

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

Indictment Numbers: 2011-GS-07-01398, 1399, 1423, 1496
Appellate Case No: 2014-002706

The State,.....Respondent
v.
Jajuan Andre Habersham.....Appellant

SUPPLEMENTAL RECORD ON APPEAL

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2011GS0701398

State of South Carolina

Plaintiff(s),

vs.

Transcript of Record

JuJuan Habersham,

Defendant(s).

VOLUME 1 of 5

December 8, 2014

Beaufort, South Carolina

BEFORE:

The Honorable D. Craig Brown

PROCEEDINGS

1
2 THE COURT: Okay. We are back now after lunch and
3 it is 2:10 and the jury panel is coming in.

4 THE COURT: Madam Solicitor, would you recognize
5 and call the case, please.

6 MS. LEMPESIS: Thank you, Your Honor. If it
7 please the Court, State calls the case of Jajuan Andre
8 Habersham. Your Honor, Indictment No. 2011GS071423,
9 the charge of armed robbery; Indictment No.
10 2011GS071496, the charge of attempted armed robbery;
11 2011GS071399, the charge of possession of a weapon
12 during the commission of a violent crime; and
13 2011GS071398, a charge of -- indictment of a -- firearm
14 by a person convicted of a crime of violence.

15 THE COURT: Ladies and gentlemen, the State has
16 called the case of the State of South Carolina v.
17 Jajuan Andre Habersham. By indictment Mr. Habersham is
18 charged with four separate offenses, the first being
19 armed robbery. The indictment for such offense reads
20 as follows:

21 That on or about June 19, 2011, in Beaufort
22 County, South Carolina, the Defendant, Jajuan Andre
23 Habersham, at 1006 Bay Street, Beaufort, by use of
24 force, threats, or intimidations and while armed with a
25 deadly weapon or while alleging either by action or

JURY SELECTION

1 words he was armed while using the representation of a
2 deadly weapon or other object which the person present
3 during the commission of a robbery reasonably believed
4 to be a deadly weapon, did take and carry away goods
5 and/or moneys from the person or immediate presence of
6 Kelsey Brown with the intent to permanently deprive the
7 victim of possession thereof, in violation of Section
8 16-11-330(A) of the South Carolina Code of Law.

9 The second offense being attempted armed robbery.
10 This particular charge in the indictment reads that:

11 On or about June 19th, 2011, in Beaufort County,
12 South Carolina, the defendant, Jajuan Andre Habersham,
13 at 1006 Bay Street, Beaufort, by use of force, threats,
14 or intimidation and while armed with a deadly weapon or
15 while alleging by words or action -- excuse me, by
16 action or words, he was armed while using a
17 representation of a deadly weapon or other object which
18 a person present during the commission of the robbery
19 reasonably believed to be a deadly weapon, did attempt
20 to take and carry away goods and/or money of the person
21 or immediate presence of Richard Parker, with the
22 intent to permanently deprive the victim of possession
23 thereof, in violation of Section 16-11-330(A) of the
24 South Carolina Code of Law.

25 The next offense being possession of a weapon

JURY SELECTION

1 during a violent crime. That indictment reads that:

2 In Beaufort County, South Carolina, on or about
3 June 19, 2011, the defendant, Jajuan Andre Habersham,
4 did possess a weapon or visibly display what appeared
5 to be a weapon during the commission or attempted
6 commission of armed robbery, a violent crime, this in
7 violation of Section 16-23-490 of the South Carolina
8 Code of Law.

9 The final charge, ladies and gentlemen, is
10 possession of a firearm by a person convicted of a
11 crime of violence. That particular charge in the
12 indictment reads that:

13 In Beaufort County, South Carolina, on or about,
14 June, 19, 2011, the defendant, Jajuan Andre Habersham,
15 did have in his possession a handgun, after having been
16 convicted of a crime of violence, all in violation of
17 Section 16-23-30 of the Code of Law of South Carolina.

18
19 Now, ladies and gentlemen, these indictments -- or
20 this that I hold in my hand are simply the charging
21 documents, simply the charging documents by which a
22 case is brought into this court, and they are not in
23 any sense -- any sense evidence in this case
24 whatsoever. To these charges the defendant has pled
25 not guilty. He has pled not guilty to each of these

EXAMINATION OF JUJUAN HABERSHAM

1 can't force the State to stipulate to something and
2 force them -- force their hand in how they prove the
3 case when there's an element to convict. Okay? But
4 I'll take a look at it closer. All right.

5 MR. BAX: Thank you, Your Honor.

6 And moving on, I know that we have to get through
7 this before the jury gets in. As I had stated to Your
8 Honor in chambers, I would also have a motion to -- and
9 I'll flip back in my notes -- to dismiss pursuant to
10 Brady. And if Your Honor is willing I would like to go
11 into that motion at this time.

12 THE COURT: Yes, sir.

13 MR. BAX: Thank you very much.

14 And, Your Honor, I'm making the motion to dismiss
15 pursuant to Brady. I think that, like a Jackson v.
16 Denno, that that kind of switches the burden back to
17 the prosecution. I don't know if they wish to call any
18 witnesses, but I certainly defer if they want to call
19 any witnesses before we proceed any further.

20 THE COURT: You have made a very general
21 allegation here. What is your -- so they can know
22 specifically what to address. You have given them a
23 broad general motion here.

24 MR. BAX: I can, Your Honor.

25 THE COURT: All right.

STATE'S OPENING STATEMENT

1 They don't see them after that. They turn around and
2 they start walking away and counting as told.

3 They walk back towards downtown Beaufort. They
4 walked over to Panini's, which is a restaurant in
5 Downtown Beaufort, and they used Jake's cell phone at
6 that point to call the police. His cell phone had not
7 been taken and they used it to call the police. The
8 police respond and, unfortunately, that night no one is
9 apprehended. But they do have a description of who
10 they are looking for. It was two white men and one
11 black man, and the black man was the one who had the
12 gun. No question. The victims were sure of that.

13 The next day -- well, much later that same day,
14 June 19th, Kelsey Brown is checking her credit cards
15 that were taken and discovers that one of her credit
16 cards had been used at a mini-mart gas station in
17 Hardeeville, South Carolina. And so she reports this
18 that afternoon to Investigator George Erdel at the
19 Beaufort Police Department.

20 Investigator Erdel follows up on the use of that
21 credit card. And through his investigation he
22 identifies Jujuan Habersham as a suspect in this crime.
23 Mr. Habersham is arrested several days later. He is
24 interviewed at the Hardeeville Police Department. And
25 it is during that interview that Mr. Habersham, Jujuan,

STATE'S OPENING STATEMENT

1 says, Yes, I was there. He admits to taking part in
 2 the armed robbery -- the armed robbery of Kelsey Brown,
 3 the attempted armed robbery of Jake Parker -- but with
 4 one caveat. Mr. Habersham says, I was there, but I
 5 didn't have anything to do with it. I was there. I
 6 knew what was going to happen. My two buddies, they
 7 did the robbery. I was there, but I didn't have
 8 anything to do with it.

9 You are going to hear the interview of Jajuan
 10 Habersham and you are going to hear him explain his
 11 role in this robbery. He was there. He saw it all
 12 happen. He knew what was going to happen. But he
 13 didn't have the gun.

14 But you are also going to hear from Kelsey Brown
 15 and Jake Parker, the victims. And while they cannot
 16 identify Jajuan Habersham himself, they will tell you
 17 that of the three people that robbed them that night,
 18 it was two white men who asked for directions. It was
 19 the black man that came from behind that had a gun that
 20 robbed them and that took their items.

21 You are going to hear from several people during
 22 this trial, and I ask you to do just as you have
 23 already been doing today: Just to pay close attention.
 24 Pay close attention to what they say. Pay close
 25 attention to what you see.

STATE'S OPENING STATEMENT

1 The Judge has told you some already about the
 2 burden that the State has, the burden to prove to you
 3 all beyond a reasonable doubt that Mr. Habersham is
 4 guilty of these crimes, the crimes of armed robbery,
 5 attempted armed robbery, possession of a weapon during
 6 the commission of a violent crime, and also possession
 7 of a weapon by a person convicted of a crime of
 8 violence. This is a burden that we take seriously.
 9 And these are serious charges.

10 Once you have heard all of the testimony in this
 11 case and seen the evidence you will find that the State
 12 has met its burden and you will not hesitate to find
 13 Mr. Habersham guilty of these crimes. Thank you.

14 THE COURT: Mr. Bax.

15 DEFENSE'S OPENING

16 MR. BAX: Thank you, Your Honor. May it please
 17 the Court.

18 Good afternoon, ladies and gentlemen. As I said
 19 before, my name is Arie Bax. I'm an attorney here in
 20 Beaufort, South Carolina, and I represent Jujuan
 21 Habersham in his trial where he has pled innocent, not
 22 guilty, to the charges that you have heard listed by
 23 the State, read out by the Court. I want to talk to
 24 you about that a little bit.

25 But first I think what's really important is we've

DEFENSE'S OPENING

1 got some flags in the courtroom. You can see that
2 we've got the South Carolina flag because we are in
3 South Carolina. And you can see on the other side of
4 His Honor the American flag because we are in the
5 United States of America. That's important. And you
6 are going to hear testimony in this trial, today and
7 tomorrow, that is going to make you a little ashamed
8 that it happened in your country. Because what you are
9 going to hear is going to shock you a little bit.
10 Because what you are going to hear is the State meeting
11 its burden of proof -- trying to meet its burden of
12 proof. Because they are correct, they have the burden
13 of proof. They must prove the Defendant guilty of all
14 charges, all elements in those charges beyond a
15 reasonable doubt.

16 And you are going to hear from His Honor and you
17 are going to hear from the attorneys about what
18 reasonable doubt is. And I'm going to talk to you a
19 little bit about it now, but you are going to hear more
20 about it at the end of the trial. It is the highest
21 standard in the land, and it is their burden. And you
22 are going to see on this stand here this afternoon in
23 this courtroom that they are going to try to meet that
24 burden with lies. And you are going to hear that they
25 are going to try to show what they wanted, because they

DEFENSE'S OPENING

1 lied to get it. You are going to hear them talk about
2 the fact that when they didn't have the evidence that
3 they needed, they made it happen.

4 And I think that when you get done hearing the
5 lies, that you are going to be a little ashamed that it
6 happened in your state and in your country. Because
7 that's not what we are supposed to be about.
8 Originally the burden of proof was placed on the State,
9 the highest burden in the land, because our founders
10 distrusted government before they distrusted some
11 individual person.

12 Why is that? Because who has the power to wreak
13 real havoc in the lives of people, one individual or
14 the government? Who changes or alters the course of
15 history that you read about, a boy from Beaufort or a
16 government? Who do you see on the news, law
17 enforcement in tanks or individuals? You don't. You
18 know what you see. And you know what is talked about.
19 You know what is written in the history books. It is
20 the government. That is why we have this system.

21 Now, from earliest times on we were told we have
22 the best system of justice in the world. And we can.
23 And we do. But we can only have that best system
24 because of you. We can only have that best system if
25 you, sitting in that jury as the buffer between one

COLLOQUY

1 I'll recognize Defense counsel.

2 Mr. Bax, you are recognized.

3 MR. BAX: Thank you very much, Your Honor. At
4 this time the Defense rests.

5 THE COURT: Ladies and gentlemen, you have heard
6 all of the testimony, and all of the evidence that is
7 going to be introduced has been introduced. That which
8 remains now are closing arguments by the State, closing
9 arguments by Defense counsel, and my charge on the law
10 to you.

11 Before I recognize the State for closing
12 arguments, Mr. Bax, please make a note for the record
13 your renewal of motions, et cetera.

14 MR. BAX: Yes, Your Honor. At this time I renew
15 all motions and objections as previously made.

16 THE COURT: So noted for the record, Court's prior
17 rulings remain the same, but your renewal of such is so
18 noted for the record.

19 At this time I'm going to recognize the State for
20 closing argument. Ladies and gentlemen, before
21 closing arguments begin let me remind you, what these
22 attorneys tell you is not evidence in this case, is
23 not evidence in this case.

24 Ms. Lempsis, you are recognized.

25 STATE'S CLOSING ARGUMENT

STATE'S CLOSING ARGUMENT

1 MS. LEMPSIS: Thank you, Your Honor. May it
2 please the Court.

3 The Defense said at the beginning of this trial
4 that this is a case about lies. I don't completely
5 disagree. This is a case about the lies that Jujuane
6 Habersham has told. Two innocent people, Kelsey Brown
7 and Jake Parker, were robbed by a man who thought that
8 he could get away with it. A man who thought, even as
9 he was talking to the police, admitting his
10 involvement, that all he had to do is lie about the
11 gun, say he didn't have it and that that was enough.
12 This case is about Jujuane Habersham's lies.

13 During this trial you have had the opportunity to
14 hear from several witnesses. I'm going to go back
15 through that testimony and just sort of recap for you.
16 We heard first from Corporal O'Ryan with the city of
17 Beaufort Police Department. He testified that he
18 responded on June 19th, 2011, about 2:38, I think it
19 was, the dispatch time, to downtown Beaufort, Bay
20 Street area, the downtown marina parking lot. When he
21 got there he met with the victims, they were
22 distraught. He got written statements from them that
23 night, the area was searched for suspects but
24 unfortunately no one else was located. No one was
25 located at all that night.

STATE'S CLOSING ARGUMENT

1 He also testified about the victims that night.
 2 Mr. Bax had asked him, and he talked a lot during the
 3 trial about how much they had to drink that night.
 4 You heard from Corporal Steady that he made note in
 5 his report that he were dealing with grossly
 6 intoxicated people. And you also heard the corporal
 7 say that he let both of the victims leave that night
 8 and drive -- leave the scene.

9 You heard then from the first victim that got on
 10 the stand, Richard Jake Parker. And Jake told you
 11 about that night. He told you about how he and Kelsey
 12 had been hanging out. They are friends from high
 13 school, from church. They have known each other a
 14 long time. They were getting together that night,
 15 hanging out with their other friends in downtown
 16 Beaufort. He told you about when they were leaving
 17 downtown that night, walking through the parking lot,
 18 how they were approached by first two white men who
 19 asked for directions to Hilton Head. He testified
 20 about the other man, the black man who approached them
 21 from behind, and that man had the gun. That man also
 22 said, give me all of your money, or something along
 23 those lines.

24 You saw the Defense try to confuse Jake, talking
 25 about where people were standing, exactly where these

STATE'S CLOSING ARGUMENT

1 three people were during this robbery. That is all a
2 distraction and I urge you to look for these
3 distractions that the Defense is putting out there for
4 you. That is a distraction.

5 Jake Parker was clear, there were two white men
6 that asked for directions, and there was a black man
7 that came from another direction and he had a gun. He
8 is the one that robbed Kelsey, took her wallet and her
9 purse. He is the one that attempted to rob him but he
10 didn't have anything on him.

11 The black man was the one with the gun. He is
12 also the one who appeared to be the leader. He told
13 them to turn around and count to 100. And they did as
14 they were told.

15 He testified that he didn't have anything on him.
16 They didn't get anything from him. That is the basis
17 for the attempted armed robbery charge. It is
18 attempted armed robbery because they didn't get
19 anything from him.

20 Next you heard from Kelsey Brown. Kelsey told
21 you also what happened that night. She and Jake had
22 similar accounts. They were there that night hanging
23 out, catching up, old friends. When they left the bar
24 they said that they went for a walk around downtown
25 Waterfront Park, and then they headed back to her car,

STATE'S CLOSING ARGUMENT

1 which was parked in the far corner of the marina
2 parking lot. Just like Kelsey said in her statement
3 that she wrote the night that this happened, Kelsey
4 told you yesterday that there were two white men and
5 one black man. She told you that without question the
6 black man was the one who had the gun. She saw it,
7 she said that he was holding it in his hand, that it
8 was in his waistband before. She saw it clearly. It
9 was a gun, no question about it. She was thinking
10 about that gun when she handed that man her money.
11 She handed -- she testified that she handed the black
12 man her money. She couldn't remember if she gave him
13 the cash money or the whole wallet. Either way, she
14 gave him one of those two things. And then he
15 instructed her to turn around and give her keys and
16 her cell phone to the two white guys.

17 She said he was in charge, he was the leader, the
18 obvious leader. He did the talking, he gave the
19 instructions, he was running the show. And she did
20 exactly what he told her to do. That man wasn't just
21 merely standing there, he wasn't merely present,
22 standing by, watching this go down, he was the leader,
23 he played an active role in the robbery. He robbed at
24 gunpoint Kelsey Brown. And that is the basis for the
25 armed robbery charge.

STATE'S CLOSING ARGUMENT

1 and reviewed that surveillance footage. Also,
2 collected the footage and collected that receipt of
3 the use of the credit card. Took all of that into
4 evidence.

5 He testified that from there Jujuane Habersham
6 was developed as a suspect. Jujuane Habersham was
7 arrested on June 24th and interviewed, and you all
8 have heard that interview. You also heard that no one
9 else was ever arrested, and Investigator Erdel told
10 you they never found the two white men unfortunately.

11 You heard from Investigator Erdel about the photo
12 line-ups that he showed to the victims. Again, we are
13 not trying to hide that, nobody was picked. The
14 Defense wants to distract you with the fact that
15 Investigator Erdel failed to do a supplemental report
16 about those photo line-ups. It is just a distraction.
17 Again, no one was picked out.

18 And he also wants you to think that Investigator
19 Erdel is a liar. Investigator Erdel was asked and
20 said that lying in an interview to a Defendant is a
21 common tactic, a common police tactic used.

22 Investigator Erdel did tell Jujuane Habersham during
23 that interview that the victims had picked him out of
24 a photo line-up. That wasn't the truth. And he did
25 that in hopes of getting more information from him.

STATE'S CLOSING ARGUMENT

1 But in fact at that point he already had the
2 information that he needed. Jujuane Habersham had
3 already admitted being there for the robbery, he had
4 already told Investigator Erdel all about it. It is a
5 distraction to keep you from focusing on what is the
6 most important part of this case, and that is
7 Mr. Habersham's own words.

8 You heard about the interview, how it happened,
9 where it was. He was advised of his rights, he waived
10 them and he spoke to the investigator.

11 Let's talk about what Mr. Habersham said. He
12 told you that on the night of June 19th, 2011 he went
13 downtown Beaufort with his friends, Joe and Roach, two
14 white guys. That he was supposed to meet a girl named
15 Cheyenne. He said that he left the bar and met up
16 with Joe and Roach. He said that Joe and Roach were
17 talking about how they were about to go hit a lick.
18 And Investigator Erdel told you what hit a lick means,
19 slang for commit a robbery.

20 So, at this point we know that Jujuane Habersham
21 knows that his two buddies are about to go commit a
22 robbery. Habersham says -- well, he's minimizing his
23 role in this interview. He says, whatever, but he
24 keeps on walking. He said that he saw the white girl
25 and the white dude in the parking lot. He saw that

STATE'S CLOSING ARGUMENT

1 Roach had a gun. According to him Roach was the one
2 with the gun. He said that Roach told him that he had
3 to just go and just stand there. So, he said that he
4 stood there and was smoking a cigarette.

5 He recalled quite a bit of detail about this
6 event. That Roach was the one who asked -- actually,
7 he couldn't remember if it was Joe or Roach, but one
8 of the two asked for directions to Hilton Head. Just
9 like Kelsey and Jake told you. They asked for
10 directions to Hilton Head. He said that he looked at
11 the white girl and she looked like she was about to
12 scream. He said that they took her purse and her
13 phone, but he was just standing there for all of this.
14 His exact words, he took off running and they met back
15 at Roach's truck.

16 The next day he said that he, you know, caught
17 some sleep, woke up, got the victim's credit card and
18 activated the card. Again he said that he didn't know
19 the girl they robbed, he might as well use the card,
20 she never done anything for him. So he went to the
21 mini mart and used the card.

22 The last thing that Investigator Erdel told you
23 about what Jujuane Habersham said was during that
24 smoke break that they took at that end of the
25 interview, he said that Jujuane Habersham while they

STATE'S CLOSING ARGUMENT

1 were out on a smoke break said, I'll tell you where
2 the gun is, but only if you guarantee me leniency.
3 Only if you guarantee me a non-violent plea. Erdel
4 told him he couldn't do that, no deal. And the
5 interview ended shortly thereafter.

6 So, Jujuane Habersham admits to being there for
7 the robbery, he admits to knowing that Joe and Roach
8 were going to hit a lick. He admits to standing by as
9 the robbery was happening, so close that he could see
10 that the girl, the white girl was about to scream.
11 But conveniently, he doesn't admit to having a gun. I
12 didn't do it.

13 He corroborates everything that you heard from
14 Kelsey and Jake, everything that they said
15 Mr. Habersham backs up. But for the gun. Roach had
16 the gun. Roach, the white guy, had the gun.

17 Unfortunately for Mr. Habersham, that doesn't
18 matter. Because in South Carolina the hand of one is
19 the hand of all. You are going to hear from the Judge
20 after the closing arguments. He's going to talk to
21 you about the law. And one of the things that he's
22 going to charge you on is hand of one, hand of all.
23 And Mr. Habersham's role in this crime, by his own
24 admission, and whether or not you believe that he had
25 the gun or didn't have the gun, his role in this

STATE'S CLOSING ARGUMENT

1 crime, he was more than merely present, he played an
2 active role.

3 Kelsey said she gave her wallet and her money to
4 the black man. He wasn't just there, he played an
5 active role, he was the leader.

6 By his own admission, even if you believed
7 everything that he told you, he's still guilty. The
8 hand of one is the hand of all.

9 Jujuane Habersham was the leader, he was there,
10 he knew his buddies, Joe and Roach, were going to rob
11 these two white kids. He saw Roach with the gun, he
12 was there as they robbed them. Maybe he thinks that
13 him denying having the gun is enough, but you are
14 going to hear that it doesn't matter. Again, it
15 doesn't matter.

16 I ask you again not to be distracted. Mr. Bax
17 talked about lies. Think about who is lying here.
18 Don't be distracted.

19 I thank you again for your time and your patience
20 during this trial. This is an important case and you
21 all have an extremely important job to do. And as the
22 judge said, we couldn't do this work without you. And
23 I ask that after you carefully consider all of the
24 testimony and the evidence presented to you during
25 this case, that you come back and rendered a true and

STATE'S CLOSING ARGUMENT

1 a just verdict, and that is a verdict of guilty.
2 Thank you.

3 THE COURT: Mr. Bax.

4 DEFENSE'S CLOSING ARGUMENT

5 MR. BAX: Thank you, Your Honor.

6 Ladies and gentlemen, now you have heard from the
7 State here this morning that I'm here to distract you,
8 that I'm doing some magic trick, waving my hands and
9 trying to trick you. That would imply that you are
10 not smart enough to make your own decisions about what
11 is and what is not important. Remember that.

12 I haven't been able to come across this box and
13 do anything improper. I'm not up here trying to offer
14 you money behind the tables, I'm not doing anything
15 other than standing up here in front of the judge and
16 the State, doing my job as an attorney.

17 What my job is as the Defense counsel, contrary
18 to some people's opinion, is to bring out just as much
19 truth as they do. As they attempt to do. Because
20 there's two sides to every story and two sets to every
21 lie. And if there's not someone up here to defend
22 someone that the State is trying to take their
23 liberty, well then, they don't get to be heard.

24 I'm not up here to trick you or distract you. I
25 don't think that I could. I'm just a person just like

DEFENSE'S CLOSING ARGUMENT

1 you. You are sitting over there, I'm standing over
2 here. You make your own determination. But you have
3 heard everything that I have heard, you have been here
4 for everything that has been presented in that witness
5 stand right there. You decide.

6 Now, the State has said this is about the lie of
7 the Defendant. But I want you to think about it.
8 Which lies have been proven to be lies right here in
9 the courtroom? There's absolutely no proof whatsoever
10 offered by the State that Mr. Habersham didn't tell
11 the truth. And he didn't have a gun and he was
12 standing 30 to 40 feet off to the side saying, I hope
13 that they don't do that, I don't want to be a part of
14 this. And he ran. They have offered no proof that
15 that's not the case.

16 Because -- let's talk about this. Let's talk
17 about the fact that, yes, this is a case built with
18 lies and deceit. The one piece of evidence that they
19 have harped on is the statement that they obtained
20 with lies and deceit. Why did they build a case with
21 lies and deceit? Because they didn't have a case
22 without it. They didn't have a case without the lies
23 and the deceit.

24 Ms. Brown and Mr. Parker got up here in front of
25 you, and you've heard their testimony. I didn't make

DEFENSE'S CLOSING ARGUMENT

1 it up. I didn't force them to answer the way that
2 they did. I wasn't there when they wrote their
3 statements down. I wasn't there when Ms. Brown wrote
4 down that she gave it to the black man and gave it to
5 the white folk. I wasn't there. How is that part of
6 me deceiving you or tricking you or distracting you?
7 That happened 3½ years ago, I knew nothing about this
8 case 3½ years ago.

9 You heard from both of the people that they put
10 up that said that they were there when this happened,
11 Ms. Brown and Mr. Parker, that they could not remember
12 exactly where they had been, they could not remember
13 exactly how many drinks that they had had. Ms. Brown
14 couldn't remember even what she had had to drink, but
15 she knew she had. They couldn't recall which person
16 they gave it to or where they were standing. Cannot
17 remember, cannot recall, and in the end they could not
18 identify.

19 The only thing that they could remember without
20 any hesitation, that it was the black man with the
21 gun. That is the only thing that they could remember.
22 They can't tell you what black man, all they could
23 remember is that it was the black man with the gun.

24 Now, you have heard from them that they went and
25 they got this other evidence, but you have seen that

DEFENSE'S CLOSING ARGUMENT

1 that doesn't amount to a hill of beans. And
2 Investigator Erdel, he did tie things together.
3 Exactly like they said, he tied them together. He
4 made sure that he tied them together. He made sure
5 that he did what he had to to make sure that he was
6 going to take down the one man that he intended to
7 arrest, the only man that he intended to arrest.
8 You've heard from him. There are no other people that
9 have ever been arrested in this case. There are no
10 two white males facing trial in this case. They
11 are -- poof, they are gone.

12 He knew, he had looked at a video, the same one
13 that you guys looked at, and he didn't have anything.
14 You have a blurry black male on there with a red shirt
15 on. You can't tell who that is. That is why he
16 didn't have anybody come in here and testify who that
17 was.

18 You have got a receipt for a use of a card that
19 doesn't even match up to the video. You look at the
20 video. You have the opportunity when you go back to
21 deliberate, you are going to have all of the evidence.
22 When you look at that video, you look at the bottom of
23 that. It says June 19th, 2011. What time does it
24 say? It says 1818 through 1824. We are in military
25 time, I assume all of you know what you have to do.

DEFENSE'S CLOSING ARGUMENT

1 Take 12 off of that, that is 6:15 in the evening to
2 6:24 in the evening. Now, you look at that receipt
3 and tell me what time is on that receipt. It's hard
4 to tell what the first number is, but the last two
5 numbers was 40 and 50. So that was something 40 in
6 the evening. Whether it's 6:40 or 5:40 or 10:40 in
7 the evening, I don't know, but it wasn't 6:25. It
8 can't be. You look at it yourself. The first two
9 numbers, bad copy. It looks like it might be an 18 or
10 a 16, that is up for you guys to determine. But it
11 doesn't matter because it doesn't match up.

12 And George Erdel, he knew that, and he knew once
13 he got his hands on Mr. Habersham, that he had to make
14 a case out of nothing. Otherwise he didn't have
15 nobody to prosecute. So, he did what he had to do, he
16 lied. And he lied and he lied again.

17 Let's talk about that. How much did he lie?
18 Yes, they have talked about the fact that law
19 enforcement consider lying to a Defendant to be common
20 practice or common tactic, but you get to decide
21 whether you think that is the right thing or not.
22 That is completely up to you. How exactly you think
23 that lying to someone is a good way to produce the
24 truth, I don't know. I have never heard at any class,
25 Bible school or anywhere else I have ever been that a

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1 lie begets the truth. You decide.

2 It sounds to me like they wanted to make sure
3 that they said something that scared the ever-living
4 poop out of him and tried to get whatever they could.
5 You are the black man holding the gun. Do you want to
6 get out of it, talk to us now.

7 But he didn't just lie about that. He lied about
8 what he was going to charge him with, he turned around
9 and charged him with it anyway. He lied about I'm
10 going to get those white boys. Well, he never did. I
11 would argue that he never intended to. He got the
12 black man with the gun, he's done. He did what he
13 came to do.

14 He lied about what he's done in the
15 investigation. And this is the most important, ladies
16 and gentlemen. If he's so guilty, if he's told so
17 much truth, if they are so sure that they have got the
18 right man, if they are so sure that he did something
19 and didn't stand 30, 40 feet off and run off like a
20 scared man that just got himself with some friends
21 that were doing the wrong thing, then why did he lie
22 to the prosecutors and lie to the Defense counsel in
23 this case?

24 Because, make no mistake, as you well know an
25 omission is a lie regardless. An omission is just as

DEFENSE'S CLOSING ARGUMENT

1 much a lie as something that you say wrong . If you
2 hold back something on purpose, if you say that is all
3 I have got, that is the investigation, and you hold
4 back the biggest piece of evidence that tends to show
5 that the person is innocent, that is not a mistake.
6 There is no way that you can tell me -- and of course,
7 what I tell you is not evidence. So, this is for you
8 to decide. But you ask yourselves, if this officer
9 thought that their failure to identify anyone was
10 important enough to lie about in the interview, why
11 would he turn around and think that it was not
12 important enough to remember to put it in the report?
13 Why was it not important enough to save those
14 line-ups, and only suddenly find them the day before
15 trial after getting fussed at? How is that not a lie?

16 And finally, that is it right there, because he
17 lied to you. That is the last and final lie, because
18 he lied to you. Because he got up on the stand and he
19 said, oops, it was an accident. And he got up on the
20 stand and he said to you, it was an unintentional
21 oversight. It was not an unintentional oversight. It
22 was not a mistake. It was intentional. It was an
23 intentional effort, an intentional act to deprive the
24 one person that he was going to arrest in this case of
25 his ability to defend himself. His constitutional

DEFENSE'S CLOSING ARGUMENT

1 right to stand up here and point to the evidence that
2 exonerates him.

3 Let's talk about that. The prosecution said,
4 okay, they couldn't identify him. That is a
5 distraction that the Defense is going to stand up here
6 and talk to you about.

7 That is not a distraction, that is a fact. You
8 heard from Mr. Parker that he's standing there, all of
9 this is happening, and he's positive that the black
10 man had the gun. Don't know where he was standing or
11 where he came from, but the black man had the gun.
12 But when shown a line-up of six black males, he picks
13 two to three of them. Could have been two or three of
14 these black males. And because Officer Erdel chose to
15 lie about this and not put it down in the report, you
16 don't get the information as to which black males he
17 picked. I'll submit to you, I can damn well guarantee
18 you, not one of those black males is Mr. Habersham.

19 The reason that he said, well, the two or three
20 ain't going to work, we are going to throw that to the
21 side, is because he didn't pick the right black man.
22 You didn't pick the one that I wanted you to pick, so
23 this is going in the trash.

24 Now, you also heard from Ms. Brown. I walked up
25 and I gave all of my stuff to the black man, I walked

DEFENSE'S CLOSING ARGUMENT

1 up to the white guys and I gave them all of my stuff.
2 We don't know which one it is. But either way, she
3 was standing closer than I'm standing to you now.
4 Right here at least. To reach out and give those
5 people that stuff, whether it was him or them, but she
6 couldn't identify Mr. Habersham.

7 You heard the testimony from Mr. Erdel that
8 Mr. Habersham was in that line-up. His shot, his face
9 was in that line-up. That was a lie. It was a lie to
10 make this case go the way that he wanted it to go. He
11 was going to tie it up and he was going to do what he
12 had to do to tie it up. Now, I think that we have had
13 enough of that.

14 I talked to you a little bit about the flags when
15 we started this case, I'll let you decide what
16 importance this plays in your deliberations. But I
17 tell you and I ask you, you look at this and you think
18 about it. Is that what you are comfortable with in
19 your state and in your country, to have an officer do
20 that to get what he needed in a weak case, a case that
21 without Mr. Habersham's statement we wouldn't even be
22 here.

23 You ask yourself, what did he do to make that boy
24 say what he said. What did he do to scare him? He
25 admitted to you he can't even say that he didn't say

DEFENSE'S CLOSING ARGUMENT

1 those lies to Mr. Habersham before Mr. Habersham even
2 admitted to doing anything. He won't acknowledge
3 that. He won't even acknowledge that he talked to him
4 beforehand.

5 And he did acknowledge that in his report. He
6 even said Mr. Habersham denied any involvement. And
7 then all of a sudden, after comments that I can't
8 remember, suddenly he's talking to him. That is what
9 you heard here today, what you heard yesterday, what
10 you can hear back in the jury room.

11 Now, the State wants to now play the either/or
12 game. I don't know if you have played the either/or
13 game. Either this or that. Now, they are wanting to
14 play the either/or game. Either what we are accusing
15 him of is being the bad black man with the gun and
16 he's guilty, or either if he doesn't have the gun,
17 he's guilty. Because the hand of one is the hand of
18 all.

19 The hand of one is the hand of all. Except,
20 ladies and gentlemen, there ain't no other hands.
21 They don't have any other hands to put it in so they
22 are going to sit here and talk about the hand of one
23 is the hand of all. I think and I hope that you think
24 that they ought to have some other hands. That is
25 playing the either/or game. Whether we have proven

DEFENSE'S CLOSING ARGUMENT

1 this or we can't prove this, we just want you to
2 finish our job, the job that we couldn't do without
3 lying or deceit. We want you to find him guilty for
4 us so we can get our jobs done without doing it all
5 the way.

6 Well, that's not what you're here for. You've
7 heard the oath that you were sworn to at the beginning
8 of the case by Ms. Clark, and you are going to hear
9 the law from the Judge. What he's going to tell you
10 is we have a standard of proof beyond a reasonable
11 doubt for a reason. As I told you at the beginning of
12 this case, the founders, they were more worried about
13 government than they were an individual person. They
14 were more worried about allowing government to get
15 away with things against the overall citizens in this
16 country than they were about individuals. You think
17 about that. What are you going to let the government
18 get away with? You better be comfortable with it,
19 because when you walk out of here that is the way that
20 it's going to be. For everybody.

21 You are going to be charged that you must find
22 guilt beyond a reasonable doubt, and that you are
23 sworn to that standard. That is something that they
24 haven't been able to take away yet, and I hope that
25 they never do. And I know that when you hear the

DEFENSE'S CLOSING ARGUMENT

1 charge from the Judge and you listen to that standard
2 and you think about those flags, and you think about
3 what they did to get where they got with this case,
4 that you are going to say, no, we are not going to let
5 this happen, this ain't right. Thank you.

6 (Time is now 10:50 a.m.)

7 JURY CHARGE

8 THE COURT: Ladies and gentlemen, it is now my
9 duty as the trial judge under the Constitution of this
10 State to charge and instruct you on the law applicable
11 to this case. It is your duty as jurors to accept and
12 apply the law as i will now state it to you.
13 Furthermore, it is your exclusive duty to decide all
14 the issues of fact in this case, and to determine the
15 effect, value, weight, and truth of the evidence. Both
16 the State and the Defendant have a right to expect that
17 you will carefully consider and evaluate the evidence
18 and apply the law of this case to it, so that in the
19 end - both the State of South Carolina and the
20 Defendant will receive a fair and impartial trial. I
21 want you to understand that when i use the word
22 Defendant I refer to Jajuan Andre Habersham.

23 The charges alleged in the indictments are:

24 Count one: attempted armed robbery.

25 Count two: armed robbery.

JURY CHARGE

1 Count three: possession of weapon during a violent
2 crime.

3 Count four: possession of a firearm by a person
4 convicted of a crime of violence.

5 To these charges the Defendant has entered a plea
6 of not guilty. This plea of not guilty places the
7 burden of proof on the State to prove the guilt of the
8 Defendant to you, the jury, beyond a reasonable doubt.

9 I remind you that the fact the Defendant was
10 arrested, charged and indicted in this case, is not
11 evidence in this case and cannot be considered by you
12 as evidence of guilt in this case, nor does it create
13 any presumption or inference of guilt. The indictment
14 is simply the formal written instrument which contains
15 the charges made against the Defendant. It is the
16 formal document by which this case is brought into
17 this Court.

18 As I mentioned above, the indictment in this case
19 alleges four separate and distinct offenses against
20 the Defendant. You must decide each charge separately
21 on the evidence and the law applicable to it,
22 uninfluenced by your decision as to any other charge.
23 The Defendant may be convicted or acquitted on any or
24 all of the offenses charged. As stated previously,
25 you will be asked to write a separate verdict of

JURY CHARGE

1 guilty or not guilty for each charge alleged in the
2 indictment.

3 It is vital to understand that the Defendant is
4 presumed under the law to be innocent of these
5 charges. The Defendant has no obligation to prove his
6 innocence. It is a fundamental rule of our law that a
7 Defendant, irrespective of the seriousness of the
8 charges against him, is always presumed innocent of
9 the crimes for which he is charged, unless and until
10 his guilt has been proven by evidence that satisfies
11 you, the jury, beyond a reasonable doubt. The
12 presumption of innocence is not a mere legal theory or
13 a legal phrase. The presumption of innocence is very
14 important and you need to understand that this
15 presumption accompanies the Defendant from the time of
16 his arrest and appearance in this court and continues
17 with the Defendant even after you retire to the jury
18 room to deliberate. In other words, the Defendant
19 receives the benefit of the presumption of innocence
20 until the very end of this trial, when you, the jury,
21 will deliberate upon the evidence and decide whether
22 the State has proven his guilt beyond a reasonable
23 doubt.

24 What is a reasonable doubt in the law? A
25 reasonable doubt is the kind of doubt that would cause

JURY CHARGE

1 a reasonable person to hesitate to act.

2 Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the Defendant's guilt.
4 There are very few things in this world that we know
5 with absolute certainty, so even in criminal cases the
6 law does not require proof that overcomes every
7 possible doubt. However, if, based on your
8 consideration of the evidence, you are firmly
9 convinced that the Defendant is guilty of the crime
10 charged, you must find him guilty. If on the other
11 hand, you think there is a real possibility that he is
12 not guilty, you must give him the benefit of the doubt
13 and find him not guilty.

14 Jurors please understand that reasonable doubt
15 may arise from evidence which has been presented in
16 the case or from the lack of evidence in the case. It
17 is your responsibility to determine whether or not
18 reasonable doubt exists as to the guilt of this
19 Defendant.

20 I charge you that the Defendant is entitled to
21 every reasonable doubt arising in the whole case. If,
22 upon any issues of fact essential to conviction and a
23 verdict of guilty, you have a reasonable doubt as to
24 how that issue should be resolved, it would be your
25 duty to resolve that reasonable doubt in favor of the

JURY CHARGE

1 Defendant.

2 During this trial, you and I have had separate
3 duties to perform. As the trial judge, it is my
4 responsibility to preside over this trial, and I also
5 have the duty to rule upon the admissibility of the
6 evidence offered during the process of this trial. In
7 that regard, you are to consider only the competent
8 evidence before you, and you are to disregard from
9 your mind any testimony ordered stricken from the
10 record of this case during the progress of the trial,
11 if there was any. And you are to consider only the
12 testimony which has been presented from this witness
13 stand, together with any exhibits admitted into the
14 record of this case and any stipulations of counsel
15 made into the record.

16 Furthermore, I have the additional duty to charge
17 you on the applicable law of this case and in that
18 regard, I am the sole judge of the law of this case.
19 It is your duty to accept and apply the law as I state
20 it to you. If you have any preconceived ideas as to
21 what the law is, or what the law ought to be, and it
22 does not agree with what I tell you the law is - you
23 are obligated under your oath to abandon these
24 preconceptions, because you are sworn to accept the
25 law precisely as I state it to you.

JURY CHARGE

1 In this trial you are the sole and exclusive
2 judge of the facts, and I am the judge of the law. Do
3 not infer that I have any opinion about the facts in
4 this case from anything I have said during the course
5 of this trial in ruling upon the admissibility of
6 evidence or otherwise, or from anything that I say
7 during the course of this charge to you. In this
8 regard, the law simply does not permit me to have an
9 opinion about the facts. As jurors, it is your duty
10 alone to determine the effect, value, weight, and
11 truth of the evidence presented during the course of
12 this trial.

13 In determining what the facts in this case are,
14 you must judge the credibility, which simply means the
15 believability, of the witnesses and the value of
16 weight to be given to their testimony. You alone must
17 decide the force, effect and truth of the testimony.
18 In making this decision there are many things you may,
19 and should, take into consideration, such as:

20 (1) the appearance and manner of the witness on
21 the stand - a characteristic often referred to as the
22 demeanor of the witness.

23 (2) was the witness forthright...or hesitant?

24 (3) was the witness' testimony consistent...or did
25 it contain discrepancies?

JURY CHARGE

1 (4) what was the ability of the witness to know
2 the facts about which he or she testified?

3 (5) did the witness have a cause or reason to be
4 biased and prejudiced in favor of the testimony he or she
5 gave? (interest to be served)

6 (6) was the testimony of the witness corroborated
7 or made stronger by other testimony and evidence...or was it
8 made weaker or impeached by such other testimony and
9 evidence.

10 As jurors please understand you have the right to
11 believe a small portion of a witness' testimony and
12 discard the larger portion...or vice versa. You may
13 believe all of a witness' testimony...or none. You may
14 believe the testimony of a single witness against that
15 of many witnesses...or the other way around.

16 In exercising your mental processes and
17 attempting to decide the truth, the law simply
18 requires that you exercise your good judgment, your
19 common sense, your sense of logic and reason, and your
20 experiences in life. You then apply these attributes
21 to the evidence and apply the law as I state it to
22 you, and thus arrive at a verdict.

23 There are two types of evidence which are
24 generally presented during a trial-direct evidence and
25 circumstantial evidence. direct evidence directly

JURY CHARGE

1 proves the existence of a fact and does not require
2 deduction. circumstantial evidence is proof of a chain
3 of facts and circumstances indicating the existence of
4 a fact.

5 Crimes may be proven by circumstantial evidence.
6 the law makes no distinction between the weight or
7 value to be given to either direct or circumstantial
8 evidence, however, to the extent the State relies on
9 circumstantial evidence, all of the circumstances must
10 be consistent with each other, and when taken
11 together, point conclusively to the guilt of the
12 accused beyond a reasonable doubt. if these
13 circumstances merely portray the defendant's behavior
14 as suspicious, the proof has failed.

15 The State has the burden of proving the Defendant
16 guilty beyond a reasonable doubt. this burden rests
17 with the State regardless of whether the State relies
18 on direct evidence, circumstantial evidence, or some
19 combination of the two.

20 If a crime is committed by two or more people who
21 are acting together in committing a crime, the act of
22 one is the act of all. A person who joins with
23 another to commit an unlawful act is criminally
24 responsible for everything done by the other person
25 which happens as a probable or natural consequence of

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1 the acts done in carrying out the common plan and
2 purpose. For example, two people can be guilty of
3 killing another person when only one of the two had a
4 gun, there was only one bullet, and only one of the
5 two fired the shot that caused the death. If two or
6 more people are together, acting together, assisting
7 each other in committing the offense, the act of one
8 is the act of all or, as it is sometimes said, "The
9 hand of one is the hand of all".

10 Prior knowledge that a crime is going to be
11 committed, without more, is not sufficient to make a
12 person guilty of that crime. Mere knowledge that
13 another person is going to commit a crime, even if the
14 Defendant is present when the crime is committed, is
15 not sufficient to convict the Defendant as a
16 principal. Guilt as a principal is shown by actual or
17 constructive presence at the scene as a result of
18 prior arrangement. Therefore, a finding of a prior
19 arranged plan or common scheme is necessary for a
20 finding of guilt as a principal. The State must prove
21 beyond a reasonable doubt by competent evidence the
22 theory of the hand of one is the hand of all.

23 A principal in a crime is one who either actually
24 commits the crime or who is present aiding, abetting,
25 or assisting in committing the crime. When a person

JURY CHARGE

1 does an act in the presence of and with the assistance
 2 of another, the act is done by both. Where two or
 3 more, acting with a common plan or intent, are present
 4 at the commission of a crime, it does not matter who
 5 actually commits the crime. All are guilty. The hand
 6 of one is the hand of all. Present at the commission
 7 of a crime means to be sufficiently near to aid and
 8 abet and assist in the commission of the crime.
 9 However, mere presence at the scene of a crime is not
 10 sufficient to convict one as a principal on the theory
 11 of aiding and abetting.

12 Intent is also a necessary element, for there
 13 must have been a common design or intent to commit the
 14 crime and the crime must have been committed pursuant
 15 thereto with the person aiding and abetting by some
 16 overt act. Intent means intending the result which
 17 actually occurs; not accidentally or involuntary.

18 Intent may be shown by acts and conduct of the
 19 Defendant and other circumstances from which you may
 20 naturally and reasonably infer intent. The State
 21 must prove these elements beyond a reasonable doubt.

22 A statement alleged to have been made by the
 23 Defendant has been admitted into evidence in this
 24 case. While the Court has determined that the
 25 statement is admissible, I instruct you that you make

JURY CHARGE

1 the ultimate decision of whether or not the Defendant
2 made the statement. If the Defendant did make the
3 statement, you must determine whether the statement
4 was made by the Defendant voluntarily and of his own
5 free will. This means that the statement was not
6 caused by pressure, force, fear, threats, coercion, or
7 intimidation, or by hope or a promise of leniency or a
8 reward of any kind. In determining whether the
9 statement was voluntary, you should consider both the
10 characteristics of the Defendant and the details of
11 the questioning. Some of the factors that you must
12 consider are: (1) the age of the Defendant; (2) the
13 Defendant's education or lack of education; (3) the
14 Defendant's mental ability or capacity; (4) the
15 Defendant's i.q. or intelligence; (5) the Defendant's
16 background and environment; (6) the place and length
17 of detention; (7) the nature of the questioning; and
18 (8) the advice, or lack thereof, to the Defendant of
19 his constitutional rights including, but not limited
20 to, the right to remain silent; that any statement
21 could be used against him in a court of law; the right
22 to have a lawyer present; that if he could not afford
23 a lawyer, a lawyer would be appointed to represent him
24 without any cost; and that he could stop making a
25 statement at any time. You must carefully consider

JURY CHARGE

1 all of the surrounding circumstances before you give
2 any weight to an alleged statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was
5 voluntary. If you determine it was, you may give the
6 statement any further consideration that you deem
7 proper. You must decide what weight, if any, should
8 be given to the alleged statement. If you determine
9 the alleged statement was not the free and voluntary
10 statement of the Defendant, you should not consider
11 the statement at all.

12 I instruct you and emphasize that the fact the
13 Defendant did not testify is not a factor to be
14 considered by you in any way in your deliberation and
15 in your consideration on the question of the guilt or
16 the innocence of the Defendant. It must not be
17 considered by you in any manner whatsoever. A
18 Defendant has the constitutional right to remain
19 silent, and the assertion of this right must not be
20 considered by you in your deliberations. I repeat,
21 under your oath, you are to draw no conclusion
22 whatsoever from the fact that the Defendant in this
23 case did not testify. The fact that this Defendant
24 did not testify should not even be discussed in the
25 jury room. The burden of proof, as I have stated to

JURY CHARGE

1 you, is on the State. The Defendant is not required
2 to prove his innocence. The burden of proof remains
3 on the State to prove guilt beyond a reasonable doubt.

4 In order to establish criminal liability,
5 criminal intent is required. For example, the mental
6 state required to be proven by the State for a
7 particular crime might be purpose, intent, knowledge,
8 recklessness, or criminal negligence. Criminal intent
9 must be proven by the State beyond a reasonable doubt.
10 Criminal intent is always a matter that must be
11 determined by the jury from the circumstances
12 surrounding the situation. There is no way to prove
13 intent to a mathematical certainty. There is no way
14 medical science can dissect a person's brain and
15 determine what the person had in mind, so the law says
16 that criminal intent may be inferred from the
17 circumstances shown to have existed. This is how you
18 make a determination of whether or not the element
19 requiring intent was present. It is not necessary to
20 establish intent by direct and positive evidence, but
21 intent may be established by inference in the same way
22 as any other fact by taking into consideration the
23 acts of the parties and all the facts and
24 circumstances of the case.

25 Criminal intent is a mental state, a conscious

JURY CHARGE

1 wrongdoing. It is up to you to determine what the
2 Defendant intended to do based on the circumstances
3 shown to have existed.

4 criminal intent can arise from action or a
5 failure to act. it may arise from negligence,
6 recklessness, or an indifference to duty or to
7 consequences that is considered by the law to be the
8 equivalent of criminal intent.

9 The Defendant is also charged with attempted
10 armed robbery of mr. richard parker. In order to
11 prove this offense, the State must first prove beyond
12 a reasonable doubt that the Defendant attempted to
13 take personal property from the person or presence of
14 Mr. Richard Parker.

15 Property is in the presence of a person if it is
16 within the person's reach, inspection, observation, or
17 control so that the person could, if not overcome with
18 violence or prevented by fear, keep possession of the
19 property.

20 The State must also prove beyond a reasonable
21 doubt that the Defendant attempted to carry the
22 property away intending to permanently deprive the
23 owner of the property and to keep the property for the
24 Defendant's own use.

25 The attempted taking and carrying away of the

JURY CHARGE

1 property must have been done with violence or by
 2 putting the owner of the property in fear of violence.

3 Finally, the State must prove beyond a reasonable
 4 doubt that the Defendant was armed with a deadly
 5 weapon during the attempted robbery. A deadly weapon
 6 is any article, instrument, or substance which is
 7 likely to cause death or great bodily harm. Whether
 8 an instrument has been used as a deadly weapon depends
 9 on the facts and circumstances of each case.

10 The following are examples of instruments which
 11 may be deadly weapons: a pistol, a shotgun, a rifle, a
 12 dirk, a dagger, a knife, a sling shot, metal knuckles,
 13 a razor, gasoline, a fire bomb or molotov cocktail,
 14 and lighter fluid. A gun may be a deadly weapon even
 15 if it is not operating.

16 The Defendant is charged with armed robbery of
 17 Ms. Kelsey Brown. In order to prove this offense, the
 18 State must first prove beyond a reasonable doubt that
 19 the Defendant took personal property from the person
 20 or presence of Ms. Kelsey Brown:

21 Property is in the presence of a person if it is
 22 within the person's reach, inspection, observation, or
 23 control so that the person could, if not overcome with
 24 violence or prevented by fear, keep possession of the
 25 property.

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1 The State must also prove beyond a reasonable
2 doubt that the Defendant carried the property away
3 intending to permanently deprive the owner of the
4 property and to keep the property for the Defendant's
5 own use. The slightest removal of the property or the
6 complete possession of the property, even for an
7 instant, by the Defendant is sufficient to show a
8 taking and carrying away of the property.

9 The taking and carrying away of the property must
10 have been done with violence or by putting the owner
11 of the property in fear of violence.

12 Finally, the State must prove beyond a reasonable
13 doubt that the Defendant was armed with a deadly
14 weapon during the robbery. A deadly weapon is as I
15 have explained to you earlier.

16 The Defendant is charged with possession of a
17 weapon during the commission of, or attempt to commit,
18 a violent crime. The State must prove beyond a
19 reasonable doubt that the Defendant was in possession
20 of a firearm arm or visibly displayed what appeared to
21 be a firearm during the commission of a violent crime.

22 A firearm means any machine gun, automatic rifle,
23 revolver, pistol, or any weapon which will, is
24 designed to, or may be readily converted to expel a
25 projectile.

JURY CHARGE

1 In order to find the Defendant guilty of
2 possession of a weapon during the commission of a
3 violent crime, you must first find the Defendant
4 guilty of either committing a violent crime or
5 attempting the commit a violent crime.

6 Armed robbery and attempted armed robbery are
7 violent crimes.

8 The State must prove beyond a reasonable doubt
9 that the weapon furthered, advanced, or helped in the
10 commission of the crime.

11 The Defendant is also charged with possession of
12 a firearm by a person convicted of a crime of
13 violence. The State must prove beyond a reasonable
14 doubt that the Defendant possessed a firearm during
15 the crime, and that he was previously convicted of a
16 violent crime.

17 In this case the State and Defendant have
18 stipulated, or in other words agreed, that the
19 Defendant has previously been convicted of a violent
20 crime..

21 ladies and gentlemen, I am now drawing near the
22 end of my charge and I want you to clearly understand
23 that you are not partisans or advocates for the State
24 of South Carolina or the Defendant. it is your duty
25 by your joint deliberations, to determine the truth in

JURY CHARGE

1 this case, giving to the Defendant the benefit of
 2 every reasonable doubt on each and every issue. then,
 3 to the facts which you determine to be true, you
 4 should take and apply the law which has been given to
 5 you by this court and thus arrive at a verdict which
 6 speaks the truth in this case. in fact, the word
 7 "verdict", which has a latin derivative, means "a true
 8 saying." thus, when you have accomplished these
 9 responsibilities you will have satisfied your oath as
 10 jurors and you will have discharged your duty to this
 11 court.

12 Once you retire to the jury room the bailiff will
 13 give the verdict form to the forelady. When you, the
 14 jury, arrive at a verdict as to the offense charged in
 15 this case the forelady will select the verdict as to
 16 the charge on the verdict form. If the State has
 17 failed to prove the guilt of the Defendant beyond a
 18 reasonable doubt, your verdict will be - "not guilty."
 19 Likewise, if the State has proven the guilt of the
 20 Defendant beyond a reasonable doubt, your verdict will
 21 be - "guilty." Once a decision has been made, the
 22 forelady will check whichever choice is the verdict of
 23 the jury as to the charge.

24 The verdict that you render in this case must be
 25 the verdict of each and every juror - it must be your

JURY CHARGE

1 unanimous verdict. All twelve jurors must agree on
2 the verdict which you authorize the forelady to write
3 for the jury.

4 Ladies and gentlemen, I want you to further
5 understand that the order in which the choices of
6 verdict appear on the verdict form are not suggestive
7 of any verdict on the part of this court. The verdict
8 in this case is to be determined by you, the jury -
9 not the court. Furthermore, ladies and gentlemen,
10 please understand that even though I will give the
11 verdict form to the forelady, it is not her verdict
12 alone, it is the verdict of all twelve of you - and I
13 emphasize again it must be unanimous.

14 I am also going to give you a copy of these
15 instructions in written form. During your
16 deliberations, you may refer to the instructions to
17 guide your decision-making. you must consider the
18 instructions as a whole and not follow some and ignore
19 others. Please return the instructions to the court
20 at the time your verdict is rendered.

21 I now ask you to please retire to the jury room,
22 but do not begin your deliberations until you are told
23 to do so. The law requires that I now consult with
24 the attorneys to make sure that I have not left
25 anything out of these instructions. After I have

JURY CHARGE

1 checked with the attorneys, the bailiff will bring in
2 a copy of these instructions, and the verdict form and
3 instruct you to begin your deliberations. Also,
4 should you have any questions during your
5 deliberations, you must put them in writing and send
6 them to me by the bailiff. The court bailiff will be
7 placed immediately outside of the jury room during
8 your deliberations. Once you have reached your
9 verdict please knock on the jury room door and ask the
10 bailiff to advise the court that you have reached a
11 verdict and we will return you to the courtroom as
12 promptly as possible.

13 Thank you, ladies and gentlemen, you may now
14 retire to the jury room, but again do not begin your
15 deliberations until you have been advised to do so.

16 Thank you.

17 Please step to the jury room.

18 (Jury exits the courtroom at 11:17 a.m.)

19 THE BAILIFF: The jury is clear, Your Honor.

20 THE COURT: All right. Any exception or objection
21 to the charge by the State?

22 MS. LEMPSIS: Not from the State, Your Honor.

23 THE COURT: Defense counsel?

24 MR. BAX: Other than previously noted, no, Your
25 Honor.

1 that is sentencing. That will be sentencing. You all
2 are free to go at this time if you so desire. However,
3 you may stay if you desire to stay as well. I will
4 leave that entirely up to you. If you want to leave,
5 now is the time to leave.

6 Please make sure they get out of here safely.

7 (The jury exits the courtroom.)

8 THE COURT: Madam Solicitor, do you have sentence
9 sheets?

10 MS. SAXON: I do, Your Honor. Would you like me
11 to sign them? I wasn't sure.

12 THE COURT: You can. The Defendant doesn't have
13 to sign them, but why don't you sign them and put your
14 initials on there.

15 MS. SAXON: Okay.

16 THE COURT: All right. If the Defendant will come
17 around to be sentenced.

18 Madam Solicitor, if you will come over here.
19 Anything additional that you would like to add?

20 Furthermore, if Ms. Brown or Mr. Parker, if they
21 wish to say anything, I will give them an opportunity
22 to speak before I turn it over to Defense Counsel.

23 MS. SAXON: Thank you, Your Honor. They do wish
24 to speak, and I don't know which one wants to go first.

25 Which wants to go first?

SENTENCING

1 THE COURT: They can just stand at that swinging
2 door over there.

3 Yes, ma'am. I'd happy to hear from you.

4 MS. BROWN: Your Honor, I grew up here, and this
5 incident instilled in me a sense of fear that I never
6 had living here before and that I would wish on nobody,
7 because every night I go to sleep I worry. And it is
8 not something that I would hope on -- anyone should
9 have to live with. And I just feel that my emotional
10 state and confidence has been kind of violated by that.
11 And I don't know if that's reparable or not, but I do
12 hope that one day he will grow to regret his actions.

13 THE COURT: All right. Thank you, ma'am.

14 Mr. Parker?

15 MR. PARKER: Yes, sir.

16 THE COURT: Happy to hear from you, sir.

17 MR. PARKER: Yes, sir. When I was growing up my
18 dad always told me to walk anyone that I went out with
19 back to their car. And I always thought that it was a
20 useless formality. And I realized that night that it
21 wasn't. And I have felt bad since that I couldn't
22 prevent that. It seems to me that he had a choice to
23 participate in this robbery. And it seems to me that
24 he had a choice of what to do with the proceeds from
25 that. And in every instance he chose not to do the

SENTENCING

1 right thing. And I hope that you take that into
2 consideration.

3 MS. LEMPSIS: Thank you.

4 Judge, I would just -- we have talked about
5 Mr. Habersham's prior record before, but this is just
6 to put it on the record. His prior convictions, Your
7 Honor: From 2007 a petty larceny; from also in 2007, a
8 contributing to the delinquency of a minor; also in
9 2007, four counts of forgery. And in 2009, an armed
10 robbery that was pled down to -- the conviction is for
11 common law strong armed robbery. He was sentenced to
12 four years on that offense.

13 Your Honor, in 2013, in Jasper County he pled to
14 an assault and battery in the third degree, originally
15 charged as an AB second; he pled to third in General
16 Sessions Court in Jasper County. And that was in
17 April 2014.

18 Your Honor, I have -- you have heard all of the
19 facts. You know the case as well as anyone now. And
20 you have heard from the victims, the State. If you
21 would like to hear what we are requesting at this
22 point.

23 THE COURT: I would be happy to hear from you.

24 MS. LEMPESIS: We think that the 30-year maximum
25 is the appropriate sentence in this case, given

SENTENCING

1 Mr. Habersham's prior record and all of the facts
 2 stated during the trial. Mr. Habersham has just
 3 exhibited a complete disregard for the law and for -- I
 4 think that it's clearest in that recording of his
 5 interview, when he talks about Kelsey's credit card and
 6 he talks about using it. Not when he's talking about
 7 the crime itself, but he talks about using her credit
 8 card. And he said that the bitch hadn't done anything
 9 for him. And pardon my language, but that stood out to
 10 me. I think that Mr. Habersham thought that he was
 11 entitled to do this.

12 So, Judge, we would ask for 30 years.

13 THE COURT: All right.

14 All right, Mr. Bax. I will be happy to hear from
 15 you, sir.

16 MR. BAX: Thank you, Your Honor. As Your Honor is
 17 aware from the last several days of trial, there are a
 18 lot of issues that we have been arguing. And,
 19 obviously, working in cooperation with my client I
 20 think that we have done our best to try the case. And
 21 I don't think that, frankly, it was an unreasonable
 22 decision to try to bring those issues -- to bring those
 23 issues out and to exercise his right to have a trial.

24 As I have told my clients before, it is the
 25 Court's discretion on sentence upon a guilty verdict.

SENTENCING

1 But I ask and believe that courts do this and I believe
2 Your Honor would do this, is not to hold it against my
3 client that he exercised his right to have a trial. It
4 doesn't make a lot of sense under the law that we have
5 that one would be punished greater because he exercised
6 his right to a trial than he would be, necessarily, if
7 he had chosen to plea.

8 I understand the concept of acceptance of
9 responsibility. It is even a specific term in federal
10 court used under the sentencing guidelines. But, at
11 the same time, one has a right to rely on the
12 Constitution guaranteeing them the right to make the
13 State prove their case and to plead their innocence.

14 My client is approximately 25 years old at this
15 time. He has a two-year-old son that he desperately
16 wanted to get home to. And, obviously, I believe that
17 he's aware that's not going to happen now. But we
18 would ask Your Honor to give him whatever leniency you
19 can see fit to give. I understand what the Solicitor
20 has asked for, but I believe in regards to his age, the
21 fact that he has a son now, the fact that there were
22 codefendants that were never brought to justice in this
23 case -- which I certainly hope that he doesn't bear
24 their burden -- that Your Honor sees fit to give him
25 less than the 30. I believe any leniency you can give

SENTENCING

1 would be appreciated.

2 THE COURT: Thank you, Mr. Bax.

3 MR. BAX: Thank you, Your Honor.

4 THE COURT: Mr. Habersham, anything you want tell
5 me, sir?

6 THE DEFENDANT: All I can be is responsible for my
7 actions.

8 I'm sorry that happened to you.

9 And you, too, sir.

10 THE COURT: Direct your comments to me, please.

11 THE DEFENDANT: I'm here now.

12 THE COURT: How far did you go in school,
13 Mr. Habersham? I understand you got your GED when you
14 were in prison before?

15 THE DEFENDANT: Yes, sir.

16 MR. BAX: That's correct, Your Honor.

17 THE COURT: Does he have any family here?

18 MR. BAX: Yes. His mother is here.

19 THE COURT: Ma'am, anything you want to tell me?
20 I'll be happy to hear from you. Please tell me your
21 name.

22 MS. HABERSHAM: Jajuan Habersham.

23 THE COURT: Anything that you want to tell me?

24 MS. HABERSHAM: I'm just so sorry for all of this.

25 THE COURT: Where is his father, Ms. Habersham?

SENTENCING

1 MS. HABERSHAM: Never around. He's never been
2 there. Never, not since he was three or four.

3 THE COURT: Do you have any other children?

4 MS. HABERSHAM: Yes, sir. I have another son.

5 THE COURT: How old is he?

6 MS. HABERSHAM: Twenty-three.

7 THE COURT: Where is he?

8 MS. HABERSHAM: In Hardeeville, working. He is in
9 Hardeeville, working.

10 THE COURT: Do you work?

11 MS. HABERSHAM: No, ma'am -- no, sir.

12 MR. BAX: Your Honor, I apologize. My cocounsel
13 has reminded me. For the record, I think I need to
14 make a motion for a new trial based on all of the
15 objections in the case. And I know it's a little late
16 on that, but I would like to back up and put that on
17 the record. I apologize for my oversight.

18 THE COURT: Well, so noted for the record. We
19 will make sure that whatever needs to be done to
20 protect your client's rights.

21 MR. BAX: Yes, sir.

22 THE COURT: Thank you, Ms. Habersham. Anything
23 else that you want to tell me? Ma'am?

24 MS. HABERSHAM: Nothing.

25 THE COURT: How long has he been in jail?

SENTENCING

1 go to trial.

2 And for a number of years I represented
3 individuals just like Mr. Bax has represented you in a
4 criminal court. And when I initially started
5 practicing law, I would work the best deal I could for
6 a client, as your lawyer did on your behalf at the
7 outset. And usually when my clients would say, I'm not
8 doing that, Craig, I initially would get aggravated at
9 them. But by the time I finished practicing law, I
10 would tell my clients, you are in this situation
11 because of bad decisions that you made, not because of
12 bad decisions I made. And you can -- you have every
13 right to go to trial if you want to. And if you get
14 convicted, here is what you are looking at.

15 And I know Mr. Bax. He's tried cases in front of
16 me before. He does a good job for his clients; done an
17 outstanding job for you. You were a heartbeat away
18 that night from a death penalty case. A heartbeat.
19 Ten years would have been a gift to you after what
20 happened that night, with your record. It was a gift.

21 I can't imagine, Ms. Habersham, you sitting there
22 and seeing your child up here. I've got three at home
23 myself. And my children often -- I have one in
24 particular that challenges me on everything. And I
25 tell him quite often, Son, you are going to be -- you

SENTENCING

1 are going to reach an age at some point that I can't
2 make decisions for you.

3 And that's where you are. You're at an age now
4 where your mom can't make decisions for you; you are a
5 grown man. And I go on and tell my son, hopefully when
6 you get to the age where I can't make decisions for you
7 anymore you are going to make the right decisions.

8 It is tragic to see -- Mr. Bax sees it more in
9 what he does. Ms. Saxon. I saw it. I see it now,
10 tragic decisions that young people make every day that
11 put them in this situation. You are going to be taken
12 care of, you will have clothes to wear and you will
13 have food to eat every day. It might not be what you
14 want. You will be told when to go to sleep and when to
15 get up. But the people that are going to suffer the
16 most because of your actions are going to be the people
17 that care about you the most.

18 And it doesn't surprise me and I'm not -- it is
19 certainly tragic what happened to you all that night.
20 Fortunately, nobody got hurt. And I'm not being
21 critical of what -- of you all in any way, but I'll
22 just tell you this. My mom always told me growing up,
23 nothing good goes on after midnight. Nothing. Nothing
24 good goes on after midnight. The majority of stuff
25 that ends up in here because of drugs or alcohol, it

SENTENCING

1 happens after midnight. That is the reality of it. If
2 you'd sit in this courtroom week in and week out, you'd
3 see it. Drugs and alcohol and after midnight.
4 Thankfully, nothing serious happened to you. But I
5 hope everybody here learned a lesson.

6 On Indictment 2011GS071399, the Defendant is
7 committed to the State Department of Corrections for a
8 period of five years.

9 On 2011GS071398, the Defendant is committed to the
10 State Department of Corrections for a period of five
11 years.

12 On 2011GS071496, the Defendant is committed to the
13 State Department of Corrections for a period of 20
14 years.

15 On 2011GS071423, the Defendant is committed to the
16 State Department of Corrections for a period of 30
17 years, given credit for 13 months, 21 days. All
18 charges are to run concurrent.

19 Good luck to you, Mr. Habersham.

20 MR. BAX: Thank you, Your Honor.

21 MS. LEMPSIS: Thank you, Your Honor.

22 THE COURT: All right. We'll stand at ease until
23 about 2:15.

24 (Whereupon, the trial concluded.)

25

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable D. Craig Brown, Circuit Court Judge

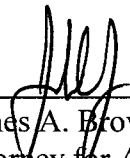
Indictment Numbers: 2011-GS-07-01398, 1399, 1423, 1496
Appellate Case No: 2014-002706

The State,.....Respondent
v.
Jajuan Andre Habersham.....Appellant

CERTIFICATE OF COUNSEL

The undersigned counsel certifies that the Supplemental Record on Appeal complies with SCACR Rule 210(c).

February 5, 2016



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