Q. Okay. And whose bedroom is on that top flight?

16 A. Sean Barrett's.

17 Q. Okay. Now, do you remember October 13th of 2007,
18 that home coming game?

19 A. The game itself, no; but the night, yes.

20 Q. Okay. And did you come across Craig Collins that
21 night?

22 A.

23 Q. Okay. When did you first see Mr. Collins that
24 night?

25 A. Uh -- Around 10 o'clock -- 10:30.

1 Q. Okay. Had he called you before then?

2 A. I don't remember.

3 Q. Okay. Uh -- Did he come and pick you up; or how
4 did you come across him?

5 A. Yes, he met me at my apartment.

6 Q. Okay. Was there anybody else in the car?

7 A. Yes.

8 Q. Who was in -- Who else was in the car?

9 A. I did not know him.

10 Q. Okay. Knew -- But you knew there was somebody else
11 in the car?

12 A. Yes. He was the driver. Craig was in the front
13 passenger seat. And I was in the back.

14 Q. Okay. Had you ever met that guy before?

15 A. No.

16 Q. Okay. Do you know -- Do you remember what the plan
17 was that night when he picked you up?

18 A. Yes.

19 Q. Okay. Tell the jury what the plan was for that
20 night when he picked you up?

21 A. Okay. I was to -- They were -- They were going to
22 take me to Sean's house, and I was going to get an amount
23 of weed and bring it back to the car; and that was that.

24 Q. Okay. Now let me ask you this:

25 The other guy in that car, do you

1 remember his name?

2 A. No.

3 Q. Okay. Would he have been allowed to go up in
4 Sean's apartment?

5 A. No.

6 Q. Okay. Nobody else would have except for you? Is
7 that right?

8 A. That's correct.

9 Q. Okay. Now, tell the jury what happened once you
10 got to [REDACTED] that night with Craig Collins and this
11 other guy?

12 What did the other guy look like?

13 A. Uh -- He was black; not very tall.

14 I didn't really get a good look at
15 him.

16 He was in the car the whole time.

17 When we arrived at [REDACTED] I
18 had him park in the visitor's parking lot so they
19 couldn't see me walk to Sean's house.

20 Q. Why was that?

21 A. Because Sean didn't want anybody with me at all --

22 Q. Okay.

23 A. -- that evening. Because I had called Sean --

24 Q. Okay.

25 A. -- to meet up with him.

1 Q. Okay.

2 A. And -- uh -- when we got --

3 Q. So where they were parked, they couldn't see which
4 apartment you were going into?

5 A. Correct.

6 Q. Okay. Go ahead; I'm sorry.

7 A. Uh -- When we got there, the driver wanted to come
8 in with me. And I told him he couldn't.

9 Q. And that was the black guy you didn't know?

10 A. Correct.

11 Q. Okay. So he said that it wasn't his money; it was
12 his boy's money; and that he wasn't going to let me take
13 it alone.

14 I told him:

15 If I don't take it alone, then the
16 deal doesn't happen.

17 So he proceeded to get out of the
18 car and talk on the phone for maybe 5 minutes.

19 And then he decided that it was
20 okay for me to go.

21 So, I -- And then I left towards
22 Sean's apartment.

23 Q. Okay. Now did you know who he was on the phone
24 with?

25 A. No.

1 Q. Did you hear any names mentioned in the car that
2 night?

3 A. Uh -- When Craig showed up --

4 MR. MONCKTON:

5 Objection, Your Honor; hearsay.

6 THE COURT:

7 I'm going to let him answer it as
8 to any names.

9 MS. LIVESAY:

10 Thank Your Honor.

11 THE COURT:

12 But --

13 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

14 Q. Did you hear any names that night?

15 A. When Craig showed up in my apartment, he had
16 mentioned Mario's name.

17 He did not say his last name; but
18 he said "Mario."

19 Q. Okay. But you never actually got the name of the
20 guy driving the car?

21 A. Correct. I actually thought he was Mario at first.

22 Q. Okay. And then, how did you figure out he wasn't?

23 A. When we got to [REDACTED] I -- uh -- called him -- I
24 said "Mario."

25 And Craig say:

1 That's not Mario.

2 Q. Okay.

3 A. So then I knew that he was not Mario.

4 Q. Okay. So once you finally got the money, he went
5 outside; talked on the phone 5 minutes.

6 Then, I'm assuming, he just gave
7 you the money?

8 A. Correct.

9 Q. Okay. How much did he give you?

10 A. 1500.

11 Q. Okay. Now, when you normally bought for -- from
12 Sean, how much would you normally buy?

13 A. Between a quarter and a half ounce.

14 Q. Okay. And how much money are we talking then?

15 A. Between 100 and 200.

16 Q. Okay. So this is buying a substantial amount more
17 than what you normally would?

18 A. Correct.

19 Q. Okay. Once you got the money, what did you do
20 next?

21 A. I grabbed the backpack. I'm not sure if it was mind
22 or their's. And I walked to Sean's apartment and went
23 inside.

24 Q. Okay. And then what happened, once you got inside?

25 A. I went upstairs to the first floor and saw a couple

1 people in the living room; met Sean.

2 Then we went to his room. And I
3 gave him the money so he could count it.

4 Q. Okay. And did you see the drugs upstairs in his
5 room at that point?

6 A. Yes.

7 Q. Okay. And you gave him the money?

8 A. Correct.

9 Q. Okay. So at that point, it was going on as usual?

10 A. Uh-huh.

11 Q. Okay. And what happened next?

12 A. Then one of his roommates said that:

13 There are a bunch --

14 MR. MONCKTON:

15 Objection, Your Honor.

16 MS. LIVESAY:

17 Your Honor, this is to go to his
18 presence of mind at that time.

19 THE COURT:

20 No. Let's don't talk about what
21 one of his roommates said. Let's just talk about what he
22 saw and heard; okay.

23 MS. LIVESAY:

24 Okay.

25 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

1 Q. Well, what happened next; once you were upstairs?

2 A. Well, I heard his roommate say --

3 THE COURT:

4 No.

5 MR. MONCKTON:

6 Objection.

7 THE COURT:

8 Let's don't talk about -- I -- In
9 the context of "heard," I'm talking about noises or
10 things of that nature; not --

11 MS. LIVESAY:

12 Okay.

13 THE COURT:

14 -- what someone said.

15 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

16 Q. How did you -- How did you react to what the
17 roommate said?

18 A. Uh -- I was concerned.

19 Q. Okay.

20 A. Uh -- I --

21 Q. And how about Sean? How did he react, that you
22 saw?

23 A. He was concerned also.

24 Q. Okay. And so what happened next?

25 A. Uh -- The door was kicked in. And I heard them