THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-480 (S.C. Ct. App. Filed Dec. 23, 2014)

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Petitioner.

PETITIONER'S APPENDIX

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INDEX TO APPENDIX

I. Record on Appeal 1

II. Briefs

Final Brief of Appellants 363

Final Brief of Respondent 392

Final Reply Brief of Appellant 452

III. Opinion of the Court of Appeals 466

IV. Petitions for Rehearing

Appellants' Petition 476

V. Order Denying Petition for Rehearing 486

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Circuit Court

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

RECORD ON APPEAL

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INDEX

INDEX i

TRIAL TRANSCRIPT DATED APRIL 8-10, 2013 1

PRETRIAL TESTIMONY

JAMES WRIGHT
Direct Examination by Ms. Ford 5
Cross Examination by Ms. Ullman 14

LORI ANN LEWIS GARRISON
Direct Examination by Ms. Ford 29
Cross Examination by Ms. Ullman 32
Redirect Examination by Ms. Ford 39

JOHNNY THROWER
Direct Examination by Ms. Ford 49

ARGUMENT OF COUNSEL 50

SELECTION OF THE JURY 58

JUDGE'S RULING – JACKSON V. DENNO 83

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY 91

OPENING STATEMENT BY MR. BELL 93

OPENING STATEMENT BY MS. ULLMAN 101

TESTIMONY

JAMES WRIGHT
Direct Examination by Ms. Ford 106
Cross Examination by Mr. Wise 116
Redirect Examination by Ms. Ford 134

ROBERT PRESTON RUMPH
Direct Examination by Ms. Ford 136
Cross Examination by Mr. Wise 145
Redirect Examination by Ms. Ford 157

DAVID MCROY
Direct Examination by Ms. Ford 159
Cross Examination by Mr. Wise 162
Redirect Examination by Ms. Ford 165
Recross Examination by Mr. Wise 166

LORI ANN LEWIS GARRISON
Direct Examination by Ms. Ford 167
Cross Examination by Mr. Wise 180

JOHNNY THROWER
Direct Examination by Ms. Ford 187
Cross Examination by Mr. Wise 192
Redirect Examination by Ms. Ford 194

JOHN C. STOKES
Direct Examination by Ms. Ford 195
Cross Examination by Mr. Wise 199

SEAN ECHOLS
Direct Examination by Ms. Ford 204
Cross Examination by Mr. Wise 215
Redirect Examination by Ms. Ford 246
Recross Examination by Mr. Wise 248

DIRECTED VERDICT MOTION 252

CLOSING ARGUMENT BY MS. FORD 260

CLOSING ARGUMENT BY MR. WISE 271

JURY CHARGES 294

VERDICT 320

MOTION FOR A NEW TRIAL 326

SENTENCING 329

VERDICT FORM 331

STATE'S EXHIBIT #1 (Color Photograph lineup) 334

STATE'S EXHIBIT #2 (Color Photograph lineup) 335

STATE'S EXHIBIT #3 (Color Photograph lineup) 336

STATE'S EXHIBIT #4 (Color Photograph of injuries) 337

STATE'S EXHIBIT #5 (Color Photograph of injuries) 338

STATE'S EXHIBIT #6 (Color Photograph of injuries) 339

STATE'S EXHIBIT #7 (Color Photograph of injuries) 340

STATE'S EXHIBIT #8 (Color Photograph of injuries) 341

STATE'S EXHIBIT #9 (Color Photograph of injuries) 342

STATE'S EXHIBIT #10 (Color Photograph of injuries) 343

STATE'S EXHIBIT #11 (Color Photograph of injuries) 344

STATE'S EXHIBIT #12 (Color Photograph of injuries) 345

SENTENCING SHEETS 346

INDICTMENTS 350

CERTIFICATE OF COUNSEL 361

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBITS 1 - 12

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

CIRCUIT COURT
2011-GS-38-01561-01563
& 2013-GS-38-00287

STATE OF SOUTH CAROLINA,

-vs-

RICHARD LANARD SPRINKLE,
Defendant.

TRANSCRIPT OF RECORD

Heard on Monday, April 8,

Tuesday, April 9 & Wednesday, April 10, 2013 in

Orangeburg, South Carolina

BEFORE:

THE HONORABLE EDGAR W. DICKSON

APPEARANCES:

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EXAMINATION INDEX

JAMES WRIGHT	
DIRECT BY MS. FORD	6
CROSS BY MS. ULLMAN	14
LORI ANN LEWIS GARRISON	
DIRECT BY MS. FORD	29
CROSS BY MS. ULLMAN	32
REDIRECT BY MS. FORD	39
JOHNNY THROWER	
DIRECT BY MS. FORD	49
CROSS BY MS. ULLMAN	54
JOHN C. STOKES	
DIRECT BY MS. FORD	59
CROSS BY MS. ULLMAN	63
RICHARD LANARD SPRINKLE	
DIRECT BY MS. ULLMAN	65
CROSS BY MS. FORD	70
JAMES WRIGHT	
DIRECT BY MS. FORD	155
CROSS BY MR. WISE	165
REDIRECT BY MS. FORD	183

ROBERT PRESTON RUMPH		
	DIRECT BY MS. FORD	185
	CROSS BY MR. WISE	194
	REDIRECT BY MS. FORD	206
DAVID McROY		
	DIRECT BY MS. FORD	208
	CROSS BY MR. WISE	211
	REDIRECT BY MS. FORD	214
	RECROSS BY MR. WISE	215
LORI ANN LEWIS GARRISON		
	DIRECT BY MS. FORD	216
	CROSS BY MR. WISE	230
JOHNNY THROWER		
	DIRECT BY MS. FORD	236
	CROSS BY MR. WISE	241
	REDIRECT BY MS. FORD	243
JOHN C. STOKES		
	DIRECT BY MS. FORD	244
	CROSS BY MR. WISE	248
SEAN ECHOLS		
	DIRECT BY MS. FORD	257
	CROSS BY MR. WISE	273
	REDIRECT BY MS. FORD	311
	RECROSS BY MR. WISE	313

EXHIBIT INDEX

			MAR	ADM
State's:				
	1	Photo lineup (pretrial)		14
	1	Photo lineup		226
	2	Photo lineup		227
	3	Photo lineup		288
	4	Photo		223
	5	Photo		235
	6	Photo		223
	7	Photo		223
	8	Photo		223
	9	Photo		220
	10	Photo		220
	11	Photo		220
	12	Photo		220
Court's:				
	1	Jury note - election of foreperson		125
	2	CD - Echols' interview		291
	3	Note from jury		409
	4	Note from jury		409

ON APRIL 8TH, 2013, AT 10:33 A.M.:

THE COURT: All right. Ms. Ford?

MS. FORD: Your Honor, we're here for the pretrial on the case the State intends to call tomorrow morning, the State of South Carolina versus Richard Lanard Sprinkle.

Mr. Sprinkle has been indicted on multiple indictments. The first being 2011-GS-38-1561 for armed robbery; 1562, second count of armed robbery; 1563 and 1564 for attempted murder; and 2013-GS-38-0287 for burglary in the first degree, Your Honor.

We'll be taking up all pretrial motions from the State and the defense at this time, Your Honor.

THE COURT: All right.

MS. FORD: Your Honor, if we could start with the Neil versus Biggers hearing.

THE COURT: All right.

MS. FORD: The State would call James Wright to the stand.

THE COURT: Mr. Wright, do you mind standing up first? I need to swear you in first, please, sir.

JAMES WRIGHT, having been duly sworn, was examined and testified as follows:

THE COURT: All right. Sit down. And your name again?

THE WITNESS: James Wright.

DIRECT EXAMINATION

BY MS. FORD:

Q. Mr. Wright, you're going to have to speak up because we got the --

A. Okay, okay.

Q. -- our new air-conditioner is going over there and it's a little hard to hear in here. So please make sure you speak up so everyone can hear you. Okay?

Your name is James Wright?

A. James Wright.

Q. Okay. Did you used to live on [redacted] here in Orangeburg?

A. Yes, ma'am.

Q. Who did you live with?

A. Rocky Rumph.

Q. How far did you go in school, Mr. Wright?

A. Third grade.

Q. Okay. All right. Have you ever been the victim of a robbery?

A. Yep.

Q. What happened?

A. They come, they knock on the door.

Q. Let me stop you for one second. You said they. Who is they? How many people?

A. Two.

Q. Two?
A. Two.
Q. Okay. What did they look like?
A. That one of them right there.
Q. Okay. Well, were they men or women?
A. Mans.
Q. Okay. Were they black or white?
A. Black.
Q. Okay. What kind of hair did they have?
A. He don't have long hair but they come in and rob me that night, real long hair.
Q. Okay. But is it different now?
A. Yes.
Q. His hair is different now than it was before?
A. Yeah. He got it cut now.
Q. Okay. So you saw these people that came and knocked on your door?

THE COURT: Hold on one second while we enjoy the sounds of the city.

MS. FORD: The sounds of the city.

(Pause.)

THE COURT: Ms. Ford, I'm sorry. If you'd continue.

MS. FORD: Thank you.

BY MS. FORD:

Q. So let's go back to what you were saying, Mr. Wright.

You said two people that came to the house. What happened next?
A. They knocked on the door. And I went and looked through the curtain at them before I opened the door. And they tell me, said, tell Rocky he want to make a phone call because his girl friend stabbed him. And I ran and tell Rocky, he told me to let them in.
Q. So hold on one second. So the people at the door that knocked on the door?
A. Before I opened the door.
Q. Okay.
A. And after I let him -- let Rocky know they wanted to make a phone call, Rocky told me to let them in.
Q. Okay.
A. That's when they start beating me in the head with the pistol.
Q. Okay. Which one beat you in the head with a pistol?
A. That one right there. And he bust me in the lip, too.
Q. Okay. Did they come inside the house?
A. After I opened the door, they come right on in the house.
Q. Okay. And you said one of them had -- did they have a weapon?
A. Yep.
Q. What kind of weapon?

A. All I know it was a pistol but what name of it, I didn't know.
Q. Okay. But you saw it was a gun of some sort?
A. Yeah.
Q. Okay. Did they say anything to you?
A. When I called Rocky, they said, don't say nothing, don't say nothing. Give me your money. Give me your money. They had me right there and a pistol in my chest.
Q. Did you give them any money?
A. Yeah, I give what I had. Right around $40. I give it to them.
Q. Okay.
A. Sure did.
Q. Okay. After you gave them the money, what happened next?
A. They make me go into that room and hold up that bed and mattress telling me, you got more money than that, man, you got to have more money. Then they went in Rocky room.
Q. Okay. After they all went and --
A. They take my wallet and all. They didn't give me none of that back. They got all of that.
Q. Okay. They took your wallet with your money. Yes, sir.
After you said they went in Rocky's room, what

happened next?
A. They ain't done him nothing more to me. They start fighting Rocky.
Q. Fighting Rocky. Okay. And after they did that, did they stay in the house or what happened?
A. No. They went out the back door and take Rocky car and leave.
Q. Okay. All right. You said they took Rocky's car and left?
A. Yes.
Q. Did you ever talk to the police about what happened to you?
A. Yeah, five of them come there that night and I told them before they ever let them come to get me to the hospital.
Q. Okay. You talked with the police officers?
A. Right.
Q. Did you tell them about the people that came in your house?
A. Yeah.
Q. Did you tell them what the people in your house looked like?
A. Yeah.
Q. Okay. Did you know any of the people that came in your house?

A. Yeah, I told them I know him.
Q. Okay. Did you know his name?
A. I always called him Ricky. He used to walked the street all the time.
Q. Name of Ricky?
A. Ricky. That's all I know; Ricky.
Q. Where had you seen him before?
A. Right up there on Mingo Street in Orangeburg.
Q. Okay. When was the last time you had seen him before you saw him in your house and he robbed you?
A. That Saturday evening. And he come in there and done that to me that Sunday morning. Saw him right there at Bojangles.
Q. Okay. So right the day before is the last time you saw this man?
A. Right. He come there that same night. He talked to me that evening some then come right in there that Sunday morning and robbed me.
Q. Okay. Did the police ever show you any pictures of anybody?
A. Yep.
Q. Okay. I'm going to show you what's been marked State's One. What is that?
A. That's him right there.
Q. Okay. But what is this? Do they have a lot -- is

this what the police officers showed you that day?
A. Yeah.
Q. Okay. And do you see the picture of the person that you said came in your house and robbed you?
A. Yep.
Q. Okay. Which one is it on here?
A. (Pointing.)
Q. Okay. That's number?
A. Two.
Q. Number two. Did you circle that?
A. I circled that.
Q. Are those your initials?
A. Yeah.
Q. Okay. Did the police officer tell you which one to pick?
A. No. Sure enough.
Q. Did she say --
A. After I see the pictures, I knowed which one it was.
Q. You knew right away --
A. Right away.
Q. -- which one it was?
A. Yes.
Q. And that's the one that you circled here?
A. That's right.
Q. And put your initials?

A. That's right.
Q. And you called him -- what was the name that you called him?
A. Ricky.
Q. Ricky.
Your Honor, at this time the State would offer this into evidence for the purposes of this hearing.
THE COURT: Have you seen this picture?
MS. ULLMAN: I've seen it.
THE COURT: Any objection?
MS. ULLMAN: For the purposes of this hearing, no, Your Honor. No objection.
THE COURT: Okay. State's One is in evidence for this hearing.
(Thereupon, State's Exhibit No. 1, photo lineup, was received into evidence.)
BY MS. FORD:
Q. Mr. Wright, that person that you circled on that picture, you said he's here in the courtroom. Is that person in the courtroom right now?
A. Yep.
Q. Can you point him out?
A. Yep. (Pointing.)
Q. That's him seated at the defense table. Okay.
Has his appearance changed at all? The way he looks,

does he look the same as that night?
A. Yeah, he's changed a little bit. He ain't quite as black in the face. More light in the face, but that's him right yonder, but he had the long hair.
Q. But without a doubt that's the man that assaulted you and robbed you?
A. That's the man.
Q. Okay. Beg the Court's indulgence, Your Honor.
THE COURT: Okay.
MS. FORD: No further questions at this time, Your Honor.
THE COURT: All right.
MS. FORD: Mr. Wright, if you'll just answer any questions Ms. Ullman has. Okay?
THE WITNESS: All right.
THE COURT: Ms. Ullman, your witness.
MS. ULLMAN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. ULLMAN:
Q. Good morning, Mr. Wright.
A. Good morning.
Q. At the time this happened back in June of 2011, how long had you lived at the [redacted] address? How long had you lived at the address on [redacted] back in June of 2011?

A. How long I live there?
Q. Uh-huh.
A. About three months.
Q. About three months. So you'd just moved in not too long before this happened?
A. Right.
Q. And do you work, Mr. Wright?
A. Huh?
Q. Do you have a job?
A. Yeah, I work part-time there with Mr. Frazier Ford.
Q. Okay. Now on the night this all happened, you were in bed and you heard a knock at the door; is that right?
A. That's right.
Q. It was about two o'clock in the morning?
A. No, it was, it was, was about 4:30 or five o'clock that morning.
Q. Okay.
A. Yeah.
Q. Were you sleeping? Did the knock wake you up?
A. I was sleeping. I hear the knock and I get up and went to the door but I never opened the door. I let my man I was staying with, somebody want to see him. And he want to make a phone call. And he tell me to open the door. When I opened the door, they came in and beat me in the head with a gun.

Q. Yes, sir. Do you remember what time you went to bed that night? How long had you been sleeping?
A. I was sleeping about four hours. Yeah.
Q. Before you went to sleep, had you drank any alcohol?
A. Yeah, I sure did.
Q. Do you remember how much?
A. Probably about half a pint. Yep. I sure did drink.
Q. Do you take any medication?
A. Not -- now I'm on asthma pills, but I wasn't taking them then.
Q. So back in June, you didn't take any asthma pills?
A. No.
Q. Okay. Now, you said you heard a knock at the door, it woke you up?
A. Yeah.
Q. Were any lights on inside your house?
A. No.
Q. Did you turn any lights on?
A. No, I never. The yard light was on.
Q. The yard light was on? And I believe you said you looked out, was it a hole in the door --
A. No.
Q. -- or through the curtain?
A. Right at the door's got sides around it, and I pulled the curtain back and I looked right in the face of that

one right there. And back back, come behind the door and he said his girlfriend stabbed him in the arm and he wanted to make a phone call. And I went and tell Rocky about it and Rocky said, let him in, make the phone call. And that's when he come in there with a pistol in my chest and around my neck.

Q. Does that -- the house you lived in at the time, did it have a porch where were they standing?

A. A porch?

Q. Uh-huh.

A. No, no, nothing but the step.

Q. Okay. So it's just one step? Two steps? How many steps?

A. A little old piece of porch on the front of the trailer. It wasn't no big porch. If you get off the step, there's a little porch there.

Q. Okay. How many people did you see when you looked out the window?

A. Two.

Q. Is it possible there was anybody else out there that you didn't see?

A. No, I ain't seen nobody but them two. And he was up on the porch then.

Q. Okay. And when you opened the door, how many people came in?

A. That man there and the bud he had.
Q. So two people?
A. Two people.
Q. And were both of these people men?
A. Yep. Mans.
Q. Okay. Now when the police arrived, you said there was maybe five police officers. There was quite a few different officers out there?
A. Yes, ma'am.
Q. And you spoke with -- how many did you -- how many police officers did you speak with before you left to the hospital?
A. Be four of them come there.
Q. All four of them that came?
A. Yes, ma'am.
Q. And when you described the men that came in your house, you said that one was a little bit taller than you?
A. Yeah.
Q. Right? And you're about five-six. That's what you said?
A. Yeah.
Q. Okay. And the guy that's a little taller than you, he was slender?
A. Yeah, he wasn't heavy.
Q. Okay. Wasn't heavy?

A. No, ma'am.
Q. Okay. And that person who's a little taller than five-six and slender had a low haircut; is that right?
A. Yes, ma'am.
Q. When you say low, what do you mean by that?
A. Well, ain't cut down low as mine now but it was low.
Q. So, short?
A. Yes, ma'am.
Q. Not hanging like mine is?
A. No.
Q. All right. So that's person number one. Then person number two is a man; correct?
A. Yes, ma'am.
Q. And you said that that person was about your height; is that right?
A. Yes, ma'am.
Q. And, again, you're about five-six?
A. Yes, ma'am.
Q. And you said the person who's about as tall as you, that's the person who had the long hair; right?
A. Yes, ma'am.
Q. And when you say real long, what do you mean? Shoulder length or maybe as long as mine?
A. No, it was to the back of his neck.
Q. Touched his collar?

A. Yeah. Uh-huh.
Q. Okay. All right. Now, and I believe you told me when they came in the house, was it immediately that you were hit? How long were these two people in your house before you got hit in the head?
A. When they first come in there they start beating me on the head.
Q. So it was immediately as soon as the door was --
A. By the time they walk in, had a hand around my neck. I tried to call my buddy, don't call him, don't call him, don't call him.

Heard him say, where is he. I say, right there in bed. And he ran in and jumped on him in his room. And they were still messing with me, but I never did try to hit him or nothing. I had no way of knowing if a bullet was in the gun or not.

Q. I understand.
A. And I never tussled with him.
Q. Okay. And you said you had the gun in your chest and an arm around your neck?
A. Yes, ma'am. At the time, arm around my neck.
Q. So was he standing behind you?
A. No. He in front me. I ain't said nothing.
Q. Okay.
A. Give me your money.

Q. Now the person who's doing all of that, was that the guy with the short hair or the long hair?
A. Long hair.
Q. Okay. And you said that you gave your wallet and it had $40 and some other stuff in there?
A. Yeah, he just take all of that. He carried it.
Q. Did you give that to the guy with the long hair or the short hair?
A. Sitting right there. Long hair.
Q. Okay. When you gave the person with the long hair your money, what weapon did that person have?
A. Well, all I know it was a pistol.
Q. Okay. It was a gun?
A. It was a gun.
Q. Okay. When that part happened, when he had the gun at you and you gave him money, where in the house, what room was that in?
A. In the front room.
Q. Okay.
A. Now when I gave him -- I never give him the money in the front room because I get up out the bed and went to the door. They make me go in the room and give them money.
Q. So your money was in your room. You gave it to him in your bedroom?

A. Right.
Q. Okay. Now, as all of this is going on did anybody turn on any lights?
A. Nope. No, sure didn't.
Q. Now, I believe you said at some point these two men start attacking your roommate; is that right, Mr. Rumph?
A. Say what?
Q. The two men started to attack your roommate --
A. Yeah.
Q. -- Mr. Rumph? At that time where were you?
A. He was, still was messing with me. And I hollered to my roommate he was coming in his room. And he went in there and jump on him.
Q. Okay. At any time that these two men were in your house, were you ever alone or was one of them always with you?
A. I don't understand you.
Q. Once these two guys came in your house, from the time they came in --
A. Uh-huh.
Q. -- until the time they left --
A. Uh-huh.
Q. -- were you ever alone or was one of them always with you?
A. One of them was with me all the time. That young'un

(inaudible).
Q. Okay. Now, I believe you told me you had to go in your room to get your money?
A. Get my money.
Q. Is there any time at any point that you then went into Mr. Rumph's room?
A. No. The other fellow's already in Rumph's room.
Q. Okay. Did you ever go in there?
A. I wait for at the door because he had hold to me. I wait for at the door. They asked me for the car keys. I said Rumph's only one with a car. I said go on out get in your car. He run out the back door and jump in his car and take off with it.
Q. Okay.
A. Sure did.
Q. How long do you think all of that took from the time they knocked on the door till the time they ran out the back door? How long do you think they were there?
A. Probably 25 minutes.
Q. Twenty-five minutes?
A. Yes, ma'am.
Q. How many times do you remember that you got hit; do you remember?
A. Got hit?
Q. In your head?

A. I remember three times.
Q. Three times?
A. They hit me. As far as my lip, they cut my lip. Went to the hospital. They had to stitch my lip up in the bottom, inside.
Q. Did you ever pass out?
A. No. Huh-uh.
Q. Now I believe Mr. Rumph had some injuries. Did you see that happen? Did you see Mr. Rumph get hit or cut or anything else like that?
A. No.
Q. Okay.
A. Never seen none of that.
Q. Okay.
A. After he come out, they take him to the hospital then I see that.
Q. Okay. So the next day, June 27th, so, Officer Garrison or Investigator Garrison showed you a lineup; right? The paper with all those pictures on it.
A. Right.
Q. How many of those papers did she show you; do you remember?
A. As far as I know it was four.
Q. Okay. So you believe she --
A. The first one she showed me, they wasn't on there.

Then she bring some more next day and showed me, wasn't on that on. And then they bring some after that.
Q. Okay. Where were you at when you looked at the pictures? Were you at your house or the hospital? Where were you?
A. I was at the house.
Q. At your house?
A. At the house.
Q. Who else was there?
A. Whereabouts?
Q. At the house. The officer and you and anybody else?
A. Nobody but Mr. Rumph.
Q. Mr. Rumph was there?
A. Yeah.
Q. Okay. Now when she showed you these papers, did she tell you she -- anybody was -- let me start over.
When she handed you the paper, did she say: The suspect's on here, see if you can pick him?
A. Yeah. Yes, ma'am.
Q. When she showed you these pictures, did she have you sign anything?
A. Yeah, I signed a paper.
Q. Okay. Let me show you this piece of paper. Is that what you signed when you looked at the pictures?
A. Right. Yes, ma'am.

Q. Okay. And that's your handwriting where it says James Wright?
A. Yeah, my handwriting.
Q. What about in the body, right here, did you write: Robbed and assaulted me?
A. No, I didn't write that. I write that, then that.
Q. So you wrote your name?
A. Right.
Q. Okay. Mr. Wright, have you ever -- do you have a nickname? Do you have a nickname?
A. No. When I was young coming up they called me Jimmy.
Q. They used to call you Jimmy?
A. Yes, ma'am.
Q. But otherwise it's just James Wright, that's your name and maybe Jimmy?
A. Yeah, James Wright.
Q. Now when you were testifying earlier when Ms. Ford was asking you some questions, I just wanted to clarify. You said that the man at the Defendant's table has changed a little?
A. Yeah.
Q. I understand you're saying that his hair's shorter, he got his hair cut?
A. Right.
Q. You also said he looks a little lighter in the face.

What do you mean by that?
A. Well, his skin's a little cleaner than it was then. It was more darker.
Q. So on the night in question you saw a dark-skinned gentleman?
A. Well, I seen him that day.
Q. Okay. What do you mean you saw him that day?
A. That Saturday before it happened. I seen him right there at Bojangles. He talked to me and then he come and robbed me that Sunday morning. Sure did.
Q. Okay. On the night the two men that came in, were they both dark skin? Light skin? How would you describe them?
A. No. All I can say is that's him right yonder, you know, the light skin or nothing. One of them was a little bit lighter than him, the other one. That's the one saying that he wanted to see Mr. Rocky.
Q. Say that again. The one that was lighter wanted to see Mr. Rocky?
A. This one?
Q. Repeat what you said. I don't want to put words in your mouth. What did you say?
A. I said, the one that wanted to see Mr. Rocky was a little bit lighter than him.
Q. Okay. How do you know Mr. Rocky, your roommate?

A. I just knew him as a friend years ago. My home in Hardeeville and I moved up here and I happened to meet him by Mr. Steve Tyson. I started working -- we started working together, Mr. Steve Tyson.
Q. About how long do you think you've known him?
A. Rocky?
Q. Uh-huh.
A. Hooooooooohhh, about 21 years.
Q. A really long time? Okay.
A. That's right. That's right.
MS. ULLMAN: Beg the Court's indulgence just one moment.
THE COURT: Okay.
(Pause.)
MS. ULLMAN: Sorry, Your Honor. No further questions.
THE COURT: Anything on redirect?
MS. FORD: Nothing on redirect, Your Honor.
THE COURT: Any other witnesses from the State?
MS. FORD: Yes, sir.
THE COURT: Okay. You may step down, please, sir. Thank you, Mr. Wright.
MS. FORD: State calls Investigator Garrison.
LORI ANN LEWIS GARRISON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. FORD:

Q. Please state your name for the record.

A. Lori Ann Lewis Garrison.

Q. Where are you employed?

A. Orangeburg County Sheriff's Office.

Q. How long have you been employed by the sheriff's office or in law enforcement?

A. I've been employed at the sheriff's office approximately four years. I've been in law enforcement approximately 15.

Q. Okay. And what are your duties?

A. I am an investigator. I investigate criminal cases.

Q. Did you have the opportunity to investigate an armed robbery, attempted murder that took place June 26 of 2011?

A. Yes, I did.

Q. Okay. What did you learn about that matter, Investigator Garrison?

A. What I learned about that matter is I spoke with both victims that night, Robert Rumph and James Wright. James Wright did state that night that he knew one of the suspects by name as Ricky or Rick, and that he approximately lived in the [redacted] of [redacted]

Upon further investigation we did discover that Richard Sprinkle lived at [redacted]. From there then

generated a lineup with Richard Sprinkle.
Q. And did you have the opportunity to show those photos to Mr. Wright?
A. Yes, I did.
Q. Okay. When did you show him those pictures?
A. The next day after the incident.
Q. Okay. And where did you show those pictures to him?
A. At his house.
Q. Okay. Investigator Garrison, can you tell me what that is?
A. This is the photo lineup of the picture of Mr. Richard Sprinkle.
Q. How many photos are on there?
A. Six.
Q. Okay. What did you say to Mr. Wright regarding the photos?
A. I showed Mr. Wright the photos and I asked him if he recognized anybody in the picture that assaulted him that night.
Q. Was Mr. Wright able to identify the person who assaulted and robbed him?
A. Yes. He identified picture number two.
Q. And who is picture number two?
A. Richard Sprinkle.
Q. Did Mr. Wright indicate that he chose Mr -- number two

by anything? Did he circle? Sign?
A. Yes, he circled and put his initials.
Q. Okay. Did Mr. Wright have any difficulty in picking out picture number two of Mr. Sprinkle?
A. No, he didn't. As soon as he saw the pictures it was no hesitation.
Q. Did you suggest to Mr. Wright who he should pick out?
A. No, I did not.
Q. Okay. Do you see the person whose photo was selected in the courtroom, Investigator Garrison?
A. Yes, I do; Mr. Sprinkle.
Q. Seated at the defense table?
A. Yes.
Q. Did you show any other lineups to Mr. Rumph?
A. Yes, I did.
Q. Did you show him the exact same lineup?
A. Yes.
Q. The exact lineup?
A. Oh, not the, the exact same. A similar lineup.
Q. And Mr. Sprinkle was in that lineup?
A. Yes.
Q. Okay. Was Mr. Rumph able to identify Mr. Sprinkle in that lineup?
A. No, he was not.
Q. Was he able to give you a description?

A. Yes, he did. He gave me a description that fit the similar characteristics of Mr. Sprinkle.
Q. Which would be what?
A. A black male, dark skin with dreads, shoulder length dreads.
MS. FORD: Beg the Court's indulgence, Your Honor.
(Pause.)
Investigator Garrison, please answer any further questions that Ms. Ullman might have for you.
THE COURT: Ms. Ullman, anything on cross?

CROSS-EXAMINATION

BY MS. ULLMAN:
Q. Investigator Garrison, when you responded you went to [redacted] is that correct?
A. Yes.
Q. And you spoke with Robert Rumph first?
A. I'm not exactly sure who I spoke with first. I did speak with both individuals.
Q. Okay. Give me just a second.
When you spoke with -- let's just focus on Mr. Wright. When you spoke with Mr. Wright, you spoke with him the first time at his house?
A. I don't recall that night. I know I spoke with him that night. It was either at the hospital or at his house. If I did speak with him at his house, it would

have been briefly.
Q. When you went to the hospital, I believe James Wright had told you he was familiar with one of the people who had come there; correct?
A. Yes.
Q. And he told you that he had seen him daily at the Corner Pocket and could identify him if he saw him again; is that correct?
A. Yes.
Q. Did he ever tell you that he had seen him the night before at the Bojangles, or I guess technically in the same time frame since this is early morning hours of the next day?
A. I do not recall if he said that at that time.
Q. If he had, you would have put it in your report; correct?
A. If he had, I probably would have; yes.
Q. Do you recall what time you went to the hospital to speak with either one of Mr. Wright or Mr. Rumph?
A. No, I don't have an actual time of when I went to the hospital.
Q. Okay. Where did you show -- I think you already testified you showed the lineup to Mr. Wright at his house; correct?
A. Yes.

Q. So he had already been to the hospital, treated and released?
A. Right. This was the next day.
Q. Okay. So at least 24 hours had passed; is that correct?
A. Yes.
Q. Okay. And I believe at some point you actually get a phone call from Derrick Rumph which is Mr. Rocky's, to use the nickname, Mr. Rocky's son; is that correct?
A. Correct.
Q. And he told you that they had some more information about this case?
A. Yes.
Q. How many lineups did you show Mr. Wright?
A. I believe it was three lineups. One with Mr. Sprinkle.
Q. What were the other two lineups? Was anyone in them?
A. Yes. The photo lineups were of Sean Echols.
Q. So you had two with Sean Echols and one with Richard Sprinkle in it?
A. If I can recall that day, yes.
Q. Who created the lineups?
A. One was created by our office which is the one with Richard Sprinkle and other one was created by SLED.
Q. So the lineup that we're actually discussing regarding

James Wright and Richard Sprinkle's pictures in it, that was created by the sheriff's department?
A. Yes.
Q. Do you know who?
A. At this time I don't recall. It was either one of our administrators.
Q. An administrator?
A. Uh-huh.
Q. Do you know how the lineups were created?
A. They were created based on likeness and physical characteristics and hairstyles.
Q. Did you give them the information to create it?
A. Yes.
Q. What information did you give them?
A. Based on what we had, a photo of Mr. Sprinkle, we tried to pick similar pictures.
Q. So you didn't tell them to generate a lineup based on the description that Mr. Wright had given you? You told them to generate it based on Mr. Sprinkle's description?
A. Repeat the question.
Q. Mr. Wright had told you that a man a little taller than him, so a little taller than five foot six with dreads was the man who assaulted him.
A. Uh-huh.
Q. Is that the information you told the administrator?

A. Right.
Q. Obviously the administrator had to know who Richard Sprinkle was though to put his picture in here, correct?
A. Correct.
Q. Now, at the time you showed this lineup, I believe you testified it was the next day?
A. That one, yes. Uh-huh.
Q. And by this point Mr. Wright and Mr. Rumph had been talking with other people; correct?
A. I'm not sure who they talked with.
Q. Well, if Mr. Rumph's son called and said they had more information, they'd been discussing it; correct?
A. I'm not sure if they discussed it. His son called for him, for Mr. Rumph's.
Q. He wouldn't have known to call unless they had been discussing it; correct?
A. I'm not certain.
Q. Did Mr. Wright ever describe to you whether the persons that came in the house were light skinned or dark skinned?
A. He just said two dark males. Uh-huh.
Q. Okay. Do you know which order you showed these lineups to Mr. Wright in?
A. At this time, no, I don't.
Q. But you did show him three lineups?

A. Yes, I did.
Q. Two had Sean Echols, one had Richard Sprinkle?
A. Yes.
Q. And this happened at Mr. Wright's house?
A. Yes.
Q. Do you know which room you were in?
A. We were outside.
Q. You were outside?
A. Yes.
Q. Who else was around when you were showing these lineups?
A. Investigator Huggins.
Q. Anyone else?
A. No.
Q. When you showed him the lineup, what did you say to him?
A. I said this is a picture, a photo lineup of some gentlemen. See if you can identify anybody in the picture that you recognize from that night.
Q. Did you tell him that there would be somebody in there?
A. No, I didn't.
Q. Did you tell him it was possible that he would pick no one?
A. There was a possibility that no one would be picked;

right.
Q. Did you tell him that?
A. I don't recall at that time if I said that no one would be picked.
Q. Okay. Now I believe you had testified you decided to put Richard Sprinkle in this lineup because Mr. Wright had told you that he knew somebody that was there, possibly by Ricky, and that he possibly lived at [redacted] -- I couldn't hear what you said.
A. [redacted].
Q. [redacted].
A. Uh-huh.
Q. I'm sorry. But that's correct, right, he told you someone named Ricky who possibly lived around the [redacted] would have been one of the people that did this?
A. Yes.
Q. And when did he tell you this?
A. That night that it happened, that same night.
Q. At his house or at the hospital?
A. I don't recall if it was at the house or the hospital, but I know it was that same night.
Q. Okay. And obviously in your training you've learned that keeping good records is a good idea; right?
A. Yes.
Q. But you didn't think to put Mr. Wright knew Ricky and

that he lived around the [redacted] in your report from the night of investigations at the beginning?

A. It's in my report that night, for that night.

Q. If you don't mind, I'm going to hand you your report. If you could find in here where you put that, I would appreciate that. Obviously just flips up.

A. (Reviewing documents.) It is right here.

Q. And this part of your report actually happened after they'd gone to the hospital, returned and talked with other people; correct?

A. (Nods head.)

Q. Okay. So at the time that this all first happens the first report that you get is only long hair, possibly knew him from the Corner Pocket?

A. Right.

Q. Okay. Beg the Court's indulgence.

(Pause.) No further questions, Your Honor.

THE COURT: Anything on redirect?

MS. FORD: Beg the Court's indulgence, Your Honor.

THE COURT: Sure. (Pause.)

MS. FORD: Just briefly.

REDIRECT EXAMINATION

BY MS. FORD:

Q. Investigator Garrison, did you know that Mr. Wright had said that one of the individuals that came in his

house assaulted him and robbed him was a man named Ricky who may have been at the Corner Pocket but he knew before you showed him that photo lineup?

A. Yes.

Q. And based on that information, is that how you came up with the photo lineup?

A. Yes.

Q. With pictures of five other individuals?

A. Yes.

Q. Do they all have similar characteristics?

A. Yes, they do.

Q. Do they have similar haircuts?

A. Yes.

Q. Similar facial features?

A. Yes.

Q. Similar facial hair?

A. Yes.

MS. FORD: No further questions, Your Honor.

THE COURT: Anything on recross?

MS. ULLMAN: No, sir.

THE COURT: Thank you, ma'am. You may step down. Does the State have any other witnesses?

MS. FORD: No, sir, Your Honor.

THE COURT: All right. Defense?

MS. ULLMAN: Your Honor, we have no witnesses for the

Neil-Biggers purpose.

THE COURT: Okay.

MS. ULLMAN: I do have a motion, Your Honor.

THE COURT: Okay.

MS. ULLMAN: Your Honor, obviously Neil-Biggers has to do with the reliability of an identification coming in. The first thing you have to look at is whether the lineup itself is unduly suggestive.

Your Honor, I would -- we would argue that, number one, we have not had any testimony in this courtroom regarding who actually personally put this lineup together, what their training and experience is in doing that.

All we've heard is that they're an administrator. Your Honor, that doesn't even actually tell us if that person is even in law enforcement. My secretaries could be administrators and that doesn't mean they have any experience in the legal field or should be creating lineups or giving any kind of legal advice.

Regarding the pictures themselves, Your Honor, these are -- it is unduly suggestive. Mr. Sprinkle is number two. He is the only person who is in a jail uniform. It's obvious that the shirt he has on is a jail shirt.

Two of them are in white T-shirts, another one in a black T-shirt with red markings on it, another one with a

black T-shirt, and another one with a black tank top.

Your Honor, all of them are at different levels. There are two of these pictures that are so closely taken that you can't even see their full face. Number five is only half of a picture.

Your Honor, the print themselves is not very clear. They're trying to say that facial hair on all of these people is the same. Number one maybe has a mustache, you can't really tell. Number three, number five and number six looks like their beard and their hair are all part of the same because these are color photos that were not printed very well.

So I believe, Your Honor, that the lineup in and of itself is unduly suggestive. Just the difference in their clothing, the difference in the way each one of them looks.

Mr. Sprinkle, in looking at these pictures, is obviously older than the rest of these people. And I think that how close they are to their face also relates to height and how tall the person looking at the lineup might actually think they are.

So regarding the lineup itself, I do believe it's unduly suggestive.

Regarding the factors that Biggers requires you to look at in the identification itself, Your Honor, the

opportunity to witness the person actually committing this crime.

Your Honor, the testimony we have is from James Wright. He testified that he was asleep for at least four house, that he had been drinking previously to that, at least a half pint of liquor. He testified that there was no lights on in the house. He said there was a light on outside that he happened -- he just peeked through the curtain and noticed two males out there.

When they came in, Your Honor, he testified that he was immediately hit in the head at least three times. Obviously had a weapon in his face and he is certainly in fear of that and paying attention to the weapon, not the person.

The degree of attention, I believe, would be exactly the same. On top of that, Your Honor, his attention would be divided between two people. There was obviously another person in this house that he was concerned about hurting him. He's trying to get word to his roommate. So obviously he has a lot of thoughts going through his mind.

The level of accuracy or description from the prior description compared to the lineup itself, Your Honor, there really was no prior description. Mr. Wright himself at the first instance he had to tell the police who did this to him, he said that a man was a little shorter than

him and a man was a little taller than him. He's five-six.

He did not at that time, Your Honor, testify -- or tell the officers anything about skin tone, hair, or, excuse me. He said long hair, short hair. He didn't say anything about the dreads. He didn't describe really anything but a size and that was to the reporting officer.

When, after having spoken with other people that is when he is able to tell Investigator Garrison that it was Ricky who did it and where Ricky lives. That is not information, Your Honor, that he is relaying to this officer based on his memory of what happened that night. The officer testified and Mr. Wright testified --

THE COURT: Another moment in Orangeburg.

MS. ULLMAN: Yes, sir.

(Sirens outside. Pause.)

THE COURT: All right. Ms. Ullman, I'm sorry for the interruption.

MS. ULLMAN: Thank you.

It wasn't until after Mr. Wright had spoken with other people and of course street talk and other people accusing Mr. Sprinkle of doing this is when he finally gave a better description of, I saw this person -- or, excuse me. I know this person is Ricky and where he may live.

The only identifying information that he gave to Investigator Garrison from his own knowledge was he believes he had seen this person at the Corner Pocket.

There is no evidence, Your Honor, that -- at all that Mr. Sprinkle had ever been to the Corner Pocket. Investigator Garrison did not testify that she ever went there to find out if anyone else knows him or who Ricky might be or if a dark-skinned man with dreads that's a little taller than five-six hangs out there often.

So the lineup was based on the victim's relaying other peoples' information. And his identification of Mr. Sprinkle out of that lineup is based on information, again, that he has received in the discussions he had with Mr. Rumph, his son and whomever else in the community may have been talking about this at that time.

So I believe, Your Honor, that not only is the lineup unduly suggestive but the way that Mr. Sprinkle was picked out of it is also not appropriate due to the factors that I've just listed.

THE COURT: Thank you. Ms. Ford?

MS. FORD: Your Honor, it would be the State's position that the identification procedure was not unduly suggestive in any way.

Your Honor, there was six individuals. Similar race -- they were all of the same race. Similar age,

similar hair, similar facial features, you know, facial hair.

Your Honor, Ms. Ullman points out the differences in the clothing. Mr. Sprinkle is in some sort of V neck. It would be her, the defense's position that's some sort of jail uniform. I certainly don't think that that is immediately evident upon looking at this, Your Honor.

But as Your Honor is aware, the question is: Was it unduly suggestive? But Neil versus Biggers doesn't stop there. If it is unduly suggestive, was it so suggestive to give rise to the substantial likelihood that the misidentification, the likelihood of irreparable misidentification under the totality of the circumstances.

Your Honor, Mr. Wright testified and Investigator Garrison testified that before this was, this lineup was created and presented to Mr. Wright and Mr. Rumph who, as Investigator Garrison pointed out, did not pick out Mr. Sprinkle, Mr. Wright had given a description of an individual, let her know that he knew the individual, and ultimately let Investigator Garrison know that he knew him as Ricky, knew that he lived in the [redacted] of [redacted] which matched with Mr. Sprinkle.

When he was shown this lineup, Your Honor, he picked him out immediately. And, Your Honor, it would be our

position that he picked him out immediately because he knew him from prior dealings and he knew him from the night of the incident.

Your Honor, it would be the State's position that this, the identification is reliable. It is not unduly suggestive. It does not create any likelihood of irreparable misidentification because Mr. Wright was familiar with Mr. Sprinkle from prior dealings.

And as such, it would be the State's position that this should be admitted for the jury's consideration, Your Honor.

THE COURT: May I see State's One for identification?

MS. FORD: Yes, sir.

(Document handed to the Judge.)

THE COURT: All right. Well, I have had the pleasure when I was in private practice of taking a photo ID lineup case on appeal.

And, Ms. Ullman, I've listened to your argument about the photo lineup and about whether or not it was unduly suggestive or not. I realize that we don't know exactly who put it together, but in comparison with the lineup that I took up and was affirmed, I think they did a spectacular job of putting this lineup together.

To me, I don't find it unduly suggestive at all. Everyone has essentially the same skin tone, length of

hair. And with the exception of one who might have a mustache, everybody has a goatee, a mustache and a goatee.

So the lineup is not unduly suggestive at all. And I don't know did this but I'd rather see more lineups this well than some I've seen. So, I don't think the lineup in and of itself is unduly suggestive.

I've listened to the testimony of the victim, Mr. Wright, and Ms. Garrison. I do not believe that the identification process was unduly suggestive, nor was there any substantial likelihood of misidentification because he had given a general description of the Defendant, indicated that he knew where he lived and then picked him out of this photo lineup.

So I find it to be reliable.

Okay. What's next?

MS. FORD: Thank you, Your Honor. If we can proceed with the Jackson V Denno hearing.

THE COURT: Okay. Could we take a short break?

MS. FORD: Yes, sir.

(Thereupon, a break was taken from 11:26 a.m., until 11:32 a.m., when the hearing of this matter resumed:)

THE COURT: All right. Ms. Ford?

MS. FORD: The State would call Investigator Thrower for purposes of the Jackson V Denno hearing.

JOHNNY THROWER, having been duly sworn, was examined and testified as follows:

THE COURT: Please be seated, please, sir.

DIRECT EXAMINATION

BY MS. FORD:

Q. Please state your name for the record.

A. Johnny Thrower.

Q. Where do you work?

A. I'm an investigator with the Orangeburg County Sheriff's Office.

Q. Investigator Thrower, how long have you been there?

A. I've been at the sheriff's office for approximately three years.

Q. And what do you do?

A. I'm a narcotics investigator with special operations. I also do criminal investigations.

Q. Have you ever met with Richard Sprinkle?

A. Yes, ma'am; I did.

Q. Okay. Did you meet with him on January 25th of this year?

A. Yes, ma'am; I did.

Q. Okay. How did that meeting come about?

A. I had received several phone calls and when I would go to the jail, they would tell me that Mr. Sprinkle wanted to speak with me.

Your Honor, as far as Mr. Sprinkle being moved, I don't know that that has any bearing on this particular, this particular motion, Your Honor, however, I think it would be good for the State and the defense to certainly put some of that information on the record at a later time.

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

All right. I think the issue before me is voluntariness. Ms. Ullman, you have made a Sixth Amendment argument that I want to look into before I make my rulings. So I'll just hold off on that for a little while. I'll just double-check some things and I'll get back to you with my ruling on that. Okay?

MS. FORD: Yes, sir.

THE COURT: You got anything else before we break for lunch?

MS. ULLMAN: I do have just a couple evidentiary pretrial issues that I'd like to bring up.

THE COURT: Okay. Have you talked to with Ms. Ford about them?

MS. FORD: No, sir.

THE COURT: You all haven't had an opportunity to talk?

MS. ULLMAN: No, sir. We haven't had an opportunity to go over it.

THE COURT: Okay.

MS. ULLMAN: It's been alluded to that during trial Sean Echols, co-defendant in this case, will be testifying against Mr. Sprinkle.

We'd just ask the Court to require the State to disclose to us any sort of deals that have been made due to this testimony with the State or with the federal government if they're aware of any. Mr. Echols is currently charged federally with crimes unrelated to the charges we're discussing today but obviously in the federal system testimony within the state court could also assist. So we would ask that anything of that nature be disclosed.

MS. FORD: Your Honor, everything has been provided to the defense concerning the pending investigation federally against Mr. Echols.

The State has also provided an expired plea offer to Mr. Echols. There have been no offers or negotiations or anything of that nature concerning Mr. Echols' testimony in this case, Your Honor.

THE COURT: Okay.

MS. ULLMAN: Your Honor, I've not received a witness list yet and that's not a complaint. It's just a statement.

A potential witness would be Collins Shuler. He is a

confidential informant that led these officers to Mr. Echols and actually named three different people that may have been involved with this.

I'd ask that if he's going to testify that we also be given any sort of deals or any kind of agreements that he may have made as an informant with the sheriff's department and/or the solicitor's office.

MS. FORD: Your Honor, the State will provide the witness list tomorrow morning and we'll certainly provide any additional information at that time, per usual custom.

THE COURT: Okay. What else?

MS. ULLMAN: Obviously, Your Honor, we would ask that criminal records be given regarding all witnesses, obviously including the two alleged victims and Mr. Echols.

THE COURT: All right. Ms. Ford?

MS. FORD: They'll be provided pretrial, Your Honor.

THE COURT: Okay.

MS. ULLMAN: Your Honor, there's two issues throughout the report that, again, I just want to make sure that we discuss them before possible testimony comes in. One is, there was a similar incident that police are saying [redacted] [redacted] [redacted] within maybe 30 minutes of this. They went off and investigated.

Mr. Sprinkle or Mr. Echols actually as far as I know

have never been charged with anything in regards to that incident, so I'd ask that --

THE COURT: The Myers Road incident?

MS. ULLMAN: The [redacted] incident; yes, sir.

So I'd ask that Investigator Garrison and any other investigator with knowledge of that incident not be allowed to speak of that. I'm afraid that with them being called similar incidents, home invasions being so close together location wise that it could confuse the jury and cause them to find the Defendant guilty based on the accusation of numerous things occurring that he hasn't been charged with.

THE COURT: Ms. Ford, is there going to be any testimony about any other incident? There shouldn't be.

MS. FORD: No, sir.

THE COURT: Okay. There won't be.

MS. ULLMAN: Yes, sir.

THE COURT: Okay.

MS. ULLMAN: Investigator Garrison also was told that there were some text messages between Sean Echols and I believe Collins Shuler, the informant.

Your Honor, we do not have those text messages. We would ask that at this point anything not turned over in discovery be excluded. Obviously this case is almost two years old now and we certainly have had time to have

discovery.

I'm being told we may have those, Your Honor. If so, I withdraw that motion obviously.

MS. FORD: Yes, sir. They certainly do have all discovery in this case. As always -- Your Honor, they do have the text messages. As always our office has an open-file policy which Mr. Mellard actually came and took a look at my file while he was still on the case.

THE COURT: Okay.

MS. ULLMAN: And my last favorite motion, Your Honor. We would ask that all witnesses be sequestered.

THE COURT: Except -- who's going to be sitting in for -- who's the chief investigator?

MS. FORD: Investigator Garrison, Your Honor. We would ask that the two victims in this case and Investigator Garrison obviously be excluded from that, but we would ask for reciprocal sequestration of the witnesses, Your Honor.

THE COURT: Okay. Do you have any problem with that?

MS. ULLMAN: We obviously agree to that.

THE COURT: All right. No problem.

MS. FORD: Your Honor, we actually have one motion.

MR. BELL: We have one motion in limine. We would move to exclude any inquiry when Mr. Echols testifies about a pending investigation. He has no, as far as I'm

aware, no charges by the federal government but -- no convictions.

His attorney, Mr. Andrew Brown, is present. He's informed us that if there is any inquiry that he's instructing Mr. Echols to take, to not answer under his Fifth Amendment rights. And I don't believe that they're allowed to ask that question for him to take those rights in front of the jury. And that's kind of what what we're trying to head off.

THE COURT: And, Mr. Bell, just to make sure I understand. As far as you know, Mr. Echols doesn't have any convictions?

MR. BELL: No convictions by the federal government. I'm not sure about the status of the charges or the investigation.

THE COURT: And what about -- and none from State government?

MR. BELL: He does have State.

THE COURT: You're just talking about --

MR. BELL: Talking about federal.

THE COURT: -- pending federal investigation.

MR. BELL: Yeah. That's correct, Your Honor.

You know, the appropriate State convictions are fair game. I mean, I'm not trying to --

THE COURT: No, I understand. Since he hasn't been

convicted of anything in federal court.

MR. BELL: That's correct. And because it would induce him to plead his Fifth Amendment rights because we've been informed by his attorney, Mr. Brown, that he's been so instructed.

THE COURT: How nice to have Mr. Brown here. Mr. wise?

MR. WISE: Thank you, Your Honor. Very briefly.

I understand exactly what Mr. Bell is talking but here's the situation. It's a little different.

The federal government is -- either has or is investigating the shooting of a corrections officer. As part of that investigation they interviewed Mr. Echols. As part of that interview Mr. Echols made certain admissions about his involvement in the shooting of that corrections officer, specifically saying that he shot him, that he was trying to assassinate him, he was doing it for money.

Certainly I would argue that that's a bad act. That he should be -- if he testifies he should be allowed to be cross-examined about it. He hasn't been convicted, I assume, but when a person says this is what I did, I think it's appropriate for the jury to use that to evaluate his credibility.

THE COURT: As a prior bad act?

MR. WISE: Exactly so, Your Honor.

THE COURT: All right. Mr. Bell?

MR. BELL: But, Your Honor, that's going to induce the answer that he has a right to invoke his Fifth Amendment rights at that point. And it would be extremely prejudicial to do that in front of the jury.

THE COURT: Okay. Well, let me -- that's what I'll look at. We'll get back to you before Mr. Echols has the opportunity to get to trial tomorrow morning.

MR. BELL: Thank you, Your Honor.

THE COURT: Either one of you have any memos on that?

MR. BELL: Not at this time but I'll find some.

THE COURT: Well, if you got the time to get me something, the Court always appreciates any memorandum or case law that you can pass on to me. I will appreciate that.

MR. BELL: I will do that, hopefully before the end of the day.

THE COURT: All right. Anything else we need to go over?

MS. ULLMAN: I have nothing further, Your Honor.

THE COURT: All right. Thank you all.

MS. FORD: Thank you, Your Honor.

THE COURT: The jury's coming in tomorrow?

MS. FORD: Yes, sir. At 9:30.

SELECTION OF THE JURY

ON TUESDAY, APRIL 9, 2013 AT 10:42 A.M.:

THE COURT: Ms. Ford, is the State ready to call the case?

MS. FORD: The State is ready, Your Honor.

THE COURT: Okay.

MS. FORD: Your Honor, the State would call the case of the State of South Carolina versus Richard Lanard Sprinkle.

He was indicted on Indictment 2011-GS-38-1561 for armed robbery which is true billed by the grand jury on October 1st of 2012.

Indictment 2011-GS-38-1562, armed robbery also true billed by the grand jury of Orangeburg County on October 1st, 2012.

Indictment 2011-GS-38-1563, an indictment for attempted murder, true billed by the grand jury, Your Honor.

Indictment 2011-GS-38-1564, indictment for attempted murder, true billed by the grand jury on October 1st, 2012.

And indictment 2013-GS-38-0287, indictment for burglary in the first degree, indicted by the grand jury of Orangeburg County, January 30th, 2013.

THE COURT: Thank you, Ms. Ford.

MS. FORD: May I approach, Your Honor?

THE COURT: Yes, ma'am.

(Document handed to the Court.)

THE COURT: Thank ma'am. All right. Ladies and gentlemen of the jury panel, the State is represented in this matter by Ms. Sarah Ford and Mr. Harrison Bell. Ms. Ford, would you also identify the other members of the solicitor's office for me?

MS. FORD: Yes, sir. I will.

THE COURT: Thank you.

MS. FORD: Good morning. I'm Sarah Ford. Along with Harrison Bell, we'll be prosecuting this case on behalf of the State of South Carolina.

Our chief prosecuting solicitor is David Pascoe. Other solicitors in our office are Tommy Scott, Don Sorenson, Rob Clariday, Crystal Chapman, Bryan Jeffries.

THE COURT: Is any member of the jury panel related by blood or marriage or a close personal friend of any of the attorneys in the solicitor's office or any person that works in the solicitor's office? Any member of the jury panel related by blood or marriage or close personal friend of anyone who -- yes, sir. Your name again, please, sir?

THE JUROR: Donald Hilton.

THE COURT: And, Mr. Hilton, you advised me earlier that your uncle works in the solicitor's office?

THE JUROR: Yes, sir.

THE COURT: The fact that your uncle works in the solicitor's office, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict?

THE JUROR: No, sir.

THE COURT: If you'd stay with us please, Mr. Hilton, I'd appreciate it.

All right. Anyone else?

All right. The Defendant in this case is represented by Ms. Jill Ullman and Mr. Mark Wise. If y'all would please stand.

Thank you. They're both with the Orangeburg County Public Defenders Office.

Mr. Wise, would you mind identifying the other members of the attorneys in your office?

MR. WISE: Thank you, Your Honor. If it please the Court.

THE COURT: Yes, sir.

MR. WISE: Good morning. My name is Mark Wise. Seated also at counsel table trying this case is Jillian Ullman. The supervisor of our office is Ms. Margaret Hinds. We also have an attorney Douglas Mellard, M-E-L-L-A-R-D.

The First Circuit Public Defender is Mark

Leiendecker. His office is in Summerville, South Carolina.

THE COURT: Thank you, sir.

Any member of the jury panel related by blood or marriage or a close personal friend of any of the attorneys that work in the public defenders office or any members of their staff that work in the public defenders office? If so, please stand at this time.

All right. No one is standing.

The Defendant in this case is Mr. Richard Sprinkle. Mr. Sprinkle, would you mind standing and facing the jury?

THE DEFENDANT: (Complying.)

THE COURT: Thank you, sir. You may sit down.

Ladies and gentlemen of the jury panel, is any member of the jury panel related by blood or marriage or a close personal friend of Mr. Sprinkle? If so, please stand at this time.

All right. No one is standing.

Now, ladies and gentlemen, there are a number of witnesses that may be called in this case. And I will go through and give you their names and after each one if you know these people or if you are related or a close personal friend of any of these people, I need for you to stand so I can ask you the same questions I have been

asking before.

I would ask you again, when I'm asking the questions, if you would just respond to the question that I ask. Okay. Sometimes I know you want to be helpful and like that, but I need for you just to respond to the questions that I ask.

All right. Deputy McRoy is a possible witness in this case. Is any member of the jury panel related by blood or marriage or a close personal friend of Deputy McRoy? If so, please stand.

No one is standing.

Deputy Pesesko. Did I pronounce that right?

MS. FORD: Pesesko.

THE COURT: Pesesko. Deputy Pesesko is a possible witness in this case. Is any member of the jury panel related by blood or marriage or a close personal friend of Deputy Pesesko? If so, please stand at this time.

No one is standing.

Investigator Garrison may be a witness in this case. Any member of the jury panel related by blood or marriage -- thank you, Investigator Garrison for standing. Any member of the jury panel related by blood or marriage or a close personal friend of Investigator Garrison? If so, please stand at this time.

Thank you.

No one is standing.

Investigator Huggins may be a possible witness in this case. Any member of the jury panel related by blood or marriage or a close personal friend of Investigator Huggins? If so, please stand at this time.

No one is standing.

James Wright is a possible witness in this trial. Any member of the jury panel related by blood or marriage or a close personal friend of Mr. James Wright? Is he here?

MS. FORD: Mr. Wright's in the courtroom, Your Honor.

THE COURT: Oh, Mr. Wright's here. Mr. Wright, if you'd please stand and face the jury panel. You're fine right there. I just need for you to stand right there. Thank you, sir.

You can be seated. Appreciate it. You can sit down.

Any member of the jury panel related by blood or marriage or a close personal friend of Mr. James Wright? If so, please stand.

No one is standing.

Is Robert Rumph --

MS. FORD: He is, Your Honor.

THE COURT: Mr. Rumph, if you'd also stand and face the jury panel. Thank you, sir.

Any member of the jury panel related by blood or marriage or a close personal friend of Mr. Robert Rumph?

If so, please stand.

No one is standing.

Is Investigator Shumpert here?

MS. FORD: No, sir.

THE COURT: No. Okay. All right. Any member of the jury panel related by blood or marriage or a close personal friend of Investigator Shumpert? If so, please stand at this time.

No one is standing.

Sean Echols is not here right now?

MS. FORD: No, sir.

THE COURT: Any member of the jury panel related by blood or marriage or a close personal friend of Sean Echols? If so, please stand.

No one is standing.

Is any member the jury panel related by blood or marriage or a close personal friend of Collins Shuler? If so, please stand at this time.

No one is standing.

Any member of the jury panel related by blood or marriage or a close personal friend of Jasper Clark? If so, please stand at this time.

No one is standing.

Any member of the jury panel related by blood or marriage or a close personal friend of Investigator Stokes

with the Orangeburg County Sheriff's Office? If so, please stand.

No one is standing.

Any member of the jury panel related by blood or marriage or a close personal friend of Investigator Thrower with the Orangeburg County Sheriff's Department? If so, please stand.

No one is standing.

Deputy Asbury is a possible witness?

MS. FORD: Yes, sir.

THE COURT: Okay. Deputy Asbury, would you turn to the jury panel, please? Thank you, sir.

Any member of the jury panel related by blood or marriage or a close personal friend of Deputy Asbury? If so, please stand at this time.

All right. No one is standing.

Any member of the jury panel related by blood or marriage or a close personal friend of Investigator Godwin with the Orangeburg County Sheriff's Department? If so, please stand.

All right. No one is standing.

Is any member of the jury panel related by blood or marriage or a close personal friend of any member of any law enforcement agency? If so, please stand.

All right. No one is standing.

Has any member of the jury panel ever been employed by any civilian or military law enforcement agency as a law enforcement officer, or in any other capacity? If so, please stand.

Yes, ma'am, your name?

THE JUROR: Geraldine Manning.

THE COURT: Ms. Manning, you're Juror Number 112?

THE JUROR: Yes.

THE COURT: Okay. And, Ms. Manning, you have been employed in a civilian or military law enforcement?

THE JUROR: Civilian, with the city public safety.

THE COURT: With public safety?

THE JUROR: Right.

THE COURT: The public safety here in Orangeburg?

THE JUROR: In Orangeburg.

THE COURT: The fact that you were employed with public safety here in Orangeburg, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict?

THE JUROR: No.

THE COURT: Okay. If you'd then stay with us, please, ma'am. Thank you.

Anyone else?

All right. No one else is standing.

Is any member of the jury panel employed by, related

by blood or marriage to or a friend or, a close friend of anyone employed by the solicitor's office, the attorney general's office, or any prosecuting attorney's office? If so, please stand.

All right. No one is standing.

Has any member of the jury panel ever worked at any of those agencies in any capacity; the solicitor's office, the attorney general's office, or any prosecuting attorney's office? If so, please stand.

No one is standing.

Now has any member of the jury panel read or heard anything about this case? If so, please stand.

No one is standing.

Has any member of the jury panel or a member of your immediate family or a close personal friend ever been the victim of a crime? If so, please stand.

No one is standing.

Is any member of the jury panel, a member of your immediate family or a close personal friend a member of MADD, SADD, CAVE, CASA or any other similar organization which has as its goal the promotion of law enforcement? If so, please stand.

THE JUROR: Could you repeat that question again, please?

THE COURT: Yes, ma'am.

Is any member of the jury panel or a member of your immediate family or a close personal friend a member of organizations such as MADD, SADD, CAVE, CASA, or other similar organizations which have as their goal the promotion of law enforcement? If so, please stand.

All right. No one is standing.

Is there anything in the nature of the allegations of this case, and you've heard what the charges are, which would cause any member of the panel any problem with sitting as an impartial juror in this matter? If so, please stand.

No one is standing.

Has any member of the jury panel ever received assistance from the Victim's Advocacy program? If so, please stand.

No one is standing.

Has any member of the jury panel ever contributed to the election campaigns of David Pascoe, the solicitor, or the Orangeburg County Sheriff? If so, please stand.

No one is standing.

Has any member of the jury panel ever been arrested by a law enforcement agency even if the arrest did not result in a conviction? And I'm not talking about speeding or traffic violations like that.

Any member of the jury panel ever been arrested by any

law enforcement agency, even if the arrest did not lead to conviction? If so, please stand.

All right. No one is standing.

Does the fact that the Defendant is represented by the Orangeburg County Public Defenders Office cause any member of the panel any problem in sitting as an impartial juror? If so, please stand.

No one is standing. All right.

Any other questions from the State?

MS. FORD: Nothing from the State, Your Honor.

THE COURT: Okay. Any other questions from the defense?

MS. ULLMAN: No, sir.

THE COURT: All right. Ladies and gentlemen, we are now getting ready to proceed with picking jurors in this case. What's going to happen is every one of you who are presently sitting here name is in the computer. The computer is going to rearrange your names and put your names out in a different order.

After the computer has done that, the clerk will call your name. You will need to come up to the front, stand at this podium right here and if you'll stand and face the doors out there and then the attorneys will tell me whether they want you to sit as a juror or whether you are excused from service as a juror this week.

Now, when you come up, you know, if you got a pocketbook or a jacket or something like that, you need to bring that with you because you might not go back to your seat. You might go over here and the bailiff's going to show you where to sit in the jury box.

Now it's going to take a minute to do that. And, again, if you need to stretch your legs, go to the restroom or something like that, now's the time to do it. I'd ask you to be back in the courtroom at 11 o'clock. Okay?

Thank you all.

THE JUROR: I didn't process the question in time, the one about being the victim of a crime.

THE COURT: First of all, I need to know your name.

THE JUROR: Marion E. Robinson, 157.

THE COURT: Hold on a second Mr. Robinson, you have been the victim of a crime?

THE JUROR: All this string of robberies that was going on in Orangeburg.

THE COURT: All right. The fact that you have been a victim of those, would that affect your ability to listen to the evidence in this case and render a fair and impartial verdict?

THE JUROR: Most certainly would.

THE COURT: It would?

THE JUROR: Yes, sir.
THE COURT: Mr. Robinson, then I am going to excuse you.
THE JUROR: I can leave?
THE COURT: Yes, sir. Thank you, sir.
THE JUROR: Okay.
THE COURT: Juror Number 157 is excused. Yes, sir, your name?
THE JUROR: Christopher Reed.
THE COURT: Mr. Reed.
THE JUROR: On the one when you were talking about the arresting part, I was arrested a while back. I don't remember, I'm pretty sure -- I mean, I didn't go to jail or anything.
THE COURT: Okay.
THE JUROR: But I just wanted to say I was arrested.
THE COURT: The fact that you've been arrested, would that affect your ability to listen to the evidence in this case?
THE JUROR: No, sir.
THE COURT: And render a fair and impartial verdict?
THE JUROR: I just wanted --
THE COURT: If you'd stay with us. No, no. I appreciate you doing that. Okay. Mr. Reed, Number 146, is going to stay with us. Okay. Thank you, sir. Yes,

ma'am?

THE JUROR: Alexis Guinyard, Juror Number 69.

THE COURT: Hold on one second. Ms. Guinyard, you didn't understand one question; right?

THE JUROR: I understand the question about CASA.

THE COURT: CASA.

THE JUROR: I work for CASA Family Systems here in Orangeburg. And I just wanted to make sure that that was the agency that you were referring to.

THE COURT: Yeah, uh-huh.

THE JUROR: I'm also a volunteer victim's advocate with the sheriff's department. So I just wanted clarification.

THE COURT: That's okay. Would the fact that you work in any of those places affect your ability to listen to the evidence in this case, render a fair and impartial verdict?

THE JUROR: No, sir.

THE COURT: Okay. Thank you, ma'am. If you'd stay with us.

THE JUROR: No problem.

THE COURT: Yes, sir?

THE JUROR: Juror 143.

THE COURT: Hold on one second. Mr. James Rast.

THE JUROR: Yes, sir. Both of those things that you

spoke about just a minute ago, I have been a victim about a year and a half, car jacking at gunpoint in Dorchester County. And I have been involved in the legal system after that.

THE COURT: Mr. Rast, the fact that has happened to you, would that affect your ability to listen to evidence in this case and render a fair and impartial verdict?

THE JUROR: I'm not sure, sir.

THE COURT: Well, I need for you to tell me either yes or no.

THE JUROR: I would think I could be -- yes, sir, I think I can.

THE COURT: Be fair and impartial?

THE JUROR: Yes, sir.

THE COURT: Listen to both sides, render --

THE JUROR: Yes, sir.

THE COURT: If you'd stay with us then, Mr. Rast. Thank you. Juror Number 143 is staying with us. Yes, ma'am?

THE JUROR: Geraldine Manning, 112.

THE COURT: Okay.

THE JUROR: My sister was a victim, so I just wanted to share that.

THE COURT: Ms. Manning, would the fact that your sister was a victim, would that affect your ability to

listen to the evidence in this case, render a fair and impartial verdict?

THE JUROR: I don't think so.

THE COURT: Okay. Then if you'd stay with us, please, ma'am. Thank you for telling me. Okay. Thank you.

All right. Ladies and gentlemen, we're going to get ready to begin picking a jury in this case. As I mentioned earlier when the clerk calls your name I need for you to come forward, stand in front of the podium right here and turn. If you'll then turn your back to me and face the attorneys, I'd appreciate it.

All right. Madam Clerk, are you ready to call?

THE CLERK: Yes.

THE COURT: Okay.

THE CLERK: Juror Number 126, Tony Mims.

(Black male comes forward.)

THE COURT: Okay. Mr. Mims, this is the part you show everybody how to do this right.

THE JUROR: I hope so.

THE COURT: Come right up here and then turn.

THE JUROR: All right.

THE COURT: Very good. Thank you, sir. Now y'all see how it's done. All right.

THE CLERK: What says the State?

MS. FORD: Please present Mr. Mims, Your Honor.

SELECTION OF THE JURY

THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.
THE CLERK: You may have a seat in the jury box.
Juror Number 92, Jamel James.
(Black male comes forward.)
THE CLERK: What says the State?
MS. FORD: Beg the Court's indulgence.
THE COURT: Take your time.
MS. FORD: Please present Mr. James.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.
THE BAILIFF: Right here.
THE CLERK: Juror Number 31, Marilyn Carter.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Carter.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.
THE CLERK: Juror Number 112, Geraldine Manning.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Manning.
THE CLERK: What says the defense?
MS. ULLMAN: Please excuse Ms. Manning.
THE CLERK: You may return to your seat.

SELECTION OF THE JURY

Juror Number 121, Faye Menefee.
(White female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Menefee.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.
THE CLERK: Juror Number 161, Wryan Sarjeant.
(Black male comes forward.)
THE CLERK: What says the State?
MS. FORD: Please excuse Mr. Sarjeant.
THE CLERK: You may return to your seat.
Juror Number 52, Penny Fulmer.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Fulmer.
THE CLERK: What says the defense?
MR. WISE: One moment, Your Honor.
THE COURT: Take your time.
MS. ULLMAN: Please seat the juror.
THE BAILIFF: This way.
THE CLERK: You may have a seat in the jury box.
Juror Number 93, Jacqueline Jamison.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Beg the Court's indulgence, Your Honor.

THE COURT: Take your time.
MS. FORD: Please present Ms. Jamison.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat Ms. Jamison.
THE CLERK: Juror Number 22, Earl Bruce.
(Black male comes forward.)
THE CLERK: What says the State?
MS. FORD: Please excuse Mr. Bruce.
THE CLERK: You may return to your seat.
Juror Number 146, Christopher Reed.
(White male comes forward.)
THE CLERK: What says the State?
MS. FORD: Beg the Court's indulgence, Your Honor.
THE COURT: Okay.
MS. FORD: Please present Mr. Reed.
THE CLERK: What says the State -- I'm sorry. What says the defense?
MS. ULLMAN: Please seat the juror.
THE BAILIFF: This way, sir.
THE CLERK: Juror Number Two, Ashley Aimar.
(White female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please Present Ms. Aimar.
THE CLERK: What says the defense?
MR. WISE: One moment, Your Honor.

THE COURT: Okay.
MS. ULLMAN: Please excuse the juror.
THE CLERK: You may return to your seat.
Juror Number 84, Kenya Hubbard.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Hubbard.
THE CLERK: What says the defense?
MS. ULLMAN: Please excuse the juror.
THE CLERK: You may return to your seat.
Juror Number 34, Blondell Colter.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Colter.
THE CLERK: What says the defense?
MS. ULLMAN: Please excuse the juror.
THE CLERK: You may return to your seat.
Juror Number 72, Harold Hailey.
(Black male comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Mr. Hailey.
THE CLERK: What says the defense?
MS. ULLMAN: Please excuse the juror.
THE CLERK: You may return to your seat, sir.
Juror Number 71, Rachel Haddock.

(White female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Haddock.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.
THE CLERK: Juror Number 143, James Rast.
(White male comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Mr. Rast.
THE CLERK: What says the defense?
MS. ULLMAN: Please excuse the juror.
THE CLERK: Juror Number 17, Stephanie Brant.
(White female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Brant.
THE CLERK: What says the defense?
MR. WISE: One moment, Your Honor.
MS. ULLMAN: Apologize, Your Honor. Please seat the juror.
THE CLERK: Juror Number 125, Edward Miller.
(Black male comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Mr. Miller.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.

SELECTION OF THE JURY

THE CLERK: You may have a seat now, sir, in the jury box.

Juror Number 101, Shannon Johnson.

(Black male comes forward.)

THE CLERK: What says the State?

MS. FORD: Please present Mr. Johnson.

THE CLERK: What says the defense?

MS. ULLMAN: Please seat Mr. Johnson.

THE CLERK: Juror Number 195, Tillman Williams.

(White male comes forward.)

THE CLERK: What says the State?

MS. FORD: Please present Mr. Williams.

THE CLERK: What says the defense?

MS. ULLMAN: Please excuse the juror.

THE CLERK: You may return to your seat.

Juror Number 182, Erica Tyler.

(Black female comes forward.)

THE CLERK: What says the State?

MS. FORD: Please present Ms. Tyler.

THE CLERK: What says the defense?

MR. WISE: Could I have one moment, Your Honor?

MS. ULLMAN: Please seat the juror.

THE COURT: All right. According to my calculations we now have a jury. We'll pick two alternates. The first alternate will be, the strikes are one and two.

THE CLERK: Yes, sir. Juror Number Four, Gloria Allen.

(White female comes forward.)

THE COURT: Did we skip Miss --

THE CLERK: Erica.

THE JUROR: No, no.

THE CLERK: No. Go back.

THE JUROR: I'm sorry. Okay. Sorry.

THE CLERK: What says the State?

MS. FORD: Please present Ms. Allen.

THE CLERK: What says the defense?

MS. ULLMAN: Your Honor, we'd ask that the juror be excused.

THE COURT: All right.

THE CLERK: Juror Number 58, Randy Garrett.

(White male comes forward.)

THE CLERK: What says the State?

MS. FORD: Please present Mr. Garrett.

THE CLERK: What says the defense?

MS. ULLMAN: Please seat the juror.

THE COURT: All right. Now, pick the second alternate.

THE CLERK: Juror Number 14, Ollie Boyd.

(Black female comes forward.)

THE CLERK: What says the State?

MS. FORD: Please excuse Ms. Boyd.
THE CLERK: Juror Number 69, Alexis Guinyard.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Guinyard.
THE CLERK: What says the defense?
MR. WISE: One moment, Your Honor.
MS. ULLMAN: Please excuse the juror.
THE CLERK: Juror Number 67, Angela Gray.
(Black female comes forward.)
THE CLERK: What says the State?
MS. FORD: Please present Ms. Gray.
THE CLERK: What says the defense?
MS. ULLMAN: Please seat the juror.
THE COURT: All right. We now have a jury and two alternates. Any issues from the State regarding jury selection?
MS. FORD: Nothing from the State, Your Honor.
THE COURT: Anything from the defense regarding jury selection?
MS. ULLMAN: No, sir.
THE COURT: Okay. Ladies and gentlemen, those of you who were not chosen to serve, I appreciate y'all being willing to serve as jurors.
As I mentioned earlier, we only have one case to try

this week. So, y'all are now excused from jury service. If y'all would quietly leave the jury room -- courtroom.

(Jury pool exits courtroom at 11:32 a.m.)

THE COURT: Congratulations. Appreciate y'all being willing to serve. I appreciate the fact that y'all will be serving.

Let me just mention a couple of things. First of all, it's -- there are some matters I need to take up with the attorneys before we can actually start the trial. And since it's getting close to lunchtime, what I will do is I'm going to let y'all go to lunch. And it's going to be -- it's sort of an extended lunchtime because we have some things to take care of.

The most important thing I need to tell you is you cannot talk with anyone about this case. You cannot do any investigation about this case. You know how you can go on the Internet now and find out almost anything you want to? Don't go on the Internet. Don't do any investigation about this case or anything like that.

Everything you're going to need to know to decide this case you're going to hear right here in this courtroom. Okay?

Now the other thing is, until I tell you you can begin your deliberations at the end of the case, you can't even talk among yourselves about what the testimony is. So

when we start taking testimony, we'll probably have a witness on the stand, if it takes a while we'll take a break, y'all will get to go back into the jury room but you can't talk about the testimony that you've just heard.

You cannot begin discussing this case even among yourself until the end of the trial. The reason for that is we want you to hear everything before you start voicing any kind of opinions or how y'all take anything about the case.

Now, the final thing I want to tell you before you break for lunch is that if you will follow the bailiff back she'll show you where the jury room is. I'll ask y'all to be back in the jury room at a quarter to two. At 1:45.

When y'all get back into the jury room, members of the jury panel, I need for you to elect a foreperson. The foreperson's duty is to fill out the verdict form at the end of the case, to write down any questions that the jury may have when you begin your deliberations, and to preside over the deliberations in the jury room once the case goes to you to be decided.

So when y'all come back at 1:45 the first thing that y'all are going to do to see how well y'all work together. Pick a jury foreperson.

Now you've got an extended lunch. I know you've got

to contact people and tell them that you're going to be on jury duty this week. This will give you some time to do this, eat lunch. If you'd all be back in the jury room at 1:45. The bailiff will show you where to go to get back in to serve.

And thank y'all for being willing to serve. Thank you.

(Jury panel exits courtroom at 11:35 a.m.)

THE COURT: Did y'all have any new matters before I start getting into the old matters, from the State?

MS. FORD: No, sir.

THE COURT: Ms. Ullman, did y'all have any new matters before I get into the rulings?

MS. ULLMAN: At this time, no, sir.

THE COURT: What I will do is, let me just go over -- we had that Jackson V Denno hearing. And I've got two rulings that I want to read into the record regarding the Jackson V Denno and for the testimony of the co-defendant, a couple issues that y'all brought up yesterday.

Regarding the Jackson V Denno, I find that the Sixth Amendment right to counsel had undoubtedly attached at this point in the Defendant's criminal proceedings. When the Sixth Amendment right to counsel has attached, if police initiate interrogation after a defendant's assertion at an arrangement or at other similar

his right to counsel by mentioning that Mr. Wise was his attorney at the conclusion of the interrogation. The invocation of the right to counsel must be unambiguous. And finally I find that based on the totality of the circumstances, the Defendant's statement itself was made voluntarily. While the interrogation took place at the Orangeburg County Sheriff's Office, all the evidence presented showed that the interrogation took place at the Defendant's request.

Furthermore, there was nothing presented tending to show any compulsive or otherwise unduly coercive factors involved in the Defendant's giving the statement himself and since the interrogation was conducted at the Defendant's request and his rights were waived freely and voluntarily, I find that the statements made therein are admissible.

Regarding the testimony of the co-defendant and his Fifth Amendment issues, I'm granting the State's motion to exclude the testimony of the co-defendant's federal investigation. It is a well-settled matter of law that the United States Constitution which certainly trumps matters of state law, quoting from Jameson versus Ford Motor, if a state statute, administrative rule or common law cause of action conflicts with a federal statute, it is uncontestable that the state law has no efficacy.

Therefore were the testimony sought otherwise admissible, I feel that any invocation of the Fifth Amendment privilege against self-incrimination would clearly take precedence there over.

However, I also find the evidence inadmissible under the South Carolina Rules of Evidence. The Defendant apparently seeks to admit the evidence under Rule 608(b)(1). However evidence admissible thereunder is only evidence of the witness's character for truthfulness or untruthfulness.

These specific instances of misconduct are limited to those that are clearly probative of thoughtfulness or untruthfulness such as forgery, bribery, false pretenses or embezzlement, quoting from State V Kelsey, 331 South Carolina 50.

I find that the crime about which this testimony is apparently sought, which is attempted murder, is not a specific instance of conduct that is probative for the Defendant's truthfulness or untruthfulness and is thus inadmissible under the South Carolina Rules of Evidence.

Additionally I find that allowing defense counsel to question Mr. Echols regarding this matter and requiring him to invoke the privilege from the witness stand could cause the jury to draw an inference therefrom contrary to the purpose of the Fifth Amendment.

It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such an invocation.

It has been recognized that neither the State nor the Defendant should be allowed to call witnesses who either side knows will invoke the Fifth Amendment in front of the jury and then be subject to inferences in form -- in a forum not subject to cross-examination. Cite: State versus Hughes, 328 South Carolina 146.

Therefore I'm granting the State's motion to exclude and order that no testimony regarding Mr. Echols' federal attempted murder charge be elicited by either party in this case.

All right. Anything, Mr. Wise?

MR. WISE: Very briefly, Your Honor.

THE COURT: Yes, sir.

MR. WISE: The Court's last ruling, I recognize what the Court's ruling is.

THE COURT: Yes, sir.

MR. WISE: Normally when the Court rules on a motion in limine --

THE COURT: It's only in limine if it comes up in trial. You can -- you will need to preserve it at that time.

MR. WISE: Okay. So I will -- the reason I'm raising this now is, the way I'd have to preserve it is to go directly against this Court's ruling which I don't want the Court to think I'm trying to be obstinate.

THE COURT: No, no, no. You've got to do that to preserve your objection.

MR. WISE: Okay. Thank you.

THE COURT: We'll handle it without, hopefully without disturbing the jury or anything like that.

MR. WISE: Very good. Thank you.

MR. BELL: Your Honor, I think it would be incumbent upon us to raise it when we call him as a witness, I think is what the procedure would be and raising it before any testimony.

THE COURT: Whichever way -- we'll talk about it a little bit more. He's not going to be the first witness called, I assume?

MR. BELL: No, Your Honor.

THE COURT: All right. Now, I believe y'all told me we don't have any other witnesses, any other things to go over right now?

MS. FORD: No, sir.

THE COURT: If y'all will be prepared to get started at quarter till two, that will give y'all some time to talk some more, hopefully.

MR. WISE: We are, Your Honor. Thank you.

THE COURT: All right. Bring the jury on out.

THE BAILIFF: Yes, Your Honor.

THE COURT: Thank you, ma'am.

(Jury enters courtroom at 2:02 p.m.)

THE COURT: Good morning -- afternoon, ladies and gentlemen. I hope y'all had a good lunch. We're getting ready to start the trial.

Before we can start the trial, the first thing we've got to do is swear y'all in as the jury in this case. So if y'all don't mind standing and raising your right hand, the clerk is going to swear y'all in.

(Jury impaneled.)

THE COURT: Please be seated.

MR. WISE: Your Honor, before be begin can we approach the bench one moment?

THE COURT: Sure.

(Off-the-record discussion.)

THE COURT: Ladies and gentlemen, oftentimes I think I have taken care of everything before we get started. There's one other thing I was reminded that I need to take care of before we can begin this.

So what I'm going to do is excuse y'all to go back into the jury room for just a minute while I take care of another matter, and then I'll bring you back out. Thank

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

I understand what you're getting at. I do understand that. I mean, it's not that I don't understand what you're getting at, but I think as victims they have that right.

So, I'll deny your motion. Again, note your objection.

MR. WISE: Okay.

THE COURT: Okay. Hopefully it will be preserved for the record. Okay.

Anything else?

MR. WISE: That's all we have, Your Honor.

THE COURT: Okay. State ready?

MS. FORD: We're ready to proceed, Your Honor.

THE COURT: Then we'll start back. Thank y'all. Okay. Bring them back in.

THE BAILIFF: Yes, Your Honor.

(Jury enters courtroom at 2:20 p.m.)

THE COURT: We're getting ready to get started. This is the case of the State of South Carolina versus Richard Lanard Sprinkle.

What I'm going to do now is give you an introduction into what's going to happen in this case. I'm not charging you on the law at this time. I will not -- the last thing that happens in this case before you begin your deliberations is that I will instruct you on the law.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

What I'm going to do now is give you an idea of the procedure, how things are going to happen today so that you will have kind of a general idea of what's going on.

As you may remember when Ms. Ford called the case, Mr. Sprinkle had been charged by indictments filed with this Court of the crimes of two counts of attempted murder, two counts of armed robbery and one count of burglary in the first degree. All of the elements of those crimes will be explained to you later.

These indictments are simply the charges by which this case is brought to court, and is not in any sense of the word evidence of any of the allegations that it contains.

The Defendant has pled not guilty to these indictments and the State therefore has the burden of proving each of the elements of each indictment beyond a reasonable doubt.

And it will be your duty, ladies and gentlemen, to decide whether the State has met that burden. Your job as jurors is to find and determine the facts in this case. You are the sole judges of the facts.

If at any time during this trial I make any comment regarding the facts, you must disregard my comment. You are to determine the facts from the testimony that you hear in this courtroom and any other evidence that is introduced in court. It is up to you to determine the inferences which you feel may be properly drawn from this

the testimony is admitted whether or not you believe it is solely for you to determine.

In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand.

You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means that it is your duty to pay close attention to them, to observe them, to listen to the witnesses and to pay close attention to the attorneys and the Court.

Please give strict attention to the testimony in this case so that at the end of all the testimony, after the arguments of counsel, and after the charge on the law by me you will then be in a position to determine what the true facts are and apply the law to those facts and thus render a true verdict. All right.

Mr. Bell?

MR. BELL: If it please the Court, Mr. Wise, Ms. Ullman, madam forelady, ladies and gentlemen of the jury.

Easy money. That's why we're here today. Easy money.

OPENING STATEMENTS ON BEHALF OF THE STATE

Back on the early morning hours of June 26, 2011, Mr. Robert Rumph and Mr. James Wright were at the residence, they're roommates, on Myers Road. On that early morning a knock came to the door. They knew one of the fellows, a Sean Echols. They opened the door. They asked, Sean asked to use a phone, something about a girlfriend. And they came in. Sean Echols and the Defendant, Mr. Richard Sprinkle, came into the residence, produced a pistol and a knife and asked these gentlemen for their money. They took one, Mr. Wright into the room. I think Mr. Sprinkle took Mr. Wright into the room. Mr. Echols went back to Mr. Rumph and they took money from Mr. Wright and then brought him back in the room, got money from Mr. Rumph and then they beat them and stabbed the gentlemen and left. They took Mr. Rumph's car.

We know it was these two gentlemen, ladies and gentlemen, because after all this happened the police were called. They were arrested for these crimes, charged with the crimes that you've heard. And at some point Sean Echols admitted to his involvement.

And that's why we're here, ladies and gentlemen. We're here because Richard Sprinkle is charged with five different charges. You've heard; one count of burglary in the first degree, two counts of attempted murder and two counts of armed robbery.

These men were elderly, living by themselves and were known to have money. That's why I said this is about easy money. They thought they could get in and get it with little fuss and muss, get the money and for added benefit for some reason they beat them and stabbed them for no good reason.

Ladies and gentlemen, as you heard, my name's Harrison Bell and along with Susan Ford we represent -- Sarah Ford, I'm sorry. We represent the State of South Carolina. We're the prosecutors. We have the burden of proving these charges against Richard Sprinkle.

We have the burden of proving each and every element of these charges against Richard Sprinkle to your satisfaction in order to find and convict him of these charges, for you to find him guilty.

We have the burden of proof. We must prove these charges beyond what's called all reasonable doubt. All reasonable doubt. We must prove a person guilty beyond all reasonable doubt. That's an important concept in the law.

What it doesn't mean is that the State doesn't have to prove a person guilty beyond all doubt or 100 percent guilty or beyond a shadow of a doubt. We don't have to go that far. We have to go a pretty good distance but we don't have to go all the way to certainty because there's

nothing certain in this world except death, and taxes unfortunately.

What the law says is proof beyond all reasonable doubt is proof that leaves honest jurors earnestly seeking the truth firmly convinced of a defendant's guilt.

That's the standard. That's the standard you must use.

Now, what must we prove? Well, as I said, we have a number of charges. And I want to briefly go over them. The first one I have is burglary in the first degree. Burglary in the first degree is defined and these are the elements; that there is an unlawful entry into the dwelling of another without consent with the intent to commit a crime therein.

And there's several circumstances of aggravation that makes it burglary in the first degree. And we're saying A, that these individuals were armed with a deadly weapon. And it can be any participant, not just -- it doesn't have to be both of them. Just one participant in the crime has to be armed, or causes physical injury to a non participant in the crime. In this case, the victims.

We will really -- the law also says as to consent, consent can be gained or consent is not gained if you use artifice or trickery or misrepresentation such as saying I need to use the phone and then go in and present a

weapon. That's without consent. By gaining entry through artifice, trickery or misrepresentation.

The next crime we have is armed robbery. Armed robbery is the taking and caring away of another's personal property with the intent to deprive them of possession, him or her of possession. This is just simple stealing, larceny. Taking somebody's property with the intent to deprive them of permanent possession. That's what the larceny is. But then you add using force, threats or intimidation, that makes it robbery, by using force, threats or intimidation.

And finally when you're armed with a deadly weapon such as a knife or a pistol, that makes it armed robbery or even a representation of a deadly weapon. So that's what armed robbery is. It's basically taking something from another with force, intimidation and you're armed with a deadly weapon.

And finally, ladies and gentlemen, we have attempted murder. Attempted murder is the intent to kill another person. With intent to kill. They intend to kill another person with malice aforethought, either express or implied. Have to have the intent to kill, you try to kill somebody, you don't kill them. With malice aforethought either express or implied.

Now malice is a term of art in here. You've got to

have malice aforethought. And malice aforethought means that malice must exist at any time before you shoot somebody, stab them, hit them or whatever. That's all that means, at any time. It could be a millisecond before.

Malice is defined as hatred or ill will or hostility towards another person. It's the intentional doing of a wrongful act without just cause or excuse and with the intent to inflict an injury or under circumstances that the law will infer an evil intent.

It may be inferred from conduct showing a total disregard for human life, and it may also arise when the deed is done with a deadly weapon. That is, using a deadly weapon you can confer malice exists while committing the attempted murder.

Those are what the elements the State must prove beyond all reasonable doubt.

Now how do we do that? We do it several ways. Notably and most importantly we present testimony from the witness stand. And that's, the victims will testify. We're going to have five or six people testify during the course of this trial. We're going to have the Defendant -- I mean, the victims. We're going to have some police officers and we're going to have Sean Echols, the co-defendant is going to testify against

Mr. Sprinkle.

What we ask you to do, ladies and gentlemen, is to listen carefully to the testimony up here. As His Honor, Judge Dickson, told you, you are the judges of the facts, the sole judges of the facts. He's the judge of the law.

When he tells you about the law at the end of this case, when he charges, you must take -- you just took an oath that says I will follow the law. Even if you don't like the law it can't enter into it because you must follow the law that he charges.

And you, ladies and gentlemen, are the judges of the facts. You listen to testimony up here. There may be exhibits presented. You look at those carefully. And what you do, ladies and gentlemen, is you take the facts as you find them up here, you take any exhibits, and you take the law that he will charge you, Judge Dickson will charge you at the end of the trial and you put them together and you deliberate and reach a verdict.

Now you will be asked from this witness stand to determine the credibility of witnesses. As His Honor, Judge Dickson, told you a few minutes ago, called the believability. Do you believe him or not. And you're probably going, well how do I do that? How do I do that?

Well, nobody can tell you how to do that. I can suggest this. I can suggest that you do it like you do it

every day of your life. You talk to your friends, you talk to your family, you talk to strangers. When somebody tells you something you know you have a feeling just based on your life experiences, based your knowledge of that person or the way they talk, the way they act, on whether they're telling the truth or whether they're feeding you a line.

You use that same, that same calculation, that same common sense, if you will, your same life experiences to determine the credibility of witnesses up here.

You didn't check anything at the door when you came in the courtroom today. You brought your common sense. You brought your life experience with you. Use those, ladies and gentlemen.

And again, I ask you to listen. And observe anything that's entered into evidence. Listen to the testimony very carefully.

Because it is an important day. It's an important day for the Defendant. He's on trial. It's an important day for the State because we're here to enforce the laws and to seek justice for the victims in this case.

And I will tell you one other thing, one other important concept of law. It goes with the State's burden of proof. As I said, the State has the sole burden of proving the charge in this case. The Defendant does not

have to prove anything. He is under no obligation to prove anything. He sits there innocent. He sits there innocent until the State proves him guilty to your satisfaction.

And that's a fundamental part of the law of the State of South Carolina. It's a fundamental part of the law of the United States. It's a basic part of our law.

But, ladies and gentlemen, I do tell you, after you listen to all the testimony, after you observe any exhibits that may be entered into evidence, the State will present you with more than enough evidence where you will find Richard Sprinkle guilty of two counts of armed robbery, two counts of attempted murder and burglary in the first degree.

Thank you.

THE COURT: Thank you, Mr. Bell. Ms. Ullman?

MS. ULLMAN: Good afternoon.

I agree with Mr. Bell that one of the most important parts of our criminal justice system is the presumption of innocence. Throughout life you always hear from pretty much everyone in the community that our system is the best. Our country has the best legal system.

I've heard it all my life. I've heard it all the time in law school. That's all they ever talked about in law school; we've got the best system. I never really

honestly thought about why. Why is ours the best system?

Recently in the news there was a case out of Italy and that case made me realize what makes our system the best. There was an American student studying in Italy. She was accused of a crime. She did not have American protections just because she was a citizen. She was under Italy's law. In Italy you're guilty until proven innocent. You have the burden to prove yourself innocent.

And what I learned in science class is proving a negative is almost impossible. To prove something didn't happen, someone didn't say something is almost impossible to do.

And that's why in this country the defense doesn't have a burden because you can't prove it didn't happen. The State must prove to you beyond a reasonable doubt that it did happen.

Part of them proving that -- don't let them take your job away from you. Mr. Bell called Mr. Wright and Mr. Rumph victims. It's your job to determine if they are. You have to decide here today if anything actually happened. They're saying that they were robbed and that they were assaulted.

Maybe that's not true. You have to decide that today. You'll hear from them and then you will determine if you even believe them. That's your job. They're not victims

until you decide that something actually happened.

Mr. Bell called Mr. Sprinkle the Defendant. These are all just titles. They mean nothing. Mr. Sprinkle just like everybody else in this courtroom is a citizen of Orangeburg County. That's what he is. He's a citizen. He's currently accused of something.

We've all been accused of something. Maybe not in the criminal system, but growing up your brother accused you of breaking something that he actually broke, or your sister or your family member. I don't know if you have brothers and sisters, but you get the point. Growing up at some point in your life you've been accused of something that you knew you didn't do.

You're a citizen of this county as he is. They've titled him the Defendant. That means nothing. He's a citizen accused of something. That's it.

So thankfully in this country we are not like Italy. It's not his job to prove himself innocent.

Part of the reasoning again for that, if you look at who's here today, we have the State and a citizen of this county. The State. Think of what that means. What does that mean? They have almost unlimited resources between the sheriff's department, public safety, their own investigators that work within their own office. A handful of lawyers that work in our office. They have

unlimited monetary resources.

A citizen of Orangeburg County, he doesn't have that. The sheriff's department isn't working for him. Public safety's not working for him. He doesn't have unlimited resources. That's why he's innocent until they prove otherwise.

The State is here today asking you to find Mr. Sprinkle guilty, asking you to take from him his life and his liberty. That's why they have the burden before.

For anybody in this country to lose their life, liberty and pursuit of happiness, you must find beyond a reasonable doubt that the State did their job.

The American citizen in Italy was convicted. And thank God for her she had a mother who loved her and fought for her and helped her win an appeal. And that's what mothers do. That's a mother's love. A mother always believes you didn't do it. That's what moms do.

I'm not asking you to be Mr. Sprinkle's mom, but I am asking you to have that belief that he's innocent.

Thank you.

THE COURT: Ladies and gentlemen, my court reporter just advised me that we have an equipment malfunction and since everything has -- she has to keep the record straight with everything that's said and done in the courtroom, I'm going to need to excuse y'all to go back

into the jury room for just a minute while we make sure we get the equipment working properly.

Remember, you can't talk about the case. All you've heard so far is just opening statement. Thank you.

(Jury exits courtroom at 2:44 p.m., break taken.)

THE COURT: State ready to proceed?

MS. FORD: We are, Your Honor.

THE COURT: Defendant's ready?

MS. ULLMAN: We are. Thank you.

THE COURT: Okay. Bring the jury back out, please, ma'am.

(Jury enters at 2:53 p.m.)

THE COURT: Ladies and gentlemen, the Court appreciates your patience. We have the machine malfunction in order now, and my understanding is the State's ready to call its first witness.

MS. FORD: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. FORD: The State calls James Wright to the stand.

THE COURT: Okay. Mr. Wright.

JAMES WRIGHT, having been duly sworn, was examined and testified as follows:

THE CLERK: You may have a seat

MS. FORD: Have a seat right up there.

THE COURT: On the witness stand, please.

THE CLERK: Please state your name for the record, Mr. Wright.

THE COURT: Mr. Wright, would you state your name one more time on the record?

THE WITNESS: The one that hit me?

THE COURT: Sir?

THE WITNESS: My name is James Wright.

THE COURT: That's what I want you to say. You did Good. Okay.

DIRECT EXAMINATION

BY MS. FORD:

Q. All right. Mr. Wright, I'll make sure that I speak loudly. Can you hear me?

A. Yes, ma'am.

Q. Okay. Am I talking too loudly?

A. Good. Good.

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

A. Probably about third grade.

Q. About third grade. Did you used to live on Myers Road here in Orangeburg?

A. Yes, ma'am.

Q. Who did you live with at the [redacted] house?

A. Mr. Robert Rumph.

Q. Mr. Robert Rumph. Were you ever robbed before?

A. No.
Q. Did anyone ever come in your house, Mr. Wright?
A. No.
Q. And rob you?
A. Yes, that, that, that night.
Q. That night?
A. (Nods head.)
Q. Okay. Let's talk about that night.
A. Okay.
Q. What happened that night?
A. They knock on the door and asked me if Mr. Rock was home. I said, yeah. They wanted to make a phone call.
Q. Let me stop you for one second, Mr. Wright. I just want to make sure I understand. How many people came to the house?
A. I know they were knocking on the door. I didn't see no car or nothing.
Q. How many people knocked on the door?
A. It was two of them.
Q. Two of them. Was it men or women?
A. Man.
Q. What did they look like?
A. That's only one of them, like with him. I (inaudible) after they bring me the paper, but I didn't see in any of them yet.

Q. Okay. All right. Were they white men or black men?
A. Black man.
Q. What did their hair look like?
A. That man had long hair on his neck, his hair.
Q. One of them had long hair?
A. Yes, ma'am.
Q. And what about the other one?
A. The other one wasn't quite as long as his but he had hair on his head.
Q. He had hair on his head?
A. Yes, ma'am.
Q. Okay. And you said the two people knocked on the door?
A. Yes.
Q. Tell me what happened.
A. They knocked on the door, asked me about Mr. Rumph. I telled them Mr. Rock home. Tell him that the other fellow want to make a phone call, he call him uncle.

And he said, let him in. When I let them in he came in and put that pistol in my chest and grabbed me around the neck.

Q. You said he did. Who are you talking about?
A. That one right there.
Q. That one right there?
A. Yes, ma'am.

Q. Did you know him?
A. I saw him that Friday. I know him. I was seeing him all the time walking the street.
Q. You had seen him before he came in your house?
A. Yes, ma'am.
Q. Okay. Did you know his name?
A. Yeah, I just called him Ricky.
Q. You called him Ricky?
A. I didn't know his last name.
Q. Okay. And that was one of the people that came in your house?
A. Yes, ma'am.
Q. After they came in your house, what happened?
A. That when I start calling Rocky. He said, shut up, shut up. I want your money.

And the other boy said, yeah, Rocky the one I want to see. And he went on down in Rocky room. He make me went to my bed, pulled up my mattress. I had more money in there and I tell him I never.

Q. So he asked for your money?
A. More money. I pulled the mattress up. I was bleeding like I don't know what. I told him I ain't have no more money.
Q. You said you were bleeding. Why were you bleeding?
A. Because he beat me in the head.

Q. Beat you in the head?
A. Yeah.
Q. With what; do you know?
A. With a pistol, but I didn't know what kind of pistol.
Q. Did you see the pistol?
A. I seen it, but I didn't know what the name of the pistol.
Q. That's okay. That's okay.
After you went in your room and lifted up, you said you lifted up the mattress?
A. Yeah.
Q. What happened next?
A. That when he, he make me went down to Rocky room with the other fellow. Both of them's in Rocky room.
Q. When you say he, who are you talking about?
A. The other boy be with him.
Q. Okay. So you want into Mr. Rumph's room, Rocky?
A. After they left they led me out of my room and went to Mr. Rocky room.
Q. What happened in Mr. Rocky's room?
A. Well, the other one cut Rocky, I know.
Q. Cut him with what?
A. All I know with a knife and make Rocky open the closet, get his pocketbook out of his pocket.
Q. Okay.

A. And out the door. I went on back in my room and they take Rocky car and leave.
Q. They took Rocky's car and left?
A. And leave.
Q. Okay. Did you ever talk -- is that the end? Did they leave the house and they took the car?
A. They take the car and drive it out the yard.
Q. Okay. Did you call the police or did you ever talk to the police?
A. Rocky brother called the police but they was done gone.
Q. Right. Okay. Did you talk to the police?
A. I talked with them before the ambulance come and pick us up.
Q. So you had to go to the hospital?
A. Yes, ma'am.
Q. Did you tell the police what the people looked like?
A. No, I never tell them what they looked like but I tell them I had know him.
Q. That you had known him?
A. Yes.
Q. Did you tell him you knew one of them?
A. That one that right there because he did talk to me that Saturday evening.
Q. Where did he talk to you that Saturday evening?

A. Bojangles.
Q. Okay. So you had seen him. This happened the day before or the day after?
A. No. That was after. Early that Sunday morning because that was that Saturday evening.
Q. Okay. So you had recently seen --
A. Yeah.
Q. -- this one right here?
A. Right there.
Q. Before he came in your house and robbed you?
A. Right.
Q. And beat you?
A. (Nods head.)
Q. Okay. Mr. Wright, can you take a look at that for me? What is that?
A. That's the picture with my circle around.
Q. That's the picture you circled around. Did the police show you that? Did one of the police officers show you that piece of paper?
A. No. When the lady came, right there.
Q. She showed you that piece of paper.
A. Yes, ma'am.
Q. Okay. And what's on that paper?
A. I was robbed. I know that.
Q. What are those pictures of? Do you know anyone in any

of those pictures?
A. Yep.
Q. Which one?
A. I know that one right there but I ain't seen nothing on there, but I circled another picture.
Q. We'll talk about that in a second. Who's that a picture of?
A. This one?
Q. (Nods head.)
A. (Pointing.)
Q. You pointed --
A. That's his picture.
Q. Okay. And you said you circled it?
A. Yes.
Q. What is that? Are those your initials?
A. Initials.
Q. Okay. And you -- this was -- you said that lady right there is the one that showed you this?
A. Yes, ma'am.
Q. And you picked this, circled this one out?
A. Sure did. Yes, ma'am.
Q. Okay. How long did it take you to pick out that picture?
A. Well she brought me pictures three different days till I find the boys in there. I circled that same one there

that day.
Q. Okay. Is this the person that robbed you and beat you in your house?
A. Yeah.
Q. That is the same person that's seated right there?
A. Right there.
Q. Mr. Wright, does he look the same now as he did then?
A. Well, he looked different then. He more stouter now. He had all that hair on his head.
Q. Say that again. I want to make sure --
A. I say his face more heavier now but he was walking the street, it was a little face on the street now, but he take all that hair off his head.
Q. You said cut the hair off his head?
A. I mean, the long hair he had on, you take that off and it ain't long now.
Q. I'm going to show you one more thing, Mr. Wright. Can you take a look at this for me? What is that?
A. That's the other one.
Q. When you say that's the other one, what do you mean?
A. That's the other boy that be with him.
Q. That came in your house?
A. Come in the house.
Q. Okay. Which one is that?
A. Two.

Q. Okay. Did you circle that?
A. Yeah, I circled that.
Q. Are those your initials on that?
A. Yes, ma'am.
Q. Thank you, Mr. Wright. How many people came in your house that night?
A. Two.
Q. Two. And one of them's in the courtroom right now?
A. Yes, ma'am.
Q. And which one is it?
A. That one right there (pointing).
Q. That one right there. Are you sure, Mr. Wright?
A. Yes, ma'am.
Q. You're sure. Beg the Court's indulgence, Your Honor.
THE COURT: Okay.
MS. FORD: Just a couple more questions, Mr. Wright.
BY MS. FORD:
Q. Do you mind if I ask how old you are?
A. Ma'am?
Q. How old are you, Mr. Wright?
A. Seventy-four.
Q. Seventy-four. Okay. Let me ask you one more question. You said you knew this fellow, you called him Ricky. Did you know where he lived?
A. No.

Q. You didn't know where he lived?
A. No.
Q. But you knew him from around?
A. Yeah.
MS. FORD: No more questions, Your Honor, at this time. Please answer any questions that Mr. Wright may have. Okay, Mr. Wright?
THE WITNESS: All right.
THE COURT: Mr. Wise, your witness.
MR. WISE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WISE:
Q. Mr. Wright, how are you? How are you?
A. All right, sir.
Q. Okay. Mr. Wright, I don't have a lot of questions. These two men came to your house that night?
A. Yes, sir.
Q. Somebody knocked on the door?
A. Yes, sir.
Q. Do you know which man knocked on the door?
A. Yes. That one right there (pointing).
Q. He knocked on the door?
A. He knocked on the door.
Q. Okay. And when he spoke to you, what did he say to you?

A. He asked me where was Mr. Rock, called Uncle Rocky. I said Rocky in the bed. I asked Rocky, I said, Rocky, these boys out there know you. And I said, they want to make a phone call. And Rocky said, let them in.
Q. So he came to the door, he knocked on the door and he asked for Rocky?
A. Yes, sir.
Q. Did he say Rocky or Rock?
A. Rocky.
Q. Rocky. Okay. And then you went back and you spoke to to Mr. Rumph. He said okay. And you let them in?
A. He said, okay, let them in.
Q. Okay. Very good.
Okay. When you -- when he knocked on the door and you looked out there and you saw him, did you say Rick or Ricky, what are you doing here this time of morning?
A. He say, tell Rocky he wanted to make a phone call and Rocky said to let them in.
Q. What time was this when he knocked on the door?
A. I don't know exactly what time, but I came in late that night myself.
Q. So you don't know?
A. I had done gone to bed.
Q. So you came in late, you went to bed. You're not sure what time it was?

A. It was late. I don't know exactly what time.
Q. Okay. Well, do you remember testifying yesterday in this case? You remember that; right?
A. Yes, sir.
Q. Do you remember yesterday when you testified you said it was about 4:30, five o'clock in the morning?
A. That's what I said, but I didn't know exactly what time it was but I said that time.
Q. So you said something yesterday that you weren't sure about?
A. Because I never know exactly what time. I know I had come in late and I had no watch on my arm to find out what time, but I wasn't looking for that to happen.
Q. Okay. So yesterday when you came to court you took an oath like you did today. You swore to tell the truth. When you said that you weren't lying; were you?
A. No.
Q. No. You just made a mistake?
A. Yep.
Q. You thought you remembered something that you didn't remember?
A. Right.
Q. When you said that you were convinced that you right --

MS. FORD: Objection, Your Honor. He's -- asked and

answered. He's answered the question.

MR. WISE: Well, I just have one last question.

THE COURT: Okay. Let him finish.

BY MR. WISE:

Q. When you said that, though, you were wrong?

A. I just couldn't remember exactly what time it was.

Q. Okay. When you went to Rocky's room and said that somebody's at the door, did he get up and come to see who it was?

A. Who that?

Q. Rocky.

A. No. Rocky told me to open the door because he called Rocky, Uncle Rock. And Rocky said, open the door and let them in there. When he come in there he grabbed me around the neck and put the pistol in my chest. And I hollered back to Rocky telling him he had a gun.

Q. He called him Uncle Rocky?

A. That's what he called him. He started beating me on the head with a pistol, left a mark on top of my head now.

Q. All right. Now, when you opened the door it's your testimony that that man took you to your bedroom; is that correct?

A. No, he done beat me in the head before he came into my bedroom because the other fellow asked where Rocky. I said, Rocky right in his bed. Both of them -- one of them

went to Rocky room. He make me hold up my bed and mattress see if I had more money in there.
Q. Okay. So it's your testimony he comes in, he has a gun in his hand?
A. Yeah.
Q. And he hits you in the head with the gun?
A. Right.
Q. And then he takes you to your bedroom?
A. Yeah.
Q. Okay. Okay. And when he takes you to your bedroom, the other person goes into Rocky's bedroom?
A. To Rocky's bedroom and he walk behind me in Rocky room too. Me and him.
Q. Okay. So the only -- just so I'm clear. Was there one person or two people with you in your bedroom?
A. In my bedroom?
Q. Yes.
A. Wasn't nobody but me.
Q. Okay. When this thing happened, when your mattress was turned over, was there one person or two people with you in your bedroom?
A. One.
Q. Just one. Okay. Okay. When you were in your bedroom and your mattress was being turned over, did you yell to your roommate, hey Rock, there's trouble?

A. No. Wasn't -- he make me hold the mattress up. Wasn't nobody in there but me and him.
Q. And did you yell for your roommate?
A. Yeah, yeah, the other one went on down to Rocky room.
Q. I'm sorry. The mattress gets held up. And did you ever yell to let Rock know what was going on?
A. No, sir. Because he was done in the house. I doubt Rocky know he was in there.
Q. Okay. Okay. The two people who were in your house, one person had a gun. Did the other person have a weapon?
A. Had a knife.
Q. Other person had a knife?
A. Yes.
Q. So there was one gun and one knife?
A. One knife.
Q. And it's your testimony that he had the gun and the other person had the knife?
A. Yep. He might have got it after he got in the room but I didn't know.
I was bleeding so, wiping blood off of my face, but I didn't know whether he had the gun or not.
Q. Now, Mr. Wright, do you remember telling the police that both of these guys followed you into your room? Do you remember telling the police that?
A. The police, no.

Q. I'm trying again. There came a time when you spoke to the police about what happened; didn't there?
A. Well them boys were done gone.
Q. They were gone?
A. And the police come up and they called an ambulance.
Q. So you spoke to the police that night?
A. Yep.
Q. And you also spoke to Investigator Garrison?
A. (Nods head.)
Q. Okay. Do you remember her writing a statement for you about what happened that night? Do you remember that?
A. I don't remember that.
Q. Okay.
MS. FORD: May we approach?
(Off-the-record discussion.)
BY MR. WISE:
Q. Okay. Mr. Wright, there came a point when you spoke to Investigator Garrison. Do you remember that?
A. Yes, sir.
Q. And then when you spoke to her she wrote out what you told her and then you signed your name at the bottom?
A. Yes.
Q. Do you remember that?
A. Yes, sir.
Q. Okay. And when you -- when she wrote this statement

for you, did she read it to you before you signed it?
A. That paper there?
Q. Yes. Yes, sir.
A. Yeah.
Q. She read it to you?
A. (Nods head.)
Q. Okay. So, what's in this statement is an accurate statement of what you told her; is that right?
A. Right.
Q. Okay. Okay. But you didn't read it before you signed it, she just read it to you?
A. Right. I can't read.
Q. Okay. My father couldn't read. Okay. Do you remember telling her that both of these guys went with you into your room?
A. Yeah.
Q. Do you remember telling her that?
A. Yes, sir.
Q. You did tell her that?
A. Yes, sir.
Q. Okay. But when you told her that, was that -- that wasn't accurate. That wasn't correct, was it, when you told her that these two guys followed you into your room?
A. No, the other guy went to Rocky room and he the one that followed me in my room, make me hold up my mattress

and then he followed me to Rocky room.
Q. So when she wrote that down, that wasn't right. That wasn't accurate. That wasn't correct. That didn't happen.
A. Well, she never wrote that down until after it happened.
Q. Okay. Okay. All right. Now, Ms. Ford showed you what's been marked as State's Exhibit Number Two. That is a picture of six people, one of which has their head circled and your initials; correct?
A. Yep. I did that.
Q. You did that. The person who has their head circled, do you know that person's name?
A. Nope.
Q. Okay. When you circled that, you also signed your name to another piece of paper; isn't that correct?
A. Yep.
Q. And on this piece of paper it has your name at the bottom?
A. Yeah.
Q. What's written in here beneath where your name is written and above where it's signed, Investigator Garrison wrote that for you; correct?
A. Yeah.
Q. Correct?

A. (Nods head.)
Q. Okay. And in this piece of paper it says that this person, the person circled on State's Exhibit Number Two, hit me with a gun about the face and head.

Do you remember signing that piece of paper?

A. Yeah, I signed that paper. Now I know I signed that paper, but he the one that hit me with a gun.

Q. So even though this piece of paper says --

MS. FORD: Objection, Your Honor. Mr. Wright has testified that he can't read or write so whatever that paper says, he doesn't know whether it says that or not. He's testified and that should be sufficient, Your Honor.

THE WITNESS: But he the one that beat me in the head.

THE COURT: Hold on just one second. He was just asking him if he remembered that. I'm going to let him complete the answer to that. He's already testified that he cannot read.

So, Mr. Wise, if you can continue.

MR. WISE: Okay.

Q. So, let me back up. The piece of paper that you signed says, number two hit me with a gun about the face and head area. Do you remember signing that piece of paper?

A. Yes, sir.

Q. Okay. And, just so we're clear. You would agree

with me that number two is not that man who's sitting right there?
A. That's the one that beat me with a gun.
Q. But that man isn't the man who's in this picture with his face circled as number two.
A. No, but another paper there.
Q. Yes, there is. Okay. Okay. So I want to make sure I understand this. It's your testimony that this person took your money and the other person took Rock's money; is that -- am I correct?
A. Yes, sir. That's, that's true. That's true. He the one that take my money. My wallet and all, everything being in my wallet. I had to go back, get papers and everything back over.
Q. Now you left your bedroom and then you went to Rock's room, correct, that night?
A. Yeah. He the one that lead me to Rocky room because the other fellow been ahead of us.
Q. So the other fellow was already in Rock's room and then you said he led you to Rock's room?
A. Right.
Q. Okay. And when you walked into Rock's room, obviously the other guy was already there, the other person was there before you got into Rock's room?
A. Yeah, he was in that room ahead of me now.

Q. Okay. When you walked in, what did you see? What was happening?
A. I never said nothing but he tell Rocky, he was cutting Rocky on the leg and foot. He telling Rocky to give him his money. Rocky said well he ain't had no money, make Rocky open the closet and there was Rocky pocketbook and all in his closet and he take all that and went out the back door and take Rocky car.
Q. So when you walked in, what was the first thing you saw when you walked into Rock's room?
A. He was done cutting Rocky and ask Rocky about his money and Rocky gave him what money he had in his britches pocket. And he go, no, you got more money that. Make Rocky open his closet. Rocky got his britches, he made him get his pocketbook out there, but I didn't know how much money was in it.
Q. So when you walked into Rock's room, Rock had already been cut by the person --
A. Right.
Q. -- that was in his room?
A. Right, right.
Q. Okay. You did not see Rock getting cut; did you?
A. Nope.
Q. Okay. All right. And just so we're clear. You said there was one gun and one knife. You didn't see any other

weapon that night; did you?
A. No.
Q. Okay. Now, Mr. Wright, you told the police that the man who -- you knew who did this, you described him as dark skinned; didn't you?
A. What do you say?
Q. You told the police that the man who did this, the man who -- the man with the dreads, you --
A. Yeah.
Q. -- told the police he was dark skinned. That was the word you used; right?
A. Right.
Q. Okay. And you are -- you're referring to him?
A. That's him.
Q. You described him as dark skinned?
A. That's him.
Q. Okay. Okay. Now, the night this happened, you went to the hospital?
A. Yep.
Q. Okay. When you left the house to go to the hospital, did the police take you or did you go by ambulance?
A. Go by ambulance.
Q. Okay. Did you and Rocky go together to the hospital?
A. Yes, sir.
Q. Okay. In one ambulance?

A. Yes, sir.
Q. Okay. And when you came back from the hospital, did you come back together?
A. Yes, sir.
Q. Okay. Did you come back by ambulance?
A. No, sir.
Q. How did you get back?
A. His daughter.
Q. Okay. So his daughter --
A. Picked us up after he called her. She come and she waited for us to come out there that day.
Q. Do you know how long you were at the hospital?
A. No, sir. I don't.
Q. Okay. Do you have any idea what time you left the hospital?
A. No, sir.
Q. Okay. When these guys came into the house, they immediately split you and -- they immediately split off. One went with you, and other went straight to Rock's room?
A. No. Both of them. After he beat me he asked about Rocky. I said Rocky in the bed. He walked right on down in Rocky room. Yeah, that's the one I want to see and left me.

After that he make me hold up my bed mattress say I had more money and I never. Then he lead me on down to

Rocky room.
Q. Okay. Are you doing okay, Mr. Wright? Do you want some water?
A. No. I don't want nothing now.
Q. Okay. The night this happened, did you have anything to drink, any alcoholic beverage?
A. Yeah. Because I had went down home to my sister then when I come back from Harleyville up here I had me a drink earlier that night.
Q. About how much did you have to drink?
A. About a half of a half a pint.
Q. About a half pint?
A. Liquor.
Q. Now you're showing --
A. I have a pint bottle in there. I drink half of that.
Q. Okay. That would be half a pint?
A. No, it wasn't quite half a pint. I said half out of a half a pint.
Q. When this happened, were the lights on in your house?
A. No.
Q. Okay. And you never turned them on?
A. I never turned them on because the city streetlight was out there, and I could look through the glass and see, see their face.
Q. And once these guys were in your house, the lights

never got turned on --
A. No.
Q. -- correct? Okay. Do you remember how many police officers you spoke to before you went to the hospital?
A. It was four.
Q. Four?
A. But I don't know their names. It was four.
Q. That's okay. When the person who had the gun left the house, did he still have the gun with him?
A. Yeah, he carried that when he leave.
Q. So he came in, you say he hit you --
A. Yep.
Q. -- went to, took the gun, went to Rock's room, Rock was with the other guy, and then the same person had that gun and then they left the house?
A. Left out the back door.
Q. He had the same gun when he left as he had when he came in?
A. Right.
Q. And had it the whole time?
A. Yeah. Brought it in the house when he come in the door.
Q. Brought it in when he came in, took it out when he left?
A. (Nods head.)

Q. Okay. And how many times were you hit that night?
A. What that?
Q. How many times were you hit that night?
A. How many time he hit me with the gun?
Q. Yes.
A. Three times up there and bust me on the lip there and had to put stitches inside my lip, four times.
Q. Four times. Three times in the head, once to the mouth?
A. Right.
Q. Okay. You testified that Investigator Garrison showed you some papers like this?
A. Yeah.
Q. Okay. But this piece of paper, State's One, was not the first one she showed you; is that right? This isn't the first piece of paper she brought to you?
A. Right.
Q. She brought some others to you before?
A. She brought some more, but I couldn't pick nobody out on that one there.
Q. Okay. All right. And did you say she brought three to you?
A. Sir?
Q. She brought three of these pieces of paper to you before this one, or four?

A. She brought three different days at the top. Nobody on the one she showed me at first.
Q. So she brought them on three days?
A. Yes, sir.
Q. One each day?
A. Every day she bring different ones. I find then that man over there.
Q. Okay. And these -- Mr. Wright, do you know somebody named Shakira Harrison?
A. Who that?
Q. Shakira Harrison. Do you know that name?
A. No.
Q. Never heard that name before?
A. No.
Q. Mr. Wright, have you ever had a problem before this night with Mr. Sprinkle?
A. No. No, sir.
Q. Never had any conflicts with him?
A. No, sir.
Q. No conflicts about some woman?
A. No, sir. Never did.
Q. Never did?
A. Nobody else since I moved to Orangeburg.
MR. WISE: All right. Your Honor, may I have one moment?

THE COURT: Sure.
BY MR. WISE:
Q. When you were in Rock's room, did you hear the other person speaking?
A. Yeah. He was talking to Rocky.
Q. He was talking to Rocky. And did you hear the other person say this: I killed once and I'll kill again?
A. What that?
Q. Did you hear the other person say: I killed once and I'll kill again? Did you hear that other person say that?
A. No, I never heard him say that; no.
MR. WISE: Okay. Mr. Wright, thank you.
THE COURT: Anything on redirect?
MS. FORD: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. FORD:
Q. Just a couple more questions, Mr. Wright. Okay?
A. All right.
Q. Mr. Wright, can you get to Mr. Rocky's bedroom -- now, we're talking about the house. Can you get to Mr. Rocky's bedroom without going by your bedroom?
A. Nope -- yeah, you can. It was a back door to the trailer. They come in through the front.
Q. Okay. Are the bedrooms close by?
A. No. Mine's in the middle of the trailer and Rocky was

on the end.
Q. Okay. But it wasn't one was on one end and one was on the other?
A. Right.
Q. Are they off the same hallway?
A. Yes, ma'am.
Q. And tell me, Mr. Wright, how much money did he get from you?
A. Well all I can estimate be in my pocket was about $40.
Q. And that's what was taken from your whole pocketbook you called it?
A. Yeah. They took everything.
Q. Everything. No further questions.
THE COURT: Anything on recross?
MR. WISE: No, Your Honor. Thank you.
THE COURT: Thank you, sir. All right. Mr. Wright, you may step down. Thank you, sir.
THE WITNESS: All right.
THE COURT: Be careful stepping down.
THE WITNESS: All right.
THE COURT: State ready to call its next witness?
MS. FORD: We are, Your Honor.
THE COURT: Okay.
MS. FORD: State would call Robert Rumph.
ROBERT PRESTON RUMPH, having been duly sworn, was

examined and testified as follows:

THE WITNESS: My name is Robert P. for Preston Rumph R-U-M-P-H.

THE CLERK: Thank you, sir.

THE COURT: Ms. Ford, your witness.

MS. FORD: Thank you, Your Honor.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION

BY MS. FORD:

Q. Mr. Rumph, did you used to live off of [redacted] here in Orangeburg?

A. Yes.

Q. Who did you live with?

A. I was the owner of a trailer, me and James Wright lived together.

Q. Have you ever been the victim of a robbery?

A. Yes.

Q. Did that happen back in June of 2011?

A. Yes.

Q. What happened?

A. What happened is about that night, James Wright come to my bedroom and said two boys out there want to use the phone. One call you uncle. I said, let them in. He let them in. But then I was in my bed and I was asleep. I didn't know nothing about them in the trailer at the time.

Q. Okay. When did you learn something was going on?
A. The young man was, came down to my room. He had a gun pointed at me. He said, give me your money. I said, I don't have no money. Give me your money.
When I look up I said, the money, it was on the dresser right there.
Q. About how much money was on your dresser?
A. It was about 50, 50-some-odd dollars.
Q. And did he take that?
A. He took that. He said, that's not all of it.
Q. Okay. What else happened?
A. He said, he made the statement to me, give me the money, man. Don't make me kill you over this little bit of money.
Q. Okay. At this point, how many people are in your room? Are you still in your bedroom?
A. I was still in my bedroom.
Q. Okay. How many people were in your bedroom?
A. Me, and that one person.
Q. Okay. At any point, did other people come in your bedroom?
A. Yes.
Q. Tell me about that.
A. That was James Wright. And the young man that was the short hair came down to the room and then when they came

down to my room the young man with the dreads on his hair, he was in the room.
Q. Okay. What happened when everybody was all in the room together?
A. I give them the money from out of my closet. He cocked the gun and say that, don't make me kill you over this little bit of money. I said, okay.
Q. So --
A. So I give him the money.
Q. Okay. Did they ever hurt you?
A. Yes.
Q. What happened? How did they hurt you?
A. Cut me.
Q. With what?
A. A knife.
Q. Who cut you with a knife?
A. The one with the dreads.
Q. Okay. Did the one with the dreads always have a knife?
A. No. When he came in my bedroom, he had the pistol.
Q. The one with the dreads had the pistol?
A. Yes.
Q. Okay. How did he get the knife?
A. Him and the other boy changed weapons.
Q. Okay.

A. And he said, make him talk.
Q. Who said, make him talk?
A. The one with the short hair. That would be Vivian's son.
Q. So you knew the boy with the short hair?
A. Yes.
Q. How did you know him?
A. Me, his mother was socializing together.
Q. So you'd seen him around before?
A. A time, once or twice. As a matter of fact, I loaned him some money.
Q. So you knew the one with the short haircut then?
A. Yes.
Q. And let's go back to what you just said about one of them said, make him talk. Can you explain that for me? Who said what?
A. The one with the short hair which was Vivian's son told the other one with the dreads to make him talk.
Q. Meaning you?
A. (Gestures.)
Q. What happened then?
A. Well, he started cutting on me.
Q. Okay. Where did you get cut, Mr. Rumph?
A. In the side of my stomach, on my leg, on my arm and on my foot.

MS. FORD: (Showing document to defense counsel.)
Q. Mr. Rumph, after you got cut, what happened?
A. When they was getting ready to leave out the back door, and the one with the short hair made a statement to me, don't you never disrespect my mama because I will be back.
Q. Okay. Did they take anything else from you?
A. My car, and my money, my pants and a hat.
Q. Your pants?
A. My pair of pants, a black pair of pants and a hat.
Q. And you said that they took your car?
A. Yes.
Q. What kind of car was that?
A. Buick Roadmaster.
Q. How did they get your car though? Did they ask you for your keys?
A. Yes.
Q. Did you give it to them?
A. I told them the key was in the car.
Q. And then what happened to them? Did they leave?
A. As far as I know they leave.
Q. In your car?
A. In my car.
Q. Okay. After they left, did law enforcement come to the house?

A. Yes.
Q. Did the ambulance come to the house?
A. When -- yes, the ambulance came.
Q. Because you were injured; right?
A. Right.
Q. Okay. I'm going to show you some pictures that have been marked State's Exhibit Four, Five, Six, Seven and Eight. You take a look and see if you know what those things are.
A. Number Eight is when I put -- my cut on my foot.
Number Seven where he cut me in the side of my, my side and my stomach.
Six is they cut me on my leg.
Seven where he cut me on my arm.
Four is another one on my foot.
Q. Thank you, Mr. Rumph. Did you talk to the police?
A. Yes.
Q. Okay. Did you tell them what happened?
A. Yes.
Q. Did you tell them about the people that were in your house?
A. Yes.
Q. How many people were in your house, Mr. Rumph?
A. Two.
Q. Did you tell the police that you knew one of them?

A. Yes.
Q. Okay. Did you tell the police how you knew them?
A. Yes.
Q. Okay. Did the police officers ever show you any pictures?
A. Yes.
MS. FORD: (Document shown to defense counsel.)
Q. Mr. Rumph, I'll show you what's been marked State's Exhibit Three. Did any police officer ever show you that before?
A. Yes.
Q. What is that of?
A. This is a picture of Vivian's son.
Q. Okay. Vivian's son being one of the people that was in the house?
A. In my house.
Q. Is this the one with the longer hair or the short hair?
A. Short hair.
Q. Okay. Did you put your initials on there?
A. Yes, I did.
Q. And you circled that?
A. Yes, I did.
Q. Did the police officer show you any other lineups?
A. Yes.

Q. Did you pick anyone out?
A. No.
Q. Okay. Did you give the police a description of the other person?
A. Yes.
Q. What did you tell the police?
A. Black guy with long dreads on his hair.
Q. Okay. Mr. Rumph, you said there were two people in your house?
A. Yes.
Q. One that you knew; right?
A. Yes.
Q. And the other with dreads?
A. Right.
Q. And those people stole your pants?
A. Pants, my car, and my money.
Q. And your money?
A. And a hat.
Q. And your hat. Okay.
Beg the Court's indulgence, Your Honor.
THE COURT: And, Ms. Ford, before you ask and get -- I believe when he was looking at State's Five --
MS. FORD: Yes, sir.
THE COURT: -- the cut on the arm, he indicated it was, the second time he said Seven. Is State's Five, the

cut on the arm?

MS. FORD: Yes, sir.

THE COURT: And I just want to clarify that. That is State's Five, and that is the cut on the arm?

MS. FORD: Take a look at that, Mr. Rumph.

THE COURT: Is that the cut on your arm?

THE WITNESS: Yes.

THE COURT: Okay. And that is State's Five?

MS. FORD: Yes, sir.

THE COURT: I may have misheard but I wanted to make sure that was correct on the record.

MS. FORD: Yes, sir.

THE COURT: All right.

BY MS. FORD:

Q. Mr. Rumph, just one more thing. Did anybody else come inside the house the night that you got robbed other than those two people?

A. No.

Q. Just two people?

A. Just them two people.

Q. That's all you saw?

A. That's all.

MS. FORD: No further questions at this time. Mr. Rumph, if you'll just answer any questions that Mr. Wise or Ms. Ullman may have for you. Okay?

THE WITNESS: Okay.
MS. FORD: Thank you, sir.
THE COURT: Your witness, Mr. Wise.
MR. WISE: Thank you, Your Honor.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WISE:

Q. Mr. Rumph, how are you?

A. I'm fine.

Q. Good. Mr. Rumph, what I want to do first is I want to make sure that we understand everybody that's involved in this case.

You mentioned a woman named Vivian Johnson; correct?

A. Right.

Q. Is that your girlfriend?

A. That was a lady I was socializing with.

Q. Okay. You and she kept company sometimes?

A. Yes.

Q. And Ms. Johnson knew that you kept a lot of money in your house; correct?

A. Right.

Q. Now Sean Echols, do you know that name? You know that name?

A. Yes.

Q. That's her son?

A. Yes.
Q. Okay. And you said that you knew him before this thing happened?
A. I loaned him some money.
Q. Okay. How long have you known him?
A. I didn't know him. I didn't -- I don't know him a whole lot. I know of him.
Q. Okay. You said you loaned him money. How many times did you loan him money?
A. Once.
Q. One time. Okay. And when did you meet him?
A. Matter of fact I, if I'm not mistaken he was the one in jail or in prison.
Q. How long ago did you meet him?
A. I don't recall.
Q. Years?
A. No. About two or three months.
Q. Two or three months before this happened?
A. Yeah.
Q. Okay. Okay. And before this night had he ever been to your house?
A. No.
Q. He knew -- did he know where you lived before this night?
MS. FORD: Objection.

THE WITNESS: I don't, I don't know.
MS. FORD: Objection, Your Honor.
THE COURT: He --
MS. FORD: He answered the question, he doesn't.
THE COURT: Okay. He already answered that he didn't know.
BY MR. WISE:
Q. And obviously James Wright is your roommate?
A. Yes.
Q. Now do you sometimes call James Peg?
A. Yes.
Q. Is that like a nickname he goes by?
A. Right.
Q. But on the night this thing happened, you didn't know Richard Sprinkle?
A. (Shakes head.)
Q. Never seen him before?
A. Not as I can remember.
Q. Okay. Now you said I think on direct examination Mr -- the night this happened, Mr. Wright came in to you and he said two boys want to use the phone. Is that what he said to you?
A. That what he said.
Q. Okay. And you said okay, said it was okay?
A. I said it was okay.

Q. Okay. All right. Do you remember what time this happened?
A. I don't recall exactly what time. I think it was between two and three.
Q. Okay. All right. Now you said you're in your bed and you wake up and there's a guy in your bedroom with a gun; is that right?
A. Right.
Q. Pointing it at you; right?
A. Yes.
Q. Okay. Did he wake you up when he came to the room? Did he say, wake up, Mr. Rumph?
A. No.
Q. You were already awake?
A. I was, I was asleep. And undoubtedly he must have cut the light on in my bedroom. My TV, I don't never cut it off. My TV I leave on in my house 24-7 in my bedroom.
Q. Did you hear anything going on before he came into your room?
A. No.
Q. Okay. You never heard any commotion out of Mr. Wright's room before?
A. No.
Q. So Mr. Wright comes in, he wakes you up, says he wants to use the phone. You go back to sleep. Next thing you

know a man's in your room?
A. Right.
Q. Now I want to talk about this incident. Earlier in the evening of the day this happened, did Sean Echols call you to tell you he was coming over to your house?
A. He called me and tell me on Friday he was bringing me my money I loaned him.
Q. Okay. And did you tell Investigator Garrison that it was the small guy who hit you with -- who hit Mr. Wright with the gun. Do you remember saying that?
A. Yes.
Q. Okay. The small guy hit Wright with the gun?
A. Right.
Q. Okay. And the tall guy is the guy that cut you?
A. Yes.
Q. The small guy hits Mr. Wright, the tall guy cuts you?
A. (Nods head.)
Q. When the person who came into your room with the gun got the money, did he say, I got it? Did he yell that to --
A. The other guy?
Q. Yes.
A. Yes.
Q. So he got the money from you and then said, I got it?
A. Yes.

Q. And then the other guy came in?
A. Both of them.
Q. Both of them came in. When you say both of them, you mean the other guy and Mr. Wright?
A. Yeah.
Q. Okay. And I think you testified that the other person said -- Sean said, because we know who it is, something about, don't make me kill you over this little bit of money?
A. Not Sean. The other, the other one with the dreads.
Q. The dreads said that?
A. Yes.
Q. Okay. Sean said, don't disrespect my mama, I'll be back?
A. Yes.
Q. Did he also say, I killed once, I'll kill again? Did he say that to you?
A. I can't recall.
Q. You can't recall. Mr. Rumph, just bear with me just one second. (Pause.)

Mr. Rumph, do you remember writing a statement for Investigator Garrison?
A. I can't write.
Q. You can't write? Okay. Do you remember this statement?

A. If you read it. Can you read it for me?
Q. I can read you the whole thing but --
A. Read it.
Q. -- I just have a question about one of it. But, do you --
A. Read it. If you read it, I'll answer you what you want me to answer.
Q. You'll answer. When you spoke to Investigator Garrison, do you remember telling her that the person said, I killed once, I'll kill again?
A. I, I can't recall that.
Q. Okay. All right. You went to the hospital with Mr. Wright?
A. Yes.
Q. Do you remember how long you were there?
A. About two hours.
Q. Two hours. Okay. Now I asked you about Vivian. The night this happened, she called you twice; didn't she?
A. Yes.
Q. Okay. Earlier in the evening, and then she called back later to ask if she could come over; is that right?
A. That's right.
Q. And when Vivian called you later in the evening, did you tell her that her son had robbed you? Did you tell her that?

A. When?
Q. After these guys left the house, did there come a time that night when you spoke to Vivian Johnson and told her, your son robbed me?
A. No.
Q. You never told her that?
A. That happened on that Sunday morning.
Q. Okay.
A. Vivian called me. I told her, your son come in and robbed me.
Q. Okay. And when you had that conversation with her, did she ask you if Mr. Wright knew that it was her son who did that?
A. She asked did I told anybody.
Q. Right. And what did you say?
A. Yes.
Q. Okay. And she asked you?
A. Not to tell.
Q. Not to tell?
A. Not to tell anybody that it was her son.
Q. Okay. And there came a point after you got back from the hospital that Vivian came back to your house?
A. Yes.
Q. How long had you been home before Vivian got there?
A. I don't recall.

Q. Was it more than an hour?
A. I can't remember.
Q. Okay. Do you remember telling Investigator Garrison that it was right after you came home that she came there? Do you remember using that expression?
A. It might have been.
Q. Okay. All right. And Mr. Rumph, are you employed?
A. No.
Q. And how do you support yourself?
A. I get -- on Disability.
Q. How much money was taken this night?
A. A little over a thousand dollars.
Q. Okay. In cash?
A. In cash.
Q. Okay. And obviously that was your cash that they took?
A. Yes.
Q. And how much do you get on Disability?
A. I make my money playing cards. I play cards. I gamble.
Q. Okay. I assume if you can have a thousand dollars in cash you are a good gambler?
A. Excuse me?
Q. If you have a thousand dollars in cash in your home you are a good gambler. You do well. You win.

A. Not really.
Q. Okay. So having a thousand dollars, that's not good?
A. It's not?
Q. No. It was a question. It was a question. That's okay. I'll withdraw it.
Were you playing cards the night this happened?
A. Yes.
Q. How much earlier had you been playing cards before this happened?
A. Let me rephrase something. Also in my house where I play cards at, I make money on cutting a game.
Q. What does that mean?
A. We play cards. You got to give the house a cut.
Q. So I'm going to back up. The night this happened, was there a card game at your house?
A. Yes.
Q. How many people?
A. I don't know.
Q. Two? Three? Ten?
A. Might be six or seven.
Q. Six or seven people. What kind of card game do you play?
A. Skin.
Q. Skin. And how long had this game been going on? When did it start? When did it end?

A. I can't recall.
Q. Do you remember how long it lasted? An hour? Two hours? Five hours?
A. Might have been three hours.
Q. And so people are playing skin and every time they bet on a hand, the house gets so much, you get so much money?
A. Yes.
Q. Okay. Were you playing?
A. Yes.
Q. Okay. So you're making money from the card game but you're also making money from the house cut?
A. Right.
Q. Okay. Did you win money that night playing skin?
A. I can't recall.
Q. Okay. Do you remember at what point the card game ended? Do you remember what time that was?
A. I can't recall that.
Q. Okay.
A. But then I can recall Vivian calling me asking me about coming over. I told her I was in the bed.
Q. Okay. Had the card game been over for an hour, two hours, three hours before this thing happened?
A. Maybe about two hours.
Q. Okay. While the person was in your room, did you tell him to go to your brother's house because your brother had

more money that belonged to you?
A. Yes.
Q. Was that true?
A. No.
Q. Okay. So you sent them to your brother's house but your brother did not have any more money?
A. They didn't go to my brother's house.
Q. But you told them to go there for more money?
A. No. I tell them, let me go over there and get more money from my brother.
Q. Okay. You had more money at your brother's house?
A. No.
Q. Okay. You testified that the person -- a person said, make him talk. Do you remember saying that?
A. Yes.
Q. The person that said, make him talk, was that Sean? Did Sean say those words?
A. Sean said them words.
Q. Okay. And that was after the money was found; is that right?
A. Yes.
Q. Okay. So the person finds the money. Yells, I got it. And then Sean says, make him talk?
A. Yes.
Q. Okay. All right. When Sean walked into the bedroom,

your bedroom that night and you looked up, you knew right away that was Sean; didn't you?

A. Sean, I didn't know him. I didn't know he was in the house until he came down afterwards. The guy with the dreads was in my bedroom. I didn't know Sean was in there during the time.

Q. There came a point when Sean came into your room?

A. Yes.

Q. And when he came into your room and you looked up and you saw him?

A. Yes.

Q. And you knew him when you saw him?

A. Right.

MR. WISE: Could I have one moment?

THE COURT: Sure.

MR. WISE: Just give me one second.

(Pause.)

MR. WISE: Mr. Rumph, thank you.

THE COURT: Anything on redirect, Ms. Ford?

MS. FORD: Yes, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MS. FORD:

Q. Mr. Rumph, why did you tell the two boys that were

robbing you in your house to let you go to your brother's house to get more money?
A. That was before I give them the money out of my coat pocket in the closet.
Q. Okay.
A. Matter of fact, I was telling them about my brother next door to me and about, got to him he would have brought his shotgun out where he would have probably killed them.
Q. So, that's why you said to let you go there?
A. Yes.
MS. FORD: Thank you, Mr. Rumph.
THE COURT: Anything on recross?
MR. WISE: No, Your Honor. Thank you.
THE COURT: All right. Mr. Rumph, you may step down.
Ladies and gentlemen, y'all have been listening attentively and patiently. We're going to take about a ten-minute break, let you stretch your legs, go to the restroom if you need to.
Remember, you cannot begin talking about the testimony that you've heard. Okay? Thank y'all.
(Jury exits courtroom at 4:06 p.m. A break was taken until 4:18 p.m., and the trial resumed:)
THE COURT: State ready to proceed?
MS. FORD: We are.

THE COURT: Defense ready to proceed?

MS. ULLMAN: We are.

(Jury enters courtroom at 4:18 p.m.)

THE COURT: All right. Ladies and gentlemen, appreciate your attention. We're going to continue with the State's case now.

Ms. Ford?

MS. FORD: Thank you, Your Honor. State calls Deputy McRoy.

DAVID McROY, having been duly sworn, was examined and testified as follows:

THE CLERK: Thank you. You may have a seat. Please state your name for the record.

THE WITNESS: David McRoy.

DIRECT EXAMINATION

BY MS. FORD:

Q. Deputy, where do you work?

A. The Orangeburg Sheriff's Department.

Q. How long have you been working in law enforcement?

A. Twenty years.

Q. What do you do as a deputy?

A. I'm a road deputy. Answer calls.

Q. Were you working the night of June 26, 2011?

A. Yes, ma'am.

Q. Did you respond to a call at [redacted]?

A. Yes, ma'am.
Q. Is that here in Orangeburg County?
A. Yes, ma'am.
Q. What did you find out about the incident at that location?
A. I responded probably two o'clock in the morning, met with two victims. The victim stated that the car had been stolen and the wallets had been stolen.
MR. WISE: I'd object to the hearsay as to what he was told.
THE COURT: Okay. I'm going to overrule the objection. Let him testify, not for the truth of the matter asserted, just what he was told, the reason why he was there. Go ahead.
BY MS. FORD:
Q. Continue.
A. And they said that one of the victim's cars was stolen and both victims had been assaulted.
Q. Okay. You said assaulted. How had they been assaulted?
A. One victim had a cut across his chest. One was cut on his foot, his left foot. And one I think had a cut on his forearm. The other one had a big old gash on the top of his head.
Q. The one with the cuts, was that the same victim?

A. There were two victims.
Q. Two victims?
A. Yes, ma'am.
Q. Okay. Can you describe what the scene looked like when you got there?
A. When we got there it was a lot of blood. So we knew it was something big so the detectives were called and everything.

So we didn't -- I went into the first part of the house. There was a lot of blood there. And one of the victims came out on the front porch, and there was a lot of blood. His foot was bleeding bad, but it was pretty bloody the first part of the house.

I didn't go in the back house or anything because I knew the crime scene guys were coming.
Q. Okay. Did you ask the victims about the suspects?
A. Yes, ma'am. They said that they were two black males, one was about five-ten, medium build. One was about six foot, medium build. They said they both had black clothes on, dark clothes.
Q. Did you ask the victims a lot of questions about the suspects?
A. No, ma'am. I knew the detectives were on the way so I just secured the scene and cleared the scene for EMS.
Q. Okay. What was your priority that evening when you

responded to that call?
A. To make sure nobody trampled all over the scene because there was a lot of blood and stuff.
Q. And did you call EMS?
A. Well, when something big like this happens the detectives were called out and the supervisors come, everybody came. So it was a crime scene so the detectives did that.
Q. Were you there when EMS came and took the victims?
A. Yes, ma'am.
Q. Did you follow up this investigation or did you turn it over to someone else?
A. No, ma'am. It just goes to a detective if it's a big case.
Q. All right. Thank you, Deputy McRoy. Please answer any further questions from counsel.
THE COURT: Anything on cross?
MR. WISE: Thank you, Your Honor.
THE COURT: All right.

CROSS-EXAMINATION

BY MR. WISE:
Q. Deputy McRoy, how are you?
A. Good. Thank you.
Q. Okay. Deputy McRoy, you responded to the scene that night and you spoke to Mr. Wright and Mr. Rumph and then

you filled out an incident report; correct?
A. Yes, sir.
Q. And just explain to the jury what an incident report is.
A. I basically document what I've been told by the two victims.
Q. Okay. And when you say document, you write down?
A. Yes, yes.
Q. Okay. Why do you do incident reports?
A. For court purposes or to start the report, I guess, on a case.
Q. Okay. And incident reports are important; aren't they?
A. Yes, sir.
Q. Okay. One of the reasons you do an incident report is so that you don't forget something?
A. Yes.
Q. Okay. Very good. I want to ask you a few questions about your incident report. Let me ask you this. You were told that this happened at about 2:20 in the morning; correct?
A. Yes.
Q. Do you have your incident report with you?
A. No, sir.
Q. Would you like to see it?

A. Please.
Q. Okay.
MR. WISE: May I approach the witness, Your Honor?
THE COURT: You may.
BY MR. WISE:
Q. (Document handed to witness.) And that is your incident report from that night?
A. Yes, sir.
Q. Okay. Now, your incident report does not show any forced entry; correct?
A. No, sir.
Q. Okay. And where it says, was there forced entry, you checked no?
A. Yes, sir.
Q. Okay. Very good. And you don't have any names of people who were involved in this?
A. No, sir.
Q. No Ricky, no Sean, no Richard, no nothing?
A. No, sir.
Q. Okay. One is described actually as unknown?
A. Yes, sir.
Q. And the other space for the suspect is just left blank?
A. Yes, sir.
Q. Okay. And where on the incident report you are asked

if the subjects have been identified, you checked no?
A. Yes, sir.
Q. Okay. You do have descriptions for the height and the weight, the hair, the eyes, the race, the sex, the age and the clothes; correct?
A. Yes, sir.
Q. You have all of that information?
A. Yes, sir.
Q. But no names?
A. Yes, sir.
Q. Okay. So when you left the house that night you were looking for two unknown individuals?
A. Yes, sir.
MR. WISE: Thank you.
THE WITNESS: Thank you.
THE COURT: Anything on redirect?
MS. FORD: Beg the Court's indulgence, Your Honor.
THE COURT: Yeah. Take your time.
MS. FORD: Just briefly.

REDIRECT EXAMINATION

BY MS. FORD:
Q. Deputy McRoy, did you inquire of these victims anything other than a general description?
A. No, ma'am.
Q. And why not?

A. Like I said, it was a big case. And I knew the detectives were coming. And one of them had a big old gash on his head, one was bleeding out of his foot so I didn't want to aggravate them. And I just knew the detectives were coming and were going to follow up on it. So I just got the basic initial stuff I needed for the report and --

MS. FORD: Thank you, Deputy.

THE COURT: Anything on recross?

MR. WISE: Just one question.

RECROSS-EXAMINATION

BY MR. WISE:

Q. Deputy, you didn't want to aggravate them. Did you think finding out who did this to them would aggravate them?

A. Did I think it would aggravate them?

Q. Yeah.

A. No, sir.

MR. WISE: Thank you.

THE COURT: All right. Thank you, sir. You may step down. Appreciate it. Be careful stepping down.

THE WITNESS: All right.

THE COURT: Who's next?

MS. FORD: The State would call Investigator Lori Garrison.

LORI ANN LEWIS GARRISON, having been duly sworn was examined and testified as follows:

THE CLERK: Thank you. You may have a seat. State your name for the record.

THE WITNESS: Lori Ann Lewis Garrison.

DIRECT EXAMINATION

BY MS. FORD:

Q. Good afternoon, Investigator.

A. Good afternoon.

Q. Where are you employed?

A. I'm employed with the Orangeburg County Sheriff's Office.

Q. How long have you been in law enforcement, Investigator?

A. I've been in law enforcement for approximately 15 years.

Q. Okay. What do you do as an investigator, generally?

A. We investigate criminal offenses.

Q. Okay.

A. Major crimes.

Q. Yes, ma'am. Did you investigate an incident that took place on June 26 of 2011?

A. Yes, I did.

Q. Where did that incident take place?

A. [redacted].

Q. And what did you learn about that incident? What happened?
A. What I learned about that incident is that two black males came into that residence with -- under the pretense of using a phone based on an assumption.
MR. WISE: Your Honor, can we interject the same objection as to hearsay?
THE COURT: Hearsay?
MR. WISE: Yes.
THE COURT: And I'm going to overrule that objection. It's being introduced not for the truth of what she's saying. It's just what she was told while she was investigating the scene.
Okay. Thank you.
MR. WISE: Thank you, Your Honor.
BY MS. FORD:
Q. Please continue.
A. Two black males entered the residence with the pretense of using the telephone from the victims, Robert Rumph and James Wright.
Upon them entering the home, the victims were brutally assaulted. There was blood all over the residence from the, from the starting point all the way into the bedrooms.
In Mr. Rumph's bed there was also a pool of blood and

pools of blood throughout the hall.
Q. Okay. So obviously you learned that the victims were assaulted?
A. Yes.
Q. Did anything else happen to the victims?
A. The victims were robbed. And Robert Rumph's car was taken at that time.
Q. Did you know what they had been robbed of or what had been stolen from them?
A. At the time it was money.
Q. Okay. Did you meet with the victims that night?
A. Yes. I spoke to them briefly at their home. Because of their injuries we wanted to make sure that they were taken care of, so the ambulance was called in. They went straight to the hospital.
Q. What types of injuries did the victims have, Investigator?
A. Okay. Mr. Wright had several deep lacerations to his head, bumps and bruises to his head. Mr. Rumph had several cuts to his foot, his arm, his legs and his abdomen.
Q. Investigator, did you go to the Regional Medical Center?
A. Yes, I did.
Q. Okay. Did you happen to take any pictures of the

victims and their injuries?
A. Yes, I did.
MS. FORD: Your Honor, may I approach?
THE COURT: You may.
BY MS. FORD:
Q. Investigator, I'm going to show you what's been marked State's Exhibit Nine, Ten, 11 and 12. Can you identify these for the Court?
A. This is a picture of Mr. Wright at the hospital. Trying to depict his lip, but you can't see it really good. It was a deep laceration to his lip.
This is also Mr. Wright, his head. Had injury to his head. After he'd been cleaned up some from the hospital.
Also Mr. Wright, his head, another head injury. All of these are Mr. Wright's head injuries at that time which had been cleaned up since the time that I saw him at the house.
Q. Did they look like that at the house?
A. No. They were -- it was blood everywhere. It was blood all over them, so they had to get cleaned up.
Q. Did you take these pictures, Investigator?
A. Yes, I did.
Q. And do these pictures accurately depict what the victim, Mr. James Wright, looked like after they were cleaned up at the hospital?

A. Yes, ma'am.

MS. FORD: Your Honor, at this time the State would offer into evidence State's Exhibit Nine, Ten, 11 and 12 which have been pre-marked, Your Honor.

THE COURT: Any objection?

MR. WISE: No objection, Your Honor.

THE COURT: State's Nine, Ten, 11 and 12 are in evidence without objection.

(Thereupon, State's Exhibit Nos. 9, 10, 11 and 12, photographs, were received into evidence.)

BY MS. FORD:

Q. Did you happen to take any other pictures that evening, Investigator Garrison?

A. Yes, I did. I also took pictures of Mr. Rumph.

Q. Investigator, I'm going to show you what's been marked State's Four, Five, Six, Seven and Eight. Can you identify these for the Court?

A. This is Mr. Rumph's foot after it was -- stitches.

Mr. Rumph's arm after stitches.

This is his leg after it has been cleaned.

His abdomen.

Q. Investigator, can I stop you? Can you refer based on the numbers --

A. Oh, I'm sorry.

Q. -- what each -- that's okay. Just refer to the number

and what you're describing, please.
A. Okay. This is picture Number Eight. This is Mr. Rumph's foot after it has --
MR. WISE: Your Honor, until these are moved into evidence, I think she should not publish them to the jury.
THE COURT: First of all, Investigator Garrison, what she wants to know is can you identify them.
THE WITNESS: Yes. Uh-huh.
THE COURT: And then she's going to ask you another follow-up question. And then after that if everything's in order, then you can publish them to the jury.
THE WITNESS: Okay.
THE COURT: I'm sorry.
THE WITNESS: Number Eight is a picture of Mr. Rumph's foot after it has been cleaned up and stitches by the hospital.
His abdomen area that has been cut.
BY MS. FORD:
Q. And what number was that, Investigator?
A. I'm sorry. Number Seven.
Q. Okay.
A. Number Four, picture of the foot, Mr. Rumph's.
Picture of Mr. Rumph's legs that was cut.
Q. And what number was that, Investigator?
A. I'm sorry. Number Six.

Q. Thank you.
A. And this is picture Number Five, a picture of Mr. Rumph's arm after it has been cleaned up and stitched from the hospital.
Q. Investigator, do these pictures marked State's Four, Five, Six, Seven and Eight accurately depict the injuries sustained by Mr. Rumph on the night of June 26, 2011?
A. Yes.
Q. And you also took these pictures?
A. Yes, I did.
MS. FORD: Your Honor, at this time the State would move into evidence what's been marked State's Five, Six, Seven, Eight and Four, Your Honor.
THE COURT: Any objection?
MR. WISE: Can I see these, Your Honor?
MS. FORD: (Documents handed to defense counsel.)
MR. WISE: Your Honor, as to State's Exhibit Five, can I voir dire this witness very briefly?
THE COURT: You can ask her about it.
MR. WISE: Yes. Just ask her before --
THE COURT: What, I'll do is I'll hold that out until you get a chance to cross-examine.
MR. WISE: No objections to the rest of them.
THE COURT: Four, Six, Seven and Eight are in without objections, and we'll come back to Four (sic) after your

cross-examination.

MS. FORD: Yes, sir. Thank you, Your Honor.

THE COURT: Thank you.

(Thereupon, State's Exhibit Nos. 4, 6, 7 and 8, photographs, were received into evidence.)

BY MS. FORD:

Q. Investigator, did you get the opportunity to talk with the victims about what happened to them that night?

A. Yes, I did.

Q. What did you learn from the victims?

A. As stated, what I learned from the victims that two black males entered their home and assaulted them to the point where they needed medical attention from the hospital.

Q. Did they give you a description of the subjects?

A. Yes, they did. Both described as dark-skin male.

Mr. Wright stated that one subject was a little taller than him, clean cut. The other subject was shorter, a little shorter than the other subject and he had long dreads, shoulder-length dreads.

Q. Okay. Did either of the victims know the subjects?

A. Yes. Mr. Wright stated that he knew the subject from frequenting a place called the Corner Pocket.

Q. Which one? The one --

A. Mr. Wright.

Q. Okay. And which subject did he say that he knew from the Corner Pocket?
A. Oh. He said that he knew the subject by frequenting the Corner Pocket, and the name he said was Rick or Ricky.
Q. Was this the one with the dreads or --
A. With the dreads --
Q. -- or shorter hair?
A. -- uh-huh.
Q. Okay. Did Mr. Rumph know either of them?
A. Yes. Mr. Rumph stated that he was seeing a lady named Vivian and that the other subject was her son, Sean Echols.
Q. Based on that information that you received from the victims, what did you do?
A. Based on that information I went and obtained a photo lineup. And from there I showed it to Mr. Wright and Mr. Rumph.
Q. Investigator, I'm going to show you what has been marked State's Exhibit One.
A. Okay.
Q. Can you identify that?
A. This is the photo lineup of Mr. Sprinkle, Richard Sprinkle.
Q. Okay. And who did you show that to?
A. I showed it to both victims.

Q. That one in particular?
A. Not the same -- similar pictures to both victims.
Q. That one in particular, was that shown to Mr. Wright or was that shown to Mr. Rumph?
A. This was shown to Mr. Wright.
Q. Okay. When -- when did you show that to Mr. Wright?
A. The next day.
Q. Okay. And where did you show it to him?
A. At his house.
Q. How many photos are in that lineup, Investigator?
A. There are six photos in the lineup.
Q. And what did you say to Mr. Wright regarding that lineup?
A. I showed Mr. Wright the lineup. I asked him, I asked him to look at the pictures carefully and see if he recognized anybody in the photo.
Q. Okay. And was Mr. Wright able to identify anyone in the photo?
A. Yes. Immediately he identified picture number two.
Q. Picture number two. Did you suggest that he should pick --
A. No, ma'am.
Q. -- picture number two?
A. No, ma'am. I didn't; no, ma'am.
Q. And whose photo was selected?

A. Richard Sprinkle.
Q. Is that person in the courtroom, Investigator?
A. Yes, ma'am, he is.
Q. Can you point him out?
A. He's right there.
Q. You said that Mr. Wright immediately picked --
A. Immediately.
Q. -- picture two?
A. Yes, ma'am.
Q. Did you show Mr. Wright any other photo lineups?
A. Yes, ma'am.

I showed Mr. Wright a photo lineup that contained a photo of Mr. Sean Echols.

Q. Okay.

MS. FORD: Your Honor, at this time the State would move into evidence what's been marked State's Exhibit One, photo lineup.

MR. WISE: No objection, Your Honor.

THE COURT: State's One is in evidence without objection.

(Thereupon, State's Exhibit No. 1, photo lineup, was received into evidence.)

BY MS. FORD:
Q. Investigator, can you identify what's been marked State's Exhibit Two?

A. It is a photo lineup with a picture of Sean Echols in it.
Q. And what did you say regarding that lineup, Investigator?
A. The same as before; to look at the pictures carefully and determine if he can identify anybody in the picture.
Q. And was he able to identify anyone?
A. Yes. Picture number two which is Sean Echols.
Q. And did he circle that?
A. Yes, he circled that and he initialed.
Q. Thank you, Investigator.
MS. FORD: Your Honor, at this time the State would move into evidence as State's Exhibit Two.
MR. WISE: No objection.
THE COURT: No objection, State's Two is in without objection, in evidence without objection.)
(Thereupon, State's Exhibit No. 2, photo lineup, was received into evidence.)
BY MS. FORD:
Q. So, Investigator, Mr. Wright was able to identify through a photo lineup both Richard Sprinkle and Sean Echols as the people that came into his house and robbed him?
A. Yes.
Q. How about Mr. Robert Rumph, did you show him any

lineups?
A. Yes, I showed him pictures of similar lineups.
Q. Investigator, I'm going to show you what's been marked State's Exhibit Three. What is that?
A. That is a photo lineup depicting Sean Echols in one of the pictures.
Q. And that's the one that you showed to Mr. Robert Rumph?
A. Yes.
Q. And is Mr. Echols identified in that lineup?
A. Yes, he is.
Q. Okay. And how was that done?
A. He was, his picture was circled and Mr. Rumph initialed, initialed the picture.
Q. Thank you, Investigator.
MS. FORD: Your Honor, at this time the State would move into evidence what's been marked State's Exhibit Three, photo lineup, Your Honor.
THE COURT: Hold on one second, please.
MR. WISE: No objection.
THE COURT: State's Three is in evidence without objection.
(Thereupon, State's Exhibit No. 3, photo lineup, was received into evidence.)
BY MS. FORD:

Q. Did you show Mr. Robert Rumph any other lineups, Investigator?
A. Yes, I did.
Q. Okay. Did he pick anyone out of those lineups?
A. No, he did not.
Q. Did he give a description of the other suspect?
A. Yes. He said that the man was shorter and had dreads and dark skin.
Q. And based on all of this that you learned, what did you do?
A. From there I obtained warrants for Sean Echols and --
Q. The Defendant?
A. -- Sprinkle. Right.
Q. Mr. Sprinkle. And what was Mr. Sprinkle ultimately charged with, Investigator?
A. He was charged with two counts of armed robbery, two counts of attempted murder and one count of burglary.
Q. In the first degree?
A. First degree, yes.
MS. FORD: Beg the Court's indulgence, Your Honor?
(Pause.)
Thank you, Investigator. If you'll answer any questions of Mr. Wise.

CROSS-EXAMINATION

BY MR. WISE:

Q. Investigator Garrison, how are you?
A. Good. How are you?
Q. Investigator, let me start with State's Exhibit Five. Let me clear up one thing.
A. Okay.
Q. What body part is that?
A. His arm.
Q. Are you sure?
A. Yes.
Q. Thank you. The night that you responded here, you spoke to Mr. Rumph and Mr. Wright at the hospital; correct?
A. Correct.
Q. You didn't really do anything, you didn't do an in depth interview at the house?
A. No. We wanted to take care of their injuries.
Q. Okay. And when you spoke to them at the hospital, Mr. Wright said the person was either Rick or Ricky; is that correct? Am I correct?
A. Yes, uh-huh.
Q. Okay. I'm sorry.
Mr. Wright told you that when this happened one guy followed him into his bedroom and hit him with a pistol; correct?
A. If I can recall from the statement, yes, uh-huh.

Q. Okay. These photo arrays have sheets that accompany them, don't they, where the people sign?
A. Yes.
Q. Do you have those sheets with you?
A. I don't have them with me.
Q. Do you have them in your folder?
A. Yes.
Q. Would you retrieve them for me? With the Court's permission?
THE COURT: Sure. I think she's going to hand it to her.
MS. FORD: (Folder handed to the witness.)
BY MR. WISE:
Q. Can you show me the sheets that accompany or the sheets that were signed by Mr. Wright?
A. Okay. This one. (Document handed to counsel.)
Q. Now, do you know which lineup this accompanies?
A. Which one do you have?
Q. (Displaying document.)
A. It should be this one.
Q. Okay. Can I see that?
A. Uh-huh. (Document handed to counsel.)
Q. Do you have another sheet like this that was signed by Mr. Wright?
A. (Document handed to counsel.)

Q. Okay. Give that back to you. And this sheet accompanies which photo array?
A. That should be this one here (pointing).
Q. Okay. So, and this is -- I'm looking now at State's Exhibit Two; correct?
A. Yes.
Q. And the person circled in State's Exhibit Two is Sean Echols?
A. Yes.
Q. And what Mr. Wright said about the photo in State's Exhibit Two is this is the man that hit me with the gun about the head and face area?
A. That's what was stated.
Q. So Mr. Wright said Mr. Echols hit him with a gun?
A. That's what was stated at that time.
Q. Okay. I'll give that back to you. Okay.
And when you first met Mr. Wright, he said to you that he went to the door and he saw two guys. That was his description; correct?
A. Right.
Q. Okay. Investigator Garrison, did you attend the preliminary hearing in this matter?
A. I believe I did.
Q. Were you present for a conversation between Mr. Sprinkle and Mr. Rumph?

A. Between Mr. Sprinkle --
Q. And Mr. Rumph?
A. -- and Mr. Rumph?
Q. Yes, at the preliminary hearing?
A. Not that I did recall.
Q. You never --
A. A conversation between the two of them?
Q. Yes, ma'am. Let me be more specific.
A. Okay.
Q. At the preliminary hearing, did you hear Mr. Sprinkle say to Mr. Rumph -- or, I'm sorry. Let me rephrase it.

Did you hear Mr. Rumph say to Mr. Sprinkle that he knows he didn't do anything to him? Did you hear Mr. Rumph say that to Mr. Sprinkle at the preliminary hearing?

A. No, sir.
Q. All right. And between Mr. Rumph and Mr. Sprinkle, who's taller?
A. Between Mr --
Q. I'm sorry. Thank you. Between Mr. Echols and Mr. Sprinkle, who is taller?
A. I believe it's Mr. Echols.
Q. During the course of your investigation you collected a DNA sample from Mr. Sprinkle; correct?
A. Yes. From both, from Mr. Echols and Mr. Sprinkle,

yes.
Q. Did Mr. Wright ever tell you about some interaction between he and Mr. Sprinkle at the Bojangles earlier in the evening?
A. No, sir.
Q. Okay.
MR. WISE: Your Honor, can I have one moment?
THE COURT: Sure.
(Pause.)
BY MR. WISE:
Q. In your conversation with Mr. Rumph, did he tell you that Sean said to him that night, I killed once and I'll kill again?
A. Yes, sir.
Q. Mr. Rumph did tell you that Sean said that?
A. He said, he said that he believed it was, right. Her son, right. Yes.
Q. Okay. And your investigation revealed that there was one gun and one knife but no other weapons?
A. Correct.
Q. Okay. Investigator Garrison, one more moment, please.
(Pause.)
It's your testimony you only showed Mr. Wright photo arrays on one occasion?
A. Say that again now.

Q. Your recollection is you only showed Mr. Wright one set of photo arrays? You only showed him -- you went out one time with pictures?
A. Two. Two separate times. I can say that.
Q. All right. Okay.
MR. WISE: Investigator Garrison, thank you.
THE COURT: Anything on redirect?
MS. FORD: Yes, sir, Your Honor.
State would renew our motion to move into evidence State's Exhibit Five, Your Honor.
THE COURT: Any objection?
MR. WISE: No.
THE COURT: State's Five is in evidence without objection.
MS. FORD: Thank you, Your Honor.
(Thereupon, State's Exhibit No. 5, photograph, was received into evidence.)
MS. FORD: No further questions.
THE COURT: Anything on recross?
MR. WISE: No, Your Honor.
THE COURT: State ready to call its next witness?
MS. FORD: Yes, sir, we are.
THE COURT: Okay.
MS. FORD: The State will call Investigator Thrower.
JOHNNY THROWER, having been duly sworn, was examined

and testified as follows:

THE CLERK: Thank you. You may have a seat. Please state your name again for the record.

THE WITNESS: Johnny Thrower.

DIRECT EXAMINATION

BY MS. FORD:

Q. Good afternoon, Investigator.

A. How are you doing?

Q. I'm good. Thank you. Where do you work?

A. I'm an investigator with the Orangeburg County Sheriff's Office.

Q. How long have you been in law enforcement?

A. I've been in law enforcement for 15 years. I've been with the sheriff's office approximately three years.

Q. Okay. And what do you do as an investigator?

A. I'm a narcotics investigator with special operations. I also do criminal investigation.

Q. Did you ever meet with Richard Sprinkle in January of this year?

A. Yes, ma'am. I did.

Q. How did that meeting come about?

A. Mr. Sprinkle had made several requests to talk to me. He called the office collect a few times and people at the jail, workers at the jail let me know that he wanted to speak with me.

Q. Okay. So you did meet with him?
A. Yes, ma'am.
Q. Where did that meeting take place?
A. It took place at the criminal investigations division office on Chestnut, here in Orangeburg.
Q. Who all was present for your meeting with Mr. Sprinkle?
A. Myself and Investigator John Stokes.
Q. Okay. When you met with Mr. Sprinkle, did you advise him of his Miranda rights?
A. Yes, ma'am. I did.
Q. What rights did you advise him of?
A. I told Mr. Sprinkle that he had the right to remain silent, anything that he said can and will be used against him in a court of law. I told him that he had a right to an attorney. If he couldn't afford an attorney one would be appointed to him.

I also let him know that he had a right to stop answering questions or anything at any time while he was there to seek counsel from a lawyer.

Q. When you read Mr. Sprinkle his rights, did he appear to be under the influence of any drugs or alcohol or anything that would impair his ability to understand --
A. No, ma'am.
Q. -- your --

A. No, ma'am, he didn't.
Q. Did he appear to have any mental or physical defects that would impair his judgment?
A. No, ma'am. Not at all.
Q. After you gave Mr. Sprinkle his rights, did he want to talk with you?
A. Yes, ma'am.
Q. Did you have any idea what he wanted to talk to you about?
A. Absolutely not.
Q. Let me ask you, Investigator, did you have Mr. Sprinkle sign a waiver of rights form?
A. No, ma'am; I didn't.
Q. Why not?
A. During the time, I had no idea what he wanted to talk about. I didn't know him.
Q. Okay. So this meeting was entirely at Mr. Sprinkle's request?
A. Yes, ma'am.
Q. Okay. Did Mr. Sprinkle make any statements when you met with him?
A. Yes, ma'am. He did.
Q. What did he say?
MR. WISE: Objection, Your Honor. We would renew our objection.

THE COURT: I'll note your objection on the record. I also note my -- overrule your objection so that it's preserved for the record.

MR. WISE: Thank you, Your Honor.

BY MS. FORD:

Q. What did Mr. Sprinkle say?

A. He told me about a home invasion that him and Sean Echols actually participated in. And he told me that he did go to a residence with Sean. And after they got inside of the residence, Sean started to assault a guy there. And, you know, he basically was scared at that point and he left the residence.

Q. Okay. Mr. Sprinkle admitted being at a residence?

A. Yes, ma'am.

Q. And left?

A. Yes, ma'am.

Q. According to what he said to you?

A. Yes, ma'am.

Q. What else did he say?

A. He said, you know, that there was, you know, a third person there. It was Sean's mom. He said, you know, during the time, you know, he was on drugs or what have you and, you know, that's why he went.

Q. Okay. Did he make any further statements, Investigator?

A. No, ma'am.
Q. Okay. Did he ever stop and ask for his lawyer?
A. No, ma'am.
Q. Did he ever say, stop, I don't want to talk to you any more?
A. No, ma'am.
Q. Did you interrogate him about what he was saying?
A. No, ma'am, I didn't.
Q. Did you handle the investigation that he was referencing, the home invasion he was referencing?
A. No, ma'am.
Q. But were you aware what he was referencing?
A. Well, I mean, I kind of heard about it, but as far as the details of it and, you know, everything, no, I wasn't aware of any detail about it.
Q. And after Mr. Sprinkle made these statements, what did you do next?
A. Took him back to the jail.
Q. Did you notify anyone?
A. Myself and Investigator Stokes, you know, we told Investigator Garrison that she needed to, you know, probably talk with him.
Q. Thank you, Investigator. Please answer any questions that Mr. Wise is going to ask you.
THE COURT: Your witness, Mr. Wise.

MR. WISE: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WISE:

Q. Investigator Thrower, how are you?

A. I'm fine, Mr. Wise. How are you?

Q. Investigator, I am well.

So, you get Mr. Sprinkle, you take him back, and he makes a statement. I just want to understand a couple of things.

He said there were three people present; correct?

A. That's correct.

Q. Okay. And he says he didn't do anything?

A. According to the statement that he gave; yes, sir.

Q. That's what he said?

A. Yes, sir.

Q. Okay.

A. Yes, sir.

Q. But he did say that Echols was one of the people who did do something?

A. Yes, sir.

Q. So based on his statement, based on his statement three people there, two people do something, one person didn't do anything, according to what he told you?

A. Based on his statement, Sean Echols did something. He

never said anything about what the third person did.
Q. All right. But according to his statement, he was there and then when Sean Echols started assaulting someone he took off?
A. That's correct.
Q. Okay. Did he say during the course of his statement that he went to the house at Sean's request?
A. He could have. I don't recall whether he did or not.
Q. Now you made the statement or you testified that -- I think you said, he said he was on drugs, that's why he went?
A. That's correct.
Q. Did he say what he meant by that?
A. He said he was a crack head.
Q. Did he say that he went there for drugs?
A. I don't recall if he said that or not.
Q. Okay. Let me be specific. He didn't say, because of my drug habit I went there to rob these people?
A. No, sir. I don't recall him saying that.
Q. Okay. What he says, he was there, he didn't do anything?
A. That's correct.
Q. Okay. Did he also tell you that he was afraid of Sean Echols?
A. Yes, sir. He did mention that.

Q. Okay. Did he tell you if he ever had a weapon?
A. No, sir. He never said he had a weapon.
Q. Okay. Did he ever say he hit anybody?
A. No, sir. He never said he hit anybody.
Q. So when people, the first time -- according to his statement the first time something bad started happening he says he got scared and he left?
A. According to the statement that he gave me; yes, sir.
Q. Okay.
MR. WISE: Can I have one moment, Your Honor?
THE COURT: Sure.
(Pause.)
BY MR. WISE:
Q. Mr. Thrower, let me ask you one last question.
A. Yes, sir.
Q. Do you remember Mr. Sprinkle saying this to you, that he went to the house to test drugs? Do you remember him saying that?
A. If he did I don't recall him saying that.
Q. Okay. Thank you, Investigator.
THE COURT: Ms. Ford, anything on Redirect?
MS. FORD: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. FORD:
Q. Investigator, when did you meet with Mr. Sprinkle?

A. I believe it was January. Sometime in January, at the end of January; I'm not sure of the exact date.
Q. Okay. But was that, what year?
A. This year.
Q. Are you aware of when the home invasion that he was talking about, are you aware of when that happened?
A. The exact date? No, ma'am. I'm not sure.
Q. Was it recently or was it --
A. It may have been in the last, maybe year or so. I'm -- like I said, I didn't investigate the case so I'm not sure.

MS. FORD: Thank you, Investigator.

THE COURT: Anything on recross?

MR. WISE: No, Your Honor.

THE COURT: Thank you, sir. You may step down. Is the State prepared to call its next witness?

MS. FORD: We are, Your Honor. The State would call Investigator Stokes.

JOHN C. STOKES, having been duly sworn, was examined and testified as follows:

THE CLERK: Have a seat, state your name for the Court.

THE WITNESS: My name is John C. Stokes.

DIRECT EXAMINATION

BY MS. FORD:

Q. Good afternoon, Investigator.

A. How are you doing?
Q. Where do you work?
A. Orangeburg County Sheriff's Office.
Q. How long have you worked at the sheriff's office, Investigator?
A. Nine going on ten years.
Q. Have you ever met Richard Sprinkle?
A. Yes.
Q. When have you met with him?
A. I don't remember the exact date but it was sometime in January of this year.
Q. Of this year, okay. How did that come about, the meeting with him?
A. Well, Mr. Sprinkle had expressed several times he wanted to talk to Investigator Thrower about something that we didn't know exactly what he wanted to talk about. And also Mr. Sprinkle had called our office, criminal investigations, on numerous times, collect calls to speak to someone.
Q. So eventually you all met with him?
A. Yes.
Q. Did you advise Mr. Sprinkle of his rights?
A. (Shakes head.)
Q. Do you know if Investigator Thrower did?
A. Investigator Thrower stated he verbally gave him his

Miranda rights, yes.
Q. Okay. Did Mr. Sprinkle appear to be under the influence of drugs or alcohol or have any mental or physical disabilities that would affect him understanding what his rights were?
A. No.
Q. Eventually did Mr. Sprinkle decide that he wanted to speak with you and Investigator Thrower?
A. Yes.
Q. Okay. And what did he say?
MR. WISE: Same objection.
THE COURT: Noted for the record. Your earlier objection and my earlier rulings are preserved on the record. Thank you, sir.
MR. WISE: Thank you.
BY MS. FORD:
Q. What did he say, Investigator?
A. Oh, he said that an incident took place on some type of home invasion that took place on [redacted] [redacted]. And that he was there with Sean Echols but his mama was the third person. He said that he was there. He got afraid -- got scared when the assault was taking place and he ran out the house.
Q. Okay. Did he say anything else?
A. He expressed some concerns about being in the

detention center. He said he was receiving some threatening, some threatening-type things from Mr. Echols and he was, wished to be removed from Orangeburg Detention Center.

Q. Okay. Anything else? Or was that basically the extent?

A. That's basically, that's basically it.

Q. Did he ever stop and say, I want to talk to a lawyer?

A. No.

Q. Did he ever say, I don't want to talk to you?

A. No.

Q. Did you handle the investigation --

A. No.

Q. -- of that home invasion on [redacted] [redacted]?

A. No, I didn't.

MS. FORD: Beg the Court's indulgence.

(Pause.)

BY MS. FORD:

Q. When you said that Mr. Sprinkle was calling repeatedly, did those calls, were they followed quickly by you all meeting with him or --

A. No.

Q. -- was it a long period of calls?

A. It was a long period before we actually met with him.

Q. Okay. Would you say several days? Several weeks?

A. Probably several weeks.
Q. Okay.
MS. FORD: Thank you. Please answer any questions that Mr. Wise may have.
THE COURT: Mr. Wise?

CROSS-EXAMINATION

BY MR. WISE:
Q. How are you, sir? Thank you, Your Honor.
A. Good.
Q. Is it Investigator Stokes?
A. Sergeant Stokes.
Q. Sergeant Stokes. Sergeant, let me ask you a question.
A. Uh-huh.
Q. You were there when -- with Investigator Thrower during the interview with Mr. Sprinkle; correct?
A. Yes.
Q. Were you there the whole time?
A. No.
Q. Okay. Tell me what happened. Who -- how did it work out?
A. As far as the interview?
Q. Yeah. In terms of who was there when, since you weren't there the whole time.
A. Investigator Thrower picked him up from the jail and brought him to our office. And they were sitting inside

the actual interview room when I got there. And I actually stepped out a couple of times during the interview.
Q. Okay. I want to ask you a couple of things.
A. Yes, sir.
Q. You said he called numerous times?
A. Yes.
Q. To your office?
A. Uh-huh.
Q. To speak to you?
A. No, not me. He'd call collect. It was a collect call from Richard Sprinkle. That's all.
Q. He called to speak to a deputy?
A. An investigator, yes.
Q. Somebody in law enforcement?
A. Yes.
Q. He had a story to tell and he's calling to tell that story?
A. Apparently.
Q. About how many times did he call?
A. I can only say, I'm probably aware of at least three or four times that I know he called.
Q. That you know he called?
A. That I know he called.
Q. He called a lot.

A. Three or four times, you know, I know he called and he called collect to our office, yes.
Q. Okay. One of the things you said was that he had some concerns about being in the detention center?
A. Yes.
Q. He was afraid of Sean Echols?
A. Yes.
Q. He said that Sean Echols had threatened him?
A. Yes.
Q. And he was trying to get out of there because he feared for his safety?
A. Yes.
Q. All right. Do you recall him saying about this incident that happened at the house that he went there at Sean's request?
A. Yes.
Q. Okay. And do you recall him saying that he went there to test drugs?
A. I can't recall that.
Q. Okay. You do recall him saying when Sean started assaulting somebody he left?
A. I remember him saying when something was taking place he got, I'm not -- I can't recall if he said when Sean was doing it but I know he said he saw something was going on, he got scared and he left out, he ran out the house.

Q. And he never said he did anything?
A. No.
Q. Okay. And he said there were three people?
A. Yes.
MR. WISE: One moment, Your Honor.
THE COURT: Sure.
MR. WISE: That's all I have, Your Honor.
THE COURT: Anything on redirect?
MS. FORD: Nothing, Your Honor.
THE COURT: You may step down. Thank you. Can I see y'all for one second?
MS. FORD: Yes, sir.
(Off-the-record discussion.)
THE COURT: All right. Ladies and gentlemen, that was another one of those important discussions that we were warning you about earlier. That was a discussion about whether we are going to break now or not.
And we are going to break now. I'd ask you all to be back in the jury room at 9:30 tomorrow morning.
Remember, you can't talk about the case among yourselves or with anybody else. You can't do any investigation, read anything about the case, anything like that.
Get a good night's rest. Come on back here in the morning and we'll continue with the State's case. Okay?

ON WEDNESDAY, APRIL 10TH, 2013, AT 9:56 A.M.:

THE COURT: All right. Good morning. Ms. Ford, is the State ready to go?

MS. FORD: We are, Your Honor.

THE COURT: Is the defense ready to go?

MR. WISE: We are, Your Honor.

THE COURT: If you'd bring the jury back in.

(Jury enters courtroom at 9:58 a.m.)

THE COURT: Good morning, ladies and gentlemen.

THE JURY (COLLECTIVELY): Good morning.

THE COURT: Hope y'all had a good evening. We're getting ready to continue with The case today and the State's prepared to call their next witness.

Ms. Ford?

MS. FORD: Thank you, Your Honor. May it please the Court.

The State calls Sean Echols to the stand.

SEAN ECHOLS, having been duly sworn, was examined and testified as follows:

THE CLERK: You may have a seat. Please state your name again for the record.

THE WITNESS: Sean Echols.

THE COURT: Your witness.

MS. FORD: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. FORD:

Q. Good morning, Mr. Echols. You're dressed in a jail uniform. Why is that?

A. Because I'm incarcerated.

Q. Why are you incarcerated?

A. For two armed robberies and two attempted murders.

Q. Was anyone else charged with you?

A. Yes, ma'am.

Q. Who?

A. Richard Sprinkle.

Q. How do you know Richard Sprinkle?

A. Through Collins Shuler and Jasper Clark.

Q. Make sure you speak loudly because she's taking everything down. Okay? You said you were charged with two armed robberies?

A. And two attempted murders.

Q. Okay. Is that the same charges that Richard Sprinkle is charged with?

A. Yes, ma'am.

Q. Okay. So how did all of this start?

A. It started when I had a situation that I had, you know, like a quick come up and --

Q. What's a quick come up?

A. A quick robbery.

Q. Okay.
A. And I had spoke with Collins Shuler and Jasper Clark on the situation. And I was going to initially do it by myself, but that's when they brought Richard -- well, Collins Shuler and Jasper Clark brought Richard Sprinkle into the picture of the armed robbery.
Q. Okay. When you say that they brought Richard Sprinkle into the picture, what do you mean by that?
A. Like, they know somebody that lived the life that could do it with me and that's how Richard Sprinkle came into the picture.
Q. Okay. So you met. Did you know Richard Sprinkle at that point?
A. No. I only met him, like, a couple, few times prior with Collins Shuler.
Q. Prior to you meeting him for what?
A. The night of the robbery.
Q. Did you and Richard Sprinkle talk about the robbery?
A. Yes, ma'am.
Q. What did y'all talk about?
A. We talked about how we would go about committing the robbery once we got to the scene, how we would get away from the robbery and which parts were, like, basically be played.
Q. Okay. Did you have any victims in mind?

A. Yes, ma'am.
Q. Who?
A. Robert Rumph and James Wright.
Q. How did you choose them?
A. Because they ran a gambling house.
Q. And you were looking for quick money; right?
A. Yes, ma'am.
Q. Okay. Did you know either of the victims any other way?
A. Yes, ma'am.
Q. How?
A. I knew Robert Rumph because he was affiliated with my mother.
Q. Okay. And that's how you knew he had a lot of money in the house?
A. Yes, ma'am.
Q. So you planned the robbery?
A. We planned the robbery.
Q. We meaning?
A. Me and Richard Sprinkle.
Q. Okay. And you decided when you were going to do the robbery?
A. Yes, ma'am.
Q. Was that back in June of 2011?
A. Yes, ma'am.

Q. Well after you planned the robbery, what did you do?
A. After we planned the robbery we had Jasper Clark and Collins Shuler, first they took us to Bojangles gas station. Jasper Clark and me stayed in the car. Collins Shuler and Richard Sprinkle went inside the gas station to get some cigarettes and a cigar for me.

When they came back out of the gas station Collins Shuler and Richard Sprinkle, Jasper Clark dropped us off up at Highway 33. Me and Richard Sprinkle got out of the car. We initially go through the path to come out on Atlantic Avenue but the woods had done overgrown. So we had to walk a few streets up.

I text Jasper Clark letting them know the name of the street that we were going to have to go through because we couldn't get through the path.

Q. Where were you trying to go?
A. To Robert Rumph and James Wright house.
Q. And was that close by where you were dropped off?
A. Yes, ma'am.
Q. Okay. So you said you were walking through the woods to get there?
A. We couldn't get through the woods.
Q. Okay. So how did you get there?
A. We had to go a few streets up. And I had texted the name of the street to Jasper Clark. I can't pronounce it

or nothing. We went through a field, across the tracks and we came out onto the end of [redacted] which is a parallel street directly in front of James Wright and Robert Rumph's trailer.

Q. Okay. And when you got there, who all was with you?

A. Me and Richard Sprinkle.

Q. And what did y'all decide to do? What did you do?

A. I decided I was going to knock on the door and Mr. James Wright came to the door. He asked who it was. I told him that I needed to use the phone because I just got into a physical altercation with my wife and that I needed to call my mother to come pick me up.

Q. Is that the truth?

A. No, ma'am.

Q. So that was a lie --

A. Yes, ma'am.

Q. -- that you used to --

A. Gain entry into the residence.

Q. Okay. When you knocked on the door, who was with you?

A. Me and Richard Sprinkle.

Q. Okay. So you lied to Mr. Wright; correct?

A. Yes, ma'am.

Q. What did you do next?

A. Mr. Wright shut the door back, not all the way but partially. He left. I guess he went to go ask Mr. Robert

Rumph is it okay to let us in to use the phone. Mr. Wright came back with the cordless phone in his hand. He told us to come in. Mr. Richard Sprinkle pointed the gun to Mr. Rumph's head -- I mean, not Mr. Rumph, Mr. Wright's head and told Mr. Wright, don't move, don't move, don't move.

So I kept Mr. Wright standing in the livingroom by the door while Richard Sprinkle went to Rocky's room. Then I escorted Mr. Wright to his room. I asked Mr. Wright for his money. He took a few bills out of his wallet, I guess, like, 30-something dollars.

I flipped up his mattress and that's when Richard Sprinkle called me and tell me to come to the back to Rocky's room.

Q. You said that Richard Sprinkle had a gun?

A. Yes, ma'am.

Q. Did you have any weapons on you?

A. I had a knife on my side.

Q. Okay. So you and Richard Sprinkle robbed Mr. Wright?

A. I robbed Mr. Wright while Richard Sprinkle went to Mr. Robert Rumph's room.

Q. And what did he do in there?

A. Well, when I was in Mr. Wright room I can't speak on what was done in the room before I was called back there, before Richard Sprinkle called me back there.

Once I got to the room with James Wright, Richard Sprinkle asked me for the knife. I gave Mr. Richard Sprinkle the knife and I gained possession of the firearm. And that's when I was, like, yeah, make him talk.

That's when Richard Sprinkle began to cut Mr. Robert Rumph.

Q. You told him to make him talk?

A. Yes, ma'am.

Q. Okay. When did you that, who all was in the room?

A. Me, Richard Sprinkle, Robert Rumph and James Wright.

Q. Was anybody else in the house with you?

A. No, ma'am.

Q. At any time?

A. No, ma'am.

Q. Were your faces covered at all?

A. No, ma'am.

Q. Did you take anything from Mr. Rumph?

A. Richard Sprinkle relieved me -- when I came in the room Richard Sprinkle gave me two hands full of cash. And he started telling Mr. Rumph, that's not the rest of the money. Mr. Rumph was telling him that there's no more money in the residence.

That's during the time Mr. Rumph finally admitted that there was some more money in the closet. Richard Sprinkle

went and retrieved it.

Also after that was done and over with Richard Sprinkle passed me the money. I asked Mr. Robert Rumph and Mr. Peg where were the car keys. Both of them stated that the keys were in their car. That's when I sent Richard Sprinkle on to the car, to go on to the car so he had the car ready.

I had took the pants off the foot of Mr. Robert Rumph bed and a black Atlanta Braves hat to put on my head in case anyone was outside or anyone would seen me when I was leaving the residence. I used the pants to open the back door so as not to leave any prints on the door knob or on the car.

And that is when I got in the car. Mr. Richard Sprinkle drove to the -- parallel to the same street, to the end of Atlantic Avenue. We got out, ran across the tracks and called Jasper Clark to come pick us up.

Q. So you and Richard Sprinkle left Robert Rumph's house and James Wright's house after you robbed them?

A. Yes, ma'am.

Q. And they were beaten and stabbed?

A. Yes, ma'am.

Q. Why are you here today?

A. To tell the truth.

Q. What you testified is the truth?

A. Yes, ma'am.
Q. That you and Richard Sprinkle planned this?
A. Yes, ma'am.
Q. That you all knocked on the door?
A. Yes, ma'am.
Q. You lied to gain entry?
A. Yes, ma'am.
Q. You robbed these two gentlemen --
MR. WISE: Objection, Your Honor. She's testifying.
THE COURT: I'll sustain the objection.
MS. FORD: Yes, sir.
THE COURT: Okay.
BY MS. FORD:
Q. Have you been offered anything to be here today?
A. No, ma'am.
Q. Has anyone promised you anything?
A. No, ma'am.
Q. Have I promised you anything to be here?
A. No, ma'am.
Q. So you're doing this out of the goodness of your heart?
A. Yes, ma'am. I'm doing it because also, we got caught.
Q. You got caught. What do you hope is going to happen now to you?
A. That the Court would have mercy on me.

Q. Because you did it?
A. Yes, ma'am.
Q. And you were caught?
A. Yes, ma'am.
MS. FORD: Beg the Court's indulgence?
THE COURT: Okay. (Pause.)
BY MS. FORD:
Q. Mr. Echols, what did Mr. Sprinkle look like the night of the robbery at the victim's house? What did he look like? What did his hair look like?
A. He had dreads.
Q. I ask you to take a look at something. It's been marked State's Exhibit One. Do you see a picture of what Mr. Sprinkle looked like at that time?
A. Yes, ma'am.
Q. Which one is it?
A. Number two.
Q. Okay. That's what Richard Sprinkle looked like the night of the robbery?
A. Yes, ma'am.
Q. Mr. Echols, you talked about Mr. Rumph being cut; right?
A. Yes, ma'am.
Q. What had happened to Mr. Wright?
A. I struck Mr. Wright in the head twice with the gun and

punched him in the mouth.
Q. In the head?
A. Yes, ma'am.
Q. Was he bleeding?
A. Not, like, excessively or nothing but, yes.
Q. And Mr. Rumph was left bleeding?
A. Yes, ma'am.
Q. Do you see the person that robbed Mr. Wright and Mr. Rumph with you in the courtroom today?
A. Yes, ma'am.
Q. Where is he? Can you point him out?
A. (Pointing.)
Q. Mr. Sprinkle?
A. Yes, ma'am.
MS. FORD: Mr. Echols, please answer any questions from Mr. Wise.
MR. BELL: Your Honor, if I may. May we have a legal matter to take up outside of the jury, please?
THE COURT: All right. Ladies and gentlemen of the jury, we're going to take a short break.
Again, remember, you cannot talk about the testimony you've heard. We'll let you stretch your legs in there for a minute and we'll be right back out. Okay?
Thank you.
(Jury exits courtroom at 10:12 a.m.)

THE COURT: All right. Mr. Bell, does this have to do with the motion in limine?

MR. BELL: Yes. We would renew our motion in limine that we made pretrial that no questions about the federal investigation be asked.

THE COURT: I understand. The reason that the jury's been excused is we're hoping that we're going to preserve the record so that if anything has to go forward after this. So I'll note your motion.

I'm going to let Mr. Wise begin his cross-examination without the jury hearing. And then I'll let you object. Okay?

MR. BELL: (Nods head.)

CROSS-EXAMINATION

(PROFFERED)

BY MR. WISE:

Q. Mr. Echols, just to get right to the heart of what we're talking about here. Have you been charged in a federal case involving the shooting of a corrections officer?

THE COURT: Okay.

MS. FORD: Objection, Your Honor, based on our previous motions.

MR. WISE: If I may, Your Honor, at this point he hasn't asserted his Fifth Amendment rights.

THE COURT: No, I --

MR. WISE: And I think the case law is pretty clear that somebody else can't do it for him.

THE COURT: I will let him do whatever -- answer however he wishes to answer.

THE WITNESS: I would like to assert my Fifth Amendment.

THE COURT: Okay.

MR. WISE: Okay.

MS. FORD: Objection.

THE COURT: And now she's objecting and renewing the motion that we made in limine. And I'm going to continue with my ruling that we made in limine, I'm renewing it.

MR. WISE: Your Honor, I understand everything that's going on here.

I submit to the Court that the question of -- that wasn't the question I dealt with in the, initially in the hearing. What was dealt with initially -- what I just asked him was: Is he under investigation.

THE COURT: Right.

MR. WISE: So I don't believe that is a -- anything that wouldn't be -- his answering that wouldn't be incriminatory in any manner. But the question obviously that everybody is concerned about is my asking him: Did you shoot that corrections officer, or did you say he did.

THE COURT: And, Mr. Bell, I see you anxiously waiting to respond.

MR. BELL: Your Honor, I think that was the crux of our motion about an investigation or any charges that -- I mean, asking him about it still causes him to invoke his Fifth Amendment rights because he's under no compulsion to incriminate himself under the Fifth Amendment of the United States Constitution.

MR. WISE: I submit his saying that they're investigating me is not incriminatory. It just says he didn't do anything wrong.

THE COURT: Well, it may not be -- and I understand the distinction that you're attempting to make but he has invoked his Fifth Amendment rights. And I'm going to go along with the ruling I made earlier. You're not going to be able to question him on that.

MR. WISE: Okay. Very good.

THE COURT: And hopefully everything is preserved along that line.

And then before you pick up on the actual cross-examination and bring the jury back in here, I'm going to take a short break because I was supposed to call court administration first thing this morning and I forgot to.

MR. BELL: Your Honor, I don't mean to interrupt the Court.

THE COURT: Go ahead. It's more fun that way.

MR. BELL: I was just going to -- we would also interject another objection for cross-examination.

I think that Mr. Echols has been previously convicted of assault and battery with intent to kill and burglary second, and we would object to that coming in under 609(a), even though it says that a crime of more than one year shall come in but it shall come in subject to a 403 analysis that the probative value is outweighed by or outweighs any unduly prejudicial effect.

Our objection would be that these particular charges have nothing to do with dishonesty or credibility for impeachment sake. They're merely being asked to show conformity with and all of that, and that the prejudicial effect would substantially outweigh the probative value of these questions since they have nothing to do with dishonesty or anything, or would go to the credibility of the witness.

THE COURT: Okay. Mr. Wise, your response to that?

MR. WISE: I would submit certainly a burglary conviction goes to this witness's credibility.

The issue of whether or not an assault and battery with intent to kill, I think, is a little different. But I also think that is an issue that the jury can take into consideration when it's trying to evaluate this witness's

credibility.

So I would submit that they are appropriate questions for me to inquire this witness about.

THE COURT: And he's been convicted of them and within the last ten years; is that correct?

MR. BELL: I think the conviction's more than ten years but I think the way it reads is when your sentence plays out, at the end --

THE COURT: It's within ten years of the sentence.

MR. BELL: I think that would bring it in, but, again, Your Honor, as far as I'm aware burglary and ABWIK have not been declared crimes of dishonesty in the State of South Carolina.

Even -- there's now a question as to whether armed robbery is such. It just depends on the facts and circumstances depending on which case you read now, but...

THE COURT: What I'm going to do is, you know, Mr. Echols is sitting here in his prison garb. He has been convicted of this. It's within ten years, and I'm going to let you ask him about it. Okay?

MR. WISE: Thank you, Your Honor.

THE COURT: All right. We're going to take a short break.

(Thereupon, a break taken at 10:18 a.m., until 10:26 a.m., when the trial resumed:)

THE COURT: Is the State ready?
MS. FORD: We are, Your Honor.
THE COURT: Okay. Mr. Wise, are you ready?
MR. WISE: Yes, we're ready.
THE COURT: Bring the jury back in. Thank you.
(Jury enters courtroom at 10:27 a.m.)
THE COURT: Thank you, ladies and gentlemen. We're going to continue.
Mr. Wise?
MR. WISE: Thank you, Your Honor.
THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WISE:

Q. Good morning, Mr. Echols.
A. Good morning.
Q. Mr. Echols, what I want to do first is talk a little bit about some of the people involved in this case.
There has been some testimony in this case about Vivian Johnson. Do you know who Vivian Johnson is?
A. Yes, sir.
Q. Who is that?
A. My mother.
Q. Okay. And she is also the girlfriend of Mr. Rumph; is that correct?
A. Yes, sir.

Q. Okay. And she is also charged in this case; isn't she?
A. Meaning as?
Q. Out of this situation you got charged, Mr. Sprinkle got charged, your mother got charged?
A. She got charged with obstruction of justice, not for nothing dealing with what took place at the scene.
Q. Okay. All right. She has a pending charge also?
A. Yes, sir.
Q. Okay. You and she discussed the fact that Mr. Rumph kept a large amount of money in his house; didn't you?
A. No, sir.
Q. You never talked about that?
A. No, sir.
Q. She never told you that he kept large amounts of cash?
A. No, sir.
Q. Okay. All right. You knew that he kept large amounts of cash because it was a gambling place?
A. Yes, sir.
Q. Okay. Now, how much money did you take from that house that night?
A. Like 5,200.
Q. Fifty-two hundred. Not a thousand?
A. No, sir.
Q. Okay. Do you remember speaking to Investigator

Shumpert after you were arrested?
A. Yes, sir.
Q. Do you remember sitting down, you were at the office on Chestnut and making a statement to him?
A. Yes, sir.
Q. Do you remember telling him that you took $7,000?
A. No, sir.
Q. You don't remember telling him that?
A. No, sir.
Q. Would looking at your statement help refresh your recollection about whether or not you told him that?
A. I know I told him it was somewhere in, like, the mid-thousands. I don't remember the exact number.
Q. Okay. Would looking at your statement help you refresh your recollection about what you told him?
A. Do you want to show it?
Q. Okay.
MR. WISE: Your Honor, may we have one moment?
THE COURT: Sure.
BY MR. WISE:
Q. While we're doing that, let me ask you another question. So it's your testimony that you knocked on the door?
A. Yes, sir.
Q. Okay. And Mr. Wright came to the door and you spoke

to Mr. Wright?
A. Yes, sir.
Q. Okay. And then when Mr. Wright opened the door, you were the one who attacked Mr. Wright?
A. No, sir.
Q. You didn't attack Mr. Wright?
A. No, sir.
Q. You didn't do anything to him?
A. No, sir.
Q. Didn't hit him?
A. Not when the door was opened.
Q. Okay. When did you hit him?
A. When we all in Mr. Rumph's room.
Q. Okay. Did you take him to his bedroom?
A. Mr. Wright?
Q. Yes.
A. Yes, sir.
Q. Okay. When you took him to his bedroom, did you hit him?
A. No, sir.
Q. Okay. When he was standing at the front door, did you hit him?
A. No, sir.
Q. So it's your testimony the only time you struck him was later in Mr. Rumph's room?

A. Yes, sir.
Q. Okay. And do I understand your testimony correctly that Mr. Sprinkle did not do anything to Mr. Wright?
A. He did not do anything to Mr. Wright.
Q. Okay. He never struck him with his hand or anything else?
A. No, sir.
Q. Okay. All right. And when you hit Mr. Wright, what did you hit him with?
A. The butt part of the gun.
Q. Okay. When you were in Mr. Rumph's room before you left that room, did you tell Mr. Rumph or say to him that you killed, you'd killed before and you'll kill again?
A. No, sir.
Q. You never said that?
A. No, sir.
Q. Now, do you remember in your statement to Mr. Shumpert saying that?
A. No, sir.
Q. Don't remember saying that?
A. (Shakes head.)
Q. Okay. Looking at your statement, would that help refresh your recollection about that?
A. Do you want to show it?
Q. Okay.

you.

(Court's Exhibit No. 2, DVD of Sean Echols' interview, was marked and received into evidence.)

(Jury enters courtroom at 11:09 a.m.)

THE COURT: All right. Ladies and gentlemen, I appreciate your patience while we get things -- while we get things going this morning. So I do appreciate that.

Mr. Wise is now going to continue with his cross-examination. Mr. Wise?

MR. WISE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WISE:

Q. Mr. Echols, let me back up. You've had a chance to listen to the statement that you gave Investigator Shumpert; correct?

A. Yes, sir.

Q. You've heard it? You understood it?

A. Yes, sir.

Q. Very good. Now one of the questions I asked you before we took a break was that you told Investigator Shumpert you took $7,000. That's correct; isn't it?

A. No. I said close to.

Q. Close to $7,000?

A. Close to $7,000; yes, sir.

Q. Now, Mr. Echols, there was a third person present;

wasn't there?
A. No, sir.
Q. Now during the course of listening to your statement you heard what you told Investigator Shumpert?
A. Yes, sir.
Q. You would agree with me that you told him that there were three people involved?
A. Yes, sir.
Q. You did tell him that?
A. But I told him a lie.
Q. You lied to him?
A. I didn't trust him.
Q. Okay. And you also told him that, the word you used was the other dude was just standing there. That's what you told him?
A. Yes, sir.
Q. Okay. You told them that the other dude, the third person, did not leave the living room. That's what you told him?
A. Yes, sir.
Q. You told him that the other dude did not engage in any planning. That's what you told Investigator Shumpert; isn't it?
A. Yes, sir.
Q. In your statement to Investigator Shumpert you did not

say that this person you described as the other dude or the third person ever had a weapon; correct? You never said that?
A. No, sir.
Q. Okay. And you told Investigator Shumpert that the other dude did not share in the proceeds. That third person, he didn't get any money. That's what you told Investigator Shumpert?
A. Yes, sir.
Q. Okay. That that third person was just an innocent person?
A. Yes, sir.
Q. Okay. You told -- you told Investigator Shumpert that that third person did not do or say anything but just stood there?
A. Yes, sir.
Q. And the statement -- basically the statement that you gave Officer Shumpert was this third person, this other dude, was just merely present there at the time?
A. Yes, sir.
Q. Okay. This third person, this other dude, didn't know what was happening until it happened?
A. Yes, sir.
Q. All right. Now, let me ask about a few other people. Who is somebody you call Little J?

A. Jasper Clark.
Q. Okay. What was his involvement in this case?
A. He was the driver.
Q. When you say the driver, what do you mean by that?
A. He drove the vehicle.
Q. He drove?
A. The vehicle that was used to drop me and Richard Sprinkle off.
Q. Okay. So he drove you and Mr. Sprinkle to do this?
A. Yes, sir.
Q. Okay. And when he drove you there, did he know what he was driving you there to do?
A. Yes, sir.
Q. Did you tell Investigator Shumpert that?
A. Yes, sir.
Q. So, you told -- it's your testimony you told Investigator Shumpert that this Little J guy drove you to a robbery that he knew you guys were going to participate in?
A. Yes, sir.
Q. Did he share in the proceeds of the robbery?
A. Yes, sir.
Q. Okay. Did he have any other involvement in planning the robbery?
A. Do you mean, like, did he have anything to do with the

planning?
Q. Yes.
A. Yes, sir.
Q. Okay. So he was involved in the planning and he drove the car and he shared in the proceeds?
A. Yes, sir.
Q. He was -- well, the only difference between you and he is that he didn't go in the house?
A. No, sir.
Q. Who is Carlos Shuler?
A. Who is he?
Q. Yes.
A. The confidential informant in our case.
Q. Is he -- was he involved in what happened this night?
A. Yes, sir.
Q. What was his involvement?
A. He supplied the weapons and he was part of, like, a second ride if we needed to get away.
Q. Did he go to the location?
A. Meaning as did he go in the location?
Q. Yes.
A. No, sir.
Q. So he supplied the weapons, he was a driver?
A. Yes, sir.
Q. He was involved in the planning?

A. Yes, sir.
Q. And did he share in the money?
A. Yes, sir.
Q. Okay. Did you tell Investigator Shumpert this?
A. Yes, sir.
Q. And obviously he knew, Carlos Shuler knew that a robbery was going to take place?
A. Yes, sir.
Q. Okay. After this all happened, there came a point when the police searched your house; didn't they?
A. After I was incarcerated?
Q. Well, they had a search warrant for your house. I'm not sure if you were in jail or not. They went to your house with a search warrant; didn't they?
A. I was in -- I was locked up when that search warrant took place.
Q. Do you know that they did, though?
A. Yes, sir.
Q. Okay. And when they were in your house, they found a holster; didn't they?
A. Sir?
Q. They found a gun holster.
MS. FORD: Objection, Your Honor. May we approach?
THE COURT: Sure.
(Off-the-record discussion.)

THE COURT: And go ahead, Mr. Wise.

MR. WISE: Thank you.

BY MR. WISE:

Q. So when they searched your house, let me get right to the point. When they searched your house, they found a gun holster and a knife in your room; isn't that correct?

A. Sir?

Q. They found a gun holster and a knife in your room?

A. Not to my knowledge.

Q. Not to your -- you don't know anything about that?

A. No, sir.

Q. Okay. Now, how did you come to testify in this case, how did this happen?

A. I mean, I don't understand your question.

Q. Okay. Did you approach Ms. Ford and say, I want -- or your attorney and say, I want to testify in this case?

A. You mean, like, how did everything come about?

Q. Yes.

A. I was left with no choice in the matter. Once I was aware that Richard Sprinkle was doing everything to place everything on me and tell lies to investigators, I said I would come forth and give the truth.

Q. Okay. So you approached the State about testifying?

A. Yes, sir.

Q. Okay. Now you said that -- when you decided to

testify, did you meet with Ms. Ford to talk about what your testimony was going to be?
A. I don't understand.
Q. Well, let me ask you this. Have you ever met with Ms. Ford to talk about your case and your testimony?
A. With my attorney present?
Q. Yes.
A. Yes, sir.
Q. That would be Andrew Brown?
A. Yes, sir.
Q. And you talked about all that was going to happen in your case, your testimony and how it was going to work; correct?
A. No.
Q. Okay. All right. Before you testified today -- well, let me rephrase this.
Did your attorney provide you with what we call discovery in your case?
A. Rule Five?
Q. Yes.
A. Yes, sir.
Q. And did you review that Rule Five?
A. Yes, sir.
Q. So you know -- and would you explain to the jury what Rule Five is so they know?

A. Rule Five is Brady versus Maryland and motion of discovery with all the evidence that is in your case.
Q. So the evidence in your case is also the same as the evidence in Mr. Sprinkle's case?
A. Yes, sir.
Q. So you knew everything that the police had found out about this situation, what their investigations revealed, you knew that before you testified today?
A. Yes, sir.
Q. Now when you started testifying, you said -- I think Ms. Ford asked you -- you're charged with armed robbery, and -- or two counts of armed robbery and two counts of attempted murder.

She did not ask you if you're charged with burglary in the first degree. Are you charged with burglary in the first degree?
A. Not to my knowledge.
Q. You were not indicted for burglary in the first degree?
A. No, sir.
Q. Do you know why not?
A. No, sir.
Q. Do you know that Mr. Sprinkle is indicted for burglary in the first degree?
A. No, sir.

Q. Do you know that -- you're familiar with the charge of burglary; aren't you?
A. Meaning?
Q. You know what a burglary is?
A. Yes, sir.
Q. Okay. And would your -- and you would -- do you understand that burglary in the first degree is a very serious crime?
A. Yes, sir.
Q. Okay. And you know that that carries life imprisonment?
A. Yes, sir.
MS. FORD: Objection, Your Honor. What is the relevance of this? Asking --
THE COURT: Well, I'm going to sustain that objection.
MR. WISE: Your Honor, may I call the Court's attention to State versus Mizzell dealing with the ability to cross-examine the witness about a potential punishment, especially a witness who's -- I'll let the Court review that.
THE COURT: All right.
Ladies and gentlemen, I'll ask y'all to leave the courtroom one more time while I have a discussion with the attorneys about this.
Again, do not talk about the testimony. Thank you.

(Jury exits courtroom at 11:22 a.m.)

THE COURT: Mr. Wise, what's the cite on this?

MR. WISE: I'll find it for you.

(Pause.)

THE COURT: Mr. Wise, let me hear from you.

MR. WISE: Well, Your Honor, I think that case speaks directly to what I'm trying to do. It deals specifically with the issue where you have a witness who has charges pending where the issue is what the potential punishment is versus what he is trying to see happen.

And the fact that a witness who hasn't reached a specific agreement about a number is more -- it's relevant for the jury that they know that there is a potential there for greater punishment, that they hear that to evaluate his credibility.

I think that's what that case stands for. And it says it's especially true -- can I look at the case for a second?

THE COURT: Sure.

MR. WISE: The language that I think is most relevant --

MS. FORD: Your Honor, can we see a copy of this?

MR. WISE: Yes, you can.

THE COURT: You don't have a copy?

MS. FORD: No, sir, I don't.

MR. WISE: I don't.

THE COURT: Hold on, Mr. Wise. Before you do that, would you go back in there and let's copy it?

MR. WISE: Sure.

THE COURT: Maybe a couple copies because Mr. Bell probably wants to read it, too.

(Law clerk exits courtroom.)

(Break was taken from 11:26 a.m., until 11:43 a.m., when the trial continued:)

THE COURT: I want to get your arguments on the record. Mr. Wise, I'll let you go first.

MR. WISE: Your Honor, I think --

THE COURT: And just for the record, just so they'll know. We had to take a number of breaks in Mr. Echols' testimony and I asked the attorneys to come back in chambers so that I could find out where we're going and hopefully continue with his cross-examination in a smoother fashion without as many interruptions as we've had to take so far.

So I had a taken the liberty of asking you where you were going with your cross-examination. And you brought up three different areas that we needed to address so we could go forward in a, perhaps, smoother and more coherent fashion without having to take these -- let the jury go out on possibly three separate occasions.

So that's what I'm giving you the opportunity to talk to me about right now. Okay?

MR. WISE: I think the issues that we're left with is whether I can inquire of this witness that he's looking for a ten-year sentence. That was the first issue.

The reason I think that is an appropriate area to examine this witness about is because it goes to his -- the jury should evaluate that in evaluating his credibility. That, in fact, as he said, if he had been charged with burglary in the first degree he would be looking at life. He is desirous of serving a ten-year sentence. And the jury should evaluate that in how they evaluate the things that he testifies to.

THE COURT: Okay.

MR. WISE: The second issue I think related to -- I think it was my indication that I planned to ask him, wasn't he given an offer of a cap of 20 years. And obviously that goes along with the same issue of, he could be facing life, he was offered 20 and he's looking for ten.

So it's the same issue of how the jury evaluates his credibility understanding the potential sentence, what the sentence was, what the plea offer was that he was originally offered and what he's looking for.

Then I think the third issue that came up was my --

and let me make sure.

My intention to ask him about his membership in the Folk Nation. The Folk Nation -- and, Your Honor, obviously I don't know what this witness would say when I ask him that question. But the reason this becomes an issue and the reason I know to ask the question is because this is based on something he said to Investigator Shumpert in their videotaped statement.

And I think the fact that he is a member of a gang, a gang that has been known to commit all manner of crime becomes relevant for the jury to evaluate his credibility.

In addition, he said to Lieutenant Shumpert not only was he a member of the Folk Nation but he was a lieutenant in the Folk Nation. In other words, he ordered other people around. I think he said that he gave orders to other people.

So again I think that goes to -- the jury should evaluate that.

And, Your Honor, I submit being a member of a gang is a bad act that he should be able to be cross-examined about, but I think it goes to this individual's credibility.

And all of these questions, the issue of the ten year to 20 year, involved in the Folk Nation are all designed to squarely let the jury make a determination about how to

evaluate this witness's credibility.

THE COURT: Okay. Thank you, sir. Ms. Ford?

MS. FORD: Your Honor, regarding Mr. Wise's first and second arguments, we would refer to Rule 408, Your Honor, that's specifically discussing plea negotiations. This witness has testified that he was offered nothing in exchange for his testimony here today.

And that should be sufficient, Your Honor.

In conformity with 410, Your Honor. I apologize. Rule 410 of South Carolina Rules of Evidence.

Your Honor, concerning Mr. Wise's additional argument about asking questions about the witness's possibility of being involved in the Folk Nation, Your Honor, we'd just refer to Rule 405 (sic) that evidence of a crime, wrong or act is not admissible to prove the character of a person in order to show action in conformity therewith.

That's exactly what the defense is trying to do here. If you are a member, it says, you must have committed these crimes. Your Honor, that's what the rule was created to obviously avoid, Your Honor.

And I think Mr. Wise's confusing the issue of credibility of a witness versus the character of a witness. The credibility of a witness can be tested, Your Honor, but certainly not bring into, the character of the witness in the manner in which Mr. Wise's attempting to do

so which it would be the State's position would violate Rule 404, Your Honor.

THE COURT: Okay. Thank you, ma'am. All right. Anything in response?

MR. WISE: Very, very briefly, Your Honor.

As I indicated, I am not trying to show -- because there's really nothing that's related to this case that deals with any kind of gang or gang activity or anything like that unless these other guys from the Folk Nation could -- as the State's indicated it does, there is a difference between character and credibility and my belief is that it goes to the witness's credibility.

I'm not trying to show he acted in conformance with anything that the Folk Nation does in this situation.

THE COURT: But you're -- okay. All right.

The first thing, right before we took a break I had sustained your objection to his question about whether or not he could ask him about the possible life sentence. And Mr. Wise was kind enough to give me the Mizzell case so I'm going to correct my ruling.

I'm going to overturn the objection. He is allowed to ask him about the maximum sentence he could be facing under that. Okay?

With regards to Mr. Echols asking, you know, for ten years or asking for a cap of 20 years, whether or not that

was given or not, all of that is part of plea negotiations and we're not going to get into that at all.

With regard to whether or not he was in a gang or not in a gang however, whether he -- it doesn't matter to me how he's going to ask it, we're not going to get into that. I think it's character. Doesn't have anything to do with his truthfulness or untruthfulness. So, whether I think it's a bad act that he's in a gang or not, we're not getting into it in this trial.

Okay? All right.

MR. WISE: Your Honor, just to clarify the Court's ruling.

THE COURT: Okay.

MR. WISE: I understand about the plea negotiations.

THE COURT: You're not going to ask him about the ten, you're not going to ask him about the 20.

MR. WISE: Okay.

THE COURT: That's plea negotiations. You're not going to ask him whether or not he was a member of a gang regardless of what he says.

MR. WISE: Okay. Since we're all standing here.

THE COURT: Some of us are sitting.

MR. WISE: Since I'm the only one standing here.

THE COURT: That's right. And since you're here and you got the floor, go ahead.

MR. WISE: One of the things I was going to ask him about was whether or not, and this goes with life imprisonment, he was served notice of life without parole, an LWOP. The --

THE COURT: You can ask him that. He has been served with that; is that correct?

MS. FORD: Mr. Echols has not, Your Honor.

THE COURT: Mr. Echols has not?

MR. WISE: Thank you, Your Honor.

THE COURT: It's seemingly in line with the Mizzell. You can ask him about whatever maximum sentence he could be facing.

MR. WISE: Thank you, Your Honor.

MS. FORD: But I would like to say that he certainly could be, but he's not on trial here today.

THE COURT: Right. I understand.

Now after the break we're getting ready to start again. Is the State ready?

MS. FORD: Yes, sir, Your Honor.

THE COURT: Is the defense ready?

MR. WISE: We are, Your Honor. Thank you.

THE COURT: Thank you, sir. If you'd bring the jury back in. Thanks.

And, Mr. Wise, I note your objection to all my rulings so they're preserved.

MR. WISE: Thank you, Your Honor.

THE COURT: Thank you, sir. Looking forward to reading this transcript.

(Jury enters courtroom at 11:53 a.m.)

THE COURT: All right. Ladies and gentlemen, again, I want to thank you for your patience. We'll continue now with the cross-examination of Mr. Echols.

Mr. Wise, you have the floor.

MR. WISE: Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION (CONTINUED)

BY MR. WISE:

Q. Mr. Echols, I'm going to -- let's go back and start again. You testified you weren't indicted for burglary in the first degree; correct?

A. Correct.

Q. And you know that burglary in the first degree carries life imprisonment; correct?

A. Correct.

Q. Okay. Now have you been served with notice that the State intends to seek life without parole or LWOP?

A. No, sir.

Q. Do you know what that means?

A. Yes, sir.

Q. What does that mean?

A. Life without the possibility of parole.
Q. Which means if that happens to you, you'd spend the rest of your life in prison?
A. Yes, sir.
Q. Since this case has been pending, you've threatened Mr. Sprinkle; haven't you?
A. No, sir.
Q. You never threatened him in jail?
A. No, sir.
Q. You never sent some of your friends to beat him up?
A. No, sir.
Q. That never happened?
A. No, sir.
Q. Okay. I don't think you were asked this, Mr. Echols, on direct but you've got a prior conviction for burglary; don't you?
A. Yes, sir.
Q. Okay. And prior convictions for assault and battery with intent to kill?
A. Yes, sir.
Q. Okay. On your direct examination you mentioned exchanging some texts, I think, with Clark, somebody named Jasper Clark.

Do you know somebody -- is it Jasper Clark? Is that the name of the person who was involved in this with you?

A. Yes, sir.
Q. Jasper Clark. Okay. So you exchanged some text messages with Jasper Clark about this crime; correct?
A. Yes, sir.
Q. Did you exchange any text messages with Mr. Sprinkle about this crime?
A. No, sir.
Q. Okay.
MR. WISE: Your Honor, may I have one moment?
THE COURT: Take your time.
(Pause.)
BY MR. WISE:
Q. A couple of very quick questions. Mr. Echols, I think on direct testimony you said that Sprinkle said to you, called out to you and said, I got it; is that right?
A. Yes, sir.
Q. And then after that you came into the room?
A. Yes, sir.
Q. And that's when you said to him, make him talk; that's your testimony?
A. No, sir. After -- once he called me into the room that's when he asked for the knife. We switched weapons, and then that's when I was, like, yeah, make him talk.
Q. Okay. And that was after he said, I got it?
A. Yes, sir.

Q. How do you know Richard Sprinkle?
A. Through Collins Shuler and Jasper Clark.
Q. Did you ever pal around with him?
A. Probably on, like, two or three occasions.
Q. So two or three occasions in your whole life you spent any time with Mr. Sprinkle?
A. Yes, sir.
Q. But this is the person you choose to go and do, in your testimony do a robbery with?
A. Yes, sir.

MR. WISE: Thank you, Mr. Echols.

THE COURT: Ms. Ford, anything on redirect?

MS. FORD: Yes, sir.

REDIRECT EXAMINATION

BY MS. FORD:

Q. Mr. Echols, when you talked to Investigator Shumpert you had said that there was a third person involved with the robbery. Were you talking about Richard Sprinkle?
A. Yeah, we were the only two people.
Q. So when you said a third person --
A. I was lying.
Q. -- you were talking about you, Richard Sprinkle and another third person; correct?
A. Yes, sir -- I mean, yes, ma'am.
Q. Mr. Sprinkle was not the third person you were

thinking of?
A. No, ma'am.
Q. Okay. You've always said that Richard Sprinkle and you planned this robbery?
A. Yes, ma'am.
Q. Together?
A. Yes, ma'am.
Q. With Jasper Clark and Collins Shuler?
A. Yes, ma'am.
Q. And that's been your testimony here today?
A. Yes, ma'am.
Q. Correct? And that's what you told Investigator Shumpert?
A. Yes, ma'am.
Q. Do you know what the maximum penalty is for armed robbery?
A. Yes, ma'am.
Q. What is it?
A. Thirty years.
Q. Do you know what the maximum penalty is for attempted murder?
A. Yes, ma'am.
Q. What is that?
A. Thirty years.
Q. You're looking at two counts of both; correct?

A. Yes, ma'am.
Q. So you're looking at a maximum of 120 years for these charges; correct?
A. Yes, ma'am.
MS. FORD: No further questions, Your Honor.
THE COURT: Anything on recross?

RECROSS-EXAMINATION

BY MR. WISE:
Q. Mr. Echols, Ms. Ford just asked you about Mr. Shuler and Mr. Clark. How long have you known Mr. Shuler?
A. All my life.
Q. And how long have you known Mr. Clark?
A. Same.
Q. Okay.
MR. WISE: Thank you.
THE COURT: All right. Thank you, Mr. Echols. You may step down. Thank you.
May I see the attorneys here for one second?
(Off-the-record discussion.)
THE COURT: Ms. Ford, is the State ready to call its next witness?
MS. FORD: Your Honor, at this time the State would rest.
THE COURT: All right. Ladies and gentlemen, the State has elected to rest their case. That means you've

12:22 p.m., until 2:12 p.m., when the trial resumed:)

THE COURT: Y'all may be seated.

Let me just go over a couple of things on the record. The attorneys have had an opportunity to review the verdict form which is three pages, and five questions with subparts to questions three and four.

And they have indicated in chambers that the verdict form was acceptable.

Is that correct, Ms. Ford? Ms. Ford?

MS. FORD: Yes, sir.

THE COURT: The verdict form is fine?

MS. FORD: Yes, sir.

THE COURT: And Mr. Wise?

MR. WISE: It is, Your Honor.

THE COURT: Now we've also had an opportunity in chambers to go over the jury charges. And I believe the defense had submitted a criminal intent definition from Section 111 that had a sentence in it that mine did not contain verbatim.

I have allowed them to look -- they have reviewed my criminal intent charge, and I believe it is acceptable. Is that correct?

MS. ULLMAN: Your Honor, after reviewing what Court intends to charge we are acceptable with that versus the one sentence that is missing.

THE COURT: All right. And I have advised counsel that I will be charging the armed robbery charge, attempted murder, assault and battery first as to both of the victims, but I would also charge assault and battery second as to Mr. Wright.

The parties are -- I mean, as to Mr. Wright being the victim.

MS. FORD: As well as assault and battery of a high and aggravated nature?

THE COURT: Yes. Assault and battery high and aggravated nature as well.

MS. FORD: Yes, sir.

THE COURT: Thank you. Yeah, okay. All right.

MS. ULLMAN: Obviously, Your Honor, for the record we would object to that. We would ask that you charge assault and battery second as to both victims.

THE COURT: Right.

MS. ULLMAN: Due to the injury we feel that that fits moderate bodily injury.

THE COURT: And just to clarify. The Court does not believe that Mr. Rumph -- number one, it is only arguable to the Court that Mr. Wright only received moderate bodily harm, but the Court does not believe Mr. Rumph received only moderate bodily harm when he was cut, I believe, five times. And I do not, the Court does not believe that that

was moderate bodily injury, but I note your objection.

Anything else we need to discuss about the charge?

MR. WISE: Could I have one moment, Your Honor?

THE COURT: Sure. And, again, y'all have the opportunity after I charge to clear that up.

MS. ULLMAN: Yes, sir.

THE COURT: But right now.

MS. ULLMAN: We're fine. Thank you.

THE COURT: All right. Now, is the defense ready to proceed?

MR. WISE: We are, Your Honor.

THE COURT: Okay. And -- have y'all had -- I guess I need to ask Mr. Sprinkle.

Mr. Sprinkle, if you'd stand back up, please, sir, if if you don't mind?

THE DEFENDANT: (Complies.)

THE COURT: Mr. Sprinkle, we had earlier placed you under oath to go over when I advised you about whether or not you wanted to testify or not.

THE DEFENDANT: Uh-huh.

THE COURT: Okay? And we did that right before we took a break for lunch. And during lunch, hopefully you've had an opportunity to talk to everybody that you wanted to.

THE DEFENDANT: Yes, sir.

THE COURT: Have you had that opportunity?
THE DEFENDANT: Yes, sir.
THE COURT: Have you come to a conclusion as to whether or not you wish to testify?
THE DEFENDANT: I don't.
THE COURT: Okay. And I appreciate the fact but, so you've come to a conclusion. Have you done that freely and voluntarily?
THE DEFENDANT: Yes, sir.
THE COURT: Has anybody forced you to make that decision?
THE DEFENDANT: No, sir.
THE COURT: Okay. And it is your decision not to testify; is that right?
THE DEFENDANT: Right.
THE COURT: Thank you, sir. You can sit down.
THE DEFENDANT: (Complies.)
MS. ULLMAN: Your Honor, The last thing I think before we bring in the jury is the State has rested on the record. The defense would have a motion for a directed verdict.
THE COURT: Okay.
MS. ULLMAN: Bear with me just a moment, Your Honor.
THE COURT: Take your time.
MS. ULLMAN: Directed verdict motion, obviously the

Court is to look at the evidence in the light most favorable to the State.

And this is an issue of whether evidence exists, not sufficiency of that evidence, though the evidence must be competent evidence, Your Honor.

Regarding that, specifically attempted murder, both indictments, Your Honor, we believe there's been no evidence at all as to Mr. Sprinkle's intent to kill Mr. Rumph or Mr. Wright. Regarding that, Your Honor, Mr. Wright received cuts to his body but he was never stabbed or shot with the gun that they're alleging was there.

Obviously a stabbing and a shooting would be likely to result in death and certainly could be inferred to intend that, but in this situation regarding Mr. Wright the only evidence is that he had been hit, I believe, with a weapon but that he was hit not shot or stabbed.

Regarding Mr. Rumph, Your Honor, I believe the evidence has been that he was cut with the intention of trying to make him talk. Obviously you can't make someone talk who's dead.

So I think that that would show that the intent was to make him talk, to make him tell where the money was and not actually to kill him. Had that been the intent, make him talk certainly wouldn't be part of what happened

there.

So regarding the attempted murder as to both victims, I don't believe any evidence as to the intent has been provided.

Your Honor, regarding the armed robbery, there's no evidence that -- excuse me. I'm sorry. There's no evidence that Mr. Sprinkle is the person who -- (conferring with Mr. Wise)...

I apologize, Your Honor. Just one second.

THE COURT: Take your time.

MS. ULLMAN: Apologize. Regarding the armed robbery, the State has to allege or evidence has to exist here today that Mr. Sprinkle took property from the presence of a person or from that person himself with the intent to deprive him while threatening or armed with a weapon.

In this situation I don't think there's been any evidence that Mr. Sprinkle took property from both of these victims or that he had the intent to deprive those victims.

I believe the car itself, Your Honor, was left right down the street. It certainly wasn't hidden or taken out of the county or anywhere else. So we would argue that there's no evidence as to the armed robbery.

Regarding the burglary, Your Honor, the evidence is that the victim knew the people at the door and that they

let them in. So we would argue that there was no forced entry or -- no forced entry, and their intent was to -- the testimony was their intent was to go in and use the phone at first.

What happened and the change of the intent once they entered the house wouldn't be probative. I think the intent to commit the crime therein on a burglary, no matter what degree, has to exist at the time that the entry of the residence was made.

That's it, Your Honor. Thank you.

THE COURT: Thank you, ma'am. Any response?

MR. BELL: I'll respond.

THE COURT: Okay. Mr. Bell?

MR. BELL: Thank you, Your Honor.

As stated, the Court is weighing -- well, not weighing but considering whether there was any evidence to support the charges. I think as to the attempted murder, I think the Court can infer that from the circumstances, A, they were both armed with deadly weapons therefore, there was an intent to do serious harm or to kill.

And I think the statements made, one, talk or I'll kill you or whatever, I think that certainly, I think that evinces an intent that they would have killed them if they hadn't talked. I mean, we can't read their minds because eventually I think Mr. Rumph talked.

I will also say there were questions that were asked about, also, I think even Sean Echols, I've killed before and I'll kill again. So even though I can't remember, I thought that came out with one witness, maybe with Detective Garrison, but there was talk, a direct threat to kill which would evince an intent to kill and malice to cover an attempted murder, both attempted murders because as you know the hand of one is the hand of all. What's imputed to one can be imputed to both since they were both actively involved in the crime.

As to the armed robbery, they were both armed. Money was taken from both individuals. Goods were taken from both individuals while they were, each of the participants were armed and we would say also that the hand of one, again, applies to both. It covers the activity of both as to each.

As to the burglary, Your Honor, I think there is no element in burglary of forced entry. There's only entry. And the State would argue that in this case that entry, that the consent to enter was overcome or it was without consent because it was coercive intent. It was gained by trick or artifice under 16-11-310. And that's adequate under the law for the crime of burglary first. They came in. They were armed. And they also injured two individuals who were not participants in the crime.

That's the elements of those crimes.

So I think the State has proven -- I think the State has proven, not just the evidence (verbatim) of the evidence but we have proven that all charges exist.

And would ask that you deny the directed verdict motion on all five indictments.

THE COURT: All right. Thank you, Mr. Bell.

With regard to the motion, I do have to look at whether or not there's any evidence with regard to the attempted murder.

I believe the phrase you were looking for that was testified to was, don't make me kill you over this little bit of money was the question. So I do believe that there is testimony from which a jury could reasonably find him guilty of the charge of attempted murder.

As to the charge of armed robbery, I know that the defense has made an issue about it not being for a very long period of time, but if you take -- as the law says, if you take property for even an instant away from, the slightest removal of property for even an instant it's sufficient to be a taking or an armed robbery of a person.

And, regarding no forced entry, deception as a means of entering into a house is included in the charge of burglary.

And I believe that with regard to all these charges

there's sufficient evidence in the record for it to go to the jury. So I am denying motions for directed verdict.

Thank you, Ms. Ullman.

Now, is the defense -- I understand that Mr. Sprinkle is not going to testify. Is there going to be any testimony from the defense?

MR. WISE: No, Your Honor. We would rest.

THE COURT: So when the jury comes in and you rest on the record, you won't -- do you want me to excuse them so you can renew your directed verdict motion or --

MR. WISE: Can I have one minute, Your Honor?

THE COURT: Yeah.

MS. ULLMAN: Your Honor, for the record defense has rested. I think it would be appropriate just to renew our motion at this point.

When the jury comes in certainly in front of them we'll rest so that they understand the defense is not putting up any information but just for logistics and not making them travel so much, obviously we have rested and we would renew our motions just based on the same argument.

THE COURT: Okay. And I think just for the record what we'll do is I'll let you rest and then for the record I just want you to state on the record we'll renew our motions and I'll say I'll renew my decision or something

like that and we'll go forward.

MS. ULLMAN: Yes, sir.

THE COURT: Ms. Ford, are you prepared to go forward at that stage?

MS. FORD: Yes, sir.

THE COURT: And then, who's closing? Ms. Ullman?

MR. WISE: I am.

THE COURT: Mr. Wise. All right.

If y'all are ready, go ahead and bring the jury in. Okay. Thank you.

(Jury enters courtroom at 2:30 p.m.)

THE BAILIFF: Your Honor, may I approach?

THE COURT: Yes, ma'am.

(Off-the-record discussion.)

THE COURT: All right. Ladies and gentlemen, I understand from the bailiff we tried to find a cooler room to put y'all in. And you understand we will sweat you out if we have to.

Now I hope y'all enjoyed lunch. We're getting ready to continue with the trial now. Mr. Wise?

MR. WISE: Your Honor, at this point the defense would rest.

THE COURT: Ladies and gentlemen, the defense has indicated that they are resting which means that they will not be putting up any testimony at this time.

CLOSING STATEMENTS ON BEHALF OF THE STATE

The -- so we will now go into the final arguments on this case. Before we do the final arguments, Mr. Wise, do you want to just note or Ms. Ullman, do you want to note for the record?

MS. ULLMAN: Yes, sir. Just for the record, I would renew motions that we had discussed previously and the motions just made before.

THE COURT: Thank you. And just for the record, I will do my decision just as we had done. Okay?

MS. ULLMAN: Yes, sir.

THE COURT: All right. Ladies and gentlemen, what we're going to do now is we're going to go into the closing arguments of the parties.

And Ms. Ford, are you ready?

MS. FORD: I am, Your Honor.

THE COURT: Okay. All right.

MS. FORD: May it please the Court.

THE COURT: Yes, ma'am.

MS. FORD: Good afternoon, ladies and gentlemen of the jury.

Don't make me kill you over this little bit of money. Don't make me kill you over this little bit of money.

There cannot be a more cowardly or depraved act than the burglary, the robbery, and the brutal beating and stabbing of two old men who were asleep in their own

house.

But that was exactly what Richard Sprinkle and Sean Echols did on the night of June 26, 2011, at the home of Mr. Robert Rumph and Mr. James Wright.

They were asleep in their beds, awoken by a knock, face to face with people they knew and ultimately with the barrel of a pistol pointed at them and the shine of a knife coming at their body.

Ladies and gentlemen, Mr. Sprinkle is charged on five indictments; burglary in the first degree, two counts of armed robbery, and two counts of attempted murder.

As I go over the law, I ask that you please remember that Judge Dickson is the Judge. If anything I say in my explanation of the law conflicts in any way with Judge Dickson's, you've got to follow him. He's the Judge.

Use a yardstick.

Burglary in the first degree is the unlawful entry into the dwelling of another without consent, with the intent to commit a crime therein, accompanied by circumstances of aggravation, being armed with a deadly weapon, or causing physical injury to a non participant in the crime.

Now Mr. Bell in his opening told you about this unlawful entry into a dwelling of another without consent. If you lie, you trick, you deceive to gain entry

into the home, then that is without consent.

Armed robbery. Armed robbery is the taking and carrying away of another's personal property with the intent to deprive him or her of possession by use of force, threats or intimidation and while armed with a deadly weapon which in this case would be armed with a knife and armed with a gun.

And attempted murder. The intent to kill, attempts to kill another with malice aforethought either express or implied.

The Judge is going to go over all of this in greater detail.

But I first want to look to what you heard from the witness stand. What's the testimony that you heard? The evidence shows that Richard Sprinkle and Sean Echols went to Mr. Rumph and Mr. Wright's house on Myers Road here in Orangeburg County that night, June 26 of 2011.

Everyone agrees with that, even the Defendant. He told the investigators he was there that night. Everyone agrees.

They knocked at the door armed with a knife, a gun. Sean Echols testified they came up with a story; I need to use the phone, had a little fight with my girlfriend, I need your help.

Mr. Wright testified he went to the door, answered

it. They said they needed to use the phone. He wanted to check with his house mate. He wanted to talk with Mr. Rumph, Uncle Rocky as they called him when they asked if they could see him and use the phone. Mr. Rumph said sure because Mr. Wright said, we know him.

So when Mr. Wright went back, he pointed out the person in this courtroom, Mr. Richard Sprinkle, that pointed a gun at him. He pointed it right at his chest and demanded money from Mr. Wright.

The testimony you heard from the witness stand was that Mr. Wright knew him as Ricky. He had seen him around. He testified that he had even seen him the day before. He said, I saw him on that Saturday. This happened that Sunday night. Middle of the night. He had just seen him.

Investigator Garrison ultimately showed Mr. Wright the lineup. And she said immediately Mr. Wright testified and Investigator Garrison testified, he immediately picked out who he called Ricky. Rick. Richard Sprinkle.

Sean Echols and Richard Sprinkle, they got Mr. Wright's money. Mr. Wright was beaten about the head with a gun, told you he had stitches on the inside of his mouth because it was all broken up. They bloodied an old man for $40 in his own home causing lacerations to his head. Investigator Garrison testified that these were the

cleaned-up photos. This is what it looked like after it was all cleaned up.

Ladies and gentlemen, the evidence shows you that Richard Sprinkle is guilty of burglary in the first degree and he's guilty of the armed robbery and attempted murder of Mr. James Wright.

Both Mr. Wright and Mr. Rumph testified as well as Sean Echols that the four of them, Mr. Rumph, Mr. Wright, Sean Echols and Richard Sprinkle, all ended up in Mr. Rumph's room.

After they had made their intrusion into the home by lying, demanding money, they ended up in Mr. Rumph's room. Sean Echols was demanding money, demanding money from Uncle Rocky. Mr. Rumph knows Sean Echols. He dated his mom. He had even borrowed money from Mr. Rumph.

Both Mr. Wright and Mr. Rumph picked Sean Echols out of the photo lineup. They picked him as one of the people who came in their home, robbed them, beat and stabbed them.

Sean Echols told Mr. Sprinkle -- four of them were in that bedroom, Mr. Rumph's bedroom, told him, make him talk.

You heard testimony from both Sean Echols and Mr. Rumph that Richard Sprinkle and Sean Echols switched weapons. Richard Sprinkle had the knife and that's when

Richard Sprinkle made Mr. Rumph talk, sliced him, stabbed him in his abdomen, his foot, his arm, his legs, multiple places all over his body, ultimately telling him, there's more money, take it.

And that's what they did. Richard Sprinkle made him talk and stole more money. According to both Mr. Rumph and Sean Echols, they took Mr. Rumph's money, they took his pants, an Atlanta Braves baseball cap and they left in Mr. Rocky Rumph's car leaving this man, Mr. Rocky Rumph, in a pool of blood in his own bed in his home.

Ladies and gentlemen, the evidence shows that Richard Sprinkle and Sean Echols are guilty of the armed robbery and attempted murder of Robert Rumph.

You heard some testimony from Mr. Wright. He said Ricky looks different now. When he was beating and robbing Mr. Wright and Mr. Rumph, he had dreads. He's clean shaven now. But Mr. Wright pointed, that's Ricky. He had dreads then. He looks different now but that's him.

Mr. Wright was sure then that it was Richard Sprinkle. He was sure now when he testified yesterday that that was the man that came in his house. Lied his way in. Beat him. Robbed him. Took his money.

Mr. Rumph testified he didn't pick anybody out of a lineup other than Sean Echols. He picked Sean Echols out,

but he gave Investigator Garrison a description; a taller black man with dreads. Sure sounds like the description of Richard Sprinkle at the time of this incident.

But then we come to the testimony of Sean Echols. Sean Echols testified it was him. Sean Echols testified Richard Sprinkle was with him. Together they entered that home and robbed and assaulted these men.

Sprinkle himself told Investigator Thrower and Investigator Stokes that he was at the house that night. Of course he doesn't tell the whole truth. He says that when stuff started going down he got scared and ran. That's what he told them. That's what the investigators testified to. And he left the house.

That sure doesn't match with what three of the four people in that house that night said; that he was there. Sean Echols testified he planned it with him, planned it, entered that home, beat and took the money of these men. Sounds better though for him to say, I was there but I was scared. I didn't do anything.

That just doesn't match the testimony that you heard, the overwhelming evidence that shows that Richard Sprinkle was there, Richard Sprinkle participated in the planning. Richard Sprinkle entered that home. He robbed these two men. He sliced up Mr. Rocky Rumph. He had beaten Mr. Wright, 74 year old Mr. Wright, stole their money and

left in the car with Sean Echols.

The only one that disagrees with that is Richard Sprinkle. The only person who has a motive to lie. He's trying to save his own neck. Surely if he robbed and beat two old men in the middle of the night, he'd certainly lie to save his neck; wouldn't he?

The defense is going to try to say anything to help Mr. Sprinkle avoid the truth, the truth that you heard from the witnesses on the witness stand.

They're going to try to get you to believe that Richard Sprinkle was scared of Sean Echols; he was threatened by him, that he went to that house that night because he was forced to by Sean Echols. He was under duress. He had to go, but Sean Echols continues to threaten him.

Ladies and gentlemen, does that make sense? That the person who's testifying against this man is also threatening him? Wouldn't it be the other way around?

Wouldn't it make more sense that the person testifying against Mr. Sprinkle would be the one threatened? And when did Mr. Sprinkle start claiming he was threatened? Well it turns out it was right around the time he found out that Sean Echols was going to testify against him. Huh.

And when did Mr. Sprinkle want to come clean? He

said, tell his truth is what he told the investigators, Investigator Stokes and Investigator Thrower. Well, that was in January of this year. This happened in 2011. He was noticed for trial January of this year.

The defense wants you to believe, they're going to get up here and argue in just a few minutes, that Richard Sprinkle was there but he didn't have anything to do with it.

But that's not what Mr. Wright said. That's not what Mr. Rumph said. That's not what Sean Echols said.

That man was there. He participated. He robbed these men. He assaulted these men in their own house.

The defense is also going to try and throw out that there was a third person in the house that night, someone to draw attention away from Mr. Sprinkle.

Except the victims say that there were only two people in the house that night. And we know it was Richard Sprinkle and Sean Echols.

Ladies and gentlemen, I didn't call Sean Echols to the witness stand because he was a boy scout. Ladies and gentlemen, Sean Echols is a bad man. He entered their home. He beat them. He robbed them. He's not a good guy.

And Mr. Echols admits it. He's always admitted it. You heard him say, we got caught.

And what he says happened and what Mr. Rumph says happened and what Mr. Wright said happened is right on. He did it. Richard Sprinkle did it.

During cross-examination Mr. Wise had asked Investigator Garrison if she heard Mr. Rumph tell Mr. Sprinkle at some sort of hearing that he knows he didn't have anything to do with it. Investigator Garrison said she didn't recall any sort of conversation like that.

Well, the interesting thing is, Mr. Wise didn't ask Mr. Rumph that question because he knows if he did Mr. Rumph wouldn't have just said no. He would have said heck no. That didn't happen. Never said that.

And if he had asked Mr. Rumph that, then Mr. Wise in his closing couldn't come up here and float that out to you all, try to make you all think, oh maybe, maybe Mr. Rumph did say that. So we asked Investigator Garrison instead.

The defense is going to argue anything to avoid the truth. The truth that Richard Sprinkle knows, these victims know, Sean Echols knows. And that's Richard Sprinkle is guilty of burglary in the first degree. He's guilty of two counts of armed robbery. And he's guilty of two counts of attempted murder.

Now concerning the attempted murder, if you ladies and

gentlemen are not firmly convinced that Mr. Sprinkle is guilty on the charge of attempted murder, the Judge will instruct you on some other offenses. And while it's the State's position that there is sufficient evidence to find Mr. Sprinkle guilty of attempted murder on both Mr. Wright and Mr. Rumph, I ask you all to evaluate the evidence that you heard, think about it carefully and hold Mr. Sprinkle responsible for the terrible injuries that he caused Mr. Wright and Mr. Sprinkle -- Mr. Wright and Mr. Rumph, excuse me, and find him guilty of attempted murder.

And as we wrap up, I go back and think about the openings, the road map that you heard from Mr. Bell and Ms. Ullman. Ms. Ullman said in her opening that Mr. Sprinkle is just a citizen of Orangeburg County but that the sheriff's office and public safety don't work for him.

Well, I disagree with that. The sheriff's office, public safety, they work for all citizens, you, me, Mr. Sprinkle, serving and protecting us. It just so happens that in this case the citizens of Orangeburg County need to be protected, protected from Richard Sprinkle.

I ask you, members of the jury, to carefully consider and think about the evidence that you've heard from this witness stand. I want you to take a look at the photos,

deliberate in just a little bit.

I want you to consider all the witnesses. Mr. Wright and Mr. Rumph, they're not educated men but they know when they were robbed and assaulted in their own home and they know who did it.

And they know it was Sean Echols and it was Richard Sprinkle who planned it, carried it out and left, left these men bloody in their own home in the middle of the night.

I ask you, members of the jury, to do what is right and what is just. And in the interest of justice for Mr. Wright, Mr. Rumph, I ask that when you deliberate I ask that you find Richard Lanard Sprinkle guilty of burglary in the first degree, guilty of armed robbery against Mr. Rumph and Mr. Wright, and I ask that you find him guilty of two counts of attempted murder against these victims.

THE COURT: Thank you, Ms. Ford.

MS. FORD: Thank you.

THE COURT: Mr. Wise?

MR. WISE: Thank you, Your Honor. If it please the Court.

I understand everything that you've been told by the State about how they see this case. But I think if you take a step back and look at the facts in this case you

take a step back and look at the facts in this case you will see that the things they say do not make sense.

I'm going to say a lot of things. I'm going to talk about a lot of things. I'm going to lay out a lot of facts. If you think that I am misstating, if you think that I'm incorrect, if you think that I'm exaggerating, you have the ability to come back in here and hold me to my proof. You can come back in here and say, we want to hear something back. And you can check whether or not I am telling you what the facts of this case reveal.

Now, let's take a look. Because there are too many things that just don't make sense in this case. You know, when I started working on this I said to Mr. Sprinkle, you know, there's just too many inconsistencies. At this point I am saying there are some things that are just an impossibility that just could not have happened.

Let's start with the fact that these people go to somebody's house at 2:30 in the morning.

Now if you believe the police report based on the description that they gave, Mr. Rumph and Mr. Wright did not know who did this.

Now, remember, the State says one knew one, the other knew the other. But Deputy McRoy came in here and testified that he did his incident report. And in his incident report when it asked him who are these two

subjects he had two things filled in. One was unknown and one was a blank.

And I asked him, when you left the house that day, who were you looking for. And he said, we were looking for two unknown people.

Now that's the first indication that something's wrong because obviously if they knew that it was Sprinkle and they knew that it was Echols and they knew both of them, that's the first thing they would say.

And, remember they spoke to the police. I think they said they spoke to four or five police officers.

At the time this happened Mr. Wright said that he did not know who did this. If he knew it was Richard Sprinkle, he would have said so.

But the report says the robbers are unknown.

The other thing I think that goes along with that is, under my examination of Investigator Garrison, I asked her what was the first thing that Mr. Wright said to you about who did this. And she said it was -- he said it was two guys. Garrison says they said, two black males. No matter who you believe, we know there's no doubt about it, they never said it was Mr. Echols and Mr. Sprinkle.

Now the other thing, late at night, not that big a deal but important is that they described Mr. Sprinkle as a person with dark skin. We'll he's sitting there and you

can look at him. And you can make your own determination about whether or not he is dark skinned.

But I submit to you the fact that they described that man as dark skinned gives you a pretty good indication that something was going on here. And it is not as the State would have you believe.

The other thing that caught my attention about this case which made me think this case isn't just what the State says it is, is that Mr. Wright said he went to the door and Mr. Wright knows Mr. Sprinkle. He calls him Rick or Ricky but he never said in answer to my question, did you speak to him, did you address him, did you say Rick or Ricky what are you doing here. Did he say to you, Mr. Peg, how are you doing. There was no interaction between them according to Mr. Wright.

So I submit to you that when he said that that's not right. That's not accurate.

Now, according to Mr. Wright, Mr. Sprinkle asked for Mr. Rumph but Mr. Rumph doesn't know -- Mr. Rumph doesn't know Mr. Sprinkle. So why are we asking that? You would think that Echols who knows Mr. Rumph would ask for Mr. Rumph. Echols would be the one who would say, Uncle Rocky. But Echols never spoke.

The other curious thing about it is, if Mr. Wright knew it was Mr. Sprinkle that night why would they need

three or four lineups to figure it out?

Apparently Mr. Wright said he knows his name and he knows what street he lives on. Now, I know Investigator Garrison. She's a good investigator. She doesn't need much more to find him. She wouldn't have to keep showing them these lineups.

So I submit to you either Mr. Wright and Mr. Rumph were trying to mislead people, mislead the police or they let two complete strangers into their house at that address.

Obviously they spoke to the police because the police had the description and the only people who would give that description were Mr. Rumph and Mr. Wright. So obviously they were not being forthright. That's the point.

The question is, why? Why would they not be forthright with the police? Why would they not say, we know these guys, this is who they are? One is my girlfriend's son and one is a guy I know and this is his name.

We'll come back to that, but there's some other things about the evidence in this case that should cause you some concern and cause you, I submit, to find that the State has not proven their case beyond a reasonable doubt.

To accept the State's theory you have to believe that

Mr. Rumph did not know who was seeing Rick. You have to believe that Mr. Rumph just said, sure, let these strangers in.

Now -- because remember, he didn't know. He didn't have names. Mr. Sprinkle never said to Mr. Rumph, it's Sean and it's Ricky. He never said who they were. He just said they were these -- his words I think were, according to Mr. Rumph, two boys want to use the phone.

Neither Mr. Rumph or Mr. Wright ever testified that Mr. Wright told Mr. Rumph that it was Mr. Sprinkle at the door. So he -- you have to believe that he just said, okay, 2:30 in the morning, these two boys we don't know, they want to use the phone, have at it. Let them use it.

I submit that that didn't happen. It couldn't happen that way.

Another issue I think that it's small but it's important is that whether this happened at 2:30 in the morning or 4:30 or five o'clock in the morning. And remember Mr. Wright wasn't sure about time it happened.

And I say that only because of this. If they can't be sure about something that simple, can you have any confidence in any of the other things that they tell you?

How many people were there? Mr. Rumph and Mr. Wright say two. Sean says three. Now these are State's witnesses. Listen, I'm not making something up. I'm not

arguing something that didn't -- wasn't testified to from this stand.

Let's look at something else about what happened here. There's some very simple facts that are in dispute, like who did what.

I was trying to follow, make my notes and listen to what was going on. I came away with this. Sean Echols said he assaulted and robbed Mr. Wright and he said that in great detail.

But Mr. Wright testified that Mr. Sprinkle assaulted and robbed him and he said that in great detail.

Lots of details. No doubt about it.

And when Mr. Wright filled out that photo lineup form that Investigator Garrison showed him, he circled Mr. Echols' picture and wrote that that was the man that hit him in the head with a gun.

So obviously this all can't be true. Something is wrong. That alone should cause you some concern.

Another issue is both Mr. Wright and Mr. Rumph testified to something and agreed to something that just could not happen. And let me be specific.

Somebody goes to the door. Mr. Wright says, one guy followed him into his bedroom and pistol whipped him. That was his word. He says the other guy, and when he used the word pistol whip he means hit him with a gun. He

said that.

He said the other guy went right to -- and that was his words, went right to Mr. Rumph's room. He said one guy had a knife. One guy had a gun. So in this house there's one guy with a knife, one guy with a gun.

So the guy in Mr. Wright's room has the gun, but Mr. Rumph said a man comes in waiving a gun, woke him up waiving a gun. Obviously it's impossible for Mr. Wright to be pistol whipped with a gun in his room and Mr. Rumph at the same time to be approached in his room by a man with the same gun. Cannot happen. That's what I mean by impossibility. These are not inconsistencies.

Mr. Rumph has said that the small guy hit Mr. Wright with the gun. The small guy is Mr. Sprinkle. That's what Investigator Garrison told you. So that would mean that Mr. Sprinkle would have been with Mr. Wright in Wright's room and therefore could not have been in Mr. Rumph's room with the gun. It's an impossibility.

Then that leads to the question of: Okay, well then, who cut Mr. Rumph? Mr. Rumph says Mr. Sprinkle cut me, but it could not have been Mr. Sprinkle who cut him because Mr. Wright says Mr. Sprinkle was with him in his room. That's what Mr. Wright says.

And according to Mr. Wright when he got into Mr. Rumph's room, Mr. Rumph had already been cut. So

obviously, logically the person who might have cut -- who would have cut Mr. Rumph could not have been, as the State alleges, Mr. Sprinkle because he would not have been there. And by the time he got there Mr. Rumph had already been cut.

Wright helps me with this because he says, look, the other guy, the other guy being Mr. Echols, cut Mr. Rumph. That's the testimony. And that testimony makes sense because remember what Mr. Echols said, he was the one with the knife.

So, the point obviously is you can't have it both ways. Both Mr. Echols and Wright could not have both cut Mr. Rumph with one knife. An impossibility.

Now there was this issue about them -- someone said the State argued about them switching knives. And I understand that, except for the fact that Mr. Wright said that never happened. What he says is, the guy comes in the house. He's got a gun. He hits me in the head with the gun. We go into Mr. Rumph's room. He's got the gun. They go out the back door. He's got the gun. He came -- and I asked him. He came in with a gun, he went out with a gun. That's what he said.

So you can see the confusion about what happened. You can see the impossibility about what happened. Did Mr. Echols hit Mr. Wright or did Mr. Sprinkle hit

Mr. Wright? Did Mr. Sprinkle cut Mr. Rumph or did Mr. Echols cut Mr. Rumph?

And the thing that makes me use the word impossibility is because during the course of this trial they have said all of that happened. And all of that can't be true.

And again, if you think I am exaggerating or making it up, there is a record. You come back and listen to it.

How much money was taken? Mr. Echols says close to 7,000. Mr. Rumph says a thousand. Again this is the State's witnesses. I'm not just making stuff up.

I got to deal quickly, I think, with the allegation about somebody making him talk. When you think about that and you take a step back and you listen to that, you look at that, I submit to you, you can't accept that at face value.

If you believe that Echols told Mr. Sprinkle to make Mr. Rumph talk but -- and I asked him about this at the time it happened. It didn't make any sense. Because the reason Mr. Echols came into the room, according to Mr. Rumph, was because the other person, they said it's Sprinkle, said, I got it. So he had the money.

There's nothing to make him talk about. Whatever that means, it didn't happen because it doesn't make any sense. And remember he says, come in and make him talk. They never say talk about what, because they had the

money. And they never ask him any questions.

Now, I don't know exactly what happened in that room. I don't. But I know that when they come in and say that somebody said, make them talk and the other person started cutting them, that didn't happen. It just doesn't follow.

So obviously you can't just accept what they say about what happened and who did what. And I submit these inconsistencies, and I called them impossibilities, makes it impossible for you not to have a reasonable doubt about what happened that night.

So what happened? Well, now the thing we know is this. After my cross-examination about Mr. Rumph and his income and money that was taken, we come to find out it's a gambling place. We come to find out there's a lot of money in that place.

So I submit what happened is some kind of gambling-related something. I don't know. It was common knowledge that it was a gambling place, obviously. It was common knowledge that there was a lot of money there. And I submit that, back to what I said in the beginning, that's why Mr. Wright and Mr. Rumph were not forthright with the police.

And that's also why their stories are so inconsistent because when you're talking about $7,000, that's a lot to try to explain. It's a lot to -- it's enough money to

cause the streets to break out. People have certainly fought over less. But that's why this came up. That's why there was an issue for them and they couldn't just come to the police. When the police walked in the door they couldn't say, okay, this is what happened. We're having a game and, you know, we had a lot of money and this is what happened and we know who did it.

It had to be related to the money and the gambling because, as Mr. Rumph said, he was on a fixed income. Sean Echols' mother dates Mr. Rumph. She knows how much money he's got. She knows he's on a fixed income. So obviously he would not be a target to rob just on his fixed income. And that's why they told the police they didn't know who did it.

So they had to come up with this story. And why is this significant? The problem is this. This happens. They got to come up with a story and, remember, time passed. There was some time before they told the police what happened. They told them at the hospital, not at the house, at the hospital.

During that time they were trying to figure out exactly what to tell the police. So they were trying to come up with a story and they had some time. They didn't have enough time and that's why they couldn't work out the details about what happened. And that's why the story

doesn't make sense. And that's why they did not give forthright answers to the police. And that's why you should have a reasonable doubt about what happened.

I was listening to the State's case and they -- one of the officers, deputies testified about crime scene people coming out, people start investigating and photo lineups.

But it doesn't help because this has nothing to do with Mr. Sprinkle.

They didn't need all of that. And the fact they used all of that is a good, I think, indication that they did not say Mr. Sprinkle in the very beginning because they wouldn't need all of that to find him.

Well, why did they name him? Why did they name him? Why would they pick on him? That's the question. Well, what do we know? No doubt about this. We know Sean did this. He came in, he testified to what happened. One of the things I asked him was: Were you involved in sending texts messages to set this up? And he said, yeah. I said: Did you send any to Sprinkle? He said, no. And there's no record of text messages to Sprinkle. Why? Because Mr. Sprinkle wasn't involved with it. He's sending text messages to the people who are helping him, Collins and Jasper Clark.

We know Sean did this. He called earlier. We know his mother was involved because she called setting it up.

She called earlier in the evening to make sure he was home, called again to make sure he was home. She said, I want to just come over, is that okay, although it was late at night. And who else knew about the money except for Vivian Johnson?

We know she was involved because the interesting thing that got to me was the testimony that she got to the house, and I think the term was, right after he got back from the hospital. Well, how would she know that that happened? Because there is no testimony, no indication that anybody called her. She was following the situation because she was involved in the situation and she was checking to see how he was.

So we have Sean. We know he's involved. We have Sean's mother's boyfriend, Mr. Rumph. We know he's involved. We have Sean's mother's boyfriend's roommate, Mr. Rumph (sic). All connected. We know that. Who is the odd man out? Who is totally uncommitted? Who has no connection to any of these people?

And that is Mr. Sprinkle. That's Richard. And that's why he gets named. He's just a guy in the community and they use him because it will help Sean. He is just a fall guy, a patsy. I don't know what name you want, but we know that the problem is Sean Echols is on the hook. No doubt about it. He's in a bad place. So what does he

do? What does his mother do? They come up with a plan to help him. How can you help him?

He names Richard Sprinkle. What does that do? It does what -- it accomplishes what he wanted to accomplish which is, he can come in here, take this witness stand, look you in the eye and say, it was me but it was also another guy. So I'm going to come in here and I'm going to help the police. I'm going to be a witness for the State and then I can ask for mercy, well, I helped you out. And it worked.

So just to be sure you understand the point I am making, the State's dealing with a guy, a bad person, plans a robbery, present at the robbery, puts the whole thing in place. He is facing a maximum of 30 years. The guy who set the whole thing up.

Somebody else, Mr. Sprinkle, is facing life without parole. I asked Sean, did the State serve you life without parole notice? No. He's not dumb. He knows what he's doing. He is very smart. He is accomplishing with the help of the State exactly what he wants. And, and he's making it better for his friends, whoever those third people are. He's making it better for his mother.

Don't think Sean can't do this. You've seen him. You've got a feel for him. These people know him; Mr. Rumph, Mr. Wright. They know him. He knows them. He

knows where they live. And as he said to them, people he knows, the boyfriend of his mother, as he looked him in the eye and said he has killed before and will kill again.

That's the kind of person he is. Everybody knows Sean Echols and everybody's afraid of him. Even Richard Sprinkle is afraid of him and he was in jail.

If Sean Echols says to Mr. Rumph, to Mr. Wright, to whoever, that Mr. Sprinkle is the third person, then Mr. Sprinkle is going to be the third person because nobody's going to cross him. And neither Wright nor Rumph are going to go against him. And he has his mother to just make sure everything goes according to plan.

So why would the -- it was a good question. Ms. Ford asked a very good question. Why would Mr. Echols threaten Mr. Sprinkle? Because Mr. Echols is trying to make something happen, and he doesn't want Mr. Sprinkle to get in the way. That's why he threatened him.

So what is Sprinkle's involvement in this case? I submit to you he's the real person that Sean referred to that -- when he said that there was a third person who did nothing. Sean said there was a third person.
Mr. Sprinkle told the police there was a third person. He said, when things started going wrong, I left. When the assault started, I left.

And that's why they keep talking about only being

two people in there because when all the dirty work was happening in the house, Mr. Sprinkle was gone.

According to Mr. Echols, he says someone just stood there, didn't do anything, didn't plan, didn't have a weapon. And I submit it was Mr. Sprinkle that was that person.

Sean has never -- Sean Echols has never said who the other people are. But he's made up a story of Mr. Sprinkle's involvement to protect those people. I would submit it was probably Little J who he referred to or Collins Shuler, maybe his mother, but I don't know. I think it was probably Little J or Collins Shuler. And just to show you how smart he is, they're off the hook. No charges, no testimony --

MR. BELL: Objection, Your Honor. There's no evidence of what he's saying there in the record.

THE COURT: Do I need to excuse the jury so I can talk about this with y'all, or do we need to ignore that?

MR. WISE: Okay. No, I'll rephrase.

THE COURT: If you don't mind rephrasing, Mr. Wise. I'll appreciate it.

MR. WISE: Thank you. Okay.

So I say it's Collins or I say Little J or Collins Shuler. You did not hear any of them come in to testify. Why is that? Just like Sean wanted, the police don't

care.

Now the last few things. The thing that, that made me scratch my head about this whole thing is Mr. Echols testified he knows Collins Shuler, known him all his life. He knows Little J, Jasper Clark, known him all his life.

But he's only talked to Mr. Sprinkle twice. And you have to scratch your head and wonder why would somebody commit a crime that carries maximum of life imprisonment with somebody who he's only known (verbatim) twice.

Why would he do that? He doesn't know him, obviously. Doesn't know what he'd do, what he's capable of, whether he'd stand up, if he wouldn't, if he'd run. No, he would do it with the people like Collins Shuler and Little J. The people he's known all his life. His boys. His people he can count on. That's how that would happen.

And I submit to you, that's why Collins Shuler and Little J weren't called as witnesses in this case. Because they weren't the people, as he said, that were doing this. And they're not going to come in here and do what Mr. Echols said. And who would? Of course, they don't have the same situation Mr. Echols has. Okay.

The other thing you can't ignore about this case is the lack of any physical evidence. No fingerprints in the

car or in the house. No weapon found. No money found. No DNA. And, remember, Mr. Sprinkle gave them a DNA sample. It's nothing. There's nothing. No physical piece of evidence to in any way corroborate or substantiate what anybody from the State has said.

Now, I've got a few last arguments but I want to talk about these charges for a minute. Number one, I submit to you that there's no attempted murder. I say if you look at Mr. Rumph, if you look at his injuries, it is pretty obvious that there was no intent to murder.

The State may say he used a knife but when the injuries are to someone's feet and someone's arm and somebody's thumb -- and if you look at the photos, they're here. They're an inch, maybe an inch and a quarter. You're not trying to kill anybody like that.

Now, I submit to you that if somebody were going to hurt somebody or try to kill somebody with a knife, they would stab that person and not inflict what are relatively -- and I don't mean that cuts don't hurt, but relatively small cuts. And there was no stabbing here. They would be small cuts.

And I submit also that this whole issue of just-making-him-talk thing, if nothing else it's an indication they were not trying to murder Mr. Wright.

As to Mr. Wright, certainly his injuries are not

enough. Getting hit in the head is not enough.

Now the Judge is going to give you some other charges. And he'll tell you about assault charges and other charges, and he's going to charge you on those but let me tell you this.

If you look at these injuries of Mr. Wright and they don't even rise to the level of the charge that the Judge gave you, if you look at them and say, this isn't even that, assault and battery second degree, then as to that you find him not guilty. And that's it.

There's no burglary here. Why do I say that? Well, there's some statements that are not in dispute. They go to the door. They request to be let in. They get let in and then something happens inside. Obviously the State says they try to trick them to get in, but we talked about something, something happened inside. So obviously there was no forced entry. They were voluntarily let in.

Now, the fact that after they get in they committed a crime, after they get in they commit a crime does not make it a burglary. It does make the crime that was committed after they got in but not a burglary.

And the evidence at this point, I think, is insufficient to show that whatever happened here, whatever happened, fight, gambling, argument, whatever it was, there was no intent to do anything wrong when they went

in.

So as I said in the beginning, I understand everything the State is arguing. But there are some things that just caught my ear when Ms. Ford was speaking. And there's a couple of expressions she used. She used they knocked at the door. They said they needed to use the phone. She said, I think it's Mr. Wright was beaten about the head. They bloodied the old man. They took his pants. And the reason that caught my ear is because even the State doesn't know exactly who did what or they would have told you.

Now, the interesting thing that Ms. Ford said was that Mr. Sprinkle started talking around the time that he found out about Mr. Echols. And I thought that was interesting.

Because here's what you need to do. If I say something that you don't think really happened, you check the record. And I ask you to check the record to see if there's any proof in that. Okay. Check the record to see if there's any proof of what he talked about as far as the (inaudible). It's just not what this case is.

She described Mr. Wright as sure, but I will say this. I think you understand at this point that Mr. Wright is anything, but he's not sure. He is anything but sure about what happened.

The Judge -- one of the Judge's instructions is going

to be on the issue of mere presence. You'll listen to that. But basically what it means is this. If somebody is present when something happens and they're not involved in it, then it's not hand of one hand of all.

There is this old, this idea that we can -- we have this hand of one hand of all thing, when people are around then everybody's responsible. It's almost like some judicial-pixie-dust-supreme-court-case that everybody's guilty. But that's not the law. The Judge will instruct you on the law when he talks about mere presence.

Ms. Ford asked something about why I didn't ask Mr. Rumph the question about -- it really was a good point she made, but I didn't ask because I didn't have to. I asked Investigator Garrison because she was there. Nothing to hide. I'm not trying to hide.

I understand everything the State has put forward. I understand everything that they've argued. I submit that the evidence in this case is just insufficient.

I submit that when you look at the testimony of Mr. Wright and Mr. Rumph and you put them side by side, put them next to each other, put them on top of each other, it's impossible. The things they said happened could not have happened. They can't just say everybody did everything and come in here and expect you to send people to prison on that kind of testimony. There's too

many problems with their story, too little evidence in this case.

I submit the appropriate verdict is not guilty. Mr. Sprinkle has been through a lot. He has been put through a lot. He has been threatened. And it is time for you to find him not guilty and send him home.

Thank you.

THE COURT: Thank you, Mr. Wise.

Ladies and gentlemen, before I go over the charges with you, we've been going for just about an hour so I'm going to let you all take a break. Go back to the jury room for a second and I'll bring you all back out in about ten minutes.

Remember you have not heard me give you the charge on the law. You cannot begin your deliberations until I tell you you can begin your deliberations. I'll let you go back and stretch your legs for a minute and then you'll come back and I'll charge you on the law.

Thank you.

(Jury exits courtroom at 3:29 p.m.)

THE COURT: All right. We'll be in recess for ten minutes.

(Thereupon at 3:30 p.m., a recess was taken until 3:45 p.m., when the trial resumed:)

THE COURT: State ready?

MS. FORD: Yes, sir.

THE COURT: Defense ready?

MS. ULLMAN: We are, Your Honor. Thank you.

THE COURT: Bring them back, please, ma'am

(Jury enters courtroom at 3:45 p.m.)

JUDGE'S CHARGE TO THE JURY

THE COURT: All right. Ladies and gentlemen, it's getting down to the wire. My turn to charge you on the law in this case.

The indictments that I mentioned, that have been mentioned in this case, these indictments, there are a number of offenses that the Defendant has been charged with. But I need to remind you of the fact that the Defendant was arrested, charged and indicted is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt.

These documents are simply the formal written instruments which contain the charges made against the Defendant. They are the formal documents which brings this case to court.

The indictments charge the Defendant with several different offenses.

He is charged with armed robbery of Mr. Rumph and Mr. Wright.

He is charged with attempted murder of Mr. Rumph and Mr. Wright.

And he is charged with burglary in the first degree.

Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and law applicable to it, uninfluenced by your decision as to any other indictment.

The Defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment. This is the verdict form.

And, Madam Forelady, at the conclusion of these charges, I'm going to come down there and I'm going to review this with you.

Now the Defendant has pled not guilty to these indictments. And that plea puts the burden on the State to prove the Defendant guilty beyond a reasonable doubt as to every offense charged. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

The basic rule of our law is that a Defendant in a criminal trial no matter how serious the charge is always presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you, the jury, of that guilt beyond a

reasonable doubt.

This presumption of innocence does not end when you begin your deliberations but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the Defendant's guilt beyond a reasonable doubt.

What is reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. The State has the burden of proving the Defendant guilty beyond a reasonable doubt.

Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true such as by the greater weight or preponderance of the evidence.

In criminal cases the State's proof must by more

powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

There are very few things in this world that we know of with absolute certainty. And in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty.

On the other hand, if you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

During the trial you and I have certain duties to perform. As the trial judge it is my duty to preside over the trial of this case and I also have the duty to rule on the admissibility of evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony.

You are to consider only the testimony which has been presented from this witness stand and any exhibits which have been made a part of the record in this case and any stipulations of counsel.

I have the duty to charge you the law applicable in this case. As the presiding judge, I am the sole judge of the law and it is your duty as jurors to accept and apply the law as I now state it to you.

If you already have an idea as to what the law is or what the law ought to be and it does not agree with what I tell you now the law is, you must abandon that idea because you are sworn to accept the law and apply the law exactly as I now state it to you.

In every case tried before a jury, the jury is the sole and exclusive judge of the facts. A trial judge cannot intimate, state, comment on, or make any statement to a trial jury about the facts in a case.

Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I have said during the progress of this trial, in ruling upon the admissibility of evidence or otherwise, or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case.

The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors it is your duty to determine the effect, value, weight, and truth of the evidence presented during this trial.

There are two types of evidence which are generally

presented during a trial; direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all of the evidence in this case. After weighing all of the evidence if you are not convinced of the guilt of the Defendant beyond a reasonable doubt, you must find the Defendant not guilty.

Necessarily you must determine the credibility of witnesses who have testified. Credibility simply means believability.

It becomes your duty as jurors to analyze and to

evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified, you may believe one witness over several witnesses or several witnesses over one witness.

You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

I instruct you and emphasize that the fact that the Defendant did not testify is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of the guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever.

A defendant has the constitutional right to remain silent and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath you are to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify.

The fact that this Defendant did not testify should not even be discussed in the jury room.

The burden of proof, as I have stated to you, is on the State. The Defendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt.

In order to establish criminal liability criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

There's no way to prove intent to a mathematical certainty. There's no way medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent may be inferred from the circumstances shown to have existed at that time.

You must make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct and positive evidence. But intent may be established by inference in the same way as any other factor; by taking into consideration the acts of the parties and all of the facts and circumstances of the

case.

Criminal intent is a mental state, a conscious wrongdoing. It it's up to you to determine what the Defendant intended to do based on the circumstances shown to have exited.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness or indifference to duty or to consequences that is considered by the law to be the equivalent of criminal intent.

An issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant.

Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available, how far or close the witness was, the lighting conditions and whether the witness had the chance to see

or know the person in the past.

Once again, I instruct you, the burden of proof is on the -- the burden of proof on the State extends to every element of the crime charged. And is -- and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as the person who committed the crime.

If after examining the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

A statement alleged to have been made by the Defendant has been admitted into evidence in this case. While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the Defendant made the statement.

If the Defendant did make the statement, you must determine whether the statement was made by the Defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation, or by hope of a promise of leniency or a reward of any kind.

In determining whether the statement was voluntary you should consider both the characteristics of the Defendant and the details of the questioning. Some of the factors that you must consider are: The age of the Defendant; the

Defendant's education or lack of education; the Defendant's mental ability or capacity; the Defendant's IQ or intelligence; the Defendant's background and environment; the place and length of detention; the nature of the questioning; and the advice or lack thereof to the Defendant of his constitutional rights including but not limited to the right to remain silent, that any statement could be used against him in a court of law, the right to have a lawyer present, that if he could not afford a lawyer, a lawyer would be appointed to represent him without any cost; and he could stop making a statement at any time.

You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine that it was, you may give the statement any further consideration that you deem proper.

You must decide what weight if any should be given to the alleged statement. If you determine that the alleged statement was not the free and voluntary statement of the Defendant, you should not consider the statement at all.

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is

the act of all. A person who joins with another to commit an unlawful act is criminally responsible for everything done by the other person which happens as a probable or natural consequence of the acts done in carrying out the common plan and purpose.

For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet and only one of the two fired the shot that caused the death.

If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all. Or, as it is sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime even if the Defendant is present when the crime is committed is not sufficient to convict the Defendant as a principal.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principal.

The State must prove beyond a reasonable doubt by

competent evidence the theory of the hand of one is the hand of all. A principal in a crime is one who either actually commits the crime or who is present aiding, abetting or assisting in the -- in committing the crime.

When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all.

Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

Intent is also a necessary element, for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act.

Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt.

As I said before, mere presence at the scene is not sufficient to prove someone guilty of a crime. A Defendant's presence where a crime is being committed or mere association with a person who commits a crime does not make a Defendant an accomplice or an aider or abetter of the person committing the crime.

The burden is on the State to prove every element of the crime charged. If you find after reviewing all of the evidence that the State has proved that the Defendant was only present at the scene of the crime and that they have not proved beyond a reasonable doubt any other participation in the crime, then you must find the Defendant not guilty. The law is that the proof of the Defendant's presence at the scene of the crime is not sufficient to find someone guilty.

The Defendant is charged with two counts of armed robbery, one against Mr. Rumph, one against Mr. Wright. In order to prove this offense, the State must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person. Property is in the presence of a person if it is within the person's reach, inspection, observation or control so that the person could, if not overcome with violence or prevented by fear, keep possession of the property.

The State must also prove beyond a reasonable doubt

that the Defendant carried the property away intending to permanently deprive the owner of the property and to keep the property for the Defendant's own use. A slightest removal of the property or the complete possession of the property, even if for an instant, by the Defendant is sufficient to show a taking and carrying away of the property. The taking and carrying away of the property must have been done by violence or by putting the owner of the property in fear of violence.

Finally, the State must prove beyond a reasonable doubt that the Defendant was armed with a deadly weapon during the robbery. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case.

The following are examples of instruments which may be deadly weapons; a shotgun, a rifle, a dirth, a dagger, a slingshot, metal knuckles, a razor, gasoline, a fire bomb or Molotov cocktail and lighter fluid. A gun may be a deadly weapon even if it is not operating.

The Defendant is also charged with two counts of attempted murder; one of Mr. Rumph, one of Mr. Wright. In order to prove this crime the State must prove the Defendant attempted to kill another person with malice

aforethought, either express or implied.

Malice is hatred, ill will or hostility toward another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed but malice must exist in the mind of the Defendant just before and at the time the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be express or inferred. These terms, express and inferred, do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is, either by direct evidence or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will for another or when the person prepared beforehand to do the act which was later accomplished. For example, lying in wait for a person or any other acts of preparation going to show that the deed was within the Defendant's mind would be express malice.

Malice may be inferred from conduct showing a total

disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon. Again, a deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm.

Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. And I've already given you examples of instruments which may be deadly weapons and I'm not going to repeat that to you.

If facts are proved beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply -- would be simply an evidentiary fact to be considered by you, the jury, along with the other evidence in this case and you may give it the weight you decide it should receive.

A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury. Intent means intending the result which actually occurs, not accidentally or involuntarily.

Intent may be shown by acts and conduct of the Defendant and other circumstances from which you may naturally and reasonably infer intent.

Evidence of the character of the act, the character of the instrument used, the manner in which it was used, the purpose to be accomplished, and the resulting wounds or

injuries may be considered in determining the intent with which the act was committed.

Intent may also be inferred when it is demonstrated that the Defendant voluntarily and willfully commits an act, the natural tendency of which is to destroy other's life.

Included within the offense of attempted murder is the lesser offense of assault and battery of a high and aggravated nature. If you find that the State has not proven that the Defendant is guilty of attempted murder, you must then determine whether the State has proven the Defendant is guilty of assault and battery of a high and aggravated nature as to the victims Rumph and Wright.

A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and great bodily injury to another person results or the act is accomplished by means likely to produce death or great bodily injury.

Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Also included within the offense of attempted murder is the lesser offense of assault and battery in the first degree. If you find that the State has not proven that

the Defendant is guilty of attempted murder or assault and battery of a high and aggravated nature you must then determine whether the State has proven -- has proved that the Defendant is guilty of assault and battery in the first degree as to the victims, Mr. Rumph and Mr. Wright.

A person commits the offense of assault and battery in the first degree if the person unlawfully injures another person and the act occurred during the commission of a robbery, burglary, kidnapping or theft.

A person may also commit the offense of assault and battery in the first degree if the person unlawfully offers or attempts to injure another person with the present ability to do so and the act either is accomplished by means likely to produce death or great bodily injury or occurred during the commission of a robbery, burglary, kidnapping or theft.

Great bodily injury means bodily injury which causes a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

Included within the offense of attempted murder is the lesser offense of assault and battery in the second degree. If you find that the State has not proven that the Defendant is guilty of attempted murder, assault and battery of a high and aggravated nature, or assault and

battery in the first degree you must then determine whether the State has proven that the Defendant is guilty of assault and battery in the second degree as to Mr. Wright only.

A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person or offers or attempts to injure another person with the present ability to do so and moderate bodily injury to another person results or moderate bodily injury to another person could have resulted.

Moderate bodily injury means physical injury requiring treatment to an organ system of the body other than skin, muscles and connective tissues of the body except when there is penetration of the skin, muscles and connective tissues that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia.

The Defendant is also charged with first degree burglary. The State must first prove beyond a reasonable doubt that the Defendant entered a dwelling without consent. A dwelling is any building or portion of a building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied cannot be considered a dwelling for purposes of burglary but a building is a dwelling even if the residents are

each one of you. In order to return a verdict it is necessary that each juror agree. Your verdict must be unanimous. All 12 of you must agree on the verdict. Your verdict cannot be based on sympathy, passion, prejudice, emotion, or any other consideration not in evidence in this case.

Remember, you are not partizans favoring one party over another. You are the judges of the facts. Your sole interest is to seek the truth from the evidence that has been presented to you in this case.

Now, Madam Forelady, I'm going to go over the verdict form with you. I'm glad you put on your glasses. Okay. This is the verdict form. And here it tells you we're here in Orangeburg County. These are the indictment numbers. Okay. This is the case; State of South Carolina versus Mr. Richard Sprinkle.

It says, please circle the appropriate verdict below and follow the instructions carefully.

The first question that y'all have to answer is: We the jury unanimously find the Defendant as to the charge of armed robbery of Robert Rumph, either guilty or not guilty.

Question number two: We the jury unanimously find the Defendant as to the charge of armed robbery of James Wright, again, either guilty or not guilty.

Now, you get to question number three and this is where you got to be careful. We the jury unanimously find the Defendant as to the charge of attempted murder of Robert Rumph, either guilty or not guilty.

Now, if you answer guilty to question three, proceed to question four which is right there. Okay? If you answered not guilty you go, you proceed to part A.

Part A reads: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery of a high and aggravated nature of Robert Rumph, again guilty or not guilty.

Again at this point if you answered guilty to part A, proceed to question four. If you answered not guilty to part A, proceed to B.

B reads: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery in the first degree of Robert Rumph, either, again, guilty or not guilty.

Then we move to question four. We the jury unanimously find the Defendant as to the charge of attempted murder of James Wright, again, guilty or not guilty.

Again we're going to be doing the same thing with him that we did with Mr. Wright. If you answered guilty to question four, proceed to question five which is on the

last page. If not, you proceed -- if you answered not guilty, proceed to part A.

A is: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery of a high and aggravated nature of James Wright, guilty or not guilty. Again, if you answered guilty to part A, proceed to five. If not, proceed to B.

B: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery in the first degree of James Wright, guilty not guilty.

Again if you find him guilty, move to five. If not, go to part C. Okay?

Part C: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery in the second degree of James Wright, guilty or not guilty.

And then finally question number five. We the jury unanimously find the Defendant as to the charge of burglary in the first degree, guilty or not guilty.

That's the end of your deliberations. You will sign here and complete the date.

Okay. Now, you will not get this verdict form until you are told to begin your deliberations. Okay. What's going to happen now, you and I just went through a bunch of charges. I've got to go over the charges with the attorneys. If I have misspoken or I need to clarify some

(Alternates exit courtroom.)

THE COURT: Anything from the State regarding the charges?

MS. FORD: Nothing from the State.

THE COURT: Anything from the defense?

MR. WISE: Yes, sir. Very briefly. I did it again.

THE COURT: Sir?

MR. WISE: I said, very briefly

THE COURT: Okay.

MR. WISE: Your Honor, I believe the Court in the charge on attempted murder charged the jury that specific intent is not required for that crime. I believe that it is. I call the Court's attention to State versus Sutton, S-U-T-T-O-N.

THE COURT: Okay.

MR. WISE: 33 South Carolina 192, 508 Southeastern Second 41.

And as I read the case, the essential elements required for proof of criminal intent of murder are, one, a specific intent to commit the crime and, two, a direct and effectual act done towards its commission.

Then it goes on: The elements of intent to crime (verbatim) are, specific intent to commit a criminal offense and an act in furtherance of that intent that falls short of its ultimate execution. Probably a bad

choice of words, but...

THE COURT: You got the case?

MR. WISE: I don't have the case. I just have my notes but it has the citation.

THE COURT: Okay. That's a 1998 case.

MR. BELL: Attempted murder didn't exist.

THE COURT: Yeah.

MR. BELL: That's ABWIK. That case in attempted murder didn't exist.

THE COURT: When was this indicted? When was this -- not indicted, when was this?

MR. BELL: 2011.

MS. FORD: 2011, I believe, Your Honor.

THE COURT: 2011?

MS. FORD: I believe so, Your Honor.

THE COURT: Let's just -- we'll double-check. What is it, 333. Put code section and see if it pulls up anything. I'll go pull 333.

(Pause.)

THE COURT: Just to let you know 16-20-29 became effective June 2nd, 2010.

All right. Mr. Bell, or Ms. Ford, any comments about correcting my charge?

MS. FORD: No, sir.

THE COURT: What I was thinking about doing is I was

just to read the statute. And the statute reads: A person who with intent to kill, intends to kill a person -- attempts to kill another person with malice aforethought, either express or implied, commits the offense of attempted murder.

Here's yours.

MR. WISE: Oh, thank you.

THE COURT: That's why you can't find it.

MR. WISE: Thank you.

THE COURT: That's a 1998 case. I figure the best thing to do is just read what the actual statute says.

MR. WISE: Can I --

THE COURT: Sure.

MR. WISE: One moment.

(Pause.)

MR. WISE: Very good.

THE COURT: Is that all right?

MS. FORD: Yes, sir.

THE COURT: Would you bring the jury back in?

(Jury enters courtroom at 4:30 p.m.)

THE COURT: Ladies and gentlemen, what I'm going to do -- it has been pointed out to me that I have possibly not charged you correctly with the definition of the attempted murder charge. So what I'm going to do is I'm going to read to you the statute on what attempted murder

that that's what they said but he kept -- his testimony did not change. He stands by what he stated yesterday under oath, Your Honor.

THE COURT: Okay. All right. Thank you, ma'am. Mr. Wise, we just note that on the record. Okay?

MR. WISE: Yes, Your Honor.

THE COURT: Thank you, sir. All right.

We're going to be in recess for a little while longer. Okay. Thank you.

(Thereupon, Court stood in recess from 5:49 p.m., until 7:05 p.m., when the trial resumed:)

THE COURT: I've been told the jury has reached a verdict; is that correct?

THE BAILIFF: Yes, Your Honor.

THE COURT: Is the State ready to proceed?

MS. FORD: We are, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. WISE: We are, Your Honor.

THE COURT: Okay. Bring the jury on back out.

(Jury enters courtroom at 7:05 p.m.)

THE COURT: Madam Forelady, has the jury reached a verdict?

THE FORELADY OF THE JURY: We have, Your Honor.

THE COURT: Is that verdict unanimous?

THE FORELADY OF THE JURY: It is, Your Honor.

THE COURT: Would you mind giving the bailiff the verdict form?

THE FORELADY OF THE JURY: (Complies.)

THE BAILIFF: Your Honor, may I approach?

THE COURT: Yes, ma'am. Thank you, ma'am.

THE BAILIFF: Uh-huh.

THE COURT: Can I see the attorneys for a second?

(Off-the-record discussion.)

THE COURT: All right. This is the verdict form of the State of South Carolina versus Richard Sprinkle and the jury answering the questions that were provided to them.

Question number one: We the jury unanimously find the Defendant as to the charge of armed robbery of Robert Rumph, guilty.

Question number two: We the jury unanimously find the Defendant as to the charge of armed robbery of James Wright, guilty.

Question number three: We the jury unanimously find the Defendant as to the charge of attempted murder of Robert Rumph, not guilty.

Question -- so question A of question three: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery of a high and aggravated nature of Robert Rumph, jury did not respond to

that.

Subpart B: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery in the first degree of Robert Rumph, guilty.

Question number four: We the jury unanimously find the Defendant as to the charge of attempted murder of James Wright, not guilty.

Subpart A of question four: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery of a high and aggravated nature of James Wright, not guilty.

Subpart B of question four: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery in the first degree of James Wright, not guilty.

Subpart C: We the jury unanimously find the Defendant as to the lesser-included offense of assault and battery in the second degree of James Wright, not guilty.

Question number five: We the jury unanimously find the Defendant as to the charge of burglary in the first degree, guilty.

Signed by the Foreperson and dated today.

Anything from the State?

MS. FORD: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

MS. ULLMAN: Your Honor, We'd ask that you poll the jury.

THE COURT: All right. Ladies and gentlemen of the jury, the defense has asked that I poll the jury. That means I'm going to ask you questions.

What I'm going to do is ask each one of you if this is your verdict and is it still your verdict is what the question is. When I call your name, I would ask that you stand so that I can ask the question of you. And then you can respond.

Tony Mims. Mr. Mims, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, sir. Jamel James. Mr. James, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, sir. Marilyn Carter. Ms. Carter, is this your verdict?

THE JUROR: Yes.

THE COURT: Is it still your verdict?

THE JUROR: Yes.

THE COURT: Thank you, ma'am. Faye Menefee. Is this

your verdict?

THE JUROR: Yes.

THE COURT: Is it still your verdict?

THE JUROR: It is.

THE COURT: Thank you, ma'am. Penny Fulmer. Ms. Fulmer, is this your verdict?

THE JUROR: Yes.

THE COURT: Is it still your verdict?

THE JUROR: Yes.

THE COURT: Thank you, ma'am. Jacqueline Jamison. Ms. Jamison, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, ma'am. Christopher Reed. Mr. Reed, is this your verdict?

THE JUROR: Yes.

THE COURT: Is it still your verdict?

THE JUROR: Yes.

THE COURT: Thank you, sir. Rachel Haddock. Ms. Haddock, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, ma'am. Stephanie Brant.

Ms. Brant, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, ma'am. Edward Miller. Mr. Miller, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, sir. Shannon Johnson. Mr. Johnson, is this your verdict?

THE JUROR: Yes.

THE COURT: Is it still your verdict?

THE JUROR: Yes.

THE COURT: Thank you, sir. Erica Tyler. Ms. Tyler, is this your verdict?

THE JUROR: Yes, sir.

THE COURT: Is it still your verdict?

THE JUROR: Yes, sir.

THE COURT: Thank you, ma'am. Anything else?

MS. ULLMAN: We have matters of law, but other than that, no, sir.

THE COURT: All right. Ladies and gentlemen, I appreciate your attention. I know the verdict form was a fairly long verdict form, but I appreciate your attention

during this trial. I appreciate the questions that you've asked.

You are now free. Okay. Thank you for your service to the county. And y'all can go that way around. Have a good evening. Thank you.

(Jury exits courtroom at 7:14 p.m.)

MS. FORD: Your Honor, may we approach for just a moment?

THE COURT: Sure.

(Off-the-record discussion.)

THE COURT: All right. Mr. Wise, Ms. Ullman, who is it?

MS. ULLMAN: Thank you, Your Honor.

THE COURT: Ms. Ullman.

MS. ULLMAN: First, I would ask Your Honor to consider a motion for a new trial. A new trial should be granted where there's no evidence supporting a conviction.

Regarding the assault and battery first conviction in Mr. Rumph's case -- or Mr. Rumph was the victim. Excuse me. We don't believe that there was any evidence of great bodily injury to Mr. Rumph that would not support assault and battery first degree.

Regarding the burglary, Your Honor, we don't believe there's evidence supporting that. There was no evidence that they -- that Mr. Sprinkle wasn't invited into the

house.

And then obviously we'd also argue there's no evidence regarding the armed robbery of both victims.

THE COURT: All right. Ms. Ullman, I'll note your argument for the record but having seen the pictures and like that regarding the assault and battery first conviction, I do believe that there was sufficient evidence to show great bodily injury.

With regard to the burglary, deception was evident, I think, from the testimony. And regarding the armed robbery I think there was certainly evidence to convict him of the armed robbery.

So I'm going to deny your motion for a new trial.

MS. ULLMAN: Yes, sir.

The last motion I would make is for a verdict in arrest of the judgment, Your Honor. That's an appropriate criminal case motion when there's lack of jurisdiction or insufficiency in the charging document.

That comes from State V Miller, 287 South Carolina 280.

Your Honor, I obviously would again just renew my arguments earlier about the insufficiency of the --

THE COURT: Of the indictment

MS. ULLMAN: Of the indictment. Yes, sir.

THE COURT: It includes --

him, we'd appreciate it.

THE COURT: And, Ms. Ford, I'd like to be able to help. I have very limited things that I can do.

MS. MARY JANE FORD: I understand. Okay.

THE COURT: Thank you, ma'am.

MS. MARY JANE FORD: We thank you all.

THE COURT: Yes, ma'am. Anything else, Ms. Ullman?

MS. ULLMAN: Obviously, Your Honor, we understand what the potential sentences are. In this situation, Your Honor, we would ask that you consider not giving a life sentence. I understand that's what burglary first carries.

But Mr. Sprinkle's 43 years old. His record started in '87 and as you heard, he has a few bad things on there but it's not extensive. It's not as if every year, twice a year or anything like that he was being arrested and charged with weapons and drugs and things of that nature.

I think Ms. Mary Ford, his aunt, is correct in that drugs absolutely have led him down the path that he's been in life. And one thing out of his own mouth that you heard on the stand, Your Honor, during the pretrial he said, yes, I'm a drug fiend. I have a drug problem. So he's admitted that, too.

Obviously, I understand the sentence will be given. I just again would ask that you consider not giving a life

sentence.

And along with what Ms. Mary Ford said, we'd ask that you consider possibly ATU or something in that nature so that while he is there he could try to get some help.

And I think that's probably the limit on the help that you can give him in prison.

I believe that would be it, Your Honor.

THE COURT: Thank you, ma'am. Y'all give me a second. Let me step back a little bit.

MS. FORD: Yes, sir.

THE COURT: I'll be back.

(Thereafter, a break was taken from 7:33 p.m., until 7:41 p.m., when the trial resumed:)

THE COURT: All right. Mr. Sprinkle.

THE DEFENDANT: Yes, sir.

THE COURT: In some ways, you appeared in front of me so many times, I'm kind of going to miss seeing you.

THE DEFENDANT: Yeah.

THE COURT: The jury has listened to the evidence in this case and they found you guilty of these charges. And they also found you not guilty of the charge of Mr. Wright. I think the jury paid attention to the testimony.

Now it is my duty to sentence you according to the jury's verdict.

AND ON THE CHARGE OF ASSAULT AND BATTERY IN THE FIRST DEGREE, THE SENTENCE OF THIS COURT IS: YOU ARE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF TEN YEARS.

ON THE CHARGES OF ARMED ROBBERY, THERE ARE TWO OF THOSE THAT YOU WERE CONVICTED OF, SENTENCE OF THIS COURT IS: YOU'RE SENTENCED -- cOMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 30 YEARS.

AND ON THE CONVICTION FOR BURGLARY ONE: YOU ARE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 35 YEARS.

THE SENTENCES ARE CONCURRENT. I'LL GIVE YOU CREDIT FOR THE TIME SERVED AND I AM GOING TO RECOMMEND ATU.

THE DEFENDANT: All right.

THE COURT: Good luck to you.

THE DEFENDANT: All right. Thank you.

THE COURT: Thank you, sir. All right. Thank you all.

MS. FORD: Thank you, Your Honor.

MR. WISE: Thank you, Your Honor.

END OF PROCEEDINGS: 7:44 P.M.

***

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	OF THE FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG)	Indictment Nos. 11-GS-38-1561 through 1564;
)	13-GS-38-0287
STATE OF SOUTH CAROLINA,)	
)	
VS.)	VERDICT FORM
)	
)	
RICHARD SPRINKLE,)	
Defendant.)	
)	

PLEASE CIRCLE THE APPROPRIATE VERDICT BELOW AND FOLLOW THE ACCOMPANYING INSTRUCTIONS CAREFULLY.

1) WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE CHARGE OF ARMED ROBBERY OF ROBERT RUMPH,

(GUILTY) NOT GUILTY

2) WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE CHARGE OF ARMED ROBBERY OF JAMES WRIGHT,

(GUILTY) NOT GUILTY

3) WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE CHARGE OF ATTEMPTED MURDER OF ROBERT RUMPH,

GUILTY (NOT GUILTY)

IF YOU ANSWERED "GUILTY" TO QUESTION 3, PROCEED TO QUESTION 4; IF YOU ANSWERED "NOT GUILTY" TO QUESTION 3, PROCEED TO PART A.

ATTEST: TRUE COPY
Winnifa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

A. WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE OF ROBERT RUMPH,

GUILTY NOT GUILTY

IF YOU ANSWERED "GUILTY" TO PART A, PROCEED TO QUESTION 4; IF YOU ANSWERED "NOT GUILTY" TO PART A, PROCEED TO PART B.

B. WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY IN THE FIRST DEGREE OF ROBERT RUMPH,

GUILTY NOT GUILTY

4) WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE CHARGE OF ATTEMPTED MURDER OF JAMES WRIGHT,

GUILTY NOT GUILTY

IF YOU ANSWERED "GUILTY" TO QUESTION 4, PROCEED TO QUESTION 5; IF YOU ANSWERED "NOT GUILTY" TO QUESTION 4, PROCEED TO PART A.

A. WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE OF JAMES WRIGHT,

GUILTY NOT GUILTY

IF YOU ANSWERED "GUILTY" TO PART A, PROCEED TO QUESTION 5; IF YOU ANSWERED "NOT GUILTY" TO PART A, PROCEED TO PART B.

B. WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY IN THE FIRST DEGREE OF JAMES WRIGHT,

GUILTY NOT GUILTY

IF YOU ANSWERED "GUILTY" TO PART B, PROCEED TO QUESTION 5; IF YOU ANSWERED "NOT GUILTY" TO PART B, PROCEED TO PART C.

C. WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE LESSER INCLUDED OFFENSE OF ASSAULT AND BATTERY IN THE SECOND DEGREE OF JAMES WRIGHT,

GUILTY NOT GUILTY

5) WE THE JURY UNANIMOUSLY FIND THE DEFENDANT, AS TO THE CHARGE OF BURGLARY IN THE FIRST DEGREE

GUILTY NOT GUILTY

STOP AND END ~~YOUR~~ DELIBERATIONS

Please sign and date.

Foreperson

April 10, 2013
Date

STATE'S EXHIBIT

Date Printed 06/27/2011

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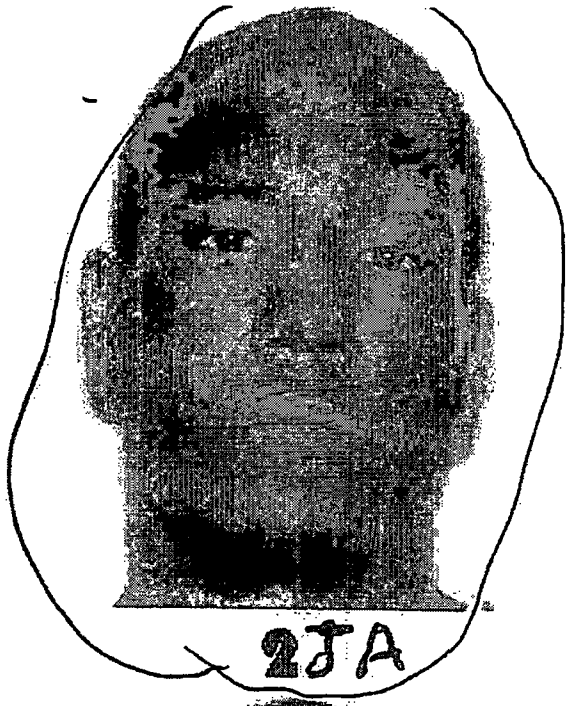
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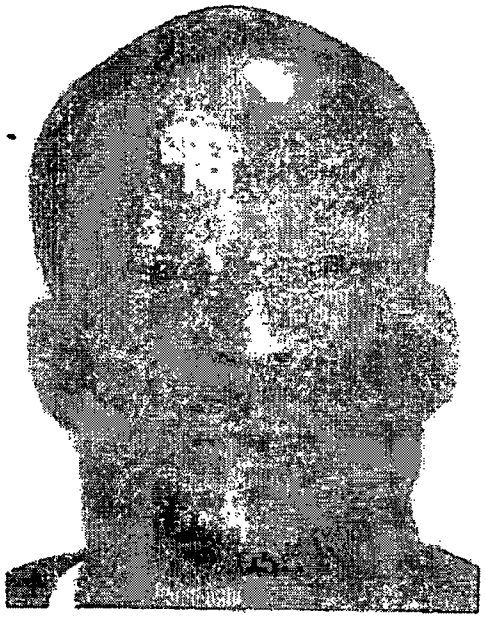
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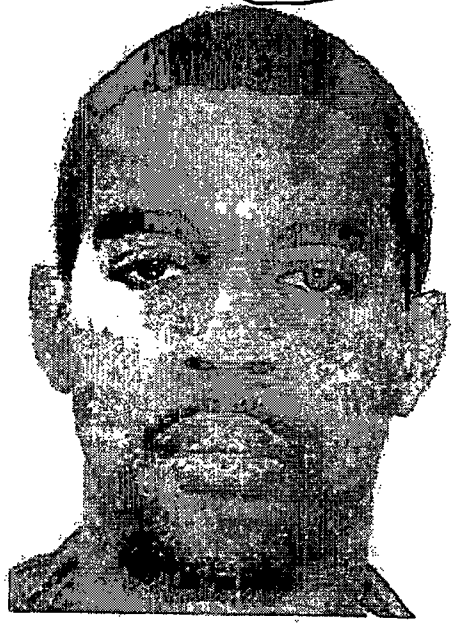
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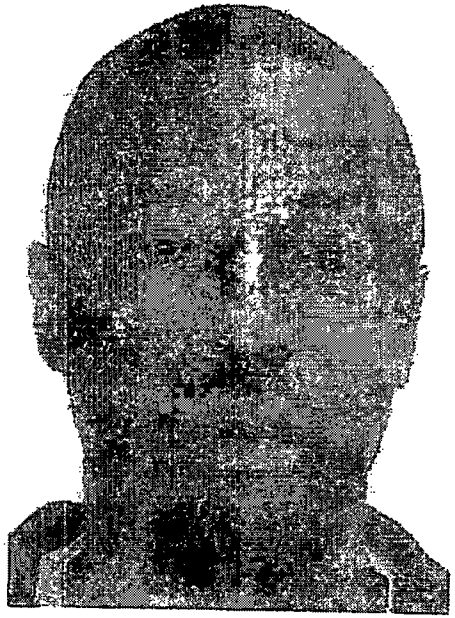
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STATE'S EXHIBIT

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Date Printed 06/26/2011

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STATE'S EXHIBIT

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STATE'S
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STATE'S
EXHIBIT
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STATE'S
EXHIBIT
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STATE'S
EXHIBIT
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STATE'S
EXHIBIT
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344

STATE'S EXHIBIT

11



12

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
STATE VS.
Richard Lanard Sprinkle
AKA:

Race: BLACK Sex: M Age: 42
DOB: [redacted] SS#: [redacted]
Address: [redacted]
City,State,Zip: [redacted]
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-1561
A/W#: M805587
Date of Offense: 6/26/2011
S.C. Code § : 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Sarah A Ford 77029
Ford, Sarah A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 ~~days/months~~ years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with probation for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/10/13
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐Ordered PTUP _____
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$133.90

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☒ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk V. Glenn
Court Reporter: Cheri S. Young

Presiding Judge
Judge Code: 2153
Sentence Date: 4/10/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)
STATE VS.)
Richard Lanard Sprinkle)
AKA:)
Race: BLACK Sex: M Age: 42)
DOB: [redacted] SS [redacted])
Address: [redacted])
City,State,Zip: [redacted])
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-1562
A/W#: M805588
Date of Offense: 6/26/2011
S.C. Code § : 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS
TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐SERIOUS ☒MOST SERIOUS ☐Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐§17-25-45

The charge is: ☒ As Indicted, ☐Lesser Included Offense, ☐Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Sarah A. Ford 71029 _____ _____ _____
Ford, Sarah A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed ___ years
and/or to pay a fine of $ ___; provided that upon the service of ___ days/months/years and/or payment
of $ ___; plus costs and assessments as applicable*; the balance is suspended with probation for ___
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/10/13
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐Ordered
Total: $ ___ plus 20% fee: ___ $ ___
Payment Terms: ___
☐ Set by SCDPPPS ___
___
Recipient: ___

PTUP ___
___ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ___
May serve W/E begining ___
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ___ beginning ___
$ ___ paid to Public Defender Fund
Other: ___

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$133.90

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: V. Glover
Court Reporter: Cheri L. Young

Presiding Judge [signature]
Judge Code: 2153
Sentence Date: 4/10/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)
STATE VS.)
Richard Lanard Sprinkle)
AKA:)
Race: BLACK Sex: M Age: 42)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: [redacted])
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS38-1563
A/W#: M805589
Date of Offense: 6/26/2011
S.C. Code § : 16-3-29
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Assault / Assault and Battery 1st Degree

in violation of § 16-3-600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. ____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Sarah A Ford 77029
Ford, Sarah A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment
of $ —; plus costs and assessments as applicable*; the balance is suspended with probation for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/10/13
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ ____ plus 20% fee: $ ____ $ ____
Payment Terms: ____
☐ Set by SCDPPPS ____
Recipient: ____

PTUP ____
____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ____
May serve W/E begining ____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ ____ beginning ____
$ ____ paid to Public Defender Fund
Other: ____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

ATTEST: TRUE COPY

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk V. Oleyar
Court Reporter: Cheri L. Young

Presiding Judge
Judge Code: 2153
Sentence Date: 4/10/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA)
COUNTY OF Orangeburg)
STATE VS.)
Richard Lanard Sprinkle)
AKA:)
Race: BLACK Sex: M Age: 42)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Orangeburg, SC 29115)
DL#: SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS38-0287
A/W#: 2013ORB7
Date of Offense: 6/26/2011
S.C. Code § : 16-11-311
CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Burglary - First Degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Sarah A Ford 77029
Ford, Sarah A. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed — years and/or to pay a fine of $ —; provided that upon the service of — days/months/years and/or payment of $ —; plus costs and assessments as applicable*; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 4/10/13
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: Recommends ATU

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 00.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

ATTEST: TRUE COPY

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: V. Glenn
Court Reporter: Cheri J. Young
Presiding Judge
Judge Code: 2153
Sentence Date: 4/10/13

SCCA/217 (03/2011)

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805587

Arrested: June 29, 2011

ACTION OF GRAND JURY

TRUE BILL

Date OCT 01 2012

Foreperson of Grand Jury

Date: October 10, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1561

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 8, 2012 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-1561

At a Court of General Sessions, convened on October 8, 2012 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about June 26, 2011, in Orangeburg County, the defendant, Richard Lanard Sprinkle did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Robert Rump, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon(s) described as a gun and a knife. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sarah A. Ford

Sarah A. Ford, Solicitor

M-805587

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

THE STATE 2011GO07280

against

hard Lanard Sprinkle

SSN:

M Race: B Height: 5 9 Weight: 180

Agency ORI #: SC0380000

esting Agency: Orangeburg County Sheriff

esting Officer: Lori Garrison - 1021

se: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

e Code: 0139

Ordinance Sec: 16-11-330(A)

Warrant is CERTIFIED FOR SERVICE in the County/ [ ] Municipality of

. The accused be arrested and brought before me to be with according to the law

(L.S.)

Signature of Judge

RETURN

of this arrest warrant was delivered to

at

Signature of Constable/Law Enforcement Officer

WARRANT TO:

eneral Sessions

51 Docket Street

. O. Box 9000

rangeburg, SC 29116

ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL ORIGINAL

[X] County/ [ ] City of

Orangeburg

AFFIDAVIT

ORIGINAL

Personally appeared before me the affiant Lori Garrison who being duly sworn deposes and says that defendant Richard Lanard Sprinkle did within this county and state on or about 06/26/2011 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Based on the investigation by the Orangeburg County Sheriff's Office, the defendant, Richard Lanard Sprinkle, violated section 16-11-330 of the SC code of laws, Robbery while armed with a deadly weapon. On Saturday, June 26, 2011, while located at [redacted], the defendant did enter the residence armed with a gun and knife, causing multiple injuries to the victim, Robert Rump, while robbing him of his property. This incident occurred in the County of Orangeburg, State of South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

Affiant's Address P. O. Box 9000

Orangeburg, SC 29116-

Affiant's Telephone (803)531-4647

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/26/2011 defendant Richard Lanard Sprinkle did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) as set forth below

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 06/28/2011

(L.S.)

Signature of Issuing Judge

Richard Murray

Judge Code: 5796

Judge's Address 1540 Ellis Avenue

Orangeburg, SC 29116-9000

Judge's Telephone (803)533-5879

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
MB05688

Arrested: June 29, 2011

ACTION OF GRAND JURY
TRUE BILL
Date: OCT 0 1 2012
Foreperson of Grand Jury
Date: October 10, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1562

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 8, 2012 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-1562

At a Court of General Sessions, convened on October 8, 2012 the Grand Jurors of Orangeburg County present upon their oath:

ARMED ROBBERY

That on or about June 26, 2011, in Orangeburg County, the defendant, Richard Lanard Sprinkle did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, James Wright, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a gun and a knife. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sarah A. Ford

Sarah A. Ford, Solicitor

M-805588

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

THE STATE

against

hard Lanard Sprinkle

[redacted]

M Race: B Height: 5 9 Weight: 180

ate: SC DL #: [redacted]

[redacted] Agency ORI #: SC0380000

olding Agency: Orangeburg County Sheriff

esting Officer: Lori Garrison - 1021

se: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

se Code: 0139

Ordinance Sec: 16-11-0330(A)

Warrant is CERTIFIED FOR SERVICE in the

[ ] County/ [ ] Municipality of

The accused

be arrested and brought before me to be

with according to the law.

(L.S.)

Signature of Judge

RETURN

r of this arrest warrant was delivered to

on

Signature of Law Enforcement Officer

WARRANT TO:

General Sessions

151 Docket Street

P. O. Box 9000

Orangeburg, SC 29116

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

[X] County/ [ ] Municipality of

Orangeburg

AFFIDAVIT

ORIGINAL

Personally appeared before me the affiant Lori Garrison who being duly sworn deposes and says that defendant Richard Lanard Sprinkle did within this county and state on or about 06/26/2011 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Based on the investigation by the Orangeburg County Sheriff's Office, the defendant, Richard Lanard Sprinkle violated section 16-11-330 of the SC code of laws, Robbery while armed with a deadly weapon. On Saturday, June 26, 2011, while located at [redacted] the defendant did enter the residence armed with a gun and knife, causing multiple injuries to the victim, James Wright, while robbing him of his property. This incident occurred in the County of Orangeburg, State of South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

Affiant's Address P. O. Box 9000
Orangeburg, SC 29116-

Affiant's Telephone (803)531-4647

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/26/2011 defendant Richard Lanard Sprinkle did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/28/2011

(L.S.)

Signature of Issuing Judge

Richard Murray

Judge Code: 5796

Judge's Address 1540 Ellis Avenue
Orangeburg, SC 29116-9000

Judge's Telephone (803)533-5879

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
M805589

Arrested: June 29, 2011

ACTION OF THE GRAND JURY
TRUE BILL
OCT 0 1 2012
Date

Foreperson of Grand Jury
Date: October 10, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS38-1563

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

October 8, 2012 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for

ATTEMPTED MURDER

SC Code: 16-3-29

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within Indictment or to

Defendant

ATTEST: TRUE COPY

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2011GS38-1563

At a Court of General Sessions, convened on October 8, 2012 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

That in Orangeburg County, South Carolina, on or about June 26, 2011, the Defendant, Richard Lanard Sprinkle, did enter the residence armed with a gun and a knife, causing multiple injuries to the victim by cutting the victim, Robert Rump, with a knife on the chest, feet, and arm area, and as a result violated Section 16-03-0029 Code of Laws of South Carolina, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sarah A. Ford

Sarah A. Ford, Solicitor

M-805589

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Orangeburg

THE STATE 2011007280

against

ichard Lanard Sprinkle

dress: [redacted]

one: SSN: [redacted]

x: M Race: B Height: 5 9 Weight: 180

State: SC DL #:

B: [redacted] Agency ORI #: SC0380000

secuting Agency: Orangeburg County Sheriff

secuting Officer: Lori Garrison - 1021

ense: Murder / Attempted Murder

ense Code: 3410

te/Ordinance Sec: 16-03-0029

warrant is CERTIFIED FOR SERVICE in the

[ ] County/ [ ] Municipality of

. The accused

to be arrested and brought before me to be

lt with according to the law.

(L.S.)

Signature of Judge

:

RETURN

opy of this arrest warrant was delivered to

ndant

Signature of Constable/Law Enforcement Officer

JRN WARRANT TO:

General Sessions

151 Docket Street

P. O. Box 9000

Orangeburg, SC 29116

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA)

[X] County/ [ ] Municipality of)

Orangeburg)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Lori Garrison who being duly sworn deposes and says that defendant Richard Lanard Sprinkle did within this county and state on or about 06/26/2011 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) in the following particulars:

DESCRIPTION OF OFFENSE Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

Based on the investigation by the Orangeburg County Sheriff's Office, the defendant, Richard Lanard Sprinkle violated section 16-3-29 of the SC code of laws, Attempted Murder. On Saturday, June 26, 2011, while located at [redacted] the defendant did enter the residence armed with a gun and knife, causing multiple injuries to the victim by cutting the victim. Robert Rump, with a knife on the chest, feet and arm areas. This incident occurred in the County of Orangeburg, State of South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA)

[X] County/ [ ] Municipality of)

Orangeburg)

Affiant's Address P. O. Box 9000

Orangeburg, SC 29116-

Affiant's Telephone (803)531-4647

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 6/26/2011 defendant Richard Lanard Sprinkle did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Orangeburg) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me)

on 06/28/2011)

(L.S.))

Signature of Issuing Judge)

Richard Murray)

Judge Code: 5796)

Judge's Address 1540 Ellis Avenue

Orangeburg, SC 29116-9000

Judge's Telephone (803)533-5879

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL

358

WITNESSES

LORI GARRISON

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2013ORB7

Arrested: June 29, 2011

TRUE BILL
ACTION OF GRAND JURY
Date JAN 30 2013

Foreperson of Grand Jury
Date: January 30, 2013

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS38-0287

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

February 4, 2013 TERM

THE STATE
vs.

Richard Lanard Sprinkle

Indictment for

BURGLARY - FIRST DEGREE

SC Code: 16-11-311

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
2013 JAN 30 PM 4:51
ORANGEBURG COUNTY
CLERK OF COURT
ATTEST
TRUE COPY
CLERK OF COURT
ORANGEBURG CO.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

INDICTMENT
2013GS38-0287

At a Court of General Sessions, convened on February 4, 2013 the Grand Jurors of Orangeburg County present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about June 26, 2011, the Defendant, Richard Lanard Sprinkle, did willfully and unlawfully enter the dwelling of the victims Robert Rumph and James Wright at [redacted], [redacted], without consent and with the intent to commit a crime therein and the defendant did while armed with a deadly weapon caused physical injury to the victims. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sarah A. Ford

Sarah A. Ford, Solicitor

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Circuit Court

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the April 15, 2014, revised order concerning personal identifying information and other sensitive information in appellate court filings from the South Carolina Supreme Court.

By: RMcC

Tina Cundari, S.C. Bar No. 71951
Alexander E. Davis, S.C. Bar No. 100061
SOWELL GRAY STEPP & LAFFITTE LLC
1310 Gadsden Street
Columbia, South Carolina 29201
(803) 929-1400
tcundari@sowellgray.com
adavis@sowellgray.com

Robert M. Dudek
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Circuit Court

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina, ... Respondent,

v.

Richard Lanard Sprinkle, ... Appellant.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Table of Authorities iii

Statement of Issues on Appeal iv

Statement of the Case 1

Facts 1

Standard of Review 3

Argument 4

I. **The trial court erred in denying the motion to suppress the identification of Richard Sprinkle** 4

II. **The trial court erred in limiting the cross-examination of Sean Echols, who testified on behalf of the State** 6

III. **The trial court erred in denying Sprinkle's motion for directed verdict and motion for new trial** 13

IV. **The trial court erred in failing to charge the lesser-included offense of assault and battery in the second degree** 17

Conclusion 20

TABLE OF AUTHORITIES

Federal Cases

Delaware v. Van Arsdall, 475 U.S. 673 (1986) 8, 12, 13

Duncan v. State of La., 391 U.S. 145 (1968) 8

Neil v. Biggers, 409 U.S. 188 (1972) 4

Pillsbury Co. v. Conboy, 459 U.S. 248 (1982) 9

United States v. Mathis, 550 F.2d 180 (4th Cir. 1976) 11

State Cases

State v. Cheeseboro, 345 S.C. 526, 552 S.E.2d 300 (2001) 4

State v. Dennis, 402 S.C. 627, 742 S.E.2d 21 (Ct. App. 2013) 17

State v. Gilliland, 402 S.C. 389, 741 S.E.2d 521 (Ct. App. 2012) 14

State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) 8, 12, 13

State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997) 7, 9

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) 15

State v. Mizell, 349 S.C. 326, 563 S.E.2d 315 (2002) 8, 10, 12

State v. Moore, 374 S.C. 468, 649 S.E.2d 84 (2007) 16

State v. Senter, 396 S.C. 547, 722 S.E.2d 233 (Ct. App. 2011) 4, 13

Statutes and Regulations

S.C. Code Ann. § 16-3-600 (2011) 17

S.C. Code Ann. § 16-3-600(A)(1) (Supp. 2012) 18

S.C. Code Ann. § 16-3-600(A)(2) (Supp. 2012) 18

S.C. Code Ann. § 16-3-600(C)(1) (Supp. 2012) 18

S.C. Code Ann. § 16-3-600(D)(3) (Supp. 2012) 18

S.C. Code Ann. § 16-11-330 (2003) 16

S.C. Code Ann. § 16-11-311(A) (2003) 14

Court Rules

Rule 410, SCRE 10, 12

Rule 608(c), SCRE 10

Rule 609, SCRE 8, 10

Other Authorities

Wright, Miller, et al., 23 Fed. Prac. & Proc. Evid. § 5349 (1st ed.) 11

STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in admitting identification evidence that was unreliable and unduly suggestive?

II. Did the trial court err in limiting the cross examination of Sean Echols, one of the perpetrators of the crime and a witness for the State?

III. Did the trial court err in denying the motion for directed verdict and motion for new trial when the evidence did not support the conviction?

IV. Did the trial court err in failing to charge the lesser-included offense of assault and battery in the second degree?

STATEMENT OF THE CASE

This is an appeal from a verdict finding Richard Lanard Sprinkle guilty of one count of burglary, two counts of armed robbery, and one count of assault and battery in the first degree. (R. pp. 331-333.) Sprinkle was sentenced to 35 years in prison for burglary, 30 years for the two counts of armed robbery, and 10 years for assault and battery in the first degree. (R. p. 330; pp. 346-349.)

Sprinkle was arrested on June 29, 2011, and indicted on October 1, 2012, for two counts of armed robbery, two counts of attempted murder, and burglary in the first degree. (R. p. 5; pp. 350-360.) On January 30, 2013, Sprinkle was indicted for first degree burglary. (R. p. 359.)

The case was tried before a jury in Orangeburg County on April 9 and 10, 2013, nearly two years after Sprinkle was arrested. The jury found Sprinkle guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery. (R. pp. 331-333.) The jury found Sprinkle not guilty as to attempted murder and not guilty as to assault and battery of one of the victims.

This appeal follows.

FACTS

This case involves a crime that occurred in a gambling house in Orangeburg on the early morning hours of June 26, 2011. The victims were James Wright and Robert Rumph. Wright and Rumph lived together. (R. p. 106, lines 20-24.) Rumph makes his money playing cards and gambling. (R. p. 153, lines 19-20.) On the night of the crime,

there had been a card game at the house. (R. pp. 154-155.) Wright, who is 74 years old, drank a "half of a half a pint" of liquor.[1] (R. p. 115, lines 20-21; p. 130, lines 5-18.)

According to Wright, he and Rumph were sleeping when there was a knock at the door. The person asked if "Uncle Rocky," meaning Rumph, was home. (R. p. 107, lines 11-12; p. 117; p. 119, lines 12-18.) The person said he wanted to use the phone. (R. p. 107, lines 11-12). Wright looked out the window to see who was there. Wright said he could see the faces of the men from the city streetlight. (R. p. 130, lines 22-24.) He testified that he went to the back bedroom to tell Rumph that someone was at the door asking for him. Rumph said to let them in. (R. p. 119, lines 13-14.) Wright opened the door and the men came inside. It was dark inside and Wright did not turn on the lights. (R. p. 16, lines 16-19; p. 22, lines 2-4; p. 130, lines 19-22.) Once inside, one of the men immediately hit Wright on the head with a pistol and demanded money. (R. p. 109, line 25 – p. 110, line 8; p. 119, lines 18-24.)

The other man went to Rumph's room. Rumph testified that a "black guy with long dreads on his hair" came into his room and demanded money. (R. p. 137; p. 143, line 7.) Rumph testified that his bedroom light and TV were on. (R. p. 148, lines 15-17.) When Rumph did not immediately give the man money, the man cut Rumph with a knife. (R. p. 138.)

Rumph testified that Wright and the other man eventually came into his bedroom. Rumph recognized the other man as Sean Echols, Vivian's son. Vivian was a woman whom Rumph "socialized" with. (R. p. 139; p. 145.) Vivian knew that Rumph kept a lot of money in the house, and Rumph had loaned money to Echols in the past. (R. p. 139;

[1] In the pre-trial hearing, Wright testified that he draft "about a half a pint." (R. p. 16, lines 4-7.)

pp. 145-146.) Vivian had called the house twice that evening. (R. p. 151, lines 17-22.) The second time she called, she asked if she could come over. Rumph said no, that he was in bed. (R. p. 155, lines 19-20.) Rumph testified that a little over $1000 was stolen. (R. p. 153, lines 11-12.) Rumph also testified that his car, a pair of pants, and a hat were taken. (R. p. 140; p. 143.)

Shortly after the men left, the police arrived. Wright said that the man who hit him was "dark skinned" and had dreadlocks. (R. p. 128.) The police showed Wright three or four different photo lineups on three different days. (R. p. 113, line 24 - p. 114, line 1; p. 133, lines 1-7.) Wright was not able to identify anyone in the first lineup. (R. p. 133, line 14 – p. 133, line 7.) After Wright told the police that he thought the man's name was Ricky, the police created a photo lineup with a photo of Richard Sprinkle. (R. pp. 38-40.) Wright identified Sprinkle as one of the perpetrators. (R. p. 334.) Wright also identified Echols. (R. pp. 113-114; p. 335.)

Rumph, on the other hand, was not able to identify Sprinkle. (R. p. 180, lines 1-8.) He was only able to give a description, which was that the man was "shorter and had dreads and dark skin." *Id.* Rumph identified Echols, however. (R. p. 142; p. 336.)

Sprinkle was arrested on June 29, 2011, three days after the crime. In January 2013, Sprinkle met with the police and told them that he was present at the scene of the crime, but that when he saw Echols assaulting someone, he got scared and ran out of the house. (R. p. 187; p. 190; p. 193; p. 197.) He said that he was on drugs and that is why he went to the house. (R. p. 190, lines 21-23.) He never said that he had a weapon and he never said that he hit anyone. (R. p. 194, lines 1-4.) He also testified that Echols's mom, Vivian was there. (R. p. 197, lines 18-21.) He said that he was afraid of Echols.

(R. p. 192, lines 23-25.) Echols had been threatening him and he wanted to be moved from Orangeburg Detention Center. (R. p. 197, line 24 – p. 198, line 4.)

STANDARD OF REVIEW

"In criminal cases, appellate courts review errors of law only and are bound by the trial court's factual findings unless they are clearly erroneous." *State v. Senter*, 396 S.C. 547, 551, 722 S.E.2d 233, 235 (Ct. App. 2011).

ARGUMENT

I. The trial court erred in denying the motion to suppress the identification of Richard Sprinkle.

The trial court erred in denying the motion to suppress the identification of Richard Sprinkle because the testimony presented by Wright was unreliable and the lineup was unduly suggestive because Sprinkle appears in prison garb.

"An in-court identification of an accused is inadmissible if a suggestive out-of-court procedure created a very substantial likelihood of irreparable misidentification." *State v. Cheeseboro*, 345 S.C. 526, 540, 552 S.E.2d 300, 307-08 (2001). "To determine the admissibility of an identification, the court must determine (1) whether the identification process was unduly suggestive and (2) if so, whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." *Id.* at 540, 552 S.E.2d at 308. In evaluating the likelihood of misidentification, courts consider the following factors: "the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation." *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972).

In the case at hand, the identification of Sprinkle was unreliable. Wright testified that he was immediately hit over the head when the men came into the house and that it was dark inside and he never turned the lights on. He further testified that he had been drinking that night.[2]

Further, the description Wright gave the police did not match a description of Sprinkle. Wright initially told the police that the person who assaulted him was a dark-skinned black man with shoulder length dreadlocks. But he later identified Sprinkle as the perpetrator. Wright admitted that Sprinkle "changed a little bit" since the night of the crime. (R. p. 14, lines 1-4.) He said, "He ain't quite as black in the face." *Id.* He also said his hair is shorter and his skin's a little cleaner that it was then. It was more darker." (R. p. 26, line 22 – p. 27, line 3.)

Additionally, Wright did not identify Sprinkle in a photo lineup until after Wright gave the police Sprinkle's name. Wright did not give the police Sprinkle's name during the initial interview. (R. p. 39, lines 12-15.) Wright was shown a total of four different lineups on three different days. (R. p. 24, line 17 – p. 25, line 2.) He said he was shown the first one the day after the crime, but was not able to identify anyone. *Id.* He was shown additional lineups the next day, and again, no identification. *Id.* It was not until after Wright told the police that someone named "Ricky" was involved that the police produced a lineup with Sprinkle's photo. (R. p. 39, line 24 – p. 40, line 7.) Wright said that the police handed him the lineup and said, "The suspect's on here, see if you can pick him." (R. p. 25, lines 17-19.) Wright circled the photo of Sprinkle

[2] The jury ended up not believing Wright's testimony that Sprinkle was the one who hit him. The jury found Sprinkle not guilty as to assault and battery of Wright. (R. pp. 331-333.)

even though it did not match the description he gave the police. If Wright knew who the perpetrator was, then there should not have been a need to create a lineup. The creation of a lineup that contained a photo of a suspect who matched the name giving to the police but not the description was unduly suggestive and created a very substantial likelihood of irreparable misidentification.

More importantly, Rumph never identified Sprinkle, even though he was in the best position to do so. Rumph described the person who came into his bedroom as "a black guy with long dreads on his hair." (R. p. 143, lines 3-7.) Rumph said that the TV and light were on his bedroom. Rumph testified that eventually the other perpetrator, whom both Wright and Rumph identified as Sean Echols, came into the room. (R. p. 157.) Rumph had a much better opportunity to observe the men than Wright did. His room was lit, he had not been immediately hit over the head, and there was no testimony presented that he had been drinking that night. Wright testified that the robbery lasted approximately 25 minutes, which gave Rumph plenty of time to view the perpetrators. (R. p. 23, lines 16-21.) Rumph never identified Sprinkle in any of the lineups he was shown.

Finally, the lineup itself is unduly suggestive because Sprinkle appears in prison garb. (R. p. 334.) The other men are wearing t-shirts and tank tops. Sprinkle is the only one who appears in a gray, scrub-like shirt that is worn in prison.

Given these circumstances, there is a substantial likelihood that a misidentification has occurred. The in-court identification made by Wright and the photo lineup should have been excluded.

II. The trial court erred in limiting the cross-examination of Sean Echols, who testified on behalf of the State.

The trial court erred in limiting defense counsel's cross-examination of Sean Echols, who was one of the perpetrators and a key witness for the State. Echols was the only witness who testified that Sprinkle helped plan the crime. Without Echols's testimony, the jury could not have convicted Sprinkle of burglary, and may not have convicted him of armed robbery and assault and battery.

At trial, defense counsel sought to cross-examine Echols regarding (1) several prior convictions, (2) Echols's sentence for the conduct in this case, (3) a plea deal that Echols was offered, and (4) pending charges related to a federal investigation of a shooting of a corrections officer. The State moved to exclude cross-examination on these subjects. (R. pp. 54-57; pp. 215-216; pp. 234-241.) Although the trial court allowed the defense to cross-examine Echols about his prior convictions and the maximum sentence he faced the conduct in this case, the trial court refused to allow the defense to cross-examine Echols regarding the federal charges and any plea deal offered by the State. (R. pp. 87-88; pp. 240-42.)

A. The federal charges

Prior to trial, the State made a motion to limit the cross-examination of Echols regarding federal charges pending against him. (R. pp. 54-57). The defense opposed the motion, arguing that cross-examination should be permitted to impeach the witness. *Id.* The trial court granted the State's motion. (R. pp. 86-89). The trial court ruled that the examination was prohibited because it violated Echols's Fifth Amendment right to refuse to offer incriminating testimony. *Id.* The trial court relied on *State v. Hughes*, 328 S.C. 146, 493 S.E.2d 821 (1997), for the proposition that the defense should not be allowed to call a witness whom it knows will invoke the Fifth Amendment in front of the jury, and

ruled that the attempted murder is not a crime that is probative of truthfulness, and therefore cross-examination was not permitted.[3] *Id.*

At trial, the State called Echols to testify. (R. p. 203, line 17.) At the beginning of the cross-examination, the jury was excused, the State renewed its objection, and the Court sustained the State's objection. (R. pp. 215-17.) This was error.

The Sixth Amendment rights to notice, confrontation, and compulsory process require that a defendant be allowed to answer charges "through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994).[4] A criminal defendant has the right under the Confrontation Clause to cross-examine a witness against him with regard to bias. *State v. Mizell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). A defendant's rights under the Confrontation Clause are violated where the he is "prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors [] could appropriately draw inferences relating to the reliability of the witness.'" *Id.* at 331, 563 S.E.2d at 317 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680 (1986)). "The trial judge retains discretion to impose reasonable limits on the scope of cross-examination." *Mizell*, 349 S.C. at 331, 563 S.E.2d at 317. "Before a trial judge may limit a criminal defendant's

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[3] Although not specifically mentioned by the court, the basis for this part of its ruling appears to be Rule 609, SCRE.

[4] These Sixth Amendment protections are extended to state defendants through the Due Process Clause of the Fourteenth Amendment. *E.g., Duncan v. State of La.*, 391 U.S. 145, 148 (1968).

right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate." *Id.*

The trial court's reliance on the Fifth Amendment and *Hughes* was error, and violated Sprinkle's rights under the Confrontation Clause. Echols should not have been allowed to invoke his Fifth Amendment right not to testify when he was simply asked whether he had "been charged in a federal case involving the shooting of a corrections officer." (R. p. 215, lines 18-20.) "It is . . . black-letter law that a witness cannot assert a Fifth Amendment privilege not to testify if the testimony sought cannot possibly be used as a basis for, or in aid of, a criminal prosecution against the witness." *Pillsbury Co. v. Conboy*, 459 U.S. 248, 273 (Blackmun, J. concurring). Here, the question posed sought merely a factual answer regarding whether the witness had been charged with a crime. The question was not intended to elicit incriminating testimony. Accordingly, defense counsel was entitled to question Echols regarding the existence of these charges.

The trial court's reliance on *Hughes* and Rule 608(b)(1), SCRE, is misplaced. In *Hughes*, the South Carolina Supreme Court held that a defense counsel may not put a defendant "on the stand *solely* to allow the jury to draw adverse inferences from his refusal to testify." 328 S.C. at 152-53, 493 S.E.2d at 824 (emphasis in original). In this case, Echols was not being put on the stand solely to allow the jury to draw an inference regarding his refusal to testify. The purpose of the examination was to demonstrate that Echols had additional charges pending against him, which may influence his testimony against Sprinkle. Cross-examination to elicit such bias is permissible under the Sixth Amendment and state law.

Similarly, Rule 609, SCRE, does not apply. Rule 609 applies to the use of past convictions to impeach a witness. But the testimony in question did not relate to Echols's prior convictions. It concerned pending charges.

The purpose of the cross-examination was to demonstrate the potential for bias by Echols, a purpose which is allowable under Rule 608(c), SCRE, and *Mizell*. The mere fact that a witness has "neither agreed to a plea bargain nor pled guilty" does not allow a court to exclude such testimony. *Mizell*, 349 S.C. at 332, 563 S.E.2d at 318.

Accordingly, the trial judge erred in prohibiting cross-examination on the federal charges.

B. Plea discussions with the State

The trial court also erred in prohibiting the defense from cross examining Echols about his plea discussions with the State. Defense counsel sought to question Echols about whether "he [was] given an offer of a cap of 20 years. And obviously that goes along with the same issue of, he could be facing life, he was offered 20 and he's looking for ten [years]." (R. p. 237, lines 17-20.) Although the basis for the trial court's ruling is not entirely clear on the record, it appears to be based on Rule 410, SCRE.[5]

Rule 410, SCRE, reads:

> Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible *against the defendant* who made the plea or was a participant in the plea discussions:

[5] The trial court ruled that "[w]ith regards to Mr. Echols asking, you know, for ten years or asking for a cap of 20 years, whether or not that was given or not, all of that is part of plea negotiations and we're not going to get into that." (R. p. 240 line 24 – p. 241 line 2). This was in response to the State's argument that their objection to the proffered cross-examination was that that no plea had been reached as a result of Echols' discussions with the State. The State referred the court to Rule 410, SCRE, which is "specifically discussing plea negotiations." (R. p. 239, line 5.)

> . . . (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

(emphasis added). The language in the rule suggests that the rule applies only in a civil or criminal proceeding "against the defendant."

Although state courts have not addressed what it means for the rule to apply "against the defendant," at least one federal court has. In *United States v. Mathis*, the Fourth Circuit stated that it "see[s] no error in the use of a statement of a witness made when he pleaded guilty to impeach his testimony in this trial [of another individual]."[6] 550 F.2d 180, 182 (4th Cir. 1976). The Court went on to hold that "Federal Rule of Evidence 410 . . . only prohibit[s] statements made in conjunction with a guilty plea from being used . . . against the person who made the plea." *Id.* Thus, there is no protection under Rule 410 where the statements sought to be introduced are only to be "used collaterally for the purposes of impeachment." *Id. See also* Wright, Miller, et al., 23 Fed. Prac. & Proc. Evid. § 5349 (1st ed.) ("Presumably the use of the statement [from plea negotiations] to impeach the defendant when he testifies in some case in which he is not a party would be permissible. Moreover, in some cases the invocation of the rule by the prosecutor to prevent the defendant from using a plea-related statement for impeachment purposes might run afoul of the Confrontation Clause.").

Here, the plea negotiations between Echols and the State should have been revealed to the jury as evidence of Echols's bias. Echols's testimony was not being

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[6] The Fourth Circuit noted that in addition to the fact that the statement was used in the trial of a third party, the rule did not apply because the guilty plea was not withdrawn by the witness. *Mathis*, 550 F.2d at 182.

introduced into evidence at his own trial, and therefore Rule 410, SCRE, did not bar cross-examination regarding this matter.

In *Mizell*, the witness "had neither agreed to a plea bargain nor pled guilty." 349 S.C. at 332, 563 S.E.2d at 318. Although *Mizell* specifically dealt with whether the maximum sentence the witness faced was admissible upon cross examination, the court's holding provides guidance in the instant case. As the supreme court stated in *Mizell*, "*any fact* may be elicited which tends to show interest, bias, or partiality of the witness." 349 S.C. at 331, 563 S.E.2d at 317 (emphasis added). The supreme court also held that "[t]he fact that a witness has yet to reach a plea bargain or been found guilty should not prevent the admission of [evidence indicative of bias]. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation of leniency." *Id.*

Echols' testimony regarding his plea negotiations is the type of evidence of bias envisioned in *Mizell*. Echols had been offered plea, but was hoping for even greater leniency in exchange for his testimony and therefore had not accepted the plea. (R. p. 237.) The failure to allow defense counsel to cross-examine Echols about this plea offer and his reasons for not accepting it violated Sprinkle's Sixth Amendment rights.[7]

Although a violation of the Confrontation Clause is not *per se* reversible error, in order to avoid reversal "the error must be harmless beyond a reasonable doubt." *Graham*, 314 S.C. at 386, 444 S.E.2d at 527 (1994) (quoting *Van Arsdall*, 475 U.S. 673, 680 (1986)). The determination of whether an error is harmless beyond a reasonable

[7] The prosecution also opened the door to this testimony in its direct examination of Echols, where the State elicited testimony that the defendant was testifying "out of the goodness of his heart" and had not been offered anything. (R. p. 212, lines 18-22.)

doubt "depends upon a host of factors" including "the importance of the witness' testimony[,] . . . whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted and, of course, the overall strength of the prosecution's case." *Graham*, 314 S.C. at 386, 444 S.E.2d at 527 (quoting *Van Arsdall*, 475 U.S. at 684).

Here, Echols's testimony was an essential part of the State's case. Without his testimony, the State had no evidence that Sprinkle helped plan the crime, and therefore no evidence of intent, particularly with respect to burglary. Additionally, Echols was the only person to testify that Sprinkle assaulted Rumph, which was directly contradicted by Rumph himself, who was never able to identify Sprinkle.

Given the importance of Echols's testimony and the limitations on Sprinkle's ability to confront him through cross examination, the trial court's ruling should be reversed.

III. The trial court erred in denying Sprinkle's motion for directed verdict and motion for new trial.

The trial court erred in denying the motion for directed verdict and a motion for new trial because the evidence presented did not support the convictions in this case.

"When reviewing the denial of a motion for directed verdict, an appellate court must review the evidence, and all inferences therefrom, in the light most favorable to the State." *State v. Senter*, 396 S.C. 547, 551, 722 S.E.2d 233, 235-36 (Ct. App. 2011). "If there is any evidence, direct or circumstantial, which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced, the appellate court must find the case was properly submitted to the jury." *Id.* at 551, 722 S.E.2d at

236. "The decision whether to grant a new trial rests with the sound discretion of the trial court, and [the appellate court] will not disturb the trial court's decision absent an abuse of discretion." *Id.*

A. First-degree burglary

"A person is guilty of first-degree burglary if he 'enters a dwelling without consent and with intent to commit a crime in the dwelling' and either enters or remains in the dwelling during the nighttime." *State v. Gilliland*, 402 S.C. 389, 397, 741 S.E.2d 521, 525 (Ct. App. 2012) (quoting S.C. Code Ann. § 16-11-311(A) (2003)). "Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling." *Id.*

Here, the only evidence presented to support a conviction of burglary came from Sean Echols, whom defense counsel was not able to fully cross examine as explained above. Echols testified that Sprinkle, along with two other people, helped him plan the crime. (R. pp. 206-07; p. 212.) The two other people were Jasper Clark and Collins (Carlos) Shuler, people whom Echols had "known all of his life." (Rr. pp. 227-30; pp. 247-48.) Echols said that Clark, who was known as Little J, helped plan the robbery, drove them to the house, and shared in the proceeds. (R. p. 228.) Echols had only met Sprinkle "a couple, a few times prior." (R. p. 205, lines 12-15; p. 246, lines 5-7.)

Echols knew that there was a lot of money in the house. His mother "socialized" with Rumph and Echols had borrowed money from Rumph before. (R. p. 139; p. 145.) There was no evidence presented that Sprinkle knew any of this.

Echols testified that he (Echols) was the one who knocked on the door and asked to use the phone. (R. p. 208, lines 8-12.) Echols testified that he "robbed Mr. Wright while Richard Sprinkle went to Mr. Robert Rumph's room."[8] (R. p. 209, lines 20-21.) But Rumph never identified Sprinkle.

Despite this testimony, Echols was not indicted for burglary. Only Sprinkle was indicted. Echols understood that burglary carries a potential sentence of life imprisonment. (R. p. 234, lines 6-12; p. 243, lines 14-19.)

The jury was given a charge on mere presence. "Mere presence at the scene is not sufficient to establish guilt as an aider or abettor." *State v. Mattison*, 388 S.C. 469, 480, 697 S.E.2d 578, 584 (2010). "However, presence at the scene of a crime *by pre-arrangement* to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principle." *Id.* (emphasis added).

Without Echols's testimony, there was no evidence that Sprinkle was at the scene by pre-arrangement to aid, encourage or abet, in the perpetration of the crime. The defense was not able to fully explore Echols's credibility because of the limitation on the cross examination as explained above.

Because the evidence presented in this case does not reasonably tend to prove the guilt of Sprinkle with respect to the charge of first degree burglary, the trial court should have granted the motion for a directed verdict or the motion for a new trial.

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[8] Echols previously gave a statement to the police saying that three men went into the house that night, and that one of the men did not help plan the crime; he just stood there. (R. p. 226.) Echols later said that he lied to the investigator because he did not trust him. *Id.*

B. Armed robbery

"Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon." *State v. Moore*, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (2007) (citing S.C. Code Ann. § 16-11-330 (2003)). "Included in armed robbery is the lesser included offense of robbery." *Moore*, 374 S.C. at 476, 649 S.E.2d at 88. "Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence of by putting such person in fear." *Id.* "The gravamen of a robbery charge is a taking from the person or immediate presence of another by violence or intimidation." *Id.* at 477, 649 S.E.2d at 88. "The elements of robbery and armed robbery include asportation of the property." *Id.*

In this case, there was no evidence presented that Sprinkle took anything from anyone, or that he participated in taking anything. Wright's testimony identifying Sprinkle is unreliable as explained above. The jury found Sprinkle not guilty of assaulting Wright, which means the jury did not believe Wright's testimony that Sprinkle is the one who assaulted him. And Rumph was never able to identify Sprinkle.

Given that there was no evidence presented that Sprinkle took anything from anyone or that he participated in the crime, the trial court should have granted a directed verdict or the motion for a new trial.

C. Assault and Battery

The trial court erred in failing to direct a verdict or grant a new trial as to the charge of assault and battery of Rumph.

"A person commits the offense of assault and battery in the first degree if the person unlawfully: injures another person, and the act . . . (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft . . . ." S.C. Code Ann. § 16-3-600 (2011).

Here, despite being shown multiple lineups, Rumph never identified Sprinkle as the person who injured him. Nor did he identify Sprinkle in court. Rumph had the best opportunity to view the perpetrator because the light was on in his room and Rumph was not immediately hit over the head like Wright was. Further, Rumph was able to positively identify Echols, who came into the room after Rumph had been assaulted.

Further, Wright's testimony was that someone else other than Sprinkle assaulted Rumph. Wright testified that Sprinkle assaulted him (Wright) by hitting him over the head while the other perpetrator went into the room and confronted Rumph. Wright testified that when he went into Rumph's room, he saw that Rumph had been cut on his leg and foot, but he did not see it happen. (R. pp. 126-127.)

The only person who testified that Sprinkle harmed Rumph was Echols, who as explained above, the defense was not permitted to fully cross-examine. Given the limited cross examination of Echols and Rumph's inability to identify Sprinkle as the person who assaulted him, the trial court erred in denying the motion for directed verdict and the motion for new trial as to the assault and battery of Rumph.

IV. The trial court erred in failing to charge the lesser-included offense of assault and battery in the second degree.

A defendant is entitled to a jury charge on a lesser included offense where "there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." *State v. Dennis*, 402 S.C. 627, 637-38, 742 S.E.2d 21, 27 (Ct.

App. 2013). "To warrant reversal, a trial court's refusal to give a requested jury instruction 'must be both erroneous and prejudicial to the defendant." *Id.* at 637, 742 S.E.2d at 27.

Assault and battery in the first degree occurs where a defendant injures another and the act involves nonconsensual touching of the other's private parts, occurred during the commission of a robbery, burglary, kidnapping, or theft, or an offer or attempt to injury someone was "accomplished by means likely to produce death or great bodily injury." S.C. Code Ann. § 16-3-600(C)(1) (Supp. 2012). Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, assault and battery of a high and aggravated nature, and attempted murder. S.C. Code Ann. § 16-3-600(D)(3) (Supp. 2012).

The statute defines "great bodily injury" as injury "which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ." S.C. Code Ann. § 16-3-600(A)(1) (Supp. 2012). The statute defines "moderate bodily injury" as "physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles, and connective tissues of the body that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia." S.C. Code Ann. § 16-3-600(A)(2) (Supp. 2012).

In the case at hand, the trial court refused to charge assault and battery in the second degree as to Rumph because the court found that Rumph's injury was more than "moderate bodily injury." This was error. Rumph's injury did not rise to the level of

"great bodily injury." There was no evidence presented that Rumph suffered a substantial risk of death or permanent disfigurement. Rumph's injuries required stitches. He was taken to the hospital and released that same day. Similarly, there was no evidence that the assailant—and certainly not Sprinkle—attempted to cause death or great bodily injury. Instead, the evidence presented was that the person cut him to try to make him give over the money.

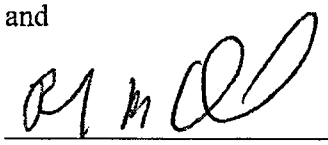
Because there was evidence by which it could be inferred that Sprinkle committed only assault and battery in the second degree, the court should have charged the lesser-included offense, and the failure to do so constitutes reversible error.

CONCLUSION

Appellant respectfully requests that the convictions and sentences be reversed and the case remanded for a new trial.

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June 24, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Circuit Court

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 24, 2014.

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In the Court of Appeals

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Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

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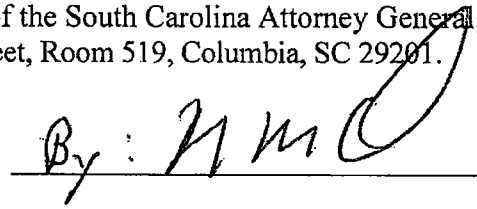
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PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant on Respondent State of South Carolina on June 24, 2014, addressed to the attorney of record, J. Benjamin Aplin, Assistant Attorney General, Office of the South Carolina Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

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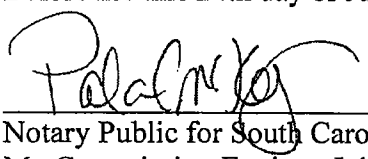
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SUBSCRIBED AND SWORN TO
Before me this 24th day of June, 2014.



Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

THE STATE,.....RESPONDENT

v.

RICHARD LANARD SPRINKLE,.....APPELLANT.

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TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Respondent's Statement of Issues on Appeal 1

Statement of the Case 2

Statement of Facts 3

Argument:

I. Appellant's claim that the trial court erred in failing to suppress the victim's in-court identification testimony is not preserved for appellate review because Appellant failed to object to the identification when it was offered at trial, and even if preserved, the trial court properly concluded the out-of-court photo lineup identification did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed. 21

II. The trial court properly imposed reasonable limits on Appellant's cross-examination of State's witness Sean Echols where the interrogation sought: (1) was irrelevant, (2) was likely to confuse the issues, and (3) would not demonstrate a prototypical form of bias on the part of Echols. 30

III. The trial court properly denied Appellant's motions for a directed verdict and for a new trial on all charges where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge 38

IV. The trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred the lesser, rather than the greater, offense was committed. 44

Conclusion 51

TABLE OF AUTHORITIES

Cases:

Federal:

Neil v. Biggers, 409 U.S. 188 (1972). 3, 24, 27

Delaware v. Van Arsdall, 475 U.S. 673 (1986) 32, 36

State:

Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736 (1963) 49

Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005) 24

State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003) 51

State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) 31, 32

State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012) 22

State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006) 23, 28

State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989) 29

State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978) 28

State v. Brown, 205 S.C. 514, 32 S.E.2d 825 (1945) 45

State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991) 32, 38

State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997) 22

State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 39

State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002) 39, 41, 42, 44

State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008) 39

State v. Dukes, 404 S.C. 553, 745 S.E.2d 137 (Ct. App. 2013) 24, 25, 26

State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008) 28, 52

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) 22

State v. Frazier, 386 S.C. 526, 689 S.E.2d 610 (2010) 41

State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) 39

State v. Geiger, 370 S.C. 600, 635 S.E.2d 669 (Ct. App. 2006) 48

State v. Gibson, 390 S.C. 347, 701 S.E.2d 766 (Ct. App. 2010) 42

State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004), ... 31, 33

State v. Govan, 373 S.C. 552, 643 S.E.2d 92 (Ct. App. 2007) 23

State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) ..... passim

State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) 31

State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012) 47

State v. Hariott, 210 S.C. 290, 42 S.E.2d 285 (1947) 51

State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003) 28

State v. Hill, 315 S.C. 260, 433 S.E.2d 838 (1993) 47

State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009) 47

State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997) 8, 34

State v. Kirkpatrick, 320 S.C. 38, 462 S.E.2d 884 (Ct. App. 1995) 29

State v. Liverman, 398 S.C. 130, 727 S.E.2d 422 (2012) 24, 25, 28, 30

State v. Mallory, 270 S.C. 519, 242 S.E.2d 693 (1978) 50

State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002) 32, 35, 37

State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986) 39

State v. Peer, 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996) 47

State v. Pinckney, 339 S.C. 346, 529 S.E.2d 526 (2000) 40, 41

State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000) 31

State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006) 48

State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993) 22

State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991) 28

State v. Simmons, 308 S.C. 80, 417 S.E.2d 92 (1992) 29

State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App .2009) 23, 48

State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996) 22

State v. Singleton, 395 S.C. 6, 716 S.E.2d 332 (Ct. App. 2011) 24, 25, 26, 29

State v. Small, 307 S.C. 92, 413 S.E.2d 870 (Ct. App. 1992) 50

State v. Smith, 337 S.C. 27, 522 S.E.2d 598 (1999) 21

State v. Taylor, 255 S.C. 147, 177 S.E.2d 550 (1970) 37

State v. Thompson, 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003) 51

State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004) 24

State v. Turner, 373 S.C. 121, 644 S.E.2d 693 (2007) 23, 25

State v. Weaver, 265 S.C. 130, 217 S.E.2d 31 (1975) 47

State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) 39

State v. Whitner, 380 S.C. 513, 670 S.E.2d 655 (Ct. App. 2008) 31

State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009) 22

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 23, 39

Constitutions and Statutes:

U.S. Const. amend. VI 31

S.C. Code Ann. § 16-3-29 (Supp. 2013) 48

S.C. Code Ann. § 16-3-600 48

S.C. Code Ann. § 16-3-600 (Supp. 2013) 48

S.C. Code Ann. § 16-3-600(B)(3) 48

S.C. Code Ann. § 16-3-600(C)(1) 49

S.C. Code Ann. § 16-3-600(C)(3) 48

S.C. Code Ann. § 16-3-600(C) (Supp. 2013) 43

S.C. Code Ann. § 16-3-600(D)(3) 48

S.C. Code Ann. § 16-11-310 (2003) 40

S.C. Code Ann. § 16-11-311 (2003) 39

S.C. Code Ann. § 16-11-330(A) (2003) 41

Rules:

Rule 404(b), SCRE 34

Rule 405, SCRE 16

Rule 410, SCRE 16, 35

Rule 608(b), SCRE 33

Rule 608(c), SCRE 31, 36

Rule 609(a)(1), SCRE 14

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether Appellant's claim that the trial court erred in failing to suppress the victim's in-court identification testimony is preserved for appellate review where Appellant failed to object to the identification when it was offered at trial, and even if preserved, whether the trial court properly concluded the out-of-court photo lineup identification did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed?

2. Whether the trial court properly imposed reasonable limits on Appellant's cross-examination of State's witness Sean Echols where the interrogation sought: (1) was irrelevant, (2) was likely to confuse the issues, and (3) would not demonstrate a prototypical form of bias on the part of Echols?

3. Whether the trial court properly denied Appellant's motions for a directed verdict and for a new trial on all charges where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge?

4. Whether the trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred the lesser, rather than the greater, offense was committed?

STATEMENT OF THE CASE

Richard Lanard Sprinkle (Appellant) was indicted at the October 8, 2012, term of the grand jury for Orangeburg County for two counts of armed robbery (R.p. 350-354) and two counts of attempted murder (R.p. 356-357). He was subsequently indicted at the February 4, 2013, term of the grand jury for burglary - first degree (R.p.359). Appellant was represented by Jillian D. Ullman, Esquire, and Mark Wise, Esquire, of the First Circuit Public Defender's Office. The State was represented by Assistant Solicitors Sarah A. Ford and B. Harrison Bell, Jr. (R.p.1). On April 8-10, 2013, Appellant proceeded to trial by jury before the Honorable Edgar W. Dickson pursuant to which he was found guilty of first degree burglary, two counts of armed robbery, and one count of assault and battery in the first degree as a lesser included offense of attempted murder. He was sentenced to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years' concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p. 346-360; R.p.330, lines 1-13). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

In the early morning hours of June 26, 2011, two men knocked on James Wright (Wright) and Robert Rumph's (Rumph's)[1] front door and asked if they could use the telephone. When Wright opened the door, the men produced a pistol and a knife and asked for money. The intruders struck Wright in the head with the pistol and cut Rumph with the knife while continuing to demand money. After assaulting Wright and Rumph, the men took cash and some clothing, and left in Rumph's car. (R.p.93, line 22-p.94, line 15; p.106, line 11-p.111, line 7; p.136, line 8-p.140, line 23; p.145, lines 15-19). Wright testified he knew Appellant before the incident and had even talked to Appellant the day before. (R.p.111, line 17-p.112, line 13). Rumph testified he knew Appellant's accomplice, Sean Echols, before the incident because Rumph socialized with Echols' mother, Vivian, and had previously loaned money to Echols. (R.p.139, lines 2-13). During the subsequent investigation, Wright and Rumph were able to identify Appellant and Echols from photo line-ups prepared by the police. (R.p.112, line 14-p.115, line 4; p.142, line 4-p.143, line 2).

Identification Evidence: Pretrial

On April 8, 2012, the court held a hearing to address several pre-trial motions. First, the State asked the trial court to conduct a Neil v. Biggers[2] hearing regarding the reliability of the out-of-court identification of Appellant and the admissibility of eyewitness identification testimony the State was considering offering at trial. First, the State called Wright to the stand. He described the two robbers as black men, one of

[1] Rumph was also known by the nickname "Rocky" and was alternatively referred to as Rocky, Mr. Rock or Uncle Rocky by some witnesses.

[2] 409 U.S. 188 (1972).

whom had long hair. Wright testified he knew the one with the long hair as "Ricky" because Ricky "used to [walk] the street all the time." He explained he had actually talked to Ricky on the Saturday evening before the early Sunday morning robbery. Next, Wright identified State's Exhibit #1 as a photo line-up which was presented to him by the police. He testified the person in photo number two was the one who came into his home and robbed him. Wright said he circled the photo and wrote his initials next to his selection. He testified the police officer who presented the line-up did not tell him which photo to pick, and he knew right away which one was Ricky. The exhibit was introduced into evidence for the purpose of the hearing. Wright then physically identified Appellant as the person he had circled in the line-up and testified that despite slight changes in physical appearance since the incident, Appellant was without a doubt the person who assaulted and robbed him. (R.p.5, line 21-p.14, line 11). On cross-examination Wright acknowledged that at the time he encountered the intruders there were no lights on in the house, he had just woken up, and he had drunk a half-pint of alcohol before going to bed; however, he noted when he answered the door he "looked right in the face" of Appellant and again identified him in the courtroom as the person who hit him with the pistol and robbed him. (R.p.14, line 18-p.28, line 15).

Next, the State called Investigator Lori Ann Lewis Garrison of the Orangeburg County Sheriff's Office to the stand. She talked to both Wright and Rumph the night of the incident. Garrison testified Wright told her he knew one of the suspects by the name "Ricky" or "Rick," and that Ricky lived on the 1400 block of Goff. She later discovered Appellant [Richard Sprinkle] lived at 1482 Goff, so she generated a photo line-up that included Appellant. The day after the incident Garrison showed the six-person photo

line-up to Wright and asked if he recognized anybody who assaulted him that night. Wright identified picture number two, which was the photo of Appellant. Garrison said Wright showed no hesitation in picking the picture of Appellant. She testified she did not suggest to Wright whom he should pick out. (R.p.28, line 22-p.31, line 13).

On cross-examination Garrison testified she showed Wright a total of three different photo line-ups, two of which included a photo of Echols, and one of which included a photo of Appellant. She explained that administrator at the Sheriff's Department created the line-up including Appellant by choosing photos of five other individuals with the same physical characteristics and hairstyle as the photo of Appellant. Garrison testified she simply asked Wright if he could identify anybody in the picture that he recognized from that night, but did not tell him there would be somebody particular in the line-up. (R.p.32, line 11-p.39, line 15). On re-direct Garrison clarified the Sheriff's Department came up with the photo line-up by finding pictures of five other individuals with similar characteristics, similar haircuts, similar facial features, and similar facial hair as Appellant. (R.p.39, line 22-p.40, line 18).

At the close of the testimony, Appellant argued the line-up constituted an unduly suggestive police procedure because he was the only person in a jail uniform. He claimed it was obvious the shirt he was wearing was a jail shirt and that some of the photos were cropped too closely to see the full face of the person pictured. Appellant also argued that pursuant to "the factors that Biggers requires" the identification made by Wright was not reliable because Wright did not have a good opportunity to witness the intruders on the night of the incident. (R.p.41, line 5-p.45, line 19).

The State responded that the identification procedure was not unduly suggestive in any way because it involved a photo line-up with six individuals of the same race with similar hair and facial feature. The solicitor argued it was not at all evident Appellant was wearing a jail uniform in the photo. Finally, the solicitor argued that even if the procedure was somehow suggestive, the fact Wright knew Appellant from prior dealings demonstrated there was no likelihood of irreparable misidentification. (R.p.45, line 21-p.47, line 11).

After hearing testimony arguments, the trial court denied the motion to exclude the eyewitness identification evidence. The judge ruled as follows:

> I think they did a spectacular job of putting this lineup together.
>
> To me, I don't find it unduly suggestive at all. Everyone has essentially the same skin tone, length of hair. And with the exception of one who might have a mustache, everybody has a goatee, a mustache and a goatee.
>
> So the lineup is not unduly suggestive at all. And I don't know [who] did this but I'd rather see more lineups [done] this well than some I've seen. So, I don't think the lineup in and of itself is unduly suggestive.
>
> I've listened to the testimony of the victim, Mr. Wright, and Ms. Garrison. I do not believe that the identification process was unduly suggestive, nor was there any substantial likelihood of misidentification because he had given a general description of the Defendant, indicated that he knew where he lived and then picked him out of this photo lineup.
>
> So I find it to be reliable.

(R.p.48, line 22-p.49, line 15).

Scope of Cross-Examination: Pretrial

Following a pre-trial Jackson v. Denno hearing, Appellant made a motion to require the State to disclose any deals made for the testimony of co-defendant Echols, either with the State or the federal government. He claimed Echols was charged federally

with crimes unrelated to the State charges. The solicitor responded: "Your Honor, everything has been provided to the defense concerning the pending investigation federally against Mr. Echols. The State has also provided an expired plea offer to Mr. Echols. There have been no offers or negotiations or anything of that nature concerning Mr. Echols' testimony in this case, Your Honor." (R.p.50, line15- p.51, line 20). The State then made a motion in limine to exclude any effort to question Echols about the pending federal investigation, noting there had been no conviction, or even a federal charge. The solicitor also noted Echols attorney was present and had instructed Echols not to answer any questions about the federal investigation based on his Fifth Amendment rights. (R.p.54, line 23-p.56, line 5). Appellant responded that the federal investigation involved the shooting of a corrections officer, and alleged that during the investigation Echols admitted he shot the officer in an assassination attempt in exchange for money. He argued the shooting was a "bad act," and that he should be allowed to cross-examine Echols about it so the jury could better evaluate his credibility. (R.p.56, line 8-p.57, line 1). The State replied that any question about the shooting would induce Echols to answer that he was invoking his Fifth Amendment rights, which would be extremely prejudicial to do in front of the jury. The trial judge took the matter under advisement. (R.p.57, lines 3-9).

The following morning the case was called for trial, the jury was selected, and the court gave preliminary instructions before excusing the jury panel and ruling on outstanding pretrial matters. (R.p.58, line 1-p.85, line 8). The trial court granted the State's motion to exclude any testimony regarding Echols' federal investigation for two reasons. First, the trial court found such evidence was inadmissible under the South

Carolina Rules of Evidence, specifically Rule 608(b), because it was not probative of Echols character for truthfulness or untruthfulness. Second, relying on State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997), the trial court found any attempt to elicit testimony about the pending investigation would impermissibly allow the jury to draw an adverse inference from Echols' invocation of his right against self-incrimination, which would run contrary to the purpose of the Fifth Amendment. (R.p.86, line 17-p.88, line 14). Ultimately, the jury was sworn and the case proceeded to trial. (R.p.90, lines 5-13).

Trial

During opening statements, Appellant's counsel reminded the jury that it was their job to determine whether any of Wright's trial testimony was true. (R.p.102, line 13-p.103, line 1). The State then called Wright to the stand to describe the armed robbery and assault. He repeated his previous in camera testimony that on the night of the incident two black men, one with long hair and one with short hair, knocked on his door. When Wright went to the door, they asked about Rumph and said they wanted to make a phone call. Rumph told Wright it was okay to let them in, but when Wright opened the door one of the men pointed a pistol at his chest and grabbed him around the neck. (R.p.105, line 22-p.108, line 21). Wright made an in-court identification of Appellant as the assailant with the pistol, without any objection from Appellant. Wright testified he knew Appellant as "Ricky" and recognized Appellant because Wright saw him "walking the street" all the time. (R.p.108, line 23-p.109, line 12).

Wright testified that one man went down the hall to Rumph's room while the other man forced Wright to his room, demanded money, and made Wright pull up his mattress. Wright was bleeding because he had been hit in the head with the pistol. The

man then walked Wright to Rumph's room, where the other man cut Rumph with a knife to get Rumph to open his closet and give up his "pocketbook." The two men then took Rumph's car and left. Wright testified he talked to Appellant at Bojangles the evening before the Sunday morning robbery, and then he made a second in-court identification of Appellant. Appellant again failed to object. (R.p.109, line 13-p.112, line 13). Next, Wright described the photo lineup procedure and his out-of-court identification of Appellant, and he made a third in-court identification of Appellant without objection. He also described a separate photo lineup where he identified Echols as the second robber. (R.p.112, line 14-p.115, line 14; R.p. 334-335). On cross-examination, Wright explained that the intruders had a gun and a knife, but he wasn't sure whether Appellant or the other man had the knife after they were all in Rumph's room, because Wright was bleeding and wiping blood from his face as a result of having been hit with the pistol. (R.p.121, lines 9-21). He later said Rumph had already been cut when they entered his room, and he did not actually see Rumph getting cut. (R.p.127, lines 1-23).

The State then called Rumph to the stand. On the night of the incident, Rumph was in bed asleep when Wright came to his room to say two men were at the door who wanted to use the phone. One of the men referred to Rumph as "uncle" and Rumph told Wright to let them in. Shortly thereafter, a man entered Rumph's room, pointed a gun at him, and demanded money. Rumph directed the intruder to some cash that was on his dresser, but the man demanded more money and said: "Don't make me kill you over this little bit of money." Wright and a second intruder with short hair then entered Rumph's bedroom. Rumph testified the man with longer hair, or "dreads" was the one who was already in his room. He claimed the man with the dreads then cut him with a knife.

Rumph explained that when the man with the dreads first entered the bedroom he had the pistol, but then he and the man with the shorter hair traded weapons, and the man with the dreads cut him with the knife while the man with shorter hair said: "Make him talk." (R.p.135, line 25-p.139, line 2).

Rumph identified the intruder with short hair as "Vivian's son" and testified he already knew him because Rumph and his mother were "socializing together." Rumph testified the man with the dreads started cutting him on his stomach, leg, arm and foot. As the intruders left the house with Rumph's money, pants, and a hat, the man with short hair told Rumph: "don't you never disrespect my mama because I will be back." The two men then left in Rumph's car. (R.p.139, line 2-p.140, line 23). Rumph identified State's Exhibit Numbers Four, Five, Six, Seven, and Eights as photographs of his injuries. He also identified State's Exhibit Number Three as a photo line-up by which he made an out-of-court identification of Echols as the man with short hair. Rumph explained there were two intruders, one with short hair whom he knew, and one with dreadlocks whom he didn't know, but that they both participated in stealing his pants, his car, his money, and his hat. (R.p.141, line 6-p.143, line 19; State's Exhibit #3).

Next, Deputy David McRoy of the Orangeburg County Sheriff's Department testified on behalf of the State. McRoy was working road patrol on June 26, 2011. At approximately two o'clock in the morning he responded to the scene of the robbery. He described one victim as having cuts on his chest, left foot, and forearm, and the other victim having a big gash on top of his head. (R.p.159, line 10-p.161, line 13).

The State then called Investigator Garrison to describe her investigation of the assault and robbery of Wright and Rumph. She described the injuries received by both

victims and identified several photos of those injuries, each of which was introduced into evidence without objection. (R.p.167, line 1-p.174, line 5; p.186, lines 8-12; R.p.337-345). Garrison testified she talked to both victims about the incident. Wright stated he knew one of the subjects from a local place called the Corner Pocket and that his name was "Rick" or "Ricky," and Rumph stated the other subject was Sean Echols, the son of a lady he was seeing. Garrison went on to describe the preparation of the photo line-ups and the out-of-court identifications Wright made of both Appellant and Echols (R.p. 334-335), and the out-of-court identification Rumph made of Echols (R.p.336). Each of the three photo line-ups was introduced into evidence with "no objection" from Appellant. (R.p.174, line 7-p.180, line 23).

Next, Investigators Johnny Thrower and John Stokes testified in regard to an oral statement Appellant made to them after his arrest. Appellant made several requests to talk to Thrower, so Thrower and Stokes eventually agreed to meet with Appellant. At the meeting, Appellant told the investigators about a home invasion he participated in with Echols. Appellant claimed he went to the residence with Echols and Echols' mother, but after they got inside, Echols started assaulting a guy, at which point Appellant got scared and ran out of the house. (R.p.186, line 24-p.202, line 9).

Finally, the State called co-defendant Sean Echols to the stand. Echols testified he originally was to planning to commit a quick robbery by himself, but then sought help from his friends Collins Shuler and Jasper Clark, who also brought Appellant into the picture. He said he and Appellant specifically planned the robbery of Wright and Rumpy because the victims ran a gambling house and would have money. Echols said he and Appellant talked about how they would commit the robbery, how they would get away,

and the specific roles each would play in committing the crime. Echols already knew Rumph because Rumph was "affiliated" with his mother. He repeated his claim that he and Appellant planned the robbery. (R.p.203, line 17-p.206, line 25).

Echols then described the entire incident in great detail. Shuler and Clark dropped Appellant and Echols a few streets away from the victims' house. Appellant and Echols walked through a field and then approached the door of the residence. Echols knocked and when Wright came to the door Echols told Wright he needed to use the phone because he had been in a fight with his wife and needed to call his mother to pick him up. Echols testified this claim was a lie in order to gain entry into the house. Wright walked away but returned with a cordless phone and told Echols and Appellant to "come in." (R.p.207, line 1-p.209, line 3).

According to Echols, when they entered the house Appellant had a gun and Echols had a knife. Appellant pointed the gun to Wright's head and told him not to move and then walked to Rumph's room while Echols escorted Wright to Wright's room. Echols asked Wright for money, took a few bills from his wallet, and flipped up Wright's mattress to look for more money when he heard Appellant call for him to come to Rumph's room. When Echols and Wright got to Rumph's room, Appellant handed Echols two handfuls of cash and asked Echols for the knife. They traded weapons and Appellant began to cut Rumph with the knife while demanding more money. Eventually, Rumph admitted there was more money in the closet. Appellant opened the closet and retrieved the money while Echols asked for Rumph's car keys. Echols took a pair of pants and a hat from Rumph's room and used the pants to open the back door without leaving fingerprints. Appellant and Echols then drove Rumph's car to the end of the

street, got out, and called Clark to come pick them up. Echols testified he and Appellant beat, stabbed, and robbed Wright and Rumph, and that they planned the robbery. (R.p.209, line 3-p.212, line 8).

Next, Echols testified he had not been offered or promised anything in exchange for his testimony. He said he was testifying because he did it, got caught, and was hoping the court would have mercy on him. (R.p.212, line 14-p.213, line 4). Echols then testified Appellant had dreads the night of the robbery and reviewed State's Exhibit #1. He said photo number 2 was an accurate picture of what Appellant looked like at the time of the robbery. Echols admitted he hit Wright in the head twice with the gun and punched him in the mouth, causing Wright to bleed. (R.p.212, line 13-p.214, line 7).

Scope of Cross-examination: Trial

Before Appellant began his cross-examination, the solicitor advised the court he had a matter to take up outside of the presence of the jury. The jury was excused, and the State renewed its motion to prohibit any questions about the federal investigation involving Echols. The trial court then asked Appellant to proffer the questions he wanted to ask on cross-examination and asked the State to make whatever objections it would make to those questions. The proffer proceeded as follows:

> Q: Mr. Echols, just to get right to the heart of what we're talking about here. Have you been charged in a federal case involving the shooting of a corrections officer?
>
> The Court: Okay.
>
> Ms. Ford: Objection, Your Honor, based on our previous motions.
>
> Mr. Wise: If I may, Your Honor, at this point he hasn't asserted his Fifth Amendment rights.
>
> The Court: No, I - -

Mr. Wise: And I think the case law is pretty clear that somebody else can't do it for him.

The Court: I will let him do whatever - - answer however he wishes to answer.

The Witness: I would like to assert my Fifth Amendment.

The Court: Okay.

Mr. Wise: Okay.

Ms. Ford: Objection.

The Court: And now she's objecting and renewing the motion that we made in limine. And I'm going to continue with my ruling that we made in limine, I'm renewing it.

(R.p.214, line 17-p.215, line 13). Counsel for Appellant argued he should be allowed to ask Echols whether he is "under investigation" because the answer given wouldn't be incriminatory in any manner. The State responded that any question about an investigation or a possible criminal charge would allow Echols to invoke his Fifth Amendment rights because he is under no compulsion to incriminate himself. Ultimately, the trial court ruled: "Well, it may not be - - and I understand the distinction that you're attempting to make but he has invoked his Fifth Amendment rights. And I'm going to go along with the ruling I made earlier. You're not going to be able to question him on that." (R.p.216, line 16-p.217, line 16).

Next, the State made a motion to prohibit Appellant from cross-examining Echols in regard to his prior convictions for assault and battery with intent to kill and second-degree burglary. The solicitor argued that under Rule 609(a)(1), SCRE, any probative value was outweighed by undue prejudice. The trial court disagreed and ruled it would allow Appellant to ask Echols about the prior convictions. (R.p.218, line 2-p.219, line

21). The jury returned to the courtroom and Appellant began his cross-examination of Echols. Echols testified Appellant did not do anything to Wright and repeated his claim that he was the one who hit Wright with the pistol. (R.p.220, line 5-p.224, line 10). Echols then acknowledged that in a statement given to the police during the investigation he said there were three people involved in the robbery but that the other "dude" or "third person" involved: (1) was just standing there, (2) did not engage in any planning of the robbery, (3) did not have a weapon, (4) did not get any of the money stolen, (5) was innocent, (6) was merely present, and (7) didn't know what was happening until it happened. Echols, however, testified this claim about an innocent third party was a lie and that once he learned Appellant was trying to place all of the blame on him, he came forward to give the truth. (R.p.226, line 3-p.231, line 22).

Appellant then began questioning Echols about the charges he was facing for his participation in the robbery. He admitted he had not been indicted for first-degree burglary but denied knowing Appellant had been so indicted, for what Echols acknowledged was a "very serious crime." The State objected to the questions about first-degree burglary on grounds they were not relevant. The trial court initially sustained the objection and then sent the jury out to hear arguments after Appellant drew the judge's attention to State v. Mizzell.[3] After hearing Appellant's argument in regard to Mizzell, and a brief discussion in chambers, the trial court asked counsel for Appellant to describe any additional areas of cross-examination he wished to explore and to explain why he believed they were appropriate. Appellant's counsel advised he wanted to cross-examine Echols on three points, all of which would assist the jury in making a determination about Echols credibility. First, he wanted to ask Echols if he had sought a

[3] 349 S.C. 326, 563 S.E.2d 315 (2002).

ten year sentence during plea negotiations with the State. Second, he wanted to ask Echols if he was in fact given an offer of a cap of twenty years during plea negotiations with the State. Third, he wanted to ask Echols if he is a member of the Folk Nation gang. The solicitor responded that she believed Appellant's first and second requests were inadmissible pursuant to Rule 410, SCRE, because they were part of Echols' plea negotiations, and the third request was inadmissible pursuant to Rules 404 and 405, SCRE, because it was evidence of other crimes, wrongs, or acts. (R.p.231, line 23-p.240, line 14).

The trial court ruled as follows:

> The first thing, right before we took a break I had sustained your objection to his question about whether or not he could ask him about the possible life sentence. And Mr. Wise was kind enough to give me the Mizzell case so I'm going to correct my ruling.
>
> I'm going to overturn the objection. He is allowed to ask him about the maximum sentence he could be facing under that. Okay?
>
> With regards to Mr. Echols asking, you know, for ten years or asking for a cap of 20 years, whether or not that was given or not, all of that is part of plea negotiations and we're not going to get into that at all.
>
> With regard to whether or not he was in a gang or not in a gang however, whether he - - it doesn't matter to me how he's going to ask it, we're not going to get into that. I think it's character. Doesn't have anything to do with his truthfulness or untruthfulness. So whether I think it's a bad act that he's in a gang or not, we're not getting into it in this trial.
>
> Okay? All right.

(R.p.240, line 15-p.241, line 9). Cross-examination resumed, and Appellant questioned Echols about not having been indicted for first-degree burglary. He acknowledged first-degree burglary would have carried a sentence of life without the possibility of parole. Appellant also questioned Echols about his prior convictions for burglary and assault and

battery with intent to kill. (R.p.243, line 11-p.244, line 20). Upon completion of Echols testimony, the State rested. (R.p.248, lines 20-23).

Proposed Jury Charges

After questioning Appellant outside of the presence of the jury in regard to his right to testify, the parties discussed possible jury charges. In regard to the crimes themselves, the trial judge advised he would be charging armed robbery, attempted murder and the lesser included offense of assault and battery in the first degree as to both victims, Wright and Rumph. He said he would also charge the lesser included offenses of assault and battery in the second degree and assault and battery of a high and aggravated as to Wright, but declined Appellant's request to charge assault and battery in the second degree as to Rumph. The trial judge found Mr. Rumph could not have suffered only moderate bodily harm when he was cut five times, denied Appellant's request, and noted Appellant's objection. (R.p.249, line 15-p.251, line 1).

Motion for a Directed Verdict

Appellant moved for a directed verdict on all charges. In regard to attempted murder, he argued the State had failed to present any evidence of an intent to kill. He argued that since Wright had only been struck with a pistol rather than shot or stabbed, there was no evidence of intent to kill. He further argued that since Rumph was only cut with the intention of trying to make him talk, the robbers could not have wanted him dead, so there was no intent to kill. In regard to armed robbery, Appellant argued there was no evidence he took property from the victims or had to the intent to deprive them of their property, particularly where the car was left right down the street. Finally, in regard to burglary, Appellant argued that since there was no forced entry there was no intent to

commit a crime at the time the intruders entered the victims' house. (R.p.252, line 18-p.255, line 10). The solicitor responded that by being armed with deadly weapons and threatening to kill the victims if they didn't talk, the intruders evidenced an intent to kill. The solicitor then referenced the use of weapons and the taking money and goods from both vicitms as evidence of armed robbery, and use of trick or artifice to gain entry and the injuries inflicted on the victims as evidence of burglary. (R.p.255, line 14-p.257, line 6). The trial court denied the motion for a directed verdict as to each charge. (R.p.257, line 7-p.258, line 3). Appellant chose not to testify in his own defense, and the defense rested. Appellant renewed his motion for a directed verdict and the trial court again denied the motion. (R.p.258, line 7-p.260, line 10).

Closing Arguments, Jury Charge, and Verdict

After the trial court denied Appellant's motion for a directed verdict, the parties made closing arguments. Appellant's counsel reminded the jury of the weaknesses of Wright's identification by pointing out the inconsistency between the initial police report of two "unknown" assailants and Wright's subsequent claim that he knew Appellant prior to the incident. Counsel also noted the discrepancy between Wright's original description of Appellant as having dark skin and the appearance of Appellant's skin during trial. Next, counsel attacked the reliability of Wright's identification where he was presented with multiple photo line-ups and he noted the seemingly inconsistent testimony from Wright, Rumph, and Echols about Appellant's participation in the crimes. (R.p.271, line 21-p.293, line 7).

The trial judge charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, direct evidence, circumstantial evidence,

credibility of witnesses, criminal intent, accomplice liability, and mere presence. (R.p.294, line 6-p.307, line 15). In regard to identity, the trial judge specifically charged the jury as follows:

> An issue in this case is the identification of the Defendant as the person who committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant.
>
> Identification testimony is an expression of belief or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by things like how long or short a time was available, how far or close the witness was, the lighting conditions and whether the witness had the chance to see or know the person in the past.
>
> Once again, I instruct you, the burden of proof is on the - - the burden of proof is on the State extends to every element of the crime charged. And is - - and this specifically includes the burden of proving beyond a reasonable doubt the identity of the Defendant as a person who committed the crime.
>
> If after examining the testimony you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty.

(R.p.302, line 10-p.303, line 10). In regard to the charging the crimes and the elements of those crimes, the trial court charged armed robbery, attempted murder, assault and battery of a high and aggravated nature, and assault and battery in the first degree as to both victims, but only charged assault and battery in the second degree as to Wright. (R.p.307, line 16-p.313, line 17). The trial court then gave detailed instructions on the verdict form, including the attempted murder charges and the possible lesser included offenses as to each victim, which did not include an option for assault and battery in the second degree as to Wright. (R.p.314, line 11-p.316, line 18). Except for an objection to the trial

judge's charge that specific intent was not required for attempted murder, Appellant made no other objections to the jury charge or verdict form. (R.p.317, line 2-p.319, line 19).

At the end of trial, the jury found Appellant guilty of first degree burglary, two counts of armed robbery, and one count of first degree assault and battery as a lesser included offense of attempted murder in regard to Rumph. Appellant was acquitted of any assault in regard to Wright. Appellant made a motion for a new trial, arguing there was no evidence of great bodily injury to Rumph which would support the conviction for assault and battery in the first degree. The trial court denied the motion and sentenced Appellant to thirty-five (35) years' imprisonment for first degree burglary, thirty (30) years' concurrent imprisonment for each count of armed robbery, and ten (10) years' concurrent imprisonment for first degree assault and battery, for an aggregate sentence of thirty-five (35) years' imprisonment. (R.p.346-360; R.p.330, lines 1-13). (R.p.321, line 9-p.326, line 24).

ARGUMENT

I.

Appellant's claim that the trial court erred in failing to suppress the victim's in-court identification testimony is not preserved for appellate review because Appellant failed to object to the identification when it was offered at trial, and even if preserved, the trial court properly concluded the out-of-court photo lineup identification did not result from unduly suggestive police procedures and was so reliable that no substantial likelihood of misidentification existed.

Appellant argues the trial court erred in denying his motion to suppress Wright's in-court identification testimony because that testimony was unreliable and was based on an unduly suggestive out-of-court photo line-up. This argument is not preserved for appellate review because Appellant failed to object to the identification evidence when it was offered at trial. Even if preserved, there was ample evidence supporting the circuit court's findings that: (1) the out-of-court photo lineup identification did not result from unduly suggestive police procedures; and (2) under the totality of the circumstances the out-of-court identification was so reliable that no substantial likelihood of misidentification existed. Furthermore, any error in the admission of Wright's identification testimony was harmless given the cumulative nature of that evidence and the other overwhelming evidence of Appellant's guilt. For all of these reasons, Appellant's challenge to the identification testimony should be denied and his convictions should be affirmed.

Issue Preservation

Generally, a motion in limine seeks a pretrial evidentiary ruling to prevent the disclosure of potentially prejudicial evidence to the jury, and a ruling on such a motion is preliminary and subject to change based on developments during trial. State v. Smith,

337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). A ruling on a motion in limine does not constitute a final ruling on the admissibility of evidence. State v. Simpson, 325 S.C. 37, 42, 479 S.E.2d 57, 60 (1996). Therefore, an objection must be made at the time the evidence is introduced during trial in order to preserve the issue for appellate review. State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993); State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012); State v. Burton, 326 S.C. 605, 609, 486 S.E.2d 762, 764 (Ct. App. 1997). "However, where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001). Additionally, if the trial court clearly indicates its ruling is final rather than preliminary, the issue is preserved for appellate review. State v. Wiles, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009); Atieh, 397 S.C. at 647, 725 S.E.2d at 733.

In the instant case, Appellant failed to preserve any challenge to the identification evidence for appellate review. Before the jury was sworn, the trial court held a Neil v. Biggers hearing regarding the reliability of Wright's out-of-court identification of Appellant and the admissibility of the eyewitness identification testimony the State was considering offering at trial. The trial judge issued a preliminary ruling finding the identification process was not unduly suggestive and that the identification itself was reliable. Following a pretrial Jackson v. Denno hearing, a preliminary jury charge, and opening statements, the State called Wright to the stand to tell the jury about the assault, robbery and burglary. During Wright's testimony, the State sought to elicit the identification evidence addressed in the trial court's pretrial ruling. Wright proceeded to

make three separate in-court identifications of Appellant. Appellant did not object or otherwise attempt to renew any pretrial challenge to Wright's identification testimony. Appellant also did not object to testimony from Wright and Investigator Garrison describing the out-of-court identification procedure, and he failed to object with the photo lineup was introduced into evidence by the State.

Because Appellant did not make a contemporaneous objection to any identification evidence elicited during trial in the jury's presence, he failed to preserve any issue related to the trial court's pretrial rulings on the identifications by Wright. See State v. Turner, 373 S.C. 121, 126, n.1, 644 S.E.2d 693, 696 (2007) (finding the issue regarding an in-court identification was not preserved when the appellant objected pre-trial to a suggestive identification procedure and again during trial to the procedure but never objected to the subsequent in-court identification). Therefore, this issue is not preserved for further review. To the extent this Court finds the identification issue was properly preserved, the State submits it is nevertheless without merit.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The admission of evidence is within the sound discretion of the circuit court. State v. Simmons, 384 S.C. 145, 166, 682 S.E.2d 19, 30 (Ct. App .2009). Accordingly, a circuit court's decision to allow the in-court identification of an accused will not be disturbed on appeal absent an abuse of discretion or prejudicial legal error. Id.; State v. Govan, 373 S.C. 552, 556, 643 S.E.2d 92, 94 (Ct.

App. 2007). "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." State v. Singleton, 395 S.C. 6, 13-14, 716 S.E.2d 332, 335-36 (Ct. App. 2011) (quoting Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005)).

Discussion / Analysis

An out-of-court identification of the defendant violates due process and must be suppressed when the identification procedure used by police was impermissibly suggestive and conducive to a substantial likelihood of misidentification. State v. Liverman, 398 S.C. 130, 138, 727 S.E.2d 422, 425 (2012); State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). A witness's subsequent in-court identification is inadmissible "if a suggestive out-of-court identification procedure created a very substantial likelihood of *irreparable* misidentification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004) (emphasis added). Trial courts employ a two-pronged inquiry to determine whether due process requires suppression of an out-of-court eyewitness identification. Liverman, 398 S.C. at 138, 727 S.E.2d at 426. First, the court must determine whether the identification resulted from "unnecessarily suggestive" police procedures. Biggers, 409 U.S. at 198-99; Liverman, 398 S.C. at 138, 727 S.E.2d at 426; Traylor, 360 S.C. at 81, 600 S.E.2d at 526. If the court finds the identification did not result from impermissibly suggestive police procedures, the inquiry ends there and the court does not need to consider the second prong. State v. Dukes, 404 S.C. 553, 557-58, 745 S.E.2d 137, 139 (Ct. App. 2013). The defendant bears the burden of proving the

identification procedure was impermissible suggestive. Id. at 561, 745 S.E.2d at 141 ("Our supreme court has never placed the burden of disproving suggestiveness on the State. The Fourth Circuit, whose decisions regarding federal constitutional law are binding on us, has held the defendant bears the burden of proving the identification procedure was impermissibly suggestive.").

If the court finds, however, that the police used an impermissibly suggestive identification procedure, it must then determine whether the identification was nevertheless "so reliable that no substantial likelihood of misidentification existed." Liverman, 398 S.C. at 138, 727 S.E.2d at 426. The inquiry must focus upon whether, under the totality of the circumstances, there was a substantial likelihood of irreparable misidentification. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007); Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36. When determining the likelihood of misidentification, courts must evaluate the totality of the circumstances using the following factors: (1) the witness's opportunity to view the perpetrator at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the perpetrator, (4) the level of certainty demonstrated by the witness at the confrontation, and (5) the length of time between the crime and the confrontation. Turner, 373 S.C. at 127, 644 S.E.2d at 697; Singleton, 395 S.C. at 13-14, 716 S.E.2d at 335-36.

In the instant case, Wright testified the police officer who presented the photo lineup did not tell him which photo to pick. Investigator Garrison confirmed this account, testifying she did not suggest to Wright whom he should pick out of the photo array, instead simply asking if he recognized anybody who assaulted him that night.

Appellant argued the lineup was nevertheless unduly suggestive because he was the only person in a jail uniform. He claimed it was obvious the shirt he was wearing was a jail shirt. The trial judge disagreed and found the photo lineup was not unduly suggestive at all. The trial judge observed how strikingly similar the six individuals appeared the photographs, all having the same skin tone and length of hair, and nearly identical facial hair. He praised the "spectacular job" the police did putting the photo array together. (R.p.49, line 22-p.49, line 15). The photo lineup itself supports the trial court's observations. It also demonstrates the fallacy of Appellant's claim regarding the shirt he was wearing in the photograph. It is simply a solid colored, "v-neck" shirt with no lettering or other identifying information indicating it is part of a jail uniform. (R.p. 334). Appellant failed to carry his burden of proving the identification procedure was impermissibly suggestive.

On appeal, Appellant also argues Wright's prior personal knowledge of Appellant led the police to create a suggestive lineup. He contends: "The creation of a lineup that contained a photo of a suspect who matched the name given to the police but not the description was unduly suggestive and created a very substantial likelihood of irreparable misidentification." (Brief of Appellant, p.5-p.6). However, this Court has specifically found the opposite to be true. See Singleton, 395 S.C. at 14, 716 S.E.2d at 336 (concluding the identification process was not unduly suggestive because the victim had prior personal knowledge of the defendant). Thus, this argument is without merit.

The State submits that since there was evidence to support the trial court's decision, that court did not abuse its discretion in ruling the procedure was not impermissibly suggestive. Dukes, 404 S.C. at 563, 745 S.E.2d at 142. Consequently,

this Court should affirm the trial court's ruling and need not consider the trial court's determination of the second prong of Biggers. Id. To the extent this Court disagrees, the State submits there was also sufficient evidence to support the trial court's ruling that the out-of-court identification was reliable under the totality of the circumstances.

At the pretrial hearing, Wright described the two robbers as black men, one of whom had long hair. This description was consistent with the photograph of Appellant the police used in the photo lineup. Wright testified he knew the robber with the long hair as "Ricky" and explained he had actually talked to Ricky on the Saturday evening before the early Sunday morning robbery. He testified that when presented with the lineup, he knew right away which one was Ricky. (R.p.5, line 21-p.14, line 11). On cross-examination Wright noted that when he first answered the door he "looked right in the face" of Appellant. (R.p.14, line 18-p.28, line 15). Investigator Garrison testified she showed the lineup to Wright the day after the incident and Wright showed no hesitation in picking the picture of Appellant. (R.p.28, line 22-p.31, line 13).

Appellant argued the identification made by Wright was not reliable because Wright did not have a good opportunity to witness the intruders on the night of the incident. (R.p.41, line 5-p.45, line 19). The trial judge disagreed and ruled as follows:

> I've listened to the testimony of the victim, Mr. Wright, and Ms. Garrison. I do not believe that the identification process was unduly suggestive, nor was there any substantial likelihood of misidentification because he had given a general description of the Defendant, indicated that he knew where he lived and then picked him out of this photo lineup. So I find it to be reliable.

(R.p.48, line 22-p.49, line 15).

The evidence supports this finding. Wright had an excellent opportunity to view the perpetrator at the time of the crime because he looked right in Appellant's face before

opening the door. His attention was heightened because he was answering a strange knock on the door in the middle of the night. Wright gave a relatively accurate description of the perpetrator and was then certain he had made a correct identification from the photo lineup. Finally, the lineup was presented only one day after the crime. Further, a review of Wright's trial testimony indicates that his in-court identification of Appellant originated not from any taint associated with the allegedly suggestive photo lineup, but from Wright's prior association with Appellant and his observation of Appellant at the time robbery. Thus, the in-court identification was nonetheless properly admitted as it had an independent origin. Liverman, 398 S.C. at 142, 727 S.E.2d at 428. Under the totality of the circumstances, the victim's pre-trial and in-court identifications were reliable. Therefore, the trial court did not abuse its discretion in denying Appellant's motion to suppress the identification testimony, and Appellant's convictions should be affirmed.

Harmless Error

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. Baccus, 367 S.C. at 55, 625 S.E.2d at 223. Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). An admission of improper evidence is considered harmless when it is merely cumulative to other properly admitted evidence. State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978). The harmlessness of an error in the admission of evidence generally depends on the materiality of the evidence in relation to the case as a whole. State v.

Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003). "When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Here, the State submits any error in the admission of the identification evidence from Wright was harmless, merely cumulative to other evidence, and not prejudicial. The identification by Wright placed Appellant at the scene of the crime and showed he was an active participant, evidence which was cumulative to and corroborated by the detailed testimony from Echols. See State v. Simmons, 308 S.C. 80, 83, 417 S.E.2d 92, 94 (1992) ("We note that, under certain circumstances, if the identification is corroborated by either circumstantial or direct evidence, then the harmless error rule might be applicable."). Furthermore, Appellant admitted in his own statement to law enforcement he was present at the scene of the crime and he conceded his presence in his closing argument to the jury. (R.p.286, line 18-p.287, line 6). See State v. Kirkpatrick, 320 S.C. 38, 43, 462 S.E.2d 884, 888 (Ct. App. 1995) ("The erroneous admission of the key evidence was harmless inasmuch as Kirkpatrick admitted he rented the U-Haul in question and bought a lock, with two keys, to put on it. Thus, the evidence of the key linking Kirkpatrick to the U-Haul was merely cumulative."). Because the challenged identification evidence was cumulative to other properly-admitted evidence, any error in the admission of that identification evidence was completely harmless and could not have affected the result at trial. See Singleton, 395 S.C. at 14-15, 716 S.E.2d at 336 (finding harmless error in the admission of identification testimony where two co-conspirators testified against Singleton and identified him as a participant in the robbery).

Furthermore, the propriety of Appellant's conviction is reinforced by the other protections he was afforded at trial, including his Sixth Amendment right to confront the eyewitness, his right to the effective assistance of an attorney who attempted to expose the flaws in the eyewitness' testimony during cross-examination and focus the jury's attention on the fallibility of such testimony during opening and closing arguments, the trial court's eyewitness-specific jury instruction, and the constitutional requirement that the State prove Appellant's guilt beyond a reasonable doubt. Liverman, 398 S.C. at 142-43, 727 S.E.2d at 428. For all of these reasons, Appellant's convictions should be affirmed.

II.

The trial court properly imposed reasonable limits on Appellant's cross-examination of State's witness Sean Echols where the interrogation sought: (1) was irrelevant, (2) was likely to confuse the issues, and (3) would not demonstrate a prototypical form of bias on the part of Echols.

Appellant argues the trial court erred in limiting his cross-examination of State's witness Sean Echols. Specifically, he argues the trial court improperly prohibited him from asking Echols: (1) whether he was "under investigation" or "charged" in a federal case involving the shooting of a corrections officer, and (2) whether during plea negotiations he sought a ten year sentence and had been offered a "cap" of twenty years. The State disagrees and submits Appellant's argument is without merit. The trial court appropriately exercised its discretion to impose reasonable limits on Appellant's cross-examination of Echols where both the federal investigation and the plea negotiations were not relevant to Echols' testimony at Appellant's trial, were likely to confuse the issues, and would not demonstrate a prototypical form of bias on the part of Echols.

Furthermore, any error in limiting Appellant's cross-examination of Echols was harmless in light of: (1) the existence of evidence corroborating Echols' testimony on material points, (2) the extent of the cross-examination Appellant was permitted to conduct, and (3) the overall strength of the State's case.

Standard of Review

As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed on appeal absent a manifest abuse of discretion. State v. Gracely, 399 S.C. 363, 371, 731 S.E.2d 880, 884 (2012); State v. Quattlebaum, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000). Pursuant to the Sixth Amendment of the United States Constitution, every criminal defendant has a right to "to be confronted with the witnesses against him" during trial. U.S. Const. amend. VI. Specifically included in a defendant's Sixth Amendment right to confront the witness is the right to meaningful cross-examination of adverse witnesses. State v. Aleksey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). This right guarantees to a criminal defendant the opportunity to cross-examine the witnesses against him concerning bias. State v. Gillian, 360 S.C. 433, 450, 602 S.E.2d 62, 71 (Ct. App. 2004), aff'd as modified on other grounds, 373 S.C. 601, 646 S.E.2d 872 (2007); see also Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.").

"This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination." Aleksey, 343 S.C. at 33-34, 538 S.E.2d at 255; See also State v. Whitner, 380 S.C. 513, 519, 670 S.E.2d 655,

659 (Ct. App. 2008) (finding the scope of cross-examination rests in the trial judge's sound discretion). "On the contrary, 'trial [courts] retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.'" Aleksey, 343 S.C. at 34, 538 S.E.2d at 255 (quoting Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986)). "The limitation of cross-examination is reversible error if the defendant establishes he was unfairly prejudiced." State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness. State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (quoting Van Arsdall, 475 U.S. at 680) (internal quotation marks omitted). The Mizzell court highlighted the competing concerns with regard to certain witnesses: The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence. Id. at 331-32, 563 S.E.2d at 318.[4]

4 In Gracely, our supreme court revisited limitations on the scope of cross-examination in light of the Confrontation Clause and concluded: "The fact that a cooperating witness avoided a mandatory minimum

Discussion / Analysis

Appellant acknowledges he was allowed to fully cross-examine Echols about both: (1) his prior convictions for burglary and assault and battery with intent to kill; and (2) the maximum sentence he would have faced for his conduct in this case, including the possible life without the possibility of parole (LWOP) sentence he avoided by not being indicted for first degree burglary. Appellant, however, maintains the limitations imposed by the trial court in regard to the pending federal investigation and the plea negotiations with the State nonetheless violated his Sixth Amendment Rights. The State disagrees. "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Gillian, 360 S.C. at 450, 602 S.E.2d at 71 (emphasis added). Here, the trial court did not interfere with Appellant's opportunity for effective cross-examination.

The Federal Investigation

At the pre-trial hearing, Appellant argued that although Echols had not been convicted of a federal crime, he believed the shooting Appellant allegedly admitted to federal investigators would constitute a "bad act" Appellant should be permitted to ask Echols about in regard to his credibility. The trial court granted the State's motion to exclude any testimony regarding Echols' federal investigation for two reasons. First, the trial court found it was inadmissible under Rule 608(b), SCRE, because it was not probative of Echols character for truthfulness or untruthfulness. Second, relying on

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sentence is critical information that a defendant must be allowed to present to the jury." Gracely, 399 S.C. at 374-75, 731 S.E.2d at 886. "It is of no moment that at some point during the proceedings one of the witnesses confirmed the existence of a mandatory minimum sentence. The fact remains that Appellant was unable to fully develop this information through the cross-examination . . . ." Id. at 375 n.4, 731 S.E.2d at 886 n.4.

State v. Hughes, 328 S.C. 146, 493 S.E.2d 821 (1997), the trial court found any attempt to elicit testimony about the pending investigation would impermissibly allow the jury to draw an adverse inference from Echols' invocation of his right against self-incrimination, which would run contrary to the purpose of the Fifth Amendment. (R.p.86, line 17-p.88, line 14). At trial, Echols invoked his Fifth Amendment rights and the trial court went along with the pretrial ruling.

On Appeal, Appellant challenges the trial court's Fifth Amendment analysis and reliance on Hughes, as well as its reliance on the South Carolina Rules of Evidence. The State submits that even if the trial court's reliance on Hughes was slightly misplaced because Echols was not being called solely to allow the jury to draw an adverse inference from his refusal to testify, the limitation on cross-examination was nevertheless an appropriate exercise of discretion because the pending federal investigation simply does not show bias. The State has no authority to negotiate a deal with a witness in regard to federal charges. Appellant asserts "the purpose of the examination was to demonstrate that Echols had additional charges pending against him, which may influence his testimony against [Appellant];" however, he fails to articulate how this would be the case. Instead, it appears to be a thinly veiled attempt to introduce evidence of Echols' prior "bad act" to prove his bad character - a use clearly not permitted under Rule 404(b), SCRE. Thus, the interrogation sought was irrelevant and would likely confuse the jury. In addition, it would not expose the jury to facts from which the jurors could appropriately draw inferences relating to Echols' reliability. Thus, the questions about the federal investigation were appropriately excluded.

The Expired Plea Offer

At a pretrial hearing, the solicitor explained the State provided Appellant with the terms of an expired plea offer it had given Echols, but further explained there had been no offers or negotiations concerning Echols testimony in this case. (R.p.50, line 15-p.51, line 20). At trial, Echols confirmed he had not been offered or promised anything in exchange for his testimony. (R.p.212, line 14-p.213, line 4). Appellant then sought to question Echols about the specific terms of the expired plea offer, despite it having no connection to Echols testimony at trial. The solicitor suggested those questions should be prohibited pursuant to Rule 410, SCRE, because the terms of the expired offer were part of plea negotiations. The trial court agreed and prohibited Appellant from asking about the expired plea offer.

On Appeal, Appellant challenges the trial court's analysis and apparent reliance on Rule 410 of the South Carolina Rules of Evidence. The State submits that even if the trial court's reliance on Rule 410, SCRE, was off target, the limitation on cross-examination was nevertheless an appropriate exercise of discretion because the terms of the expired plea offer simply do not show bias in regard to Echols testimony. Appellant asserts "the plea negotiations between Echols and the State should have been revealed to the jury as evidence of bias;" however, similar to his analysis regarding the federal charges, he fails to explain how. Appellant references Mizell, and its holding that the lack of a negotiated plea "creates a situation where the witness is more likely to engage in biased testimony in order to obtain a recommendation of leniency." Mizell, 349 S.C. at 332, 563 S.E.2d at 318. He argues: "Echols' testimony regarding his plea negotiations is the type of evidence of bias envisioned in Mizell." The State

disagrees. The testimony envisioned in Mizell is precisely the testimony that was already elicited from Echols – that he had no deal. The terms of an expired plea deal – one that was not offered in exchange for trial testimony – is irrelevant and would likely confuse the jury. In addition, it would not expose the jury to facts from which the jurors could appropriately draw inferences relating to Echols' reliability. Therefore, the questions about the expired plea deal were appropriately excluded.

Harmless Error

In Gracely our supreme court acknowledged "[a] violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis." Id. at 375, 731 S.E.2d at 886. Whether such an error is harmless in a particular case depends upon a host of factors . . . . The factors include [1] the importance of the witness's testimony in the prosecution's case, [2] whether the testimony was cumulative, [3] the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, [4] the extent of cross[-] examination otherwise permitted, and, of course, [5] the overall strength of the prosecution's case. Id. (quoting Van Arsdall, 475 U.S. at 684 (emphasis added in Gracely)).

The purpose of Rule 608(c), SCRE, is that a defendant be allowed to explore any "bias, prejudice, or other motive to misrepresent" such that the jury gets a clear picture of a witness with which to judge her credibility. Cross-examination is the tool used to highlight any biases that may exist. Here, the trial court allowed a meaningful cross-examination with numerous opportunities for impeachment, including specifically allowing Appellant to inquire into whether Echols believed he would get some sort of leniency in exchange for testifying. Echols admitted he was not indicted

for first degree burglary and was avoiding an LWOP sentence, but testified he had not yet been given any deals or plea bargains in exchange for his testimony. Just as the Court pointed out in Mizzell, this particular testimony was highly probative of bias because the jury could have inferred that Echols would be more likely "to engage in biased testimony in order to obtain a future recommendation for leniency." Mizzell at 332-33, 563 S.E.2d at 318. The additional cross-examination sought by Appellant would at best have been marginally relevant.

In regard to overall strength, Appellant argues Echols' testimony was an essential part of the State's case, and that without his testimony, the State had no evidence that Appellant helped plan the crime. He also notes that Echols was the only person to testify Appellant was the assailant that assaulted Rumph. Although Echols accomplice testimony was important, it was only a portion of the strong testimony against Appellant. Established case law in South Carolina has held that a conviction can stand upon the uncorroborated testimony of an accomplice. See State v. Taylor, 255 S.C. 147, 149-150, 177 S.E.2d 550, 551 (1970). Here by comparison, the testimony was largely corroborated by the eyewitness identification testimony from Wright proving Appellant was an active participant in all of the crimes. It was also corroborated in part by Appellant's statement to the police where he admitted he was at the scene of the crimes. As noted by our supreme court, "In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless." Gracely, 399 S.C. at 377, 731 S.E.2d at 887. Here, the case was not built on circumstantial evidence and Echols' testimony alone. Appellant suffered

no unfair prejudice as a result of the limitations placed on his cross-examination of Echols concerning the federal investigation and the plea negotiations. See State v. Brown, 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991). Thus, the trial court did not err.

III.

The trial court properly denied Appellant's motions for a directed verdict and for a new trial on all charges where the State presented substantial direct and circumstantial evidence from which the jury could fairly and logically find Appellant guilty of each charge.

Appellant argues the trial court erred in denying his motion for a directed verdict and his motion for a new trial because the evidence presented did not support the convictions in this case. He argues the evidence did not reasonably tend to prove his guilt with respect to first degree burglary, armed robbery, or assault and battery. The State disagrees and submits Appellant's arguments are without merit. Detailed eyewitness testimony from Appellant's accomplic Echols and victim Wright provided direct evidence of Appellant's active participation in the first degree burglary of the residence, the armed robbery of Wright and Rumph, and the first degree assault and battery of Rumph. Additionally, Appellant's statement to the police, testimony from victim Rumph, and testimony from the investigating officers provided substantial circumstantial evidence to reasonably support the direct evidence of the crimes. The State submits the trial judge properly considered the existence of evidence as opposed to its weight in denying Appellant's motions for a directed verdict and a new trial, and in submitting the case to the jury. Therefore, Appellant's convictions and sentence should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593-94, 606 S.E.2d 475, 477-78 (2004). Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

First Degree Burglary

"A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either . . . the

entering or remaining occurs in the nighttime. S.C. Code Ann. § 16-11-311 (2003). "'Enters a building without consent' means: (a) To enter a building without the consent of the person in lawful possession; or (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession." S.C. Code Ann. § 16-11-310 (2003). Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling. State v. Pinckney, 339 S.C. 346, 349-50, 529 S.E.2d 526, 527-28 (2000).

At trial, the State presented testimony from Wright describing the armed robbery and assault. Wright explained how the two assailants convinced him to let them enter the house before the assault and robbery. He made several in-court identifications of Appellant as one of the intruders and participants in the crimes. (R.p.105, line 22-p.115, line 14). Rumph also described the armed robbery and assault and identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19).

The State then presented testimony from Echols himself. Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols then described the entire incident in great detail, including the lie he told Wright so he and Appellant could gain consent to enter the residence, and Appellant's active participation in the armed robbery and assault. (R.p.207, line 1-p.212, line 8).

Appellant complains that the only evidence presented to support his conviction for burglary came from Echols, whom he was not able to fully cross-examine. He argues

that without Echols' testimony, there was "no evidence" Appellant was at the scene by pre-arrangement to aid, encourage or abet, in the perpetration of the crime. This argument completely disregards the eyewitness testimony from Wright. Wright's testimony alone would survive a directed verdict motion for first degree burglary, because the jury was free to base its determination of Appellant's intent on evidence of his actions once inside the dwelling. Pinckney, supra. But Wright's testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Echols. Furthermore, any additional cross-examine of Echols would only impact his credibility as a witness. Credibility goes to the weight of evidence, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra.

Armed Robbery

Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear. State v. Frazier, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010); S.C. Code Ann. § 16-11-330(A) (2003). Robbery is the crime of larceny accomplished with force, and armed robbery occurs when a person commits robbery while armed with a deadly weapon. Id. at 532, 689 S.E.2d at 613-14.

Wright testified one of the intruders pointed a pistol at his chest, and he identified Appellant as that intruder. He described being forced to his room, getting hit in the head with the pistol, and having his money taken before the Appellant and the other intruder left in Rumph's car. (R.p.108, line 23-p.115, line 14). Rumph also described being threatened, repeatedly cut with a knife, and robbed of his money, pants, a hat, and his car. Rumph identified Sean Echols as the second intruder. (R.p.135, line 25-p.143, line 19).

The State then presented testimony from Echols himself. Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols then described the entire incident in great detail, including their use of a pistol and a knife and Appellant's active participation in the armed robbery and assault. He testified he and Appellant took money, a pair of pants, a hat, and a car from the residence. (R.p.207, line 1-p.265, line 8).

Appellant argues there was no evidence he took anything from anyone, or that he participated in taking anything. He contends Wright's testimony identifying him as one of the intruders is unreliable, and that without it there was no evidence he took anything from the victims. This argument completely disregards the testimony from Echols. Echols' testimony alone would survive a directed verdict motion for armed robbery because, under the "hand of one is the hand of all" theory of accomplice liability, each intruder is guilty for everything done by his or her confederate incidental to the execution of their common design or purpose. State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769 (Ct. App. 2010). But Echols' testimony did not stand alone. It was substantially corroborated by testimony from Rumph and Wright. Furthermore, absent outright exclusion, any attack on the reliability of Wright's identification of Appellant would only impact the weight given to his testimony, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra.

First Degree Assault and Battery

"A person commits the offense of assault and battery in the first degree if the person unlawfully . . . injures another person, and the act . . . occurred during the commission of a robbery, burglary, kidnapping, or theft." S.C. Code Ann. § 16-3-600(C) (Supp. 2013).

The State elicited testimony from Rumph that he was threatened and repeatedly cut with a knife while he was robbed of his money, pants, a hat, and his car. Rumph identified Sean Echols as the second intruder but was unable to identify the first intruder, except to say he had dreadlocks. Rumph said the man with the dreads first came into his room with a pistol, but later traded weapons with the Echols, and then proceeded to cut him with a knife. (R.p.135, line 25-p.143, line 19). Subsequently, Echols testified he and Appellant specifically planned the robbery of Wright and Rumph, including how they would get away, and the roles each would play in the commission of the crime. (R.p.203, line 17-p.206, line 25). Echols described the entire incident in great detail, including Appellant's active participation in the armed robbery and assault. He testified that when they entered the house Appellant had a gun and Echols had a knife, but they later traded weapons, and Appellant inflicted the cuts to Rumph before they left with the stolen goods. (R.p.207, line 1-p.212, line 8).

Appellant notes that Rumph never identified Appellant as the person who cut him despite having the best opportunity to view the perpetrator. He then complains, as he did in regard to the first degree burglary, that the only evidence presented to support his conviction for assault and battery came from Echols, whom he was not able to fully cross-examine. As explained above, any additional cross-examine of Echols would only

impact his credibility as a witness. Credibility goes to the weight of evidence, not its existence, and therefore would not have affected the propriety of the court's ruling on Appellant's motion for a directed verdict. Condrey, supra. Thus, there was substantial direct and circumstantial evidence that Appellant committed first degree assault and battery against Rumph.

Conclusion

Viewing the evidence in a light most favorable to the State, there was ample evidence for the jury to reasonably conclude Appellant committed first degree burglary, armed robbery of both Wright and Rumph, and first degree assault and battery of Rumph. Therefore, the evidence was sufficient, as a matter of law, to submit the case to the jury. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."). The trial judge committed no error in denying Appellant's motions for a directed verdict and for a new trial, and Appellant's convictions should be affirmed.

IV.

The trial court properly declined Appellant's request to charge the jury on the lesser included offense of assault and battery in the second degree where no evidence was presented at trial from which it could be inferred the lesser, rather than the greater, offense was committed.

Appellant argues the trial court erred in failing to charge the lesser included offense of assault and battery in the second degree as to Rumph, because Rumph's injury

did not rise to the level of "great bodily injury" as defined in the relevant statute. He maintains there was evidence by which it could be inferred that Rumph only suffered "moderate bodily injury" and therefore the jury could have found Appellant only committed second degree assault and battery. The State disagrees and submits Appellant's argument is entirely without merit. A person commits assault and battery in the first degree if the person unlawfully "injures another person," and the act occurred "during the commission of a robbery, burglary, kidnapping, or theft," regardless of the severity of that injury. S.C. Code Ann. § 16-3-600(C). Thus, whether Rumph's injury was a "great bodily injury" or a "moderate bodily injury" is of no moment, and no evidence was presented at trial to support a charge on the lesser included offense of assault and battery in the second degree as to Rumph. For the same reason, even if the trial court's decision was error, it was harmless because the jury's verdict reflected it could not have convicted Appellant of second degree assault and battery even if the option had been available. The jury specifically determined Appellant was guilty of committing both a burglary and a robbery, either of which mean that any injury to Rumph was necessarily an assault and battery in the first degree. For these reasons, Appellant's convictions should be affirmed.

Standard of Review

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). "No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). "Ordinarily, the trial court has the duty to give requested

instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

"A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). "The mere contention that the jury might accept the State's evidence in part and reject it in part is insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense." State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge's decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Analysis / Discussion

The Omnibus Crime Reduction and Sentencing Reform Act of 2010 substantially overhauled the state's criminal law in regard to assault and battery offenses. It codifies attempted murder in section 16-3-29 and four degrees of assault and battery in section 16-3-600. S.C. Code Ann. §§ 16-3-29 & 16-3-600 (Supp. 2013). The new degrees of assault and battery are, in descending order of severity, assault and battery of a high and

aggravated nature (ABHAN), and assault and battery in the first, second, and third degrees. Under the statute, ABHAN is a lesser-included offense of attempted murder. Id. § 16-3-600(B)(3). Assault and battery in the first degree is a lesser-included offense of both attempted murder and ABHAN. Id. § 16-3-600(C)(3). Further, assault and battery in the second and third degree are each lesser-included offenses of every preceding offense. Id. § 16-3-600(D)(3) & (E)(3).

At trial, the judge advised he would be charging attempted murder, as well as the lesser included offenses of ABHAN and assault and battery in the first degree as to both victims, Wright and Rumph. He said he would also charge the lesser included offense of assault and battery in the second degree as to Wright, but not as to Rumph. Appellant objected and asked the court to charge assault and battery in the second degree as to Rumph, arguing he felt "that it fits moderate bodily injury." The trial judge found Rumph could not have suffered only moderate bodily harm when he was cut five times, denied Appellant's request, and noted Appellant's objection. (R.p.249, line 15-p.251, line 1). Appellant now contends this was error.

In relevant part, the statute provides:

> (C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully:
>
> (a) injures another person, and the act: (i) involves nonconsensual touching of the private parts ... with lewd and lascivious intent; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft, or
>
> (b) offers or attempts to injure another person with the present ability to do so, and the act: (i) is accomplished by means likely to produce death or great bodily injury; or (ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

S.C.Code Ann. § 16-3-600(C)(1) (emphasis added). The trial judge misconstrued the statutory definition of assault and battery in the first degree as requiring great bodily injury to the victim. While subsection (b) does require that the acdt be "accomplished by means likely to produce death or great bodily injury," this only applies when there is "an offer or attempt to inure" rather than an actual injury. Assault and battery in the first degree also comprises subsection (a) of the statute. See Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963) ("The word 'or' used in a statute, is a disjunctive particle that marks an alternative. The word 'or' used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both.") (citations omitted). Under subsection (a), any injury constitutes assault and battery in the first degree if it occurs during the commission of a robbery, burglary, kidnapping, or theft. It is undisputed that the elements of subsection (a) are met in this case.

Here, the trial judge properly declined to instruct the jury on assault and battery in the second degree because the evidence presented during trial only supported a conclusion Rumph was injured during the commission of a burglary and robbery. Based on that evidence, the jury could only find that Appellant committed assault and battery in the first degree, committed a greater offense, or was not guilty. See State v. Mallory, 270 S.C. 519, 523, 242 S.E.2d 693, 695 (1978) ("[I]t is not error to refuse to submit the question of simple assault and battery to the jury under an indictment for assault and battery of a high and aggravated nature, unless there is testimony tending to show that the defendant is only guilty of a simple assault and battery." (emphasis added)); see also State v. Small, 307 S.C. 92, 94, 413 S.E.2d 870, 871 (Ct. App. 1992) ("The evidence does not warrant the charge of the lesser offense of simple assault. Small was guilty of

assault and battery of a high and aggravated nature or not guilty. Accordingly, there is no merit to his claim that the court erred in refusing to give the requested charge.").

On appeal, Appellant contends he was entitled to a jury instruction on assault and battery in the second degree because there was evidence by which it could be inferred that he committed only that offense. To the contrary, the evidence established either Appellant injured Rumph during a burglary and robbery, or he did not injure, rob, and burglarize Rumph at all. Accordingly, as no evidence was presented supporting a finding the assault on Rumph constituted an assault and battery in the second degree, the trial judge did not err in declining to instruct the jury on the lesser included offense. Appellant's convictions should be affirmed.

Harmless Error

Errors are considered to be harmless when they could not reasonably have affected the result of the trial. State v. Adams, 354 S.C. 361, 380, 580 S.E.2d 785, 795 (Ct. App. 2003). "It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him." State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 285, 288 (1947). When a review of the entire record establishes an error is harmless beyond a reasonable doubt, an appellate court should not reverse a conviction. State v. Thompson, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003).

In the case at bar, even assuming the trial judge erred in declining to the instruct the jury on the lesser-included offense of second degree assault and battery, any error was entirely harmless and had no impact on the ultimate outcome of Appellant's case in light of the verdict returned by the jury. Accordingly, the trial judge's decision not to instruct

the jury on simple assault and battery resulted in no prejudice to Appellant and had no impact on the outcome of his case even if the trial judge's decision was an erroneous one. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484 ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also State v. Hughey, 339 S.C. 439, 450, 529 S.E.2d 721, 727 (2000) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial."), overruled on other ground by Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009). Appellant's convictions should be affirmed.

CONCLUSION

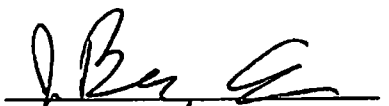
For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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Columbia, South Carolina
June 18, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

THE STATE,.....RESPONDENT

v.

RICHARD LANARD SPRINKLE, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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RICHARD LANARD SPRINKLE, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 18, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

JUN 24 2014

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

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TABLE OF CONTENTS

Table of Authorities ii

Argument 1

I. **The identification issue is preserved for review** 1

II. **Sprinkle should have been permitted to cross-examine Echols regarding the federal charges** 2

III. **There was no evidence from which Sprinkle's guilt could be fairly and logically deduced** 5

IV. **The failure to charge the lesser-included offense of assault and battery in the second degree was reversible error** 7

Conclusion 7

TABLE OF AUTHORITIES

Federal Cases

United States v. Bruno, 879 F.2d 691 (3rd Cir. 1990) 3

United States v. Ray, 683 F.2d 1116 (7th Cir. 1982) 4

United States v. Tockes, 530 F.3d 628 (7th Cir. 1982) 4

United States v. Watts, 519 U.S. 148 (1997) 3

State Cases

Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999) 7

State v. Cantrell, 250 S.C. 376, 158 S.E.2d 189 (1967) 3

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) 1, 2

State v. Gracely, 399 S.C. 363, 731 S.E.2d 880 (2012) 5

State v. Mattison, 388 S.C. 469, 697 S.E.2d 578 (2010) 6

State v. Mizell, 349 S.C. 326, 563 S.E.2d 315 (2002) 4

State v. Mueller, 319 S.C. 266, 460 S.E.2d 409 (Ct. App. 1995) 1

State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996) 1

State v. White, 361 S.C. 407, 605 S.E.2d 540 (2004) 7

State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 (2009) 1

Statutes and Regulations

18 U.S.C. § 3661 3

ARGUMENT

I. The identification issue is preserved for review.

Contrary to the State's argument, the issue concerning the admissibility of the identification evidence is preserved for review. The trial court ruled on the admissibility of the evidence pre-trial, and the trial court's ruling was final. No new evidence was presented between the time the ruling was made and the evidence was introduced that would have changed the court's ruling. Accordingly, Sprinkle's counsel did not need to renew the objection at trial in order to preserve the issue for review.

A contemporaneous objection is typically required to preserve an issue for appellate review, even where the court has previously ruled on a motion in limine. *State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) (citing *State v. Simpson*, 325 S.C. 37, 479 S.E.2d 57 (1996)). But when the trial court has previously indicated that a ruling is final, a renewed, contemporaneous objection is not necessary to preserve the issue for review. *State v. Wiles*, 383 S.C. 151, 157, 679 S.E.2d 172, 175 (2009). A contemporaneous objection is also unnecessary when the trial court makes a ruling on the admissibility of evidence immediately prior to the introduction of the evidence. *Forrester*, 343 S.C. at 642, 541 S.E.2d at 840 (quoting *State v. Mueller*, 319 S.C. 266, 268-69, 460 S.E.2d 409, 410 (Ct. App. 1995)).

Here, the trial court ruled on the admissibility of the identification evidence before trial, during the *Neil v. Biggers* hearing. The trial court made the ruling after hearing testimony from one of the victims (Wright) and one of the investigators. The trial court considered the objections of Sprinkle's counsel, who argued that the evidence was inadmissible because it was unduly suggestive and unreliable. (R. pp. 41-45.) The

trial court also heard from the State. After considering the testimony presented and the argument of counsel, the trial court ruled that the identification evidence was reliable. There was no indication that any portion of the ruling remained open or that the court planned to revisit the issue at trial. (Rr. pp. 47-48.) The ruling was final.

Additionally, there was no new evidence presented at trial that would have changed the trial court's ruling. Wright was the State's first witness, and it was during his testimony that the identification evidence was admitted into evidence. (R. pp. 154-155.) Because Wright was the same witness who provided the identification evidence pre-trial and he was the first witness to testify at trial, there was no new evidence that would have changed the trial court's ruling. Accordingly, counsel for Sprinkle did not need to renew the objection to preserve the issue for review. *See Forrester*, 343 S.C. at 642-43, 541 S.E.2d at 840 (holding that the issue was properly preserved for review even without contemporaneous objection, where the witness introducing the evidence sought to be suppressed was the trial's first witness).

II. Sprinkle should have been permitted to cross-examine Echols regarding the federal charges.

Sprinkle should have been permitted to cross-examine Echols regarding the federal charges because the charges may have revealed evidence of bias. Had the jury known about the federal charges and the plea deal offered by the State, the jury may not have believed Echols and may not have convicted Sprinkle. Echols was the only witness who provided testimony that Sprinkle helped plan the crime and that Sprinkle assaulted Rumph. The limitation on Sprinkle's ability to cross-examine Echols was reversible error.

The fact that the charges against Echols are federal versus state, or that the State lacks the authority to negotiate deals regarding federal charges, does not mean that the cross examination would have been pointless. Sprinkle should have been given the opportunity to explore the issue of what had been negotiated between Echols and the State. Sprinkle was not, as the State contends, solely trying to elicit the evidence for purposes of showing prior bad acts. The jury already knew that Echols was a criminal and that he participated in the crime. Showing that Echols had committed prior bad acts would have been cumulative evidence that may or may not have helped Sprinkle's case. What Sprinkle needed to show, and the reason Sprinkle needed the ability to fully cross examine Echols, was that Echols had been offered a deal by the State in exchange for his testimony against Sprinkle, and that the deal benefitted Echols.

Echols had good reason to help the State. Doing so could help him obtain leniency on the federal charges. Like state court judges, federal judges are vested with broad discretion to consider mitigating or aggravating evidence when sentencing a defendant. *See, e.g.*, 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); *U.S. v. Watts*, 519 U.S. 148, 151 (1997) (discussing "the longstanding principle that sentencing courts have broad discretion to consider various kinds of information"); *U.S. v. Bruno*, 879 F.2d 691, 693 (3d Cir. 1990) (discussing provisions of 18 U.S.C. § 3661, which requires consideration of "the pertinent circumstances," including "information tendered by a defendant" and "cooperation by a defendant"); *State v. Cantrell*, 250 S.C. 376, 379, 158 S.E.2d 189,

191 (1967) ("We have held that with the view of fixing the sentence to be imposed upon a defendant, it is proper for the trial judge . . . to inquire into any relevant facts in aggravation or mitigation of punishment.") (citations omitted).

Further, federal courts may consider information about pending state court charges during sentencing. *United States v. Tockes*, 530 F.3d 628, 633 (7th Cir. 2008) (holding that the district court acted within its discretion in allowing testimony about pending state charges during sentencing because "the court is required to consider . . . the history and characteristics of the defendant" and its inquiry is "broad in scope, largely unlimited either as to the kind of information it may consider, or the source from which it might come") (internal citation omitted). *See also United States v. Ray*, 683 F.2d 1116, 1120-21 (7th Cir. 1982) (holding that it was proper for federal judge to consider information like the defendant's conduct in a prior state court trial, such as shouting an obscenity at the state court judge).

Moreover, Sprinkle was entitled under South Carolina law to elicit any fact that "tends to show interest, bias, or partiality of the witness." *State v. Mizell*, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002). *Mizell* does not, as the State contends, limit the testimony that may be elicited to testimony regarding the plea negotiations, i.e., that there was no plea deal. Not only was Sprinkle prevented from eliciting testimony regarding plea negotiations that could be used to demonstrate bias, he was prohibited from confronting Echols's statement that he (Echols) was providing the testimony "out of the goodness of his heart." (R. p. 212, lines 14-22.) Sprinkle should have been permitted to cross-examine Echols regarding this statement and Echols's negotiations with the State.

This limitation on Sprinkle's ability to fully cross examine Echols was not harmless. Echols provided the only evidence that Sprinkle helped plan the crime and that Sprinkle assaulted Rumph. Echols's testimony was in direct conflict with Sprinkle's statement to the police, which was that he was on drugs and that he ran out of the house when he saw Echols assaulting someone. (R. pp. 189-197.) Given the variance in testimony, and the credibility issues of the witnesses who testified, the denial of Sprinkle's right to present the full picture of possible bias to the jury was reversible error. *See State v. Gracely*, 399 S.C. 363, 377, 731 S.E.2d 880, 887 (2012) ("In a case built on circumstantial evidence, including testimony from witnesses with such suspect credibility, a ruling preventing a full picture of the possible bias of those witnesses cannot be harmless.").

III. There was no evidence from which Sprinkle's guilt could be fairly and logically deduced.

Because the limitation on the cross examination of Echols was an error of law, and because Sprinkle's guilt could not be fairly and logically deduced without Echols's testimony, the trial court erred in denying Sprinkle's motion for directed verdict. Echols was the only witness who testified that Sprinkle entered the home with the intent to commit a crime and was the only witness who testified that Sprinkle assaulted Rumph. Without Echols's testimony, there was no evidence to support the first-degree burglary and assault and battery convictions, and even with Echols's testimony, there was no evidence to support the conviction of armed robbery.

Contrary to what the State argues, evidence concerning what Sprinkle did once inside the home is not evidence that Sprinkle entered the home with the intent to commit a crime, especially when Echols testified that he (Echols) planned the crime with two

other people (who were lifelong friends, not Sprinkle), and that he was the one who knocked on the door and gained entry into the home, knowing the victims and knowing that there was money inside the house. (R. p. 206; p. 208; p. 212; pp. 244-45; p. 247.) There is no evidence that Sprinkle knew any of this or that he went to the house with the intention of committing a crime.

Additionally, there was not, as the State suggests, evidence that two people convinced Wright to open the door. Echols testified that *he* was the one who knocked on the door and asked to use the phone. (R. p. 208, lines 8-12.) Echols asked if "Uncle Rocky," meaning Rumph, was home. (R. p. 117, line 1.) There is no evidence that another person spoke or helped convince Wright to open the door. Additionally, there was no evidence presented that Sprinkle knew Rumph or would have referred to him as "Uncle Rocky." Rumph never even identified Sprinkle as being at the scene of the crime. Echols, not Sprinkle, is the one who had the relationship that convinced Wright to open the door.

Finally, Echols's testimony was not "substantially corroborated by testimony from Rumph and Wright" as argued by the State. Rumph and Wright did not present any evidence that Sprinkle was at the scene by "pre-arrangement to aid, encourage or abet in the perpetration of the crime." *State v. Mattison*, 388 S.C. 469, 480, 697 S.E.2d 578, 584 (2010). Rumph never even identified Sprinkle as one of the perpetrators despite being shown several lineups. Additionally, no evidence was presented that Sprinkle stole anything from the house, and the jury did not convict Sprinkle of assaulting Wright.

Given these circumstances and the fact that the evidence to support the convictions came from a witness who was a co-perpetrator and whom Sprinkle was not

permitted to fully cross examine, the trial court erred in denying the motions for a directed verdict and for a new trial.

IV. The failure to charge the lesser-included offense of assault and battery in the second degree was reversible error.

The failure to charge the lesser-included offense of assault and battery in the second degree is reversible error. The fact that Sprinkle was ultimately convicted of first-degree burglary does not mean that failure to charge the lesser-included offense was harmless. The determination of whether an error is harmless should not be viewed in hindsight, after the verdicts are rendered, but rather based on the evidence in the record at the time the charge was requested. The trial court "must charge a lesser included offense if there is *any evidence* from which a jury could infer the defendant committed the lesser rather than the greater offense." *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) (citing *Brightman v. State*, 336 S.C. 348, 350-51, 520 S.E.2d 614, 615 (1999)) (emphasis added).

Because there was evidence from which the jury could conclude that Sprinkle committed the lesser-included offense of assault and battery in the second degree, and the burglary conviction was error as explained above, the trial judge should have charged the lesser included offense of assault and battery in the second degree.

CONCLUSION

Sprinkle's convictions should be reversed and the case should be remanded for a new trial.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Circuit Court

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No. 2013-000784

State of South Carolina,.....Respondent,

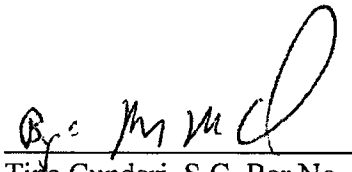
v.

Richard Lanard Sprinkle,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Reply Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 24, 2014.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Case No. 2011-GS-38-01561 - 01563
Case No. 2013-GS-38-00287
Appellate Case No.: 2013-000784

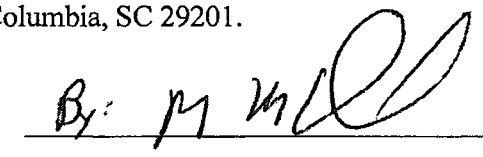
State of South Carolina,.....Respondent,

v.

Richard Lanard Sprinkle,.....Appellant.

PROOF OF SERVICE

I certify that I have served the Final Reply Brief of Appellant on Respondent State of South Carolina by depositing a copy in the United States Mail, postage prepaid, on June 24, 2014, addressed to the attorney of record, J. Benjamin Aplin, Assistant Attorney General, Office of the South Carolina Attorney General, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201.

By: 

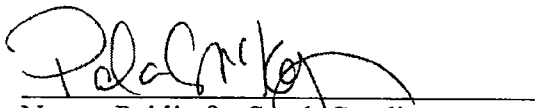
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SUBSCRIBED AND SWORN TO
Before me this 24th day of June, 2014.



Notary Public for South Carolina
My Commission Expires: July 24, 2022.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Richard Lanard Sprinkle, Appellant.

Appellate Case No. 2013-000784

Appeal From Orangeburg County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-480
Heard November 5, 2014 – Filed December 23, 2014

AFFIRMED

Tina Marie Cundari and Alexander Erwin Davis, both of Sowell Gray Stepp & Laffitte, LLC, of Columbia; and Chief Appellate Defender Robert Michael Dudek, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Assistant Attorney General John Benjamin Aplin, both of Columbia; and Solicitor David Michael Pascoe, Jr., of Orangeburg, for Respondent.

PER CURIAM: Richard Sprinkle appeals his convictions for first-degree burglary, first-degree assault and battery, and two counts of armed robbery, arguing the trial court erred in: (1) denying his motion to suppress identification evidence; (2) limiting the cross-examination of a witness; (3) denying his motions for a directed verdict and a new trial; and (4) failing to charge the lesser-included offense of second-degree assault and battery. We affirm.

FACTS

In June 2011, James Wright and Robert Rumph,[1] the two victims, were roommates. Between 2:00 a.m. and 5:00 a.m. on a Sunday morning, two men arrived at Wright's and Rumph's front door while Wright sat in the living room and Rumph slept in his bedroom. Wright explained the men asked for "Rocky" and stated they needed to use the telephone. Wright recalled that once Rumph told him to let the men in, he opened the door. Once inside, the men assaulted and robbed Rumph and Wright and fled in Rumph's car. The jury convicted Sprinkle of first-degree assault and battery of Rumph, as a lesser-included offense of attempted murder, first-degree burglary, and two counts of armed robbery. Sprinkle moved for a new trial, which the trial court denied. This appeal followed.

ISSUES ON APPEAL

1. Did the trial court err in admitting identification testimony?
2. Did the trial court err in limiting the cross-examination of a witness?
3. Did the trial court err in denying motions for a directed verdict and a new trial?
4. Did the trial court err in failing to charge the lesser-included offense of second-degree assault and battery?

STANDARD OF REVIEW

In criminal cases, this court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). "This [c]ourt does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Id.*

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[1] The parties also refer to Rumph as "Rocky" or "Rock."

LAW/ANALYSIS

I. Identification Evidence

Sprinkle argues the trial court erred in admitting Wright's identification testimony. We disagree.

In *Neil v. Biggers*, the Supreme Court of the United States developed a two-prong inquiry to determine the admissibility of an out-of-court identification. 409 U.S. 188 (1972). First, a court must determine whether the identification process was unduly suggestive. *State v. Moore*, 343 S.C. 282, 287, 540 S.E.2d 445, 447 (2000). Second, a court must determine whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.* However, only if the procedure was unduly suggestive need the court consider the second question. *Id.* at 287, 540 S.E.2d at 447-48.

The State asserts this issue is not preserved for appellate review because Sprinkle failed to object to the identification when it was offered at trial. Sprinkle's motion *in limine* to suppress this evidence occurred immediately prior to Wright's in-court-identifications of Sprinkle. Since the trial court ruled on the admission of this evidence immediately prior to the introduction of the evidence in question, Sprinkle did not need to renew his objection to the evidence. *See State v. Forrester*, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("[M]aking a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced. However, where a [court] makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection." (quotation marks and internal citation omitted)). Therefore, we find the issue is preserved.

On the merits, we find the identification process was not unduly suggestive. All of the men in the lineup have the same length and style of hair. They have similar skin tones and facial features. Further, the photo does not suggest Sprinkle is wearing a jail uniform as Sprinkle contends. Investigator Lori Garrison testified she showed Wright the lineup "the next day after the incident." Garrison indicated Wright did not have difficulty identifying Sprinkle, and she denied suggesting to Wright which picture to pick from the lineup. Garrison denied telling Wright one of the robbers was included in the photo lineup.

Additionally, we find the identification was so reliable that no substantial likelihood of misidentification existed. Wright testified he looked out of the window directly at Sprinkle when the two men arrived at the front door asking to use the telephone. Although Wright admitted he never turned the lights on in the home, he testified "the city streetlight was out there, and [he] could look through the glass and see, see their face." Further, Wright testified he told officers he knew Sprinkle because Sprinkle "used to walk[] the street all the time," and he recently saw Sprinkle on the Saturday evening before the crime occurred early Sunday morning. Moreover, Wright testified that after he saw the photo lineup, he immediately identified Sprinkle from the group. Despite suggesting Sprinkle's appearance had changed, Wright stated he had no doubt that Sprinkle was the person who assaulted and robbed him. Therefore, viewing the totality of the circumstances, we find no substantial likelihood of irreparable misidentification existed. Accordingly, we affirm the trial court's decision to admit Wright's in-court identification of Sprinkle because the identification process was not unduly suggestive and there was no substantial likelihood of irreparable misidentification.

II. Limiting Cross-Examination

Sprinkle argues the trial court erred in limiting the cross-examination of Sean Echols, Sprinkle's co-defendant,[2] regarding his pending federal investigation and expired plea negotiations.

"The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence." *State v. Mizzell*, 349 S.C. 326, 330, 563 S.E.2d 315, 317 (2002) (quoting *State v. Graham*, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994)). "A defendant has the right to cross-examine a witness concerning bias under the Confrontation Clause." *Id.* at 331, 563 S.E.2d at 317. "On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." *Id.* (quotation marks and citation omitted).

> A criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias

[2] Echols and Sprinkle were tried separately.

> on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.

State v. Pradubsri, 403 S.C. 270, 276-77, 743 S.E.2d 98, 102 (Ct. App. 2013) (alteration in original) (quoting *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317). "The trial [court] retains discretion to impose reasonable limits on the scope of cross-examination." *Mizzell*, 349 S.C. at 331, 563 S.E.2d at 317. "Before a trial [court] may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross-examination is inappropriate." *Id.* "If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error." *Id.*

"It is desirable the jury not know that a witness has invoked the privilege against self-incrimination since neither party is entitled to draw any inference from such invocation." *State v. Hughes*, 328 S.C. 146, 150, 493 S.E.2d 821, 823 (1997). "[I]t has been recognized that neither the [S]tate nor the defendant should be allowed to call witnesses who either side knows will invoke the Fifth Amendment in front of the jury and then be subject to inferences in a form not subject to cross-examination." *Id.* at 152, 493 S.E.2d at 823. A witness may not be called solely for the sake of invoking his or her Fifth Amendment privilege against self-incrimination. *Id.* at 152-53, 493 S.E.2d at 824.

Rule 410, SCRE, provides:

> evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions: . . . any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn.

We find the trial court did not abuse its discretion in limiting Sprinkle's cross-examination of Echols regarding his pending federal investigation. Sprinkle failed to demonstrate a link between Echols' pending federal investigation and his testimony against Sprinkle. Echols had not yet been charged with a federal offense nor has Sprinkle shown that the investigation was related to the crimes at issue. Importantly, the State notes it has no authority to negotiate a deal with a witness in regard to federal charges. Therefore, Sprinkle failed to show bias or how the

investigation may influence Echols' testimony against Sprinkle. Moreover, Echols' counsel was present during trial and indicated he advised Echols to assert his Fifth Amendment rights if questioned regarding the federal investigation. Although, as Sprinkle claims, his reason for calling Echols as a witness may not have been solely for the sake of having Echols assert his privilege against self-incrimination, he knew Echols would assert his Fifth Amendment rights if questioned about the federal investigation. As such, the trial court properly excluded that line of questioning.

However, we find the trial court erred by excluding evidence regarding Echols' plea negotiations. Nevertheless, we hold the error was harmless. Initially, we note the facts of this case are vastly different from the facts in *Mizzell*. Here, unlike *Mizzell*, Echols testified he had not been offered anything in return for testifying; he was doing it out of the goodness of his heart; and he hoped the court would have mercy on him in his own trial. Additionally, under cross-examination, Echols admitted he lied to investigators about the number of persons involved in the robbery. He also claimed he did not know why he was not charged with first-degree burglary or that Sprinkle was indicted for first-degree burglary, but admitted he was not indicted for first-degree burglary and was avoiding a LWOP sentence. Further, the trial court allowed Sprinkle to question Echols regarding Echols' prior convictions for assault and battery with intent to kill and second-degree burglary. Therefore, the trial court allowed a meaningful cross-examination of Echols with adequate opportunity for impeachment, such that the jury had sufficient evidence before it to judge Echols' credibility. Accordingly, we affirm the trial court's limitations on Sprinkle's cross-examination of Echols. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) (finding accused suffered no prejudice from limitation on cross-examination of one co-defendant where other evidence, including the testimony of co-defendants, established his commission of the crime).

III. Directed Verdict and New Trial

Sprinkle argues the trial court erred in failing to grant his motion for a directed verdict on all charges. We disagree.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the

evidence in a light most favorable to the State. *State v. Venters*, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990).

"A person is guilty of first-degree burglary if he enters a dwelling without consent and with intent to commit a crime in the dwelling and either enters or remains in the dwelling during the nighttime." *State v. Gilliland*, 402 S.C. 389, 397, 741 S.E.2d 521, 526 (Ct. App. 2012) (quotation marks and citation omitted). "Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling." *Id.*

"Armed robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear." *State v. Frazier*, 386 S.C. 526, 532, 689 S.E.2d 610, 613 (2010). "Robbery is the crime of larceny accomplished with force, and armed robbery occurs when a person commits robbery while armed with a deadly weapon." *Id.*

Section 16-3-600 (C)(1) of the South Carolina Code (Supp. 2013) provides:

> A person commits the offense of assault and battery in the *first degree* if the person unlawfully:
> (a) injures another person, and the act:
> . . .
> (ii) *occurred during the commission of a robbery, burglary, kidnapping, or theft; or*
> (b) *offers or attempts to injure another* person with the present ability to do so, and the act:
> (i) is accomplished by *means likely to produce death or great bodily injury*; or
> (ii) *occurred during the commission of a robbery, burglary, kidnapping, or theft.*

(emphasis added).

Although there is some dispute as to which perpetrator attacked Wright and Rumph individually, the evidence reflects Sprinkle entered the home under false pretenses at some point between 2:00 a.m. and 5:00 a.m. and remained for several minutes. The evidence further reflects that during that time, both Wright and Rumph were robbed and injured and Sprinkle participated in robbing and

assaulting the two victims. Echols testified regarding the plan he and Sprinkle developed to rob Wright and Rumph. Wright testified Sprinkle took money from him and left in Rumph's car. Rumph testified the "one with the dreads"—who Wright and Echols identified as Sprinkle—pointed a gun at him and demanded money. Further, Rumph testified the "one with the dreads" cut him on the side of his stomach, leg, arm, and foot. Rumph stated the men took his car, money, pants, and a hat when they left the home. Any discrepancies in the witnesses' testimony were for the jury to weigh. Therefore, the trial court properly submitted this case to the jury and denied Sprinkle's motions for a directed verdict and new trial.

IV. Lesser-Included Offense

Sprinkle argues the trial court erred in failing to charge the lesser-included offense of second-degree assault and battery as to Rumph. We disagree.

"The law to be charged must be determined from the evidence presented at trial." *State v. Rivera*, 389 S.C. 399, 404, 699 S.E.2d 157, 159 (2010). "The trial [court] is to charge the jury on a lesser included offense if there is any evidence from which the jury could infer that the lesser, rather than the greater, offense was committed." *State v. Watson*, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002).

"Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree . . . ." S.C. Code Ann. § 16-3-600(D)(3) (Supp. 2013). "A person commits the offense of assault and battery in the *second degree* if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so," and "*moderate bodily injury* to another person results" or could have resulted. § 16-3-600(D)(1) (emphasis added).

The trial court did not err in denying Sprinkle's request to charge the lesser-included offense of second-degree assault and battery. There is no evidence tending to show Sprinkle is guilty solely of the lesser crime. The only reasonable inference to be drawn from the totality of the evidence was that Sprinkle either did or did not injure, offer to injure, or attempt to injure Rumph during the commission of the robbery and burglary. §16-3-600 (C)(1). Moreover, Rumph clearly sustained great bodily injury as he was cut on the side of his stomach, leg, arm, and foot, requiring stitches. *See id.*

CONCLUSION

For the foregoing reasons, the trial court's order is

AFFIRMED.

FEW, C.J., LOCKEMY, J., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of General Sessions

Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2013-000784

State of South Carolina,

Respondent,

v.

Richard Lanard Sprinkle,

Appellant.

PETITION FOR REHEARING

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JAN 06 2015

SC Court of Appeals

ARGUMENT FOR REHEARING

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the appellant, Richard Lanard Sprinkle, petitions this Court for a rehearing of the Opinion issued on December 23, 2014, affirming the convictions of Richard Sprinkle. Sprinkle submits that the Court misapprehended the law and overlooked the evidence when it held that it was harmless error for the Circuit Court to limit Sprinkle's ability to fully cross-examine the State's star witness, Sean Echols, with regard to plea discussions Echols had with the State. The Court agreed that the limitation was error, but held that the error was harmless. Sprinkle respectfully asks the Court to reconsider its decision.

The Court should reconsider its decision because the error was not harmless beyond a reasonable doubt. Although a violation of the Confrontation Clause of the Sixth Amendment is not *per se* reversible error, where an error has occurred, reversal can only be avoided where "the error is harmless *beyond a reasonable doubt*." State v. Graham, 314 S.C. 383, 386, 444 S.E.2d 525, 527 (1994) (quoting Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)) (emphasis added). In Van Arsdall, the United States Supreme Court set forth a list of criteria to be used to determine whether or not error is harmless beyond a reasonable doubt:

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

475 U.S. at 684. In State v. Graham, the South Carolina Supreme Court cited the Van Arsdall factors approvingly, while stating that "[t]he list of factors . . . is not exhaustive." Graham, 314 S.C. at 386, 444 S.E.2d at 527.

Here, the Court did not consider all these factors and overlooked the importance of Echols's testimony when determining that the limitation on cross examination was harmless error. Echols's testimony was vital to the State's case. Without Echols' testimony, the State had *no evidence* that Sprinkle helped plan the crimes and therefore *no evidence* to show Sprinkle's intent. (R. pp. 206-07; 212.) Additionally, the State had *no evidence* that Sprinkle assaulted Rumph. (R. p. 209, lines 20-21.) Rumph himself was never able to identify Sprinkle. (R. pp. 142; 180; 336.) Moreover, no physical evidence was presented at trial tying Sprinkle to the crimes. The State needed Echols's testimony to make the case against Sprinkle. Given the critical nature of the testimony, any limitation on Echols's testimony—particularly a limitation that would show bias—could not have been harmless beyond a reasonable doubt.

In addition, the Court improperly placed the burden on Sprinkle to show the error was reversible. The State has the burden to demonstrate that the error was harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18, 23-24 (1966) (holding that there was no difference between previous precedent and "requiring the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained," a standard established in the case). See also, e.g., State v. Alvarez-Lopez, 98 P.3d 699, 708 (N.M. 2004) ("Under federal law, the burden is on the State to establish that the constitutional error in this case was harmless beyond a reasonable doubt.") (citing Brecht v. Abrahamson, 507 U.S. 619, 630 (1993)); Com v. Vardinski, 780 N.E.2d 1278, 1287 (Mass. 2003) ("Where a defendant's constitutional right to cross-examination has been denied, the prosecution bears the burden of establishing that the error was harmless" and a court must "resolve all ambiguities and doubts in favor of the defendant"); Dionas v. State, 80 A.3d 1058, 1065 (Md. 2013) ("once error [in not allowing certain cross-examination] is established, the

burden falls upon the State, the beneficiary of the error, to exclude this possibility beyond a reasonable doubt"). Here, the Court improperly placed the burden on Sprinkle by stating that "[i]f the defendant establishes he was unfairly prejudiced by the limitation [on cross-examination], it is reversible error." State v. Sprinkle, Op. No. 2014-UP-480 (S.C. Ct. App. Filed Dec. 23, 2014) (quoting State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002)).

Moreover, the State failed to meet its burden of showing that the error was harmless beyond a reasonable doubt. In Dionas v. State, the Maryland's highest court held that "where credibility is an issue and, thus, the jury's assessment of who is telling the truth is critical, an error affecting the jury's ability to assess a witness' credibility is not harmless error because "the right to cross-examine effectively necessarily includes the right to place the testimony of a witness in its proper setting to fairly enable the jury to judge its credibility." Dionas, 80 at 1066 (citations omitted). Id. The Dionas court noted a previous decision where it had determined that "[a]lthough the jury had ample evidence to convict [the defendant], we cannot say beyond a reasonable doubt that the court's error [in not allowing effective cross-examination] could not have influenced the jury" because "[t]he proffered cross-examination, if successful, could have cast sufficient doubt on the prosecuting witness' credibility to render her unworthy of belief in the mind of at least one juror." Id. Thus, any cross-examination which could *potentially* affect a juror is not harmless, even where there is strong evidence against a defendant.[1] See also State v. Alvarez-Lopez, 98 P.3d 699 (N.M. 2004) (determination of guilt or innocence is for the jury and error cannot be harmless unless the jury's verdict is "surely unattributable to the error . . . no matter how inescapable the findings to support that verdict might be") (quoting Sullivan v. Louisiana, 508 U.S. 275, 279 (1993)); Clark v. O'Leary, 852 F.2d 999 (7th Cir. 1988)

[1] As discussed above, the evidence against Sprinkle was not strong. The evidence came almost exclusively from Echols.

(examining the Van Arsdall factors and determining that where the state's case was built on witness testimony to place defendant at the scene of the crime, failure to allow cross-examination of witnesses on gang affiliation that may result in bias was not harmless error).

Courts in other jurisdictions have directly examined the harm to a defendant where a trial court prohibits cross-examination of a witness for the State regarding plea negotiations. In one case, the trial court prohibited the defendant from cross-examining a key witness of the state about unsuccessful plea negotiations with the State, including a revoked proffer of a maximum sentence and discussions about his eligibility for probation.[2] Cruz v. State, 437 So.2d 692, 695 (Fla. Ct. App. 1983), *disapproved on other grounds by* Edwards v. State, 548 So.2d 656 (Fla. 1989). Although the trial court did not allow the defendant to cross-examine the witness about these plea negotiations, the defendant was able to elicit on cross examination that the witness expected leniency in exchange for his testimony. Id. The appellate court held that the exclusion of the evidence of plea negotiations was reversible error.

In holding that the limitation on cross was reversible error, the court noted that "the defense's right to question a witness as to what representations were made to him is not dependent on whether they were approved by the court; the inquiries are germane to developing the witness's interest or bias in testifying." Id. at 697 (citing United States v. Benavides, 549 F.2d 392, 394 (5th Cir. 1977). The court went on to hold that because the witness was a key witness for the State, "[i]t would be problematic to say with certainty whether the state's conviction of the appellant could have been effected without the key testimony of [the] witness." Cruz, 548 So.2d at 697. Instead, "[g]iven the crucial nature of [the witness]'s testimony, the defense should have been permitted to make a more thorough examination of two vital areas

[2] The witness was convicted in a separate trial just prior to the defendant's trial and was awaiting sentencing. Cruz, 437 So.2d at 694.

bearing on the witness's credibility . . . [including] his interest or bias, if any, in testifying against the appellant." This required the court to allow the defense to conduct "[a] comprehensive exploration of . . . questions relevant to plea negotiations which occurred both before and after [the witness]'s trial."

Other courts examining similar issues have reached the same result. See, e.g., Fannin v. State, 581 So.2d 974 (Fla. Ct. App. 1991) (holding it was reversible error to prevent cross-examination of a witness regarding her knowledge or belief of the possibility of a plea deal for her mother on a separate charge, as such information could suggest interest or bias on the part of witness which could "shade her testimony to protect her mother"); State v. Clark, 364 S.W.3d 540 (Mo. 2012) (holding it was reversible error to prohibit cross-examination of witness regarding his hopes for leniency even where plea deal had not been offered); Keys v. State, 739 So.2d 455 (Miss. Ct. App. 1999) (holding it was reversible error for the trial court to prevent cross-examination of a witness using a statement made by that witness at plea hearing where plea had ultimately been withdrawn).

The same question of bias was present in the case at hand, and the failure to allow Sprinkle to expose Echols's bias was reversible error. Although the original plea deal that the State offered Echols had expired, there is nothing in the record to suggest that the possibility of deal in the future had been foreclosed. In fact, *in camera* discussion with the trial court indicate that Echols had allowed the plea deal to expire because "he could be facing life, he was offered 20 [years] and he's looking for ten [years]." (R. p. 237, ll. 17-20.) The trial court itself indicated in its ruling that "we're not going to get into" discussions "[w]ith regard to Mr. Echols asking, you know, for ten years." (R. p. 240 line 24 – p. 241 line 2.)

Further, Echols testified that he was testifying out of the goodness of his heart and that he had not been offered anything for his testimony. (R. p. 212, lines 18-22.) This testimony is important because it left the jury with the impression that there had been *no plea discussions* between the State and Echols, which was not true. In addition, it allowed the State to portray Echols as a repentant criminal who was hoping simply for "*the Court* to have mercy on [him]." (R. p. 212, lines 23-25) (emphasis added). Had Sprinkle been able to expose the plea discussions with the State, the jury would have seen that Echols was not only not credible, but he actually had reason to testify *against* Sprinkle. Moreover, Echols testified that he was not indicted for burglary, presumably because he was cooperating with the State, and yet the jury was not permitted to hear testimony that would have led them to conclude that Echols was cooperating with the State. Given these facts, it cannot be said with certainty that the testimony would not have affected the jury's decision.

Finally, the Court's reliance on State v. Sherard, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991), is misplaced because the facts in that case were vastly different than the facts in the present case. To begin, the court in Sherard did not find that the limitation on cross was error. The defense was able to elicit testimony that the State's witness had previously served time and "the last thing in the world he wanted to do was go back"; that the State's witnesses both knew that they "would be treated much less severely in family Court than in General Sessions Court"; that the State had agreed to reduce numerous penalties against them in exchange for their testimony; and that one witness knew that "in order to remain in Family Court and have the charges against him reduced, he had to testify for the State." Id. at 174-75, 399 S.E.2d at 596. This testimony is much more extensive and much more indicative of bias than the testimony elicited in the present case.

Further, in Sherard the conviction was supported not only by the State's witnesses but also by the defendant's *own statements to the police*, which "indicate that he shot [the victim] while attempting to rob him." Id. at 175, 399 S.E.2d at 596. Here, there is no other evidence supporting Sprinkle's conviction for burglary, other than Echols's testimony. Sprinkle has maintained through the case that he did not go to the victims' house to rob them or to commit a crime. That was Echols's idea, and Echols was permitted to point the finger at Sprinkle without Sprinkle being able to full cross examine him. Accordingly, the Court erred in relying on Sherard to hold that the trial court's error was harmless beyond a reasonable doubt.

CONCLUSION

Sprinkle respectfully asks the Court to reconsider its decision in this case. The limitation on cross examination was not harmless beyond a reasonable doubt. The jury should have heard about the plea deal and been able to draw its own conclusions as to why Echols testified the way he did and why it was Sprinkle and not Echols who was charged with burglary. It cannot be said with certainty that had the jury known that Echols had been in plea negotiations with the State that it would not have affected the outcome. A defendant should not have to serve 35 years in prison based on such flimsy and limited evidence.

For these reasons, the appellant respectfully requests that the Court grant the Petition for Rehearing and reverse and remand for a new trial.

By: _____

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Attorneys for Appellant

January 6, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Edgar W. Dickson, Circuit Court Judge

THE STATE, RESPONDENT,

V.

RICHARD LANARD SPRINKLE, APPELLANT

APPELLATE CASE NO. 2013-000784

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of January, 2015.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 6th day
of January, 2015.
Beverly Robinson Brown (L.S.)

Notary Public for South Carolina

My Commission Expires: December 9, 2024.

The South Carolina Court of Appeals

The State, Respondent,

v.

Richard Lanard Sprinkle, Appellant.

Appellate Case No. 2013-000784

ORDER

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

C.J.

J.

A.J.

Columbia, South Carolina

FILED
1/8/15

cc: Alan McCrory Wilson, Esquire
Robert Michael Dudek, Esquire
Tina Marie Cundari, Esquire
John Benjamin Aplin, Esquire
David Michael Pascoe, Jr., Esquire

Alexander Erwin Davis, Esquire
The Honorable Edgar W. Dickson

The South Carolina Court of Appeals

The State, Respondent,

v.

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ORDER

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

John Cannon Jr. C.J.

J.

Jasper M Cureton A.J.

Columbia, South Carolina

FILED
1/8/15

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