

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BENJAMIN LAVON SMALLS,

APPELLANT

APPELLATE CASE NO. 2014-001539

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2) Court of General Sessions
2 COUNTY OF CHARLESTON) Case No. 2011-GS-105647
3) and 2011-GS-105648

3)
4 STATE OF SOUTH CAROLINA)
4)
5 vs.) Transcript of Record
5)
6 BENJAMIN LAVON SMALLS,)
6)
7 Defendant.)
7) DATE: July 7, 2014

8
9 B E F O R E:
10 THE HONORABLE DEADRA L. JEFFERSON

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13 For the State

14 ROBERT L. GAILLIARD
15 For the Defendant

16 Karen V. Andersen, RMR, CRR
17 Circuit Court Reporter
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25

1 (Whereupon, the defendant is present.)

2 THE COURT: Is the State ready to proceed?

3 MR. OSBORNE: Yes, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. GAILLIARD: Yes, Your Honor.

6 THE COURT: Does the defendant wish to have a
7 formal arraignment?

8 MR. GAILLIARD: No, Your Honor, we will waive that.

9 THE COURT: And what are we going forward on?

10 MR. OSBORNE: Two charges; armed robbery and
11 possession of a weapon during the commission of a violent
12 crime.

13 THE COURT: Indictments 2011-5647 and 5648; is that
14 correct?

15 MR. OSBORNE: That's correct.

16 THE COURT: Ladies and gentlemen, we are going to
17 select a jury for the cases of the State of South Carolina
18 vs. Benjamin Lavon Smalls, Indictments 2011-GS-10-5647 and
19 5648.

20 Those indictments allege as follows, that on May
21 25th, 2011, in Charleston County, South Carolina, at
22 Staffordshire Drive, by use of force, threats, or
23 intimidation, and while armed with a deadly weapon, to wit,
24 a handgun, the defendant, Benjamin Lavon Smalls, while
25 acting in concert with others, did take and carry away goods

1 and/or moneys from the person or immediate presence of
2 Ronzell, R-o-n-z-e-l (sic), Olds, O-l-d-s, with intent to
3 permanently deprive him of possession thereof, alleging a
4 violation of Section 16-11-330a) of the South Carolina Code
5 of Laws as amended.

6 And Indictment 5648, possession of a firearm during
7 the commission of a violent crime, and that indictment
8 alleges that in Charleston County, South Carolina, on or
9 about May 25th, 2011, the defendant, Benjamin Lavon Smalls,
10 did possess a handgun or visibly displayed what appeared to
11 be a handgun during the commission or attempted commission
12 of an armed robbery, a violent crime, alleging a violation
13 of Code Section 16-23-490 of the code of laws as amended,
14 and alleging these actions to be against the peace and
15 dignity of the State of South Carolina.

16 We are going to go through a process that is called
17 voir dire, which is simply a legal term meaning that I'm
18 going to ask you some questions so that the attorneys can
19 more effectively exercise their peremptory challenges in
20 jury selection. If a question applies to you, please stand,
21 and in a loud and clear voice, give us your name, your juror
22 number, and an answer to the question, if applicable, and
23 remain standing until the Court has completed questioning
24 you.

25 Before we begin that process, I'm going to ask

1 counsel for the State to introduce themselves, anyone who
2 will be assisting them in the trial of the case, the names
3 of the members of their office. And I'm going to ask
4 counsel for the defense to provide us with the same
5 information, as well as having his client stand and face the
6 panel.

7 You may proceed.

8 MR. OSBORNE: Hello. My name is David Osborne. I
9 work for the Ninth Circuit Solicitor, Scarlett Wilson. This
10 is Greg Voigt. He will be assisting me in this case. This
11 is the case agent, Lamarte Williams, and Detective Richard
12 Jones.

13 THE COURT: I need you to give us the names of the
14 members of your office.

15 MR. OSBORNE: Oh.

16 MR. VOIGT: Besides Scarlett Wilson, we have Chief
17 Deputy Bruce Durant, Stephanie Linder, Ran Stoney, Marian
18 Askins, Tod Williams, Culver Kidd, Chad Simpson, Amy
19 Harrell, Timmy Finch, Jennifer Shealy, Jennifer McCoy, Ted
20 Corvey, Nick Lewis, Nina Savas. We also have Kelley Young,
21 Tyler Schachte, Emmanuel Ferguson, Jim Stack, Drew Evans,
22 Jessica Baldwin, Debbie Herring-Lash, Shannon Elliott,
23 Lauren Mulkey. And I think that's it, Judge.

24 THE COURT: Mr. Gailliard.

25 MR. GAILLIARD: May it please the Court, Your

1 Honor.

2 I'm Robert Gailliard. I represent the defendant,
3 Benjamin Lavon Smalls, who is standing right here. My
4 office is 1071 King Street. And I'm the only member of my
5 firm.

6 THE COURT: Thank you. You may take your seat.

7 Again, ladies and gentlemen, if a question applies
8 to you, please stand, and in a loud and clear voice, give us
9 your name, your juror number, and an answer to the question,
10 if applicable, and remain standing until the Court has
11 completed questioning you.

12 Is there any member of the panel related by blood
13 or marriage to Benjamin Lavon Smalls or Ronzell Olds? If
14 so, please stand at this time.

15 (No response from the jury.)

16 THE COURT: Does any member of the panel have a
17 close, personal, or social relationship with Benjamin Lavon
18 Smalls or Ronzell Olds? If so, please stand at this time.

19 (No response from the jury.)

20 THE COURT: The following are a list of potential
21 witnesses. I would ask that you listen carefully: Brandon
22 Nelson, Benjamin Lavon Smalls, Ashley Green, Ronzell Olds,
23 Cicely Gillispie, Jazmyn Olds, Brandon Nelson, Ashley Green,
24 Montez Dozier, Barry Daniels, Andre Jenkins, Lamarte
25 Williams, Tim Dasher, Matt Stanley, Richard Holmes, Yolanda

1 Brown, Harry Mills, Jonathan Lance, George Bradley, and
2 Bryant Tatman, all of the Charleston Police Department.
3 Sarah Gladwell and Mary Phillips, as well as Jennifer Wooley
4 who are crime scene technicians with the Charleston Police
5 Department, Mark Lipsey, Charleston County Sheriff's Office.
6 David Watson, Ticia Lafayette and Jack Scarborough, all
7 employed as investigators with the Charleston County
8 Solicitor's Office; Jennifer Bartman, Nikki Hughes and Amy
9 Stephens of the South Carolina Law Enforcement Division; and
10 Linda Wilson and Lori Rowe of the Charleston Police
11 Department.

12 Are there any member of the panel related by blood
13 or marriage to any of the people that I've just listed, or
14 does anyone have a close, personal, or social relationship
15 with any of these individuals? If so, please stand at this
16 time.

17 Yes, ma'am. Tell us your name and juror number.

18 PROSPECTIVE JUROR: My name is Amber Grant. I'm
19 Juror No. 141. I think I may know Montez Dozier from
20 school.

21 THE COURT: And how long ago would you say you had
22 contact with Mr. Dozier?

23 PROSPECTIVE JUROR: Not since maybe 2010.

24 THE COURT: How would you characterize that
25 relationship?

1 PROSPECTIVE JUROR: Well, he's close friends with
2 my cousin.

3 THE COURT: How often would you say that you see
4 him?

5 PROSPECTIVE JUROR: Rarely.

6 THE COURT: As a result of this experience, do you
7 feel that you could remain fair and impartial and render a
8 fair and impartial decision in this case based solely on the
9 evidence as it will be presented and on the law as the Court
10 will instruct?

11 PROSPECTIVE JUROR: Yes, ma'am.

12 THE COURT: Thank you, ma'am. You may take your
13 seat.

14 Has any member of the panel ever been represented
15 by any of the attorneys involved in this case or any of the
16 lawyers in their offices? If so, please stand at this time.

17 (No response from the jury.)

18 THE COURT: Is there any member of the panel
19 related by blood or marriage to or have a close personal or
20 social relationship with any of the attorneys involved in
21 this case or any of the lawyers in their offices? If so,
22 please stand at this time.

23 Sir, tell me your name and juror number.

24 PROSPECTIVE JUROR: Josh Cantwell, Number 65.

25 THE COURT: And who is it that you have a

1 relationship with?

2 PROSPECTIVE JUROR: I know a few of the solicitors,
3 just based on being -- I'm a member of the bar.

4 THE COURT: How would you characterize that
5 relationship with them?

6 PROSPECTIVE JUROR: Just acquaintances. I'm not
7 close friends.

8 THE COURT: Remain standing for me.
9 Yes, ma'am in the back.

10 PROSPECTIVE JUROR: 187, Lacresia Johnson. I know
11 both of the attorneys on both sides.

12 THE COURT: In what capacity, ma'am?

13 PROSPECTIVE JUROR: I had a case I was involved in.

14 THE COURT: How long ago was that?

15 PROSPECTIVE JUROR: One was in 2012, and then the
16 other was, I believe, maybe 8 to 10 years ago.

17 THE COURT: As a result of these experiences, do
18 you both feel that you can remain fair and impartial and
19 render a fair and impartial decision in this case based
20 solely on the evidence as it will be presented and on the
21 law as the Court will instruct? If your answer is yes,
22 please take your seat.

23 Let the record reflect that both answered yes.

24 Is there any member of the panel related by blood
25 or marriage to or have a close personal or social

1 relationship with anyone who is employed in the Solicitor's
2 Office or in Mr. Robert Gailliard's law practice? If so,
3 please stand at this time.

4 (No response from the jury.)

5 THE COURT: Has any member of the panel formed or
6 expressed an opinion about any issue or matter involved in
7 this case? If so, please stand at this time.

8 (No response from the jury.)

9 THE COURT: Is there any member of the panel aware
10 of any bias or prejudice toward either the State or the
11 defense in this case? If so, please stand at this time.

12 (No response from the jury.)

13 THE COURT: Is there any member of the panel who is
14 a member of the Grand Jury which issued the indictments in
15 this case? If so, please stand at this time.

16 (No response from the jury.)

17 THE COURT: Is there any member of the panel who is
18 a member of or contributor to any group which has as its
19 primary concern the promotion of law enforcement or victim's
20 rights? These groups would include, but are not limited to
21 Mothers Against Drunk Driving, Students Against Drunk
22 Driving, Citizens Against Violent Crime, People Against
23 Rape, Citizens Advocating a Return to Decency and Ethics,
24 Parents Empowered to Save Teens, or any other type of
25 community watch group? If so, please stand at this time.

1 (No response from the Jury.)

2 THE COURT: Is there any member of the panel who
3 has a moral, philosophical, or religious opposition to
4 sitting in judgment of a fellow human being? If so, please
5 stand at this time.

6 (No response from the jury.)

7 THE COURT: Is there any member of the panel who
8 has any knowledge of the alleged facts and circumstances
9 surrounding this alleged armed robbery on Staffordshire
10 Drive in 2011? If so, please stand at this time.

11 (No response from the jury.)

12 THE COURT: Is there any member of the panel who
13 has watched, read, or listened to any media accounts about
14 this case? If so, please stand at this time.

15 (No response from the jury.)

16 THE COURT: Is there any member of the panel who
17 has ever been a victim of a violent crime? If so, please
18 stand at this time.

19 Yes, ma'am, tell us your name and juror number.

20 PROSPECTIVE JUROR: Elizabeth Stribline. And I
21 don't know my juror number.

22 THE CLERK: 352, Your Honor.

23 THE COURT: 352?

24 Yes, ma'am.

25 PROSPECTIVE JUROR: I was a victim of an assault

1 and attempted robbery in 2002. I was working at a hotel.

2 THE COURT: I'm sorry, repeat the last part.

3 PROSPECTIVE JUROR: I was working at a hotel and I
4 was held up at gunpoint.

5 THE COURT: If you would remain standing.

6 Yes, sir.

7 PROSPECTIVE JUROR: Sam Garrett, Juror 128. Twenty
8 years ago, I lived in Jacksonville, I was walking through
9 downtown Jacksonville and I was rushed by two men that
10 attempted to take my wallet. And when I resisted, they hit
11 me with a pipe and knocked me out.

12 THE COURT: If you would remain standing for me,
13 sir.

14 PROSPECTIVE JUROR: Mary Ellison, 107. I was held
15 up at gunpoint in 1981 and they got away with amount of
16 cash.

17 PROSPECTIVE JUROR: I'm Jaunita Champagne.

18 THE CLERK: Juror 71.

19 PROSPECTIVE JUROR: In March of this year, I was a
20 victim of a robbery in my store by gunpoint.

21 THE COURT: As a result of these experiences, do
22 you all feel that you can remain fair and impartial and
23 render a fair and impartial decision in this case based
24 solely on the evidence as it will be presented and on the
25 law as the Court will instruct? If your answer is yes,

1 please take your seat.

2 Let the record reflect that 107 and 71 have
3 indicated they cannot be fair and impartial. You will be
4 excused from the trial of this case only.

5 352 and 128 indicated yes by taking their seats.

6 Y'all can take your seats. Thank you.

7 Is there any member of the panel who has had what
8 they would characterize as a bad experience with law
9 enforcement such that it would affect your ability to be
10 fair and impartial? If so, please stand at this time.

11 (No response from the jury.)

12 THE COURT: Does any member of the panel know of
13 any reason whatsoever why he or she should not serve as a
14 juror in this case, with particular emphasis being placed on
15 your ability to be fair and impartial to both the State and
16 the defense? If so, please stand at this time.

17 (No response from the jury.)

18 THE COURT: Is there any member of the panel who
19 has been subject to what they would characterize as an
20 identity theft? If so, please stand at this time.

21 (No response from the jury.)

22 THE COURT: Are there any additional questions from
23 the State?

24 MR. OSBORNE: No, Your Honor.

25 THE COURT: From the defense?

1 MR. GAILLIARD: No, Your Honor.

2 THE COURT: Strikes will be 5 and 10.

3 Who is going to demonstrate for me? Mr. Robinson?

4 Ladies and gentlemen, if your name is called,
5 please come forward, as Mr. Robinson is doing, with all of
6 your personal belongings. Stand where he is standing,
7 turning back facing the panel until we either seat or excuse
8 you as a juror. Again, please bring all of your personal
9 belongings. We appreciate your patience. This process
10 should go fairly quickly. I will give you over to the
11 attention of the deputy clerk for me. If you would give him
12 your attention please.

13 THE CLERK: Ladies and gentlemen, when your name is
14 called, please come forward, stand here by the podium.
15 Bring all of your items with you, and face the parties.

16 Juror No. 128, Samuel Garrett. What say you for
17 the State?

18 MR. OSBORNE: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 MR. GAILLIARD: Please excuse this juror.

21 THE CLERK: Sir, please return to your seat.
22 You've been excused from the trial of this case.

23 Juror No. 356, Rita Tadlock. What say you for the
24 State?

25 MR. OSBORNE: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. GAILLIARD: Please seat this juror.

3 THE CLERK: Ma'am, please have a seat in the jury
4 box. You've been selected as a juror in the trial of this
5 case.

6 Juror No. 154, Megan Hazelton.

7 What say you for the State?

8 MR. OSBORNE: Please present this juror.

9 THE CLERK: What say you for the defense?

10 MR. GAILLIARD: Please seat this juror.

11 THE CLERK: Please have a seat in the jury box.
12 You've been selected as a juror in the trial of this case.

13 Juror No. 385, Bruce Williams.

14 What say you for the State?

15 MR. OSBORNE: Court's indulgence. Please excuse
16 the juror.

17 THE CLERK: Sir, please return to your seat.
18 You've been excused from the trial of this case.

19 Juror No. 183, Helen Jervey.

20 What say you for the State?

21 MR. OSBORNE: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. GAILLIARD: Please excuse this juror.

24 THE CLERK: Ma'am, Please return to your seat.
25 You've been excused from the trial of this case.

1 Juror No. 65, Joshua Cantwell.

2 What say you for the State?

3 MR. OSBORNE: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. GAILLIARD: Please seat this juror.

6 THE CLERK: Sir, please have a seat in the jury
7 box. You've been selected as a juror in the trial of this
8 case.

9 Juror No. 391, Sherre Wilson.

10 What say you for the State?

11 MR. OSBORNE: Please excuse this juror.

12 THE CLERK: Ma'am, please return to your seat.
13 You've been excused for the trial of this case.

14 Juror No. 289, Sherelle Ravenell.

15 What say you for the State?

16 MR. OSBORNE: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 MR. GAILLIARD: Please excuse this juror.

19 THE CLERK: Ma'am, please return to your seat.
20 You've been excused from the trial of this case.

21 Juror No. 310, Peter Rothermel.

22 What say you for the State?

23 MR. OSBORNE: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. GAILLIARD: Please seat this juror.

1 THE CLERK: Sir, please have a seat in the jury
2 box. You've been selected as a juror in the trial of this
3 case.

4 Juror No. 352, Elizabeth Stribling.

5 What say you for the State?

6 MR. OSBORNE: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. GAILLIARD: Please excuse this juror.

9 THE CLERK: Ma'am, please return to your seat.
10 You've been excused from the trial of this case.

11 Juror No. 315, Danny Rowsey.

12 What say you for the State?

13 MR. OSBORNE: Please excuse this juror.

14 THE CLERK: Please return to your seat. You've
15 been excused from the trial of this case.

16 That's three strikes for the State.

17 Juror No. 280, Jack Pitts.

18 What say you for the State?

19 MR. OSBORNE: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 MR. GAILLIARD: Please seat this juror.

22 THE CLERK: Please have a seat in the jury box.
23 You've been selected as a juror in the trial of this case.

24 Juror No. 333, Sade Small.

25 What say you for the State?

1 MR. OSBORNE: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. GAILLIARD: Please seat this juror.

4 THE CLERK: Please have a seat in the jury box.
5 You've been selected as a juror in this case.

6 Juror No. 322, Maureen Schrader.

7 What say you for the State?

8 MR. OSBORNE: Please present this juror.

9 THE CLERK: What say you for the defendant?

10 MR. GAILLIARD: Please seat this juror.

11 THE CLERK: Please have a seat in the jury box.
12 You've been selected as a juror in this case.

13 Juror No. 33, April Blissett.

14 What say you for the State?

15 MR. OSBORNE: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. GAILLIARD: Please seat this juror.

18 THE CLERK: Ma'am, please have a seat in the jury
19 box. You've been selected as a juror in this case.

20 Juror No. 389, Rebecca Williamson.

21 What say you for the State?

22 MR. OSBORNE: Please present this juror.

23 THE CLERK: What say you for the defendant?

24 MR. GAILLIARD: Please excuse this juror.

25 THE CLERK: Ma'am, please return to your seat.

1 You've been excused from the trial of this case.

2 That's five strikes for the defendant.

3 Juror No. 302, Katrina Robinson.

4 What say you for the State?

5 MR. OSBORNE: Please present this juror.

6 THE CLERK: What say you for the defendant?

7 MR. GAILLIARD: Please seat this juror.

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

9 You've been selected as a juror in this case.

10 Juror No. 173, James Iverson.

11 What say you for the State?

12 MR. OSBORNE: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. GAILLIARD: Please seat this juror.

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

16 You've been selected as a juror for the trial of this case.

17 Juror No. 373, Alexander Waters.

18 What say you for the State?

19 MR. OSBORNE: Court's indulgence. Please present
20 this juror.

21 THE CLERK: What say you for the defendant?

22 MR. GAILLIARD: Please excuse this juror.

23 THE CLERK: Sir, please return to your seat.

24 You've been excused from the trial of this case.

25 Juror No. 160, Susan Higgins.

1 What say you for the State?

2 MR. OSBORNE: Please excuse this juror.

3 THE CLERK: Please return to your seat. You've
4 been excused from the trial of this case.

5 Juror No. 182, Carol Jerman.

6 What say you for the State?

7 MR. OSBORNE: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. GAILLIARD: Please seat this juror.

10 THE CLERK: Please have a seat in the jury box.
11 You've been selected as a juror for the trial of this case.

12 Juror No. 313, Lawrence Rowland.

13 What say you for the State?

14 MR. OSBORNE: Please present this juror.

15 THE CLERK: What say you for the defendant?

16 MR. GAILLIARD: Please seat this juror.

17 THE CLERK, Sir, please have a seat in the jury box.
18 You've been selected as a juror for the trial of this case.

19 THE COURT: Two alternates; strikes are one and
20 two.

21 THE CLERK: Now selecting for the alternate. Juror
22 No. 306, Richard Roesner.

23 MR. GAILLIARD: What's the juror number?

24 THE CLERK: 306. What say you for the State?

25 MR. OSBORNE: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. GAILLIARD: Please seat this juror.

3 THE CLERK: Sir, please have a seat in the jury
4 box. You've been selected as an alternate for the trial of
5 this case.

6 Now selecting for a second alternate.

7 Juror No. 400, Meghan Grech.

8 What say you for the State?

9 MR. OSBORNE: What's the juror number?

10 THE CLERK: 400.

11 MR. OSBORNE: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 MR. GAILLIARD: Please seat this juror.

14 THE CLERK: Please have a seat in the jury box.
15 You've been selected as a juror for the trial of this case.

16 THE COURT: Are there any motions regarding
17 selection of the jury from the State?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: From the defense?

20 MR. GAILLIARD: None, Your Honor.

21 THE COURT: Ladies and gentlemen, y'all have been
22 incredibly patient with us. We know that we probably have
23 taxed your patience today, but we appreciate it. Again, as
24 I've explained, today will be the longest day that you are
25 here. We try to get as much done as possible. You are

1 excused for the remainder of the day. We just ask that you
2 call the jury information line after six o'clock this
3 morning. We appreciate you letting us go a little beyond
4 the lunch hour. I figured that was preferable to sending
5 you to lunch and having you come back 2 or 2:30. Have a
6 great day.

7 (Whereupon, prospective jurors leave.)

8 THE COURT: Can counsel approach for me, please.

9 (Whereupon, a bench conference takes place off the
10 record.)

11 THE COURT: Ladies and gentlemen, please stand so
12 that the clerk can swear you in.

13 (Whereupon, the jury is sworn.)

14 THE COURT: You've been selected for the case of
15 State of South Carolina vs. Benjamin Lavon Smalls. We are
16 going to begin this case, but I'm going to give you a break
17 for lunch until 3:30. And the lawyers and I will have a
18 different break. I have two other hearings I have to hear
19 before I go to lunch, and then I have to eat lunch, and then
20 I have to deal with pretrial matters in this case. And then
21 we will begin with opening instruction, opening argument.

22 I anticipate we will get one or two witnesses done
23 today before we break around five o'clock. Again, we are
24 used to this schedule. Y'all are not. And I appreciate
25 your indulgence. It allows the Court to dispose of quite a

1 few other matters so that the week can roll along a little
2 more smoothly.

3 Again, we do not take your time for granted and we
4 are greatly appreciative of it. I would rather give you all
5 a little extended lunch than have you wait in the jury room
6 while I'm hearing a matter in-camera. Again, we appreciate
7 your patience.

8 During this break, please do not watch, read or
9 listen to media accounts about this case, if there are any.
10 That includes anything that could be on the radio,
11 television, internet -- did I leave out something? -- TV, I
12 think. Also, I know this may sound strange, but please do
13 not make any posts regarding your status on any social
14 networking sites. That includes Facebook, Instagram, Vine.
15 There's so many, I've lost track. I am befuddled, frankly,
16 at the number of people who scan these during the workday
17 and call our jury coordinator who are not on jury duty. You
18 would be amazed as well. I wonder if people are actually
19 working, that they would have the time to troll through
20 these sites, but they do, and they will call us. And they
21 will tell us that you made a comment on your Facebook page,
22 on Vine, Twitter, Instagram, the plethora of them that I
23 have lost track of.

24 So to avoid that, it's better that you not make any
25 comments, because we would hate for an innocent comment to

1 be misinterpreted. And I would hate to have to take the
2 time that would be required for us to do what we call an
3 individual voir dire of you if such a comment is made.

4 Also, please don't have any contact with anyone in
5 or about the courthouse. Again, we would not want an
6 innocent conversation to be misinterpreted. So to safeguard
7 yourselves, please only speak to those you know to have blue
8 juror stickers on.

9 I hope y'all have a wonderful lunch. We will see
10 you at 3:30. Again, we appreciate your patience. Have a
11 good lunch recess.

12 (Whereupon, the jury leaves open court at 1:32
13 p.m.)

14 THE COURT: Y'all indicated there was a stipulation
15 in the chain witnesses. Have y'all been able to agree to
16 that or not been able to agree?

17 MR. GAILLIARD: We have not agreed to that, Your
18 Honor.

19 THE COURT: Okay. No further explanation is
20 necessary.

21 All right. Is there anything else we need to take
22 up before we adjourn until three o'clock from the State?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: From the defense?

25 MR. GAILLIARD: No, Your Honor.

1 THE COURT: All right. And did you all talk about
2 agreeing to witnesses appearing by Skype? You don't have to
3 agree to it because the court rules don't provide for it.
4 And if he doesn't agree to it, you don't have to make
5 preparation --

6 MR. OSBORNE: I have not received any notice from
7 him whether he's disagreeing or agreeing.

8 THE COURT: Do you have any opposition to them
9 presening witnesses via Skype?

10 MR. GAILLIARD: No, Your Honor.

11 THE COURT: Thank you. See y'all at three o'clock.
12 Have a good lunch.

13 (Whereupon, a luncheon recess is taken.)

14 THE COURT: State ready to proceed?

15 MR. OSBORNE: Yes, Your Honor.

16 THE COURT: Is the defense ready to proceed?

17 MR. GAILLIARD: Your Honor, before we proceed with
18 the Neil v. Biggers hearing, I need to bring one thing to
19 the Court's attention. As I was leaving for lunch, I was
20 approached by one of the jurors who indicated that she
21 wanted to talk to me.

22 THE COURT: On our panel?

23 MR. GAILLIARD: Yes, Your Honor, this panel. She
24 then indicated that she knew the defendant. I then told her
25 that she would need to discuss that with the judge.

1 THE COURT: Which juror was it?

2 MR. GAILLIARD: I cannot identify her by number.

3 THE COURT: Tell me what she looked like and what
4 she did for a living. Where was she seated, do you
5 remember, on each or one of these rows?

6 MR. GAILLIARD: She was on the back row, Your
7 Honor.

8 THE COURT: Was it close to the end or near the
9 middle?

10 MR. GAILLIARD: I can't tell you that. She was a
11 black woman with a white sweater and perhaps a green skirt
12 on.

13 THE COURT: 33 was on this end, but she had braids.
14 How was the person's hair; do you remember?

15 MR. GAILLIARD: I don't recall braids, Your Honor.

16 THE COURT: Then it would have to be 302, I
17 think.

18 THE CLERK: She was wearing a blue shirt.

19 THE COURT: Okay. We will deal with that
20 momentarily.

21 Were any deals extended to the defendant by the
22 State?

23 MR. OSBORNE: The offer from us was two armed
24 robberies, possession of stolen vehicle, possession of
25 crack, and two charges of possession of weapon during the

1 commission of a violent crime, negotiated 15 years.

2 THE COURT: So, basically, he would plead to
3 everything he was charged with; no indictments would be
4 nolle pros'd, for negotiated plea of 15 years?

5 MR. OSBORNE: That's correct.

6 THE COURT: And tell me again what that was.

7 MR. OSBORNE: It was two armed robbery charges, two
8 weapons during the commission of a violent crime, possession
9 of stolen vehicle, and possession of cocaine base first
10 offense.

11 THE COURT: Does he have any record?

12 MR. OSBORNE: I'm sorry?

13 THE COURT: Does he have any record?

14 MR. OSBORNE: Now, the incidents stem from two
15 different armed robbery incidents and a possession of
16 cocaine, so there's actually three different incidents
17 involved.

18 THE COURT: I understand that, but my question is,
19 does he have any previous criminal history?

20 MR. OSBORNE: He has a juvenile adjudication
21 in '07. Doesn't list what it's for. He has a possession of
22 a weapon conviction in '07. He has a concealed weapons
23 conviction in '09. Entering a premises after warning in
24 2010. And assault and battery third degree in '03 -- oh,
25 '13, sorry. That's it.

1 THE COURT: When was that offer extended to him?

2 MR. OSBORNE: That offer was extended on April the
3 10th of 2014. And it was to expire on May the 30th of
4 2014.

5 THE COURT: April the 10th of 2014; and expired
6 when?

7 MR. OSBORNE: On May the 30th.

8 THE COURT: Mr. Gailliard, did you have a full
9 opportunity to discuss the State's offer with your client?

10 MR. GAILLIARD: Your Honor, I was hired after
11 the --

12 THE COURT: The plea offer had expired?

13 MR. GAILLIARD: -- after the offer had expired.

14 THE COURT: Who was representing him prior to that
15 time.

16 MR. GAILLIARD: Attorney Ray Baumil was, Your
17 Honor. And the substitution of counsel order came in rather
18 late. And I was able to get the Court to allow me to put
19 the trial off until July to come up to speed.

20 THE COURT: So by the time -- when exactly were you
21 retained?

22 MR. GAILLIARD: I can check my records.

23 THE COURT: But it was after the May 30th date?

24 MR. GAILLIARD: It was after the expiration of the
25 offer; I'm certain of that.

1 THE COURT: Did you make any inquiry of the State
2 as to whether they would extend the time frame for that
3 offer in light of you having just been retained?

4 MR. GAILLIARD: Your Honor, I talked to them about
5 going back to the offer of strong-arm robbery, but which
6 they would not entertain at that point. I was retained on
7 or about May 7th, Your Honor. And the order of substitution
8 was some time after that that we were finally able to get it
9 processed with the Court.

10 THE COURT: But my question is, did you make any
11 attempts to have them extend the May 30th deadline on your
12 client's behalf? I'm asking these questions for
13 post-conviction relief purposes. I really don't have any
14 position or any concern, really, whether he takes the offer
15 or doesn't take it. The hindsight is a 20/20 animal. And a
16 year from now, worst-case scenario, if he's convicted, I
17 don't want -- I need a contemporaneous record of what
18 actually happened, and that being whether the offer was
19 extended to him, whether it was fully explained to him,
20 whether he accepted or rejected it freely and voluntarily,
21 and whether that was with or without the advice of counsel.

22 MR. GAILLIARD: I did talk to him about the offer,
23 Your Honor. He did reject that.

24 THE COURT: So it wouldn't have made any
25 appreciable difference extending the deadline, is what you

1 are telling me?

2 MR. GAILLIARD: No, it would not, Your Honor.

3 THE COURT: Okay. So he was interested in
4 something less than an armed robbery with a negotiated plea;
5 is that correct?

6 MR. GAILLIARD: Certainly with 15 years.

7 THE COURT: And I assume the State was not willing
8 to offer anything less than that?

9 MR. OSBORNE: That's correct, Your Honor.

10 THE COURT: Okay. So to your knowledge,
11 Mr. Gailliard, was the offer fully explained to your client?

12 MR. GAILLIARD: I talked to him about it. I don't
13 know what counsel did prior to my --

14 THE COURT: But you fully explained it to him?

15 MR. GAILLIARD: Yes, ma'am.

16 THE COURT: And do you believe he understands the
17 nature of that offer?

18 MR. GAILLIARD: Yes, I do.

19 THE COURT: Was he inclined to accept or reject
20 that offer?

21 MR. GAILLIARD: He was not inclined to accept that.

22 THE COURT: So he was inclined to reject it?

23 MR. GAILLIARD: That's correct.

24 THE COURT: And did he do that with or against your
25 advice?

1 MR. GAILLIARD: Your Honor, I didn't advise him one
2 way or another. I just presented it to him. He indicated
3 he was not interested in that.

4 THE COURT: Okay.

5 Sir, if you would stand for me.

6 And you explained to him the maximum penalties?
7 You've explained to him the maximum penalties for these
8 offenses?

9 MR. GAILLIARD: We discussed that, I believe, Your
10 Honor.

11 THE COURT: And on the armed robbery, it's 10 with
12 a maximum of 30, correct?

13 MR. GAILLIARD: That's correct, Your Honor.

14 THE COURT: That's served at 85 percent?

15 MR. GAILLIARD: We discussed the 85 percent.

16 THE COURT: You explained to him it's considered a
17 most serious strike?

18 MR. GAILLIARD: I don't know whether it was a
19 strike or not.

20 THE COURT: You explained to him that it had a
21 violent classification, which basically means he could serve
22 it day for day?

23 MR. GAILLIARD: Absolutely, Your Honor.

24 THE COURT: Possession of a firearm during the
25 commission of a violent crime carries five years. Did you

1 explain that to him, as well as possession of a stolen motor
2 vehicle?

3 MR. GAILLIARD: We talked about those, Your Honor.

4 THE COURT: And did you explain to him the maximum
5 penalty on the crack charge would be 0 to 3 and/or \$5,000?

6 MR. GAILLIARD: We did not spend much time on the
7 crack charge.

8 THE COURT: Because it was basically
9 inconsequential, yeah.

10 MR. GAILLIARD: With the armed robbery, we didn't
11 talk much about the crack charge.

12 THE COURT: Okay. Sir, raise your right hand to be
13 sworn.

14 (Whereupon, the defendant is sworn.)

15 THE COURT: State your name for the record.

16 THE DEFENDANT: Benjamin Lavon Smalls.

17 THE COURT: Mr. Smalls, how old are you?

18 THE DEFENDANT: 23.

19 THE COURT: How far have you gone in school?

20 THE DEFENDANT: 10th grade.

21 THE COURT: Do you have a GED?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Did Mr. Gailliard fully explain to you
24 the State's offer of the negotiated plea of 15 years?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And did Mr. Baumil fully explain that
2 to you as well?

3 THE DEFENDANT: Yes, ma'am. He sent me a letter
4 through the mail.

5 THE COURT: Okay. But he explained it to you, that
6 that was what the State had offered you?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And did he explain to you that you had
9 the ability to accept or reject that offer?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. Did you fully understand what
12 the State was offering you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And did you accept or reject that
15 offer?

16 THE DEFENDANT: Rejected it.

17 THE COURT: And did you do that freely and
18 voluntarily and of your own will?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And did you do that with the advice of
21 counsel, having fully explained to you the minimum or
22 maximum penalties, as well as the worst and best case
23 scenario in your case?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Thank you, sir. You may take your

1 seat.

2 Is the State ready to proceed in the Neil vs.

3 Biggers hearing?

4 MR. OSBORNE: Yes, Your Honor. The State would
5 call Detective Richard Holmes.

6 RICHARD HOLMES,

7 having been duly sworn, testifies as follows:

8 THE CLERK: State your full name for the record,
9 spelling your last name.

10 THE WITNESS: Detective Richard J. Holmes,
11 H-o-l-m-e-s.

12 DIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Detective Holmes, where do you work?

15 A. With the Charleston City Police Department.

16 Q. How long have you worked there?

17 A. 28 years.

18 Q. 28 years?

19 A. Yes, sir.

20 Q. And back on 2011, where was your assignment?

21 A. I was assigned to the central investigations
22 robbery unit.

23 Q. Did you have the occasion on May the 27th to become
24 involved in an armed robbery investigation involving this
25 defendant?

1 A. Yes, sir.

2 Q. And how did that come about?

3 A. The case agent, who was a Detective Williams, had
4 made a call to me because I was the duty detective for the
5 night. And he had asked me -- he had informed me that a
6 female was coming in to see me in reference to an armed
7 robbery that he was investigating. And he asked me would I
8 conduct an interview investigation with him.

9 Q. I believe this armed robbery occurred two nights
10 earlier.

11 A. Yes, sir.

12 Q. So just briefly tell the Court, what was your
13 understanding of the armed robbery at that point?

14 A. The armed robbery, from my understanding, was three
15 gentlemen had robbed the victim in the West Ashley area over
16 in the Staffordshire area, but the female had taken a party
17 away from the area. And the female, who was at the station
18 at the time to be interviewed, we found out that she was the
19 female who had driven away three parties that robbed the
20 individual in that area at the time, was the information I
21 had received from Detective Williams.

22 Q. You said three, but I think you mean two gunmen and
23 a get-away driver?

24 A. Yes, sir, I'm sorry, two gunmen and a female
25 get-away driver.

1 Q. Did you have any idea at that point who the
2 get-away driver was?

3 A. No, sir.

4 Q. Now, at a certain point, you had an occasion to
5 meet with an individual?

6 A. Yes, sir.

7 Q. And who was that?

8 A. Ms. Ashley. Her name was -- it was a female by the
9 name of Ashley Green.

10 Q. Now, was it your understanding that she was,
11 indeed, the get-away driver?

12 A. Yes, sir.

13 Q. Walk us through that meeting with Ashley.

14 A. The night in question, it was on May the 27th,
15 2011, at about 11:10, I was contacted by the front desk and
16 advised that there was a female at the station in reference
17 to an interview. I went downstairs and I meet with the --
18 met with the female victim -- I'm sorry, the female at that
19 time. And she advised me that she was headed to an
20 interview. I spoke with Detective Williams prior, and he
21 told me what was going on. I brought her up to the
22 investigations bureau, our office, and advised her what was
23 going on. And she was giving Miranda warnings and
24 everything. She came in and agreed to talk to me about the
25 case, what was going on at the time.

1 Q. And what did she tell you?

2 A. She advised that she was in the area of
3 Staffordshire. And she had taken a gentleman she referred
4 to as -- I believe it was -- and I have it here -- TA, from
5 the area. She had taken him from the area and dropped him
6 off somewhere over in that area over there. And she had --
7 and I was, during the interview, to conduct the follow-up
8 investigations with her. And she said she had dropped him
9 off at a residence over there.

10 Q. Did she indicate that she dropped someone else off
11 other than TA?

12 MR. GAILLIARD: Your Honor, I object to leading.

13 THE COURT: I'm going to give him a little
14 latitude -- we are in-camera -- if it helps us with the
15 time. But be careful that it's nothing particularly
16 substantive in terms of testimony.

17 A. She had advised me -- I documented the party -- she
18 identified two parties. One party as Benjamin Lavon Smalls,
19 and another party by the name of TA, as David Capers, who
20 was in the yard area at that time.

21 Q. So once she told you the names of these
22 individuals, did you make any attempts to try to get them
23 identified?

24 A. Yes, sir, I did.

25 Q. What did you do?

1 A. The gentleman she gave us the name, conducted --
2 concluded and put together a photographic, did a photograph
3 to make sure we were talking about the same party that she
4 was giving me the name of, which I presented her with the
5 picture. She identified the picture for me and said that
6 was the party that she was talking about, on both
7 individuals.

8 Q. Okay. So you showed her separate photo of both?

9 A. Yes, sir, separate photos of both.

10 MR. OSBORNE: Your Honor, may I approach?

11 THE COURT: Yes.

12 BY MR. OSBORNE:

13 Q. I'm showing you what's been previously marked as
14 State's Exhibit 21 and 22 for identification purposes only.
15 Do you recognize these?

16 A. Yes, sir.

17 Q. And how do you recognize them?

18 A. These are the pictures I showed her on the night in
19 question.

20 Q. And what are they photographs of?

21 A. On one picture, she has it marked as: I know him
22 as Ben.

23 She had the other picture marked as: I know as TA,
24 David Capers.

25 THE COURT: I'm sorry, could you please repeat that

1 answer?

2 THE WITNESS: The second picture she had it marked
3 as: I know him as TA, David Capers. And she signed them
4 and dated.

5 BY MR. OSBORNE:

6 Q. And are those, indeed, pictures of David Capers and
7 Benjamin Smalls?

8 A. Yes, sir, it is.

9 Q. And you had them signed and dated, you said?

10 A. Yes, sir.

11 Q. Do you know how long after your interview with her
12 that you showed her the photographs?

13 A. It was at the same time the interview was going on,
14 so it was the exact same time the interview was going on.
15 The time that she has on here is 12:11 p.m. She has them
16 both at 12:11 p.m.

17 Q. Did she hesitate at all when you showed her
18 pictures of the defendant?

19 A. No, sir, she did not.

20 Q. Did you indicate to her in any way that she should
21 identify that person?

22 A. No, sir, I did not.

23 Q. Was the interview video recorded?

24 A. Yes, sir, it was.

25 MR. OSBORNE: No further questions.

1 THE COURT: Any questions for the witness?

2 MR. GAILLIARD: Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GAILLIARD:

5 Q. Officer, just to be clear, Ms. Green indicated
6 there were two or three people involved?

7 A. Two additional besides herself, but two gentlemen
8 that she signed for me.

9 Q. Can you tell us where you obtained those pictures
10 that you showed to Ms. Green?

11 A. These pictures were collected from the Charleston
12 Police Department photographic section.

13 Q. And are those two pictures the only ones that you
14 showed to Ms. Green?

15 A. Yes, sir.

16 MR. GAILLIARD: No other questions for this
17 witness, Your Honor.

18 THE COURT: Any redirect?

19 MR. OSBORNE: None, Your Honor.

20 THE COURT: Sir, you may step down subject to being
21 recalled.

22 Call your next witness.

23 MR. OSBORNE: Would you like to address this one or
24 do you want to go on to the next?

25 THE COURT: I want to do the whole hearing.

1 MR. OSBORNE: Okay. The State would call Detective
2 Matt Stanley.

3 MATTHEW STANLEY,

4 having been duly sworn, testifies as follows:

5 THE CLERK: State your full name for the record,
6 spelling your last name.

7 THE WITNESS: Matthew Stanley, S-t-a-n-l-e-y.

8 THE COURT: You may proceed.

9 DIRECT EXAMINATION

10 BY MR. OSBORNE:

11 Q. Where do you work at?

12 A. I work at the Charleston Police Department.

13 Q. What's your assignment now?

14 A. I'm currently a sergeant in the robbery -- over
15 supervising the robbery unit.

16 Q. Where did you work back on May the 25th of 2011?

17 A. On May 25th, I was actually a detective in the
18 burglary unit at that point. On that particular day, I was
19 a duty detective working the nighttime shift.

20 Q. On that day, did you have the occasion to become
21 involved in an armed robbery investigation?

22 A. Yes, I did. I did respond to Juniper in
23 reference to an armed robbery that occurred.

24 Q. When you responded, what happened?

25 A. When I got there, I was briefed by then-Sergeant

1 Jenkins. He's now a lieutenant, but at that point, he was a
2 sergeant. He said that an armed robbery occurred earlier
3 and that the victim was present. I chose to meet with the
4 victim and get a statement from at that point.

5 Q. You did meet with the victim?

6 A. I did.

7 Q. Who was the victim in this case?

8 A. The victim's name was Ronzell Olds.

9 Q. At that point, after speaking to Ronzell, had you
10 developed any persons of interest in the investigation?

11 A. Yes. He gave us a couple of names, one of which
12 was Benjamin Smalls. He did identify a female named Ashley,
13 as well as another individual by the name TA, nickname.

14 Q. Now, did Ronzell indicate to you that he knew
15 Benjamin Smalls?

16 A. Yes, he said he knew him.

17 Q. So what did you do next?

18 A. I took a statement from him, from Mr. Olds. I
19 drove him to the incident location so he could verify where
20 it actually occurred. And then we agreed to meet at the
21 station to show him photographs. And Detective Dasher at
22 that point gave him a ride to the station.

23 Q. And when you got station, I guess you looked
24 through the system database to see if there was a Benjamin
25 Smalls in your system?

1 A. Yes, I believe Detective Dasher did that. There
2 was -- there was a Benjamin Smalls in our system that met
3 the physical parameters that were given to us. We included
4 that photograph in a six-person photographic lineup.

5 Q. And what did you do then?

6 A. Then I met with Mr. Olds. I audio recorded,
7 rereading the photo lineup admonition form to him. And I
8 showed him a lineup. And he selected Benjamin Smalls.

9 MR. OSBORNE: Your Honor, may I approach?

10 THE COURT: Uh-huh.

11 BY MR. OSBORNE:

12 Q. I show you what's been marked as State's Exhibit 17
13 for identification purposes only. Do you recognize that
14 item?

15 A. Yes, yes, I do.

16 Q. And what is it?

17 A. This is the photo lineup admonition form that I
18 read to Mr. Olds with the photo lineup attached to it.

19 Q. When you read that admonition form, how do you
20 present it to him?

21 A. What I did was I met with him in a room. I set the
22 photo lineup face down so he couldn't see the pictures on
23 the desk. I told him what we were about to do. And I told
24 him that I was going to read this form to him, and make sure
25 basically he did that, and make sure he understood what

1 exactly I read to him. And then I told him that when he was
2 ready, he could turn the form -- or the photograph over, and
3 proceed from there.

4 Q. When he turned it over, did he make any
5 identifications?

6 A. Yes, he did, he selected Picture No. 4, which is
7 Benjamin Smalls. After about couple seconds, he pointed to
8 him and said that's -- right there.

9 Q. So he identified Benjamin Smalls as being one of
10 the two gunmen that robbed him?

11 A. He did.

12 Q. What did you do then?

13 A. I thanked him. And I took the form, had him
14 initial it and sign it -- excuse me, circle it and initial
15 it and date it, took the form. And I believe at that point,
16 Detective Dasher gave him a ride back to his house.

17 Q. And that process, was it reported in any way?

18 A. What's that?

19 Q. The lineup process.

20 A. Yes, lineup presentation was recorded, was audio
21 recorded.

22 MR. OSBORNE: No further questions.

23 THE COURT: Any questions for the witness?

24 MR. GAILLIARD: Yes, Your Honor.

25 THE COURT: You may proceed.

1 CROSS-EXAMINATION

2 BY MR. GAILLIARD:

3 Q. Detective Stanley, did you interview Mr. Olds
4 immediately after the incident took place?

5 A. I interviewed him approximately little after 1, I
6 think 1:09 a.m. And I believe the incident occurred at
7 approximately 9:10. So it was several hours after the
8 incident occurred.

9 Q. And would you describe his manner as authoritative
10 when you talked to him?

11 A. Yes, it was.

12 Q. And did he immediately indicate that his alleged
13 assailant was one Benjamin Smalls?

14 A. Yes, he did.

15 Q. And there was no resistance on his part whatsoever?

16 A. No, sir, not with me, no.

17 Q. And so your testimony is that this identification
18 took place some four hours after the incident occurred?

19 A. The photo lineup was given at approximately 3 a.m.,
20 which would have made it about six hours afterwards.

21 MR. GAILLIARD: No other questions for this
22 witness, Your Honor.

23 THE COURT: Any redirect?

24 MR. GAILLIARD: None, Your Honor.

25 THE COURT: Sir, you may step down subject to being

1 recalled.

2 Any further witnesses?

3 MR. OSBORNE: We will call one more witness, Ashley
4 Green.

5 ASHLEY GREEN,

6 having been duly sworn, testifies as follows:

7 THE CLERK: State your full name for the record,
8 spelling your last name. And please be sure to speak in a
9 loud and clear voice.

10 THE WITNESS: Ashley Green, G-r-e-e-n.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Ashley, I'm just going to ask you a couple of brief
15 questions about what happened on May the 25th.

16 A. Okay.

17 Q. And let's just sort of pick it up whenever you
18 walked outside of the house. Did anyone approach you and
19 ask you for a ride?

20 A. Yes, yes, sir.

21 Q. Who approached you?

22 A. Benjamin -- well, Ben.

23 Q. Ben? Did anyone else?

24 A. And TA, they both.

25 Q. And what did you do then?

1 A. I told them I would give them a ride to Bailey
2 Street, which is where they were going in North Charleston.

3 Q. And did you do that?

4 A. I did, yes, sir.

5 Q. So they got in the car with you and you drove to
6 Bailey?

7 A. Yes, sir.

8 Q. And did you talk to them at all in the car?

9 A. I didn't talk to them, but they were talking
10 amongst each other.

11 Q. Who was seated in the front seat?

12 A. TA was in the front seat, front passenger seat.

13 Q. And who was in the back seat?

14 A. Benjamin was in the back on the driver's side.

15 Q. Who asked you for a ride?

16 A. Benjamin.

17 Q. After you dropped them off at Bailey, did you have
18 the occasion to see them again that night?

19 A. Yes, I came back home to Bailey Street.

20 Q. And did you speak to them then?

21 A. Yes. I went inside the house and I did speak to
22 them then. I actually came back to use the cell phone.

23 Q. All right. At this point, on May the 25th of 2011,
24 did you know David Capers?

25 A. Yes, yes.

1 Q. How did you know him?

2 A. For a long time from school, middle school.

3 Q. How about Benjamin?

4 A. I knew Benjamin not as long as TA, but through TA.

5 Q. About how long would you say?

6 A. Maybe five to seven years.

7 Q. So you knew him about five to seven years?

8 A. Yeah.

9 Q. At a certain point, you had the occasion to speak
10 to Detective Holmes.

11 A. Yes.

12 Q. And Detective Yolanda Brown?

13 A. Yes.

14 Q. Did they show you any photographs?

15 A. Yes, they showed me a picture of both David Capers
16 and Benjamin.

17 Q. Did you recognize them?

18 A. Yes, I did.

19 MR. OSBORNE: Your Honor, may I approach?

20 THE COURT: You may.

21 BY MR. OSBORNE:

22 Q. I show you what's been marked as State's Exhibit
23 21. This is just for identification purposes. Do you
24 recognize this?

25 A. Yes.

1 Q. And what is it?

2 A. That's Benjamin. It's a picture of Benjamin.

3 Q. Is that your signature on it?

4 A. That's my signature on the bottom, yes, sir.

5 Q. Was this the photo that Detective Holmes showed
6 you?

7 A. Yes.

8 MR. OSBORNE: Your Honor, I would offer these items
9 into evidence just for the purpose of these hearings, of
10 this hearing.

11 THE COURT: Any objection?

12 MR. GAILLIARD: None, Your Honor.

13 THE COURT: Marked and admitted without objection.
14 17, 21 and 22.

15 (State's Exhs. 17, 21, 22, are moved into
16 evidence.)

17 THE COURT: No further questions. Any questions
18 for it witness?

19 CROSS-EXAMINATION

20 BY MR. GAILLIARD:

21 Q. Ms. Green, after you gave TA and Benjamin a ride
22 home, at least to Bailey Street, how long after that were
23 you called in and asked to identify photographs?

24 A. The following day.

25 Q. The next day?

1 A. Uh-huh.

2 Q. And how many photographs were you shown?

3 A. Just one of each.

4 Q. And you indicated that you knew Benjamin from some
5 other area?

6 A. Just from being around with David.

7 Q. I'm sorry?

8 A. From being around David Capers.

9 Q. Okay. For how long a period of time?

10 A. Like I said, five to seven years.

11 Q. And did you identify both of them as persons that
12 you gave a ride to on May 25th?

13 A. Yes, yes, sir.

14 MR. GAILLIARD: No other questions of this witness.

15 THE COURT: Any redirect?

16 MR. OSBORNE: None, Your Honor.

17 THE COURT: Ma'am, you may step down subject to
18 being recalled.

19 Anything further from the State?

20 MR. OSBORNE: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. GAILLIARD: Yes, Your Honor. I would at this
23 point indicate that --

24 THE COURT: I mean, do you have any witnesses, not
25 argument?

1 MR. GAILLIARD: No, no witnesses.

2 THE COURT: Glad to hear any argument. Who wants
3 to go first?

4 MR. OSBORNE: I will go first, Your Honor. As you
5 know, the Neil v. Biggers hearing has a two-part test to see
6 if due process has been violated. The first part is whether
7 the identification process itself was unduly suggestive. I
8 don't think it was unduly suggestive here.

9 When Detective Holmes showed the photograph to
10 Ashley, he made no suggestion that she should identify him.
11 Ashley volunteered that it was Ben that she drove from the
12 scene before he even showed the picture. The picture was
13 shown a day after the incident occurred.

14 But even if you think that was unduly suggestive,
15 the single photograph, the second part of it says that the
16 procedure is so suggestive to give rise to a very
17 substantial likelihood of irreparable misidentification.
18 Ashley says she had known Ben for five years. So even if it
19 is unduly suggestive, I don't believe it was irreparable
20 identification.

21 And Detective Stanley's process was textbook
22 photographic lineup with the admonition form, making no
23 suggestion she should identify him.

24 THE COURT: Mr. Gailliard, would you like to
25 respond?

1 MR. GAILLIARD: Yes, Your Honor. As to the
2 identification by Ms. Green, certainly, holding out a single
3 photograph is overly suggestive in itself.

4 Next, Your Honor, there was no indication that she
5 had given any description of Mr. Smalls to anyone else prior
6 to the identification. And she's presented with one
7 photograph and said, okay, yes, that's him. So we think
8 that it was wholly suggestive and that that identification
9 should be thrown out.

10 THE COURT: Anything further from the State?

11 MR. OSBORNE: No, Your Honor.

12 THE COURT: I have not heard anything that would
13 rise to the level of the identifications being suppressed.
14 I have not heard anything that suggests that the procedures
15 in and of themselves was extremely suggestive, such that I
16 need to reach the second prong of the Neil vs. Biggers
17 inquiry.

18 It appears, and I will take the second two
19 officers' identification process, that being Detective
20 Stanley's ID was clearly done textbook, basically, with an
21 admonition being given and the victim picking out almost
22 instantaneously the defendant as one of the -- identifying
23 one the individuals who had perpetrated this crime against
24 him.

25 And then we come to both Sergeant Holmes and

1 Ms. Green's testimony regarding her identification of the
2 defendant as the individual who perpetrated this incident.
3 To some extent, all of these identifications were
4 perfunctory, and merely done to confirm information that
5 both the victim in this case, Mr. Olds, and Ms. Green
6 voluntarily provided to the police, as both of them had
7 already indicated that they knew him. So, basically, what
8 the police did was follow up on information that the victim
9 and Ms. Green voluntarily provided to them. And the
10 identification procedures were merely confirmatory in their
11 nature.

12 I don't even know that they were actually necessary
13 in this incident where Ms. Green was basically a
14 co-defendant, unwittingly so, in the incident, or at least
15 could be argued an accessory before or after the fact, and
16 came to the police station, was Mirandized, and basically
17 gave -- not basically, gave the names of the individuals to
18 the police. So them getting their pictures out of their
19 repository simply was confirmatory in its nature. She
20 already knew who she was talking about. She's known them
21 for five to seven years. So them getting these pictures and
22 having her identify them were really perfunctory.

23 The same could be said of Mr. Olds in that he
24 indicated he knew these individuals and was able to identify
25 them by name. So based on that information, the six-pack

1 was developed, and he immediately identified the person who
2 he alleges perpetrated this robbery.

3 So the first prong of the procedure having been --
4 first prong of the test having been met by a preponderance
5 of the evidence, that being that the Court finds that the
6 police procedure that was used was not unnecessarily
7 suggestive. Therefore, I do not have to reach the second
8 prong of the test, that being that police used an
9 impermissibly suggestive procedure, then having to
10 determine, nevertheless, that it was so unreliable that no
11 substantial likelihood of misidentification existed.

12 So I find the procedure that was employed was not
13 unduly suggestive and, therefore, I do not reach the second
14 prong of the test.

15 I will give you five minutes to use the restroom
16 and get ready for opening argument and instruction. We will
17 be at ease for five minutes. If you have any exhibits you
18 need to mark, I would suggest you premark them with the
19 court reporter, those that you can agree upon.

20 (Whereupon, recess transpired.)

21 THE COURT: State ready to proceed?

22 MR. OSBORNE: Yes, Your Honor.

23 THE COURT: Defense ready to proceed?

24 MR. GAILLIARD: Yes, Your Honor.

25 THE COURT: Was anything pre-marked, Madam Court

1 Reporter?

2 THE COURT REPORTER: Not that was given to me.

3 THE COURT: If there are any exhibits y'all have
4 that you agreed upon, you need to get them marked, because I
5 don't want to be stopping and starting.

6 MR. OSBORNE: I had marked all my exhibits, Your
7 Honor, but --

8 THE COURT: Mr. Gailliard, do you agree with any of
9 the exhibits that have been marked?

10 MR. GAILLIARD: Yes, Your Honor. I agreed with the
11 photographs.

12 THE COURT: Can you look at the numbers that you
13 agree upon so that we can go ahead and move those into the
14 records so we don't have to spend time on that.

15 MR. OSBORNE: Your Honor, it looks like about half
16 the photographs were agreed on.

17 THE COURT: I need the numbers.

18 MR. OSBORNE: We have State's Exhibit No. 1, 2, 3,
19 4 and 5.

20 THE COURT: Is that correct, Mr. Gailliard; they
21 are without objection?

22 MR. GAILLIARD: Yes, Your Honor.

23 (State's Exhs 1, 2, 3, 4 and 5 are received in
24 evidence.)

25 THE COURT: What other exhibits are there that need

1 to be admitted or marked?

2 MR. OSBORNE: There are more photographs, 6, 7.

3 THE COURT: Photographs of what?

4 MR. OSBORNE: Okay. One is a photograph of the
5 stairwell that the defendant was seen coming down at the
6 time of his arrest. At the top of the stairwell is a
7 basket, and inside of that basket is a firearm.

8 Photograph No. 7 is the front door of the location
9 in which the defendant was arrested.

10 Number 8 is a photograph of the basket at the top
11 of the steps showing a gun inside of the basket.

12 Photograph Number 9 is a picture of the gun.

13 Photograph Number 10 and Number 11 are both
14 overshot Google Earth pictures. Number 10 is the crime
15 scene, Staffordshire, shows the pinpoint location, as
16 well Juniper, which is the victim's house.

17 And Number 11 is a pinpoint Google location of the
18 house in which the co-defendant was arrested, as well as the
19 house that Ashley Green saw them later on in the night.

20 THE COURT: You do not agree to the admissibility
21 of these documents, Mr. Gailliard?

22 MR. GAILLIARD: No, Your Honor, we have to question
23 those.

24 THE COURT: On what basis, authenticity? Certainly
25 not. It's self-authenticating. So what would be the basis

1 of your objection?

2 MR. GAILLIARD: Well, Your Honor, if they are going
3 to introduce the photograph of a stairwell, I don't know
4 that that has anything to do with my client in this
5 particular incident.

6 THE COURT: We will cross that when we lay a
7 foundation for it, I guess.

8 What would be your objection to the other photos?

9 MR. GAILLIARD: Shall I go over them one by one?

10 THE COURT: They are all basically the same thing,
11 aren't they?

12 MR. GAILLIARD: Well, there's one photograph here
13 of a gun.

14 THE COURT: Why don't we start with the Google
15 Earth photos. What are your objections to that?

16 MR. GAILLIARD: Doesn't add anything to the case.

17 THE COURT: Establishes location.

18 MR. GAILLIARD: We would admit that the crime took
19 place in Charleston County.

20 THE COURT: I guess I'm trying to figure out what
21 prejudice your client suffers by having a picture of the
22 location?

23 MR. GAILLIARD: None that I know of.

24 THE COURT: So do you still now object to the
25 Google Earth photographs?

1 MR. GAILLIARD: We agree to admit those.

2 THE COURT: 10 and 11 are admitted without
3 objection.

4 (State's Exhs. 10 and 11, Google Earth
5 photographs, were moved into evidence.)

6 THE COURT: And then the picture of the location
7 where he was arrested, what is the prejudice suffered to
8 your client with that document?

9 MR. GAILLIARD: We can go ahead and approve that
10 one.

11 THE COURT: What number is that?

12 MR. OSBORNE: 6 is the stairwell; and 7 is the
13 picture of the front door to the residence.

14 THE COURT: We are not talking about the stairwell.
15 He said he can agree to the residence picture, which is the
16 doorway.

17 MR. OSBORNE: 7.

18 THE COURT: 7 comes in without objection.

19 (State's Exh. 7, Photograph of front door, were
20 moved into evidence.)

21 THE COURT: What does that leave now?

22 MR. GAILLIARD: 8, 9, and 6.

23 THE COURT: One is the stairwell. Two are with
24 baskets?

25 MR. GAILLIARD: One is the basket and one --

1 THE COURT: Oh, one is the gun. Okay? We will
2 deal with those after you lay the appropriate foundation
3 with regard to relevance.

4 Is there anything else we need to take up before we
5 begin with opening instruction and opening argument?

6 MR. GAILLIARD: Your Honor, is the Court going to
7 address the matter of the juror?

8 THE COURT: You know, I am going to do that. I'm
9 glad you reminded me.

10 Could we please bring in Juror No. 302.

11 THE COURT: And, Mr. Gailliard, if you can let me
12 know when she walks in if this is the person you recall that
13 approached you.

14 MR. GAILLIARD: Yes, Your Honor.

15 (Whereupon, Juror 302 enters the courtroom.)

16 THE COURT: Ma'am, how are you?

17 JUROR 32: I'm fine.

18 THE COURT: Could you tell me your name for the
19 record?

20 JUROR 302: Katrina Robinson.

21 THE COURT: Is your Juror No. 302?

22 JUROR 302: Yes, ma'am.

23 THE COURT: Did you approach Mr. Gailliard during
24 the break and indicate that you knew the defendant?

25 JUROR 302: I said I probably knew him.

1 THE COURT: Okay. And tell me what you mean by
2 that.

3 JUROR 302: His face just had looked familiar when
4 I was walking out when you dismissed us.

5 THE COURT: Is there a particular reason that you
6 mentioned this to Mr. Gailliard instead of bringing it to
7 the Court's attention?

8 JUROR 302: He was the only person I saw in the
9 court besides the lady that walked us out. And asked her,
10 and she said she wasn't sure. So when I saw him, I asked
11 was it him or you, and he said I needed to speak to you.

12 THE COURT: Was it him or --

13 JUROR 302: You that I needed to tell that to.

14 THE COURT: I got you. Okay. When you say he
15 looked familiar to you, I need you to elaborate on that for
16 me.

17 JUROR 302: Just somebody from the neighborhood.

18 THE COURT: What neighborhood is that?

19 JUROR 302: I live in North Charleston.

20 THE COURT: What neighborhood?

21 JUROR 302: It's either Dorchester Waylyn or
22 Dorchester Terrace.

23 THE COURT: Does your client live in that area?

24 MR. GAILLIARD: No, Your Honor, he does not.

25 THE COURT: Okay. Is this someone you recognize to

1 live in your neighborhood?

2 JUROR 302: I'm not sure. I just glanced at him and
3 I thought he was somebody I knew.

4 THE COURT: From your neighborhood?

5 JUROR 302: Right.

6 THE COURT: Okay. Is it someone that you have had
7 regular contact with, someone you would characterize as a
8 friend, or someone you've just seen in passing?

9 JUROR 302: No, just seen in passing.

10 THE COURT: As a result of you indicating that you
11 may have -- his face may have looked familiar to you, does
12 that in any way affect your ability to be fair and
13 impartial?

14 JUROR 302: I'm not sure.

15 THE COURT: Okay. If, in fact, this is not the
16 person you think it is, and Mr. Gailliard has indicated that
17 his client has never lived in either of these neighbors and
18 has never frequented those neighbors, I am of the thought
19 process at this moment that it may be someone you may have
20 recognized, but it's not who you thought it was.

21 JUROR 302: Yes, ma'am.

22 THE COURT: So I need you to -- there's no right or
23 wrong answer, but I need for you to be -- to search yourself
24 and to give the Court a yes or no answer as to whether your
25 thought process that this person may have looked familiar to

1 you, does that affect your ability to be fair and impartial?

2 JUROR 302: Yes.

3 THE COURT: Tell me why.

4 JUROR 302: Because I don't want to think that it's
5 somebody I know and it's not the person I know. And I don't
6 want to be the person to judge whether he's wrong or not if
7 I know him.

8 THE COURT: Okay. I need to you look at him very
9 clearly and determine whether, in fact, you know him.
10 Because right now, I'm hearing speculation, you might know
11 him, you think you might be familiar, you are not sure.
12 And, again, there's no right or wrong answer, but I need a
13 definitive answer. Does he look familiar to you? Does he
14 look as though he is someone that you know?

15 JUROR 302: Yes.

16 THE COURT: Okay. And where would you have known
17 him from?

18 JUROR 302: From the neighborhood, which is
19 Dorchester Waylyn or Dorchester Terrace.

20 THE COURT: Where does your client reside,
21 Mr. Gailliard, what neighborhood?

22 MR. GAILLIARD: He lives in West Ashley, Your
23 Honor.

24 THE COURT: Has he ever frequented Dorchester
25 Waylyn or Dorchester Terrace?

1 MR. GAILLIARD: He has not.

2 THE COURT: Okay. So, ma'am, I ask the question
3 again now with that clarity that the defendant in this case
4 has never been in Dorchester Waylyn or frequented Dorchester
5 Terrace or Dorchester Waylyn. Do you still believe that
6 this is someone you recognize as someone you know?

7 JUROR 302: Yes.

8 THE COURT: Okay. And so where would you have
9 known him from since he's never been in your neighborhood?

10 JUROR 302: May have been. I guess y'all would be
11 telling me I'm wrong.

12 THE COURT: Not necessarily. Is it possible you
13 know him from someplace else? Is it possible he resembles
14 someone else?

15 JUROR 302: It could be he resembles someone else
16 and could be from somewhere else.

17 THE COURT: What's the person's name you think he
18 resembles or the person you believe he resembles?

19 JUROR 302: I don't know their name.

20 THE COURT: Again, I ask -- again, there's no right
21 or wrong answer. Do you believe that you can be fair and
22 impartial?

23 JUROR 302: Yes.

24 THE COURT: Do you believe that you can decide this
25 case based solely on the evidence as it is presented and on

1 the law as the Court will instruct during and at the close
2 of the trial?

3 JUROR 302: Yes.

4 THE COURT: Ma'am, if you would step into the hall
5 for me. Please do not discuss this conversation with
6 anyone.

7 JUROR 302: Yes, ma'am.

8 THE COURT: As the saying goes, everybody has a
9 twin. Is there any exception to the juror remaining on the
10 panel from the State?

11 MR. OSBORNE: Well, I know it's not an ideal
12 situation, but she did say at first that she didn't think
13 she could be fair and impartial.

14 THE COURT: That's because she thought she knew
15 him, but with clarification he's never been in her
16 neighborhood, I don't know how she possibly could have known
17 him. Because I asked the question twice deliberately and I
18 asked it two different ways. I asked her very specifically,
19 where would you have known him from, and she indicated
20 Dorchester Waylyn or Dorchester Terrace. Since he's never
21 been there, it really would have been to his benefit to say
22 he had been there. So for him to say he's never been --
23 Charleston is very clique-ish in that way. West Ashley folk
24 don't hang out in North Charleston. And North Charleston
25 folk don't hang out with West Ashley/downtown folk, very

1 rarely leave the peninsula.

2 MR. OSBORNE: He actually does, he does hang out in
3 North Charleston.

4 THE COURT: Where?

5 MR. OSBORNE: Well, he hangs out on Bailey Drive.

6 THE COURT: Is that Dorchester Waylyn or Dorchester
7 Terrace?

8 MR. OSBORNE: It is not.

9 THE COURT: North Charleston is a huge area. North
10 Charleston isn't just one --

11 MR. OSBORNE: I think what she -- this may be
12 reading into it, but I think what she was trying to say is
13 in her mind, she does know him.

14 THE COURT: I will tell you what my perception is.
15 She never wanted to be picked for jury duty. And I think
16 it's all dilatory at this moment, to be frank. And I'm
17 getting old. Maybe it's because it's been a long day, but
18 that is my perception. However, I'm not adverse to excusing
19 her if y'all want me to.

20 MR. OSBORNE: That would be my position.

21 THE COURT: Mr. Gailliard, what's your position?

22 MR. GAILLIARD: Your Honor --

23 THE COURT: But y'all have to agree on it.

24 MR. GAILLIARD: She was much more positive in the
25 parking garage that she knew my client. And I'm very

1 uncomfortable with her sitting on the jury.

2 THE COURT: Like I said, that doesn't cause any
3 heartburn if y'all agree.

4 MR. GAILLIARD: I think we need to get another
5 juror.

6 THE COURT: We can dismiss her. And I have
7 concerns. I noticed her disposition and her demeanor when
8 she was selected, she was less than pleased. As a matter of
9 fact, I think it would be more like interpreting her body
10 language and her behavior, my perception is that she simply
11 doesn't want to be on jury duty. And I would rather have
12 somebody who is paying attention to the evidence who doesn't
13 have that demeanor or that disposition who is taking the --
14 because she's adamant that she knows him. But when really
15 pointed the question about it, it's almost -- I doubt very
16 seriously she's ever come in contact with him. She probably
17 came in contact with somebody that resembles him. But I
18 think that all jurors are not -- what's the word I'm looking
19 for? They know how the system works. They know if they
20 say, I can't be impartial, that's the magic word to be
21 dismissed.

22 But I think to be on the safe side and since y'all
23 agree, again, as I've indicated, I don't have a position one
24 way or the other. As long as y'all agree, I'm happy to
25 dismiss her. And then we will seat our first -- well, yeah,

1 we can seat our first alternate.

2 Is there any exception from the State?

3 MR. OSBORNE: No, Your Honor.

4 THE COURT: From the defense?

5 MR. GAILLIARD: I was hopeful that we might be able
6 to get another juror to replace her rather than one of the
7 alternates.

8 THE COURT: No, that's the only option.

9 MR. GAILLIARD: We will take the alternate.

10 THE COURT: Okay. That's why my gut told me to
11 have two, and I'm glad I did.

12 Okay. We will excuse Ms. Robinson from the panel
13 without objection and we will seat the alternate, Mr.
14 Roesner. Bear with me one second. Do you have the ability
15 to shake up the alternates by computer?

16 THE CLERK: No, ma'am.

17 THE COURT: You have to write their names down. We
18 need to follow 14-7-1340 in replacing the alternate. If you
19 can bring in Ms. Robinson.

20 (Whereupon, Juror 302 enters the courtroom.)

21 THE COURT: Ms. Robinson, you are going to be
22 excused from the trial of this case, out of abundance of
23 caution. Please do not discuss in any manner whatsoever
24 what the Court has discussed with you among your fellow
25 jurors or with anyone else. And just call the jury

1 information line after six o'clock this evening for further
2 instructions.

3 JUROR 302: Thank you.

4 THE COURT: You're welcome, ma'am. Have a good
5 day.

6 No. 400 will be seated pursuant to 14-7-1340, which
7 provides -- and draw the name of one of the alternates, if
8 there be more than one by ballot to serve in place of such
9 dead or discharged juror throughout the remainder of the
10 proceedings.

11 And since we don't have a blind person, I will
12 utilize Sam, and we will do it by ballot. And it's Ms., I
13 guess, Grech, No. 400.

14 All right. Any exception from the State?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: Any exception from the defense?

17 MR. GAILLIARD: None, Your Honor. Do we understand
18 Ms. Grech is now going to be the 12th juror?

19 THE COURT: Yes. And our alternate is Mr. Roesner.
20 Okay. Is there anything else before we resume with opening
21 argument and instruction from the State?

22 MR. OSBORNE: The only thing, Your Honor, is after
23 we go through the opening, our first witness was going to be
24 the victim in this case, Ronzell Olds. He does have a
25 little bit of a criminal history. I don't know if you

1 wanted to hear that before.

2 THE COURT: Define it a little bit for me.

3 MR. OSBORNE: He has an unlawful carrying of a
4 weapon and possession of cocaine base.

5 THE COURT: None of which are impeachable --

6 MR. OSBORNE: Correct.

7 THE COURT: -- for credibility purposes. Did you
8 plan to try to introduce any of those to try to impeach his
9 credibility?

10 MR. OSBORNE: Well, we certainly think the jury
11 needs to know he has a criminal record.

12 THE COURT: Carries 0 to 1, so it doesn't come
13 within 609. And Supreme Court has held drug offenses are
14 not probative for truthfulness. And possession of cocaine
15 is a misdemeanor, isn't it? Or is it a felony? I don't
16 remember.

17 MR. OSBORNE: 0 to 3.

18 THE COURT: 0 to 3 and/or 5. Are there any other
19 eyewitnesses to this incident?

20 MR. OSBORNE: None that the State are going to
21 call.

22 THE COURT: So it's going to be -- Mr. Smalls has
23 no burden of proof, so he doesn't have to testify. So the
24 only person's word, basically, that this took place is the
25 victim's?

1 MR. OSBORNE: That's correct.

2 THE COURT: And then there will be corroborative
3 testimony.

4 MR. OSBORNE: That's correct.

5 THE COURT: In the form of Ms. Green?

6 MR. OSBORNE: In the form of Ms. Green and also in
7 the form of locating a weapon at the scene.

8 THE COURT: I'm sorry, I can't hear you.

9 MR. OSBORNE: Also locating a weapon at the scene
10 where he was arrested, the defendant.

11 THE COURT: Does that weapon comport with the
12 description given by the victim?

13 MR. OSBORNE: Victim did not get a good look at the
14 gun. All he could say, it was two handguns. We did have
15 the defendant on jail phone trying to get rid of evidence
16 that was found at the scene.

17 MR. GAILLIARD: Your Honor, can I be heard?

18 THE COURT: Give me one second.

19 Pursuant to Rule 609A, what was he charged with?
20 What was the nature of the gun charge?

21 MR. OSBORNE: It was unlawful carrying of a weapon.

22 THE COURT: That's 0 to 1, isn't it?

23 MR. OSBORNE: That's correct, Your Honor.

24 THE COURT: So that would not come in under 609A
25 because it does not carry excess of one year. And it does

1 not involve dishonesty or false statement regardless of
2 punishment.

3 The other is a possession of crack cocaine charge?

4 MR. OSBORNE: That's correct.

5 THE COURT: And what year was that?

6 MR. OSBORNE: It was from 2014, was the conviction.

7 THE COURT: After I've heard his entire testimony,
8 I will have to make a weighing of the probative value of
9 admitting it versus the prejudicial effect. Once I could
10 make some assessment regarding the -- how crucial the
11 credibility is in this case, but I'm still of the mind that
12 it would not be admissible because narcotics offenses are
13 generally not considered probative for truthfulness. And
14 I'm not familiar with the Supreme Court changing its mind in
15 giving us that direction. But I will take it under
16 advisement until I hear all of the direct examination.

17 Is there anything we need to take up before we
18 begin with opening instruction and opening arguments; from
19 the State?

20 MR. OSBORNE: No, Your Honor.

21 THE COURT: From the defense?

22 MR. GAILLIARD: No, Your Honor.

23 THE COURT: Please bring in the jury. And please
24 have No. 400 seated with the remainder of the panel. Oh,
25 wait one second for me. I need to tell you who your

1 foreperson is going to be.

2 Mr. Cantwell will be the foreperson, Number 65. So
3 you will need to bring him in last.

4 (Whereupon, the jury returns to open court at 4:18
5 p.m.)

6 THE COURT: The clerk is going to pass out some
7 notebooks to you. They have white stickers on the front.
8 If you would put your juror number on that sticker. You
9 will be given the opportunity to take notes during this
10 trial. And I will give you some instructions regarding that
11 in a little while. But, again, place your juror number on
12 that sticker so that you will be able to identify which note
13 pad belongs to you.

14 Ladies and gentlemen, you've been selected for the
15 case of the State of South Carolina vs. Benjamin Lavon
16 Smalls. What I will now say to you is intended to serve as
17 a general introduction to the trial of this case so that you
18 may better understand what is happening as we proceed.
19 These remarks are not a charge on the law. I will instruct
20 you on the law applicable to this case at the end of the
21 trial before you retire to consider your verdict.

22 And, ladies and gentlemen, when you hear me use the
23 word charge, charge is a legal term of art that simply means
24 instructions. So when you hear charge or instructions, they
25 are interchangeable terms.

1 And, again, as I've explained, these instructions
2 are merely an explanation of the procedure that we will be
3 following so that you may better understand what is
4 happening as we proceed with the trial of this case.

5 The defendant has been charged by two indictments
6 filed in this court with the crimes of armed robbery and
7 possession of a firearm during the commission of a violent
8 crime, the elements of which I will explain to you at the
9 conclusion of the case.

10 The indictments, ladies and gentlemen, are simply
11 the charge by which the case is brought into court. And
12 they are not in any sense evidence of any of the allegations
13 they may contain. They are merely the formal way by which a
14 case is filed or processed or brought into this court.

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

1 be properly drawn from the evidence.

2 It is especially important that you perform your
3 duty of determining the facts diligently and
4 conscientiously, because ordinarily, there is no way to
5 correct an erroneous determination of facts made by a trial
6 jury.

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

20 Until I advise you to begin your deliberations, you
21 must not discuss this case with anyone. That includes your
22 fellow jurors, your friends, your family members, and anyone
23 involved in the case. After the case is submitted to you,
24 you must discuss it only in the jury room with your fellow
25 jurors. The attorneys and the parties have been advised

1 they should not speak with you at all. So if you should run
2 into them on the way to the restroom, in the elevator, in
3 the garage, even at a local restaurant during lunch, and
4 they don't speak with you, please don't think they are being
5 rude or unfriendly. They are strictly following the Court's
6 instruction. You will hear me say this over and over again.
7 And it comes from hard-fought experience. We would not want
8 an innocent conversation to be observed and misinterpreted
9 by a third person.

10 During the trial, do not read, watch, or listen to
11 any media accounts about this case. That includes anything
12 that's on the radio, TV, internet, or television. And also,
13 please don't do any independent research of any type on the
14 internet. You must not consider anything that you may have
15 read or heard about this case outside the courtroom whether
16 before or during the course of this trial. It is essential
17 that you maintain an open mind and not decide any issue in
18 this case until all of the evidence has been presented, the
19 parties have made their closing arguments, and I have
20 instructed you on the law in this case. It is your solemn
21 responsibility to determine the guilt or innocence of the
22 defendant. And your verdict must be based solely on the
23 evidence as it is presented to you in this trial and on the
24 law as I will instruct you during and at the close of the
25 trial.

1 In just a moment, the solicitor will make what is
2 called an opening statement in which he will explain to you
3 the issues in this case, or at least what he believes the
4 issues to be in this case. We call that arguing what the
5 evidence will show in the case.

6 The attorney for the defendant may also make an
7 opening statement, although he is not required to do so. He
8 has no burden of proof in this case.

9 What the attorneys tell you during opening
10 statements is not evidence in this case. It is only their
11 contention as to what they believe the evidence will show or
12 what they believe the issues are in this case.

13 The evidence in this case will be presented to you
14 by the testimony of sworn witnesses from the witness stand
15 and/or by exhibits that may be introduced into evidence.
16 From time to time during the trial, you may hear the
17 attorneys say, Your Honor, I object. Just as in sports,
18 business, or any other structured activity, there are
19 certain rules that the attorneys must obey in the
20 presentation of evidence.

21 These rules have a definite purpose. They ensure
22 that you receive the most trustworthy and reliable evidence
23 available. An objection is the procedure that an attorney
24 uses to call a possible violation of these rules to my
25 attention as the judge of the court. And for this reason,

1 you should never hold an attorney's objection against them,
2 nor should you conclude from the Court overruling or
3 sustaining an objection that I favor one side or the other.

4 Also, from time to time, you will hear the
5 attorneys say something like, Your Honor, we believe we have
6 a question of law or a matter of law to discuss, or they may
7 ask to approach the bench, or I may ask them to approach the
8 bench, or it may even be necessary for us to exclude you
9 from the courtroom for a short while while we discuss
10 matters of law. The reason we do this is, as I've
11 explained, you are the finders of the fact. And sometimes
12 when I'm discussing matters of law with the attorneys, it
13 might be necessary for me to make some comment about the
14 facts in connection with ruling whether an evidentiary rule
15 or statute or a rule of procedure applies to a particular
16 situation. And for this reason, we exclude you from the
17 courtroom so that in no way will you be influenced by
18 anything that the Court may say or do in connection with the
19 facts of this case.

20 In determining what the true facts are in this
21 case, you must decide whether or not the testimony of a
22 witness or witnesses is believable. It is my responsibility
23 to rule as a matter of law as to whether certain testimony
24 is admissible at all or not. But once it is admitted,
25 ladies and gentlemen, whether or not you believe it, is a

1 matter solely for you to determine.

2 In deciding whether to believe a witness, you have
3 the right to consider the interest of any witness, the bias
4 of any witness, the prejudice of any witness, the
5 opportunity for the witness to have seen the matters and
6 things about which the witness may testify, and the way the
7 witness acts on the witness stand, something we commonly
8 refer to as demeanor. You have a right to consider anything
9 that is in the record that will help you evaluate the
10 testimony of the witnesses. That means, ladies and
11 gentlemen, that it is your duty to pay close attention to
12 the witnesses, to observe them, to listen to them, and to
13 pay close attention to the attorneys and the Court.

14 Although I know it is very difficult sometimes,
15 please do not allow your thoughts to wonder, but give strict
16 attention to the testimony. So that at the end of the
17 testimony, after the arguments of the attorneys and the
18 charge on the law given by the Court, you will then be in a
19 position to determine what the true facts are, apply the law
20 to those facts, and, thus, render a true and just verdict in
21 this case.

22 During the course of this trial you will be allowed
23 to take notes. Notetaking is a privilege that you may
24 choose to exercise or choose not to exercise. Please don't
25 feel you are required to take notes. Not everyone finds

1 notetaking helpful to them. If you should decide to take
2 notes, please don't try to record everything that is said.
3 It's physically impossible, even to the best and most
4 copious notetaker. The average person speaks over 200 words
5 a minute. So as you can well imagine, it is almost
6 physically impossible to take it down verbatim. And even if
7 you thought you were, if you went back and listened to it,
8 you would be amazed. Sometimes I'm amazed. I go back and
9 look at transcripts or I read them, and I put the beginning
10 of a sentence at the end. I've used -- substituted words I
11 would commonly use for a word that was used. And that's
12 only human nature in terms of notetaking, because I think
13 everybody has their own notetaking style.

14 And the only reason the court reporter can take
15 down everything that is said is because she's trained in a
16 very complex and specialized form of shorthand that allows
17 her to take down things phonetically. So she can take down
18 a sentence in two key strokes usually. But even with that,
19 she will still go back and listen to -- see these mics
20 everywhere -- she still goes back and listens to her backup
21 tape to make sure she's taking down everything accurately
22 before she produces a transcript.

23 So please don't try to record everything that is
24 said. It's physically impossible. And, again, as a
25 factfinders, it is absolutely essential that you rely on

1 your powers of observation. So please do not allow
2 notetaking to become a distraction to you and to dilute your
3 attention given to the witnesses as they testify.

4 You may want to keep an outline of the main points
5 that are being made and the main concepts, so that when you
6 retire to deliberate, you will allow your notes to refresh
7 your memory. During breaks and recess, your notes will be
8 left in your seats. And we do this so that there's no
9 premature temptation to deliberate regarding anything you
10 may have heard prior to a break.

11 Again, ladies and gentlemen, your notes are for
12 your specific and your individual purposes. They are only
13 to be used to refresh your own memory. They are not to be
14 shared with anyone else. And please be reminded that your
15 notes should not be considered any more reliable than
16 someone else's memory. Someone else's memory should be
17 considered just as reliable as notes that may have been
18 taken by a fellow juror.

19 I have selected your foreperson. It is a
20 completely random process that the Court employs. I wish
21 there was scientific method that we use, but it is not.
22 Again, it is purely random to ensure that a cross-section of
23 the community is represented in that capacity. But I
24 emphasize, the foreperson is merely administrative. That
25 person successfully fills out the verdict form and writes

1 out any questions you may have during deliberations. That
2 person does not have any greater authority or vote than any
3 other juror. Again, it is purely administrative.

4 Mr. Foreman, it will be your duty to write out the
5 verdict form and write out any questions that the jury may
6 have during deliberations, but I will give you further
7 instructions regarding that at the conclusion of the case.

8 In order to preserve everyone's rights, I'm going
9 to give the attorneys the opportunity to take exception to
10 anything that the Court has said by way of opening
11 instruction. Are there any exceptions from the State?

12 MR. OSBORNE: No, Your Honor.

13 THE COURT: Any exceptions from the defense?

14 MR. GAILLIARD: None, Your Honor.

15 THE COURT: The State may proceed.

16 Ladies and gentlemen, please give the attorneys
17 your undivided attention.

18 MR. OSBORNE: Thank you, Your Honor. May it please
19 the Court.

20 THE COURT: Yes, sir. You may proceed.

21 MR. OSBORNE: Greed, callus, reckless greed.

22 That's the kind of behavior that was on perfect display back
23 on May 25th, 2011, when two individuals caught wind that an
24 18-year-old might have a little money in his pocket. They
25 didn't care where the money came from or what it was

1 supposed to be used for. The only thing they cared about
2 was how they could get their hands on it. So each one of
3 them got their guns, went to where that 18-year-old was
4 hanging out with his friends, and waited, waited for their
5 opportunity. And when their opportunity arose, put the gun
6 to that 18-year-old's head, threw him up against a house,
7 took his money, took his pants and his shoes.

8 Ladies and gentlemen, one of the individuals that
9 committed that crime is sitting in this courtroom with us
10 here today. It's this man, the defendant, Benjamin Smalls.

11 I introduced myself earlier. I'm David Osborne.
12 This is Greg Voigt. And I want to take a minute to
13 introduce you to Ronzell Olds. Ronzell Olds is sitting
14 right there in the front row of the benches. He's one of
15 the victims in this case.

16 In May of 2011, Ronzell lived in this apartment.
17 It's a small two-bedroom apartment. It's in Ardmore. He
18 lived with three sisters, his mom, Cicely Gillispie, his
19 older sister's daughter, and they lived in a neighborhood
20 called Ardmore. And you will hear about Ardmore. It's a
21 rough neighborhood, known for drugs and violence.

22 Now, on this day, Cicely thought that the landlord
23 might be coming by to pick up the rent. His name is
24 Mr. White. The rent was \$600. It might seem a little
25 strange to you at first that the landlord would be coming by

1 to pick up the rent, but sometimes things are done a little
2 differently. So she left the \$600 with Ronzell waiting for
3 Mr. White to come by so he could pay.

4 Ronzell also had to take care of his younger
5 sisters that day. As the day went along, it became pretty
6 apparent that Mr. White wasn't going to come by that day.
7 Jazmyn, Ronzell's older sister, came by that afternoon. And
8 that enabled Ronzell to hang out with his friends.

9 So he went to go hang out with an individual named
10 Montez Dozier. Montez is a life-long friend of Ronzell's.
11 Ronzell lived right around the corner in Ardmore as well.
12 But before he left, he made a mistake. Ronzell brought the
13 rent money with him. He should have left it, but he brought
14 it.

15 On the way, he ran into an associate from the
16 neighborhood named Brandon Nelson. They end up going to
17 this house. This is the backyard of Montez's house. The
18 way Montez had it set up, and they set it up like this
19 frequently, they had a table back there and they put a TV on
20 the table and they had an Xbox set up, and they run the
21 power cord to the outlet. When Ronzell got there, he,
22 Montez, and Brandon started playing the Xbox.

23 Hour or two later, they started playing a card game
24 called Pitty Pat. It's nothing more than a dollar card
25 game. Exchange hands here or there. No more than a few

1 dollars went one way or another. And if anybody was up,
2 Ronzell was up.

3 Now, while they were playing this game, Ashley
4 Green enters the picture. Ashley is Montez's younger
5 sister. She was doing what any younger sister might do, she
6 was being annoying, seeing what her older brother was doing.
7 And she was standing right there at that door watching her
8 older brother play cards and whatnot and play games with his
9 friend.

10 And then she gets a phone call. She gets a phone
11 call from an individual named David Capers. You will hear
12 him referred to as TA. TA hears the noise in the background
13 and he says, what's that; what's that noise? Ashley says,
14 well, that's just these boys over here gambling.

15 Gambling, and that's all it took. That put the
16 scent in the air. That put opportunity in the air. Because
17 David Capers, TA, is his buddy.

18 They continue playing cards and playing games. And
19 as it went along, as the night went along, it was time to
20 go. So Montez and Ashley picked up the TV and the card
21 table and brought them inside. Brandon and Ronzell then
22 left around to go to the side, to go back out to
23 Staffordshire and get out. But as they walked around, there
24 were two individuals waiting for him. The defendant was
25 standing right there by the tree. TA was standing up

1 against the house, each armed. TA starts yelling at
2 Brandon: You a snitch. You a snitch. Brandon gets up to
3 the road, gets out of there.

4 Ronzell tries to follow him, but they grab ahold of
5 him. They both grab him by the arms, put the gun to his
6 head, throw him up against the house. Give me your money.
7 Give me your money.

8 He tries to hang onto the rent money. He takes
9 maybe 200 out, hands it to him. Defendant is not happy with
10 that: Give me the rest.

11 Ronzell, faced with two guns, on the ground at this
12 point, has no choice. He hands him the rest of his money.
13 Defendant is not happy with that. He thinks he might have
14 more. Give me your pants. Give me your shoes. Takes his
15 pants off. Takes his shoes off. Gives it to the defendant.

16 Defendant then escorts Ronzell to Staffordshire,
17 sends him up the way. Ashley then re-enters the picture.
18 Ashley is going to go hang out with her friends at Edisto
19 that night. So she's coming out the front door right after
20 the robbery happened. The defendant and TA see a get-away
21 driver. They come up to Ashley. Hey, we need a ride; get
22 out of here. North Charleston is out of her way, but she
23 still agrees. They get into the car. They take
24 Staffordshire up, go to North Charleston. I will get back
25 to that get-away ride in a minute.

1 Now you've got Ronzell, no shoes, no pants, no rent
2 money, humiliated. He's pacing back and forth in front of
3 Montez's house, mad. Them boys got me. Them boys got me.
4 Montez comes out and sees his friend, no pants on. So he
5 gives him a pair of shorts.

6 Ronzell then goes home, tells Jazmyn. Jazmyn calls
7 mom. Mom is at work at this point. She works at the
8 Wendy's right down Sam Rittenberg. Mom calls the police.
9 Mom comes home. Ronzell is not at home, though, because
10 he's still mad. So he starts pacing the neighborhood. He's
11 not far, still only about a block or two away.

12 The police saturated the area. Mom goes out with
13 the police and she sees Ronzell, and she points him out.
14 Police come up and they question Ronzell. Ronzell tells
15 them he was robbed. He gives them a description of the car,
16 but he doesn't give the defendant's name. He doesn't give
17 the defendant's associate's name either, although he knows
18 him. He's not friends with him, but he knows him from the
19 neighborhood. Again, that might seem a little odd.

20 This is Ardmore. One thing you don't do in Ardmore
21 is snitch. So mom is sitting there and she hears that. And
22 she knows her son. She knows her son ain't telling the
23 whole truth. They go back to the house. Mom goes inside
24 and Ronzell is sitting outside. Couple hours go by,
25 Ronzell's still sitting outside. And the police come by and

1 they ask him, are you ready to cooperate now? And this time
2 he does.

3 He goes with Detective Matt Stanley. You will hear
4 from him. He goes to the police station. Detective Stanley
5 shows him a lineup. He identifies the defendant. It takes
6 the police a day to figure out who TA is, but when they do,
7 Ronzell meets with them again and he identifies TA in the
8 lineup, and the get-away driver, Ashley.

9 Speaking of Ashley, you are going to hear from
10 Ashley. And you are going to hear what happened in that
11 get-away ride. And it's exactly what you would expect. You
12 got two individuals that just committed an armed robbery.
13 They are talking about the armed robbery and they are
14 splitting the loot.

15 The judge is going to instruct you on the law.
16 Listen to what she has to say on that. I'm only going to
17 give you a summary of what I think we need to prove in order
18 for you to find the defendant guilty. He's been charged
19 with armed robbery. These are the elements as I see them.
20 Again, the judge is going to instruct you. The defendant
21 took property from another, within the person's control, the
22 victim's control. Defendant carried property away intending
23 to permanently deprive him. It was done with violence, and
24 the defendant was armed with a deadly weapon.

25 The second thing he's been charged with is

1 possession of a weapon during the commission of a violent
2 crime. Defendant was in possession of a weapon while
3 committing a violent crime.

4 I'm going to talk to you briefly about reasonable
5 doubt. All right? Reasonable doubt doesn't mean beyond all
6 certainty. It just means that you are firmly convinced that
7 the defendant was involved in the robbery. That's it. At
8 the end of this trial, it should take a day or two, if you
9 are firmly convinced that this defendant was one of the two
10 individuals that robbed that man right there, Ronzell Olds,
11 we are going to ask you to return a verdict of guilty.

12 Thank you.

13 THE COURT: You may proceed, Mr. Gailliard.

14 MR. GAILLIARD: May it please the Court, Your
15 Honor.

16 THE COURT: Yes, sir.

17 MR. GAILLIARD: Mr. Foreman, ladies and gentlemen
18 of the jury, I want you to consider that this defendant, as
19 any other that comes to this Court, is cloaked in innocence.
20 And he is only found guilty if and only if the prosecution
21 is able to strip that innocence cloak away from him.

22 Now, what the prosecutor didn't tell you is that
23 this is a case of misidentity. Now, they are saying that my
24 client robbed this victim. Ask yourself, how are they going
25 to prove that? Are they going to prove that by his

1 testimony only? What are they going to do to convince you
2 that my client actually committed this offense? And how are
3 you going to determine that? They said this occurred back
4 on May 25th, 2011, over three years ago. You are going to
5 have to use what I like to call your life experience to
6 listen to everyone testifying and determine what did happen
7 out there.

8 And I'm going to suggest to you now that they are
9 not going to be able to convince you that this defendant
10 committed this crime. Think about what happened when he
11 first talked to the police, when he identified them, if he
12 knew them, why he didn't identify them immediately. All
13 those are factors you need to consider. And after you've
14 had an opportunity to listen to all of the witnesses, we are
15 going to ask you to come back with a verdict of not guilty.

16 THE COURT: The State may proceed.

17 MR. OSBORNE: State would call Ronzell Olds.

18 RONZELL OLDS,

19 having been duly sworn, testifies as follows:

20 THE CLERK: State your full name for the record,
21 spelling your first and last name. And please be sure to
22 speak in a loud and clear voice.

23 THE WITNESS: My name is Ronzell Olds,
24 R-o-n-z-e-l-l. My last name is O-l-d-s.

25 THE COURT: You may proceed.

1 DIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. Thanks for hanging around. I know it's been a long
4 day. Just go ahead and tell the jury, where are you from?

5 A. I'm from downtown, but I moved in '09, 2009.

6 Q. Do you go by any nicknames?

7 A. No, just Ron.

8 Q. Anybody ever call you Zell?

9 A. Yes, sir.

10 Q. Where did you go to high school?

11 A. Garrett.

12 Q. And do you work now?

13 A. Yes, sir.

14 Q. Where do you work?

15 A. At Fuel downtown, the corner of Rutledge and
16 Cannon.

17 Q. All right. Let's go ahead and get right into it.
18 In 2011, where did you live?

19 A. On Juniper Street, Juniper.

20 Q. And who did you live with?

21 A. My mom and my two sisters and my little niece.

22 Q. And the niece being Jazmyn, the old sister's
23 daughter?

24 A. Yes, sir.

25 Q. How big is the apartment?

1 A. It wasn't -- it was a little big, but we had two
2 bedrooms.

3 Q. Now, let's talk about May the 25th of 2011. On
4 that day, where did you wake up?

5 A. I wake up at my mom's house... She was getting ready
6 to go to work, and my sister was out. And she told me
7 Mr. White was coming, because that's what he do, he comes to
8 pick up the rent. And he didn't never came. So I was just
9 sitting there watching my two little sisters.

10 Q. Okay. She left you in the house. You were
11 watching your younger sisters; is that correct?

12 A. Yes, sir.

13 Q. Before she left, did she leave you with anything?

14 A. Yes, she left me with \$600 to pay the rent.

15 Q. All right. So after your mom went to work, what
16 happened next?

17 A. I just was sitting in the house with my little
18 niece and my two little sisters watching Sponge Bob and
19 talking on the phone, playing with the phone. And then
20 later on that day, my sister came. Mr. White never came
21 back. So I want to go outside, so I went outside. I met up
22 with Brandon Nelson. That's one of my friends. And then we
23 went to Mr. Dozier and played some -- Montez.

24 Q. Montez?

25 A. Montez.

1 Q. He lived right around the corner from you?

2 A. Yes.

3 Q. You said you were going over there to do what?

4 A. Play games, play cards.

5 Q. Is that something that you normally do?

6 A. Yeah, we did it ever day. Like, ain't never been
7 no problem until that night right there.

8 Q. You run into Brandon?

9 A. Yeah.

10 Q. Brandon agrees to go with you?

11 A. Yes, sir.

12 Q. So when you get to Montez's house, what happens?

13 A. We start playing cards first. And we playing
14 cards. We playing Pitty Pat for a dollar, you know, going
15 back and forth. And then after that, his sister came out
16 there, you know. She stayed out there for a minute and she
17 left. And I start playing video game. And then she came
18 back and, like, she drive up and down the street first.

19 Q. Just slow down just a minute. So y'all are playing
20 cards?

21 A. Playing.

22 Q. At a certain point, his sister -- and what's
23 Montez's sister's name?

24 A. Ashley. I don't know her last name.

25 Q. So she comes out to the back at some point as well?

1 A. Yes, she sees us playing cards, you know. I pulled
2 out the money, and we were playing for a little bit more
3 longer. And then we started playing the videogame, played
4 MBA live.

5 Q. Just for clarification purposes, you had the
6 \$600?

7 A. Yeah.

8 Q. Were you gambling with that money?

9 A. No, no, sir. I had like \$30. I had \$30, like \$35
10 in my -- like, I had it here, and I pulled it out. So we
11 still be playing cards after that.

12 Q. So you never gambled the \$600?

13 A. No, sir. No, sir.

14 Q. And you gambled with your money, \$35?

15 A. Yes, sir.

16 Q. Did you lose any money while you were gambling?

17 A. No, sir.

18 Q. Why did you bring the money with you?

19 A. It was a mistake. I just was ready to go outside.
20 I didn't thought I was going to get robbed.

21 Q. Were you showing off with the money?

22 A. No, I was just with my friends.

23 Q. Just asking. All right. So at a certain point, it
24 gets a little later in the afternoon and it's time to go?

25 A. Yeah.

1 Q. What happens? Just walk me through that process.

2 A. After that, we finished playing the game. Montez
3 Dozier, he was putting the game away and TV back in the
4 house. And TA and Benjamin Smalls, they came --

5 Q. Let me just stop you right there. We are going to
6 go through it kind of slow. Okay?

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

8 BY MR. OSBORNE:

9 Q. I'm going to show you what's been marked as State's
10 Exhibit 3. Do you recognize this?

11 A. Yeah, that's Montez Dozier's backyard.

12 Q. I believe it's been introduced without objection.

13 Now, you can actually touch that screen right there
14 and it will make a mark. Okay? So this is where you were
15 all playing games and Xbox and whatnot?

16 A. Yes, sir.

17 Q. This photograph was not taken at the time of the
18 robbery, was it?

19 A. No, sir.

20 Q. In fact, this picture looks like it's taken during
21 the day?

22 A. Yes, sir.

23 Q. When the robbery happened, did it look like this or
24 was it darker?

25 A. It was darker. And we had a table and some chairs

1 out there.

2 Q. Go ahead and put on there where -- you can mark,
3 like I said, on the screen right there. Where were the
4 table and chairs?

5 A. Table would have been right here. And the chair
6 would have been right here sitting on the grass. And he had
7 the game on top of the table. And after we finished playing
8 the game, we got up -- see, I was sitting right here. So I
9 could see, like, the street. So I see Ashley's car driving
10 back and forth. So then me, Brandon Nelson and Montez
11 Dozier were like, let's go around the corner and walk down
12 the street.

13 Q. But at this point, you didn't have any idea or any
14 reason to suspect Ashley of anything?

15 A. No.

16 Q. She's just driving?

17 A. No, because I used to be in her yard every day. So
18 I help him put back the game and he still in the house.

19 Q. Just so the jury understands, when you brought in
20 the game, the table and the TV, you brought it in, was it
21 through that back door there or through the front yard?

22 A. No, through the back door, because the room was
23 there once you walk through the back door.

24 Q. Once everything is brought inside, who all is left?

25 A. Just me and Brandon Nelson, because Montez --

1 Q. Just you and Brandon?

2 A. Yeah.

3 Q. Now, you are walking around to the front?

4 A. Yeah, we walk right here. And Benjamin Smalls was
5 right here. And David Capers was right there.

6 Q. What happens?

7 A. And they was walking up, calling Brandon Nelson a
8 snitch. So I don't know where that came from, but he was
9 calling him a snitch.. So I was standing right here --

10 Q. So who was calling Brandon a snitch?

11 A. David Capers.

12 Q. David is calling Brandon a snitch? What did
13 Brandon do?

14 A. He just was like, what are you talking about? You
15 know, they exchanged words. And he was like, come on. So I
16 been walking behind him. And Benjamin Smalls grabbed my
17 arm, and then they whipped out both their guns and put them
18 on the side of my face.

19 Q. So you are facing the street?

20 A. Yeah. I walking between both of them, trying to
21 get to the street.

22 Q. You've got TA on your right-hand side?

23 A. No, Benjamin on the -- yeah, TA on the right-hand
24 side and Benjamin on the left-hand side.

25 Q. All right. When TA starts calling Brandon a

1 snitch, is it like, you know, you are a snitch, or is it --

2 A. Yeah, like, you a snitch. Like, I don't even know
3 what he was talking about.

4 Q. So then Brandon then goes on up. You tried to
5 follow him?

6 A. Yes, Brandon walked between --

7 Q. Why didn't you just follow Brandon on out of there?

8 A. I did. I tried to. Benjamin Smalls grabbed my arm
9 and whooped out a gun. And TA had the other gun to my other
10 side of my face.

11 Q. Where did they put the guns?

12 A. Right here. (Witness indicates.)

13 Q. Both of them had guns?

14 A. Yes, sir.

15 Q. Are you sure about that?

16 A. Yes, sir.

17 Q. So they both got guns to your head, then what
18 happens?

19 A. They threw me over the side of the house and told
20 me to give up everything in my pocket. And I reached in my
21 pocket and said, all I got is \$200. I handed him \$200. And
22 he took me to the ground, told me to take off my pants.

23 Q. Who is telling you this?

24 A. Benjamin and TA.

25 Q. They are both saying it?

1 A. Yeah, telling me to get on the ground, take off my
2 pants, take off your shoes, take off your socks.

3 Q. When they throw you up against the house, where did
4 they throw you up the against the house, what side of the
5 house?

6 A. The side right here by the trash can.

7 Q. So they grab ahold of you, throw you up against the
8 house, start asking you for money. Why didn't you give them
9 the whole \$635?

10 A. I was trying not to give up that amount of money.
11 It was a stupid move, but I was trying to give them
12 something so they would go.

13 Q. Who did you hand the money to?

14 A. Benjamin Smalls.

15 Q. He had the gun in one hand, took the money in the
16 other? So he took 200 at first. You are still laying on
17 the ground. Then what happened?

18 A. First when I gave him \$200, they still had me
19 against the house. And then when I whoop out on the \$200,
20 they be like, I hear you be walking around with more money
21 than that.

22 Q. Who said that?

23 A. Benjamin Smalls, like, lay down, get on the ground.
24 And I laid down on the ground. They take off my pants and
25 take off my shoes.

1 Q. Did you take the money, the rest of the money out
2 and hand it to him? Or was it in the pants and they took
3 the pant?

4 A. They go in and take my pants and go in my pocket.
5 Like, they made me struggle.

6 Q. What happened then?

7 A. Then after that, he told me, get up. He walked me
8 to the street. And he hopped back in Ashley's car and he
9 ride off.

10 Q. Who told you to get up?

11 A. Benjamin Smalls.

12 Q. You said he walked you to the street?

13 A. Yes, and hopped back in Ashley's car and drove off.

14 Q. Where was Ashley's car parked?

15 A. Parked in the front of the yard.

16 MR. OSBORNE: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MR. OSBORNE:

19 Q. I show you what's been marked as State's Exhibit 2.
20 Do you recognize this?

21 A. That's the front of the yard.

22 Q. I believe this has already been introduced without
23 objection. All right. What is this showing here, Ronzell?

24 A. That's -- she parked right here. That's the front
25 of their house.

1 Q. Okay. So the left-hand side over here is Montez's
2 house?

3 A. Yes, sir.

4 Q. If you were to walk between these two houses, hang
5 a quick left, that's the back porch, correct?

6 A. Yes, sir.

7 Q. All right. So the robbery actually happened in
8 this dark, shadowy area right there; is that correct?

9 A. Yeah.

10 Q. So you left off with the story with Benjamin
11 walking you to the street. All right. Pick it up from
12 there.

13 A. He walked me right here. And then he went and
14 hopped in the car and he drove off.

15 Q. Where was the car parked?

16 A. Right here.

17 Q. Facing the house or facing the street?

18 A. Yeah. They backed out and they drove off.

19 Q. You saw both the defendant and TA get into the car?

20 A. Yes, both of them hopped into the car.

21 Q. Which way did the car go?

22 A. Went this way out of the neighborhood.

23 Q. Okay. What happened then?

24 A. Then I am still standing in the street. I'm
25 saying, they robbed me. And Montez -- and I walked up, and

1 Dozier gave me pants, and I walked home. And when I got
2 home, my sister realize that I hadn't had on the same pants,
3 I had on clothes. So she was like, what happened? And I
4 said, I got robbed.

5 Q. And your sister being Jazmyn?

6 A. Yes.

7 Q. You told her you had been robbed?

8 A. I got robbed.

9 Q. And then what did you do?

10 A. I throwed (sic) on some pants and some shoes, and
11 then I left back out.

12 Q. What happened next?

13 A. I was walking around. I was still mad. I just now
14 got robbed everything, plus my cell phone. I be walking
15 around. The police -- my mom called the police. The police
16 be driving around looking for me. They stopped me one time.
17 I told them I didn't know who robbed me. I mean, I did it
18 because I was mad and I didn't want to be no snitch. And
19 then I went back by my mama's house, after my mom saw me
20 talking to the police --

21 Q. Did you know who robbed me?

22 A. Yes, I know who robbed me. They didn't have no
23 masks.

24 Q. Are you friends with these individuals?

25 A. No.

1 Q. How do you know them?

2 A. Just through the neighborhood and hear some stuff

3 out there.

4 Q. So you tell the police that you were robbed?

5 A. Yeah.

6 Q. But you didn't give up the names?

7 A. Yeah.

8 Q. All right. So what happened then?

9 A. Then I went home. And mama was mad at me because I
10 didn't tell them who robbed me.

11 Q. Your mom was mad at you?

12 A. Yeah.

13 Q. What did she do?

14 A. She told me I better tell them or she would kick me
15 out.

16 Q. She wouldn't let you back in the house, would
17 she?

18 A. No.

19 Q. In fact, she locked the door on you, didn't she?

20 A. Yes.

21 Q. That's why you were sitting outside?

22 A. Yeah, I was just sitting out there smoking
23 cigarettes. And then the Police Officer Jenkins, he pulled
24 up and he was like, you already know who robbed you, so are
25 you ready to cooperate? And I was like, yeah, man, I'm

1 ready to cooperate. I got calmed down.

2 Q. Did you talk to him that time?

3 A. Yes. Well, he called the detective out there. He
4 told --

5 Q. Right, you spoke to a detective?

6 A. Yes, he said he would call a detective. And the
7 detective came out there and talked to me.

8 MR. OSBORNE: May I approach?

9 Q. I'm going to show you what's been marked as State's
10 Exhibit 17; do you recognize this?

11 THE COURT: Sir, I need you to say yes or no.

12 THE WITNESS: Yes, sir.

13 BY MR. OSBORNE:

14 Q. And what is it?

15 A. That's my signature and my initial.

16 Q. And what is it? You can turn it over to the next
17 page.

18 A. That's my signature and that's a picture of
19 Benjamin Smalls.

20 Q. It's a photographic lineup?

21 A. Yes, sir.

22 Q. And where you identified Benjamin Smalls?

23 A. Yes, sir.

24 MR. OSBORNE: Your Honor, we would like to move 17
25 in evidence.

1 THE COURT: You have to lay the rest of the
2 foundation unless there's no exception from the defense.

3 MR. GAILLIARD: I think we had that in the Biggers
4 hearing.

5 THE COURT: We did in-camera. It was admitted for
6 that limited purpose, but we are now in -- I need to know if
7 you have any exception to the admission of the document?

8 MR. GAILLIARD: No, Your Honor.

9 THE COURT: Admitted without objection. You may
10 proceed.

11 (State's Exh. 17, Photo Lineup, is moved into
12 evidence.)

13 BY MR. OSBORNE:

14 Q. I believe it was Detective Stanley who read this to
15 you. This was the front page; is that correct?

16 A. Yes, sir.

17 Q. He showed this lineup to you; is that correct?

18 A. Yes, sir.

19 Q. Is that your initials there?

20 A. Yes, sir.

21 Q. And this, you made this identification on the night
22 of the incident; is that correct?

23 A. Yes, sir.

24 Q. Do you see one of the two individuals who robbed
25 you in the courtroom here today?

1 A. Yes, sir, Benjamin Smalls.

2 Q. Can you point him out?

3 A. Right there. (Witness indicates.)

4 Q. Describe what he's wearing.

5 A. White-collared shirt and black tie with dreads.

6 His dreads' much longer now.

7 MR. OSBORNE: Your Honor, let the record reflect
8 he's identified the defendant.

9 THE COURT: You may proceed.

10 MR. OSBORNE: No further questions.

11 THE COURT: Will counsel approach for me please.

12 (Whereupon, a bench conference takes place off the
13 record.)

14 THE COURT: Mr. Foreman, ladies and gentlemen, it
15 is now five o'clock. We anticipate the cross-examination of
16 this witness will be fairly lengthy. So we are going to
17 break for the evening, resume in the morning at 9:30.

18 During the break, please do not discuss the case
19 among yourselves or with anyone else. Please abide by these
20 instructions, and do not allow yourself to be exposed to any
21 media coverage. Please don't do any independent research of
22 any type on the internet. When you return in the morning,
23 you will return directly to your jury room. And as soon as
24 all of you have arrived, we will then resume testimony.

25 I know today has been long. I know it's been

1 taxing. I know it's hot outside, but we truly appreciate
2 how very gracious y'all have been with us with your time.
3 We are used to this process. We are used to this schedule.
4 Of course, y'all are not. And so, again, please note that
5 we truly appreciate your service and we do not take your
6 time for granted.

7 If you would leave your note pads in your seats, we
8 will secure those during the evening recess. And we will
9 resume cross-examination of the witness in the morning at
10 9:30. Have a good evening.

11 (Whereupon, the jury exited the courtroom at 5:02
12 p.m.)

13 THE COURT: Is there anything before we break for
14 the evening other than me excusing the witness; from the
15 State?

16 MR. OSBORNE: No, Your Honor.

17 THE COURT: From the defense?

18 MR. GAILLIARD: Nothing, Your Honor.

19 THE COURT: Sir, during this break, you are
20 strictly instructed that you are not to discuss your
21 testimony with anyone. Do you understand?

22 THE WITNESS: Yes, ma'am.

23 THE COURT: And I need you to return in the
24 morning, to be on the safe side, by 9:15 so that we can
25 resume your testimony at 9:30. Thank you very much. Y'all

1 have a good evening.

2 (Whereupon, the proceedings adjourn for the
3 evening.)

4 (Whereupon, the trial continues on 7/8/14.)

5 THE COURT: Is the State ready to proceed?

6 MR. OSBORNE: We are, Your Honor. We have a couple
7 issues. After this witness testifies, our very next witness
8 does have an arrest issue --

9 THE COURT: We have to deal with that later because
10 we are in the middle of cross-examination of this witness.

11 MR. GAILLIARD: Your Honor, on the arrest issue, I
12 intend to question Mr. Olds about his felony conviction.

13 THE COURT: Is possession of cocaine a felony
14 conviction? I don't think it is, nor does it carry a year,
15 so I doubt it's a felony. There's some that are felonies
16 that carry more than a year, but the one which he was
17 convicted carries a year, a year, I think, and/or a \$1,000
18 fine. I might be wrong about the fine, but I think I'm
19 pretty on target about the time. I think it carries a year.
20 So it would not come within the rule because it carries --
21 doesn't carry more than a year...

22 MR. GAILLIARD: So I was under the impression the
23 year was the cutoff point, but it's actually more than a
24 year.

25 THE COURT: Actually, what the rule says is in

1 excess of one year.

2 MR. GAILLIARD: So it has to be one and a day.

3 THE COURT: Uh-huh. And then it still has to be
4 subject to the balancing test. That's why the current and
5 prevailing case law says that narcotics offenses are
6 generally not considered probative of truthfulness. So that
7 would have to come into my assessment of whether a
8 possession of cocaine charge would be relevant and probative
9 and, therefore, admissible.

10 So what I would instruct you to do is ask all of
11 the questions you intend to ask of him on cross-examination,
12 and then let me know we have a matter of law, and then I
13 will let you create a proffer. And then I will make a
14 decision at that point. Okay?

15 MR. GAILLIARD: Thank you very much.

16 THE COURT: You're welcome.

17 (Whereupon, recess transpired.)

18 THE COURT: State ready to proceed?

19 MR. OSBORNE: Yes, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MR. GAILLIARD: Yes, Your Honor.

22 THE COURT: Please bring in the jury.

23 If the witness could retake the stand, I will
24 remind you, you are still under on this.

25 (Whereupon, the jury returns to open court at 10:03

1 a.m.)

2 THE COURT: Ladies and gentlemen, you can take your
3 seats. Good morning, I hope everyone had a pleasant and
4 restful evening. We are now going to resume the
5 cross-examination of the witness. I appreciate y'all's
6 patience. We had another hearing I needed to dispose of
7 this morning prior to proceeding with this case.

8 Mr. Gailliard, you may proceed.

9 MR. GAILLIARD: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 CROSS-EXAMINATION

12 BY MR. GAILLIARD:

13 Q. Good morning, Mr. Olds.

14 A. Good morning.

15 Q. Let me call your attention back to May 27, 2011,
16 the date of this incident. Can you tell approximately what
17 time it occurred?

18 A. I don't even remember the exact time.

19 Q. Approximately what time?

20 A. Like 8 or 9 o'clock.

21 Q. 8 or 9? Was it light out or dark?

22 A. It was dark time.

23 Q. It was dark? Okay. How old are you now?

24 A. 21.

25 Q. And how old were you three years ago in 2011?

1 A. 18.

2 Q. Were you employed at that time?

3 A. No, sir.

4 Q. You were not? So you were usually just hanging out
5 with your friends during the day; is that correct?

6 A. Yes, sir.

7 Q. Now, do you recall on the date of the incident
8 being interviewed by Detective Matthew Stanley from the
9 Charleston Police Department?

10 A. Yes, sir.

11 Q. You do? Okay. Did you at first refuse to
12 cooperate with him?

13 A. No, I refused to cooperate with the officers who
14 patrolled the neighbor.

15 Q. They were someone different than Officer Stanley?

16 A. Yes.

17 Q. Who were those officers that were patrolling the
18 neighborhood?

19 A. I don't know the name. One officer stopped me and
20 asked me who robbed me. And I told him I didn't know
21 because I didn't want to tell on nobody.

22 Q. Okay. And later, when you talked to Detective
23 Stanley, did you tell him the same thing?

24 A. No, I told him who robbed me.

25 Q. Okay. Do you recall telling Detective Stanley that

1 you never saw the face of the people who robbed you?

2 A. No, I didn't tell him that.

3 Q. You didn't tell him that?

4 A. No, not that I remember.

5 Q. You don't remember telling him that?

6 A. No.

7 Q. All right. Did you tell Detective Stanley that you
8 did not want to file a report of this incident?

9 A. No, I didn't told him that.

10 Q. I'm sorry?

11 A. I didn't tell him that.

12 Q. You didn't tell him that either?

13 A. When I talked to the detective, I told him who
14 robbed me and where did it happen at.

15 Q. All right. So you would be surprised if he put in
16 in his incident report that you told him you never saw their
17 face? You would be surprised by that, wouldn't you?

18 MR. OSBORNE: I object, Your Honor.

19 THE COURT: Basis?

20 MR. OSBORNE: Speculation.

21 THE COURT: Please repeat the question.

22 BY MR. GAILLIARD:

23 Q. Would you be surprised if Detective Stanley had in
24 his report that you said you did not see their face?

25 A. Yes.

1 MR. OSBORNE: Objection.

2 THE COURT: Overruled. Goes to the weight. In the
3 future, Mr. Gailliard, you need to ask him a direct question
4 and give him the opportunity to review the statement to
5 refresh his memory instead of asking him to comment on the
6 veracity of another witness. You may proceed.

7 BY MR. GAILLIARD:

8 Q. Now, you only changed your story and named someone
9 after your mother told you that she was going to put you out
10 of the house if you didn't say what happened; is that right?

11 A. The only reason --

12 Q. I'm sorry?

13 A. Yes. And the only reason I didn't want to
14 cooperate is because I didn't want nobody coming at me for
15 being -- for telling on nobody. That's the only reason I
16 didn't come up front right then.

17 Q. Well, you said that's the only reason, but you were
18 outside and you only changed your story after your mother
19 said that she was not going to let you in the house unless
20 you told what happened; is that right?

21 A. Yes.

22 Q. So you first said you didn't know what happened; is
23 that right?

24 A. No, I didn't tell him who robbed me at first.

25 Q. Didn't you tell the police you didn't know?

1 A. Yes.

2 Q. So you first said you did not know; is that right?

3 A. Yes.

4 Q. Then you changed and said you did know after your
5 mother said to you that if you don't tell, you can't come
6 back in the house; is that right?

7 A. Yes.

8 Q. Now, Mr. Olds, have you ever been convicted of a
9 crime?

10 A. Yes.

11 Q. Which one?

12 MR. OSBORNE: Objection.

13 THE COURT: Mr. Gailliard, we are supposed to deal
14 with that in-camera. I haven't decided that's admissible
15 yet.

16 Ladies and gentlemen, you are to disregard the last
17 question and any potential response. You will give it
18 absolutely no consideration in your deliberations. And it
19 is not to be discussed in any manner whatsoever in the jury
20 room.

21 You may proceed.

22 MR. GAILLIARD: Your Honor, are we going to resolve
23 that now?

24 THE COURT: No, I'm going to resolve it as I
25 instructed before we began court.

1 MR. GAILLIARD: Your Honor, I don't have any other
2 questions for this witness.

3 THE COURT: Mr. Foreman, ladies and gentlemen, I
4 have a very brief matter of law to take up with the
5 attorneys. During this break, please do not discuss the
6 case and please leave your note pads in your seats.

7 (Whereupon, the jury leaves open court at 10:10
8 a.m.)

9 THE COURT: You may ask the question now,
10 Mr. Gailliard.

11 BY MR. GAILLIARD:

12 Q. Mr. Olds, have you ever been convicted of a crime?

13 A. Yes.

14 Q. Which one?

15 A. Unlawful carrying with a gun and possession of
16 crack cocaine.

17 Q. And when were you convicted?

18 A. I went to prison January 9th, 2014.

19 Q. How much time did you serve?

20 A. Five months.

21 Q. And when did you return to the community?

22 A. May 8th.

23 MR. GAILLIARD: Those are all the questions I
24 wanted to ask, Your Honor.

25 THE COURT: Does the State have any questions?

1 MR. OSBORNE: None, Your Honor.

2 THE COURT: You can take your seat, Mr. Gailliard.

3 Any exception from the State to this line of questioning?

4 MR. OSBORNE: Yes, Your Honor. I think that it's
5 removed in time from the incident location or from the
6 incident time. It's irrelevant and, quite honestly, it's
7 just confusing.

8 THE COURT: Would you like to respond,
9 Mr. Gailliard?

10 MR. GAILLIARD: Yes, Your Honor. The prosecution's
11 case is based upon this witnesses' character. And I think
12 we have a right to question his character.

13 THE COURT: How is it based on his character?

14 MR. GAILLIARD: Well, the only thing they have is
15 his testimony that this happened. And that's part of his
16 character's veracity and the kind of person he is and
17 because his --

18 THE COURT: I would have followed that logic if a
19 person with no character could never be wrong. A lot of
20 people have no character. I guess I'm just not following
21 what -- character is very different than veracity or
22 credibility on a particular issue. I don't think you can
23 question him about his character. I think you can question
24 him about his veracity, but I need to know how any
25 conviction -- I already told you that the gun charge doesn't

1 come in because it only carries 0 to 1. So under the rules,
2 it's excluded under 609A. But I'm trying to figure out how
3 a conviction of misdemeanor for cocaine base bears on his
4 credibility.

5 MR. GAILLIARD: We would concede that it generally
6 does not.

7 THE COURT: So do you want to withdraw the line of
8 questioning?

9 MR. GAILLIARD: If it's not going to be able to be
10 asked.

11 THE COURT: That's not my question. I asked a
12 question as to how a possession of cocaine base charge,
13 misdemeanor, bore on his credibility. And you said you
14 conceded that it did not. So for it to be admissible it has
15 to bear on his credibility. So if you are conceding it
16 doesn't bear on his credibility, my question is, are you
17 withdrawing the line of questioning?

18 MR. GAILLIARD: I am.

19 THE COURT: The issue is then moot.

20 Do you have any further questions of the witness?

21 MR. GAILLIARD: I do not.

22 THE COURT: You can bring the jury back.

23 Is the State going to need to recall this witness?

24 MR. OSBORNE: No, Your Honor.

25 MR. GAILLIARD: Your Honor, we would like the right

1 to recall this witness based upon testimony from the defense
2 at a later time.

3 THE COURT: Okay. I will excuse him subject to
4 being recalled.

5 (Whereupon, the jury returns to open court at 10:16
6 a.m.)

7 THE COURT: Anything further from the defense?

8 MR. GAILLIARD: Nothing more for this witness at
9 this time.

10 THE COURT: Any redirect from the State?

11 MR. OSBORNE: No, Your Honor.

12 THE COURT: Sir, you are excused subject to being
13 recalled. The State may call its next witness.

14 MR. OSBORNE: Your Honor, may I approach?

15 (Whereupon, a bench conference takes place off the
16 record.)

17 THE COURT: You may proceed. Call your next
18 witness.

19 MR. OSBORNE: The State calls Montez Dozier.

20 MONTEZ DOZIER,

21 having been duly sworn, testifies as follows:

22 THE CLERK: Please state your full name for the
23 record, spell your first and last name. And please be sure
24 to speak in a loud and clear voice.

25 THE WITNESS: Montez Dozier.

1 DIRECT EXAMINATION

2 BY MR. OSBORNE:

3 Q. Let's start off with introducing yourself to the
4 jury. Where did you grow up?

5 A. Staffordshire Drive. That's in Charleston.

6 Q. Charleston, South Carolina? That's in the Ardmore
7 subdivision, I believe?

8 A. Yes, sir.

9 Q. When you grew up, who did you live with?

10 A. My mom.

11 Q. Any siblings?

12 A. My two sisters and my grandmother.

13 Q. Can you hold the microphone a little closer.

14 A. My two sisters and my grandmother.

15 Q. And did you finish school?

16 A. Yes, sir.

17 Q. Where did you go to high school?

18 A. West Ashley High.

19 Q. Where do you live now?

20 A. Same residence.

21 Q. Same address?

22 A. Uh-huh.

23 Q. Are you married?

24 A. No, sir.

25 Q. Any children?

1 A. No, sir.

2 Q. And do you work?

3 A. Yes, sir.

4 Q. Where do you work?

5 A. The Greenery, LLC. It's landscaping.

6 Q. So I want to take you back to 2011. You lived in
7 the same address then?

8 A. Yes, sir.

9 Q. Staffordshire?

10 A. Staffordshire Drive.

11 Q. That's in the city and county of Charleston, I
12 believe?

13 A. Yes, sir.

14 Q. And at that time, who all lived there with you?

15 A. The same people, my grandmother, my mom, my two
16 sisters, and my uncle, which is in a wheelchair.

17 Q. Okay. And I want to talk to you about an
18 individual named Ronzell Olds. Who is Ronzell to you?

19 A. He was a homeboy at that time. You know, I just
20 got in my accident. He's a homeboy, used to come chill with
21 me, play games with me on a daily basis for about five
22 months. So, you know, we real cool.

23 Q. How did you meet him?

24 A. I actually knew -- met him through his sister,

25 Jazmyn. I know her since we was young. You know, just, you

1 know, one day just started playing basketball, started
2 hanging out.

3 Q. So I want to talk to you about the day May the 25th
4 of 2011. Did you wake up at your house that day?

5 A. Yes, sir.

6 Q. Just sort of walk me through that day. What
7 happened?

8 A. I woke up, and when I woke up, I was still not
9 walkable, because I just got my fatal accident. So wash
10 off. I got up, ate. After I ate, just sit down and watch
11 TV until I think about 1, maybe between 1 and 3. That's
12 when Ronzell came, like we doing on a daily basis. Took my
13 game outside, my Xbox, put it on the back porch, started
14 playing whatever game we played, MBA, Madden, you know.

15 Q. I'm going to show you what's been already marked as
16 State's Exhibit 3. Is this the area that you are talking
17 about?

18 A. Right there, yes, sir.

19 Q. You can actually touch that screen if you ever need
20 to.

21 A. Okay.

22 Q. So this is your residence?

23 A. Yes, sir.

24 Q. The back porch?

25 A. That's the back door that leads through the patio

1 you are looking at right there. This right here is the
2 patio.

3 Q. Do you remember about what time Ronzell and Brandon
4 came over?

5 A. Probably about three o'clock.

6 Q. And you said they were playing Xbox?

7 A. Yeah. And the outlet right there is where I plug
8 my Xbox up. There's two outlets. Plug the Xbox up, plug
9 the TV up.

10 Q. Were you playing any other games?

11 A. No. I mean, we were playing cards, you know,
12 playing cards, but for the first part, we came out to play
13 the game.

14 Q. What kind of game were you playing, card game?

15 A. Pitty Pat.

16 Q. You don't have to get into all the rules and
17 everything, but is it a gambling game?

18 A. Yes, sir.

19 Q. Were you all exchanging a lot of money?

20 A. No. I think -- I was losing. I'm not lying. I
21 think when we finally quit, we probably had about 25, \$30.
22 We were playing a dollar game.

23 Q. It was a dollar game?

24 A. Yes, sir.

25 Q. At a certain point in the night, I guess at which

1 time it was getting dark, starting to pack up and go inside?

2 A. Uh-huh.

3 Q. Do you remember about what time you packed up
4 everything and brought it inside?

5 A. I guess like 7:30, 8 o'clock, somewhere between
6 that time.

7 Q. Dark outside?

8 A. Yes, sir.

9 Q. So walk me through that. How did you pack up
10 everything and bring it inside?

11 A. What I actually did was I unplugged all the things
12 from the sockets right here. And my sister, Ashley -- I was
13 still in my walker, so I couldn't lift too much. So I took
14 the lightest things in, like maybe the Xbox or the little
15 small stand it was sitting on, walked it through this door
16 right here. And then she walked behind me and put the rest
17 of the stuff up. And after that, you know, I came back out
18 to get the controllers. After the controllers, there was
19 nothing else left out there. So what I did was close the
20 door. That's when I --

21 Q. Let me stop you right there. Okay? So you
22 mentioned your sister. And who is your sister?

23 A. Ashley Green.

24 Q. Now, was Ashley -- did she ever come out while
25 y'all were out there playing cards or Xbox?

1 A. Yeah. We were playing cards. Like, there was
2 another table. The game was on this side. We were playing
3 cards on this side. There's like a table in the middle
4 right here. Ashley was standing right here on the other
5 side. I was standing on this section, and we were playing
6 cards.

7 Q. So, basically, you had the table set up out there
8 playing cards, and Ashley comes out?

9 A. Yes, sir.

10 Q. Do you remember if Ashley received a phone call
11 while she was out there?

12 A. No, sir, I don't know.

13 Q. You were playing cards?

14 A. Yes, sir.

15 Q. During this card game, at any point did you ever
16 see Ronzell pull out some money?

17 A. Yes, sir, I did.

18 Q. Was he counting the money? Was he showing it off?

19 A. I think it was either me or Brandon, we needed some
20 change, so he was starting to count through to get some
21 change to see if he had some change. I think it was change
22 for a 20 or something.

23 Q. Okay. So let's get back to where you were at. You
24 said that you brought in -- you left off the story, you
25 brought in the table, the TV and Xbox, and said you were on

1 a walker. Why were you on a walker?

2 A. I was in a fatal accident. I have a metal rod in
3 my leg from my hip to my ankle. I broke my femur bone.

4 Q. You were still recovering from an unrelated
5 accident at this time?

6 A. Yes, sir.

7 Q. For that reason, Ashley was helping you bring in
8 some of the stuff?

9 A. Yes, sir.

10 Q. Whenever you walked inside, you closed the door?

11 A. Uh-huh.

12 Q. When you closed that door, where was Ronzell and
13 Brandon?

14 A. Right here on the back porch.

15 Q. When you left him, you saw him on the back porch?

16 A. Yes, sir.

17 Q. Walk us through what happened then.

18 A. When he came through -- when I went in, closed the
19 door. My sister was already in the living room. So when I
20 came through, it was like a little -- right in this area
21 here, I heard some rumbling, you know. I thought it was
22 just Brandon and Ronzell outside playing. I didn't see
23 nobody else. They were the last two outside when I walked
24 in. So I thought, okay, they are outside playing. So when
25 I got to the front door --

1 Q. Let me stop you right there. Back to this rumbling
2 sound, I mean, could you tell what was making that sound?

3 A. It was like -- at the time I thought it was only
4 two people outside, him and Brandon. So I thought, you
5 know, they were tussling.

6 Q. Sounded like something was being hit against the
7 house, they were tussling against the house?

8 A. Yes.

9 Q. Your initial thought was that Ronzell and Brandon
10 were outside?

11 A. Playing outside like they normally do. They
12 normally do that sometimes.

13 Q. Keep going. What happened then?

14 A. When I walked, you know, the game and everything I
15 put up, me and Ronzell and Brandon was going to walk on
16 Curtis Avenue, which is like two streets down. Went to the
17 front door, which is in the front. My mom opened the door
18 so she could lock the back, you know. When we open the
19 door, everybody said, oh, my gosh what happened? I looked.
20 I saw Ronzell in his boxers. And I saw Ronzell in his
21 boxers. He looked at me like, hey, man, can I get one of
22 your pants? So I hand him black cargo pants.

23 Q. Did he say anything else?

24 A. No, he just pacing up and down the street.

25 Q. Did he say something about some boys?

1 MR. GAILLIARD: Your Honor, I object; leading.

2 THE COURT: Sustained; leading. Rephrase.

3 BY MR. OSBORNE:

4 Q. Do you recall him saying anything about --

5 A. He said -- he said -- screaming, man, them boy done
6 get me, but he never said no names.

7 Q. Them boy done get me, but never mentioned any
8 names?

9 A. Right.

10 Q. You seen him without his pants on?

11 A. Yes, he had his boxers. And I believe, I don't
12 know, white T-shirt or white tank top, one of the two.

13 Q. When you left him, he had pants on?

14 A. Yes.

15 Q. Now he doesn't have any pants on?

16 A. Uh-huh.

17 Q. Go ahead. What did you do then?

18 A. I gave him his pants. When I gave him his pants --

19 Q. You gave him your pants or his pants?

20 A. Gave him my black cargo pants that he asked for.

21 When I gave him that, that's when he walked off. My mom was
22 like, you need to go down there, what's going on? So I sat
23 in the house for another five minutes. Then that's when I
24 took my walker and I walked to Coopers Avenue.

25 Q. I want to talk to you just for a second about

1 Ashley. When you brought Ashley or when you and Ashley went
2 inside the house carrying in the stuff, you heard the loud
3 bang, where was Ashley when all of that was going on?

4 A. In the living room talking to my mom.

5 Q. At some point, did Ashley leave?

6 A. When I came -- when my mom opened the door for them
7 to see Ronzell, Ashley had gone.

8 Q. Ashley had already left?

9 A. Uh-huh.

10 Q. Okay. Montez, I want to talk to you a second about
11 some arrests that you've had your past. Okay? And in
12 particular, it looks like 2010 was kind of a rough year for
13 you.

14 A. Uh-huh.

15 Q. You had eight fraudulent checks; is that correct?

16 A. Yes, sir.

17 Q. And I guess related to that, or maybe it wasn't,
18 you had two false information arrests; is that correct?

19 A. Yes, sir.

20 Q. And convictions?

21 A. Yes, sir.

22 Q. So I guess I would have to ask you, that brings
23 into question your credibility. Are you lying today?

24 A. No, sir.

25 Q. Did you see the robbery?

1 A. Sure did.

2 Q. You heard loud bangs outside?

3 A. Heard loud bangs.

4 Q. Sounded like people were banging up against the
5 house?

6 A. Exactly.

7 Q. And you also saw Ronzell pacing back and forth?

8 A. Yes, sir.

9 Q. No shoes on?

10 A. No pants.

11 MR. OSBORNE: No further questions.

12 THE COURT: Any questions of the witness?

13 MR. GAILLIARD: Yes, Your Honor.

14 THE COURT: You may proceed.

15 CROSS-EXAMINATION

16 BY MR. GAILLIARD:

17 Q. Good morning.

18 A. Good morning.

19 Q. How long after you went into the house before you
20 heard this banging and what you call tussling outside?

21 A. It was like maybe 10, 15 seconds. It was like the
22 distance from the back door to where I put my game in. My
23 room is actually where I walk through. From a distance,
24 that's like two, three seconds.

25 Q. Now, when you went inside, the only two people out

1 there were Ronzell and Brandon Nelson; is that correct?

2 A. Yes, sir.

3 Q. And you didn't see anyone else?

4 A. I didn't see nobody else.

5 Q. Didn't see anyone attack Ronzell Olds?

6 A. I didn't see the robbery.

7 Q. I'm sorry?

8 A. I didn't see the robbery. I didn't see nobody
9 attack him. I didn't see Brandon attack him.

10 MR. GAILLIARD: No further questions.

11 THE COURT: Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Just one. I want to direct your attention to where
15 that trash can is there and off to the side of the door.

16 Were you paying attention to anything that was going on off
17 to the left over here with the tree and the trash can?

18 A. Where we was sitting at, we were like sitting over
19 here. This is the grass area. We used to sit the chairs
20 right here. We could see the tree, but we can't see what's
21 going on the side by the trash can.

22 Q. In fact, this photograph right here was not taken
23 during the time frame of the robbery; is that correct?

24 A. Uh-huh.

25 Q. What is different about the structure of your house

1 right here as opposed to the way it was back in 2011?

2 A. None of this was missing.

3 Q. What about the side of the wall right there, is
4 there anything different there? This isn't a great image,
5 but on the side of the wall right here --

6 A. Right here?

7 Q. Yes.

8 A. There was like wired fences.

9 Q. So there was some concealment there covering that
10 that's not there now?

11 A. Uh-huh.

12 MR. OSBORNE: Okay. No further questions.

13 THE COURT: Any objection to the witness being
14 excused from the State?

15 MR. OSBORNE: None.

16 THE COURT: From the defense?

17 MR. GAILLIARD: None, Your Honor.

18 THE COURT: Sir, you are excused.

19 Call your next witness.

20 MR. VOIGT: The State calls Ashley Green.

21 ASHLEY GREEN,

22 having been duly sworn, testifies as follows:

23 THE CLERK: Please state your full name for the
24 record, spelling your last name. And please be sure to
25 speak in a loud and clear voice.

1 THE WITNESS: Ashley Green, G-r-e-e-n.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION

4 BY MR. VOIGT:

5 Q. Ms. Green, where do you live?

6 A. Staffordshire Drive.

7 Q. And how long have you lived there?

8 A. All my life, 24 years.

9 Q. And who do you live there with?

10 A. It's me, my mother, my brother, and I have a little
11 sister.

12 Q. What's your brother's name?

13 A. My brother is Montez Dozier.

14 Q. What do you do for a living?

15 A. I was in the Army from 2007 until February of this
16 year. I just got discharged.

17 Q. Did you graduate from high school?

18 A. Yes, I graduated in 2008 from Garrett.

19 Q. Do you know Ronzell Olds?

20 A. Yes.

21 Q. And how long have you known Ronzell Olds?

22 A. A couple years, since --

23 Q. How do you know him?

24 A. From my brother. He was friends with my brother,
25 Montez.

1 Q. Did he come to your house?

2 A. Yes, a lot.

3 Q. What did he do when he came to your house?

4 A. They would normally play video games, Xbox 360, or
5 like gamble with cards.

6 Q. Let me draw your attention to May 25th, 2011. Do
7 you remember that day?

8 A. Yes, sir.

9 Q. Why do you remember that day?

10 A. There was an armed robbery that took place in my
11 yard that day.

12 Q. Did you see the armed robbery?

13 A. No, no, sir.

14 Q. Had you been home all day that day?

15 A. No, sir, I did leave that afternoon. I went
16 shopping.

17 Q. Why did you go shopping?

18 A. I was actually going to buy some clothes. I was
19 supposed to go to Edisto for the holiday weekend.

20 Q. Did you have a car?

21 A. Yes.

22 Q. And what kind of car did you have back on May 25th,
23 2011?

24 A. It was a 2005 Ford Taurus, gold Ford Taurus.

25 Q. I'm going to show you what's been previously marked

1 as State's Exhibit 2. Do you recognize that?

2 A. Yes, that's the side of my house.

3 Q. Okay. Is that -- which house is yours?

4 A. The one on the left side.

5 Q. Where did you park your car?

6 A. I pulled in the drive right in front of that door.

7 Q. Can you put an X there on the screen right in front
8 of where you parked your car?

9 A. (Witness complies.)

10 Q. Were your headlights facing towards the house or
11 away from the house?

12 A. Towards the house.

13 Q. And what time were you planning to go to Edisto?

14 A. I was planning to go later on that evening for that
15 night.

16 Q. What time did you come back from the mall from
17 shopping?

18 A. I want to say around 7.

19 Q. Who was at your house when you came back?

20 A. It was a group of guys in the front of the house,
21 including TA and Benjamin. And then Ronzell and my brother,
22 Montez, and Rob were still in the back playing video games
23 and stuff.

24 Q. How long have you known TA?

25 A. Since middle school, since 7th grade.

1 Q. And what's TA's real name?

2 A. David Capers.

3 Q. Do you know Benjamin Smalls?

4 A. Yes.

5 Q. And how do you know Benjamin Smalls?

6 A. I know him through TA, through David.

7 Q. And how long do you think you have known Benjamin
8 Smalls?

9 A. To the date, it would probably be like five years.

10 Q. About how often do you think you had seen
11 Mr. Smalls?

12 A. Well, in 2011, I saw him often, because I saw David
13 often.

14 Q. What were the guys doing in the front of the house?

15 A. They were -- some of the other guys were like
16 getting their haircut and getting beards trimmed.

17 Q. What were they doing in the back of the house
18 again?

19 A. They were still playing the video games and the
20 cards.

21 Q. Did you ever get a call from TA?

22 A. Yes, earlier that morning.

23 Q. What was that conversation about?

24 A. Just was like a casual conversation, hey, how are
25 you doing; what are you doing today, things of that nature.

1 Q. Did you tell David Capers what people were doing
2 around the house?

3 A. Yes, I did. He asked what the noise was in the
4 background. I was actually outside. And I told him that it
5 was my brother and Ronzell and Rob outside gambling and
6 playing the game.

7 Q. Did you know that Ronzell had hundreds of dollars
8 on him?

9 A. I didn't know the amount, but I knew he had money
10 just because they were gambling.

11 Q. Was that telephone call before you came back from
12 the mall?

13 A. Yes, yes, sir.

14 Q. Did there come a time when you helped your brother
15 bring in the Xbox and the tables and whatnot?

16 A. Yes, that was after I had already gotten back from
17 doing shopping. And my mother stated it was getting late
18 and she wanted them to leave off the back porch, basically.
19 And I helped my brother Montez bring in the TV and the game
20 system and then the stand as well.

21 Q. Were you packed up and ready to go to Edisto?

22 A. Yes.

23 Q. Was all that stuff in your car?

24 A. Yes, sir, it was all in the trunk already.

25 Q. What did you do after you helped Montez bring stuff

1 in?

2 A. I went in the house and said goodbye to my mother
3 and my grandmother at the time, who was still living, and
4 then my sister.

5 Q. And then what did you do?

6 A. I came outside, went out the front door. You can't
7 see in this picture, but I came out the front door and
8 proceeded to the car.

9 Q. And the car is where the X is, right?

10 A. Where the X is, yes, sir.

11 Q. Then did you just drive off and go to Edisto?

12 A. No, sir, I was approached by TA and Benjamin and he
13 asked me for a ride.

14 Q. Which one asked you for a ride?

15 A. TA asked me for a ride.

16 Q. Was there anybody else in the front yard then?

17 A. Still the other guys that were still on the porch.

18 Q. Where were -- can you put an X as to where TA and
19 Benjamin may have been, or just put a T and a B where TA and
20 Benjamin would have been when you walked out.

21 A. They would have been coming from this side of the
22 house.

23 Q. So they were coming from there?

24 A. Yeah.

25 Q. How did they approach you?

1 A. In a very, like, hurried motion, like not running,
2 but rushing, I should say.

3 Q. Did it seem like they needed to go urgently?

4 A. Yes.

5 Q. Did you think twice about giving them a ride?

6 A. No.

7 Q. You've known David Capers since middle school,
8 right?

9 A. Yes, sir.

10 Q. David got into your car?

11 A. Yes, sir.

12 Q. Where?

13 A. In the front seat.

14 Q. Where did Benjamin get in the car?

15 A. On the back driver's side.

16 Q. Did anybody tell you to hurry or get out of there
17 or anything like that?

18 A. No, sir.

19 Q. Okay. So where did they ask you to drive them?

20 A. To Bailey Street.

21 Q. This has been previously introduced into evidence
22 as State's Exhibit 11. That's Bailey Street?

23 A. Yes, sir.

24 Q. And where is Bailey Street?

25 A. It's off in North Charleston right off Azalea

1 Drive.

2 Q. How long did it take you to get from where you were
3 in West Ashley to Bailey Street?

4 A. Ten minutes, fifteen minutes at the most, not that
5 long at all.

6 Q. Was that on your way to Edisto or was that out of
7 your way?

8 A. It was actually out of the way..

9 Q. How did they act when they were in your car for all
10 that time?

11 A. They acted like someone who would have like an
12 adrenaline rush or something.

13 Q. Did they seem excited?

14 A. Yes.

15 Q. Did any of them make any reference to Ronzell or
16 Mr. Olds?

17 A. In the car they were saying things like -- one of
18 the things that he said was, we just got that nigger, was
19 one of the things.

20 Q. Who said that?

21 A. Benjamin said it.

22 Q. Did you know what he meant?

23 A. Yes.

24 Q. How did you know what he meant?

25 A. It was just street slang. It's obvious what it

1 means, means they just robbed somebody, basically.

2 Q. Did that scare you?

3 A. Yes.

4 Q. At any time in that car ride over to Bailey Street,
5 did you see either one, either TA or Benjamin, with a gun?

6 A. No, sir.

7 Q. At any time, did either one of them mention a gun
8 or talk about having a gun?

9 A. No, sir.

10 Q. Did they talk about money?

11 A. Yes, sir.

12 Q. Who did?

13 A. You could actually hear them counting the money in
14 the backseat.

15 Q. Did you look back and see how much he had?

16 A. No, sir, I didn't look back.

17 Q. Did it seem like a bunch of bills or just a few
18 bills?

19 A. It seemed like a lot.

20 Q. And who was in the back counting the money?

21 A. Benjamin.

22 Q. Did he say anything about how much he got or how
23 much they got?

24 A. Later on, on Bailey Street, he did, at the house.

25 Q. Did they offer to give you anything?

1 A. They offered me gas money.

2 Q. Did you take it from them?

3 A. No, sir.

4 Q. Did they offer it just one time?

5 A. Well, three times.

6 Q. Did that make you nervous?

7 A. Yes.

8 Q. Why did that make you nervous?

9 A. Because I had told them -- I kept telling them I
10 didn't need it, but they still wanted me to get the gas
11 money.

12 Q. So you dropped them off at Bailey Street. Did you
13 go inside?

14 A. Not at that time, no, sir.

15 Q. And then from Bailey Street, did you go to Edisto?

16 A. Eventually, yes, sir, I did. I actually went to a
17 friend's house who also lives in North Charleston.

18 Q. So you made a detour?

19 A. Yes, sir.

20 Q. Did you tell this friend about this robbery that
21 had just happened?

22 A. I did.

23 Q. Did you go back to Bailey?

24 A. Yes, yes, sir.

25 Q. Okay. Why did you go back to Bailey?

1 A. I went back to Bailey to actually use TA's cell
2 phone to call my friend and let her know I was going to be
3 on my way to Edisto.

4 Q. Your female friend in Edisto was waiting for you?

5 A. Yes.

6 Q. And you hadn't communicated with her for some
7 time?

8 A. Yes, sir.

9 Q. And did you think she was getting nervous about you
10 not showing up?

11 A. Yes.

12 Q. When you got back to Bailey, was Benjamin Smalls
13 still there?

14 A. Yes, sir.

15 Q. Was TA still there?

16 A. Yes, sir.

17 Q. And did you ask TA for his phone?

18 A. Yes, yes, sir.

19 Q. Was somebody else there too?

20 A. They were -- there was other people there as
21 well.

22 Q. Okay. And you knew who some of them were?

23 A. Yes, sir.

24 Q. Did either Benjamin or David Capers, TA, were they
25 talking about what they had done to Zell?

1 A. Yes, they did. The conversation actually -- I
2 guess they were making sure that they had split the money
3 evenly between the two of them. So he had -- Benjamin asked
4 TA how much money he had given.

5 Q. And how much was that?

6 A. About 320.

7 Q. So they split it evenly? They got about 640
8 total?

9 A. Yes, sir.

10 Q. Did it seem like -- when you were back at Bailey
11 the second time, did Benjamin seem like, or TA, seem like
12 they were bragging about the robbery?

13 A. They did, seemed like they were boasting and
14 bragging. They were asked where did they get the money
15 from. And they said they just hit a lick. And they asked
16 who, and they said it was Zell, or Ronzell.

17 Q. What does hit a lick mean?

18 A. They robbed somebody.

19 Q. And you knew -- when somebody says hit a lick, you
20 know exactly what they are talking about?

21 A. Yes, sir.

22 Q. And so did everybody in that room, right?

23 A. Yes, sir.

24 Q. Now, you weren't so afraid that you didn't go back,
25 right?

1 A. No, sir.

2 Q. You went back. Did you ever get to talk to your
3 friend on TA's cell phone?

4 A. I did.

5 Q. Is that the only person you talked to?

6 A. No. Actually, the detectives used my mother's
7 phone to call TA's phone as well to get in touch with me.

8 Q. Did that scare you?

9 A. Yes.

10 Q. So already that night, the detectives are calling
11 you?

12 A. Yes, sir.

13 Q. Did you agree to go talk to the detectives?

14 A. I did, yes, sir.

15 Q. And so at some point, you go -- which detective did
16 you talk to initially? Do you remember?

17 A. I don't remember the guy's name.

18 Q. Okay. That's all right. But you told the
19 detectives the first time everything, right?

20 A. No, sir, I didn't.

21 Q. So let's be clear about it. First time you talked
22 to the detectives, you didn't tell them the whole story?

23 A. No, sir.

24 Q. Why?

25 A. I was really just trying to make myself as least

1 possible involved as I possibly can.

2 Q. When you left your house, within seconds after you
3 leaving your house with Benjamin Smalls and David Capers in
4 your car, you knew they had committed a robbery, right?

5 A. Yes, sir.

6 Q. And you didn't tell the police about that
7 initially?

8 A. Yes, sir.

9 Q. Right? In fact, hours went by and you stayed with
10 them for a good bit. You went back to Bailey?

11 A. Yes.

12 Q. So you dropped them off at Bailey, then you come
13 back to Bailey. And you don't tell the police any of that,
14 do you?

15 A. No, sir.

16 Q. Because that doesn't seem too good, does it?

17 A. No, sir.

18 Q. And you didn't tell them you knew a robbery had
19 happened?

20 A. No, sir.

21 Q. And you didn't tell them anything about the
22 counting of the money or anything like that, because that
23 would make you look back, right?

24 A. Yes.

25 Q. Still makes you look bad, right?

1 A. Yes, sir.

2 Q. And the police didn't believe you, did they?

3 A. No.

4 Q. So they talked to you again, right?

5 A. Yes, sir.

6 Q. And did you tell them 100 percent of the truth the
7 second time?

8 A. No, sir.

9 MR. GAILLIARD: Your Honor, I'm going to have to
10 object. He's leading the witness.

11 THE COURT: No speaking objections. Is the
12 objection leading?

13 MR. GAILLIARD: Leading.

14 THE COURT: Sustained.

15 MR. GAILLIARD: Thank you, Judge.

16 BY MR. VOIGT:

17 Q. Did you tell the police the 100 percent truth the
18 second time you talked to them?

19 A. No, sir, I didn't.

20 Q. Did you tell them everything that you knew?

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

22 Q. Did you tell them everything that you told this
23 jury here today?

24 A. No, sir.

25 Q. The police charged you with armed robbery, didn't

1 they?

2 A. Yes, sir.

3 Q. For being the get-away driver?

4 A. Yes, sir.

5 Q. You are still charged with armed robbery, aren't
6 you?

7 A. Yes, sir.

8 Q. You've met with Mr. Osborne and myself --

9 A. Yes, sir.

10 Q. -- to talk about this case previously, have you
11 not?

12 A. Yes, sir.

13 Q. Have either Mr. Osborne or myself ever promised you
14 anything --

15 A. No.

16 Q. -- to get you to testify here today?

17 A. No, sir.

18 Q. Did we tell you we were going to reduce your
19 charges, throw out your charges, or do anything like that?

20 A. No, sir.

21 Q. Is that your hope?

22 A. Yes.

23 Q. Now, at some point, you meet with a police officer,
24 Detective Holmes?

25 A. Yes.

1 Q. And he asks you -- he shows you some pictures, does
2 he not?

3 A. Yes, sir.

4 Q. And did you tell him -- in the conversation you had
5 with him, were you all talking about David Capers and
6 Benjamin Smalls?

7 A. Yes, sir.

8 Q. And I'm going to show you what's been previously
9 marked as State's Exhibit 21 and 22. Have you seen these
10 before?

11 A. Yes, sir.

12 Q. And State's Exhibit 22, what is that?

13 A. That's a photo of TA.

14 Q. Did the detective have you do anything with that
15 photograph?

16 A. Yes, I had to sign stating that I did know that
17 that was TA.

18 Q. That was somebody you had known since middle
19 school?

20 A. Yes.

21 Q. I imagine he didn't have a beard in middle school.

22 A. No, no, sir.

23 Q. State's Exhibit 21, do you recognize that as
24 well?

25 A. Yes, sir.

1 Q. And what is that?

2 A. That's a photo of Benjamin.

3 Q. And these are -- both 21 and 22, these were things
4 that Detective Holmes showed to you?

5 A. Yes, sir.

6 Q. And you signed each one?

7 A. Yes, sir, I signed them.

8 Q. And that's your handwriting on each one?

9 A. Yes, sir.

10 Q. And Benjamin Smalls, that's somebody you had known
11 for a number of years?

12 A. Yes, sir.

13 Q. And that was to confirm that these were the right
14 people we were all talking about?

15 A. Yes, sir.

16 MR. VOIGT: I would offer, file, introduce State's
17 Exhibit 21 and 22.

18 THE COURT: Any objection?

19 MR. GAILLIARD: None, Your Honor.

20 THE COURT: Did you show it to him?

21 MR. VOIGT: I did.

22 THE COURT: Marked and admitted without objection.
23 What are the numbers again?

24 MR. OSBORNE: 21 and 22, Your Honor.

25 (State's Exhs. 21 and 22, Photographs, are moved

1 into evidence.)

2 MR. OSBORNE: Please answer any questions
3 Mr. Gailliard may have.

4 THE COURT: Mr. Gailliard, you may proceed.

5 CROSS-EXAMINATION

6 BY MR. GAILLIARD:

7 Q. Good morning. Let's go back over your testimony.
8 You said that you knew that robbery had taken place?

9 A. I'm sorry?

10 Q. You said that you knew that a robbery had taken
11 place on that evening?

12 A. Yes.

13 Q. How did you know that?

14 A. Just from what they were stating, we just hit a
15 lick and we just got that nigger. Those were --

16 Q. Now, on your direct you said they said, we just got
17 that nigger; is that right?

18 A. Yes.

19 Q. You didn't hear about the licking until you got
20 down to Bailey Drive; is that right?

21 A. Yes, sir. Yes, sir.

22 Q. So just based upon the fact that they said that,
23 you concluded that a robbery had taken place?

24 A. Yes, sir.

25 Q. You didn't witness any robbery; is that right?

1 A. No, sir.

2 Q. And you didn't witness the presence of a gun; is
3 that correct?

4 A. No, sir.

5 Q. All right. Now, who is it that asked you to give
6 them a ride to Bailey Drive?

7 A. TA asked for the ride to Bailey Drive.

8 Q. About what time was that?

9 A. It was that night, so I want to say maybe 9. It
10 was late that night. It was already dark.

11 Q. Was it dark or light out?

12 A. It was dark outside already.

13 Q. Who sat in the front seat?

14 A. TA sat in the front seat.

15 Q. Who was in the backseat?

16 A. Benjamin.

17 Q. Who was doing the counting of the money?

18 A. Benjamin.

19 Q. Did you hear anything about the money in the car?

20 A. No, just the counting.

21 Q. Just the counting?

22 A. Yes.

23 Q. So your testimony about the division of the money
24 didn't come until they got to Bailey Drive; is that
25 correct?

1 A. Yes, sir.

2 Q. It's your testimony that you left Bailey Drive and
3 visited somebody and came back; is that right?

4 A. Yes, sir.

5 Q. When did the call come to you from the detective?

6 A. While I was still at the house. It was early that
7 morning. It was already the next morning.

8 Q. The detective didn't call you until the next day on
9 the 26th?

10 A. Yeah, it was like 1 in the morning, something like
11 that.

12 Q. Okay. You were back at what house, on Bailey Drive
13 or your house?

14 A. At Bailey.

15 Q. At Bailey?

16 A. Yes.

17 Q. So a call came in on the brother's phone?

18 A. No, on TA's phone.

19 Q. You had TA's phone?

20 A. At the house, sir, yes, sir.

21 Q. Who had TA's phone?

22 A. He had his phone. I went to the house to use it to
23 call my friend to let her know I was on my way to Edisto.

24 Q. Okay. So while you were using the phone, a call
25 came in?

1 A. Yes, sir, from my mother's cell phone calling TA's
2 phone, but it was a detective on the phone.

3 Q. Now, you didn't witness a robbery at all; is that
4 correct?

5 A. No, sir.

6 Q. So the only thing you know about it is this
7 conversation; is that correct?

8 A. Yes, sir.

9 MR. GAILLIARD: No other questions for this
10 witness, Your Honor.

11 THE COURT: Any redirect?

12 MR. VOIGT: Briefly, Your Honor.

13 THE COURT: Any objection? You said you had more?
14 I'm having difficulty hearing you. I need you to speak up a
15 little bit. You sound muffled.

16 MR. VOIGT: I just got one.

17 REDIRECT EXAMINATION

18 BY MR. VOIGT:

19 Q. Just so we are clear, is the man sitting there at
20 the table the guy that was counting money in the back of the
21 car?

22 A. Yes, sir.

23 Q. Is that Benjamin Smalls?

24 A. Yes, sir.

25 MR. VOIGT: Thank you.

1 THE COURT: Any objection to the witness being
2 excused from the State?

3 MR. VOIGT: Not from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. GAILLIARD: None, Your Honor.

6 THE COURT: Ma'am, you are excused.

7 State may proceed.

8 MR. OSBORNE: The State calls Sergeant Jonathan
9 Lane.

10 JONATHAN LANE,

11 having been duly sworn, testifies as follows:

12 THE CLERK: State your full name for the record,
13 spelling your last name. And please be sure to speak in a
14 loud and clear voice.

15 THE WITNESS: Okay. Sergeant Jonathan Lane,
16 J-o-n-a-t-h-a-n, L-a-n-e, with Charleston Police Department.

17 THE COURT: You may proceed.

18 DIRECT EXAMINATION

19 BY MR. OSBORNE:

20 Q. Sergeant Lane, how long have you been with CPD?

21 A. Eleven years, sir.

22 Q. And what are some of the assignments that you've
23 had over that 11-year period?

24 A. Over 11 years, I worked patrol divisions for both
25 downtown/West Ashley division, worked investigations for

1 downtown central detectives division, and also U.S. Marshals
2 Fugitive Task Force. And currently I'm a supervisor for
3 downtown peninsula division.

4 Q: All right. Without going through all the training
5 that you've had in that period, but what's some of the
6 training that you've had?

7 A. Majority of training: I've had interview
8 interrogation training; I've had high-risk warrant service
9 training; I currently have been for eight years on the SWAT
10 team; I've had high-risk entry training for SWAT team;
11 sniper training; more firearms training; firearms
12 instructor; and then several investigation schools.

13 Q. And back in May of 2011, where were you working
14 then?

15 A. U.S. Marshals Fugitive Task Force.

16 Q. What were some of the duties and your
17 responsibilities working for the task force?

18 A. Being a part of the task force, we were
19 collectively tasked with working in areas most dangerous and
20 high-profile cases for all the area, ranging from murder
21 investigations, armed robbery cases, and the downward slope
22 of that, but to catch fugitives that were wanted for those
23 offenses and collaborative efforts to local state resources
24 and federal resources with the U.S. Marshals.

25 Q. You mostly dealt with high-risk warrants, I take

1 it?

2 A. That's correct.

3 Q. So when an individual is out wanted, local agency,
4 they would often turn the warrant over to you to go find
5 them?

6 A. That's correct.

7 Q. On June the 3rd of 2011, is that what your
8 responsibilities were on that day?

9 A. That's correct.

10 Q. Did you become involved in an armed robbery
11 investigation that occurred on May the 25th of 2011?

12 A. Yes, I did.

13 Q. And how did you come about that?

14 A. I got a call from our bureau commander wanting me
15 to adopt a case to apprehend a fugitive David Capers and
16 Benjamin Smalls.

17 Q. And what were they wanted for?

18 A. Armed robbery and possession of weapon during a
19 violent crime.

20 Q. And did you have the occasion to arrest either one?

21 A. That's correct, David Capers.

22 Q. And walk us through that. How did that happen?

23 A. We received information that David Capers possibly
24 was at a residence at Bailey Street in North
25 Charleston. Our team joined together and came up with a

1 plan to do what we would consider just a knock and talk at a
2 residence to try to find out if that information was correct
3 or not.

4 Upon making the approach on the actual house, we
5 did a knock and talk at the door. It subsequently opened by
6 itself. While we knocked on it, two individuals were in the
7 living room. We addressed them and announced that we were
8 police, U.S. Marshals Fugitive Task Force. We addressed the
9 subjects, stepping aside. Based on the danger level of the
10 armed robbery case, they were subsequently detained.

11 A third person was said to be inside who was
12 ultimately find out to be David Capers. We called out to
13 David Capers, who complied with our request to respond to
14 the living room of that residence. He walked out to us. He
15 was taken into custody without further incident.

16 The rest of the residence was secured after consent
17 to make sure that no other parties were inside, just to make
18 sure that our safety was ensured. And then upon searching
19 the interior for people, we lifted up a bed that was in the
20 first bedroom on our left-hand side. And upon lifting the
21 bed up, a gun was recovered or found in plain view once we
22 lifted it up. While we were looking for bodies, the gun was
23 found.

24 There were no other items inside the bedroom, by
25 the way. The bedroom seemed unlivd in. The bed had no

1 sheets on it. It was just a bed frame, a mattress, and no
2 other items inside the room. That was the room that David
3 Capers immediately had come out of. No other parties were
4 located inside that.

5 Q. Just for clarification, gun located in a room that
6 David Capers was located; no one else was in the room?

7 A. That's correct.

8 Q. I want to show you just a couple of things here.
9 This is State's Exhibit 4. Do you recognize that residence?

10 A. Yes, sir, I do.

11 Q. And what is it?

12 A. That's Bailey Street.

13 Q. So this is the residence that David Capers was
14 arrested in?

15 A. That's correct. Specifically, the window that you
16 are looking at that would lead up to the stairwell is the
17 bedroom that he was located in.

18 Q. Do you recognize this?

19 A. Yes, sir.

20 Q. And what is that?

21 A. That would be the geographic location of the
22 residence that we approached.

23 Q. All right. So you take David Capers into custody.
24 You located a gun. What do you do then?

25 A. Yes, sir. Well, the gun specifically was a

1 9-millimeter Keltec, black in color. Due to the fact that
2 we were in North Charleston's jurisdiction, we recovered
3 that weapon and put it into evidence. Did not charge anyone
4 with it at that point. We just put it into evidence for
5 further investigation purposes and held it at North
6 Charleston evidence locker.

7 Q. What happened to David?

8 A. David was transported to Charleston Police
9 headquarters where he was turned over to Detective Williams
10 of the Charleston Police Department for further interview.

11 MR. OSBORNE: No further questions.

12 THE COURT: Any questions for the witness?

13 MR. GAILLIARD: None, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused from the State?

16 MR. OSBORNE: None.

17 THE COURT: From the defense?

18 MR. GAILLIARD: None, Your Honor.

19 THE COURT: Sir, you are excused.

20 THE WITNESS: Thank you.

21 THE COURT: You're welcome.

22 State may proceed with its next witness.

23 MR. OSBORNE: Beg the Court's indulgence. Your
24 Honor, may I approach?

25 THE COURT: Uh-huh.

1 (Whereupon, a bench conference takes place off the
2 record.)

3 THE COURT: Mr. Foreman, ladies and gentlemen, we
4 are going to take a brief restroom break. During the break,
5 please do not discuss the case, and please leave your note
6 pads in your seats.

7 (Whereupon, the jury leaves open court at 11:06
8 a.m.)

9 THE COURT: You may be seated. Please check on the
10 status of your witnesses and let me know.

11 MR. OSBORNE: Yes, ma'am.

12 (Whereupon, recess transpired.)

13 THE COURT: State ready to proceed?

14 MR. OSBORNE: Yes, ma'am.

15 THE COURT: Defense ready to proceed?

16 MR. GAILLIARD: Yes, Your Honor.

17 THE COURT: All right. Please bring in the jury.

18 (Whereupon, the jury returns to open court at 11:31
19 a.m.)

20 THE COURT: Ladies and gentlemen, I hope you
21 enjoyed your break. We will now resume testimony.

22 You may call your next witness.

23 MR. OSBORNE: The State calls Cicely Gillispie.

24 CICELY GILLISPIE,

25 having been duly sworn, testifies as follows:

1 THE CLERK: State your full name for the record,
2 spelling your last name. And please be sure to speak in a
3 loud and clear voice.

4 THE WITNESS: Cicely Gillispie, G-i-l-l-i-s-p-i-e.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MR. OSBORNE:

8 Q. Ms. Gillispie, are you related to Ronzell?

9 A. Yes, sir, that's my son.

10 Q. That's your son?

11 A. Yes, sir.

12 Q. Where are you from?

13 A. West Ashley.

14 Q. Where did you grow up?

15 A. West Ashley in Ardmore.

16 Q. Do you have any children other than Ronzell?

17 A. Yeah, I have four other kids.

18 Q. Four kids?

19 A. Uh-huh.

20 Q. Now, do you work?

21 A. Yes, sir.

22 Q. Where do you work?

23 A. Nightingale Nursing Assistants.

24 Q. Is that the only job you have now?

25 A. Right now, yeah.

1 Q. And I want to go back to 2011, May of 2011. Did
2 you have a job back then?

3 A. Yes, I had two jobs.

4 Q. Where did you work?

5 A. I worked at Wendy's on Sam Rittenberg, and I worked
6 at the River Park, downtown River Park.

7 Q. River Dogs?

8 A. Uh-huh.

9 Q. Where did you live?

10 A. Juniper Street.

11 Q. I'LL show you a picture real quick. This is
12 State's Exhibit 5. Do you recognize that photograph?

13 A. Uh-huh.

14 Q. And what is it?

15 A. That's where I used to stay at.

16 Q. And you said that's -- that house is in the Ardmore
17 subdivision?

18 A. Uh-huh.

19 Q. When you lived there, what was it, two-bedroom,
20 three-bedroom?

21 A. Two-bedroom.

22 Q. Who did you live with?

23 A. Me, my three daughters, my granddaughter, and my
24 son.

25 Q. Do you remember how much your rent was back then?

1 A. Rent was 600.

2 Q. And how did you pay your rent?

3 A. In cash.

4 Q. And did you mail it? Did you go deliver it?

5 A. No. Either some time I take it, I let my son take
6 it, or Mr. White pick it up.

7 Q. Mr. White was the landlord?

8 A. Correct.

9 Q. Did you ever give the money to Ronzell to pay the
10 rent?

11 A. Correct.

12 Q. And how often would you do that?

13 A. Like a year, I would say four or five times.

14 Q. I want to bring you back to May the 25th of 2011.
15 Let's talk about the rent money. Do you remember what
16 happened with the rent money on that day?

17 A. He told me that -- I found out from my daughter,
18 she called me when I was at work and told me that the kids
19 had robbed Ron.

20 Q. Did you give the rent money to Ron?

21 A. Yeah, yeah, he had it that morning.

22 Q. And what was he supposed to do with the rent money?

23 A. Mr. White was supposed to pick the money up. So
24 Mr. White didn't come, so I told Mr. White, I called him and
25 told him I was going to let my son take it because I was

1 running late for work.

2 Q. How do you get to work?

3 A. I walk or sometimes I catch a cab.

4 Q. Do you remember what your hours were that day?

5 A. It was supposed to have been like 4 to 11, but I
6 left like 8:30, 9:00.

7 Q. And you said you got a phone call from your
8 daughter saying that Ron had been robbed?

9 A. Uh-huh.

10 Q. What did you do then?

11 A. I walked home. And on my way home, I was trying to
12 call his phone. And then I found out they took his phone.
13 So I called my daughter and I asked her if he was there.
14 And she told me he wasn't there. So I called the police to
15 try to find him and I told them what happened.

16 Q. So did the police come to your house?

17 A. Well, I was walking around the neighborhood, so I
18 had to tell them what street I was on so they could catch
19 me, catch up with me.

20 Q. When you got back to your house, Ron wasn't
21 there?

22 A. No.

23 Q. So you -- I guess you and the police went to go
24 look for him?

25 A. Uh-huh.

1 Q. Was he hard to find?

2 A. Yeah, took us like 30 to 45 minutes to find him.

3 Q. When you found him, did the police talk to Ron?

4 A. Uh-huh.

5 Q. Were you there?

6 A. I wasn't really listening, but I could tell what
7 was going on.

8 Q. And what was going on?

9 A. That he was questioning him about what happened and
10 he didn't want to tell him what happened.

11 Q. Ron didn't want to tell him what happened?

12 A. He didn't want to tell him first what happened.

13 Q. And what happened then?

14 A. I told him he had to tell him what happened.

15 Q. Did you all go back to that house?

16 A. Yes, I went back to the house.

17 Q. When you got back to the house, did you talk to Ron
18 about his conversation with the police?

19 A. Uh-huh.

20 Q. What did you tell him?

21 A. I told him he had to tell them what happened or he
22 had to give me my money, because either somebody was lying;
23 either my daughter was lying or he was lying.

24 Q. Did you think he was lying?

25 A. No, I knew he wasn't lying.

1 Q. Did you let him back in the house?

2 A. Oh, no. He couldn't come back in.

3 MR. OSBORNE: No further questions.

4 THE COURT: Questions for the witness?

5 CROSS-EXAMINATION

6 BY MR. GAILLIARD:

7 Q. Good morning, Ms. Gillispie.

8 A. Hi, how are you doing?

9 Q. Ron is your only son; is that right?

10 A. No, I just had a son too.

11 Q. You've got --

12 A. Now I've got two sons, yeah.

13 Q. You say that you were working at the Wendy's West
14 Ashley?

15 A. Yes, sir.

16 Q. And did you complete your shift on the day that we
17 are talking about?

18 A. No, sir.

19 Q. Your daughter called you and you left work; is that
20 right?

21 A. Correct.

22 Q. Can you tell us exactly what your daughter told you
23 when she called you?

24 A. She told me that Ben and TA robbed Ron.

25 Q. That's what your daughter said?

1 A. Those were her exact words.

2 Q. What did you do at that time?

3 A. On my way home, like I said, I was calling him. He
4 didn't answer the phone.

5 Q. You were calling Ron?

6 A. Right.

7 Q. Okay.

8 A. To find out where he was and what happened. But
9 they took his phone, so I had no way to contact him.

10 Q. Who took his phone?

11 A. Ben and TA.

12 Q. Okay. So that's why you weren't able to reach him?

13 A. Say that again, sir.

14 Q. Is that why you were not able to reach him, because
15 he did not have his phone?

16 A. Yes, sir.

17 Q. Did you eventually catch up with Ron that day?

18 A. Yes, sir.

19 Q. What happened when you saw him?

20 A. I told him -- I asked him what happened.

21 Q. What did he tell you?

22 A. He told me that somebody robbed him. I said, who
23 robbed you? And he finally -- he told me who robbed him,
24 but he wouldn't tell the police who robbed him.

25 Q. He told you, but he would not tell the police?

1 A. Correct.

2 Q. You were there when the police asked him, and he
3 would not tell them; is that correct?

4 A. Right.

5 Q. You and he went back to the house; is that right?

6 A. He came like 5, 10 minutes after.

7 Q. And you told him unless he told what happened, he
8 couldn't come back into the house; is that right?

9 A. Right.

10 Q. And that's when he told the police, he called
11 somebody's name; is that right?

12 A. Yes, took him like two or three hours for him to --

13 Q. I'm sorry?

14 A. Took him two or three hours to call the police and
15 tell that he was going to tell.

16 Q. But that was only after you told him that he
17 couldn't stay in your house unless he told them what
18 happened; is that right?

19 A. That's correct.

20 MR. GAILLIARD: No other questions for this
21 witness.

22 THE COURT: Any redirect?

23 MR. OSBORNE: None, Your Honor.

24 THE COURT: Any objection to the witness being
25 excused from the State?

Matt Stanley - Direct by Mr. Osborne

1 MR. OSBORNE: No, Your Honor.

2 THE COURT: From the defense?

3 MR. GAILLIARD: None, Your Honor.

4 THE COURT: Ma'am, you are excused.

5 You may call your next witness.

6 MR. OSBORNE: Sergeant Matt Stanley.

7 MATT STANLEY,

8 having been duly sworn, testifies as follows:

9 THE CLERK: State your full name for the record,
10 spelling your last name. And please be sure to speak in a
11 loud and clear voice.

12 THE WITNESS: My name is Matthew Stanley, employed
13 by the Charleston Police Department, S-t-a-n-l-e-y.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. OSBORNE:

17 Q. Sergeant Stanley, how long have you worked with the
18 CPD?

19 A. I've been there little over 10 years. Probably
20 about half of that time has been spent in an investigative
21 capacity.

22 Q. What kind of work did you do before that?

23 A. Prior to that, I was about 10 or 11 years as a
24 mechanical engineer in the electric utility industry.

25 THE COURT: I could barely hear the witness. Sir,

1 I need you to speak directly into the microphone.

2 THE WITNESS: I apologize. For about 10 or 11
3 years prior to coming here to Charleston, I was a mechanical
4 engineer in the electric utility industry in D.C.,
5 Washington, D.C.

6 BY MR. OSBORNE:

7 Q. What is your current rank with CPD?

8 A. Currently, I'm a sergeant in the detective office.
9 I mean, I supervise the robbery unit.

10 Q. Supervise the robbery unit?

11 A. Yes.

12 Q. What are some of the duties and responsibilities
13 being supervisor of the robbery unit?

14 A. Basically, I oversee -- right now we have five
15 detectives who deal primarily with robberies. I oversee
16 their cases, make sure that they investigate them, and brief
17 the commanders there.

18 Q. I want to go back to May the 25th of 2011. Were
19 you still working for CPD then?

20 A. Yes, I was.

21 Q. And on that day, what was your responsibilities?

22 A. During that period of time, I was a detective in
23 the burglary unit. On that particular day, I was a duty
24 detective working the night shift. Basically, what that
25 means is, I come in at night and I'm available for any sort

1 of critical incident or violent incident that occurs. I go
2 and respond to the scene and assist patrol units.

3 Q. Now, on that night, did you have the occasion to
4 become involved in an armed robbery investigation?

5 A. Yes, I did.

6 Q. Walk us through that. How did that happen?

7 A. About one o'clock, I was called by the patrol
8 units. I responded out to Juniper Street where I met
9 with Sergeant Jenkins, who informed me that there had been a
10 robbery complaint earlier, and we had a victim here that was
11 willing to make a statement.

12 Q. And the victim's name was?

13 A. Ronzell Olds.

14 Q. And what was your understanding as to Ronzell's
15 cooperation level?

16 A. At that point, he was being cooperative and he
17 agreed to make a statement to us. Apparently, earlier that
18 hadn't been the case. But at that point, he was willing to
19 meet with me and speak to me.

20 Q. And you were the first detective to speak to
21 Ronzell?

22 A. That I'm aware of, yes.

23 Q. And prior to that, it was just patrolmen?

24 A. That's correct.

25 Q. And what neighborhood were you in?

1 A. I was in the Ardmore neighborhood.

2 Q. In the Ardmore subdivision? Now, through your
3 experience working robberies and the supervisor of the
4 robbery unit, is that uncommon for individuals not to
5 cooperate who were robbed in Ardmore?

6 MR. GAILLIARD: Your Honor, I object on the grounds
7 of relevance.

8 THE COURT: Please approach..

9 (Whereupon, a bench conference takes place off the
10 record.)

11 THE COURT: Sustained. Foundation. Speculation.

12 You may proceed.

13 BY MR. OSBORNE:

14 Q. Do you work a lot of robberies in the Ardmore
15 subdivision?

16 A. We have our fair share.

17 Q. And how would you describe Ardmore? Is it one of
18 your more troubled areas, or is it a relatively safe area?

19 A. No, I would characterize it as one of the more
20 troubled areas with, I would say, a higher-than-average rate
21 of violent crime.

22 Q. And when you talk to victims who are robbed in
23 Ardmore, through your experience being the supervisor of the
24 robbery unit and through your experience being a detective,
25 are victims who are robbed in Ardmore more likely to

1 cooperate or less likely to cooperate?

2 A. I would describe them typically as less likely to
3 cooperate. I mean, whether it be a perception of being
4 considered a snitch or out of fear, maybe they are afraid to
5 come forward.

6 Q. Now, when you spoke to Ronzell, you spoke to him --
7 was it at his house?

8 A. It was in front of his -- my understanding is in
9 front of his mother's residence at Juniper. I spoke to
10 him in my vehicle in front of that residence.

11 Q. Did you memorialize the interview in any way? Did
12 you write it down? Did you record it?

13 A. Yes, I audio recorded the interview.

14 Q. So what happened next in the investigation?

15 A. After I met with him, I met with Mr. Olds in my
16 vehicle. I asked him what happened. He identified several
17 people. He couldn't give me -- the names of those people
18 were Benjamin Smalls and another individual who he only knew
19 by the name TA, a nickname apparently, and someone else
20 named Ashley.

21 Q. Let me just stop you right there. At any point
22 through your conversation with Ronzell, did Ronzell indicate
23 to you that he did not see the people who robbed him?

24 A. No. In fact, just the opposite. I mean, he told
25 me he knew exactly who robbed him. At one point I asked

1 him, were they wearing masks or anything, and he said no.

2 He was shocked that Benjamin Smalls robbed him.

3 Q. All right. Did you go to the crime scene location?

4 A. Yes. I actually escorted Mr. Olds to Staffordshire
5 Street to point out the exact house where this occurred. He
6 said it was the house of his friend, but he didn't know the
7 number, so he pointed out the house, which is
8 Staffordshire Drive.

9 Q. I just want to touch on this real brief. This is
10 State's Exhibit 3. Do you recognize that photograph?

11 A. Yes. That's the back porch of Staffordshire.
12 And the side yard there is where he described the robbery as
13 taking place.

14 Q. Did you get any fingerprints from the scene?

15 A. No. I mean, it was outside. And by the time I got
16 there, I escorted Mr. Olds back to his mother's residence
17 and I came back to this location. By that time, it had been
18 probably about four hours after the robbery and it was
19 outside. I didn't see any place where there could have been
20 fingerprints or anything else.

21 Q. You didn't lift fingerprints from that tree?

22 A. No.

23 Q. Can you get fingerprints from a tree?

24 A. Not that I know of.

25 Q. So after you went there, what did you do then?

1 A. We met with the residents there, Ms. Green, who
2 lives there,, I believe her name is Sylvia Green, and
3 Mr. Montez Dozier, who is the friend of Mr. Olds.

4 Q. After you spoke to them, then what did you do?

5 A. After that period of time, we went back to meet
6 with Mr. Olds again and asked him to come down to the police
7 station to take a look at some photos, because our priority
8 there was confirming the identity of Benjamin Smalls, who he
9 had named.

10 Q. So Ronzell accompanied you back to the station that
11 night; is that correct?

12 A. Detective Dasher gave him a ride there, that's my
13 understanding.

14 Q. And you met him at the station, Ronzell?

15 A. That's correct.

16 Q. When you got to the station, you said you were
17 trying to confirm the identity of Benjamin Smalls. And how
18 do you go about doing that?

19 A. We developed a photographic lineup from our records
20 management system. Benjamin Smalls's picture was in there.
21 We basically developed those photos -- a piece of paper with
22 six photographs.

23 Q. So just to make sure that I understand, he tells
24 you that Benjamin Smalls robbed him. Does he give you a
25 description of Benjamin Smalls?

1 A. Yes, he did.

2 Q. So you go back to the station and then you find
3 Benjamin Smalls in your database?

4 A. That's correct.

5 Q. Does the Benjamin Smalls in your database match the
6 physical description of the Benjamin Smalls he says robbed
7 him?

8 A. Yes, he does.

9 Q. So you put together a photographic lineup, I think?

10 A. That's correct.

11 Q. I would like to show you what's been marked as
12 State's Exhibit 17. Do you recognize that?

13 A. Yes, I recognize it. This is the photo lineup
14 admonition form, and it's accompanied by the photo lineup.

15 Q. And this is the lineup and admonition form that you
16 showed Ronzell?

17 A. That's correct.

18 Q. Did he identify anyone?

19 A. Yes, he did identify Benjamin Smalls.

20 Q. This is State's Exhibit 17. This is just the front
21 of the admonition form that you were talking about?

22 A. Yes, that's correct.

23 Q. And it looks like he circles Photo No. 4?

24 A. Yes. I asked him to circle and initial and date
25 the photograph of the person who robbed him. That's what he

1 did.

2 Q. Do you remember about how long you were at the
3 station with Ronzell?

4 A. You mean how long afterwards or how long did it
5 take?

6 Q. No. I mean, do you remember what time you ended up
7 bringing him back home?

8 A. Yeah. It was approximately three o'clock when I
9 did the photo lineup, which would have been about six or
10 seven hours after the robbery occurred.

11 Q. Did you know -- so at that point, you had a
12 nickname for the second individual?

13 A. That's correct, TA.

14 Q. And you didn't know who TA was?

15 A. No, I did not.

16 MR. OSBORNE: No further questions.

17 THE COURT: Any questions for the witness?

18 MR. GAILLIARD: Yes, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. GAILLIARD:

21 Q. Now, Sergeant Stanley, back in 2011, what was your
22 rank and position with the City of Charleston Police
23 Department?

24 A. I was a senior police officer.

25 Q. Okay. And was it your charge to investigate this

1 call regarding the armed robbery?

2 A. Yes, it was. I conducted the initial
3 investigation, yes.

4 Q. Now, on direct, you mentioned that some patrolman
5 talked to the victim first; is that correct?

6 A. Yes, I believe so, yes.

7 Q. Okay. And you didn't have anything to do with the
8 patrolman interviewing the victim; is that correct?

9 A. No, I wasn't present and I was not informed at that
10 point.

11 Q. Now, can you tell us approximately when you first
12 met with the alleged victim, Mr. Olds?

13 A. Yes. I met with him at 01:09 on 26th, which would
14 have been four hours after the accident.

15 Q. The next morning about 1:00 a.m.; is that correct?

16 A. Yes, that's correct.

17 Q. And in your investigations, do you have an
18 opportunity to prepare a case report?

19 A. Yes.

20 Q. And do you also sometimes do a case supplemental
21 report?

22 A. Yes. I did the supplemental report.

23 Q. You did the supplemental report?

24 A. I did a supplemental report with my -- yes.

25 Q. And, generally, that's based upon your

1 investigation; is that correct?

2 A. That's correct.

3 Q. I'm going to show you what's listed as a case
4 supplemental report. Is that the usual form that you
5 prepare a supplemental report on?

6 A. Yeah. This is a -- this looks to be a printed out
7 copy of the supplemental report, yes.

8 Q. Do you generally handwrite that?

9 MR. OSBORNE: Your Honor, may I see that?

10 THE COURT: I would imagine you have a copy, don't
11 you?

12 MR. OSBORNE: I don't know what he's showing him.

13 THE COURT: He indicated the supplemental report
14 that your witness has identified.

15 Could you tell us the date of the document, sir?

16 THE WITNESS: It looks like the date and time on
17 the document says it occurred at 5/25/2011. Date and time
18 is 5/26/2011 at 07:24:10. And says supervisor reviewed
19 5/26/2011 at 09:07:42.

20 THE COURT: Is that a document he created?

21 MR. GAILLIARD: Yes. It was provided to me by the
22 State.

23 THE COURT: That's not my question. Is that a
24 document he created?

25 MR. GAILLIARD: Yes, he's testifying about that.

1 MR. OSBORNE: I think it is. Thank you, Your
2 Honor.

3 THE COURT: All right. You may proceed.

4 BY MR. GAILLIARD:

5 Q. Is your name listed on that case supplemental
6 report?

7 A. Yes, it is.

8 Q. Where is it located?

9 A. Investigator Stanley MJ, and then my reported
10 number, which is 1332.

11 Q. And does that indicate that you actually created
12 that report?

13 A. Yes.

14 Q. All right. And do you generally write that up and
15 it's later transcribed by someone at the police department?

16 A. No, I typed it myself.

17 Q. You typed that yourself?

18 A. Yes.

19 Q. All right.

20 A. Not the second page, but -- this looks like public
21 narrative right here from the original report, this is not
22 something I wrote.

23 Q. When you say public narrative, what do you mean by
24 that?

25 A. The original officer who takes the original report

1 writes a narrative in his original report. And that's what
2 this is. That's what it looks like.

3 Q. And did he have it typed up, or is that added to
4 your report? Can you tell us how that was produced with
5 your report?

6 A. I don't know why it's stapled to my supplemental
7 report. I didn't write it.

8 Q. Is there any indication where it came from?

9 A. What are you talking about, the second page?

10 Q. Yes.

11 A. It says Page 3 at the top and with the case number.
12 I don't see any indication where it came from.

13 Q. So you don't know anything about that part of it?

14 A. Well, I mean, this is the original -- this is
15 probably the original report for this case number, but I
16 didn't write it.

17 Q. Who wrote it?

18 A. It doesn't say who wrote it.

19 Q. And you would have no idea how that was attached to
20 your report?

21 A. My guess is that the original -- that officer who
22 wrote the original report, which there are two pages
23 missing, but his name would appear on those two pages.

24 Q. All right. Now, Officer Stanley, you were not out
25 there when the defendant indicated that he didn't -- victim

1 indicated he didn't know who robbed him; is that correct?

2 A. No, I was not there for that.

3 Q. You were told by some of the officers that he was
4 just uncooperative; is that correct?

5 A. That's correct.

6 Q. And as far as you know, he didn't name anybody on
7 the first interview with the patrolman as to who it was that
8 robbed him; is that right?

9 A. As far as I know, he did not.

10 MR. GAILLIARD: No other questions for this
11 witness.

12 THE COURT: Any redirect?

13 MR. OSBORNE: Just briefly.

14 REDIRECT EXAMINATION

15 BY MR. OSBORNE:

16 Q. Just so there's no confusion, what he showed you
17 was a public narrative. Who generally types out the public
18 narrative?

19 A. The officer that takes the original report.

20 Q. Not a detective, the officer who originally came to
21 the scene?

22 A. That's correct.

23 MR. OSBORNE: Okay. No further questions.

24 THE COURT: Any objection to the witness being
25 excused from the State?

1 MR. OSBORNE: None, Your Honor.

2 THE COURT: From the defense? Mr. Gailliard, any
3 objection to this witness being excused?

4 MR. GAILLIARD: Your Honor, subject to recall based
5 upon --

6 THE COURT: Sir, you are excused subject to being
7 recalled. The State may proceed.

8 MR. OSBORNE: The State calls Sergeant George
9 Bradley.

10 GEORGE BRADLEY,
11 having been duly sworn, testifies as follows:

12 THE CLERK: Please state your full name for the
13 record, spelling your last name.

14 THE WITNESS: My name is George Bradley,
15 B-r-a-d-l-e-y?

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MR. OSBORNE:

19 Q. Sergeant Bradley, where do you work?

20 A. I'm employed with the Charleston Police Department.

21 Q. What is your current assignment?

22 A. I'm administrative sergeant in the Team 4 patrol
23 district.

24 Q. And how long have you been there?

25 A. I've been with the department about 15 1/2 years

1 now.

2 Q. Where were you assigned back on May of 2011?

3 A. I was the sergeant over the robbery division unit
4 in the central investigations.

5 Q. Now, did you happen to become involved in a robbery
6 investigation involving the defendant, Benjamin Smalls?

7 A. Yes, sir, I did.

8 Q. And tell me how you became involved in that.

9 A. Being the supervisor over the unit, I kind of keep
10 up with all the cases and all the robbery investigations
11 that are being conducted by the investigators. And this
12 case in particular with Benjamin Smalls, I was kind of the
13 supervisor at the time overseeing the detective work in that
14 case.

15 Q. So did you assign the case to a detective?

16 A. Yes, sir, I did.

17 Q. That's part of the responsibility as a supervisor?

18 A. Assigning the cases out, yes, sir.

19 Q. Do you remember what detective you assigned this
20 case to?

21 A. I know that we work in groups, but I believe
22 Detective Williams was the one that was handling the case at
23 the time. A lot of times we work together and work them as
24 a team concept.

25 Q. Did you become aware that the defendant was

1 arrested?

2 A. Yes, sir, I did.

3 Q. And where was he arrested?

4 A. He was arrested over off of Applebee Way in West
5 Ashley.

6 Q. Was there anything of interest to you that you
7 learned from his arrest that was recovered by CPD?

8 A. Yes. At the time of his arrest, later on in that
9 evening, there was a gun that was recovered from the
10 apartment over at Applebee Way where he was arrested. It
11 wasn't found at the time of the arrest, but it was found
12 later on.

13 Q. So the gun was recovered on Applebee Way.
14 Defendant was arrested on Applebee Way. Did you happen to
15 find any other evidence that would link the defendant to the
16 gun?

17 A. Yes. We pulled the records, jail tape records and
18 actually had a conversation where Mr. Smalls was talking to
19 someone about the gun, trying to go recover the gun from the
20 residence.

21 Q. So after hearing that and with all the information
22 that you had, what did you try to do then?

23 A. At that point, what I wanted to do was I wanted to
24 be able to try to link Mr. Smalls to the gun. In doing
25 that, I obtained a search warrant for DNA sample from

1 Mr. Smalls to compare with any type of DNA sample that may
2 have come off of the gun once it was recovered.

3 Q. So you prepared a search warrant. I would like to
4 show you what's been marked as State's Exhibit 20.

5 I would like to show you what's been marked as
6 State's Exhibit 20. Do you recognize this item?

7 A. Yes, sir. This is the search warrant with my name
8 at the bottom of it and my signature on it for that DNA.

9 Q. And once you prepared that search warrant, then
10 what did you do?

11 A. Once I prepared the search warrant, I took it over
12 to the Judge Koontz's office in West Ashley to get a proper
13 signature from the judge before execution of the warrant.

14 Q. And once you got the search warrant signed by the
15 judge, then what did you do?

16 A. After the warrant was signed and certified as a
17 search warrant, then I proceeded up to the county jail where
18 Mr. Smalls was being held at that time to execute the search
19 warrant and recover what we call a buccal sample or DNA
20 sample from Mr. Smalls, and put it into evidence.

21 MR. OSBORNE: Court's indulgence. May I approach?

22 THE COURT: You may.

23 BY MR. OSBORNE:

24 Q. I show you what's been marked as State's Exhibit
25 24. Do you recognize that item? It's for ID purposes only.

1 A. Yes. This is the evidence bag that I put together
2 with my name and signature on it for containing the DNA
3 samples that were taken from Mr. Smalls.

4 MR. OSBORNE: No further questions.

5 THE COURT: Any questions for the witness?

6 MR. GAILLIARD: Yes, Your Honor.

7 THE COURT: You may proceed.

8 CROSS-EXAMINATION

9 BY MR. GAILLIARD:

10 Q. Now, in obtaining the search warrant, you indicated
11 that you had some information from the jail tapes; is that
12 correct?

13 A. That is correct, sir.

14 Q. And when you listened to the tape, there was no
15 mention of a gun; isn't that correct?

16 A. He didn't label it as a gun. I don't have it here
17 in front of me, but he made the comment about getting an
18 item out of the house or a thing or something of that
19 nature. I can't tell you verbatim what he was saying.

20 Q. Certainly, on the tape from the jail, there's no
21 mention of a gun whatsoever?

22 A. It does not specifically say gun, no, sir.

23 Q. And in your search warrant, you only mentioned an
24 item, and the judge signed off on that for you to search an
25 item in a basket; is that correct?

1 A. I could look at the search warrant and tell you
2 exactly what it says. Yes, sir, in the affidavit it says
3 left item in a clothes basket.

4 Q. That item could have been anything, just unnamed;
5 is that right?

6 A. Well, sir, the way it's written here, it says when
7 he was arrested, he left an item in the clothes basket. And
8 then the affidavit goes on to say that when they went to
9 that location, they recovered a firearm from that clothes
10 basket. This warrant here is for his DNA to compare with
11 the item that was recovered --

12 Q. Uh-huh.

13 A. -- is what it's for. It wasn't for the search
14 warrant to go into the house. He was just to get DNA to see
15 if it was going to compare with the item which was found to
16 be a pistol that was removed from the laundry basket.

17 Q. My only question is that the search warrant does
18 not specifically mention that you were looking for a gun; is
19 that right?

20 A. This search warrant wouldn't say that I was looking
21 for a gun, because this search warrant is for his DNA.

22 Q. It only mentions an item; is that right?

23 A. Says there was an item in the basket, yes, sir.

24 MR. GAILLIARD: No other questions of this witness.

25 THE COURT: Any redirect?

1 MR. GAILLIARD: None, Your Honor.

2 THE COURT: Any objection to the witness being
3 excused?

4 MR. OSBORNE: No, Your Honor.

5 MR. GAILLIARD: Not from the defense, Your Honor.

6 THE COURT: Sir, you are excused.

7 You may proceed.

8 MR. OSBORNE: State calls Officer Brian Tatman.

9 BRIAN TATMAN,

10 having been duly sworn, testifies as follows:

11 THE CLERK: Please state your full name for the
12 record, spelling your last name.

13 THE WITNESS: Brian Tatman, T-a-t-m-a-n.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MR. OSBORNE:

17 Q. Brian, where do you work?

18 A. Charleston Police Department.

19 Q. As an officer?

20 A. Yes.

21 Q. And how long have you worked there?

22 A. 10 years.

23 Q. What have been some of your assignments?

24 A. I've been a patrol officer, been a field training
25 officer, a team investigator, been a central detective.

1 Q. And where do you currently work?

2 A. Work in the Team 3, James and Johns Island, as a
3 patrol officer.

4 Q. What's your rank now?

5 A. Master police officer.

6 Q. Back in May of 2011, what was your rank then?

7 A. I was a senior police officer as a central
8 detective then.

9 Q. Now, on the night of May the 31st of 2011, were you
10 working?

11 A. Yes.

12 Q. And what were your duties?

13 A. I was the night shift duty detective that night who
14 responded to any kind of calls that needed detective work.

15 Q. Did you respond to a call that needed detectives
16 that night?

17 A. Yes, I did.

18 Q. What kind of call did you respond to?

19 A. It was a found-gun call.

20 Q. And where was that call?

21 A. That was Applebee Way.

22 Q. What time did you respond there?

23 A. Shortly after midnight. It was about 15 minutes
24 after midnight.

25 Q. Now, was it your understanding that police had

1 already been there earlier?

2 A. Yes.

3 Q. Do you know what time that was?

4 A. That was earlier that day. They were there to
5 arrest -- make an arrest.

6 Q. And who did they arrest?

7 A. They arrested Benjamin Smalls.

8 Q. So they arrested Benjamin earlier?

9 A. Yes.

10 Q. And then about how long was it before you get the
11 call to come back out there?

12 A. I don't know what time the previous officers were
13 out there.

14 Q. But it was the same night?

15 A. Yes.

16 Q. All right. When you got there, what was the call
17 in reference to again?

18 A. It was in reference to a found firearm.

19 MR. OSBORNE: May I approach?

20 THE COURT: Uh-huh.

21 BY MR. OSBORNE:

22 Q. I would like to show you what's been marked as
23 State's Exhibit 14 for ID purposes only. Do you recognize
24 that item?

25 A. Yes, that's a CPD CAD report.

1 Q. What is a CAD report?

2 A. Any calls that come into the dispatchers, calls for
3 service, it's rendered to that call.

4 Q. So when someone calls the police, the dispatcher
5 takes down the information, the caller number. And who
6 called?

7 A. Barry Daniels.

8 Q. I'm sorry, say the name again.

9 A. Barry Daniels.

10 Q. So the caller for the found firearm was Barry
11 Daniels?

12 A. Yes.

13 Q. And what number did he call from?

14 A. -4945.

15 Q. Did you have the occasion to speak to Barry?

16 A. Yes.

17 Q. The gun was recovered from his house?

18 A. Yes.

19 Q. Just for clarification, what date and time was that
20 call made?

21 A. That was on June 1st, 2011, at 11 minutes after
22 midnight.

23 Q. Eleven minutes after midnight on June the 1st. I
24 want to show you what's been marked as State's Exhibit 13.
25 Do you recognize that?

1 A. Yes, that's a CPD arrest report.

2 Q. And who's arrested?

3 A. Benjamin Lavon Smalls.

4 Q. What time was he arrested?

5 A. 5:30 p.m. on May 31st.

6 Q. And does it say where he was arrested from?

7 A. Applebee Way.

8 Q. I'm going to show you what's been marked as State's
9 Exhibit 7 in evidence. Do you recognize this photograph?

10 A. Yes, that would be the front door of Applebee
11 Way.

12 Q. I would like to show you -- may I approach? I
13 would like to show you what's been marked as State's Exhibit
14 6. Do you recognize this?

15 A. That would be the staircase of Applebee Way.

16 Q. The staircase of ?

17 A. Yes.

18 MR. OSBORNE: No further questions.

19 THE COURT: Any questions of the witness?

20 MR. GAILLIARD: None for this witness, Your Honor.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MR. OSBORNE: None, Your Honor.

24 THE COURT: From the defense?

25 MR. GAILLIARD: None, Your Honor.

1 THE COURT: Sir, you are excused.

2 You may call your next witness.

3 MR. OSBORNE: The State calls Sergeant Lipsey, Mark
4 Lipsey.

5 MARK LIPSEY,

6 having been duly sworn, testifies as follows:

7 THE CLERK: Please have a seat. State your full
8 name for the record, spelling your last name.

9 THE WITNESS: It's Mark Lipsey, M-a-r-k,
10 L-i-p-s-e-y.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MR. VOIGT:

14 Q. Sergeant, where are you employed?

15 A. Sheriff Al Cannon Detention Center.

16 Q. How long have you been there?

17 A. 15 years.

18 Q. And what's your current rank?

19 A. I'm lobby cash supervisor.

20 Q. And what are some of the duties that you -- of your
21 current position?

22 A. Jail recordings, money taken-in, subpoenas.

23 Q. So you have a variety of administrative duties at
24 the jail?

25 A. Yes, sir.

1 Q. And one of those that you just testified to is jail
2 recordings?

3 A. Yes, sir.

4 Q. How does the jail record inmates?

5 A. When an inmate is arrested, they come in through
6 the processing. And then once they go through the
7 processing, we issue them a PIN number. Once they have a
8 PIN number, in order to make outbound phone calls, they have
9 to utilize that PIN number.

10 Q. Do inmates always use their own PIN number?

11 A. Yes.

12 Q. They should?

13 A. They should, yes, sir.

14 Q. And is every recording or is every telephone call
15 from an inmate to somebody on the outside recorded by the
16 jail?

17 A. Yes, sir.

18 Q. And are those kept by the jail?

19 A. Yes, sir.

20 Q. And is it one of your duties to be the records
21 custodian of those recordings?

22 A. Yes, sir.

23 Q. So your job is to maintain them to make sure that
24 they don't get confused?

25 A. Yes, sir.

1 Q. To maintain them so that they are available in case
2 they are subpoenaed or requested?

3 A. Yes, sir.

4 Q. And you, in your office and people under your
5 supervision, do they supply those recordings when they are
6 requested?

7 A. Yes, sir, when they are requested.

8 Q. And those recordings, are they stored digitally?

9 A. Yes, sir.

10 Q. So there's a computer somewhere, a server somewhere
11 that maintains all of these recordings? How many different
12 inmates do you have? How many inmates do you have at the Al
13 Cannon center?

14 A. Right now we have about 1,500

15 Q. Do they all have phone privileges?

16 A. Yes, sir. Those -- everybody has the phone
17 privileges with the exception of those that get in trouble,
18 yeah.

19 Q. The special ones?

20 A. Yes, sir.

21 Q. Do you have any idea how many phone calls a day are
22 monitored by the Sheriff's Office?

23 A. Not -- I really don't. I really can't say exactly.

24 Q. Probably hundreds at least?

25 A. Yeah, hundreds.

1 Q. Maybe even more than a thousand?

2 A. Yes, sir.

3 Q. Depending on the volume, depending how many people
4 you have in there. Do the inmates, the people housed at the
5 Al Cannon Detention Center, do they know that their
6 telephone calls are being recorded?

7 A. Yes, sir. When they first make a phone call, it
8 states that their phone calls are being recorded, and during
9 the phone conversations.

10 Q. Did you have the occasion to collect or did your
11 office have the occasion to collect some recorded telephone
12 conversations made by one Benjamin Smalls?

13 A. Yes, sir.

14 Q. And was that done pursuant to a court order or a
15 subpoena?

16 A. Yes, sir, with a search warrant, yeah.

17 MR. VOIGT: May I approach, Your Honor?

18 THE COURT: You may.

19 BY MR. VOIGT:

20 Q. I'm going to show you what has been previously
21 marked as State's Exhibit 25 and ask you to take a look at
22 that document if you can. Is that the search warrant in
23 this case requesting the recorded conversation of Benjamin
24 Smalls?

25 A. Yes, sir.

1 Q. And so that would have been the request that you
2 would have responded to?

3 A. Yes, sir.

4 Q. Now, does that -- is that an open-ended request,
5 any telephone conversations that Benjamin Smalls may have
6 made?

7 A. Yes, whatever phone conversations he made within
8 the allotted time..

9 Q. So it's limited by time?

10 A. Yes.

11 Q. And what's the time there in the search warrant?
12 What did the --

13 A. I believe it's 5/21 through June 24th, 2011.

14 Q. Okay.

15 A. Sorry.

16 Q. And how were those recordings -- any recordings
17 made from those two dates, how were those -- who requested
18 that? Does your paperwork indicate?

19 A. Detective Lamarte Williams.

20 Q. And he's somebody who has requested jail
21 conversations on numerous occasions?

22 A. Yes, sir.

23 Q. How are those -- how do you turn those over to the
24 police?

25 A. When we get the search warrant and we fulfill the

1 request, as soon as it's downloaded onto a disk, we put it
2 in a sealed envelope, and the detective is called --

3 Q. Okay.

4 A. -- to come pick them up.

5 Q. I'm going to show you what's been previously marked
6 as State's Exhibit 16. Can you identify that item?

7 A. Yes, this is one of our jail recordings.

8 Q. And does it bear -- you can take it out of there if
9 you need to look at it more closely. Is that the disk that
10 contains the recorded jail conversations of Benjamin
11 Smalls?

12 A. Yes, sir.

13 Q. And does that bear the signature of somebody in
14 your employ under your supervision that would have made that
15 disk?

16 A. Yes, sir; Jenkins.

17 Q. Is that somebody you supervise?

18 A. Yes.

19 Q. And so that would have been -- would those records
20 have been maintained in the normal course and scope of what
21 the Al Cannon Detention Center does?

22 A. Yes.

23 Q. And State's Exhibit 16 are the recorded
24 conversations from the time periods requested in the search
25 warrant given to you by Detective Williams?

1 A. Yes, sir.

2 MR. VOIGT: At this time, the State would offer
3 State's 16.

4 THE COURT: Any objection?

5 MR. GAILLIARD: No, Your Honor.

6 THE COURT: Marked and admitted without objection.

7 (State's Exh. 16, Jail Recording, is moved into
8 evidence.)

9 BY MR. VOIGT:

10 Q. Now, Sergeant Lipsey, I'm going to show you what's
11 been marked as State's Exhibit 31. Do you recognize this
12 document?

13 A. Yes, sir.

14 Q. And what is that document? What does that
15 represent?

16 A. It's a listing of all the telephone conversations
17 or the attempted phone conversations by Benjamin Smalls.

18 Q. Is that a record that's kept in the normal course
19 and scope of the business you do at the Al Cannon Detention
20 Center?

21 A. Yes, sir.

22 Q. And is that something that's maintained by Al
23 Cannon Detention Center just to memorialize phone activity
24 during a certain period?

25 A. Yes.

1 Q. And is that -- do you supply that list in addition
2 to the recorded conversations when you comply with the
3 search warrant or request?

4 A. Yes, sir.

5 Q. And does that particular phone listing pertain to
6 Benjamin Smalls?

7 A. Yes, sir.

8 Q. And was that supplied along with the recorded disk
9 that was State's 16?

10 A. Yes, sir.

11 MR. VOIGT: At this time, the State would offer
12 State's 31.

13 MR. GAILLIARD: No objection.

14 THE COURT: Marked and admitted without objection.

15 (State's Exh. 31, Jail Telephone Conversation, is
16 moved into evidence.)

17 MR. VOIGT: Please answer any questions
18 Mr. Gailliard would have.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. GAILLIARD:

22 Q. Are you a deputy?

23 A. Not a deputy; detention supervisor.

24 Q. Detention supervisor, excuse me. Tell us how these
25 jail recordings are maintained.

1 A. We have a database that keeps all the phone records
2 for all the individuals that reside in our facility.

3 Q. And explain to us how the PIN number identifies the
4 caller.

5 A. When the -- like I said earlier, each individual is
6 given a PIN number through our database, and that specific
7 inmate has to utilize that PIN number to make the outgoing
8 phone calls.

9 Q. So once they put in their PIN number, then you know
10 who the inmate is that's identified with that PIN number?

11 A. Yes, sir.

12 Q. And that was done in this particular case?

13 A. Yes, sir.

14 Q. So you only extracted those calls with this PIN
15 number for compliance with this subpoena; is that right?

16 A. Yes, sir.

17 MR. GAILLIARD: No other questions for this
18 witness.

19 THE COURT: Any redirect?

20 Mr. VOIGT: No redirect.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MR. VOIGT: No, Your Honor.

24 THE COURT: From the defense?

25 MR. GAILLIARD: None.

1 THE COURT: Sir, you are excused.

2 The State may proceed.

3 MR. OSBORNE: Your Honor, may I approach?

4 (Whereupon, recess transpired.)

5 THE COURT: Call your next witness.

6 MR. OSBORNE: Sarah Gladwell.

7 SARAH GLADWELL,

8 having been duly sworn, testifies as follows:

9 THE CLERK: If you would please have a seat. State
10 your full name for the record, spelling your last name.

11 THE WITNESS: Sarah Gladwell, G-l-a-d-w-e-l-l.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. OSBORNE:

15 Q. Ms. Gladwell, where do you work?

16 A. I work for the City of Charleston Police
17 Department.

18 Q. And, specifically, what area do you work for CPD?

19 A. I work in the crimes scene unit..

20 Q. How long have you been there?

21 A. Little over four years now.

22 Q. Was that your assignment or was that where you were
23 working back in May of 2011?

24 A. Yes, it was.

25 Q. And just briefly, explain what are some of the

1 duties and responsibilities of crime scene technician?

2 A. As a crime scene technician, we respond to various
3 crime scene calls and perform such tasks, for example,
4 taking photographs, processing items for fingerprints and
5 collecting evidence, among other things.

6 Q. Were you working on June the 1st of 2011?

7 A. Yes, I was.

8 Q. Did you have the occasion to respond to
9 Applebee Way?

10 A. Yes.

11 Q. And for what purpose?

12 A. I was called there to -- because a firearm had been
13 recovered and it was requested that a member of the crime
14 scene unit collect it.

15 Q. Why? Why would they call out crime scene to
16 collect a gun?

17 A. Members of our crime scene unit, we respond and we
18 collect firearms if it's believed that they've been used in
19 a crime so they could be documented properly and handled
20 properly and packaged properly.

21 Q. Now, do you recall specifically -- I know you said
22 you recovered a gun from Applebee Way. Do you recall
23 specifically where the gun was located?

24 A. Yes. It was on the second story landing in a
25 laundry basket.

1 Q. As a crime scene technician, did you photograph the
2 gun, where it was located?

3 A. Yes, I did.

4 Q. I would like to show you what's been previously
5 marked as State's Exhibit 8.

6 MR. OSBORNE: Your Honor, may I approach?

7 THE COURT: Ah-huh.

8 BY MR. OSBORNE:

9 Q. Do you recognize this photograph?

10 A. Yes, I do.

11 Q. And what's that a picture of?

12 A. This is a picture of the laundry basket on the
13 second story landing. And there's a firearm on the clothing
14 that's inside the laundry basket.

15 Q. Was that the firearm that was located at
16 Applebee Road?

17 A. Yes, sir.

18 Q. And you took that photograph; or did you take that
19 photograph?

20 A. Yes, I did.

21 Q. And you took that photograph before you collected
22 the firearm?

23 A. Yes, I did.

24 Q. I would like to show you what's been marked as
25 State's Exhibit 6. Do you recognize that photograph?

1 A. Yes, I do.

2 Q. And what's that a picture of?

3 A. This is a picture of from the first floor looking
4 up the stairs into the second story landing where the
5 laundry basket and firearm were located.

6 Q. And who is that standing at the top there? I mean,
7 is it a civilian?

8 A. No, it's -- I believe it's Officer McGuire, but I
9 could be mistaken.

10 Q. It looks like she's looking at the gun?

11 A. Yes.

12 Q. And, lastly, I would like to show you what's been
13 marked as State's Exhibit 9. Do you recognize that
14 photograph?

15 A. Yes.

16 Q. And what is that a picture of?

17 A. This is the photograph of the firearm as well as
18 the magazine clip beside it.

19 Q. And you took this photograph?

20 A. Yes.

21 Q. You took all three of these photographs?

22 A. Yes.

23 MR. OSBORNE: Your Honor, request permission to
24 move State's 6, 8 and 9 into evidence..

25 THE COURT: Any objection?

1 MR. GAILLIARD: None, Your Honor.

2 THE COURT: No objection? Is that correct,
3 Mr. Gailliard? You said no objection?

4 MR. GAILLIARD: That's correct, no objection.

5 THE COURT: Marked and admitted without objection.

6 (State's Exh. 6, Photo of Staircase, is moved
7 into evidence.)

8 (State's Exh. 8, Photo of laundry basket, is
9 moved into evidence.)

10 (State's Exh. 9, Photo of firearm and clip, is
11 moved into evidence.)

12 MR. OSBORNE: May I approach?

13 THE COURT: You may.

14 BY MR. OSBORNE:

15 Q. I would like to show you what's been marked as
16 State's Exhibit 15; do you recognize that?

17 A. Yes, sir, I do.

18 Q. And what is that?

19 A. This is a cardboard box containing the firearm.

20 Q. And how do you know that that's the firearm that
21 you recovered?

22 A. I know it's the firearm that I recovered, it has my
23 handwriting on it. It has my initials on the seal, as well
24 as my recording number to identify myself as the one that
25 closed it. It has my initials on the actual firearm itself.

1 And all of the information matches the firearm that I
2 collected.

3 Q. So you actually packaged it?

4 A. Yes, sir.

5 Q. You seized it, packaged it, and turned it into
6 evidence?

7 A. Yes, sir.

8 MR. OSBORNE: Your Honor, request permission to
9 move State's 15 into evidence.

10 THE COURT: Any objection?

11 MR. GAILLIARD: None, Your Honor.

12 THE COURT: Marked and admitted without objection.

13 (State's Exh. 15, Cardboard box with firearm, is
14 moved into evidence.)

15 BY MR. OSBORNE:

16 Q. Was the gun loaded?

17 A. Yes, sir. There was one live cartridge in the
18 chamber at the time.

19 Q. After you collected the gun, what was the next
20 thing that you did?

21 A. After I collected the gun, I would have brought it
22 back to the crime scene office, packaged it in that box, and
23 then subsequently submitted it to our evidence unit.

24 Q. Would there have been any attempt or any request to
25 recover fingerprints from the gun?

1 A. Yes. I submitted -- before the gun was submitted
2 to the evidence unit, I submitted the gun to our latent
3 recovery specialist so she could process the firearm for
4 fingerprints and I believe DNA as well.

5 Q. I think you had one other involvement in this case.
6 You were involved in the chain of custody, I think, for two
7 items?

8 A. Yes, sir.

9 Q. Do you remember what those items were?

10 A. Yes, sir. I brought back, I believe, the
11 defendant's buccal swabs, as well as the swabs that were
12 collected from the gun from SLED, South Carolina Law
13 Enforcement Division, and got them back here to our
14 department.

15 Q. So swabs taken from the gun, picked them up from
16 SLED, brought them back. Do you remember what date and time
17 you picked them up?

18 A. Yes. I picked them up on May 14th of 2014 and 9:14
19 a.m.

20 Q. Do you remember what time you submitted those items
21 back in the CPD evidence?

22 A. Yes, I submitted the items to our evidence unit on
23 May 16th of 2014, I believe at 1:24 a.m.

24 Q. While both of these items were in your patrol, did
25 you tamper with them or change them in any way?

1 A. No, sir.

2 Q. Was the integrity of both of those items maintained
3 while they were in your custody?

4 A. Yes, sir.

5 MR. OSBORNE: Your Honor, may I approach?

6 THE COURT: Uh-huh.

7 BY MR. OSBORNE:

8 Q. For ID purposes only, I'm showing you what's been
9 marked as State's Exhibit 23 and 24. Can you tell me what
10 those items are?

11 A. Yes. Buccal swabs from Benjamin Lavon Smalls and
12 swabs from the firearm that I collected.

13 Q. I think the firearm's 23, and Benjamin's buccal
14 swabs are 24; is that correct?

15 A. Yes, sir.

16 MR. OSBORNE: No further questions.

17 THE COURT: Any questions for the witness?

18 MR. GAILLIARD: Just one or two, Your Honor.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MR. GAILLIARD:

22 Q. Is it correct you also submitted these samples to
23 SLED back in 2011?

24 A. I don't believe that I took them there. I believe
25 I just picked them up from --

1 Q. So you don't know whether they were submitted; is
2 that correct?

3 A. No, sir.

4 Q. You got them back in 2014; is that correct?

5 A. Yes, sir.

6 Q. And there's nothing about the gun or anything else
7 that you could testify that connects that gun to this
8 defendant; is that correct?

9 A. No, sir.

10 MR. GAILLIARD: No other questions for this
11 witness.

12 THE COURT: Any redirect?

13 MR. OSBORNE: None, Your Honor..

14 THE COURT: Any objection to the witness being
15 excused from the State?

16 MR. OSBORNE: No, Your Honor.

17 THE COURT: From the defense?

18 MR. GAILLIARD: None.

19 THE COURT: Ma'am, you are excused.

20 THE DEFENDANT: Thank you.

21 THE COURT: You're welcome.

22 (Whereupon, a bench conference takes place off the
23 record.)

24 THE COURT: Mr. Foreman, ladies and gentlemen, we
25 are going to have two witnesses appear by Skype, and so we

1 need to test our technology right quick before we proceed
2 with that. During this break, please do not discuss the
3 case in any manner whatsoever. And please leave your note
4 pads in your seats. It should only take us a few moments.
5 We appreciate your patience.

6 (Whereupon, the jury leaves open court at 12:38
7 p.m.)

8 THE COURT: State ready to proceed?

9 MR. OSBORNE: Yes, ma'am.

10 THE COURT: Defense ready to proceed?

11 MR. GAILLIARD: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 (Whereupon, the jury returns to open court at 12:51
14 p.m.):

15 THE COURT: State may proceed.

16 MR. OSBORNE: State calls Nikki Hughes.

17 NIKKI HUGHES (via Skype),
18 having been duly sworn, testifies as follows:

19 THE CLERK: State your full name for the record,
20 spelling your last.

21 THE WITNESS: Nikki Haley Hughes, H-u-g-h-e s.

22 THE COURT: You may proceed.

23 DIRECT EXAMINATION

24 BY MR. OSBORNE:

25 Q. Hi, Ms. Hughes. My name is David Osborne. I'm an

1 assistant solicitor. Where do you work?

2 A. I currently work for the South Carolina Department
3 of Labor Licensing Regulation.

4 Q. And where did you work before that?

5 A. I was employed with the South Carolina Law
6 Enforcement Division, commonly known as SLED.

7 Q. And what were your assignments there?

8 A. I was a forensic technician in the evidence control
9 department, log in, package, and transfer evidence submitted
10 to the lab for forensic analysis.

11 Q. Okay. I'm going to show you what's been previously
12 marked as State's Exhibit 24. Can you see that?

13 A. It's a little blurry. I can't. Can you turn it
14 the other side? Okay. I can see that.

15 Q. What is it?

16 A. It is a SLED heat-sealed pouch labeled L11-09723,
17 Item No. 1.

18 Q. And did you ever come into possession of this item?

19 A. I did.

20 Q. And how did that happen?

21 A. It was submitted to me on August 24th, 2011, by
22 Mary Phillips with the Charleston City Police Department.

23 Q. While that item was in your custody or control, did
24 you change or alter the item substantially as to form or
25 content?

1 A. I did not.

2 Q. Did you tamper with it in any way?

3 A. I did not.

4 Q. Did you maintain the integrity of the item?

5 A. I did.

6 MR. OSBORNE: Please answer any questions the
7 defense attorney might have.

8 THE COURT: Mr. Gailliard, do you have any
9 questions?

10 MR. GAILLIARD: Your Honor, no questions for this
11 witness.

12 THE COURT: Any objection to the witness being
13 excused from the State?

14 MR. OSBORNE: None, Your Honor.

15 THE COURT: From the defense?

16 MR. GAILLIARD: None, Your Honor.

17 THE COURT: Let the witness know she's excused by
18 the Court.

19 MR. OSBORNE: Okay. Ms. Hughes, you are excused.

20 THE WITNESS: Thank you.

21 THE COURT: Call your next witness.

22 MR. OSBORNE: State calls Amy Stephens.

23 AMY STEPHENS (via Skype),
24 having been duly sworn, testifies as follows:

25 THE CLERK: State your full name for the record,

1 spelling your last.

2 THE WITNESS: Amy Elizabeth Stephens,

3 S-t-e-p-h-e-n-s.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. OSBORNE:

7 Q. Ms. Stevens, where do you work?

8 A. I'm employed with the South Carolina Law
9 Enforcement Division, commonly called SLED.

10 Q. And how long have you been there?

11 A. Approximately eight years.

12 Q. While there, what's your assignments?

13 A. I'm a forensic technician in the evidence control
14 department. And our daily responsibilities are to log in,
15 package, and transfer evidence for forensic analysis.

16 Q. I'm going to show you what's been marked as State's
17 Exhibit 24. Do you recognize that item?

18 A. Yes. The lab number for that is affixed to the
19 package, corresponds with the lab number from my chain of
20 custody, 1109723, Item No. 1.

21 Q. And what is that?

22 A. It is a buccal swab from Benjamin Lavon Smalls.

23 Q. How did you come into possession of the item?

24 A. I retrieved this item for an intake on storage
25 shelf off of the evidence room on August -- excuse me, on

1 April 28th, 2014.

2 Q. And when you got the item, what did you do with it?

3 A. I transferred the sealed package to forensic
4 scientist Jennifer Bartman.

5 Q. While that item was in your custody, did it change
6 form or content in any way?

7 A. No, I did not.

8 Q. Did you tamper with it at all?

9 A. No, I did not.

10 Q. Did you maintain the integrity of the item?

11 A. Yes, I did.

12 Q. I'm going to show you what's been marked as State's
13 Exhibit 23. Do you recognize that item?

14 A. Yes, the lab number that's affixed to that package
15 corresponds with my chain of custody for L11-09723, Item
16 Number 2.

17 Q. And what is it?

18 A. It's a swab from a Hi-Point handgun.

19 Q. And how did you come into possession of the item?

20 A. I retrieved this item from a DNA storage shelf in
21 our evidence room.

22 Q. What did you do with it then?

23 A. I transferred it to forensic scientist Jennifer
24 Bartman.

25 Q. And the date and time on that?

1 A. April 28th, the 2014.

2 Q. While it was in your possession, did it change form
3 substantially in any way?

4 A. No, it did not.

5 Q. Did you tamper with it?

6 A. No, I did not.

7 Q. Did you maintain the integrity of the item?

8 A. Yes, I did.

9 MR. OSBORNE: Okay. Please answer any questions
10 the defense attorney might have.

11 THE COURT: Any questions for the witness?

12 MR. GAILLIARD: No, Your Honor, no questions for
13 this witness.

14 THE COURT: Any objection to the witness being
15 excused from the State?

16 MR. OSBORNE: None, Your Honor.

17 THE COURT: From the defense?

18 MR. GAILLIARD: None from the defense, Your Honor.

19 THE COURT: Please advise the witness she's been
20 excused by the Court.

21 MR. OSBORNE: The Court has excused you.

22 THE WITNESS: Thank you.

23 MR. OSBORNE: Thank you.

24 THE COURT: Does that conclude your witnesses
25 today?

1 MR. OSBORNE: We have a scientist who did the
2 analysis as well.

3 THE COURT: How long is that witness's testimony?

4 MR. VOIGT: I will try to be as brief as I can,
5 Your Honor. I think about -- I think I can do my part in
6 five to seven minutes.

7 THE COURT: Mr. Gailliard, do you have any
8 substantial cross-examination of the witness?

9 MR. GAILLIARD: I don't know, just depending upon
10 what the scientific is going to testify about.

11 THE COURT: It's lunch time. Why don't we break
12 and let her know she needs to be available at 2:15.

13 MR. OSBORNE: Thank you, Your Honor.

14 THE COURT: Mr. Foreman, ladies and gentlemen, we
15 are going to take advantage of this break in testimony to
16 take our lunch recess. We will break until 2:15, which
17 gives you an hour 15 minutes for lunch. During the break,
18 please do not discuss the case in any manner whatsoever.
19 Please don't have any contact with anyone in or about the
20 courthouse as you return. And you will return directly to
21 your jury room.

22 Please do not allow yourselves to be exposed to any
23 media coverage about this case, if there's any. And refrain
24 from making any comments regarding your jury service on any
25 social networking sites.

1 Have a good lunch. Leave your note pads in your
2 seats. We'll see you at 2:15.

3 (Whereupon, the jury leaves open court at 12:58
4 p.m.)

5 THE COURT: Is there anything we need to take up
6 before lunch from the State?

7 MR. OSBORNE: No, Your Honor.

8 THE COURT: From the defense?

9 MR. GAILLIARD: Nothing, Your Honor.

10 THE COURT: All right. See y'all at 2:15. Have a
11 good lunch.

12 (Luncheon recess was taken.)

13 THE COURT: Anything before I bring in the jury
14 from the State?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: From the defense?

17 MR. GAILLIARD: No, Your Honor.

18 THE COURT: Who is the State's next witness?

19 MR. OSBORNE: Scientist from SLED, Jennifer
20 Bartman.

21 THE COURT: Defense ready to proceed?

22 MR. GAILLIARD: Yes, Your Honor.

23 (Whereupon, the jury returns to open court at 2:34
24 p.m.)

25 THE COURT: Ladies and gentlemen, I hope y'all had

1 a pleasant lunch. We will now resume testimony. You may
2 call your next witness.

3 MR. VOIGT: Your Honor, the State calls Jennifer
4 Bartman.

5 THE COURT: Please swear the witness.

6 JENNIFER BARTMAN (via Skype),
7 having been duly sworn, testifies as follows:

8 THE CLERK: Please state your full name for the
9 record, spelling your last..

10 THE WITNESS: My name is Jennifer Bartman, spelled
11 B-a-r-t-m-a-n.

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. VOIGT:

15 Q. Where are you employed?

16 A. I'm employed by the South Carolina Law Enforcement
17 Division, commonly known as SLED.

18 Q. And what capacity are you employed there?

19 A. I am assigned to the DNA casework units.

20 Q. Skype is kind of new to me, so we may have to
21 repeat a few things. If you can't hear me at your end,
22 please just feel free to ask me to repeat, because sometimes
23 I mumble and stumble and do things like that. Is that all
24 right?

25 A. That's all right.

1 Q. What is your current assignment? What do you do
2 for SLED? Are you a forensic scientist?

3 A. Yes, I'm a forensic scientific. I'm a DNA analyst.
4 So I receive evidence submitted by local law enforcement
5 agencies from crimes that occur throughout South Carolina.
6 I can screen these items for body fluids, such as saliva or
7 blood. I then perform DNA analysis on these items, as well
8 as known standards that are submitted to the laboratory.
9 And I prepare a report to my findings.

10 Q. And what sort of educational background did you
11 have prior to joining SLED that enabled you to be a forensic
12 scientist in DNA analysis?

13 A. I have a bachelor's degree in biology from Hope
14 College in Holland, Michigan. I also have a master's in
15 forensic science with a concentration in DNA from Virginia
16 Commonwealth University in Richmond, Virginia.

17 Q. Have you been qualified as an expert in the field
18 of DNA analysis in a court in South Carolina?

19 A. Yes, I have.

20 Q. Have you ever failed to be qualified as an expert
21 in DNA analysis in any court in South Carolina?

22 A. No, I haven't.

23 MR. VOIGT: At this time, Your Honor, the State
24 would tender Ms. Bartman as an expert in DNA analysis
25 subject to cross-examination.

1 THE COURT: Any questions or objections,
2 Mr. Gailliard?

3 MR. GAILLIARD: No questions or objection for this
4 witness.

5 THE COURT: So admitted without objection.
6 BY MR. VOIGT:

7 Q. Now, Ms. Bartman, how does one go about analyzing
8 DNA, in a very general sense for the jury?

9 A. In a general sense, we first start by extracting
10 the DNA from whatever item it was submitted to the lab.
11 Next, we determine how much DNA we have. We then make
12 billions and billions of copies of certain sections of that
13 DNA. And then we compare that, we separate it according to
14 the different locations, and then compare that evidence to
15 known standards.

16 Q. How many different locations do you use in your
17 analysis?

18 A. We look at 15 different locations and then also a
19 gender markers.

20 Q. Those locations, are they also called loci?

21 A. They are called loci, yes.

22 Q. And the gender marker, is that what we commonly
23 know as our XX or XY chromosome?

24 A. Yes, that's correct.

25 Q. All right. Why do you only use those specific 15

1 markers, those loci?

2 A. There has been a lot of research in the field, and
3 these are the 15 locations that have been determined to be
4 the most discriminatory or the most different between
5 individuals as far as DNA.

6 Q. And when you are preparing -- you've prepared a
7 report in this matter?

8 A. Yes, that's correct.

9 Q. And what does -- does SLED assign a specific lab
10 number to your reports as well as the evidence that comes in
11 in each case?

12 A. Yes, they do.

13 Q. And what is the lab number that your report
14 contains?

15 A. The lab number is L11-09723.

16 Q. And is that the number that you refer to in all of
17 your internal correspondence, as well as the markers on any
18 of the items submitted to SLED?

19 A. Yes, that's correct.

20 Q. And how does evidence come to you as the forensic
21 scientist?

22 A. We are notified of cases that we are assigned, and
23 then we contact our evidence control department in order to
24 pick up the evidence.

25 Q. Is it delivered to you in the laboratory?

1 A. We go to that department to get it.

2 Q. Is it kept in a secure location?

3 A. Yes, it is.

4 Q. And what do you do when you are done with it?

5 A. When done with it, we package it up, make sure
6 everything is sealed, and we submit it for return for that
7 agency.

8 Q. I'm going to show you what's been previously marked
9 as State's Exhibit 23. I'm going to just hold it up. Can
10 you see that?

11 A. Can you tilt it forward just a little bit. Yes, I
12 can.

13 Q. Do you recognize that as something that you would
14 have had in your laboratory for analysis?

15 A. Yes. I recognize it from the yellow bar code that
16 has the lab number, as well as the item number on the
17 package.

18 Q. And this would be the swab from the gun, I believe,
19 State's 23?

20 A. Item 2, which is the swab from the Hi-Point gun,
21 yes.

22 Q. I'm going to ask you, this has been previously
23 marked as State's Exhibit 24. I will hold that up as well.
24 Does that contain your laboratory number?

25 A. Yes, it does.

1 Q. Is that the L11-09723?

2 A. That's correct.

3 Q. And is this number one of two?

4 A. It's item one, yes.

5 Q. What would item one be?

6 A. Item one contains the buccal swabs from Benjamin
7 Lavon Smalls.

8 Q. What are buccal swabs?

9 A. Buccal swabs are typically how we receive known
10 evidence. It's typically from a cotton swab, like a giant
11 Q-Tip, and it's rubbed on the inside cheek of a particular
12 person.

13 Q. Would that give you all the raw DNA material you
14 need for an analysis?

15 A. For the known standard, yes.

16 Q. However, the swab taken from a particular item,
17 will that always contain enough DNA material for an
18 analysis?

19 A. No, not necessarily.

20 Q. Now, you've prepared a report in this matter?

21 A. Yes, that's correct.

22 Q. I'm going to show you what's been previously marked
23 as State's Exhibit 26 and hold it up. Does this appear to
24 be a copy of the report that you prepared, at least the
25 front page of that?

1 A. It appears to be, yes.

2 Q. And that would have been something that you would
3 have submitted after your analysis?

4 A. That's correct.

5 Q. The long and short of it is, you compared the
6 buccal swabs with the swabs taken from the gun; is that
7 correct?

8 A. That's correct.

9 Q. Now, and you are asked to compare those things so
10 that you can come to a conclusion as to whether or not these
11 two things are similar or dissimilar; is that correct?

12 A. Yes, to see if a known standard could have
13 contributed the DNA to the item.

14 Q. Please tell the jury what it means to exclude a
15 person in a test, such as the one you conducted on these
16 items?

17 A. To exclude someone is basically us saying that we
18 cannot determine that that person left DNA on that item from
19 the results that we collected through our analysis.

20 Q. Is it fair to say that the DNA contained on the
21 item compared to the DNA on the person, you don't have
22 enough there -- as a matter of fact, you have things that
23 indicate it might not be that person?

24 A. That's correct.

25 Q. If you are excluded?

1 A. That's correct.

2 Q. And the converse is to include them would mean that
3 it's possible that they are the same or could be the same?

4 A. That the source were the same, yes.

5 Q. And are exclusion and inclusion kind of the lowest
6 levels of analysis that you can do when you have a limited
7 sample?

8 A. Well, when we have a limited sample, we can come to
9 three different conclusions. We could either include
10 someone, we can exclude someone, or we can say there's just
11 not enough information there in order to give a conclusive
12 statement.

13 Q. Did -- in your analysis as a forensic scientist,
14 did the DNA sample taken from the gun, item two on your
15 chart --

16 A. Yes.

17 Q. -- was that the DNA of one person or more than one
18 person?

19 A. It was a mixture of at least two individuals.

20 Q. And I'm going to refer you to your chart, which is
21 3 of 3. And how do you express values for these DNA
22 markers?

23 A. We do STR testing for DNA. And STRs are just small
24 sections of DNA that repeat over and over again. And the
25 number of times that that section repeats differs between

1 different individuals. So the numbers that you are seeing
2 in the table are the number of times of that section
3 grouping at that specific location.

4 Q. So if on one loci a person had a value of 10-12,
5 that would indicate 10 repeats and 12 repeats of a specific
6 protein?

7 A. That's correct. With DNA, you receive half from
8 your mom, half from your dad. So one of those numbers will
9 be your mom and one of them will be from your dad.

10 Q. And then on your last -- on the last -- on the
11 gender-specific tests that you run, if you are looking for a
12 man's DNA, you would be looking for a Y chromosome; is that
13 right?

14 A. An XY does indicate male DNA, yes.

15 Q. If you had two Xs, that would be a female?

16 A. Typically, yes.

17 Q. So the presence of a Y indicates that at least to
18 the extent you can tell, the mixture includes one man,
19 although --

20 A. Male, yes.

21 Q. Could include multiple women and one man, but as
22 long as you have a Y, we have a man's mixture?

23 A. That's correct.

24 Q. On the gun, did the mixture of DNA contain an
25 indication that a man had possessed it?

1 A. Yes, there was male DNA present on the gun.

2 Q. So you compared the gun -- the DNA found on the
3 gun -- and sometimes -- I note in your chart that some of
4 these numbers, some of how these repeats are expressed are
5 put in parenthesis. What does that mean?

6 A. That indicates our confidence level. Once -- each
7 of the different numbers is generated on a -- what we call
8 an electropherogram, which is a bunch of peaks, which are --
9 which indicate the number of repeats. And the ones that are
10 in parenthesis are just a lesser amount of DNA than the
11 peaks that are not in parenthesis.

12 Q. On some of the -- on at least two of these loci,
13 you have no numbers whatsoever. What does that indicate?

14 A. That indicates there wasn't enough DNA present at
15 that location in order to generate a result.

16 Q. So on D2S1338 and D5S81 -- I'm sorry, on FGA, in
17 both of those loci, there were no -- there was no testable
18 sample on the gun?

19 A. Not at the level that we required.

20 Q. Because you require at least some level in order to
21 maintain accuracy?

22 A. That's correct.

23 Q. Below that, it tends to be noise, right? Could be
24 a bunch of different things?

25 A. It can be, yes.

1 Q. Okay. Now, you had no problem extracting Benjamin
2 Smalls's DNA from the sample that was sent to you by the
3 Charleston Police Department, did you?

4 A. No, I did not.

5 Q. And you were able to compare it to the -- to what
6 you found on the gun. And you can't tell the jury that
7 that's Benjamin Smalls DNA, can you?

8 A. No, I can't.

9 Q. What was your scientific conclusion?

10 A. That the partial -- we call a partial DNA
11 profile -- as you indicated, there were two locations that
12 did not have enough DNA present, is a mixture of at least
13 two individuals, and that no conclusive statement can be
14 made regarding the inclusion or exclusion of Benjamin Smalls
15 as a contributor to the mixture on the gun.

16 Q. So Benjamin Smalls isn't excluded? In other words,
17 what you could find on the gun didn't lead you as a -- in
18 your expert opinion to say it's definitely not him?

19 A. That's correct.

20 Q. But the converse isn't necessarily true, you don't
21 have enough information to say it is him, or even that it
22 could at most -- it's possibly him at best?

23 A. I can't say whether he is there or not.

24 Q. Now, he does -- like on the first loci, his
25 expression is a 12-13?

1 A. That's correct.

2 Q. You did find a 12-13 on the gun?

3 A. That's correct.

4 Q. And but, conversely, like, for example, at D16S539
5 there in the middle of your chart, Mr. Smalls has an 8-14
6 expressed. Yet, you only found what could be a 12 on the
7 gun?

8 A. It is a 12, yes.

9 Q. It's below what -- it's in parenthesis, so it's a
10 much --

11 A. It's a lower level, yes.

12 Q. Lower level. At VWA, Mr. Smalls is a 17-18. You
13 did find a 17-18 there, in addition to other numerical
14 values there as well. And that's expressed throughout the
15 whole of your test, is that you find some things that tend
16 to indicate Mr. Smalls, but nothing that could conclusively
17 say it's Mr. Smalls?

18 A. That's correct. There's just not enough
19 information there to say one way or the other.

20 Q. Are inconclusive tests of DNA common in the work
21 that you've done? Do you find that to be a common result?

22 A. Typically, when you have mixtures of two or more
23 individuals, it can be harder to differentiate a single
24 contributor from that mixture in order to make a definitive
25 conclusion as to whether they are included or excluded.

1 Q. Now, these were swabs taken from a gun. You don't
2 control where the swabs are taken from. You just take them
3 as you find them, right?

4 A. Yes, that's correct.

5 Q. Is it easier to find testable samples of DNA in
6 fluids, bodily fluids, like saliva or blood or something
7 like that?

8 A. Typically, there is a higher amount of DNA that is
9 found in blood or saliva.

10 Q. So that in DNA that might have been left through
11 epithelial cells, skin or something like that, you might
12 have a harder time finding testable amounts; is that
13 correct?

14 A. Yes, that's correct.

15 MR. VOIGT: Please answer any questions that the
16 defense may have of you.

17 THE COURT: Mr. Gailliard, you may proceed.

18 CROSS-EXAMINATION

19 BY MR. GAILLIARD:

20 Q. Good afternoon, Ms. Bartman. Now, going back to
21 your direct testimony, there was a question about the DNA
22 showing that someone possessed the item. Are we actually
23 talking about whether the person touched it, rather than
24 possessed, since possessed carries a different kind of
25 meaning?

1 A. Yes, touched or left DNA on the item.

2 Q. All right. And were you able to conclusively
3 connect DNA samples from the gun to the DNA sample from
4 Benjamin Smalls?

5 A. Can you please repeat that question?

6 Q. Were you able to conclusively connect the DNA
7 sample from the gun to the DNA sample from Benjamin Smalls?

8 A. No, I was not.

9 MR. GAILLIARD: No other questions for this
10 witness, Your Honor.

11 THE COURT: Any redirect?

12 MR. VOIGT: No redirect, Your Honor.

13 THE COURT: Any objection to the witness being
14 excused from the State?

15 MR. VOIGT: No objection to her being excused.

16 THE COURT: From the defense?

17 MR. GAILLIARD: None, Your Honor.

18 THE COURT: Please advise the witness she's been
19 excused by the Court.

20 MR. VOIGT: Thank you very much. You've been
21 excused. Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: The State may proceed.

24 MR. OSBORNE: State calls Jennifer Wooley.

25

1 JENNIFER WOOLEY,
2 having been duly sworn, testifies as follows:

3 THE CLERK: State your name for the record,
4 spelling your last name.

5 THE WITNESS: Jennifer Wooley, W-o-o-l-e-y.

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION

8 BY MR. OSBORNE:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Where do you work?

12 A. The Charleston Police Department.

13 Q. And what is your assignment there?

14 A. Currently crime scene supervisor.

15 Q. How long have you been with CPD?

16 A. November will be 12 years.

17 Q. How long have you been with the crime scene unit?

18 A. Last month was 10 years.

19 Q. All right. Back in 2011, were you working in crime
20 scene unit then?

21 A. Yes, I was.

22 Q. And what were your responsibilities and duties in
23 2011?

24 A. My main responsibility at that time was latent
25 recovery specialist, meaning that I worked in a laboratory

1 facility processing items that were collected by crime scene
2 techs from the scene for additional fingerprint evidence.

3 Q. Did you become involved in the investigation --
4 armed robbery investigation where Benjamin Smalls was
5 arrested?

6 A. Yes.

7 Q. And what role did you play in that investigation?

8 A. I processed a handgun that was recovered.

9 MR. OSBORNE: May I approach, Your Honor?

10 THE COURT: Uh-huh.

11 BY MR. OSBORNE:

12 Q. I would like to show you what's been previously
13 marked as State's Exhibit 15. Can you take a look at that.
14 Do you recognize that item?

15 A. Yes, this is the firearm and content that I
16 processed for fingerprints.

17 Q. So you basically tried to recover fingerprints from
18 the gun?

19 A. Correct.

20 Q. Did you get any fingerprints from the gun?

21 A. No fingerprints were recovered from this gun.

22 Q. Why not?

23 A. Well, there's a lot of variables in a fingerprint
24 being recovered, generally speaking, do you have any oils on
25 your hands, which is basically what most fingerprints are

1 made out of, how you make contact with that surface. The
2 surface itself is probably the biggest variable. With this
3 type of weapon, a Hi-Point, the surfaces are very, very poor
4 for fingerprint recovery. I do not believe I've ever
5 recovered a fingerprint from a Hi-Point on the firearm
6 itself.

7 Q. Have you processed a lot of guns?

8 A. Normally, the department recovers between 5- and
9 600 guns a year, and they all get processed for
10 fingerprints.

11 Q. So it's pretty rare to get a fingerprint from a
12 gun?

13 A. Correct.

14 MR. OSBORNE: No further questions.

15 THE COURT: Any questions from the witness?

16 MR. GAILLIARD: No, Your Honor.

17 THE COURT: Any objection to the witness being
18 excused from the State?

19 MR. OSBORNE: None, Your Honor.

20 THE COURT: From the defense?

21 MR. GAILLIARD: None, Your Honor.

22 THE COURT: Ma'am, you are excused. You may call
23 your next witness.

24 MR. OSBORNE: The State calls Mary Phillips.

25

1 MARY PHILLIPS,

2 having been duly sworn, testifies as follows:

3 THE CLERK: Please state your full name for the
4 record, spelling your last.

5 THE WITNESS: Mary Katherine Phillips,
6 P-h-i-l-l-i-p-s.

7 THE COURT: You may proceed.

8 DIRECT EXAMINATION

9 BY MR. OSBORNE:

10 Q. Where do you work?

11 A. For the City of Charleston Police Department, the
12 crime scene unit.

13 Q. How long have you worked there?

14 A. Since October of 2006.

15 Q. Were you working there back in May of 2011?

16 A. I was.

17 Q. And did you have the occasion to become involved in
18 the armed robbery investigation involving Benjamin Smalls?

19 A. I did.

20 Q. What was your involvement in the case?

21 A. For the most part, all I did was took a contact
22 swab from the gun that was collected in that case, and I
23 transported it up to SLED.

24 Q. Was that the only item that you transported to
25 SLED?

1 A. I also took a buccal swab from the defendant.

2 Q. And you transported that item to SLED as well?

3 A. Correct.

4 MR. OSBORNE: Your Honor, may I approach?

5 THE COURT: You may.

6 BY MR. OSBORNE:

7 Q. I would like to show you what's been marked as
8 State's Exhibit 23 and 24. Do you recognize those items?

9 A. I do.

10 Q. And what are they?

11 A. One of the items is the buccal swab from Benjamin
12 Smalls, and the other one is the contact swab from the
13 handgun.

14 Q. Okay. So your testimony basically is that you took
15 these items from CPD evidence and transported them to
16 SLED?

17 A. Correct.

18 Q. That's establishing a chain of custody?

19 A. Correct.

20 MR. OSBORNE: No further questions.

21 THE COURT: Any questions of the witness?

22 MR. GAILLIARD: None, Your Honor.

23 THE COURT: Any objection to the witness being
24 excused from the State?

25 MR. OSBORNE: None, Your Honor.

Lamarte Williams - Direct by Mr. Osborne

1 THE COURT: From the defense?

2 MR. GAILLIARD: None.

3 THE COURT: Ma'am, you are excused.

4 State may proceed.

5 MR. OSBORNE: State calls Lamarte Williams.

6 LAMARTE WILLIAMS,

7 having been duly sworn, testifies as follows:

8 THE CLERK: Please state your full name for the
9 record, spelling your last. And please adjust the
10 microphone if you need to.

11 THE WITNESS: Lamarte, W-i-l-l-i-a-m-s.

12 DIRECT EXAMINATION

13 BY MR. OSBORNE:

14 Q. Mr. Williams, where do you work?

15 A. City of Charleston Police Department violent crimes
16 unit.

17 Q. You work for the violent crimes unit?

18 A. Yes.

19 Q. And what do you do for the violent crimes unit?

20 A. I'm currently assigned to task force, as a task
21 force officer with the Bureau of Alcohol, Tobacco, Firearms
22 and Explosives, commonly known as ATF.

23 Q. What are some of the crimes that the violent crimes
24 unit investigates?

25 A. Homicide, armed robberies, high and aggravated

1 assaults.

2 Q. How long have you been doing that?

3 A. Investigations, about 10 years.

4 Q. Is that all with CPD, or is that with other
5 agencies?

6 A. No, I have a total of 21 years law enforcement
7 experience. I've policed through Columbia Police
8 Department, Orangeburg County Sheriff's Office, and, of
9 course, Charleston Police Department.

10 Q. And I believe you've even had various ranks as
11 well?

12 A. I did. I've served as a sergeant of school police
13 officers, sergeant of investigations, lieutenant patrol,
14 lieutenant investigations.

15 Q. Now let's talk about this case right here. Back on
16 May of 2011, did you become involved in this investigation?

17 A. I did.

18 Q. And what was your role in the case?

19 A. I was a case agent.

20 Q. Now, I think we heard Sergeant Bradley testify, I
21 think he was your sergeant back then?

22 A. He was.

23 Q. And what unit did you work in back then?

24 A. Back then, I was assigned to the armed robbery
25 unit.

1 Q. And so it would have been Sergeant Bradley that
2 assigned the case to you?

3 A. Yes.

4 Q. Now, what are some of the duties and
5 responsibilities of the case agent?

6 A. Typically, the case agent is basically the case
7 manager. He directs other detectives or employees to
8 various tasks. I familiarize myself with the case, what had
9 been done, what needs to be done, and basically the point of
10 contact for the Solicitor's Office during the prosecution.

11 Q. Just for clarification purposes, or maybe you can
12 tell us some of your duties. When an arrest is made in a
13 case, does that end your responsibilities as a case agent?

14 A. No, it does not. Typically and often, the
15 solicitor will contact the case agent to conduct follow-up,
16 if needed.

17 Q. It's an ongoing investigation?

18 A. Yes.

19 Q. Now, with this case right here, Sergeant Bradley
20 assigned the case to you?

21 A. He did.

22 Q. When did he assign it to you?

23 A. On May 26th, 2011.

24 Q. So you come into work the next day, the case is
25 assigned to you?

1 A. Yes.

2 Q. What's one of the first things that you do when a
3 case is assigned to you?

4 A. First thing I do is review the incident report,
5 supplemental report, any statements that's recovered by the
6 responding officer and/or by the responding investigator.

7 Q. And you did that in this case?

8 A. Yes.

9 Q. Did you meet with the victim?

10 A. I did.

11 Q. How did that go?

12 A. The victim, Mr. Ronzell Olds, told me what happened
13 and who was involved.

14 Q. Did you -- at the end of that interview, did you
15 have any persons of interest in the case?

16 A. Yes, Benjamin Smalls. The victim advised it was
17 Benjamin Smalls, another person, another male known as TA
18 only to him, and Ashley, which was his friend's sister.

19 Q. I believe at this point in the investigation, the
20 victim, Ronzell, had already identified Benjamin the night
21 before; is that correct?

22 A. Yeah, that's correct.

23 Q. So what was your next role? What did you try to do
24 next?

25 A. Being that I knew Ronzell identified Benjamin

1 Smalls the night before, I was attempting to identify the
2 other two parties that were possibly involved. We only knew
3 TA at the time. Record check through CPD data banks
4 revealed that there was a TA with a given name of David
5 Capers, and also located an Ashley Green of the incident
6 locations as her address.

7 Q. What did you do next?

8 A. From there, produced six-person lineup with David
9 Capers and Ashley Green.

10 MR. OSBORNE: May I approach?

11 THE COURT: You may.

12 BY MR. OSBORNE:

13 Q. I would like to show you what's been marked as
14 State's Exhibit 18 and 19. Will you take a look at that and
15 tell me if you recognize them?

16 A. Yes, I do.

17 Q. What are they?

18 A. Photographic lineup admonition form, as well as the
19 six-man lineup of David Capers, and photo lineup admonition
20 form with six-person lineup with Ashley Green.

21 Q. So these are lineups that you presented to Ronzell
22 Olds the very next day with suspects Ashley Green and David
23 Capers?

24 A. That's correct.

25 Q. And Ronzell identified both of them?

1 A. He did.

2 Q. Now, at that point, what was the next point of
3 contact in your investigation?

4 A. After the positive identification of the suspects,
5 I prepared arrest warrants for David Capers, Benjamin
6 Smalls. And they were for armed robbery and possession of a
7 weapon during a violent crime, and prepared arrest warrant
8 for Ashley Green for armed robbery.

9 Q. And I believe Ashley has already testified. She
10 came into the station?

11 A. Yes, she came into the station on May 27th, 2011,
12 when she was arrested.

13 Q. And I believe another detective interviewed her?

14 A. Yes. Detective Holmes along with Detective Grimes.

15 Q. You interviewed her again; is that correct?

16 A. That's correct, on May 31st.

17 Q. Why did you elect to interview her again?

18 A. Talking with the detective that interviewed her on
19 the 27th and reviewing the interview CD, at that time, I
20 believed that she was not being completely honest.

21 Q. You felt there was more to the story?

22 A. Yes.

23 Q. Is that common when an individual is arrested to
24 not tell the whole story at first?

25 A. Oftentimes, it's very common. Usually they come

1 around after several interviews to tell the truth.

2 Q. So what was the next thing of importance that
3 happened during the investigation?

4 A. A visit to the magistrate's, the judge's office
5 where the magistrate judge signed the arrest warrants for
6 all three of the parties involved, which was Benjamin,
7 Ashley, and David.

8 Q. And what happened on May the 31st?

9 A. May the 31st, Benjamin was arrested at
10 Applebee Way.

11 Q. And after he was arrested, I think CPD went back to
12 that location; is that correct?

13 A. That's correct. They responded back to that arrest
14 location and recovered a Hi-Point .40 caliber handgun.

15 Q. Now, as a result of that, you felt the need to get
16 a search warrant, I believe, for Benjamin's jail cell
17 recordings; is that correct?

18 A. That's correct. That was on June the 27th, 2011.

19 Q. At this point, Your Honor, I believe this is
20 already in evidence, I would like to publish to the jury the
21 jail cell reports.

22 THE COURT: Any objection?

23 MR. GAILLIARD: None, Your Honor.

24 THE COURT: You may proceed. You need to identify
25 the number for the court reporter.

1 MR. OSBORNE: It's State's Exhibit 16.

2 BY MR. OSBORNE:

3 Q. You had the occasion to review these recordings,
4 did you not?

5 A. I did.

6 Q. Can you hear that okay?

7 (Audio played.)

8 BY MR. OSBORNE:

9 Q. Did you hear that?

10 A. A little bit.

11 Q. Who is the call from?

12 A. Benjamin Smalls.

13 Q. And just to clarify, these are the recordings that
14 you got from the search warrant attempting to obtain the
15 defendant's jail phone recordings?

16 A. That's correct.

17 Q. This call was placed on May the 31st?

18 A. May the 31st, 2011, about 11:52 p.m.

19 Q. This call would have been placed on the very night
20 that he was arrested?

21 A. That's correct.

22 MR. OSBORNE: Your Honor, beg the Court's
23 indulgence. We are going to try to put it in through the
24 overhead speakers.

25 I'm going to skip ahead.

1 BY MR. OSBORNE:

2 Q. I know that was kind of abrupt there, but could you
3 make out what he was saying?

4 THE COURT: The audio recording speaks for itself.

5 (Audio playing.)

6 BY MR. OSBORNE:

7 Q. Was that number of significance to you in the
8 investigation?

9 A. It was. It was the residence where -- the
10 homeowner of the residence where we recovered the weapon.

11 (Audio playing.)

12 BY MR. OSBORNE:

13 Q. Was that name significant to you at all?

14 A. Barry was the residence owner at the time of the
15 recovery of the weapon and the arrest location of Benjamin.

16 (Audio playing.)

17 BY MR. OSBORNE:

18 Q. I want to move ahead, Detective, to -- at this
19 point, had TA or David Capers been arrested?

20 A. Yes. Capers was arrested on June the 3rd, 2011,
21 out in North Charleston.

22 Q. So was the investigation over at that point?

23 A. No, it was not.

24 Q. And what else did you do?

25 A. You, sir, contacted me with some additional

1 follow-up.

2 Q. And what was that?

3 A. I recovered a -- ran a trace on the handgun that
4 was recovered from Applebee Way. And registered owner
5 came back as a Duvall Crummey.

6 THE COURT: Can you speak directly into the
7 microphone? I'm having difficulty hearing you.

8 THE WITNESS: Trace of the handgun came into a
9 registered owner by the Duvall Crummey. I attempted to
10 locate Duvall Crummey, but was unsuccessful.

11 BY MR. OSBORNE:

12 Q. Did you ever interview an individual by the name of
13 Brandon Nelson?

14 A. I did. At Trenton --

15 Q. That was recently, I take it?

16 A. Yes, Trenton -- incarceration facility in Aiken,
17 right by the Georgia border.

18 Q. Did you have a chance to take a look at the phone
19 records from the stolen phone?

20 A. We did, but it was -- no further investigation
21 could be determined from anything from those records.

22 Q. Didn't help the investigation?

23 A. No, it didn't help.

24 MR. OSBORNE: No further questions.

25 THE COURT: Any questions for the witness?

1 CROSS-EXAMINATION

2 BY MR. GAILLIARD:

3 Q. Officer Williams, you were assigned this case the
4 day after the alleged robbery took place; is that correct?

5 A. That's correct.

6 Q. All right. And it was your job to prepare the
7 arrest warrants for the three persons named by the victim?

8 A. Yes, after the follow-up, yes, sir.

9 Q. Okay. And you prepared the arrest warrant for
10 Benjamin Smalls; is that correct?

11 A. That's correct, sir.

12 Q. And were you there when that arrest warrant was
13 served on him?

14 A. No, sir.

15 Q. You were not part of the arrest; is that right?

16 A. No, sir.

17 Q. You also prepared the search warrant for the jail
18 recordings; is that right?

19 A. Yes, sir.

20 Q. And you listened to those yourself; is that
21 correct?

22 A. Yes, sir.

23 Q. And in your listening to those jail recordings,
24 there was no gun mentioned in the recordings; is that
25 correct?

1 A. No, sir.

2 MR. GAILLIARD: No other questions for this
3 witness.

4 THE COURT: Any redirect of the witness?

5 MR. OSBORNE: No, Your Honor.

6 THE COURT: Any objection to the -- well, you will
7 you remain with us, sir. You are excused subject to being
8 recalled. State may proceed with its next witness.

9 MR. OSBORNE: The State rests, Your Honor.

10 THE COURT: Mr. Foreman, ladies and gentlemen, the
11 State has rested their case. I have some brief matters of
12 law I need to take up with the attorneys. During the break,
13 please leave your note pads in your seat and please do not
14 discuss the case.

15 (Whereupon, the jury leaves open court at 3:22
16 p.m.)

17 THE COURT: The State has rested. Are there any
18 motions?

19 MR. GAILLIARD: Your Honor, we would move for a
20 directed verdict of acquittal on behalf of the defendant as
21 stated so far from finding burden of proof that we feel a
22 directed verdict would be appropriate..

23 THE COURT: Would the State like to respond?

24 MR. OSBORNE: No, Your Honor, I think the evidence
25 speaks for itself.

1 THE COURT: In considering the motion for directed
2 verdict, the Court is concerned with the existence or
3 nonexistence of evidence and not its weight. If there's
4 substantial circumstantial evidence or direct evidence
5 reasonably tending to prove the guilt of the accused,
6 directed verdict is not appropriate. The State must not
7 prove guilt to the exclusion of every other reasonable
8 hypothesis.

9 Considering the evidence in this case and the
10 elements of armed robbery that the State must prove, which
11 very briefly are as follows: The State must prove pursuant
12 to 16-11-330 that the defendant took property from a person
13 with the intent to deprive them of it. In addition to that,
14 he must prove that it was done with the intent to
15 permanently deprive the owner of the property. And the
16 taking and carrying away of the property must have been done
17 with violence or by putting the owner of the property in
18 fear of violence.

19 The State must then prove that the defendant was
20 either armed with a deadly weapon or that it is alleged that
21 the robber or the robber alleged that he or she was armed
22 with a deadly weapon, either by action or words, while using
23 a representation of a deadly weapon or any object which a
24 person present during the commission of the robbery
25 reasonably believed to be a deadly weapon.

1 And possession of a firearm during the commission
2 of a violent crime, the State must only prove that the
3 defendant was at that time armed with what is classified by
4 the statute as a deadly weapon.

5 There is direct as well as substantial
6 circumstantial evidence reasonably tending to prove the
7 defendant's guilt, that being the nature of the eyewitness
8 testimony of the victim in this case, Mr. Olds, as well as
9 there's substantial circumstantial corroborative evidence in
10 the nature of the testimony of Ashley Green and Montez
11 Dozier. There is also substantial circumstantial evidence
12 in the nature of the testimony that the defendant cannot be
13 excluded from the combined DNA sample left on the gun that
14 was tested by SLED. And that came from the testimony of the
15 SLED analysis, Jennifer Bartman. Therefore, there's direct
16 as well as circumstantial evidence reasonably tending to
17 prove the defendant's guilt.

18 Again, the State is not required to prove guilt to
19 the exclusion of every other reasonable hypothesis. And,
20 therefore, the motion for directed verdict is denied.

21 Now, I will give you one second. I have some
22 issues with my computer, and then I'm going to question your
23 client regarding whether he wants to testify or not. Do you
24 have any other witnesses that you wish to call,
25 Mr. Gailliard?

1 MR. GAILLIARD: Your Honor, we want to call Brandon
2 Nelson.

3 THE COURT: Is he present?

4 MR. OSBORNE: I had him placed in a transport list
5 for p.m., so he should be here.

6 THE COURT: Can we check and see if Brandon Nelson
7 is here?

8 Is there anybody else you wish to call?

9 MR. GAILLIARD: That's it.

10 THE COURT: Okay. Bear with me just one second.

11 Does the defendant have any record that the State
12 would be looking to impeach him?

13 MR. OSBORNE: No, Your Honor.

14 THE COURT: Stand for me and raise your right hand
15 to be sworn.

16 BENJAMIN LAVON SMALLS,
17 having been duly sworn, testifies as follows:

18 THE COURT: State your full name for the record.

19 THE DEFENDANT: Benjamin Lavon Smalls.

20 THE COURT: Mr. Smalls, at this time I'm going to
21 explain to you certain of your rights. If you do not
22 understand anything that I say, please let me know. If you
23 want me to explain something in more detail, please let me
24 know. Do you understand?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: We have now reached the stage of the
2 trial where you may present your defense. You have the
3 right to claim the protections given to you by the Fifth
4 Amendment to the constitution of the United States. And
5 that amendment reads in part that no person shall be
6 compelled in any criminal case to be a witness against
7 himself. This means that you cannot be required to testify
8 in this case. You have the right to testify on your own
9 behalf; however, no one can make you testify. This is a
10 personal right and no one can waive this right except you.

11 If you decide to testify, you will be subject to
12 the same rules that govern other witnesses. And you may be
13 examined and cross-examined on any relevant issue in this
14 case. In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment for more than one year and this Court
17 determines that the probative value of admitting this
18 evidence outweighs its prejudicial effect to you, the
19 solicitor will be able to introduce your record to attack
20 your credibility. If you decide to testify, this decision
21 on your part must be made freely and voluntarily and
22 intelligently, with knowledge of the consequences of your
23 decision to testify and of the Fifth Amendment.

24 If you decide not to testify, I will instruct the
25 jury that they cannot give the fact that you did not testify

1 any consideration whatsoever, and that there's to be
2 absolutely no prejudice to you because you did not testify.
3 I will instruct them that you have no burden of proof in
4 this case, that the burden remains on the State to prove
5 each and every element of the offense beyond a reasonable
6 doubt, that you have no burden of proof, and that you have
7 the absolute right to remain silent, and that that is not to
8 be discussed in any manner whatsoever in jury deliberations.

9 It is left entirely up to you whether or not you
10 testify. You may speak with your attorney, your family
11 members, your friends, or anyone else, but the final
12 decision is left entirely up to you.

13 Sir, do you understand your rights as I've just
14 explained them to you?

15 THE DEFENDANT: Yes, 'ma'am.

16 THE COURT: Have you talked with Mr. Gailliard
17 about whether you should or should not testify?

18 THE DEFENDANT: Can I talk to him again?

19 THE COURT: Sure. Absolutely. We will be at ease
20 for a few moments. We will be at ease for a few moments.
21 Just let us know when you are ready to resume.

22 (Recess is taken.)

23 THE COURT: All right. I need to know what's going
24 on. It's been 30 minutes now. I need to know from
25 Mr. Gailliard.

1 Mr. Gailliard, have you had a full opportunity to
2 discuss with your client whether he should or should not
3 testify?

4 MR. GAILLIARD: I have done that, Your Honor.

5 THE COURT: The record should reflect that at 3:35,
6 the defendant, Mr. Smalls, asked for additional time to
7 speak with his attorney. It is now 4:04. I. I think I've
8 given him adequate, ample time to inquire to you as to
9 additional questions he had, as well as the record should
10 reflect the Court has given him ample opportunity to consult
11 with his family. Is that accurate?

12 MR. GAILLIARD: That's correct, Your Honor.

13 THE COURT: Do you feel you need to speak with him
14 any more at this time?

15 MR. GAILLIARD: I don't feel that I need to tell
16 him anything more than I told him, Your Honor.

17 THE COURT: Okay. Mr. Smalls, please stand. Have
18 you fully discussed with your lawyer whether you should or
19 should not testify?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: You had additional questions of him,
22 correct?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And the Court has given you time to ask
25 those questions of him, have those questions answered,

1 correct?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And have you also had an opportunity to
4 speak with your family?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Sir, do you need any more time to speak
7 with Mr. Gailliard about whether you should or should not
8 testify?

9 THE DEFENDANT: No, but I've got to make a decision
10 now? I can't make it after?

11 THE COURT: No, you've got to make the decision
12 now. Do you want to wait until after Mr. Nelson testifies?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: I will give you the opportunity to do
15 that, uh-huh. But I'm going to need an answer after he's
16 done testifying because I'm not going to break court for you
17 to make that decision because this case has been pending
18 since 2011 and I'm certain Mr. Gailliard has more than amply
19 discussed, as well as your previous counselor, your right to
20 testify prior to today's date. So I see no need to delay
21 that decision any further. But I will give you until after
22 this next witness's testimony. Okay?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You can take your seat.

25 All right. State ready to proceed?

1 MR. OSBORNE: Yes, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MR. GAILLIARD: Yes, Your Honor.

4 THE COURT: Please bring in the jury. Wait one
5 second for me. Is the witness already up here? Go ahead
6 and put him in the witness box for me. Is he shackled? I
7 don't want the jury to see that.

8 Sir, go ahead and take your seat for me. Deputy,
9 if you can help him situate his chair and put the Bible
10 where he would be able to reach it. Go ahead and bring in
11 the jury.

12 (Whereupon, the jury returns to open court at 4:07
13 p.m.)

14 THE COURT: Ladies and gentlemen, we appreciate
15 your patience as we dealt with those matters of law. We
16 will now resume with testimony.

17 Mr. Gailliard, you may proceed.

18 MR. GAILLIARD: We call Brandon Nelson to the
19 stand.

20 THE COURT: Please swear the witness.

21 BRANDON NELSON,
22 having been duly sworn, testifies as follows:

23 THE CLERK: If you could please state your first
24 and last name into the microphone loudly.

25 THE WITNESS: Brandon Nelson, B-r-a-n-d-o-n;

1 Nelson, N-e-l-s-o-n.

2 DIRECT EXAMINATION

3 BY MR. GAILLIARD:

4 Q. Good afternoon, Mr. Nelson. Can you tell the jury
5 where you were living around May of 2011?

6 A. At Ardmore.

7 Q. And what address?

8 A. Acacia Street.

9 Q. Acacia Street?

10 A. Yes, sir.

11 Q. And do you know one Ronzell Olds?

12 A. Yes, sir.

13 Q. Tell us how you know Ronzell.

14 A. I know him through the neighborhood. Me and him
15 became friends.

16 Q. And how long have you known him in the
17 neighborhood?

18 A. For like two and a half years.

19 Q. And what kind of stuff did you and he do together?

20 A. Like just hang out, played video games, cool out,
21 stuff like that.

22 Q. And do you also know the defendant, Benjamin
23 Smalls?

24 A. Yes, sir.

25 Q. And how do you know Mr. Smalls?

1 A. Through the neighborhood, coolin (sic), playing
2 basketball.

3 Q. And how long did you know Mr. Smalls?

4 A. For like around the same, two and a half years.

5 Q. Did you go to school with any of these gentlemen?

6 A. No, sir.

7 Q. Where did you go to school?

8 A. West Ashley High.

9 Q. Okay. And neither of them went to high school with
10 you; is that correct?

11 A. No, sir.

12 Q. Did you know one David Capers?

13 A. Yes, sir.

14 Q. And where did you know Mr. Capers from?

15 A. Through the neighborhood.

16 Q. For about the same period of time?

17 A. Yes, sir.

18 Q. Now, I call your attention to May 25th of 2011.

19 Were you playing cards and Xbox 360 with one Ronzell Olds on
20 that day?

21 A. Yes, sir.

22 Q. Why do you recall that day?

23 A. Like, on that day -- on that day, I took -- me and

24 Ronzell were playing Xbox 360. Afterwards, we left. As I

25 was walking out of the yard, all I saw was two light-skinned

1 guys walk up behind, like come shooting past me, go into the
2 backyard. That's all I know about it.

3 Q. Now, you said you saw two light-skinned fellows
4 walk past you going towards the backyard?

5 A. Yes, sir.

6 Q. And that's where Ronzell was?

7 A. Yes, sir.

8 Q. Okay. Did you happen to see whether or not
9 Benjamin Smalls and David Capers were going back in that
10 area also?

11 A. No, sir.

12 Q. You did not? All right. And you did not see
13 Benjamin Smalls or David Capers attack Mr. Olds; did you?

14 A. No, sir.

15 Q. And did you write a letter to that effect to
16 Mr. Smalls's prior attorney, Mr. Baumil?

17 A. Yes, sir.

18 Q. And you said you were willing to come to court to
19 testify to that; is that correct?

20 A. Yes, sir.

21 Q. And that's why you are here testifying today?

22 A. Yes, sir.

23 MR. GAILLIARD: I don't have any other questions
24 for this witness.

25 THE COURT: Any questions for the witness?

1 MR. OSBORNE: Yes, Your Honor.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. OSBORNE:

5 Q. Brandon, you have some pretty strong feelings about
6 Ronzell talking to the police, don't you?

7 A. No, sir. Why you say that?

8 Q. Well, I say that because myself and Investigator
9 Watson here spoke to you on July the 3rd. Do you remember
10 that?

11 A. Yes, sir.

12 Q. And do you remember going into a lot of detail
13 about the code on the street and how Ronzell broke that
14 code? Do you remember that?

15 A. No, sir.

16 Q. You don't remember that?

17 A. No, sir.

18 Q. Okay. You don't remember then telling us that the
19 code on the street says that you are not supposed to snitch?
20 You don't remember that?

21 A. No, sir.

22 Q. You don't remember telling us that Ronzell should
23 have turned his back on this, that this was no big deal?
24 You don't remember that?

25 A. Yes, sir, I remember saying that.

1 Q. You do remember saying Ronzell should have turned
2 his back?

3 A. Yes, sir.

4 Q. But you don't remember Ronzell -- saying that
5 Ronzell broke the code on the street?

6 A. Right.

7 Q. Okay. And do you remember telling us that:
8 Ronzell should have taken care of this shit on his own?

9 A. No, sir.

10 Q. Don't remember saying that? Do you remember
11 saying -- again, excuse my language that: This was some
12 heavy shit?

13 A. Yes, sir, I remember saying that.

14 Q. You remember saying that? Okay. So let's talk
15 about these two light-skinned individuals that you allegedly
16 saw. Do you remember when myself and Investigator Watson
17 were talking to you and I asked you, I said, did you see two
18 light-skinned individuals walking into the yard as you
19 walked out? And do you remember answering: I don't know,
20 maybe I did, maybe I didn't, I don't know?

21 A. No, sir, I don't remember that right now.

22 Q. You don't remember saying that either? Okay. Now
23 let's talk about this letter a little bit.

24 MR. OSBORNE: Your Honor, can I get this marked?

25 This is a copy --

1 THE COURT: Don't say it in front of the jury.

2 (Whereupon, a bench conference takes place off the
3 record.)

4 THE COURT: Proceed.

5 BY MR. OSBORNE:

6 Q. Do you recall --

7 THE COURT: Ask a direct question. Give him the
8 opportunity to admit or deny it.

9 BY MR. OSBORNE:

10 Q. On July the 3rd, I showed you a letter; is that
11 true?

12 A. Yes, sir.

13 Q. And isn't it true that you admitted writing
14 portions of the letter and denied writing other portions of
15 the letter?

16 A. No, sir. I wrote the whole letter.

17 Q. But you told myself and Investigator Watson that
18 you did not write part of the letter; isn't that true?

19 A. No, sir.

20 Q. That's not true? In fact, part of what you denied
21 writing was the part that said Benjamin Smalls and David
22 Capers were not the ones that robbed Ronzell; isn't it true
23 that you told myself and Investigator Watson that you never
24 wrote that?

25 A. No.

1 MR. GAILLIARD: Your Honor, I object. That
2 question was asked and answered.

3 THE COURT: Approach.

4 (Whereupon, a bench conference takes place off the
5 record.)

6 THE COURT: Proceed.

7 BY MR. OSBORNE:

8 Q. Did you or did you not write the entire letter that
9 I showed you in that meeting on July the 3rd?

10 A. I tell you like I tell you now, I did write the
11 letter.

12 Q. You are saying now that you did write the entire
13 letter?

14 A. Yes, sir.

15 Q. Now, isn't it true that you met with this man right
16 here, Detective Lamarte Williams, and also Detective Richard
17 Holmes?

18 A. Yes, sir, they came up earlier to visit me.

19 Q. And they came up and visited you on April the 23rd
20 of 2014; isn't that correct?

21 A. Something like that, yeah.

22 Q. And isn't it true that you told them that after the
23 robbery, you walked around the side of the house and you saw
24 co-defendant in this case, David Capers, TA, standing by the
25 house? Isn't that what you told them?

1 A. No, sir, I never did say nothing like that.

2 Q. Didn't tell them that?

3 A. No, sir.

4 Q. Isn't it true that you told them that TA, David
5 Capers, started yelling at you, calling you a snitch: You a
6 snitch?

7 A. Something like that. We had altercation before the
8 fact.

9 Q. But you never told that to Detective Williams;
10 that's what you said?

11 A. Yeah.

12 Q. Is that correct?

13 A. Yes, sir.

14 MR. OSBORNE: May I approach?

15 BY MR. OSBORNE:

16 Q. I would like to show you what's been marked as
17 State's Exhibit 27. Do you recognize that?

18 A. Yes, sir.

19 Q. What is that?

20 A. David Capers.

21 Q. It's more than that, isn't it?

22 A. No, sir. He just a picture.

23 Q. Just a picture?

24 A. Yes, sir.

25 Q. Did you recognize your handwriting on it?

1 A. Yes, sir.

2 Q. Did you recognize your handwriting as identifying
3 and circling David Capers?

4 A. Yes, sir.

5 Q. And this was done to Detective Williams; isn't that
6 correct?

7 A. Yes, sir.

8 MR. OSBORNE: Court's indulgence.

9 BY MR. OSBORNE:

10 Q. All right, Brandon. Do you know Montez Dozier?

11 A. Yes, sir.

12 Q. You were playing cards with him? You were playing
13 Xbox with him, correct?

14 A. Yes, sir.

15 Q. And so you know Ashley Green?

16 A. No, sir.

17 Q. You don't know Ashley Green, Montez's younger
18 sister?

19 A. Yeah, I know who you are talking about.

20 Q. So you do know who I'm talking about?

21 A. I don't know her.

22 Q. But you know who she is?

23 A. Yes, sir.

24 Q. You've seen her around?

25 A. Sort of.

1 Q. How long have you known Montez?

2 A. Since living in the neighborhood.

3 Q. So for quite awhile?

4 A. Yes, sir.

5 Q. So you've seen Ashley around for quite awhile as
6 well?

7 A. No, sir.

8 Q. How many times have you been over to Montez
9 Dozier's house?

10 A. Like five or six times.

11 Q. And how many times have you seen Ashley over there?

12 A. Like two times.

13 Q. So you know Ashley when you see her?

14 A. Sort of.

15 Q. Sort of? I would like -- may I approach?

16 THE COURT: You may.

17 BY MR. OSBORNE:

18 Q. I'm going to show you what's been marked as State's
19 Exhibit 29. Do you recognize this? What is that?

20 A. A picture of Ashley, I guess.

21 Q. And it's a lineup with Ashley Green. And this is a
22 lineup that was presented to you by Detective Williams;
23 isn't that correct?

24 A. Yes, sir.

25 Q. But Ashley's in this lineup, isn't she?

1 A. Yes, sir.

2 Q. But you chose not to identify her; isn't that
3 correct?

4 A. I don't know which one is her, sir.

5 Q. Right. You picked out somebody else?

6 A. No, sir.

7 MR. OSBORNE: No further questions.

8 THE COURT: Any redirect?

9 MR. GAILLIARD: None, Your Honor.

10 THE COURT: Any objection to the witness being
11 excused; from the State?

12 MR. OSBORNE: No, Your Honor.

13 THE COURT: From the defense?

14 MR. GAILLIARD: No, Your Honor.

15 THE COURT: Sir, you are excused. Anything
16 further?

17 Well, actually, Mr. Foreman, ladies and gentlemen,
18 I have a very brief matter of law to take up with the
19 attorneys. I'm going to ask that you leave your note pads
20 in your seats. Do not discuss the case and just have them
21 stand out in the hallway. Don't take them all the way to
22 the jury room.

23 (Whereupon, the jury leaves open court at 4:23
24 p.m.)

25 THE COURT: Okay. Sir, do you need to discuss

1 anything further with Mr. Gailliard as to whether you should
2 or should not testify?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: I can't hear you.

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Sir, do you wish to testify?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Okay. You may take your seat.

9 Do you have any further witnesses, Mr. Gailliard,
10 or do you plan to rest?

11 MR. GAILLIARD: We are going to rest, Your Honor.

12 THE COURT: Okay. You can bring in the jury.

13 Is the State going to have any rebuttal testimony?

14 MR. OSBORNE: Yes, Your Honor, we have two rebuttal
15 witnesses.

16 THE COURT: Are they sitting here?

17 MR. OSBORNE: Yes.

18 THE COURT: We will reserve motion and go forward
19 with rebuttal witnesses.

20 (Whereupon, the jury returns to open court at 4:24
21 p.m.)

22 THE COURT: Thank you, ladies and gentlemen. We
23 appreciate your patience. You may be seated.

24 Mr. Gailliard, you may proceed. You may proceed.

25 MR. GAILLIARD: Your Honor, the defense is resting.

1 THE COURT: Okay. I need you to rest in front of
2 the jury.

3 MR. GAILLIARD: Yes, Your Honor.

4 THE COURT: We will reserve motions.

5 State may proceed. Is there any rebuttal
6 testimony?

7 MR. OSBORNE: Yes, Your Honor. The State calls
8 Detective Lamarte Williams.

9 THE COURT: I will remind you you are still under
10 oath.

11 LAMARTE WILLIAMS,
12 having been previously sworn, testifies as follows:.

13 THE COURT: State your full name for the record.

14 THE WITNESS: S. Lamarte Williams.

15 THE COURT: You may proceed.

16 DIRECT-EXAMINATION

17 BY MR. OSBORNE:

18 Q. You were sitting in here when Brandon testified,
19 correct?

20 A. Yes, sir.

21 Q. I want to ask you about this interview. Why did
22 you go to interview Brandon?

23 A. It was additional information as direction from you
24 to follow up interviewing this individual.

25 Q. That's pretty much standard police work, right? As

1 an individual that was near of the scene of the crime, you
2 are going to interview them, figure out what he's got to
3 say?

4 A. Correct.

5 Q. Now, when you traveled to go interview Brandon, you
6 brought some lineups with you; isn't that correct?

7 A. I did.

8 MR. OSBORNE: May I approach?

9 THE COURT: You may.

10 BY MR. OSBORNE:

11 Q. I would like to show you what's been marked as
12 State's Exhibit 27. Can you tell me what that is?

13 A. Charleston Police Department photo lineup
14 admonition form with a six-person photographic lineup of
15 David Capers's picture.

16 Q. Did you show that to Brandon?

17 A. I did.

18 Q. Now, just walk the jury through this process of how
19 you presented this lineup to him.

20 A. First I show the admonition form, which --

21 Q. Would you mind, go ahead and read it real quick.

22 A. It reads as follows: I'm going to show you a group
23 of photographs. These photos may or may not contain a
24 picture of the person who committed the above offense which
25 is under investigation at the time. Keep in mind that the

1 photos may show a variety of complexion, hair, eyes, facial
2 hair, et cetera. If you recognize anyone in the photos as a
3 person that committed the crime against you or you are a
4 witness to, I would ask you if you are positive in your
5 identification. I will then ask you to sign and date the
6 back of the photos. Upon viewing these photos, do not
7 discuss the results of this procedure with the victims or
8 witnesses. And he signed the -- this piece of document

9 Q. Okay. So you read that to him first?

10 A. Yes.

11 Q. Then what do you do?

12 A. The lineup was face down. After I read it to him,
13 he signed it. I asked him when he was ready, turn over the
14 photograph, the picture with the six-person lineup, which he
15 did.

16 Q. Okay. So he identifies David Capers; is that
17 correct?

18 A. He identifies David Capers. He circles the
19 picture, and prints his name under the picture.

20 Q. And you were present when he did that?

21 A. Yes.

22 Q. That's his signature?

23 A. Yes, sir.

24 MR. OSBORNE: Your Honor, I would be pressed to
25 move State's 27 into evidence.

1 THE COURT: Any objection? Please show it to
2 Mr. Gailliard.

3 Mr. Gailliard, do you have any exception to the
4 admission of document?

5 MR. GAILLIARD: No, no, Your Honor.

6 THE COURT: Marked and admitted without objection.
7 What number is that?

8 MR. OSBORNE: 27

9 (State's Exh. 27, Photo of David Capers, is moved
10 into evidence.)

11 BY MR. OSBORNE:

12 Q. Brandon identifies David Capers. What does he say
13 that David did? Why is he identifying him?

14 A. He identifies David Capers as the person on the
15 side of the house, one of the two people that was on the
16 side of the house that grabbed him. He had verbal
17 altercation with Mr. Capers. Mr. Capers was calling him a
18 snitch and this, that and the other. And he continues to
19 walk up the street, towards the street.

20 Q. So Brandon told you that David grabbed him; he's
21 one of the two individuals on the side of the house; is that
22 correct?

23 A. That's correct.

24 Q. Did he say he saw the second individual?

25 A. He said he saw an individual, but claimed that he

1 didn't know who that person was.

2 Q. Didn't know that person?

3 A. That's correct.

4 Q. So he puts David there, but nothing about -- the
5 second guy he didn't see?

6 A. That's correct.

7 Q. Did he say anything to you about two light-skinned
8 individuals that were walking into the yard as he was
9 walking out?

10 A. No, he didn't not.

11 Q. Nothing about that? Did he say to you that the
12 defendant did not commit that robbery?

13 A. No, he did not.

14 Q. Did he say that David Capers did not commit that
15 robbery?

16 A. No, he did not.

17 Q. I want to just show you one last thing.

18 MR. OSBORNE: May I approach?

19 BY MR. OSBORNE:

20 Q. This is State's Exhibit 29. Take a look at that
21 and tell me if you know what that is.

22 A. That's Charleston Police Department photo lineup
23 admonition form; same as I read a few minutes ago, signed by
24 Brandon Nelson. Same procedure as I did with David Capers,
25 photo lineup I did with Ashley Green's lineup as well.

1 Q. Who did he identify?

2 A. He did not identify Ashley Green.

3 Q. He identified a fill-in?

4 A. Yes.

5 MR. OSBORNE: Your Honor, we would like to move
6 State's 29 into evidence.

7 THE COURT: Any objection, Mr. Gailliard?

8 MR. GAILLIARD: Yes, Your Honor, based on
9 relevance --

10 THE COURT: Is there an objection?

11 MR. GAILLIARD: Yes, relevance.

12 THE COURT: Let's approach.

13 (Whereupon, a bench conference takes place off the
14 record.)

15 THE COURT: Sustained.

16 MR. OSBORNE: No further questions.

17 THE COURT: Any questions for the witness,
18 Mr. Gailliard?

19 MR. GAILLIARD: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. GAILLIARD:

22 Q. Now, Officer Williams, you did not record your
23 interview with Brandon Nelson, did you?

24 A. We could not record in that facility.

25 Q. I'm sorry?

1 A. You could not record in that facility.

2 Q. So it's not recorded?

3 A. No, no audio devices in that facility.

4 Q. So your testimony is that your recollection of the
5 conversation is different from his; is that correct?

6 A. It's very different.

7 MR. GAILLIARD: All right. Nothing further, Your
8 Honor.

9 THE COURT: Any redirect?

10 MR. OSBORNE: None, Your Honor.

11 THE COURT: Any objection -- sir, you may step
12 down. You may call your next witness.

13 MR. OSBORNE: The State calls Investigator David
14 Watson.

15 DAVID WATSON,

16 having been duly sworn, testifies as follows:

17 THE CLERK: State your first and last name clearly
18 into the microphone and spell your last please, sir.

19 THE DEFENDANT: David Watson, W-a-t-s-o-n.

20 DIRECT EXAMINATION

21 BY MR. OSBORNE:

22 Q. Mr. Watson, where do you work?

23 A. I'm a special investigator for the Ninth Circuit
24 Solicitor's Office.

25 Q. How long have you worked there?

1 A. Four years.

2 Q. And do you have any other law enforcement
3 experience prior to that?

4 A. Yes, sir. I have 10 years experience with North
5 Charleston Police Department.

6 Q. Okay. From North Charleston to here?

7 A. Yes, that's correct.

8 Q. What are some of the various assignments that you
9 worked while in North Charleston?

10 A. My first three years I was on patrol. Then after
11 that, I became a detective. At that time, I was the only
12 Hispanic police officer from 1999 to about 2006, worked
13 several crimes, couple of investigator classes, courses.

14 Q. Okay. Do you recall on July the 3rd me asking you
15 if you could pick up Brandon Nelson and bring him to our
16 office for an interview?

17 A. That's correct. Myself and Investigator Niblock
18 transported him from the Al Cannon Detention Center.

19 Q. Do you recall that interview we had with him?

20 A. Yes, sir.

21 Q. Do you remember Brandon being asked if there was a
22 code on the street?

23 A. Yes, sir, I do.

24 Q. Do you remember what his response was?

25 A. Yes, sir.

1 Q. And what was it?

2 A. He pretty much said that things that happen on the
3 street should stay on the street; you shouldn't snitch.

4 Q. Do you remember asking him how he felt about
5 Ronzell talking to the police?

6 A. Yes, sir. He said he should have just left it
7 alone; should have just walked away.

8 Q. Do you remember me asking Brandon if he wrote a
9 letter indicating that the defendant wasn't involved in the
10 crime?

11 A. Yes, sir, I do.

12 Q. And do you remember me asking him what the content
13 of that letter was?

14 A. Yes, sir.

15 Q. And do you remember when I asked him, what did you
16 write? Do you remember what his response was?

17 A. Yes, sir. Basically, he wrote some stuff in there,
18 you know, concerning the defendant.

19 Q. Did he remember what he wrote?

20 A. No, not really.

21 Q. Do you remember me reading portions of the letter
22 to him?

23 A. Yes, sir, I do.

24 Q. Did he claim that he wrote the entire letter, every
25 portion?

1 A. No, sir.

2 Q. And, in fact, what did he say?

3 A. He said, maybe I did, maybe I didn't.

4 Q. In fact, one part I think he blatantly denied
5 writing?

6 A. That's correct, sir.

7 MR. OSBORNE: No further questions.

8 THE COURT: Any questions for the witness?

9 MR. GAILLIARD: Yes, Your Honor.

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MR. GAILLIARD:

13 Q. Investigator Watson, were you there when the
14 solicitor received a fax copy of the letter from my
15 office?

16 A. Yes, sir.

17 Q. When that was presented to Mr. Nelson, didn't he
18 indicate that he wrote the whole letter?

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

20 Q. You don't recall him doing that?

21 A. No, sir.

22 Q. You don't recall that at all?

23 A. No, sir.

24 MR. GAILLIARD: Nothing further, Your Honor.

25 THE COURT: Any redirect?

1 MR. OSBORNE: None, Your Honor.

2 THE COURT: Sir, you may step down.

3 Any further rebuttal testimony?

4 MR. OSBORNE: No, Your Honor.

5 THE COURT: The State rests?

6 MR. OSBORNE: The State rests.

7 THE COURT: Mr. Foreman, ladies and gentlemen, I
8 have some matters of law that I need to take up with the
9 attorneys that probably conservatively is going to take us
10 another hour or so. So we are going to take advantage of
11 this break to take our evening recess.

12 During the break you are strictly instructed not to
13 discuss this matter among yourselves or with anyone else.
14 You are not to do any independent research regarding any
15 issue or matter involved in this case on the internet. You
16 are not to watch, read, or listen to any media accounts
17 about this case. That includes radio, newspaper, television
18 and internet.

19 We are going to resume in the morning at ten
20 o'clock, at which time I need for you all to come directly
21 to your jury room at that time. Both the State and the
22 defense have rested their cases. So the next part of the
23 process is closing argument and instruction. I'm going to
24 start well in advance of ten o'clock, unlike the federal
25 court and y'all -- I don't know if any of you ever had

1 federal jury service. Everything in that court is what we
2 call a date certain, which means you know exactly when it's
3 going forward. The State system is not like that. We don't
4 have that great amount of resources. So we try cases on
5 what we call a rolling basis, which means as I finish one, I
6 start another.

7 So in the morning, I have to pick another jury for
8 another case that I will begin after I conclude your case.
9 So I will pick that jury in the morning, and then at ten
10 o'clock, we will resume this case with closing argument and
11 instruction.

12 And once y'all begin to deliberate, I will then
13 begin my next trial. And we will do that until the week
14 comes to a conclusion, which makes life interesting because
15 I never get bored. I have great job security, of which I'm
16 very grateful. So I needed to explain to you why we are
17 starting at 10. I didn't want you to think I was wasting
18 your time. We will be doing something else to make use of
19 that time. And it's hard for people -- I don't like having
20 juries come in the middle of the day because it's easier at
21 the front of the day because they can salvage some part of
22 it and go to work if they can, instead of waiting around
23 until one or two o'clock to come to the courthouse by
24 wasting their entire day. So I tell you in advance that we
25 appreciate your patience.

1 Again, please don't have any contact with anyone in
2 or about the courthouse, especially at this late stage of
3 the trial. A very innocent conversation could be observed
4 and misinterpreted. And please don't make any comments
5 regarding your service on any social networking sites, which
6 are too numerous for me to list.

7 Have a great evening. If you can stack up your
8 notebooks as you leave, we will secure those during the
9 recess. And we will see you in the morning at 10.

10 (Whereupon, the jury leaves open court at 4:38
11 p.m.)

12 THE COURT: We will backtrack, so to speak, after
13 the defense rested. Are there any motions?

14 MR. OSBORNE: None from the State, Your Honor.

15 THE COURT: Any from the defense?

16 MR. GAILLIARD: No, Your Honor.

17 THE COURT: Do you wish to renew your motions?

18 MR. GAILLIARD: Yes, I do.

19 THE COURT: Okay. They will be marked renewed, and
20 denied based on the Court's previous ruling.

21 The State has now rested in full. Are there any
22 motions?

23 MR. OSBORNE: No, Your Honor.

24 THE COURT: Does the defense wish to renew its
25 motions?

1 MR. GAILLIARD: Yes, Your Honor, we renew our
2 previous motions.

3 THE COURT: And do you need to make additional
4 argument, or is the argument you made sufficient for the
5 record?

6 MR. GAILLIARD: The argument I made is sufficient.

7 THE COURT: The State's response sufficient for the
8 record?

9 MR. OSBORNE: Yes, Your Honor.

10 THE COURT: The Court will mark the motions heard
11 and denied based on its previous ruling, and will
12 incorporate that ruling into this portion of the record.
13 Okay. And those motions will be denied.

14 I will give the jury a general instruction
15 regarding their responsibility and my responsibility, how
16 they are to judge witness credibility and believability. I
17 will instruct them regarding the prior record of a witness,
18 in other words, that they are still competent to testify but
19 that the jury can't consider it regarding the witness's
20 believability, and it's for them to determine the weight,
21 value, and effect that they give that testimony, as well as
22 the witness's testimony.

23 I'll give a general instruction on expert witness
24 testimony, as well as the failure of the defendant to
25 testify. I will then give a general instruction on direct

1 and circumstantial evidence from the State vs. Grippon, and
2 a general instruction regarding the charge of the arrest and
3 the indictment not being evidence, as well as the
4 presumption of innocence. And I will instruct Victor vs.
5 Nebraska on reasonable doubt.

6 I will then charge the elements of 16-11-330, which
7 is armed robbery, which includes the representation
8 language. I will instruct the jury that these are simply
9 evidentiary facts to be considered by them along with the
10 other evidence. And that refers to the instruction
11 regarding what is classified as a deadly weapon.

12 Now, are there any requests for any lesser-included
13 offenses, Mr. Gailliard?

14 MR. GAILLIARD: Strong-arm robbery, Your Honor.

15 THE COURT: I would assume the State has no
16 exception to that?

17 MR. OSBORNE: No, Your Honor.

18 THE COURT: I will instruct the elements of
19 robbery, which are the same as armed robbery, except with
20 the exception of a deadly weapon. I will then -- the State
21 had asked earlier for a hand-of-one charge. I assume that
22 is because the testimony at this point has been that there
23 was a co-defendant that was involved in this robbery. So I
24 will instruct accomplice liability, which is hand of
25 one/hand of all. And I will do that -- well, I don't --

1 yeah, I will leave that last.

2 I'm going to instruct them on possession of weapon
3 during the commission of -- attempt to commit a violent
4 crime, which is 16-23-490. And as we know, armed robbery is
5 classified as a violent crime.

6 I will then instruct there are multiple charges,
7 and the jury must consider each charge separate and
8 independent of one another irregardless of -- in other
9 words, they have to consider each charge and the elements
10 separately and independently, and make a determination as to
11 whether the State has met their burden of proof beyond a
12 reasonable doubt. I will then instruct on the forms of the
13 verdict.

14 Are there any exceptions from the State?

15 MR. OSBORNE: No, Your Honor.

16 THE COURT: Any exceptions from the defense?

17 MR. GAILLIARD: None, Your Honor.

18 THE COURT: Okay. If y'all give me just a few
19 minutes, I will have the verdict forms for y'all to review.

20 (Whereupon, recess transpired.)

21 THE COURT: Would counsel approach to review the
22 verdict form. Are there any exception to the form of the
23 verdict from the State?

24 MR. OSBORNE: No, Your Honor.

25 THE COURT: From the defense?

1 MR. GAILLIARD: None, Your Honor.

2 THE COURT: I need you to check all the evidence
3 and make sure it's in place. Make sure you and the court
4 reporter are on the same page as to what has been admitted
5 and what has not been admitted, what has been marked only
6 for ID, so that in the morning we can go forward without any
7 interruption. I need you to test any technology you plan to
8 use, because I will not have time to do that in the morning.

9 (Whereupon, the proceedings adjourn for the day.)

10

11 (Whereupon, the proceedings continue on July 9,
12 2014.)

13 THE COURT: Is the State ready to proceed?

14 MR. OSBORNE: Yes, Your Honor.

15 THE COURT: Defense ready to proceed?

16 MR. GAILLIARD: Yes, Your Honor.

17 THE COURT: Is the State going to open and close?

18 MR. OSBORNE: No, Your Honor.

19 THE COURT: State is going to waive opening?

20 MR. OSBORNE: Yes, Your Honor.

21 THE COURT: Please bring in the jury.

22 (Whereupon, the jury returns to open court at 11:23
23 a.m.)

24 THE COURT: Good morning, ladies and gentlemen. We
25 appreciate your patience as we disposed of other matters

1 prior to resuming closing argument and instruction. Please
2 know that we do not take your time for granted. As I
3 explained on last night, we have now reached the stage of
4 the trial where both the State and the defense have rested
5 their cases. We will now hear closing argument and then the
6 Court's instruction. I would ask that you give the
7 attorneys your undivided attention.

8 Mr. Gailliard, you may proceed when you are ready.

9 MR. GAILLIARD: May it please the Court, Your
10 Honor.

11 THE COURT: Yes, sir. You may proceed.

12 MR. GAILLIARD: Mr. Foreman, ladies and gentlemen
13 of the jury, you listened to two days of trial testimony.
14 And now we are going to make our closing arguments and ask
15 you to make a decision in this case. I'm going to ask you
16 to consider from now until verdict two questions about the
17 entire case: One is, has the State proved all of the
18 elements of the crimes charged; and, two, if they did, how
19 did they do it? How has the State proved the elements of
20 the crime to you?

21 Now, the judge is going to charge you about
22 credibility. She's going to tell you about the burden of
23 proof. As I told you in opening, this defendant comes into
24 the court cloaked in innocence. And he's only found guilty
25 if the State is able to strip that cloak of innocence away

1 from him. I would suggest to you now that they haven't been
2 able to do that.

3 Let's just take a look at the witnesses that were
4 presented. And we are not going to go over all of them.
5 Let's just look at the high points.

6 Ronzell Olds came in and testified. All right. We
7 know that he changed his story. He claimed he was the
8 victim of an armed robbery, but when the police came to him
9 and said, hey, what happened? What was his response? I
10 don't know anything about that. Nothing happened to me. It
11 was only after he was threatened by his own mother that you
12 are not going to be able to stay in this house unless you
13 tell them something, that's when he came back and said, oh,
14 now I know what happened.

15 Consider Ashley Green. Guess what? She did the
16 very same thing. She was called down to the police station.
17 She gave a statement. And they said, you know what, we
18 don't think that's right. And she said, yeah, I didn't tell
19 the whole story, but I went back and I told them what
20 happened.

21 Well, the judge is going to charge you to consider
22 the credibility of the witnesses. So you have to decide
23 whether or not you want to believe a witness who is going to
24 tell you two stories.

25 Now, my client is charged with armed robbery.

1 Consider the gun. Ronzell said both of them put a gun to my
2 head. Anybody else saw a gun? Have they been able to prove
3 anything to you about a gun? Ask yourself that. And I
4 suggest to you that the answer is no.

5 Ashley gave them a ride, according to her, shortly
6 afterwards:

7 Ashley, did you see a gun?

8 No.

9 What do you know about this?

10 Well, they made certain comments, we got that dog.

11 So what did that mean? To me, that means they
12 committed a robbery. I don't know the actual exchange, but
13 doesn't sound like it to me.

14 What happened?

15 Well, I took him to the north area. I went and I
16 came back and they started talking about a lick and counting
17 money.

18 Well, maybe if you were on the street, you would
19 know what that means. I don't.

20 Did you see a gun there?

21 No. They found some money.

22 Consider Montez Dozier. He was right there. He
23 was playing cards.

24 What do you know about this?

25 I didn't see any incident. I heard some rumbling

1 outside. He came to the door and I gave him a pair of pants
2 to put on.

3 But he was right there. They were playing cards.

4 Brandon Nelson was right there. He was playing
5 cards. What does he say? He doesn't know anything except
6 two light-skinned fellows came up about the same time. He
7 wrote a letter from Charleston County jail, sent it to the
8 former attorney and said, hey, I need to come to court and
9 tell what I know, I saw these two light-skinned guys come
10 up, and that's what I know. What happened to them? Why
11 didn't the police do anything about this? Ask yourself
12 that.

13 If the victim is robbed the way he said he was, do
14 you think he would have or should have said to the police,
15 oh, I just got robbed and I think I know who it is, and
16 somebody would have been arrested probably sooner than 10 or
17 11 days later?

18 Let's consider the DNA evidence. And that's
19 important, because he's charged with possession of a weapon.
20 And at some point, somebody needs to prove that there's a
21 weapon and that he had it. We had a whole chain of custody.
22 We had the DNA expert testify. And I only asked her one
23 question. And in case you don't remember what that was, I'm
24 going to tell you. And that's the only question I asked
25 her. I said: Were you able to conclusively connect the DNA

1 sample from the gun to the DNA sample from Benjamin Smalls?
2 What was her answer? No, I can't say that. I can't tell
3 you that it was him that had this gun.

4 So what does that tell us? We cannot place a gun
5 in the hands of this defendant at any time. So, therefore,
6 when it comes to the commission of a crime with a weapon,
7 you have to find not guilty.

8 Consider Mr. Olds's mother. She came in.

9 I gave him the rent money. And I said, look, if
10 you don't tell somebody what happened to us, you can't come
11 back in this house.

12 How are you going to react to a threat about that?
13 Huh? Where is he going to go? What's he going to do? He
14 wants to have a roof over his head. I would ask you to
15 consider each and every element that was supposed to be
16 proved by State and ask yourself, did they do that? If they
17 did it to my satisfaction, how? How? What are you going to
18 have? I suggest to you that you don't have anything.

19 Therefore, the judge is going to tell you that if
20 there is a reasonable doubt in your mind as to whether this
21 defendant committed a crime of what he's charged, then by
22 law, you need to set him free, find him not guilty.

23 I thank you for your time and attention.

24 THE COURT: You may proceed.

25 MR. OSBORNE: Thank you, Your Honor. May it please

1 the Court.

2 What's that noise? What's that noise in the
3 background? Oh, that's just these boys over here gambling.
4 And that's all it took. That put the scent in the air, the
5 scent of opportunity, a scent that for fellows like the
6 defendant and his buddies, TA, that's all they needed to
7 hear. That's an opportunity that was too good to pass. So
8 each one got their guns, went over to where that opportunity
9 was, and they waited. They waited in the shadows. And when
10 the opportunity came, they took it.

11 Ladies and gentlemen, that's callus, reckless
12 greed. And you heard about Ardmore. It's a rough
13 neighborhood. It's known for drugs and violence. For this
14 defendant, that's his hunting grounds. He can go in that
15 neighborhood and he can take whatever he wants. He thinks
16 there won't be any consequences to it. But I will tell you
17 this, just because you live in Ardmore, doesn't mean it's
18 fair game to get robbed. I will bet you, he was counting on
19 something. He was counting on when he did that robbery,
20 that Ronzell wouldn't snitch, but he did. He came in here
21 and he told you what happened.

22 Now, you've been sitting here for the last couple
23 of days and you've been taking notes. In a minute, you are
24 going to go in there and you are going to start
25 deliberating. And you are going to ask yourself, have I

1 heard enough to convict this man? Well, you have. And then
2 you are going to ask yourself, or you might, can I believe
3 Ronzell? Like the defense attorney is saying, can I believe
4 you? Well, you don't have to take his word for it. Look at
5 the evidence. Look at what fits. Look at what makes sense.

6 Let's look at what Ronzell is saying. Ronzell
7 makes four assertions during his testimony. First, Ronzell
8 had \$635 in his pocket when they heard he's robbed. Second,
9 Ronzell was robbed. Third, the defendant and David Capers,
10 TA, robbed him. And the defendant and TA were each armed
11 with handguns when they committed the robbery.

12 Let's go through each one and look at how the
13 evidence corroborates and how it fits what he's saying, how
14 we know he's telling the truth. He had \$635 in his pocket.
15 Well, Ms. Gillispie tells you that she left him with \$600 to
16 pay the rent. That's important because this is Ardmore.
17 And I can see maybe the perception might be that he's 18
18 years old, he wouldn't have that kind of money in his pocket
19 unless it was for drugs or something like that. This a
20 legitimate robbery. That money was for rent. That's what
21 it was for.

22 Montez says that he saw Ronzell with a lot of cash
23 on him. That's important. That corroborates it. Ashley
24 says she saw Ronzell with a lot of cash. I don't think this
25 is in dispute, but just in case, Ronzell was robbed. He

1 didn't lose the money gambling or anything like that. And
2 how do you know? Montez says that he heard two loud bangs
3 coming from outside. And to address this issue about Montez
4 not seeing anything, he couldn't have. He was inside the
5 house. There was nothing to see. But he heard the two
6 sounds come from outside, two bangs up against the house.
7 That's what Ronzell said would have happened, having been
8 pushed up against the house.

9 Seconds after the robbery, Ronzell wasn't wearing
10 pants and shoes. I'm glad the suggestion wasn't made that
11 he voluntarily took off his clothes.

12 Seconds after the robbery, Ronzell said, them boys
13 got me, them boys got me. And don't discount this. The
14 very night this happened, he told the police that he was
15 robbed. He didn't wait days to tell them he was robbed. He
16 told them immediately that he was robbed.

17 The defendant and David Capers, TA, robbed Ronzell.
18 On the night of the incident, Ronzell told Detective Stanley
19 that this defendant robbed him. On the night of the
20 incident, he identified this individual through a
21 photographic lineup as being the person that robbed him.
22 And he told them that it was TA, that very night he
23 mentioned TA's name. Took the police a minute to figure out
24 who it was, but he identified him in a photographic lineup.

25 Let's look at the defendant's actions. After the

1 robbery, defendant and TA said they need a ride to the area.
2 They are in a hurried pace. Ashley's getting out of the
3 area. Ashley agrees. The defendant is counting the money
4 in the backseat of the car right after the robbery.

5 And let's talk about this. Okay. The defendant
6 later says, we did a lick. Well, Ashley tells you what lick
7 means. Lick means it's an armed robbery. And who does he
8 say we got? We will Zell. Ronzell tells you his nickname
9 is Zell. They are doing exactly what you would expect
10 individuals who committed a robbery to have done. They are
11 splitting the money and they are bragging about it.

12 The defendant asked TA, how much did I give you?
13 He splits the money equally. TA tells him, \$320. Well,
14 that's a heck of a coincidence if they didn't get it from
15 Ronzell, because Ronzell had \$635. It was split just about
16 equally.

17 Defendant and TA were each armed when they robbed
18 Ronzell. If you believe Ronzell's testimony, that's enough.
19 We don't -- you don't need a gun. If you believe what
20 Ronzell told you, that they both put guns up to his head,
21 you can find him guilty of armed robbery. You should find
22 him guilty of armed robbery. But to corroborate what
23 Ronzell said, guess what happened? When they were both
24 arrested, David and the defendant, guns were found by both
25 of them. That let's you know that Ronzell's telling the

1 truth. He was robbed. He was robbed at gunpoint.

2 Now, it's true that they didn't find any DNA or any
3 fingerprint on the gun, but let's look at that. How do you
4 know that that's his gun? Let's look at his post-arrest
5 time. What happened to the defendant after he was arrested?
6 And, by the way, he was arrested on May the 31st. The crime
7 happened on May the 25th, that's six days. It's not 10
8 days. It's not a big deal, but almost six days later.

9 May 31st, at 5:30, the police rest him at
10 Applebee Way. 11:53, the first call he makes from the jail,
11 -4945, and he talks to a person named Barry, and he tells
12 Barry: I need you to get something for me, I need you to
13 get it, it's in the basket. What number does he call? You
14 can hear it on there; he calls -4945. The police come
15 that same night at 12:11 and recover a gun.

16 We are going to go through the jail recordings.
17 And I'm going to let you listen to it. And you hear for
18 yourself what you think he's saying. Keep in mind, this is
19 the very first call that that man made after he was
20 arrested.

21 (Whereupon, audio is played.)

22 MR. OSBORNE: The basket, as soon as you walk up to
23 the top of the steps, the one that's right there, you know
24 the one? We know what basket he's talking about. It's the
25 same basket where he was arrested at. There's the basket.

1 (Whereupon, audio is played.)

2 MR. OSBORNE: You can hear it in his voice. This
3 ain't just any gun he's trying to get rid of. This is
4 evidence of a crime. He needs to get rid of that gun and
5 needs to get rid of it fast. Ladies and gentlemen, this is
6 not a robbery. This is an armed robbery.

7 Now I'm going to take a minute before you go up and
8 start deliberating, I want to address some of the concerns
9 you may have. I'm going to try to guess because this is the
10 last opportunity I am going to talk to you. But I'm also
11 going to bring up what the defense brought up.

12 The defense's case, in all honesty, revolves around
13 Brandon Nelson. So let's talk about Brandon for a second.
14 Brandon -- remember what TA told Brandon: You a snitch; you
15 a snitch. Well, Brandon made sure yesterday that in
16 Ardmore, they can't call him a snitch no more. According to
17 Brandon's testimony yesterday, there's a code against
18 snitching. Well, he said there's no code against snitching,
19 I don't know what you are talking about, never heard of
20 that. But, yet, Investigator Watson told you that when he
21 spoke, I was sitting right there, that he said over and over
22 again there's a code against snitching. In fact, when
23 Ronzell snitched, he broke that code.

24 Brandon also said that TA and the defendant weren't
25 in the yard; never saw them. But yet, when Detective

1 Williams spoke to Brandon, he said that TA was sitting right
2 there by the side of the house. When he came around the
3 corner, TA started calling him a snitch, you a snitch,
4 grabbed him by the arm, tried to tug him.

5 And if you want to believe -- if you are having an
6 issue who to believe, Brandon or detective, look at the
7 photographic lineup. He circled it. He signed it. He
8 identified TA.

9 Then let's talk about this letter for a second,
10 this letter that you've never seen. Allegedly, there's this
11 letter that he wrote where he says the defendant didn't do
12 it. All right. Investigator Watson asked him, point blank,
13 well, did you write the letter? I don't know; maybe I wrote
14 it, maybe I didn't write it. When read, like Investigator
15 Watson told you, when read part of the letter, yes, I wrote
16 that part.

17 What about the second part?

18 No, I didn't write that.

19 His testimony, quite simply, is not believable.
20 It's not credible. And I will just suggest to you this,
21 look at what he was wearing. Look at where he's laying down
22 his head. He's got nothing to lose by coming in here and
23 lying to you.

24 Now, in the opening, the defense talked about
25 misidentification. He said this was a misidentification

1 case. Didn't mention that here, but he did in opening.
2 Misidentification means that you pick out the wrong guy.
3 Well, it can't be that, because Ronzell knows the defendant.
4 Ashley Green knows the defendant. It's not a
5 misidentification. If he's innocent, then they are framing
6 him. That's a conspiracy.

7 I want to talk about just a couple quick things
8 here. You might be wondering -- I just call this a CSI
9 effect. You watch CSI, expect to see fingerprints, DNA on
10 everything. I think he even mentioned that. Detective
11 Stanley told you that this is the crime scene over here on
12 the left. Don't expect to get fingerprints off of trees,
13 off side of the house or anything like that. It's not like
14 the TV.

15 The gun, it's true the DNA came back inconclusive.
16 But what Mr. Gailliard didn't mention is that every single
17 loci in which there was enough DNA to formulate a substance,
18 it came back matching the defendant. Where there wasn't,
19 well, of course, you can't match. But where there was in
20 every single point, it matched. And I'm going to tell you
21 this about crime scene stuff. There's no law anywhere that
22 says that you have to have physical crime scene evidence to
23 convict.

24 And just briefly, in case you were wondering about
25 all these other witnesses that came up here talking about

1 chain of custody and all that, I know that's probably very
2 boring, there's laws that you have to jump through certain
3 hurdles in order for me to tell you about certain evidence.
4 So it may seem kind of boring, but we had to go through all
5 of that.

6 Now, in case you are wondering about David Capers,
7 where is he, why isn't he on trial? Well, that's an easy
8 one. We are not here for David. Focus on Benjamin. Don't
9 get distracted by David. If you think, there's a lot of
10 evidence against David, I think he did it, but I'm not sure
11 about him, the judge is going to instruct you on the hand of
12 one is the hand of all. And what it says, quite simply, is
13 if a crime is committed by two or more people who are acting
14 together in committing a crime, the act of one is the act of
15 all. If they are acting together, they are both guilty.

16 The judge is going to talk to you about the law,
17 but I am going to talk to you about the elements. He
18 mentioned the elements, so let's go through the elements of
19 the law and how you know that the facts meet or have been
20 met by each element.

21 Defendant took property from another. Well, the
22 defendant and TA took \$635, a cell phone, and clothing from
23 the victim, within the person's control. The money was in
24 Ronzell's pocket. Carried the property away intending to
25 permanently deprive him. They were splitting the money.

1 They weren't planning on giving it back to Ronzell. And
2 taking away with violence. He was pushed against the house,
3 armed with a deadly weapon. A gun is a deadly weapon. They
4 both had guns.

5 Possession of a weapon during the commission of a
6 violent crime, defendant was in possession of a weapon. A
7 gun is a weapon. While committing a violent crime, armed
8 robbery is a violent crime.

9 Armed robbery is the verdict that carries today. I
10 think if he's guilty of armed robbery, he's also guilty of
11 this, but armed robbery is the one that carries today.

12 When you go back there, you are going to be
13 presented with some options. Let's just talk about armed
14 robbery. You can find him guilty of armed robbery. You can
15 find him guilty of robbery. Or you can find him not guilty.
16 You could find him guilty of robbery, but don't. This is
17 not a robbery. This is an armed robbery. This is a real
18 gun.

19 Now, when I look at this picture right here, I'm
20 thinking to myself, well, I've got a pretty good idea who
21 that president is that's blacked out, can narrow it down to
22 one or two. And I think this is a good illustration of
23 reasonable doubt. While I can't -- while I'm not 100
24 percent sure of all of the pieces to the puzzle, I know what
25 the picture is, and the picture is in Mount Rushmore. The

1 picture in this case is he's guilty.

2 Reasonable doubt. The judge is going to instruct
3 you on this. But, basically, it means proof that leaves you
4 firmly convinced of the defendant's guilt. We don't have to
5 overcome every possibility. Doesn't mean absolute
6 certainty. I would submit to you this, if you believe that
7 this is a grand conspiracy and you believe that all of the
8 witnesses and all of the police and everybody had gotten
9 together to conspire against this man, then you should let
10 him go.

11 This is no grand conspiracy. This is an armed
12 robbery. Okay? On May the 25th, 2011, this defendant,
13 along with David Capers, made a decision, and that decision
14 was based on greed, and decisions have consequences.

15 In closing, I will just leave you this. We're
16 seeking justice. The decision that he made had
17 consequences. And those consequences have come to bear
18 today. The police did their duty by investigating that
19 case. Ronzell did his duty by coming in here and telling
20 you what happened. And there will be consequences for him.
21 He will be stuck on the streets of Ardmore labeled a snitch.
22 And we are asking you to do your duty, find the defendant
23 guilty, guilty of armed robbery, guilty of possession of a
24 firearm during the commission of a violent crime.

25 Thank you.

1 THE COURT: Ladies and gentlemen, why don't you
2 stand up and get your blood circulating a little bit. Go
3 ahead and stretch before we begin instruction. You can sit
4 down when you are ready.

5 During this trial, ladies and gentlemen, you and I
6 have certain duties to perform. As the trial judge, it is
7 my responsibility to preside over the trial of this case.
8 And I also have the duty to rule upon or pass upon the
9 admissibility of evidence which has been offered during this
10 trial. You are to consider only the competent evidence that
11 is before you. And you are to disregard and disabuse from
12 your mind any testimony that has been ordered stricken from
13 the records or any instruction to disregard any testimony
14 given to you during the progress of this trial, if there has
15 been any. You are to consider only the testimony which has
16 been presented from the witness stand, together with any
17 exhibits which have been made a part of the record in this
18 case.

19 I have the additional duty to charge or instruct
20 you on the law applicable to this case. As the presiding
21 judge, I'm the sole judge of the law of this case. And it's
22 your duty as jurors to accept and apply the law as I now
23 state it to you. If you have a preconceived idea as to what
24 the law is or what the law ought to be in a case, or in this
25 case, and it should not agree with what I now tell you the

1 law is, you are obligated under the oath which you have
2 taken to abandon this preconception on your part, because
3 you are sworn to accept the law and apply the law precisely
4 as I now state it to you.

5 In every case tried in this court before a jury,
6 the jury becomes the sole and exclusive judges of the facts.
7 You, the jury, are the judges of the facts in this case.
8 This Court is the judge of the law. The constitution of our
9 state has declared that a trial judge should not intimate,
10 state, comment upon, or make any statement to a trial jury
11 about the facts in a case. Since you, the jury, are the
12 sole judges of the facts in this case, you are not to infer
13 anything from what I have said during the progress of this
14 trial in ruling upon the admissibility of evidence or
15 otherwise, or anything that I now say to you during the
16 course of this instruction that I have any opinion about the
17 facts. The law does not allow me to have an opinion about
18 the facts. This is a matter solely for you, the jury, to
19 determine.

20 As jurors then, it is your duty, as I have
21 instructed you, to determine the effect, the value, the
22 weight, and the truth of the evidence presented during this
23 trial. Necessarily, you must assess the credibility of
24 witnesses who have testified. Credibility is simply a
25 legalistic term meaning believability. It becomes your duty

1 as jurors to analyze and to evaluate the evidence and
2 determine that evidence which convinces you of its truth.

3 Some of the things you may consider as you decide
4 whether or not to believe a witness's testimony about a
5 particular matter include: What was the manner and
6 appearance of the witness who testified? Was he or she
7 straight-forward or hesitant in answering? Was the
8 testimony of a witness consistent or inconsistent? How did
9 the witness come to know the facts that he or she testified
10 to, or what was his or her ability to know these facts? Is
11 there some reason a witness would want to give testimony
12 which would help or hurt one side or the other? In other
13 words, was the witness biased or prejudiced? And was the
14 testimony of a witness strengthened or weakened by other
15 testimony or evidence?

16 You can believe as much or as little of each
17 witness's testimony as you think proper. I further instruct
18 you that in determining the question of the credibility or
19 believability of witnesses who have testified, you may
20 believe one witness as against several witnesses, or several
21 witnesses as against one witness. You may believe a part of
22 attempt of a witness and reject the remaining part of that
23 witnesses' testimony. If you have a good and sound reason,
24 you may believe the testimony of a witness in its entirety
25 or reject the testimony of a witness in its entirety. You

1 may consider the demeanor of a witness, that is, the manner
2 and appearance of the witness from the witness stand.

3 Again, as I've instructed, you can believe as much or as
4 little of each witnesses' testimony as you think proper.

5 Ladies and gentlemen, throughout this process you
6 have but one objective, to seek the truth regardless of its
7 source. I instruct you that a person who has a past
8 criminal record is competent to testify. A past record does
9 not affect the ability of that witness to testify. The past
10 record may only be considered by you, if at all, in
11 determining the witness's believability.

12 Remember, ladies and gentlemen, you are the sole
13 judges of the facts in this case, and of the believability
14 of any and all witnesses. It is, therefore, within your
15 discretion to give the weight, value, and effect you deem
16 appropriate to any testimony.

17 Our rules of evidence ordinarily do not permit
18 witnesses to testify to opinions or conclusions. An
19 exception to this rule exists for witnesses we call expert
20 witnesses. A witness who, by their education, training, and
21 experience has become an expert in some art, science,
22 profession, or calling may state an opinion as to relevant
23 and material matters in a case, or in which the witness
24 claims to be an expert, and may also state the reasons given
25 for that opinion. You should consider any expert opinion

1 received in evidence in this case like any other evidence.
2 Give it the weight you think it deserves. If you decide
3 that the opinion of an expert witness is not based on
4 sufficient education, training and experience, or if you
5 conclude that the reasons given in support of the opinion
6 are not sound or that the opinion is outweighed by other
7 evidence, you may disregard the opinion entirely.

8 An expert witness's testimony is to be given no
9 greater weight than that of other witnesses simply because
10 the witness is an expert. Further, you are not required to
11 accept an expert's opinion even though it is not
12 contradicted.

13 Ladies and gentlemen, I instruct you and I
14 emphasize that the fact that the defendant did not testify
15 is not a factor to be considered by you in any manner
16 whatsoever in your deliberations and in your consideration
17 on the question of the guilt or innocence of the defendant.
18 It must not be considered by you in any manner whatsoever.

19 A defendant has the constitutional right to remain
20 silent. And the assertion of this right must not be
21 considered by you in your deliberative process and in your
22 deliberations in any manner whatsoever. I repeat, ladies
23 and gentlemen, under your oath, you are to draw no
24 conclusion whatsoever from the fact that the defendant in
25 this case did not testify. The fact that this defendant did

1 not testify should not be discussed in any manner whatsoever
2 in the jury room. The burden of proof, as I have stated, is
3 on the State. The State -- the defendant is not required to
4 prove his innocence. The burden of proof remains on the
5 State to prove guilt beyond a reasonable doubt.

6 Ladies and gentlemen, there are two types of
7 evidence which are generally presented during a trial,
8 direct evidence and circumstantial evidence. Direct
9 evidence is the testimony of a person who asserts or claims
10 to have actual knowledge of a fact, such as an eyewitness.
11 Circumstantial evidence is proof of a chain of facts and
12 circumstances indicating the existence of a fact.

13 The law makes absolutely no distinction between the
14 weight or value to be given to either direct or
15 circumstantial evidence, nor is a greater degree of
16 certainty required for circumstantial evidence than of
17 direct evidence. You should weigh all of the evidence in
18 this case.

19 After weighing all of the evidence, if you are not
20 convinced of the guilt of the defendant beyond a reasonable
21 doubt, you must find the defendant not guilty. Conversely,
22 if you are convinced of the guilt of the defendant beyond a
23 reasonable doubt, then you must find him guilty.

24 I instruct you, the fact that the defendant was
25 arrested, charged and indicted is not evidence in this case

1 and that cannot be considered by you as evidence of guilt in
2 this case, nor does it create any presumption or inference
3 of guilt. This documentation is simply the formal written
4 instrument or instruments which contain the charge or
5 charges made against the defendant. They simply serve as
6 the formal documentation by which the case is processed or
7 brought into this court.

8 The defendant has pled not guilty to the
9 indictments. And that plea casts the burden on the State to
10 prove the defendant guilty, because a person charged with
11 committing a criminal offense in South Carolina is never
12 required to prove himself innocent. I instruct you,
13 Mr. Foreman, ladies and gentlemen of the jury, that it is a
14 cardinal and important rule of the law of evidence that the
15 defendant in a criminal trial, no matter what the
16 seriousness of the charge or charges made against him may
17 be, will always be presumed to be innocent of that crime for
18 which he is indicted unless his guilt has been proven by
19 evidence satisfying you of that guilt beyond a reasonable
20 doubt. This presumptions of innocence does not cease when
21 you retire to deliberate, but it accompanies the defendant
22 from the time of his appearance throughout the trial until
23 you reach a verdict in this case.

24 Our Supreme Court has said that the presumption of
25 innocence is like a robe of righteousness placed about the

1 shoulders of the defendant. And it remains with him and
2 assigns him to that class of innocent until that presumptive
3 robe of righteousness has been stripped from his person by
4 evidence satisfying you of that guilt beyond a reasonable
5 doubt.

6 The presumption of innocence is not mere legal
7 theory. It is not just a legal phrase. It is a substantial
8 right to which every defendant is entitled unless you, the
9 jury, are satisfied from the evidence of his guilt beyond a
10 reasonable doubt.

11 The State has the burden of proving the defendant
12 guilty beyond a reasonable doubt. Some of you may have
13 served as jurors in civil cases where you were told that it
14 is only necessary to prove that a fact is more likely true
15 than not true, such as by the greater weight or
16 preponderance of the evidence. In criminal cases, the
17 State's proof must be more powerful than that. It must be
18 beyond a reasonable doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's guilt. There
21 are very few things in this world that we know with absolute
22 certainty. And in criminal cases, the law does not require
23 proof that overcomes every possible doubt. If based on your
24 consideration of the evidence, you are firmly convinced that
25 the defendant is guilty of the crime charged, you must find

1 the defendant guilty.

2 If, on the other hand, you think there's a real
3 possibility that the defendant is not guilty, you must give
4 the defendant the benefit of that doubt and find him not
5 guilty.

6 The defendant is charged with armed robbery. In
7 order to prove this offense, the State must first prove
8 beyond a reasonable doubt that the defendant took personal
9 property from the person or presence of another person.
10 Property is in the presence of a person if it is within the
11 person's reach, inspection, observation, or control, so that
12 the person could, if not overcome with violence or prevented
13 by fear, keep possession of property. The State must also
14 prove beyond a reasonable doubt that the defendant carried
15 the property away intending to permanently deprive the owner
16 of the property and to keep the property for the defendant's
17 own use. The slightest removal of the property or the
18 complete possession of property, even for an instant, by the
19 defendant, is sufficient to show a taking and carrying away
20 of the property. The taking and carrying away of the
21 property must be done by violence or by putting the owner of
22 the property in fear of violence.

23 Finally, the State must prove beyond a reasonable
24 doubt that the defendant was armed with a deadly weapon or
25 that the defendant, either by action or words, used a

1 representation of a deadly weapon or object during the
2 robbery.

3 A deadly weapon is any article, instrument, or
4 substance which is likely to cause death or great bodily
5 harm. Whether an instrument has been used as a deadly
6 weapon depends on the facts and circumstances of each case.
7 The following are examples of instruments which may be used
8 as deadly weapons: A pistol, a shotgun, a rifle, a dirk, a
9 dagger, a knife, a sling shot, metal knuckles, a razor,
10 gasoline, a fire balm or Molotov cocktail and lighter fluid.
11 A gun may be a deadly weapon even if it is not operating.

12 I instruct you, ladies and gentlemen, that these
13 are simply evidentiary facts to be considered by you along
14 with the other evidence in the case. And it is for you, the
15 jury, to give it the effect, value and weight you decide it
16 should receive.

17 In summary, the State may prove armed robbery by
18 establishing the commission of a robbery, and either of
19 these two additional elements, that the robber was armed
20 with a deadly weapon or that the robber alleged that he or
21 she was armed with a deadly weapon either by action or words
22 while using a representation of a deadly weapon or any
23 object which a person present during the commission of the
24 robbery reasonably believed to be a deadly weapon.

25 I instruct you, ladies and gentlemen, that if you

1 find the State has failed to prove that the defendant was
2 armed with a deadly weapon or representation of a deadly
3 weapon or object, you may then consider whether the State
4 has proven beyond a reasonable doubt that the defendant
5 committed robbery.

6 Included within the offense of armed robbery is the
7 lesser offense of robbery. In order to prove robbery, the
8 State must prove beyond a reasonable doubt all of the
9 elements that I have just explained to you except that the
10 defendant was armed with a deadly weapon or a representation
11 of a deadly weapon or object.

12 In order to prove robbery, the State must prove
13 beyond a reasonable doubt that the defendant took the
14 personal property from the person or presence of another
15 person without that person's consent and carried it away.

16 Property is in the presence of a person if it is
17 within the person's reach, inspection, observation, or
18 control, so that the person could, if not overcome with
19 violence or prevented by fear, retain possession of the
20 property.

21 The State must show that the defendant carried the
22 property away with the intent to permanently deprive the
23 owner of the property and to convert the property to the
24 defendant's own use. The slightest removal of the property
25 or the complete possession of property even for an instant

1 by the defendant is sufficient to show a taking and carrying
2 away of the property. The taking and carrying away of the
3 property must have been done by violence or by putting the
4 owner of the property in fear of violence.

5 Ladies and gentlemen, I instruct you that if a
6 crime is committed by two or more people who are acting
7 together in committing a crime, the act of one is the act of
8 all. A person who joins with another to commit an unlawful
9 act is criminally responsible for everything done by the
10 other person which happens as a probable or natural
11 consequences of the acts done in carrying out the common
12 plan and purpose. For example, two people can be guilty of
13 killing another person when only one of the two had a gun,
14 there was only one bullet, and only one of the two fired the
15 shot that caused the death. If two or more people are
16 together, acting together, assisting each other in
17 committing the offense, the act of one is the act of all, or
18 as it is sometimes said, the hand of one is the hand of all.

19 Prior knowledge that a crime is going to be
20 committed without more is not sufficient to make a person
21 guilty of that crime. Mere knowledge that another person is
22 going to commit a crime, even if the defendant is present
23 when the crime is committed, is not sufficient to convict
24 the defendant as a principal. Guilt as a principal is shown
25 by actual or constructive presence at the scene as a result

1 of prior arrangement; therefore, a finding of a prior
2 arranged plan or common scheme is necessary for a finding of
3 guilt as a principal. The State must prove beyond a
4 reasonable doubt by competent evidence the theory of the
5 hand of one is the hand of all.

6 A principal in the crime is one who either actually
7 commits the crime or who is present aiding, abetting, or
8 assisting in committing the crime. When a person does an
9 act in the presence of and with the assistance of another,
10 the act is done by both. Where two or more acting with a
11 common plan or intent are present at the commission of a
12 crime, it does not matter who actually commits the crime.
13 All are guilty. The hand of one is the hand of all.

14 Present at the commission of a crime means to be
15 sufficiently near to aid and abet and assist in the
16 commission of a crime. However, mere presence at the scene
17 of the crime is not sufficient to convict one as a principal
18 on the theory of aiding and abetting.

19 Intent is also a necessary element, for there must
20 have been a common design or intent to commit the crime.
21 And the crime must have been committed pursuant thereto,
22 with the person aiding and abetting by some overt act.

23 Intent means intending the result which actually
24 occurs, not accidentally or involuntarily. Intent may be
25 shown by acts and conduct of the defendant and other

1 circumstances from which you may naturally and reasonably
2 infer intent. The State must prove these elements beyond a
3 reasonable doubt.

4 The defendant is also charged with possession of a
5 weapon during the commission -- possession of a firearm
6 during the commission of a violent crime. The State must
7 prove beyond a reasonable doubt that the defendant was in
8 possession of a firearm or visibly displayed what appeared
9 to be a firearm during the commission of a violent crime. A
10 firearm means any machine gun, automatic rifle, revolver,
11 pistol, or any weapon which will -- is designed to or may be
12 readily converted to expel a projectile.

13 In order to find the defendant guilty of possession
14 of a firearm during the commission of a violent crime, you
15 must first find the defendant guilty of either committing a
16 violent crime or attempting to commit a violent crime. I
17 further instruct you that armed robbery is a violent crime
18 as defined by Code Section 16-160 of the South Carolina Code
19 of Laws as amended.

20 Ladies and gentlemen, the indictments in this case
21 allege several different offenses against the defendant.
22 The charges are 2011-GS-10-5647, armed robbery, and
23 2011-GS-10-5648, possession of a firearm during the
24 commission of a violent crime. Each indictment charges a
25 separate and distinct offense. You must decide each

1 indictment separately on the evidence and law applicable to
2 it, uninfluenced by your decision as to any other
3 indictment.

4 The defendant may be convicted or acquitted on any
5 or all of the offenses charged. You will be asked to write
6 a separate verdict of guilty or not guilty for each of the
7 indictments.

8 Ladies and gentlemen, there are several potential
9 verdicts in this case. You don't have to try to write it
10 down because these forms go into the jury room with you.
11 And they are as follows, and there's no significance
12 whatsoever to the order in which I state these potential
13 verdicts, it is simply that one must be stated first: As to
14 indictment 2011-5647, which is armed robbery, we, the jury,
15 by unanimous consent, find the defendant guilty of armed
16 robbery; or as to the lesser-included offense, guilty of
17 robbery; or not guilty.

18 And as to Indictment 2011-5648, possession of a
19 firearm during the commission of a violent crime, we, the
20 jury, by unanimous consent, find the defendant guilty of
21 possession of a firearm during the commission of a violent
22 crime; or not guilty. Again, there's no significance
23 whatsoever to the order in which I state these potential
24 verdicts. It is simply that one must be stated first.

25 Ladies and gentlemen, in order to reach a verdict

1 in this case, your decision must be unanimous, which means
2 that all twelve of you must agree in order to reach a
3 verdict.

4 Mr. Foreman, once the jury has reached a verdict,
5 it will be your responsibility to fill out the verdict
6 forms, to sign and date the forms, and also knock on the
7 door and advise the bailiffs that the jury has reached a
8 unanimous verdict. Also, if the jury has any questions
9 during deliberations, it will be your responsibility to
10 write those questions out and follow the same procedure by
11 signing and dating and advising the bailiffs that the jury
12 has a question, and provide that to him in written form,
13 which in turn he will provide to the Court.

14 Ladies and gentlemen, I need to advise you that if
15 you have any questions during deliberations, please know
16 there will be a delay in our response. That is because we
17 have to follow a procedure in answering your questions. So
18 know if you have a question, there will be a delay, but
19 that's because we are following that process. It's not that
20 we are ignoring you.

21 Again, ladies and gentlemen, your verdict must be
22 unanimous, which means that all 12 of you must agree in
23 order to reach a verdict. I'm going to ask now that you
24 return to your jury room, but please do not yet begin your
25 deliberations. I have a brief matter of law to take up with

1 the attorneys that may require further instruction or
2 clarification of an instruction. However, if there's no
3 further instruction, we will send in your notebooks and the
4 evidence, and we will dismiss the alternate at that time,
5 and you will be allowed to begin your deliberations.

6 If you again would leave your -- actually, go ahead
7 and put them on the banister for us and pile those up as you
8 leave. And please do not yet begin your deliberations until
9 we indicate for you to do so.

10 (Whereupon, the jury leaves open court at 12:16
11 p.m.)

12 THE COURT: Are there any exceptions from the
13 State?

14 MR. OSBORNE: None, Your Honor.

15 THE COURT: From the defense?

16 MR. GAILLIARD: None, Your Honor.

17 THE COURT: Okay. If y'all could go through the
18 evidence one more time for me, out of abundance of caution.
19 Make sure everything is there so the bailiffs can take it
20 back.

21 (Whereupon, the jury begins deliberations at 12:20
22 p.m.)

23 THE COURT: The record should reflect that the
24 alternate was excused at 12:20 and the jury began their
25 deliberations and 12:20.

1 (Recess is taken.)

2 THE COURT: Back on the record on Benjamin Smalls
3 2011-GS-10 5647 and 5648. We received a note from the jury:
4 Your Honor, the jury would like to hear the jail recording,
5 State's Exhibit 16, concerning the phone call from the
6 defendant on 5/31/2011, signed by the foreperson.

7 It will be marked as a Court's exhibit. Based on
8 my experience, there's special software that has to be used
9 to play those calls. We have a laptop in the jury room,
10 but, apparently, the software that's on the disk will not
11 activate on that laptop. So what I'm going to do is have
12 the State's laptop, which has the program on it, is able to
13 play it, taken back. But a bailiff will be -- they are
14 going to show Sam how to do it. He's going to show the
15 bailiff how to do it, or either one or both of them can be
16 in there to use it. But that is to ensure that they have no
17 access to anything else that is on the State's laptop, and
18 that the only reason it's being used for is to play those
19 recordings. And they will be instructed that there's no
20 deliberation while they are playing the recordings or while
21 the bailiff and the deputy clerk are in there with them.
22 And then the bailiff and the deputy clerk will follow their
23 instructions and basically play it as many times or at least
24 times they want it played. And then the laptop will be
25 removed from the jury room. And then we will just take

1 further instructions from the jury.

2 Is there any exception in proceeding in that way
3 from the State?

4 MR. OSBORNE: None, Your Honor.

5 THE COURT: From the defense?

6 MR. GAILLIARD: None, Your Honor.

7 THE COURT: All right. We will be at ease until
8 they give us further instructions.

9 (Court's Exh. 1, Jury note requesting to hear
10 State's Exh. 16, CD, was marked for identification.)

11 THE COURT: State ready to proceed?

12 MR. OSBORNE: Yes, Your Honor..

13 THE COURT: Defense ready to proceed?

14 MR. GAILLIARD: Yes, Your Honor.

15 THE COURT: Please bring in the jury.

16 (Whereupon, the jury returns to open court at 2:28
17 p.m.)

18 THE COURT: Mr. Foreman, is it correct that the
19 jury has reached a verdict?

20 THE FOREPERSON: Yes, we have, Your Honor.

21 THE COURT: If you would give the verdict forms to
22 the bailiff for me, please.

23 Mr. Clerk, publish the verdict. Sir, if you would
24 stand for publication of the verdict.

25 THE CLERK: Case No. 2011-GS-10-5647, State of

1 South Carolina vs. Benjamin Lavon Smalls, indictment for
2 armed robbery. The verdict of the jury is the defendant is
3 guilty of armed robbery, signed Joshua Cantwell, foreperson
4 of the jury, dated July 9th, 2014.

5 Case No. 2011-GS-10-5648, case of South Carolina
6 vs. Benjamin Lavon Smalls, indictment for possession of a
7 firearm during the commission of a violent crime, the
8 verdict of the jury is guilty, signed Joshua Cantwell,
9 foreperson of the jury, dated July 9th, 2014.

10 Mr. Foreperson, ladies and gentlemen of the jury,
11 if this is your verdict, please raise your right hand.

12 (Whereupon, all jurors raise their hand.)

13 THE CLERK: Thank you, Your Honor.

14 THE COURT: Is there any request to poll the jury
15 from the State?

16 MR. OSBORNE: No, Your Honor.

17 THE COURT: From the defense?

18 MR. GAILLIARD: No, Your Honor, everyone has
19 already indicated their consent to the verdict.

20 THE COURT: You may take your seat.

21 Mr. Foreman, ladies and gentlemen, we thank you for
22 your time and your attention to this case. I know that jury
23 service is really thankless, but it serves such a very
24 useful purpose. Our system is the only kind like this in
25 the world. It's the only system where 12 citizens hear a

1 case, determine the facts, apply the law to those facts, and
2 render verdicts.

3 Just so that you know, South Carolina has one of
4 the largest case filings per capita in the nation per judge
5 at 5,000 case filings per judge. As you can imagine, we are
6 very busy. Charleston, along with Greenville and probably
7 Richland County, which is Columbia, run about neck and neck
8 with the highest numbers of cases disposed of and filed per
9 year, probably because among the State. We probably have
10 the largest population per capita in the state. But we have
11 49 circuit judges whose job it is to rotate throughout the
12 state and hear cases. And we hear both civil and criminal
13 cases, as well as things we hear in our appellate capacity
14 over the probate courts, zoning boards, and other things
15 like that. We used to hear workers' compensation, but the
16 law has changed. And so we are sort of dwindling down to
17 the end of hearing workers' compensation appeals, and also
18 nonjury matters that we hear. We hear nonjury trials as
19 well as motions.

20 Even with that caseload, we still dispose of cases
21 more quickly than most states, at an average of 18 months,
22 where most states who have much more resources than we do
23 take sometimes four to five years, especially in states
24 where they don't have a specialized family court. We are so
25 fortunate in South Carolina to have a separate family court,

1 because in most states, domestic relations are heard in this
2 court. And it could take five years sometimes to get a
3 divorce, and oftentimes have a jury trial for your equitable
4 distribution, which is a whole other interesting antidotal
5 point.

6 But I give you that information just so that you
7 can know how very valuable you are to us. We could not --
8 generally, we have four trial courts operating a week. That
9 is just how very busy we are. And although we hear some
10 things in the nonjury capacity, we could not dispose of
11 cases without you all being willing to serve as jurors in
12 cases. It helps us dispose of the bulk of what we must do
13 on a daily basis.

14 You are welcome to discuss this case if you would
15 like. Oftentimes, lawyers will contact you to get feedback
16 on how they performed in a trial. That's why we call it the
17 practice of law, because they often want to find out how
18 they did. And oftentimes, they just need the common sense
19 of lay people and their perception of the facts of a case to
20 help them become better at what they do.

21 So if someone should contact you, feel free to
22 discuss the case if you would like. Please don't do it
23 until after Friday when the entire panel is dismissed. But
24 if someone should speak with you and you don't wish them to,
25 please contact the clerk's office so we can take the

1 appropriate action to protect your privacy.

2 If you need a work excuse, you can get that today
3 on the first floor on the Circuit Court side of the
4 courthouse. Any of the deputy clerks at any of those
5 windows can give you a work excuse; otherwise, we will mail
6 those to you along with your checks.

7 You are welcome to stay for sentencing if you would
8 like. If not, you are certainly welcome to be excused. If
9 y'all could get the sentencing sheets for me, please. And I
10 also will hear post-trial motions momentarily.

11 You are excused with the Court's profound thanks.

12 (Whereupon, the jury leaves open court at 2:34
13 p.m.)

14 (Whereupon, recess transpired.)

15 THE COURT: Is there any post-trial motions,
16 Mr. Gailliard?

17 MR. GAILLIARD: None, Your Honor.

18 THE COURT: Be glad to hear from the State.

19 MR. OSBORNE: Thank you, Your Honor. I'm not going
20 to go through the facts again, but I would like to just make
21 two points for your consideration when you are handing down
22 the sentence. I think one thing that kept coming up
23 throughout this trial has been this culture of no snitch.
24 And I think that a lot of that is due to a community that
25 feels that this system in a lot of ways just wouldn't care

1 so much if a crime were to have been committed in that area.
2 I truly feel that this sentence and this verdict will
3 resonate in that community, in the Ardmore community.

4 And most of the people in that community aren't
5 bad. I know I said during trial that it is a rough
6 neighborhood, and it is. But through my experience, most of
7 the people that live there aren't bad people. In a lot of
8 robberies that we end up working, the victims are
9 questionable people, and they were doing questionable things
10 that led to them getting robbed. That wasn't the case here.
11 Ronzell was literally hanging out with his friends in the
12 backyard playing the Xbox and cards. He even said that he
13 had never had any problems there before.

14 When you look at pictures, it didn't really look
15 like a picture of a place you might want to hang out, but
16 for them, it was a sanctuary. When he came over there with
17 his friend with that gun, I think that tore that down for
18 them.

19 Thank you, Your Honor.

20 THE COURT: You're welcome.

21 Mr. Gailliard, be glad to hear from you.

22 MR. GAILLIARD: Your Honor, I don't have a
23 post-trial motion, but the defendant wishes to say something
24 to the Court.

25 THE COURT: Sure. Yes, sir. Be glad to hear from

1 you.

2 THE DEFENDANT: Can I have a PCR?

3 THE COURT: No, sir, not at this point. You can
4 file a PCR at some later time, but certainly this would not
5 be the appropriate time for the Court to hear
6 post-conviction relief. You have to follow the procedures.
7 You can file an appeal, if you would like. You just need to
8 let Mr. Gailliard know that. And he will file the
9 appropriate documents and they will be forwarded to Indigent
10 Defense for the purpose of affecting your appeal.

11 THE COURT: All right. Sir, is there anything else
12 you want to state for the record?

13 THE DEFENDANT: Excuse me. To file an appeal, you
14 mean do it now?

15 THE COURT: No, sir. Mr. Gailliard knows what to
16 do. If you want to file an appeal, you need to let him know
17 that.

18 Okay. Mr. Gailliard, is there anything you would
19 like to say in reference to the sentencing?

20 MR. GAILLIARD: Yes, Your Honor. As you know, you
21 questioned the defendant and, apparently, this is his first
22 time in general sessions court.

23 THE COURT: You know, I meant to ask that. Does he
24 have any record?

25 MR. GAILLIARD: None, Your Honor.

1 THE COURT: So he has no record?

2 MR. GAILLIARD: No record.

3 MR. OSBORNE: He does have some convictions, Your
4 Honor.

5 THE COURT: For what?

6 MR. OSBORNE: In '07, he has a juvenile
7 adjudication. '09, he has a disturbing schools, possession
8 of marijuana, carrying --

9 THE COURT: All those are juvenile convictions,
10 right?

11 MR. OSBORNE: Carrying a concealed weapon.

12 THE COURT: All those are juvenile records?

13 MR. OSBORNE: I don't think so. It could be. I'm
14 not exactly sure.

15 THE COURT: Well, I need to know definitively.
16 Because at 21, he has no record in the eyes of the law if it
17 was juvenile. If it's criminal, that's different, because
18 then he has a prior record. How old is your client,
19 Mr. Gailliard?

20 MR. GAILLIARD: He's 23, Your Honor. We would just
21 like to ask the Court to consider the minimum 10 years in
22 this matter, as this is his first time in general sessions
23 court. He's fairly young. We ascertained that he dropped
24 out of school after 10th grade. Your Honor, I would just
25 ask the Court to consider minimum sentence.

1 And if the Court would be willing to hear from any
2 of his family members.

3 THE COURT: Sure.

4 MR. GAILLIARD: If they wish to say anything.

5 THE COURT: Is there anyone that wishes to speak on
6 behalf of the defendant?

7 MS. WILLIAMS: Yes, Your Honor.

8 THE COURT: Tell me your name, ma'am.

9 MS. WILLIAMS: My name is Flora Williams. I am
10 Benjamin Lavon Smalls's mother. I don't find that he should
11 be charged for a weapon that wasn't found on him. I mean,
12 the crime, I don't feel he even did what he did. Everybody
13 in the yard know about this armed robbery. Nobody -- all
14 these people in the yard, nobody saw him, Ronzel getting
15 robbed. I just don't understand how he could get robbed and
16 these people out there playing cards, haircuts, playing
17 games, yet nobody saw this robbery took place. My son
18 wasn't found with a gun or nothing on him. I just don't see
19 it. I just don't understand this.

20 THE COURT: Ma'am, is there anything else you would
21 like to share with the Court?

22 Are there any other family members that wish to
23 speak on his behalf, Mr. Gailliard?

24 MR. GAILLIARD: No, Your Honor, that's it.

25 THE COURT: Is there anything else that the defense

1 has in mitigation or for the Court to consider in
2 sentencing?

3 MR. GAILLIARD: No, Your Honor, that's it.

4 THE COURT: Is there anything further from the
5 State?

6 MR. OSBORNE: Your Honor, we have -- there is one
7 conviction I'm still trying to figure this out.

8 MR. VOIGT: It looks as though, Your Honor, it's a
9 possession of a firearm by a person under 21, that he
10 committed it when he was 18. On our rap sheet, it looks
11 like it's a felony conviction, a general sessions felony
12 conviction.

13 THE COURT: I'm sorry. I can't hear you.

14 MR. VOIGT: It is a general sessions felony
15 conviction. It's separate and distinct --

16 THE COURT: From his juvenile record?

17 MR. VOIGT: His juvenile adjudications were all
18 apparently misdemeanors. So it looks like he's already --

19 THE COURT: So the only conviction he has for the
20 purpose of this Court's consideration is possession of a
21 firearm by a person under 21 years of age?

22 MR. VOIGT: That's true.

23 THE COURT: What year was that?

24 MR. VOIGT: That was in -- I believe -- looks as
25 though the arrest was in 2008, Your Honor.

1 MR. GAILLIARD: Your Honor, that would have been a
2 juvenile matter, 2008. He's 23 now in 2014.

3 THE COURT: How old would he have been then?

4 MR. OSBORNE: He would have been 18.

5 MR. GAILLIARD: That can't be right.

6 THE COURT: Y'all go --

7 MR. VOIGT: It would be right because 17 is the
8 cutoff.

9 MR. GAILLIARD: Hold on. If he's 23 years old
10 today in 2014, what year did you say that 2008, six years
11 ago would be what?

12 MR. VOIGT: June 25th, 2008, is when he was
13 arrested. That's what the rap sheet indicates. My rap
14 sheet indicates a conviction for a felony. There's a
15 separate entrance -- there's a separate entry, rather,
16 indicating juvenile adjudication, and that indicates that
17 it's a misdemeanor.

18 THE COURT: Say that one more time.

19 MR. VOIGT: I'm sorry. For Mr. Gailliard's
20 purposes, I'm indicating to him that our rap sheet contains
21 a separate entry for the juvenile adjudication and that
22 indicates that it was a misdemeanor. It does not say what
23 it was for, but says it was a misdemeanor.

24 THE COURT: Is that referring to this gun
25 conviction?

1 MR. VOIGT: I don't believe it is because it
2 predates it by 15 months.

3 THE COURT: Okay. According to my simple math, he
4 would have been 17 in 2008. Is that accurate? So he would
5 have been charged as an adult with a gun under 21 at 17. He
6 wouldn't have been charged as a juvenile. It would have
7 been a general sessions charge.

8 Do you have any reason to contest that conviction,
9 Mr. Gailliard?

10 MR. GAILLIARD: Your Honor, I think we at least
11 need to be certain that that's what we are talking about,
12 because my understanding from the records that I got from
13 the solicitor, that he did not have a prior record. So I'm
14 kind of surprised it did come up today.

15 THE COURT: You want them to show you the NCIC so
16 you can see what they are referring to?

17 MR. GAILLIARD: I would.

18 THE COURT: If it helps you all for clarity, the
19 clerk's record reflects that he has a conviction for
20 possession of a firearm, and that a pointing and presenting
21 was nolle pros'd, and it was a general sessions conviction.

22 MR. GAILLIARD: Your Honor, does the Court's record
23 indicates that that was in 2007?

24 THE COURT: That indicates it was in 2008.

25 Right, Sam?

1 THE CLERK: Yes, Your Honor. I'm printing it off
2 right now. Violation date 6/25/2008; disposition date
3 4/8/2010. Sentencing was eight months. It looks like it
4 was suspended to eight months probation. Sentence says
5 eight months, but I could --

6 THE COURT: Was that time served?

7 THE CLERK: That may be possible, Your Honor. Do
8 you want me to pull the sentencing as well?

9 THE COURT: Says he pled guilty on 4/8/10 to
10 unlawful possession of a pistol. At that time, he received
11 eight months time served and he was to forfeit the pistol.
12 And he got credit for the eight months he served in jail at
13 the county detention center predisposition. He was
14 represented by Walter Bilbro at that time. And Dale Savage
15 was the solicitor. Do you want to see a copy of the
16 sentencing sheet? So it appears that's his only general
17 sessions conviction.

18 Is there anything further from the State regarding
19 sentencing of the defendant?

20 MR. OSBORNE: No, Your Honor.

21 MR. GAILLIARD: Nothing further on that issue, Your
22 Honor.

23 THE COURT: Just so the record is clear, he's been
24 convicted of armed robbery, which is classified as most
25 serious and violent. It's mandatory 10 years with a maximum

1 of 30 years, no portion of which can be suspended or
2 probation given. He's not eligible for parole until at
3 least seven years and any active sentence has been served.

4 And on possession of a firearm, it's a mandatory
5 five years, which cannot be suspended.

6 Is that correct from the State?

7 MR. OSBORNE: That's correct.

8 THE COURT: From the defense?

9 MR. GAILLIARD: Yes, Your Honor. Apparently,
10 there's no prohibition to the sentences running concurrent.

11 THE COURT: Actually, the possession of a firearm
12 used to be mandatory consecutive, but they changed it years
13 ago so that it can be run concurrent.

14 Sir, if you would stand for sentencing. Sir, on
15 the charge of possession of a firearm during the commission
16 of a violent crime, you are sentenced to five years in the
17 State Department of Corrections.

18 On the charge of armed robbery, you are sentenced
19 to 12 years in the State Department of Corrections. These
20 sentences are concurrent with one another. You will get
21 credit for any time that you served to be calculated and
22 applied by the Department of Corrections pursuant to
23 24-13-40. I've give mitigation for his youth and experience
24 and minimal record.

25 And while I would like to agree with you,

1 Mr. Osborne, that sentences have some deterrent effect,
2 after 18 years, I have found that it has none.
3 Unfortunately, true.

4 Thank you very much. Thank you so much for your
5 professionalism.

6 (Proceedings are concluded.)

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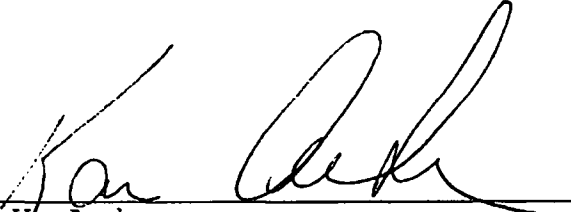
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 26th day of September, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

340
SAV20110603437

WITNESSES

Sylvester Williams
Charleston City Police Department

AGENCY CASE NUMBER

1108624

ARREST WARRANT NUMBER

M645024

DATE OF ARREST

May 31, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: ☒

SEP 12 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1005647

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

BENJAMIN LAVON SMALLS

DOB:

B/M

Indictment for

Armed Robbery

FILED

9/28/2011 9:34:56 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2011 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about May 25, 2011, in Charleston County, South Carolina, at Staffordshire Drive by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, BENJAMIN LAVON SMALLS, while acting in concert with others, did take and carry away goods and/or monies from the person or immediate presence of Ronzel Olds with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DALE SAVAGE

ASSISTANT SOLICITOR

342
SA 2011-0603437

WITNESSES

Sylvester Williams
Charleston City Police Department

AGENCY CASE NUMBER

1108624

ARREST WARRANT NUMBER

M645025

DATE OF ARREST

May 31, 2011

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date:

SEP 12 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1005648

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

BENJAMIN LAVON SMALLS

DOB:

B/M

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

FILED

9/28/2011 9:34:56 AM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2011 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about May 25, 2011, the Defendant, BENJAMIN LAVON SMALLS, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DALE SAVAGE
ASSISTANT SOLICITOR

344

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.Benjamin Lavon Smalls

AKA

Race BLACK Sex: M Age: 23DOB. SS#:Address W Pine StCity, State, Zip Lincolville, SC 29485-7170DL# SID# SC01828760*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2011GS1005647A/W#: M645024Date of Offense: 5/25/2011S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)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

Osborne, David LSC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 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. 2011-GS-10-5648
☒ 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 ☐ OrderedTotal \$ plus 20% fee \$

Payment Terms:

☐ Set by SCDPPPS

Recipient

*Fine.

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce Funding)	\$25	\$ <u>25.00</u>
§ 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 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Allison Helfmann
Karen Anderson

Presiding Judge

Judge Code. 2428Sentence Date: 7/9/14

RECEIVED

 days/hours Public Service Employment 2014Obtain GED ☐

Attend Voc Rehab. or Job Corp

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts of \$ beginning \$ paid to Public Defender FundOther

ATTEST A TRUE COF

JULIE J. ARMSTRONG (CLERK)

By CLERK, C.J. & S.C.

DEPUTY CLERK

☐ Appointed PD or appointed other counsel§ 47-12 requires \$500 be paid to Clerk
during probation

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS
Benjamin Lavon Smalls

AKA _____
 Race BLACK Sex M Age 23
 DOB _____ SS# _____
 Address W Pine St
 City, State, Zip Lincolnton, SC 29485-7170
 DL# _____ SID# SC01828760

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO Possession of a Firearm or Knife During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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 Osborne, David L 10/13/25 SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 2011-GS-10-5647
☒ 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:

JUL 18 2014

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 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/ca \$
Proviso 90.5 (SCCJA Surcharge)	\$5 \$ 5.00
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 133.90

Clerk of Court/ Deputy Clerk
 Court Reporter
 SCCA/217 (03/2011)

Allison Hoffmann
KORAN ANDERSON

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2011GS1005648
 A/W# M645025
 Date of Offense: 5/25/2011
 S.C. Code § 16-23-0490
 CDR Code # 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP _____ days/hours Public Service SC Court of Appeals

Obtain GED ☐
 Attend Voc. Rehab or Job Corp _____
 May serve W/E beginning _____
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to _____
 Other. JULIE J. ARMSTRONG/SEA
CLERK OF COURT
DEPUTY CLERK

☐ Appointed PD or appointed other counsel,
 § 47-12 requires \$500 be paid to Clerk
 during probation

Presiding Judge
 Judge Code 2128
 Sentence Date 7/9/14

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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."

March 25th, 2105



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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."

March 25th, 2105



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Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

RECEIVED
MAR 25 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

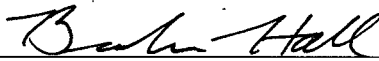
V.

BENJAMIN LAVON SMALLS,

APPELLANT

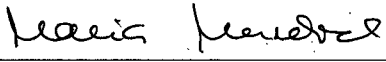
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of March, 2015.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 25th day of March, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.