

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from York County

John C. Hayes, III, Circuit Court Judge

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SC SUPREME COURT

RANDY MITCHELL

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002374

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APPENDIX

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State of South Carolina.,)  
 )  
 )  
 County of York. )

In the General Sessions  
 Court of York

Case No.: 2011-GS-46-00506

State of South Carolina.,)  
 )  
 Plaintiff., )  
 )  
 -vs- )  
 )  
 Randy Lamond Mitchell., )  
 )  
 Defendant. )

Transcript of Record

February 27-29, 2012  
 York, South Carolina

B E F O R E:

Honorable Robin Stilwell, Judge, and a jury.

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1 (COURT IN SESSION MONDAY, FEBRUARY 27, 2012 AT 02:38  
2 P.M..)

3 THE COURT: Thank you, ladies and gentlemen.  
4 Good afternoon.

5 All right. Have you had the opportunity to look at  
6 the Indictments?

7 MR. JAMIESON: Yes, sir.

8 THE COURT: Okay. Anything objectionable on the  
9 indictments?

10 MR. JAMIESON: Other than the date that she needs to  
11 correct.

12 THE COURT: Okay. All right. Which one is that?

13 MR. JAMIESON: The armed robbery indictment.

14 MS. MILLER: We can just address that now since we're  
15 talking about it, Your Honor. The State would request to  
16 amend.

17 MR. JAMIESON: My client's not in here yet.

18 We need to get him.

19 THE COURT: Sure.

20 THE BAILIFF: Who is he?

21 MR. JAMIESON: Randy Mitchell.

22 THE COURT; While we're doing that, is our jury pool  
23 ready?

24 Okay.

25 (DEFENDANT RANDY MITCHELL, BLACK MALE, ENTERING THE

1 COURTROOM.)

2 THE COURT: Mr. Jamieson, I was just reading your voir  
3 dire. Has there been pretrial publicity?

4 MR. JAMIESON: Honestly I don't know, Your Honor. I  
5 wasn't on the case at that time and I wasn't on the case  
6 until almost two years after so I don't have any idea -

7 THE COURT: Okay.

8 MR. JAMIESON: - - - whether there was or not.

9 THE COURT: Okay. Good enough. I didn't know. I was  
10 curious. I looked at these and I thought that their  
11 standard questions and I didn't know if that was something  
12 in particular with specific in this case.

13 MR. JAMIESON: No. It was jut out of the abundance of  
14 caution, Your Honor, because I don't know.

15 THE COURT: Okay. We call to the bar the case of  
16 State of South Carolina versus Randy Lamond Mitchell Docket  
17 No. 2011-GS-46-560 and 507, they are burglary first degree  
18 and armed robbery respectively.

19 And I believe that Counsel indicated to me there was a  
20 motion for an amendment of the pleadings in respect to the  
21 date.

22 MS. MILLER: Yes, Your Honor. The State ask to amend  
23 Indictment No. 2011-GS-46-00507 for armed robbery to amend  
24 it from December 3rd 2010 to correct that for October 3rd  
25 2010.

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1 THE COURT: Any objections to that, sir?

2 MR. JAMIESON: I beg the Court's indulgence, Your  
3 Honor, and explain to my client --

4 THE COURT: Okay.

5 (PAUSE.)

6 MR. JAMIESON: We do object to the change, Your Honor.

7 THE COURT: All right. On what basis?

8 MR. JAMIESON: It directly affects when my client was  
9 charged, the dates, two months after the event that  
10 occurred.

11 THE COURT: Did the discovery accurately reflect the  
12 date from which the amendment has been made? That is does  
13 discovery accurately reflect October 13, 2010?

14 MR. JAMIESON: It definitely does, Your Honor.

15 THE COURT: Okay. So therefore all of the preparation  
16 that has been made for the defense of this trial has been  
17 made bases on the October 3rd date notwithstanding the  
18 representation in the indictment?

19 MR. JAMIESON: Yes it has.

20 THE COURT: All right, sir. Recognizing that the  
21 indictment is simple a notice document, and recognizing  
22 that the State has proceeded with the day of October 3rd  
23 has turned over discovery relevant to that date there is no  
24 prejudice served upon the defendant to abide to the  
25 amendment and I respectfully deny the objection and allow

1 the amendment.

2 Okay. Anything else before we bring the jury in?

3 MS. MILLER: Your Honor, do you want to -- Do you wish  
4 to for us to pick the jury and then -- Do you wish to go  
5 forward with arguments first and then do the jury or the  
6 opposite?

7 THE COURT: What kind of arguments do you have?

8 MS. MILLER: I don't think anything of much relevance.  
9 I can tell you what I have. I'm asking, Your Honor, that  
10 there be no hearsay about what his codefendant Gregory  
11 Crawford said in his statement or in the last hearing or  
12 trial. That there would be no testimony or mentioning in  
13 front of the jury in any way including in opening and  
14 closing what Mr. Crawford pled to, what he didn't pled to,  
15 what potential sentence he was looking at or what sentence  
16 he got, et cetera. That there be on questions, testimony  
17 or mentioning in front of the jury in any way including  
18 opening and closing about the potential -- what the  
19 potential sentence could be or what sentencing range exist  
20 for the charges for which Randy Mitchell is being tried or  
21 for what Mr. Crawford is facing.

22 And the State does not intend to use a statement made  
23 by Mr. Mitchell "those guys tried to robe me ". This was  
24 in response to Officer Rivera asking him what are you  
25 running for. Firstly I believe it was ask while he was in

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1 custody and without Miranda. And Two, it being that the  
2 statement itself serving.

3 THE COURT: Okay.

4 MS. MILLER: I also have a list of crimes from which I  
5 would introduce should Mr. Mitchell take the stand.

6 THE COURT: Okay.

7 MS. MILLER: That's all been provided to Mr. Jamieson.

8 THE COURT: All right. Let's do this. Let's go ahead  
9 and take them one by one and let's start going through them  
10 now and then when the jury gets up here what we'll do is  
11 we'll go ahead and bring them in, we'll strike our jury,  
12 and then maybe then the one that we take up first is the  
13 one with respect to jury argument in case we go ahead and  
14 go ahead and start with our opening argument.

15 And those that we don't finish, after we send the jury  
16 home for the afternoon we'll finish up with remaining  
17 arguments, okay.

18 Is the jury on their way up, or over or across?

19 MADAME CLERK: They're on their way up. It will take  
20 about five minutes.

21 THE COURT; Sure. Okay. So I'd be happy to hear that  
22 first argument.

23 And, Mr. Jamieson, to the extent that you may not have  
24 an objection to whatever she's saying, if you cue up the  
25 first one and you don't have an objection let me know and

1 we can go on from that one, okay?

2 MR. JAMIESON: Yes, sir.

3 THE COURT: Ms. Miller, I'll be happy to hear from  
4 you.

5 MS. MILLER: As to the first argument as to what I'm  
6 asking for regarding argument, Your Honor?

7 THE COURT: Yes, ma'am.

8 MS. MILLER: Just two things, Your Honor.

9 There was testimony in a prior trial where Gregory  
10 Crawford testified and in that testimony he talked about  
11 what he was looking at in his armed robbery and burglary  
12 first degree plea, what his deal was and what he wound up  
13 getting. And I just find it's prejudicial to the State and  
14 would ask that that not be brought up in front of the jury  
15 at all.

16 And the same goes for Mr. Mitchell, what he's, what  
17 the potential sentence for him is and what sentencing range  
18 could be, once again being prejudicial and not relevant for  
19 the jury to hear.

20 THE COURT: Okay. All right.

21 All right, Mr. Jamieson.

22 MR. JAMIESON: I don't intend to go into those  
23 matters, Your Honor. The only way that would come up would  
24 be if the State opened the door about Mr. Crawford in some  
25 fashion. Otherwise I don't intend to address that or what



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1 sentence range my client is exposed to and I believe we're  
2 not entitled to into that.

3 THE COURT; Good enough. I agree.

4 MS. MILLER: As to opening the door for Mr. Crawford,  
5 I can't imagine how the door would be opened to allow for  
6 what he's pled to, sentencing.

7 THE COURT: Gotcha. I don't either. Stranger things  
8 have happened and I think that Mr. Jamieson is just  
9 protecting himself on the record in case something comes  
10 up. But in closing -- excuse me. IN opening arguments I  
11 feel confident that that wouldn't be appropriate for  
12 opening arguments in any event. So you're protected on the  
13 record with respect to opening arguments and I'd say there  
14 is probably ninety-nine percent chance you would not be  
15 able to get it in anyway even in evidentiary case. I know  
16 you're keeping your powder dry on that just in case.

17 MR. JAMIESON: Yes, sir.

18 THE COURT; Okay. The next one.

19 MS. MILLER: Let's see. That covered Mr. Crawford and  
20 Mr. Mitchell sentencing. We don't have any Jackson v.  
21 Denno and I'm just making sure that the Judge knows there  
22 was one statement made to police officers when Mr Mitchell  
23 said while they were arresting him "those guys tried to  
24 robe me". He said that in response to an officer asking  
25 him why are you running. I don't intend to introduce it.

1 First of all I think its self serving but secondly I  
2 believe the officer made -- He did not have his Miranda  
3 Rights read to him. This was literally while they were  
4 arresting him.

5 THE COURT: Okay. All right. So you don't intend to  
6 admit it?

7 MS. MILLER: I do not.

8 THE COURT: Okay. Mr. Jamieson, any issues?

9 MR. JAMIESON: I take the same position, Your Honor.  
10 Unless the open that door I don't intend to go into it.

11 THE COURT: If that issue becomes right for  
12 adjudication then we can take it up at the time. We can  
13 just let the jury out and do a hearing on the voluntary  
14 statement, if it becomes right, okay.

15 Next.

16 MS. MILLER: let's see, I think I said earlier I  
17 believe the State would ask for no hearsay about what Mr.  
18 Crawford said in his statement or in the last trial.

19 THE COURT: Okay. Is Mr. Crawford going to take the  
20 stand in this case?

21 MR. JAMIESON: We have not called him, Your Honor.  
22 I assume the State doesn't intend to call him either.

23 THE COURT: Okay.

24 MS. MILLER: No.

25 THE COURT: That's what it sounds like to me too.

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1           Okay. All right, then unless, unless it falls under  
2           some type of exception to the hearsay rule, which it could,  
3           and I will make a guarded ruling in limine that no hearsay  
4           from Mr. Crawford would be admitted. Now obviously that's  
5           subject to any exception...

6           MS. MILLER: I think that's it for the State.

7           MR. JAMIESON: I have a few ---- a motion in limine  
8           regarding my client's record. What she would intend to use  
9           to impeach him if he chose to testify.

10          THE COURT: Okay. Have you got that right now?

11          MS. MILLER: I have, Your Honor, I provided a list to  
12          Mr. Jamieson. Would you like me to read it to you?

13          THE COURT: Sure.

14          MS. MILLER: Possession of a weapon which was a  
15          federal offense. He was charged in -- He was convicted in  
16          2004 for which he received seventy-seven months.  
17          Possession of crack cocaine in 1998 for which he received  
18          one to six years on a YOA and was released from that in  
19          2004. Failure to stop for a blue light also in 1998 which  
20          he received a YOA one to six years for which he was also  
21          released in 2004. Attempted armed robbery, October 6, 2004  
22          for which he received two years concurrent. Hit and run  
23          with injury which is a crime of moral turpitude. He  
24          received in 2000 a one year suspended on five years  
25          probation so that would fall within the ten years. And

1 strong armed robbery from December of 2000 for which he  
2 received ten years suspended upon five years probation, so  
3 that would also fall within the ten years.

4 MR. JAMIESON: Your Honor, I would object to the use  
5 of possession of a weapon, attempted armed robbery and  
6 strong armed robbery if she uses those specific terms  
7 because I believe they are too prejudicial to my client.  
8 Those are very similar to the charges he's facing today and  
9 there is a risk the jury would assume that since he's been  
10 convicted of that previously he's guilty of this as well.  
11 I wouldn't have an objection to her saying the offense that  
12 I did not name and on those saying weren't you convicted of  
13 a felony or weren't you convicted of a felony that carried  
14 more than one year or something of that nature. But I do  
15 believe these are too close in terms of what he's charged  
16 with and in trial on this issue.

17 THE COURT: Okay. This is what we'll do.

18 Mr. Jamieson, I intend to agree with you and I  
19 probably would take that tact. Let's renew that issue at  
20 the close of the State's case. I can ask Mr. Mitchell some  
21 specific questions, I'd advise him of his Fifth Amendment  
22 rights and we can take up that issue at that time. But I  
23 think Mr. Jamieson just as an advisory opinion at this  
24 point, I tend to do what you suggest.

25 MR. JAMIESON: Thank you.

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1 MS. MILLER: The only objection I have to that is the  
2 possession of a weapon, Your Honor. The others I would ask  
3 if he had been convicted of a felony for both of the  
4 others.

5 THE COURT: We'll do that one by one and let's -  
6 knowing that let's figure out if he will testify and then  
7 we'll talk about it. I know it's gonna have some bearing  
8 on it - some. But if we're talking about one possession of  
9 a weapon that might not be one that he makes the  
10 dispositive determination of whether he wants to testify or  
11 not.

12 MR. JAMIESON: I confirm that the Solicitor's complied  
13 with Rule Five, I believe they have, Your Honor.

14 THE COURT: Okay.

15 Have you?

16 MS. MILLER: I believe we have, Your Honor.

17 THE COURT: All right. As an officer of the court I'm  
18 going to accept that.

19 MR. JAMIESON: I don't believe there is any Lyle  
20 evidence in this case, Your Honor, but if they intend to  
21 introduce any Lyle evidence I would ask that they reveal  
22 that.

23 MS. MILLER: No Lyle evidence.

24 THE COURT: Okay.

25 MR. JAMIESON: Motion to sequester the witnesses, Your

1 Honor.

2 THE COURT: Okay. Any objection to that?

3 MS. MILLER: Your Honor, in my case I have four  
4 victims all of whom under the Victim's Rights Act have a  
5 right to be here in the courtroom. I have an officer who I  
6 want to be here who was there for the crime actually. Not  
7 just after the crime. And I would like to have him sit in  
8 here and I have other officers who I - who we would  
9 sequester if ordered by the court.

10 THE COURT: Who is the one, the officer --

11 MS. MILLER: Rivera.

12 THE COURT: Is he the head investigator and the one  
13 who brought the charges in the case?

14 MS. MILLER: He did. Yes, yes, he is.

15 THE COURT: Okay. If he's the man as it were, he is  
16 your chief officer, then I'll allow him to be in here.

17 With respect to the victims their statutory entitled  
18 to be in court.

19 MR. JAMIESON: I understand, Your Honor. I believe  
20 that the Solicitor's complied with this as well, but a  
21 motion to provide me the records of any witness' she would  
22 anticipate calling who have a criminal record. She's  
23 provided me with several and I assume she's provided them  
24 all.

25 MS. MILLER: I provided him the records of all four of

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1 my lay witnesses.

2 THE COURT: All right. Good enough.

3 MS. MILLER: And I just want to make myself clear  
4 about the case agent issue. There was a detective at the  
5 brought out at some point of the night that this officer is  
6 listed as the case agent, is the one I'm requesting.

7 THE COURT: Okay. Fair enough.

8 MR. JAMIESON: If she designates him as a case agent I  
9 don't have an issue with that, Your Honor, as long as the  
10 other person's sequestered.

11 THE COURT: That's clear to you, Ms. Miller? You can  
12 only have one case agent.

13 MS. MILLER: Yes I have one.

14 THE COURT: You've got to pick.

15 MS. MILLER: I only want one and he's the one I want.

16 THE COURT: All right.

17 MR. JAMIESON: Pick one and I'm good with it.

18 MS. MILLER: I've got one.

19 THE COURT: Okay.

20 MR. JAMIESON: I believe that is all. Well there is  
21 an issue, typically what we do is when the jury comes in  
22 and we ask them if they know any of the people who might  
23 testify, none of those people are present so we need a way  
24 of dealing with that so that we don't impanel a jury that  
25 knows some of these folks by face but not by their real

1 names. And I think we decided a good way to do that would  
2 be to go ahead and draw a jury today but introduce  
3 everybody to the jury panel beginning tomorrow and have  
4 enough alternates so that if that occasion arose we can  
5 deal with it.

6 THE COURT: How many alternates you want to pick?

7 MR. JAMIESON: Do you think three or?

8 MS. MILLER: Four.

9 THE COURT: Well I'm comfortable with that. It  
10 depends on how many we got in the pool. How many do we  
11 have?

12 MS. MILLER: Fifty.

13 THE COURT: Fifty? Okay. And you're taking ten  
14 strikes and you're taking ten - five. Excuse me. Yeah we  
15 should have enough. Okay we'll take four.

16 How many witnesses does the State intend to offer?

17 MS. MILLER: Ten, eleven, in that area.

18 THE COURT: Okay. And right now, Mr. Jamieson, as you  
19 sit here I know and I'm not going to hold you to it, you  
20 anticipate putting any witnesses on the stand, sir?

21 MR. JAMIESON: The only witness that we would call  
22 would be my client if he chooses to testify.

23 THE COURT: Okay. So we just kind of look at the land  
24 scape of the case, we're thinking perhaps getting it to the  
25 jury Wednesday afternoonish?



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1 MS. MILLER: I believe so, Your Honor.

2 MR. JAMIESON: Probably.

3 THE COURT: All right. Good enough.

4 MS. SHELTON: Your Honor, before the jury comes in, if  
5 Mr. Jamieson has no pretrial, I do have a couple of  
6 objections to voir dire.

7 THE COURT: Okay.

8 THE BAILIFF: Ms. Shelton, they've been out there a  
9 good while. They've been standing out there.

10 MS. SHELTON: Very quickly.

11 THE COURT: Okay. Sure.

12 MS. SHELTON: And if you rather we approach while they  
13 come in I can deal with it that way.

14 THE COURT: Just tell me right there.

15 MS. SHELTON: On the first one, Your Honor, ask if  
16 there is any jury panel family member or close personal  
17 friend could have been the victim of a violent crime, I  
18 would just ask the Court to ask that also in reverse if  
19 there have been any family members or close personal  
20 friends that has been charged with a violent crime, just in  
21 fairness.

22 THE COURT: All right.

23 MR. JAMIESON: No objection to that of course, Your  
24 Honor.

25 MS. SHELTON: And then, Your Honor, I have an

1 objection to the way No. 5 is worded, asking that the  
2 person is likely to believe someone is guilty just because  
3 they've been charged with a crime. I think that is  
4 venturing into jury shopping of - they're asking if there  
5 are people out there that would find somebody guilty just  
6 because they've been charged. We can't ask them if they  
7 feel like people are innocent even if they have been  
8 charged so we just ask that the Court not ask that one.

9 THE COURT: Okay. I respectfully deny your motion.  
10 I will ask that that is fairly - I think it's a practical  
11 matter probably not many people stand up -

12 MS. SHELTON: Thank you, Your Honor.

13 THE COURT: Okay. All right.

14 MS. MILLER: And, Your Honor, I don't know how you  
15 normally do your procedure on - Do you want - Do you call  
16 the case or do I call the case?

17 THE COURT: When they come in, when we bring them in  
18 I'll just announce it just like I did when we began.

19 MS. MILLER: Okay. May I approach, Your Honor?

20 THE COURT: Yeah come on up.

21 Mr. Jamieson, you come up too.

22 (BENCH CONFERENCE OFF THE RECORD.)

23 (JURY ENTERS COURTROOM AT 02:59 P.M..)

24 THE COURT: All right. Good afternoon, ladies and  
25 gentlemen. I am Rob Stilwell, I'm a Circuit Court judge in

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1 the State of South Carolina. I'm a resident judge for the  
2 counties of Greenville and Pickens and I'm honored to have  
3 the opportunity to preside in York County this week. And I  
4 can tell you I look forward to having the opportunity to  
5 work with you this week on this trial. I'm going to call  
6 to the bar the case of the State of South Carolina versus  
7 Randy Lamond Mitchell.

8 Now, ladies and gentlemen, I'm going to ask you  
9 several questions related to this specific case. I know  
10 that earlier this morning Judge Alford qualified you and he  
11 ask you questions which were designed to determine if you  
12 were qualified under the law in the State of South Carolina  
13 to serve as a juror generally in the County of York and in  
14 the State.

15 The questions that I'm gonna ask you are designed to  
16 determine whether you are qualified and whether it is  
17 suitable for you to serve as a juror on this specific  
18 trial. When you answer questions this morning you took an  
19 oath, and you took an oath to tell the truth. I remind you  
20 that you continue under your oath in this courtroom when I  
21 pose these questions to you.

22 Now, before I get started, what I need to do is read  
23 to you the indictments, that is the charging papers, the  
24 allegations from the State. But before I do that I need to  
25 tell you something very important and that is this. In the

1 United States of America in the State of South Carolina in  
2 the County of York, each and every criminal defendant is  
3 presumed innocent until proven guilty beyond a reasonable  
4 doubt by the State. The State has the burden of proving  
5 each and every element of the offenses beyond a reasonable  
6 doubt. Now that's a very important tenant of our law in  
7 the United States of America. And I tell you that because  
8 I want you to remember that throughout the conduct of this  
9 trial.

10 Right now as we begin this trial the defendant, Mr.  
11 Mitchell, is presumed innocent. And I'll give you a visual  
12 on that and put it in context. Presume that he's wearing a  
13 cloak of innocence and that cloak of innocence cannot be  
14 removed or pierced unless and until the State has met it's  
15 burden of proving him guilty beyond a reasonable doubt.

16 Now one of the reasons I tell you that is because I  
17 want to read to you these charging papers. And I don't  
18 want you to think that because I'm reading you these  
19 charging papers that I as the Court am telling you what the  
20 facts are in this case. I have no opinion about the facts,  
21 these are -- This is simply the charging papers, these are  
22 the allegations from the State. I need to read them to you  
23 so that you will know at least what the allegations are so  
24 then you can answer the questions that I pose to you  
25 intelligently.

Ladies and gentlemen, the reason I read those to you is so that I can ask you this question and that is this. Is there anyone among you who has any prior knowledge, any prior information, any bias, any prejudice, any disposition regarding the allegations in this case?

1 (NO RESPONSE.)

2 THE COURT: All right. Is there anyone among you who  
3 has been privy to any pretrial publicity regarding this  
4 case?

5 (NO RESPONSE.)

6 THE COURT: All right. Let the record reflect there  
7 have been no affirmative response.

8 Ladies and gentlemen, in this case it was suggested to  
9 you that the defendant is Mr. Randy Lamond Mitchell. I'll  
10 ask you, is there anyone among you who has a personal,  
11 professional, or family relationship with the defendant Mr.  
12 Mitchell?

13 (NO RESPONSE.)

14 THE COURT: All right. Let the record reflect no  
15 affirmative response.

16 Ladies and gentlemen, Mr. Mitchell is represented by  
17 Mr. Philip Jamieson of the York County Bar. I'll ask you,  
18 is there anyone among you who has a personal, professional,  
19 or family relationship with Mr. Jamieson?

20 (NO RESPONSE.)

21 THE COURT: Let the record reflect no affirmative  
22 response.

23 Ladies and gentlemen, this case is being prosecuted by  
24 Ms. Betty Miller of the York County Solicitor's Office.  
25 I'll ask you, is there anyone among you who has a personal,

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1 professional, or family relationship with Ms. Miller?

2 Did is say that right? Did I say Ms. Berry Miller?

3 MS. MILLER: Yes, Your Honor.

4 THE COURT: I did. Okay. I was second guessing  
5 myself because I was looking at all these documents.

6 Anyone who has a personal, professional, or family  
7 relationship with Ms. Miller, or with anyone who is  
8 employed by the York County Solicitor's Office?

9 (NO RESPONSE.)

10 THE COURT: Okay. Let the record reflect no  
11 affirmative response.

12 Ladies and gentlemen, I'm gonna read for you now a  
13 list of potential witnesses in this case. Now this may be  
14 more witnesses, it could be less witnesses than those that  
15 are actually called in the trial. But these are witnesses  
16 that could potentially take the stand and testify. I'm  
17 going to read you the list. And what I'm gonna ask you to  
18 do is after I've read the list is tell me the answer to the  
19 same question that I've ask you regarding the parties and  
20 the attorneys and that is whether you have any personal,  
21 professional or family relationship with any of the  
22 following witnesses.

23 And those are, Officer William Rivera, George Weeks of  
24 the York County Forensic's Unit. James Kenny Williams,  
25 Charles Ellis, Daniel Ronnie Adams, Everett Williams,

1 Officer Shaun Watson of the Rock Hill Police Department.  
2 Officer Trey Amick with the Rock Hill Police Department.  
3 Officer Ryan Hammond of the Rock Hill Police Department.  
4 Officer C.E. Rowe of the Rock Hill Police Department.  
5 Officer Don Doster of the Rock Hill Police Department.  
6 Officer Reid of the Rock Hill Police Department. Detective  
7 Bruce Haire of the Rock Hill Police Department. Otis  
8 Mobley, Crystal Kissel or Kessell of the York County  
9 Sheriff's Office. Martha Parish of the York County  
10 Solicitor's Office, Detective M. Chavis of the Rock Hill  
11 Police Department. Linda Irby of the Rock Hill Police  
12 Department.

13 Ladies and gentlemen, is there anyone among you who  
14 has a personal, professional or family relationship with  
15 any of those individuals?

16 (NO RESPONSE.)

17 THE COURT: Ladies and gentlemen, is there anyone  
18 among you who served on the Grand Jury during the term of  
19 which this indictment was handed down?

20 (NO RESPONSE.)

21 THE COURT: Ladies and gentlemen, is there anyone  
22 among you who is close friends with any attorney at law  
23 whose practice includes defending criminal defendants?

24 (NO RESPONSE.)

25 THE COURT: All right. Does any member of the jury



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1 panel feel that you would find it difficult or impossible  
2 after hearing the facts to judge the defendant guilty or  
3 not guilty because of any religious, or philosophical or  
4 deeply held personal reasons?

5 (NO RESPONSE.)

6 THE COURT: Ladies and gentlemen, I would ask you is  
7 there anyone among you who has individual or a close  
8 personal friend or family member been the victim of a  
9 violent crime?

10 Yes, sir. If you have it if you will please, sir,  
11 stand up, state your name and your juror number and give me  
12 your response to the question, sir.

13 A. My name is David Decker, Juror No. 61.

14 THE COURT: Yes, sir.

15 MR. DECKER: I was held up at gun point in St. Pete  
16 Beach, Florida about five years ago..

17 THE COURT: Okay. Do you think having had that  
18 experience that you could still be a fair and impartial  
19 juror in the trial of this case and render a verdict in  
20 accordance of the law as I give it to you?

21 MR. DECKER: I do.

22 THE COURT: Thank you for letting me know that. We  
23 appreciate that.

24 Anyone?

25 Yes, ma'am.

1 A. Deborah Shuler. I was a victim of assault several  
2 years ago.

3 THE COURT: Okay. And what's your juror number?

4 MS. SHULER: 197.

5 THE COURT: 197. Okay. Ms. Shuler, given that fact  
6 do you think you could still be fair and impartial and  
7 render a verdict in accordance of the law as I give it to  
8 you?

9 MS. SHULER: I do.

10 THE COURT: Okay. Thank you for telling me that. I  
11 appreciate it.

12 All right, anyone else?

13 Okay. If what you want to do is everybody who wants  
14 to respond in the affirmative and what I'll do is we'll  
15 just go down the line and we'll go from my right to left.  
16 You all's left, my right.

17 Sir.

18 A. Josh Martin, Juror No. 124.

19 THE COURT: Yes, sir.

20 MR. MARTIN: My brother in law was recently robbed on  
21 the job.

22 THE COURT: Okay. Do you think you could be fair and  
23 impartial notwithstanding that?

24 MR. MARTIN: I do.

25 THE COURT: Okay. Thanks for letting me know that.

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1 Yes, ma'am.

2 A. Jennifer McMurtrie, Juror No. 132. My daughter prior  
3 to adopting was molested.

4 THE COURT: Okay. Do you think given that fact you  
5 could still be fair and impartial in this trial?

6 MS. MCMURTRIE: Yes.

7 THE COURT: Thank you. Thank you for letting me know.  
8 Yes, ma'am.

9 A. My aunt was killed by a drunk driver.

10 THE COURT: What's your name and number?

11 A. Tiffany Schaeffer.

12 THE COURT: I'm sorry about your aunt. You think  
13 given that fact you could be fair and impartial in this  
14 trial?

15 MS. SCHAEFFER: Yes.

16 THE COURT: Thank you for letting me know. I  
17 appreciate that.

18 All right, anyone else.

19 (NO RESPONSE.)

20 THE COURT: Okay. All right. Does anyone have a  
21 close personal friend or relative who has been charged with  
22 a violent crime?

23 Yes, sir.

24 A. My name is David DeFreitas, 62. My brother in law I  
25 believe had been charged on an assault to an officer.

1 THE COURT: Okay. Do you think you could still be  
2 fair and impartial in this case?

3 MR. DEFRTAS: Yes.

4 THE COURT: Okay. I appreciate that, sir.

5 Okay. All right. Does anyone among you or is there  
6 anyone among you related by kinship to a law enforcement  
7 officer or anyone employed by law enforcement?

8 Yes, ma'am.

9 A. Yes. My daughter is assistant solicitor at Berkley  
10 County and my son in law is a police officer.

11 THE COURT: Okay. Given that fact do you think you  
12 can still be fair and impartial in this case?

13 A. Yes.

14 THE COURT: Okay. Thank you very much.

15 MS. SHELTON: Judge, can we get her name?

16 THE COURT: Awh, see I missed that. They don't miss  
17 anything.

18 A. Fifty-two, Lou Anne Cornwell.

19 THE COURT: Okay. Thank you, Ms. Cornwell. I  
20 appreciate that.

21 Is there anyone among you who is a contributor to an  
22 organization or a member of an organization which advocates  
23 for criminal prosecution or victim's rights? When I say  
24 that by way of example I mean like MADD, Mother Against  
25 Drunk Drivers. SADD, Students Against Drunk Drivers. Or

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1 any other like organization that advocates for victim's  
2 rights or criminal prosecution.

3 Yes, ma'am.

4 A. Juror No. 94, my name is Angelique Holland. I work  
5 with the Catawba area Agency of Aging directly.

6 THE COURT: Yes, ma'am.

7 MS. HOLLAND: But abdicate for the elderly, abuse in  
8 nursing homes.

9 THE COURT: Okay. Do you think you can still be fair  
10 and impartial in this trial?

11 MS. HOLLAND: Yes I do.

12 THE COURT: Okay. Thank you for letting me know. I  
13 appreciate that.

14 Anyone else?

15 (NO RESPONSE.)

16 THE COURT: Okay. Is any member of the jury panel  
17 hold the belief a person is likely guilty of a crime  
18 because they were charged by law enforcement with a crime?  
19 That is simply because somebody is charged they must be  
20 guilty.

21 (NO RESPONSE.)

22 THE COURT: Does any member of the jury panel believe  
23 the law enforcement officer, law enforcement's testimony  
24 should be given greater weight or believability simply  
25 because the witness is a law enforcement officer?

1 (NO RESPONSE.)

2 THE COURT: All right. Let the record reflect no  
3 affirmative response.

4 Ladies and gentlemen, is there anyone among you who  
5 for whatever reason feels as though you could not be a fair  
6 and impartial juror in the trial of this case?

7 (NO RESPONSE.)

8 THE COURT: Okay. Let the record reflect no  
9 affirmative response.

10 All right, ladies and gentlemen, what we're going to  
11 do now, let me ask you, counsel, any additional voir dire?

12 MS. MILLER: May we approach, Your Honor.

13 THE COURT: Sure.

14 (BENCH CONFERENCE OFF THE RECORD AT 03:15 P.M..)

15 THE COURT: Ladies and gentlemen, I apologize. Ms.  
16 Miller pointed out Ms. Shelton, Ms. Misty Horton Shelton  
17 with the York County Solicitor's Office will also be  
18 assisting in the prosecution of this case.

19 Is there anyone among you who has a personal,  
20 professional or family relationship with Ms. Shelton?

21 (NO RESPONSE.)

22 THE COURT: Okay. All right.

23 Counsel, any additional voir dire? You satisfied?

24 MR. JAMIESON: No, sir.

25 MS. MILLER: None from the State.

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1 THE COURT: Good enough.

2 All right, ladies and gentlemen, we're going to move  
3 toward picking a jury in this case. Now what we're gonna  
4 do is pick twelve jurors and we're gonna pick four  
5 alternates. Four alternates is more than we usually pick  
6 in case but some of the witnesses actually all of the  
7 witnesses aren't here this afternoon. And it may be that  
8 after you are picked tomorrow you may recognize by face one  
9 of the witnesses that you did not recognize by name when I  
10 read them off this morning or this afternoon, excuse me.  
11 So I'm going to pick a few extra alternates than I  
12 ordinarily would.

13 Now the process by which we pick a jury in a criminal  
14 case is time honored. Sometimes jurors feel a little bit  
15 conspicuous when they have to come forward and stand in  
16 front of the courtroom and be either stricken or asked to  
17 served on a jury. However there is a purpose behind it I  
18 can assure you that there is. But what will happen in this  
19 case is the Clerk of Court is going to read off your name  
20 and she just picks, she's going to read off at random.  
21 What's going to happen is you're going to come forward and  
22 just stand right in front of the clerk's bench, face back  
23 out at the clock, and the attorneys are going to make  
24 peremptory challenges and or strikes. The Defense gets ten  
25 strikes, the State gets five strikes. And what you will

1 hear is either please strike the juror, please excuse the  
2 juror from the trial of this case. If you hear that just  
3 once from either side, that means you can sit back down in  
4 the pews and you will have been stricken from the jury in  
5 this case and relieved of any responsibility to hear this  
6 case. But if you hear twice either please swear the juror,  
7 or please seat the juror, then you will have been selected  
8 to serve on this jury. Now, I will tell you the attorneys  
9 are given very broad latitude and a lot of discretion in  
10 executing strikes. So I would suggest to you don't try to  
11 determine why you may have either been stricken or why you  
12 may have been accepted as a juror in the case. If you try  
13 to get in the head of an attorney maybe you will be as  
14 batty as we are and I wouldn't invite you into that dark  
15 place. So just know that when you come up have everything  
16 with you, pocketbook, backpacks, books, whatever you have  
17 with you because if you're selected you sit right down in  
18 the jury box. Again, we're going to go with twelve jurors  
19 and we're going to pick four alternates.

20 All right, having said that, Madame Clerk, you can  
21 proceed.

22 MADAME CLERK: Number 127, Latondrea McCoy.

23 (BLACK FEMALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 MS. MILLER: Please present this juror.



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1 MADAME CLERK: The Defense?  
2 MR. JAMIESON: Please seat the juror.  
3 MADAME CLERK: You may have a seat in the jury box.  
4 Number 62, David Defreitas.  
5 (WHITE MALE COMING FORWARD.)  
6 MADAME CLERK: What say you for the State?  
7 MS. MILLER: Please present this juror.  
8 MADAME CLERK: Defense?  
9 MR. JAMIESON: Please seat the juror.  
10 MADAME CLERK: You may have a seat in the jury box.  
11 Number 146, Ruthann Naufftus.  
12 (WHITE FEMALE COMING FORWARD.)  
13 MADAME CLERK: What say you for the State?  
14 MS. MILLER: Please present this juror.  
15 MADAME CLERK: Defense?  
16 MR. JAMIESON: Please excuse the juror.  
17 MADAME CLERK: You are excused from this case.  
18 Number 31, April Readett.  
19 (WHITE FEMALE COMING FORWARD.)  
20 MADAME CLERK: What say you for the State?  
21 MS. MILLER: Please present this juror.  
22 MADAME CLERK: Defense?  
23 MR. JAMIESON: Please seat the juror.  
24 MADAME CLERK: You may have a seat in the jury box.  
25 Number 94, Angelique Holland.

1 (WHITE FEMALE COMING FORWARD.)  
2 MADAME CLERK: What say you for the State?  
3 MS. MILLER: Please present this juror.  
4 MADAME CLERK: Defense?  
5 MR. JAMIESON: Please excuse the juror.  
6 MADAME CLERK: You are excused from this case.  
7 Number 153, Anna McManus.  
8 (WHITE FEMALE COMING FORWARD.)  
9 MADAME CLERK: What say you for the State?  
10 MS. MILLER: Please present this juror.  
11 MADAME CLERK: Defense?  
12 MR. JAMIESON: Please excuse the juror.  
13 MADAME CLERK: You are excused from this case.  
14 Number 223, Billy Truesdale.  
15 (BLACK MALE COMING FORWARD.)  
16 MADAME CLERK: What say you for the State?  
17 MS. MILLER: Your Honor, may we approach?  
18 THE COURT: Sure.  
19 (BENCH CONFERENCE OFF THE RECORD AT 03:24 P.M.)  
20 THE COURT: Mr. Wansack. Mr. Wansack.  
21 No, you're Mr. Truesdale.  
22 Mr. Wansack? Right. You've got a doctor's  
23 appointment on Thursday morning?  
24 MR. WANSACK: Thursday morning.  
25 THE COURT: What time?

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1 MR. WANSACK: Ten o'clock.

2 THE COURT: Ten o'clock?

3 MR. WANSACK: Yes, sir.

4 THE COURT: Okay. All right.

5 Okay. You are Mr. Truesdale.

6 And you have a doctor's appointment at Two then, or do  
7 you?

8 MR. TRUESDALE: Yes. But, Judge, I rescheduled it.

9 THE COURT: Oh. Okay, okay. All right.

10 Thank you, Mr. Truesdale. I'm sorry.

11 MS. MILLER: Please present this juror.

12 MADAME CLERK: Defense?

13 MR. JAMIESON: Please seat the juror.

14 MADAME CLERK: You may have a seat in the jury box.

15 Number 210, Shane Spitzer.

16 (WHITE MALE COMING FORWARD.)

17 MADAME CLERK: What say you for the State?

18 MS. MILLER: Please present this juror.

19 MADAME CLERK: Defense?

20 MR. JAMIESON: Please excuse the juror.

21 MADAME CLERK: You are excused from this case.

22 Number 142, Sammy Morris.

23 (BLACK MALE COMING FORWARD.)

24 MADAME CLERK: What say you for the State?

25 MS. MILLER: Please present this juror.

1 MADAME CLERK: Defense?  
2 MR. JAMIESON: Please seat the juror.  
3 MADAME CLERK: You may have a seat in the jury box.  
4 Number 151, Ruth Ostrum.  
5 (WHITE FEMALE COMING FORWARD.)  
6 MADAME CLERK: What say you for the State?  
7 MS. MILLER: Please present this juror.  
8 MADAME CLERK: Defense?  
9 MR. JAMIESON: Please excuse the juror.  
10 MADAME CLERK: You are excused from this case.  
11 Number 114, Ted Lemmond.  
12 (WHITE MALE COMING FORWARD.)  
13 MADAME CLERK: What say you for the State?  
14 MS. MILLER: Please present this juror.  
15 MADAME CLERK: Defense?  
16 MR. JAMIESON: Please excuse the juror.  
17 MADAME CLERK: You are excused from this case.  
18 Number 181, Michael Robinson.  
19 (WHITE MALE COMING FORWARD.)  
20 MADAME CLERK: What say you for the State?  
21 MS. MILLER: Please excuse this juror.  
22 MADAME CLERK: You are excused from this case.  
23 Number 201, Kane Sinakhonerath.  
24 (ORIENTAL MALE COMING FORWARD.)  
25 MS. MILLER: How do you pronounce that.

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1 MR. SINAKHONERATH: Sin-a-khon-erath.

2 THE COURT: It's exactly the way you said it.

3 MR. SINAKHONERATH: Or Smith for short.

4 MADAME CLERK: What say you for the State?

5 MS. MILLER: Please present this juror.

6 MADAME CLERK: Defense?

7 MR. JAMIESON: Please excuse the juror.

8 MADAME CLERK: You are excused from this case.

9 Number 187, Tracy Sanford.

10 (WHITE FEMALE COMING FORWARD.)

11 MADAME CLERK: What say you for the State?

12 MS. MILLER: Please present this juror.

13 MADAME CLERK: Defense?

14 MR. JAMIESON: Please seat the juror.

15 MADAME CLERK: You may have a seat in the jury box.

16 Number 9, Mary Barnes.

17 (BLACK FEMALE COMING FORWARD.)

18 MADAME CLERK: What say you for the State?

19 MS. MILLER: Please present this juror.

20 MADAME CLERK: Defense?

21 MR. JAMIESON: Please seat the juror.

22 MADAME CLERK: You may have a seat in the jury box.

23 Number 110, John Kochilla.

24 (WHITE MALE COMING FORWARD.)

25 MADAME CLERK: What say you for the State?

1 MS. MILLER: Please present this juror.  
2 MADAME CLERK: Defense?  
3 MR. JAMIESON: Please excuse the juror.  
4 MADAME CLERK: You are excused from this case.  
5 Number 243, Khary Wilson.  
6 (BLACK MALE COMING FORWARD.)  
7 MS. SHELTON: Please repeat the number again, Madame  
8 Clerk.  
9 MADAME CLERK: 243.  
10 MS. SHELTON: Thank you.  
11 MADAME CLERK: What say you for the State?  
12 MS. MILLER: Please excuse this juror.  
13 MADAME CLERK: You are excused from this case.  
14 Number 90, Shawn Henry.  
15 (BLACK MALE COMING FORWARD.)  
16 MADAME CLERK: What say you for the State?  
17 MS. MILLER: Please present this juror.  
18 MADAME CLERK: Defense?  
19 MR. JAMIESON: Please seat the juror.  
20 MADAME CLERK: You may have a seat in the jury box.  
21 Number 78, Sara Freeman.  
22 (WHITE FEMALE COMING FORWARD.)  
23 MADAME CLERK: What say you for the State?  
24 MS. MILLER: Please present this juror.  
25 MADAME CLERK: Defense?

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1 MR. JAMIESON: Please excuse the juror.

2 MADAME CLERK: You are excused from this case.

3 Number 189, Tiffany Schaeffer.

4 (WHITE FEMALE COMING FORWARD.)

5 MADAME CLERK: What say you for the State?

6 MS. MILLER: Please present this juror.

7 MADAME CLERK: Defense?

8 MR. JAMIESON: Please excuse the juror.

9 MADAME CLERK: You are excused from this case.

10 Number 53, Brian Cothorn.

11 MS. MILLER: Number again, Madame Clerk.

12 MADAME CLERK: 53.

13 (WHITE MALE COMING FORWARD.)

14 MADAME CLERK: What say you for the State?

15 MS. MILLER: Please present this juror.

16 MADAME CLERK: Defense?

17 MR. JAMIESON: Please seat the juror.

18 MADAME CLERK: You may have a seat in the jury box.

19 Number 67, Blair Ebersold.

20 (WHITE MALE COMING FORWARD.)

21 MADAME CLERK: What say you for the State?

22 MS. MILLER: Please excuse this juror.

23 MADAME CLERK: You are excused from this case.

24 MS. SHELTON: Madame Clerk, do you have the strike  
25 count please.

1 MADAME CLERK: Three for the State and nine for  
2 Defense.  
3 MS. SHELTON: Thank you.  
4 MADAME CLERK: Number 61, David Decker.  
5 (WHITE MALE COMING FORWARD.)  
6 MADAME CLERK: What say you for the State?  
7 MS. MILLER: Please present this juror.  
8 MADAME CLERK: Defense?  
9 MR. JAMIESON: Please excuse the juror.  
10 MADAME CLERK: You are excused from this case.  
11 THE COURT: I believe that's ten for the defense.  
12 MADAME CLERK: Number 124, Joshua Martin.  
13 (WHITE MALE COMING FORWARD.)  
14 MADAME CLERK: What say you for the State?  
15 MS. MILLER: Please present this juror.  
16 MADAME CLERK: Defense?  
17 MR. JAMIESON: Please seat the juror.  
18 MADAME CLERK: You may have a seat in the jury box.  
19 Number 150, Jason Osborn.  
20 (WHITE MALE COMING FORWARD.)  
21 MADAME CLERK: What say you for the State?  
22 MS. MILLER: Please present this juror.  
23 MADAME CLERK: Defense?  
24 MR. JAMIESON: Please seat the juror.  
25 MADAME CLERK: You may have a seat in the jury box.



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1 THE COURT: All right. Counsel, I believe that's  
2 twelve so we'll go four alternates. Strikes are two for  
3 the Defense and one for the State per alternate.

4 MADAME CLERK: Number 55, Jenifer Crawford.

5 (WHITE FEMALE COMING FORWARD.)

6 MADAME CLERK: What say you for the State?

7 MS. MILLER: Please present this juror.

8 MADAME CLERK: Defense?

9 MR. JAMIESON: Please excuse the juror.

10 MADAME CLERK: You are excused from this case.

11 Number 45, Cynthia Chitwood.

12 (WHITE FEMALE COMING FORWARD.)

13 MADAME CLERK: What say you for the State?

14 MS. MILLER: Please present this juror.

15 MADAME CLERK: Defense?

16 MR. JAMIESON: Please seat the juror.

17 MADAME CLERK: You may have a seat in the jury box.

18 Number 174, Charles Richardson.

19 (WHITE MALE COMING FORWARD.)

20 MADAME CLERK: What say you for the State?

21 MS. MILLER: Please present this juror.

22 MADAME CLERK: Defense?

23 MR. JAMIESON: Please seat the juror.

24 MADAME CLERK: You may have a seat in the jury box.

25 Number 41, Shelly Carter.

1 (WHITE FEMALE COMING FORWARD.)  
2 MADAME CLERK: What say you for the State?  
3 MS. MILLER: Please present this juror.  
4 MADAME CLERK: Defense?  
5 MR. JAMIESON: Seat the juror.  
6 MADAME CLERK: You may have a seat in the jury box.  
7 Number 11, Marcus Barwick.  
8 (WHITE FEMALE COMING FORWARD.)  
9 MADAME CLERK: What say you for the State?  
10 MS. MILLER: Please present this juror.  
11 MADAME CLERK: Defense?  
12 MR. JAMIESON: Please excuse the juror.  
13 MADAME CLERK: You are excused from this case.  
14 Number 172, Christy Rice.  
15 (WHITE FEMALE COMING FORWARD.)  
16 MADAME CLERK: What say you for the State?  
17 MS. MILLER: Please present this juror.  
18 MADAME CLERK: Defense?  
19 MR. JAMIESON: Please seat the juror.  
20 MADAME CLERK: You may have a seat in the jury box.  
21 THE COURT: All right, Counsel, any issues or matters  
22 of law to take up with respect to the qualifications and  
23 selection of this jury?  
24 MS. MILLER: The State does, Your Honor.  
25 THE COURT: All right. I know I've been through this

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1 once before in this courthouse before, I can't remember how  
2 we did it. We ask the jury to go back into the hall way.  
3 Is that the way we did it?

4 Took the jurors who have been selected and went ahead  
5 and put them in the jury room. Right? Okay. Let's do  
6 that. Put these sixteen individuals in the jury room and  
7 everyone else go back out to the hallway.

8 And I apologize, there are a couple of matters of law  
9 that we may need to take up before we actually get started  
10 with the trial.

11 (JURORS EXIT THE COURTROOM AT 03:41 P.M..)

12 THE COURT: All right, Ms. Miller.

13 MS. MILLER: Your Honor, we'd like to have a hearing  
14 on and Batson, selections made by the Defense in this case.

15 THE COURT: Okay.

16 MS. MILLER: Out of the ten strikes that he had he  
17 struck nine white and one Asian. Three of the nine whites  
18 who were struck I believe stood up in voir dire and he may  
19 have had reason for those but we're looking for nonracial  
20 reasons for him striking.

21 THE COURT: Okay. Good enough.

22 Mr. Jamieson.

23 MR. JAMIESON: Do you want me to go through each one  
24 or -

25 THE COURT: Yes, sir. If you'd just go through each

1 one that you struck and give me a reason, a nongender based  
2 reason for how you struck so.

3 MR. JAMIESON: The first person I struck was 146.

4 THE COURT: Yes, sir.

5 MR. JAMIESON: She is retired from the United State's  
6 Treasury Service and I didn't think that she would be a  
7 fair juror to my client.

8 THE COURT: A lackey for the government as it were.

9 MR. JAMIESON: Yes, sir.

10 THE COURT: I understand.

11 MR. JAMIESON: The next one was number 94. The lady  
12 that was number 94 stood up when Your Honor ask the  
13 question about whether she contributed to any agencies that  
14 support law enforcement and law enforcement goals, and she  
15 works for the Catawba Area Counsel on Aging and despite the  
16 fact that she felt she could be fair and impartial I felt  
17 otherwise.

18 THE COURT: Okay.

19 MR. JAMIESON: The next person I struck was Number  
20 153.

21 And that lady works for the Rock Hill School District  
22 and I had made a notation on my juror list when I was down  
23 in jury qualifications and I did not feel she was a good  
24 juror and I went with that initial reaction because she's a  
25 school teacher and employed in that capacity.

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1 THE COURT: All right, sir.

2 MR. JAMIESON: Let's see, that puts me to Number 210.  
3 210 is the same - well actually I'm looking - yeah 210. I  
4 had made the same notation on him in when he stood up in  
5 jury qualifications down stairs that I intended to strike  
6 him and I went with that same initial impression.

7 MS. MILLER: Because they were a teacher? I'm sorry,  
8 I missed that.

9 THE COURT: Yeah. I was going to ask you to explain  
10 that a little further in detail other than your impression  
11 and your notation. Is there any other articulate reason  
12 why you struck that juror?

13 MR. JAMIESON: No, sir.

14 THE COURT: Okay.

15 MR. JAMIESON: The next is Number 114. Number 114 I  
16 had previously intended to take but when he stood up in  
17 jury qualification down stairs he indicated that he owned  
18 his own business and that he didn't seem to me that he  
19 wanted to be here and wanted to be serving on a jury so I  
20 struck him for that reason.

21 THE COURT: Okay.

22 MR. JAMIESON: Number 201 is the next person I struck.  
23 I noticed in the jury qualification down stairs that both  
24 he and his wife are engineers and frankly I haven't had  
25 very good luck with engineers on a jury pool. They tend to

1 be extremely detailed oriented individuals.

2 THE COURT: Mr. Jamieson, I will let you strike an  
3 engineer for cause. You are good on that one I can assure  
4 you.

5 MR. JAMIESON: Well that was my impression, Your  
6 Honor.

7 110 was the next person I struck. 110 I had indicated  
8 down stairs that I intended to strike. He stood up in jury  
9 qualifications and indicated that he traveled for a living  
10 and that it was somewhat burdensome for him to be here for  
11 jury service so I struck him for that reason.

12 Number 78 was the next person I struck. She is a  
13 receptionist at the Fort Mill School system and again I  
14 experience with school teachers and people affiliated with  
15 the schools system suggest they would not be a good juror  
16 in this kind of trial.

17 The next person I struck was Number 189. 189 had an  
18 aunt who was killed by a drunk driver and in spite of the  
19 fact that she stated she could be fair and impartial I had  
20 some concerns about that.

21 And the last person I struck was Number 61. And  
22 Number 61 was held up at gun point. I thought he said a  
23 few months ago but at any rate he had previously been  
24 robbed at gun point and that is one of the facts in this  
25 trial I did not feel he could be fair and impartial despite

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1 his assertion to the contrary.

2 Do you want me to do the alternates?

3 THE COURT: Do you have objections to the alternates  
4 strikes as well?

5 MS. MILLER: I can't remember. I can't remember.

6 THE COURT: There was a strike of a Ms. Jenifer  
7 Crawford.

8 MS. MILLER: No.

9 THE COURT: A Mr. Marcus Barwick.

10 MS. MILLER: We're okay with the alternates.

11 THE COURT: Good enough. Any issues with respect to  
12 that - those reasons?

13 MS. MILLER: Your Honor, on Number 223 he claimed he  
14 struck - I can't remember which number it was, someone for  
15 being a treasurer, working for the Treasury. 146. But he  
16 sat Number 223 who also was a federal government worker who  
17 works for the United States Postal Service, Number 223.

18 MR. JAMIESON: Your Honor, the postal service is not  
19 an enforcement arm of the United States Government and the  
20 Treasury service is.

21 THE COURT: Okay.

22 MS. MILLER: Depending on what you do.

23 THE COURT: I understand.

24 MR. JAMIESON: I don't know what she does.

25 THE COURT: I understand. It's a matter of impression

1 and it's a matter of objective impression and if Mr.  
2 Jamieson felt like the Treasury had a law enforcement arm  
3 it was separate and distinct and distinguishable from any  
4 postal law enforcement. Or whether he was just under the  
5 impression the post office didn't have a law enforcement  
6 arm. I don't think it's right but if it is a objective  
7 impression you made a strike based on impression and I'm  
8 comfortable with that.

9 MS. MILLER: He had no reason at all for 210.

10 THE COURT: What was the reason for 210? I think you  
11 said there was a reasonable impression.

12 MR. JAMIESON: I'll have to go back and look, Your  
13 Honor. I don't remember to be honest.

14 (PAUSE.)

15 MR. JAMIESON: He had stood up in jury voir dire or  
16 jury selection down stairs and it was just a sense to be  
17 perfectly honest.

18 THE COURT: All right. The only one that gave you any  
19 cause for concern was Mr. Spitzer. And the - On the whole  
20 when I look at the strikes that were exercised by the  
21 defense there were attributable reasons for each and every  
22 strike. With respect for Mr. - to Mr. Spitzer for whatever  
23 reason counsel for the defense made the determination he  
24 wasn't an appropriate juror. I don't see any evidence that  
25 a strike was for any racial or gender bias of reason and



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1       seeing no evidence of the strikes having been made based on  
2       gender or racial basis I'm going to respectfully deny your  
3       motion. I think that there was appropriate articulation  
4       for the reasons for the strikes.

5               MS. MILLER: I just had a few more things and you may  
6       not change your mind about. We're quite done.

7               THE COURT: Okay.

8               MS. MILLER: I thought we were going one by one.

9               Then I'll generalize the last one. He said that he  
10       struck one fellow because he didn't seem to want to be  
11       here. There were a lot of folks who vocally made it clear  
12       that they did not want to be here or through their facial  
13       expressions both down stairs and here today, made it clear  
14       that they did not want to be here.

15              THE COURT: I wasn't at jury qualifications so it's  
16       very difficult for me to make a determination as to who was  
17       on and who wasn't and made any type of indication or  
18       manifestation the fact that they didn't want to be here. I  
19       take counsel at his word and I go on it.

20              Anything else?

21              MS. MILLER: None from the State.

22              THE COURT: Do you have a motion, sir?

23              MR. JAMIESON: No.

24              THE COURT: All right then let's go ahead and bring  
25       them back in.

1 (JURY REENTERS COURTROOM AT 03:55 P.M..)

2 THE COURT: All right, ladies and gentlemen, I'm going  
3 to go ahead and release you all, okay.

4 The other jurors who are coming in I'm going to go  
5 ahead and release you all. I appreciate you being here. I  
6 extend to you either congratulations or condolences on not  
7 having been selected for this jury. I guess that all  
8 depends on your previous predisposition for jury duty but I  
9 appreciate you having come. And perhaps you will be  
10 fortunate enough to get to sit on - to be able to sit on  
11 another jury this week. If I don't see you again this week  
12 then I hope you have a great week and I appreciate what you  
13 have done thus far on jury duty. And I hope you have a  
14 great weekend and I hope to see you again. Thank you.

15 (JURY DISMISSED AT 03:57 P.M..)

16 THE COURT: All right, ladies and gentlemen, we can  
17 get started on the trial of this case. Congratulations on  
18 having been seated as jurors. I don't know what your  
19 expectations were or your predispositions were regarding  
20 jury service generally but I can assure you that I go all  
21 around the state and conduct jury trials, and about ninety-  
22 eight percent of people who have the opportunity to sit on  
23 a jury come away with from the experience having had a very  
24 positive and a very educational experience. About two  
25 percent of the people are so irreparably cynical that they

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1 wouldn't have a good time doing anything. And I'm not  
2 suggesting that you'll have a good time, but I am  
3 suggesting that it should be an educational and rewarding  
4 experience. It should give you a different outlook on jury  
5 service generally. And I promise you and I'm not just  
6 saying it. After jury trials I go back and talk to the  
7 jurors and generally speaking everyone is happy to have had  
8 the opportunity to sit on a jury. So hopefully at the  
9 conclusion of this trial none of you will be part of that  
10 very cynical two percent who just didn't take anything away  
11 from it. So we're going to start the trial of this case  
12 and before we start the trial of the case it is always  
13 helpful for me and for you to give you all some type of  
14 idea of what your role is as jurors as distinguished from  
15 my role is as a judge. And also give you some idea of the  
16 procedure that we will follow so that you'll know what  
17 comes next and you won't just feel like you're being held  
18 hostage in a jury box until I let you go.

19 So let's start out by my telling you something that  
20 I've already told you. In each and every criminal case in  
21 the United States of America, a defendant is presumed  
22 innocent until proven guilty beyond a reasonable doubt. In  
23 this case the State, in this case and in every state the  
24 State has the burden of proving the defendant guilty beyond  
25 a reasonable doubt. Now, your job as jurors is to

1 determine whether the State has met that burden of proof.

2 Now, you will do that by determining what the facts  
3 are in this case. As jurors you are the judges of the  
4 facts which means you have sole and exclusive jurisdiction  
5 and authority to determine what the facts are in this case.  
6 I have no opinion and I have no authority about the facts.  
7 I can't tell you what the facts are and frankly I don't  
8 have any opinion or any concern about what the facts are.  
9 That's your sole and exclusive providence. You will  
10 determine what the facts are by looking at the evidence and  
11 by reviewing and analyzing all of the evidence that is  
12 produced in this case.

13 Now you're going to see evidence produced to you in  
14 any number of forms. Evidence may come into the record by  
15 way of an eye witness or just a witness who may know  
16 something about the case who swears in and says this is  
17 what I know. You may get evidence in the form of  
18 documents. You may get evidence in the form of objects,  
19 tangible objections that are submitted into the record.  
20 And you may get audio tapes, you may get video tapes. What  
21 I'm trying to tell you is you can get evidence in a lot of  
22 different forms. I don't know what the evidence is going  
23 to be in this case because honestly as I sit here I don't  
24 know any more about this case than you all do. I've read  
25 those indictments, I read them briefly before it read them

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1 to you and that's what I know about the case. I don't have  
2 any disposition regarding it. So you will determine what  
3 the facts are in the case by analyzing the evidence that's  
4 presented.

5 Now my job in this case is not as the judge of the  
6 facts. As I told you I don't have any opinion about the  
7 facts. And under the law I'm not allowed to have any  
8 predisposition or opinion about the facts. My role is as  
9 judge of the law which means that just in laymen terms I'm  
10 the referee, I'm the umpire. I'm calling balls and  
11 strikes, that's all I'm doing. All I care about, my entire  
12 concern, is that the defense and the State and you all get  
13 a fair trial. That's my entire concern is for this trial  
14 is conducted fairly. So as we go along in this trial if  
15 you see me say anything or do anything, and it gives you  
16 the impression that I have an opinion one way or the other  
17 about the facts so that I have a bias or a prejudice any  
18 way shape or form toward or against one side, I tell you  
19 just disabuse yourself of that notion. Forget about it  
20 because I don't. As I said the only thing that I'm  
21 concerned with is that there is a fair trial in this case.

22 Now, what we'll do first after I give you a short  
23 opening charge, is I will give you or I will allow the  
24 attorneys to make brief opening statements to you. Now  
25 those opening statements that are made to you are simply

1 just a introduction by the attorneys of their cases and of  
2 themselves. Understand that when the attorney gets up and  
3 argues and gives you a statement, that's simply advocacy  
4 from the attorney. It's argument, it's not evidence. The  
5 attorney's arguments and statements and the attorney's  
6 questions are not evidence. What is evidence is what is  
7 presented under oath during the course of the trial. So  
8 the attorneys will get up and give you brief opening  
9 statements by way of introduction.

10 After you've heard opening statements today what we  
11 will do is we'll adjourn for the day because all of the  
12 witnesses you will see they are not here. They will be  
13 here tomorrow morning and we're going to start the trial of  
14 the case and the introduction of evidence tomorrow morning.  
15 But when we start the trial of the case what will happen is  
16 the State will begin and will put witnesses on the stand.  
17 The reason the State goes first is because as I suggested  
18 to you earlier the State has the burden of proof in this  
19 case and they'll go first. They will put witnesses on the  
20 stand. They will put any number of witnesses on the stand.  
21 I think right now that they are going to have between or  
22 around ten or eleven witnesses. I'm not sure because that  
23 can change one way or the other but that's what I believe  
24 at this point. They will put witnesses on the stand, ask  
25 questions and will put evidence into the record. When they

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1 ask questions the defense will have the opportunity then to  
2 ask questions and cross examination of each and every  
3 witness. After the witness is excused then the next  
4 witness will take the stand. After the state has put all  
5 of the evidence it intends to put into the record in it's  
6 case in chief, the State will then rest. Then the Defense  
7 will have the opportunity to put evidence into the record  
8 if he chooses to. If he does not chose to put evidence  
9 into the record or if eh does once he has rested and  
10 concluded his case, then under certain set of  
11 circumstances, limited circumstances the State could have  
12 the opportunity to put some witnesses up in reply. That  
13 doesn't happen very often but sometimes they will get the  
14 opportunity to briefly put some evidence up in reply. I  
15 don't anticipate that happening in this trial but it could,  
16 it could. After you've heard all of the witnesses and all  
17 of the evidence put into the record, then what will happen  
18 is the attorneys will have the opportunity to make closing  
19 arguments to you. Again those closing arguments are not  
20 evidence because at that point you will have heard all of  
21 the evidence that is put in in the case. And what that is  
22 is the lawyers arguing about the evidence that was  
23 presented and the attorneys would be arguing, advocating  
24 their respective positions to you. After the attorneys  
25 have given you closing arguments, then I'll give you the

1 final charge on the law. The reason I don't give you the  
2 full charge on the law now is because I'm in the same boat  
3 you are and that is I don't know what's gonna be put into  
4 the record in this case. So I don't know what law is going  
5 to be applicable in this case. So I'll wait and after I've  
6 heard all of the evidence I'll give you a closing charge on  
7 the law. After I've given you a closing charge on the law,  
8 then what you will do is when I tell you to you go back to  
9 your jury room and you'll begin deliberations. And what  
10 you'll do is you'll determine what the facts are based on  
11 your analysis of the evidence, you'll apply the law to the  
12 facts, the law as I give it to you to the facts, and  
13 determine whether the State has met it's burden of proof.

14 Now, a couple of things I need to tell you. Don't  
15 begin any deliberations until I tell you to. And that is  
16 after you've heard all of the evidence and after I've given  
17 you the charge to the law and then specifically instruct  
18 you to begin your deliberations. The reason for that is  
19 pretty obvious and I think your common sense probably tells  
20 you why, but its worth restating and that is this. You can  
21 never make an informed and intelligent decision based on  
22 just part of the evidence. You never can. If you hear one  
23 side of the story and you begin to deliberate, then you're  
24 probably gonna come to a determination that really isn't  
25 fair to either party or yourself.



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1           Also it's not fair to you or either side that you  
2       begin deliberations until you've heard all of the story, a  
3       hundred percent of the story. And then its not fair that  
4       you begin your deliberations until you've heard the  
5       arguments related to the story - or related to the case and  
6       the law as I give it to you. So just hold on, don't  
7       discuss it among yourselves, and don't discuss it with  
8       anyone else during the course of the trial. And I'll talk  
9       to you about that a little bit more when we adjourn for the  
10      day.

11           Also know that during the course of the trial the  
12      attorneys are probably gonna make some objections. And  
13      they'll be objecting to the procedure the procedure that  
14      we're following or to the admissibility of evidence. And  
15      I'm gonna rule on those objections. Understand when I rule  
16      on those objections I'm either gonna sustain it or I'm  
17      gonna over rule it which means I'll rule for or against one  
18      of the sides. Now understand just because I'm ruling for  
19      or against someone doesn't mean I have a bias or prejudice  
20      towards them. Again I'm must calling balls and strikes,  
21      I'm just making a very sterile determination of what I  
22      believe the law is so don't take anything away from those  
23      rulings that I may make.

24           Also during the trial we're gonna take regular breaks.  
25      Tomorrow morning we'll start at 9:00 and then we'll take a

1 midmorning break, we'll take a lunch break, we'll take an  
2 afternoon break, and then we're probably gonna adjourn  
3 probably about 5:00. Basically a regular business day. If  
4 we're gonna deviate from that in any way, I'll try to let  
5 you know as soon as I know so that you can make  
6 arrangements if we need to. I hope we don't have to.

7 Also know that during the course of the trial we may  
8 take other breaks as circumstances require. For instance,  
9 if the attorneys make objections and I just need to hear  
10 some additional argument on those objections, and they may  
11 be commenting on matters that are not admissible and it's  
12 just not appropriate that you hear it I may ask you to go  
13 back to your jury room and just wait while I hear some  
14 arguments. I'm going to try not to do that but from time  
15 to time I need to hear a little bit more to make an  
16 intelligent decision on some of these motions.

17 Also know that if that at any time during the course  
18 of this trial you all need to take a break, anyone of you,  
19 anyone needs to take a break, just let me know or let the  
20 bailiff know. Raise your hand get our attention. You are  
21 the most important sixteen people in this courtroom without  
22 question. And what you need to be doing is paying  
23 attention to what's happening on the stand and if for some  
24 reason you're distracted, and you're just sitting there  
25 thinking to yourself I got to get out of this courtroom, I

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1 wish they would just be quite, then let us know because I'd  
2 rather have you sitting there paying attention than  
3 thinking boy we got to go, okay. So we'll take breaks as  
4 you may need breaks.

5 So having said that, ladies and gentlemen, let's go  
6 ahead and start with opening statements. But before we do,  
7 I'm going to ask the Clerk of Court to swear you in. Now  
8 you took an oath earlier.

9 MS. MILLER: Your Honor, may we approach?

10 THE COURT: Sure.

11 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
12 THE JURY AT 04:10 P.M..)

13 THE COURT: All right, ladies and gentlemen.

14 You took an oath earlier to tell the truth. The oath  
15 you're going to take now is to truly and fairly try this  
16 case in accordance with the law as I give it to you.

17 So before we start with opening arguments, Madame  
18 Clerk, please swear them in.

19 MADAME CLERK: Please stand and raise your right hand.

20 (WHEREUPON: PETIT JURY DULY  
21 SWORN AT 04:12 P.M..)

22 MADAME CLERK: Thank you. Please be seated.

23 THE COURT: Yes, ma'am.

24 MS. MILLER: May it please the Court, Your Honor.

25 THE COURT: Yes, ma'am.

1 MS. MILLER: As the judge told you earlier my name is  
2 Deputy Solicitor Betty Miller for the Sixteenth Circuit as  
3 York and Union Counties. And Assistant Solicitor Misty  
4 Horton is my co-counsel in this case. We thank you for  
5 your time, we very much appreciate it and understand you  
6 have things that you would rather be doing.

7 On October 3rd, 2010 Everett and Kenny Williams were  
8 -- it was a Sunday, they were enjoying their friends, been  
9 visiting with their friends. And one thing Everett loves  
10 is Sunday Night Football. And he had friends over to watch  
11 the game with him. So when it becomes darkness and  
12 everybody goes inside to watch the game, and its' getting  
13 close to Ten o'clock at night, and all of a sudden somebody  
14 bangs on the door. And this is Everett's and his brother  
15 James or Kenny's house so Everett stands up and before he  
16 can even make his way to the door somebody bust through the  
17 door. A man bust through the door and has a gun in his  
18 hand and starts yelling you know what this is, you know  
19 what this is, give it up, give it up. And these are old  
20 fellows that's watching a football game. And he's  
21 demanding their belongings. And they collect their  
22 belongings. Not too long after that another man bust  
23 through the door. He comes in and he's got a sawed off  
24 shotgun and he's yelling give it up, give it up. He goes  
25 to the back of the house, he finds the brother of Everett,

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1 James, he's back there, and he's screaming to him to give  
2 it up. James has got some of his money on the dresser, he  
3 takes that money and yells at him "I know you got more."  
4 And James says "That's all I got." The man with the  
5 shotgun goes back out to the living room where the man with  
6 the pistol is collecting money and other items from the  
7 folks that were in the living room watching TV. The man  
8 with the shotgun leaves the house walks out the back door.  
9 The man with the gun points the gun up in to the air,  
10 points it over one of the folks sitting there and puts a  
11 bullet in the ceiling. Tells them "Don't come outside and  
12 follow us." Goes out the door.

13 Now, how many times have we thought to ourselves or  
14 said out loud I wish there was a police officer right now.  
15 I wish there was a police officer right here right now.  
16 Well guess what? There were four police officers not just  
17 in the neighborhood, standing practically in the yard of  
18 the James brothers. They were actually looking at the door  
19 of the James brother's home. They saw one of these two men  
20 go in the house. They didn't realize there was anything  
21 wrong. They heard a commotion they didn't know it was  
22 anything wrong. They see the two guys come out and their  
23 watching them. The two fellows come out into the yard and  
24 the guy with the shotgun shoots into the air. Well you  
25 could imagine what happens next. These four police

1 officers are coming up on them and say "Rock Hill Police,  
2 show me your hands, Rock Hill Police." Well these two men,  
3 the one with the pistol and the one with the shotgun  
4 they're gone. They take off and they got four police  
5 officers chasing them. They chase them through two houses  
6 out onto Crosby Street, chase them up Crosby Street.  
7 They're together and then one of them goes this way. The  
8 State submits that Mr. Mitchell went this way, Mr. Crawford  
9 his co-defendant went straight. Two officers went this  
10 way, and two officers went that way. And within moments,  
11 mere moments, Mr. Crawford's in custody. And then moments  
12 the defendant, Mr. Mitchell, is in custody.

13 They take off Mr. Crawford items that belonged to the  
14 victim. The State submits they take items off Mr. Mitchell  
15 that belonged to the victim. This was quite an evening.

16 Randy Mitchell's charged with armed robbery in this  
17 indictment. Armed robbery is -- I'm going to read it  
18 straight from the book although you all know what it is.

19 "A person commits robbery while armed with a pistol, a  
20 dark, a sling shot, metal knuckles, razor or other deadly  
21 weapon; or, while alleging either by action or words he was  
22 armed while using representation of the deadly weapon or  
23 any object with which a person present during the  
24 commission of a robbery reasonably believed to be a deadly  
25 weapon." That's armed robbery. You all know what it is.

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1           Burglary first degree is, "When a person enters the  
2 dwelling of another without consent, with the intent to  
3 commit a crime in the dwelling, displays what is or appears  
4 to be a knife, a pistol, a revolver, a rifle, shotgun,  
5 machine gun or other firearm; or, the entering occurs in  
6 the nighttime."

7           And the State is going to present witnesses and  
8 evidence to you that the State submits would prove the  
9 guilt of Mr. Mitchell of armed robbery and burglary first  
10 degree.

11           I thank you in advance for your attention. And I do  
12 ask you to pay attention to each and every witness. And  
13 we'll get the opportunity, I'll get the opportunity to  
14 speak to you again. And I ask you while you're listening  
15 to the evidence, to keep hold of the common sense that you  
16 came in here with. Thank you.

17           THE COURT: Mr. Jamieson.

18           MR. JAMIESON: May it please the Court, Your Honor.

19           THE COURT: Yes, sir.

20           MR. JAMIESON: My name is Philip Jamieson, I represent  
21 Randy Mitchell. He's sitting right back there. As you  
22 might imagine there is a little more to the story.

23           If anybody in the jury is as old as I am you remember  
24 Paul Harvey. He used to always say "Now for the rest of  
25 the story." But before we get into that, I join the

1 Solicitor in thanking you for being here. We appreciate  
2 your time and we appreciate your attention. And you all  
3 need to pay attention in this trial because it's going to  
4 be incumbent upon you, it's your duty to decide whether  
5 witness' say what they say they saw. Whether they could  
6 see what they say they saw. Whether they know what their  
7 testifying to. And I submit to you that this case is going  
8 to be as much about what people didn't do, what people  
9 didn't see, what people don't know as is about anything  
10 else.

11 Now Ms. Miller referred to the fact that the police  
12 were in the yard. And that wasn't just a lucky coincidence  
13 as you might imagine. They were surveilling because they  
14 suspected that they were selling crack and liquor out of  
15 the house. So that's why the police were there. That's  
16 the rest of the story.

17 It's your job to decide the facts of this case just  
18 like the judge told you, and that's your duty. And you may  
19 be wondering whether you have that ability or not but you  
20 do. You have common sense, you have life experience, you  
21 have good judgment and that's what you need to do your job.  
22 It's the Solicitor's job to prove my client guilty beyond a  
23 reasonable doubt. It's your job to hold her to that  
24 standard. It's your job to hold her to that standard. And  
25 again I believe you will find as you listen to this case



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1 that its important what people say, what they did, what  
2 they know, but it's equally important what they didn't see,  
3 what they can't tell you, what they don't have here for you  
4 to look at. I ask you to think about all of that and pay  
5 close attention. Consider what witness' saw, what they  
6 didn't see, whether they could have seen what they say they  
7 saw, whether it makes sense what they're telling you. And  
8 at the conclusion of that I believe you will find the State  
9 has not met their burden. They have not proven my client  
10 guilty beyond a reasonable doubt and that will be your  
11 verdict. Thank you very much.

12 THE COURT: All right, ladies and gentlemen, that's  
13 all we're gonna do today. We're going to start with the  
14 introduction of witnesses and evidence tomorrow morning.  
15 We will start at Nine o'clock. If you would please I'd ask  
16 you to be here a little bit before Nine o'clock. And  
17 that's not out of consideration for me or for the attorneys  
18 but out of consideration for your fellow jurors. Because  
19 understand we got sixteen of your right now, if fifteen of  
20 you are here and one's waiting, and you're making the rest  
21 of the jurors wait. You're not making me wait, you're  
22 making the rest of the jurors wait. So please be  
23 considerate of your fellow jurors and be here on time.

24 Now, the other thing I will tell you is when you go  
25 home this evening, please do not discuss this case with

1 your significant other, with your friends, with your momma,  
2 with your daddy, with your kids, with anyone who may invite  
3 you to discuss it. And the reason that you shouldn't do  
4 that is because you really don't know enough about the case  
5 to discuss it intelligently yet. And also because when you  
6 start to discuss the case with someone else outside of the  
7 jury, and what you're really starting to do is deliberate  
8 and making qualitative decisions about what you've seen.  
9 Now I'll explain that to you a little bit further. Let's  
10 say that somebody ask you, your husband or your wife says  
11 "Ha what's this case about?" And you say, "well" and you  
12 start thinking about it and you say "this case is about X Y  
13 and Z." Well then that almost always invites another  
14 question. Well what about this or why did this happen and  
15 you start having to explain things. And what you end up  
16 starting to do is discuss the case, deliberate with  
17 somebody who isn't on the jury. So please don't do it. If  
18 someone ask you to discuss the case, then just say no I  
19 can't discuss it with you, I took an oath and I'm not  
20 allowed to discuss it with you. When the case is over I'll  
21 discuss it with you as long as you want to discuss it but  
22 for right now I can't discuss it with you, we'll talk about  
23 it later.

24 Also don't conduct any self help. I ask you at the  
25 very beginning whether you had seen any press coverage of

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1       this case. That's a standard question. I have no clue  
2       whether there was any press coverage of this case. Don't  
3       go looking for it. Don't get on the computer and Google it  
4       or Bing or whatever your search mode is. Don't go to the  
5       local newspaper and see if you can go into the archives and  
6       find any information about it. Don't go on the Clerk of  
7       Court's web site and try to find out something about it.  
8       If you do that and you will have tainted your  
9       deliberations, have to start over. The reason for that is  
10      the only thing that is appropriate for your consideration  
11      in this case is that evidence which is presented on this  
12      stand in accordance with the rules of law. Anything else  
13      outside of this court is inappropriate and it taints your  
14      deliberations. So just go home and enjoy your evening,  
15      watch some basketball and get ready for March Madness and  
16      just forget about this case until we get back on the record  
17      tomorrow morning. Having said that I hope you all have a  
18      great evening and I'm looking forward to seeing you again  
19      in the morning.

20           (JURY EXITS COURTROOM AT 04:25 P.M..)

21           THE COURT: Okay. Counsel, any additional matters to  
22      put on the record this afternoon?

23           MR. JAMIESON: Not from me, Your Honor.

24           MS. MILLER: One moment, Your Honor.

25           THE COURT: Okay.

1 MS. MILLER: Nothing from the State, Your Honor.

2 THE COURT: All right. Thank you. I was hoping you  
3 would say that.

4 MS. MILLER: What time are we actually gonna start  
5 court?

6 THE COURT: If all the jurors are here we'll start at  
7 Nine.

8 MS. MILLER: Okay.

9 THE COURT: If you all -

10 MS. MILLER: We can't forget to introduce all of the  
11 witnesses to the jury.

12 THE COURT: Bring them in and we'll start at Nine. If  
13 you all have any issues to take up with me, come see me at  
14 8:30. Okay?

15 MS. MILLER: Okay.

16 THE COURT: When I make the representation to the jury  
17 a specific time we'll start at that specific time. Unless  
18 there is something that really gets in our way. Okay.

19 (COURT RECESSED AT 04:30 P.M..)

20 (DEFENDANT ENTERS COURTROOM AT 09:29 A.M..)

21 (COURT BACK IN SESSION TUESDAY, FEBRUARY 28, 2012 AT  
22 09:32 A.M..)

23 THE COURT: Take your seats, ladies and gentlemen.

24 Good morning. I hope everybody is doing well.

25 All right. All right, Counsel, any issues to take up

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1 before we bring the jury in?

2 MS. MILLER: None from the State.

3 MR. JAMIESON: Not at this time.

4 THE COURT: All right, good enough.

5 Will you bring the jury in please, sir.

6 (JURY ENTERS COURTROOM AT 09:33 A.M..)

7 THE COURT: Good morning, ladies and gentlemen,  
8 welcome back. I hope you had a good evening. I'm sorry  
9 you had to wait a little bit this morning. I apologize for  
10 that. I don't usually like to have you all waiting on us.  
11 The reason we started a little bit later is because the  
12 attorneys kind of started leaning toward marking some  
13 documents so that as we go through the course of the trial  
14 as they introduce documents it goes a little bit more  
15 smoothly and a little bit more efficient, like I said so we  
16 can get through the testimony a little bit more quickly.

17 So even though you all were waiting hopefully what was  
18 going on here in the courtroom was designed to be more  
19 considerate of your time ultimately.

20 Now yesterday you remember that I read off a list of  
21 witnesses who were potential witnesses who were gonna  
22 testify. What I did is as I read off the names and  
23 sometimes if you don't put a name with a face ti's  
24 difficult to determine whether you actually do know  
25 somebody, if you've seen them, whether they go to your

1 church, or anything of that sort. So what I'm gonna do is  
2 I'm going to go back through the witness list that I read  
3 off yesterday, and the witnesses are here. So as I read  
4 off their name they're gonna stand up. And if you'd just  
5 look and I'm gonna ask you the same questions that I ask  
6 you yesterday and that is whether you have any personal,  
7 professional, or family relationship with any of the  
8 witnesses. So I'll read those off for you again.

9 And, ladies and gentlemen, when I read your name if  
10 you'd please stand up and then you can sit back down when I  
11 move on to the next witness. And those are as follows:

12 Officer William Rivera, George Weeks.

13 You all can sit as I go through.

14 James Kenny Williams, Charles Ellis, Daniel Ronnie  
15 Adams, Everett Williams, Shaun Watson, Trey Amick, Ryan  
16 Hammond, C.E. Rowe, Don Doster, Officer Reid, Bruce Haire,  
17 Otis Mobley, Crystal Kissel, Martha Parish, Detective M.  
18 Chavez, Lindy Irby.

19 All right, ladies and gentlemen, I ask you after  
20 having had the opportunity to see these respective  
21 witnesses, is there anyone among you who has a personal,  
22 professional or family relationship with any of these  
23 witnesses?

24 All right. Let the record reflect no affirmative  
25 response.

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1 (NO AFFIRMATIVE RESPONSE.)

2 THE COURT: Ladies and gentlemen, yesterday we picked  
3 twelve jurors and four alternates. I usually only pick two  
4 alternates. The reason I picked four alternates is because  
5 we knew that we were going to have to ask those questions  
6 and it could come to pass that one or more of you could  
7 have known some of these witnesses and just didn't put a  
8 name of a face. So what I'm gonna do is I'm going to  
9 release the last two alternates today. So we're gonna go  
10 forward with fourteen. So the last two alternates that we  
11 picked were Ms. Carter and Ms. Rice.

12 Where are you all?

13 Right there. So I'm going to let you all go. If you  
14 talk to the Clerk of Court and the clerk will give you  
15 instructions as to whether you should come back for  
16 additional jury. But thank you for your service on this  
17 jury and I'm sorry you all don't get to stay with us. But  
18 you can stay in the audience if you want to.

19 A. No thanks.

20 THE COURT: Not that excited. Imagine that.

21 (TWO LAST ALTERNATES DISMISSED AT 09:37 A.M..)

22 THE COURT: All right. All right, ladies and  
23 gentlemen, we're ready to get started.

24 Is the State ready to proceed?

25 MS. MILLER: We are, Your Honor.

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1 THE COURT: All right. You may call your first  
2 witness.

3 MS. MILLER: I do wish to approach the witness one  
4 quick moment.

5 THE COURT: Sure.

6 (BENCH CONFERENCE OFF THE RECORD AT 09:38 A.M..)

7 MS. MILLER: The State calls Officer Rivera.

8 MS. MILLER: The State calls Officer Rivera.

9 MADAME CLERK: Please raise your right hand, place  
10 your left hand on the Bible.

11 (WHEREUPON: OFFICER WILLIAM  
12 RIVERA, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS  
13 FOLLOWS:)

14 DIRECT EXAMINATION :

15 OFFICER WILLIAM RIVERA BY MS. MILLER:

16 Q. Could you state your name for the record?

17 A. Will Rivera.

18 Q. And where are you employed?

19 A. Rock Hill Police Department.

20 Q. And what is your rank?

21 A. I'm a sergeant, ma'am.

22 Q. And how long have you worked for Rock Hill Police  
23 Department?

24 A. Nine years.

25 Q. And were your working on October 3rd of 2010?



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1 A. I was, ma'am.

2 Q. And explain to the jury about your shift and when you  
3 came on and the details of that.

4 A. At that particular time, I was assigned to a patrol  
5 team, and we were conducting directed patrol in the Boyd  
6 Hill neighborhood in Rock Hill.

7 Q. What does "directed patrol" mean?

8 A. Directed patrol is when -- well, to sum it up for you.  
9 We have Compstat initiatives, which is problems are  
10 identified in the city, high-crime, high-drug  
11 neighborhoods. And a directed-patrol shift will be sent in  
12 to address issues in the neighborhood like that, make  
13 contact with citizens, talk to citizens, find out if  
14 there's any issues, identify any crime rates, and things  
15 like that, and bring it back to Compstat. I said  
16 "Compstat," which is a meeting that we -- I don't want to  
17 get too far into that.

18 Q. And on October 3rd, 2010 were you on a Compstat?

19 A. We were doing a Compstat initiative directed patrol,  
20 yes.

21 Q. And where was that in?

22 A. We're in the Boyd Hill area.

23 Q. In the Boyd Hill area.

24 A. Yes, ma'am.

25 Q. And so you were working on October 3rd, 2010?

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1 A. I was.

2 Q. And tell us how your evening started.

3 A. We were conducting patrol. Myself and Officer Rowe  
4 were in an unmarked vehicle just patrolling the Boyd Hill  
5 neighborhood, and we made contact with a male subject  
6 around the area of Castle and Berry Street.

7 Q. And what information -- Did you speak to him?

8 A. We did. Yes, ma'am.

9 Q. And after speaking to him, what did you do?

10 A. We just made contact with him because he was stumbling  
11 in the roadway, and it appeared that he was intoxicated.  
12 We got out with him, found out where he was going, where he  
13 was coming from, and found out that he indeed was under the  
14 influence.

15 Q. And what information did he give you?

16 A. He had a crack pipe on his person. And he advised  
17 that he had been recently smoking crack and that he just  
18 purchased it from that area.

19 Q. What area did he say specifically?

20 A. Hickory Lane.

21 Q. Did he say where on Hickory Lane?

22 A. Yes, ma'am. He said it would be the second or third  
23 house on Hickory Lane from Crosby, I believe it was,  
24 without the report in front of me. Stated that there would  
25 be people outside hanging out selling crack and selling

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1       liquor.

2       Q.   And what did you do with that information?

3       A.   Spoke with him briefly and released him without  
4       charges. He was close to his residency he advised us so we  
5       went ahead and let him go, and I called my lieutenant.

6       Q.   And what transpired from there?

7       A.   Due to our entire mission for being in the area in the  
8       first place, anything major that we were to get that would  
9       involve more than one or two officers, we would report back  
10      to the lieutenant on shift and just let him know, "Hey,  
11      Lieutenant, this is what we got." And he would give us  
12      directive from there. So that's what I did.

13      Q.   What did y'all wind up doing?

14      A.   Lieutenant advised for me to get several other  
15      officers and set up surveillance on the residence. That's  
16      what I did.

17      Q.   Now, you say "residence," but you were talking about  
18      Hickory Lane; is that correct?

19      A.   Yes, ma'am. Basically, go ahead and identify which  
20      residence is the problem house, and go ahead and set up  
21      surveillance on it.

22      Q.   And tell us what you did.

23      A.   That was after speaking to Lieutenant Doster. I  
24      called Officer Hammond and Officer Watson who were also in  
25      the area. I was already with Officer Rowe. We were riding

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1 two-men unit. We were riding in the same car.

2 Q. And tell us what you did.

3 A. Once Officer Hammond and Watson got up with me, me  
4 being the senior officer I went ahead and briefed them on  
5 what we had, just a report of, you know, this crack sales  
6 being sold from a residence up there on Hickory. And we  
7 went in, in two separate unmarked vehicles, and we walked  
8 in from there.

9 Q. And I'm going to show you what's been marked as  
10 State's Exhibit Two and ask you if you recognize that.

11 A. I do.

12 Q. And what is that?

13 A. An aerial photograph of the area we were operating in.

14 MS. MILLER: The State moves to introduce Exhibit  
15 Number Two.

16 THE COURT: Any objection, sir?

17 MR. JAMIESON: No, Your Honor.

18 THE COURT: Without objection, the same is moved into  
19 evidence.

20 (WHEREUPON: STATE'S EXHIBIT NUMBER TWO IDENTIFIED AND  
21 MARKED, RECEIVED INTO EVIDENCE.)

22 Q. So you said you were in unmarked police cars?

23 A. Yes, ma'am.

24 Q. And tell us what you did.

25 A. We parked our vehicles two streets down, and due to

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1 the fact that it was -- due to the fact that the vehicles  
2 were Crown Vics, which are highly identifiable as police  
3 cars whether marked or unmarked, we parked a distance away,  
4 and we went in on foot.

5 Q. And what -- tell us -- just tell us what you did when  
6 you -- you went on foot, and where did you go?

7 A. We walked up Hickory Lane towards Crosby Street and  
8 found a location where we could safely conduct surveillance  
9 from a shadow area where we could not be seen, but we could  
10 see the house.

11 Q. And so you went up Hickory Lane, and did you find --  
12 what did you find?

13 A. Yes, ma'am. Due to not knowing the exact location of  
14 the house, I knew it could be one of several. I had a good  
15 idea of the area just from knowing that side of town, you  
16 know, being familiar with that zone. We walked up until we  
17 heard some footsteps. Once we heard footsteps, we stopped  
18 and --

19 Q. You heard footsteps?

20 A. Or, heard voices. I apologize.

21 Q. You heard voices?

22 A. Yes, ma'am.

23 Q. Could you see anyone?

24 A. No, not at that time.

25 Q. So what did you do when you heard voices?

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1 A. We stopped and started our surveillance from that  
2 area.

3 Q. But you said you couldn't see anyone. You just heard  
4 voices?

5 A. Correct.

6 Q. What did you do?

7 A. Well, we didn't want to walk -- is there any way I can  
8 pull the slide up and show the jury exactly where I was?

9 Q. Just one second.

10 Yes, could you please put Exhibit Number Two.

11 And could you cut the lights?

12 (COURTROOM LIGHTS DIMMED.)

13 A. And I can point it out from right here.

14 Q. Okay.

15 (SOLICITOR MILLER HANDED WITNESS LASER POINTER.)

16 A. Thank you.

17 Just so the jury knows. This is -- this would be  
18 Cherry Road. And this particular -- this would be north,  
19 headed this way. So it's kind of upside-down. But we  
20 parked our unmarked vehicles down here, and we came in on  
21 foot. Myself and three other officers approached on foot  
22 here, crossed the road here, and we stopped here.

23 Q. Let's orient them a little bit. That's -- what's that  
24 street down the --

25 A. This is Hickory Lane.

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1 Q. That's Hickory Lane.

2 A. This is Crosby.

3 Q. Okay.

4 A. Which runs parallel to Cherry Road.

5 Q. Okay.

6 A. And this is Calhoun Street.

7 Q. All right. And let's show the jury again where you  
8 stopped.

9 A. There is a street lamp here, which casts a shadow in  
10 this direction. So the entire back of this house here is  
11 dark. And this little cut -- cut-out right here is where  
12 myself and three other officers stood by, and we were  
13 completely isolated in the darkness, and we could -- we had  
14 a clear view of the side of this residence here, which was  
15 well-lit and had a porch light.

16 Q. So you're in the nook there?

17 A. Yes, ma'am.

18 Q. And about what time of night is this?

19 A. Twenty-one -- 9:00 o'clock p.m.; is that correct? I  
20 don't have the paperwork in front of me.

21 Q. Well, we'll get to it. Was it light, or was it dark?

22 A. No, it was dark, ma'am. Yes, ma'am.

23 Q. So you're in the little nook there. Tell us what  
24 happened next.

25 A. I heard voices. Again, there is a carport here. So

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1 there is a good possibility -- and when I say a "carport,"  
2 it's a brick, solid carport that you can't see through,  
3 especially at night. I heard voices. We didn't want to  
4 walk right up on them and, you know, blow the whole thing.  
5 So we just stopped and kind of saw what we could see from  
6 there. I was initially given information that a black male  
7 in a white T-shirt had sold him the drugs. So I was  
8 looking for a black male in a white T-shirt originally, and  
9 I didn't see anybody, I just heard voices. So...

10 Q. You say, "a little bit." But at this time, I'm going  
11 to ask you to identify Exhibit Number Two. I'm sorry.  
12 We've got Exhibit Number Two. Exhibit Number One, do you  
13 recognize that?

14 A. I do.

15 Q. And what is that?

16 A. It's a -- another -- another aerial photograph of the  
17 area we were conducting surveillance in as well as the  
18 house that was robbed.

19 Q. And Exhibit Number Three, do you recognize that?

20 A. I do.

21 Q. And what is that?

22 A. This is a picture of the residence that was robbed as  
23 well as the area of Calhoun and Crosby Street.

24 Q. And Exhibit Number Four, what is -- do you recognize  
25 that?



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1 A. I do.

2 Q. And what is that?

3 A. It includes the backyard of the house that was robbed  
4 as well as the area where we would ultimately arrest Randy  
5 Mitchell.

6 Q. Okay.

7 MS. MILLER: Your Honor, I'm going to ask to introduce  
8 Exhibits One, Three, and Four.

9 MR. JAMIESON: No objection, Your Honor.

10 THE COURT: Without objection, the same are introduced  
11 into the record.

12 (WHEREUPON: STATE'S EXHIBIT NUMBERS ONE, THREE, AND  
13 FOUR IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 BY MS. MILLER:

15 Q. So you are -- It's dark?

16 A. Yes, ma'am.

17 Q. And you're sitting in the nook. You're hearing  
18 voices. You were telling us that you didn't want to  
19 walk -- you didn't want to scare anyone that you thought  
20 might be out there; is that correct?

21 A. Yes, ma'am. Due to the exact location being unknown  
22 to us where this activity was going on, just for safety  
23 reasons and to gather good -- good intelligence, we came up  
24 to a point where we could identify what we thought were  
25 voices, and we stopped there.. If that, indeed, didn't pan

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1 out, then we would continue forward and find another  
2 observation location. But at this particular point, we set  
3 up right there behind that residence where we were safe,  
4 and we were in the darkness.

5 Q. Tell us what happened next.

6 A. I observed a male subject walking up the roadway,  
7 probably 10 feet to my left. So we are here, and there is  
8 a male subject walking up the roadway here.

9 Q. What did he do?

10 A. He was not doing anything. He was just a pedestrian  
11 in the roadway walking. He just caught our attention due  
12 to the fact that he was so close to us. And he just  
13 continued up about to the front of the residence.

14 Q. And then what happened?

15 A. While he was walking, I observed a black male in a  
16 white T-shirt walk up into the side door of the residence.  
17 So he walked into the side door here, which --

18 Q. Where did he come from?

19 A. He came from this area here, the front yard of this  
20 house. He came from the front yard into the side door.

21 Q. That's when you noticed him?

22 A. Yes, ma'am.

23 Q. Is there -- Does this house have any neighbors?

24 A. Yes, sir -- yes, ma'am.

25 Q. I -- obviously the one where you're standing at; is

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1 that correct?

2 A. Yes, ma'am.

3 Q. What about on the other side?

4 A. Yes, ma'am. There is a house there also.

5 Q. So you noticed someone. Describe him again.

6 A. Black male, white T-shirt.

7 Q. What did he do?

8 A. He came from the front yard area and went inside that  
9 side door.

10 Q. And what happened next?

11 A. When he went inside the house, I diverted my attention  
12 back on the guy in the roadway, the guy who had been  
13 walking, just to make sure he hadn't seen us, which he had  
14 not, and just continued to watch the residence.

15 Q. And what happened?

16 A. I heard a -- let me think about this exactly. After a  
17 few minutes, I could hear people talking inside the --  
18 inside the house, loud. I didn't know if it was people  
19 arguing or just people talking, you know. And I observed  
20 the door come open, and I saw the male subject in the white  
21 shirt walking out.

22 Q. And what happened? What -- let me ask you this. Was  
23 there any light on in the yard?

24 A. Yes, ma'am. There was a porch light right there that  
25 was on.

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1 Q. Where was the porch light?

2 A. The porch light is turned on right here where the  
3 gentleman in the white shirt went inside.

4 Q. So what happened next?

5 A. He exited the residence and began walking. I thought  
6 that he was going to walk to us. He was walking in my  
7 general direction. He left here, and he walked straight  
8 over here, which was approximately 30 feet to my right.

9 Q. And then what happened? What happened after that?

10 A. I was watching him, and I heard a gunshot go off  
11 inside the house.

12 Q. And then what happened?

13 A. Obviously my attention got diverted to the residence.  
14 Now, I was not sure what that was. I identified it as a  
15 gunshot. I believe I said, "Was that a gunshot?" to the  
16 other officers who thought maybe it was just a door slam.  
17 We did not move from our location at that point. We just  
18 were kind of on edge. The door came open, and I observed a  
19 male subject exit the residence.

20 Q. And what did he look like?

21 A. Wearing dark clothing, dread locks, and -- Continue?

22 Q. What did he do?

23 A. He began walking out of the house in the same general  
24 direction as the male in the white T-shirt. And I say  
25 "same direction." He came out and began walking straight

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1 back there towards him, and he was putting on a dew-rag as  
2 he was leaving, a stocking cap.

3 Q. And what happened next?

4 A. As he was coming out, my eyes were focused on him,  
5 thinking about the gunshot when I heard a loud boom and saw  
6 a muzzle flash from my right.

7 Q. And where did that come from?

8 A. The subject in the white shirt.

9 Q. Now what happened?

10 A. All four of us together began to address the threat.  
11 Essentially, we announced "Rock Hill Police," and both  
12 subjects began to flee on foot. They took off running.

13 Q. Where did they run? And at this point, how far away  
14 are they from you?

15 A. They are approximately 15 feet, 10 feet.

16 Q. Were you still in that little nook?

17 A. No, ma'am. We had -- we had left this. As soon as  
18 those -- that second gunshot went off, and everyone was  
19 clear that it was a gunshot, we began our approach here,  
20 closed the gap to -- we hastily moved forward about 10  
21 feet, announced "Rock Hill Police," they took off, and now  
22 we were 10 to 15 feet behind them. We were -- we were  
23 right on top of them.

24 Q. Where did it end?

25 A. There's a just a worn foot path here just from foot-

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1 traffic walking back and forth. We came out here towards  
2 Crosby.

3 Q. This way? And where are they?

4 A. They were right here in front of us, ma'am.

5 Q. They run through there? Is that what you're telling  
6 us?

7 A. Yes, ma'am. They -- we made contact right here.

8 Q. Okay.

9 A. This is where we all made contact. They fled right  
10 here towards Crosby and made a left. And myself and three  
11 other officers pursued right behind them, all of us on  
12 foot.

13 Q. So they ran through those two houses. They turned  
14 left, and then what?

15 A. Yes, ma'am. Then we began running down the center of  
16 the street, running down the center of Crosby Street. It's  
17 well-lit, very easy to pursue them on Crosby.

18 Q. So you -- So are they together?

19 A. Yes, ma'am. They're together.

20 Q. Then what happened?

21 A. We continued running up Crosby Street straight to  
22 about right here. Now some of us are -- some of us are  
23 taller than some others. So some have -- are considerably  
24 faster than some of us. But Officer Watson ran this way.

25 Q. Why did he run that way?

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1 A. Because Gregory Crawford, the guy who we later found  
2 out was Gregory Crawford, in the white shirt, ran across --  
3 ran this way, and Randy Mitchell split this way.

4 Q. So right there, they separated. Is that what you're  
5 saying?

6 A. Yes, ma'am. They split up there.

7 Q. And the one in the white T-shirt, Mr. Crawford, went  
8 straight; is that correct?

9 A. Yes, ma'am. He kind of went straight. He darted  
10 across this way, across this street here.

11 Q. And which way did Mr. Mitchell go?

12 A. He ran back behind this residence here.

13 Q. And where were you?

14 A. I was about here. And just to give you the -- just to  
15 give you the running order. And you'll see when Watson and  
16 Rowe come in here, they are gazelles, if you will. They  
17 took off. Watson pursued Mitchell. Oh, I'm sorry. Watson  
18 pursued Crawford across the street. Rowe was also in front  
19 of me at this point. So when I got to this point, I lost  
20 sight of both of them.

21 Q. So what did you do?

22 A. I overshot this location here just figuring that  
23 knowing Officer Rowe, he wouldn't be bedded down behind the  
24 house, and certainly I would have heard a struggle. I  
25 wasn't that far behind. So I simply overshot the residence

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1       figuring they came out on the other side.

2       Q.    So you came on the other side of the house, and then  
3       what?

4       A.    When I saw Officer Watson going to assist -- well, I'm  
5       sorry. When I saw Officer Hammond going to assist Officer  
6       Watson with the gentleman in the white shirt, I knew he had  
7       two officers. I knew Rowe was by himself. I went to go  
8       assist Rowe.

9       Q.    Okay.

10      A.    When I came out to the roadway here, which is also  
11      well-lit, I observed Rowe pulling his flashlight out and  
12      pulling his pistol out and giving verbal commands.

13      Q.    So what did you do? Where was he, actually? First,  
14      tell us where he was.

15      A.    He had run here. It's hard to see from my angle.

16      Q.    Just tell me where he was when you saw him.

17      A.    He was right about here in the roadway still.

18      Q.    And you saw him. He had his flashlight and his gun  
19      out.

20      A.    Yes, ma'am.

21      Q.    And he was speaking?

22      A.    He was yelling, yes.

23      Q.    Okay he was yelling.

24      A.    Yes.

25      Q.    And then what?



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1 A. I immediately ran over to his location, saw him  
2 advancing forward down into what is grown-up briars and a  
3 wooded area.

4 Q. And what happened there?

5 A. And I joined up with him. As I was making my  
6 approach, I observed a male subject, who would later be  
7 identified as Randy Mitchell, running through the briars in  
8 an attempt to get away.

9 Q. What -- How was he doing in the briars?

10 A. Well, he wasn't doing too good. Those briars are  
11 extremely grown up and extremely thick.

12 Q. What did you do?

13 A. I was giving verbal commands for him to get on the  
14 ground, stop police, and Officer Rowe got to him right  
15 before I did. Officer Rowe grabbed him, and we both took  
16 him to the ground, and we were able to put him in  
17 handcuffs.

18 Q. How were you doing in the briars?

19 A. Well, I wasn't doing too good. When we were advancing  
20 and moving towards Mitchell, obviously because he got there  
21 first, he was making his way through, you know -- he was  
22 getting far, but he was still ahead of where we were. He  
23 tripped one time getting caught up, and as he was getting  
24 up and trying to move forward, that's when we got to him,  
25 so...

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1 Q. And then what?

2 A. We put him in handcuffs, and I, you know -- we just  
3 generally always ask, "Why are you running? Why are you  
4 running?"

5 Q. Objection -- I'm sorry. What did you do after that,  
6 without saying any hearsay? What did you physically do?

7 A. Put him in handcuffs, and I asked him, "Why are you  
8 running?"

9 Q. Without telling me what someone said or didn't say,  
10 what did you do? You put him in handcuffs, and where did  
11 you take him?

12 A. Oh, I took him to the patrol car. I called the patrol  
13 unit.

14 Q. And Rowe was with you?

15 A. Yes, ma'am. We called for a marked unit due to the  
16 fact that we were in unmarked vehicles, and they don't have  
17 police cages, a secure cage, not to mention they have soft  
18 seats where people can put contraband and things. We just  
19 called for a marked police car to come up there, somewhere  
20 we could secure the prisoner as well.

21 Q. This is Exhibit Number One. This is just another view  
22 of the same thing. If you could just orient us again.

23 A. Just to give you guys a overview. Now this is Cherry  
24 Road, and this would be northbound. Like Newport's up  
25 here, and Edgemore's down here. This is the original road

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1 we walked up on, Hickory Lane, crossed over here. We  
2 posted up here. We have a clear view of the side of the  
3 residence, which is right here.

4 Q. And show us from this angle where they ran.

5 A. They exited the residence here, ran between these two  
6 houses, this way on Crosby Street. They would split up  
7 here. Randy Mitchell would run this way.

8 Q. Now once you took them out to the patrol car, what did  
9 you do at that point?

10 A. Well, prior to that, when we got them and put them in  
11 handcuffs, we did a quick, hasty search, just officer  
12 safety for weapons, make sure that he didn't have anything  
13 that would injure either myself or Rowe or the transport  
14 unit. When we got him out to the vehicle by the roadway,  
15 we again did a quick search for weapons.

16 Q. And did you find anything?

17 A. No weapons at that time. No, ma'am.

18 Q. Did you find anything else on him?

19 A. Officer Rowe was conducting a thorough search. I  
20 personally did not do a thorough search.

21 Q. Then what happened?

22 A. We put him in the vehicle with Officer Reid, and he  
23 was transported.

24 Q. And what did y'all do after that?

25 A. At that point, we went back to where Officer Watson

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1 and Officer Hammond were to make sure that they were, one,  
2 safe and two, secured the prisoner. And we found out that  
3 they, in fact, arrested the second guy also. So at that  
4 point, I reported to my lieutenant, "Hey, both subjects are  
5 in custody. We've got both guys."

6 Q. What did you do next?

7 A. At that point, we needed to start thinking about  
8 securing the crime scene, figuring out who we need to talk  
9 to, who we need to call. So after reporting to Lieutenant  
10 Doster, he advised us to go ahead and backtrack and find  
11 out if, you know, they threw anything down, if there was  
12 any evidence.

13 Q. And did you do that?

14 A. Yes, ma'am. We did that.

15 Q. Let me ask you a quick question. What county is this  
16 in?

17 A. York County.

18 Q. Thank you.

19 So you're backtracking. Tell us about that.

20 A. We begin backtracking the exact route and talking  
21 about where these guys went to, what happened. As we're  
22 walking backwards here, we come back because there's a  
23 fence here, and no one ever heard Randy Mitchell jump a  
24 fence. So I assumed that he just went through the backyard  
25 here.

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1 Q. So did you go back there?

2 A. Yes, ma'am. We walked back there.

3 Q. And what did you find, if anything?

4 A. I found a pistol and a wallet.

5 Q. And it was -- show us again on the map, on the  
6 picture.

7 A. Right here behind this residence.

8 Q. I'm going to show you what's been marked as Exhibit  
9 Number Seven. Do you recognize that?

10 A. Yes, ma'am.

11 Q. And what is that?

12 A. That is the pistol and wallet that we found right  
13 there behind the residence.

14 Q. And I'm going to show you what's been marked as  
15 State's Exhibit Number Eight. Do you recognize that?

16 A. Yes, ma'am.

17 Q. And what is that?

18 A. Just a different angle of the pistol and wallet we  
19 found that night.

20 Q. And State's Exhibit Number Nine, do you recognize  
21 that?

22 A. Yes, ma'am.

23 Q. And what is that?

24 A. It's yet another angle of it, same thing, the pistol  
25 and wallet in the backyard.

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1 Q. Okay.

2 MS. MILLER: Your Honor, the State moves to enter  
3 State's Exhibit Seven, Eight, and Nine.

4 THE COURT: Any objections, sir?

5 MR. JAMIESON: I haven't heard her elicit any  
6 testimony for foundation, Your Honor, so I do have.

7 THE COURT: All right. I respectfully deny the same  
8 and permit the pictures over objection.

9 (WHEREUPON: STATE'S EXHIBIT NUMBERS SEVEN, EIGHT, AND  
10 NINE IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

11 MS. MILLER: If we could put up Exhibit Number Seven.

12 (EXHIBIT NUMBER SEVEN PUBLISHED ON COURTROOM OVER  
13 HEAD.)

14 BY MS. MILLER:

15 Q. And tell the jury what this is.

16 A. That is a picture of a 380 Lorcin, which I would later  
17 find out, that's a type of pistol. When we walked up, it  
18 was a pistol and a wallet thrown down in the backyard of  
19 this residence here.

20 Q. And State's Exhibit Number Eight, and what is that a  
21 picture of?

22 (STATE'S EXHIBIT NUMBER EIGHT PUBLISHED ON COURTROOM  
23 OVER HEAD.)

24 A. Same pistol and wallet behind that residence.

25 Q. And the numbers that are next to it, did you put those

OFFICER WILLIAM RIVERA: DIRECT BY MS. MILLER

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1 numbers out?

2 A. I did not. No, ma'am.

3 Q. Who put those out there?

4 A. The forensics unit.

5 Q. And State's Exhibit Number Nine, what is that?

6 (STATE'S EXHIBIT NINE PUBLISHED ON COURTROOM OVER  
7 HEAD.)

8 A. That's also a picture of the wallet and the pistol  
9 behind that residence.

10 Q. Just a different angle?

11 A. Yes, ma'am.

12 Q. Now when you saw this, what did you do?

13 A. Once we locate property that belongs to the crime,  
14 obviously, we can't walk away from it. And due to --  
15 obviously I knew Forensics would need to be called, and  
16 they would need to come out. So we weren't going to  
17 recover it. I posted Officer Rowe there to watch it.

18 Q. And then what did you do?

19 A. At that point --

20 Q. Let me stop you. Let me stop you for a second. I'm  
21 handing you what's been marked as State's Exhibit Twenty-  
22 eight. Do you know what that is?

23 A. Yes, ma'am.

24 Q. Could you tell us what State Exhibit Number Twenty-  
25 eight is?

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1 A. It is a Lorcin .380 caliber with a magazine containing  
2 four .380 rounds. This is what was recovered that evening.

3 Q. And is that what was found behind that house?

4 A. Yes, ma'am.

5 Q. Okay.

6 MS. MILLER: The State moves to introduce State's  
7 Exhibit Number Twenty-eight.

8 THE COURT: Any objections, sir?

9 MR. JAMIESON: Yes, Your Honor.

10 THE COURT: Okay. And what is that?

11 MR. JAMIESON: Your Honor, there is no testimony that  
12 has been elicited so far that places that weapon in the  
13 possession of my client. There's no evidence whatsoever  
14 that he possessed it. Officer Rowe, apparently can  
15 testified that he saw him either possess it or drop it.  
16 Officer Rowe hasn't testified as far as I've heard that,  
17 that's even the gun in the photograph. He's testified it's  
18 a Larcin -

19 MS. MILLER: Your Honor, if he could tell us the basis  
20 for his objection and not explain it in front of the jury.

21 THE COURT: Okay, all right.

22 What is the basis for the objection? Is it the  
23 foundation or the chain of custody?

24 MR. MILLER: No one has testified that, that is  
25 relevant evidence in this case, Your Honor. That's the



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1 basis of -

2 THE COURT: Y'all come up real quick. Y'all come up  
3 real quick.

4 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
5 THE JURY AT 10:13 A.M..)

6 THE COURT: At this time, the objection is sustained.

7 MS. MILLER: Okay.

8 THE COURT: Based on some conversations that we had  
9 with respect to the introduction of this piece of evidence.  
10 And you may proceed as well.

11 BY MS. MILLER:

12 Q. So you found these items, and you put Officer Rowe in  
13 charge of watching them; is that correct?

14 A. Yes, ma'am. That's correct.

15 Q. And then what did you do?

16 A. Officer Watson and I began to backtrack towards the  
17 original location where all this started.

18 Q. And the -- let me put up State's Exhibit Two.

19 All right, so you're backtracking. So show us where  
20 you're backtracking. So you found -- show us where you  
21 found the pistol and the wallet.

22 A. I found the pistol and the victim's wallet here and  
23 walked out towards Crosby Street and began walking down  
24 Crosby back through the path, right to the front door.

25 Q. And what if anything did you find?

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1 A. After walking down, what did -- What did I find?

2 Q. What did you see as you were backtracking?

3 A. Okay, okay. As I was walking, I walked all the way  
4 back, did not locate anything until we hit the path right  
5 here where we originally started.

6 Q. And what did you find if anything?

7 A. I found a sawed-off shotgun, and approximately 6 feet  
8 away, I found a black stocking cap, do-rag type.

9 Q. And I'm going to show you what's been marked as  
10 State's Exhibit Number Five and ask you if you recognize  
11 that.

12 A. Yes, ma'am.

13 Q. And what is that?

14 A. This is a photo of the sawed-off shotgun and the  
15 stocking cap.

16 Q. And do you recognize that?

17 A. I do, ma'am. This is a photo of the stocking cap.

18 MS. MILLER: Your Honor, the State would move to  
19 introduce Exhibits Five and Six.

20 THE COURT: Any objection, sir?

21 MR. JAMIESON: No.

22 THE COURT: All right. Without objection the same are  
23 moved into evidence.

24 (STATE'S EXHIBIT NUMBERS FIVE AND SIX IDENTIFIED AND  
25 MARKED, RECEIVED INTO EVIDENCE.)

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1 Q. And if you could just show the jury one more time  
2 where you found this shotgun and the --

3 A. In relation to -- This is our original location where  
4 the officers are standing. This is the side door where the  
5 subjects came out, and this is where the pursuit began, and  
6 this is where we found the items.

7 Q. And if you could put up State's Exhibit Five.

8 (STATE'S EXHIBIT FIVE PUBLISHED TO JURY ON COURTROOM  
9 OVER HEARD PROJECTOR.)

10 Q. And explain to the jury what that is.

11 A. This is a photo of a sawed-off shotgun, single-barrel.

12 Q. Okay.

13 A. And this is a photo of the do-rag.

14 Q. And what did you do next?

15 A. I called the Lieutenant who was not far from this  
16 location, over there towards the house and just informed  
17 him that we had the second firearm here, and both guns were  
18 accounted for.

19 Q. All right. I want to show you what's been marked as  
20 State's Exhibit Thirty and ask if you recognize that? If  
21 you can just leave it in the bag.

22 A. Yes, ma'am.

23 Q. What is that?

24 A. It is the sawed-off shotgun and one spent shell  
25 casing.

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1 Q. Thank you. And where did you see that shotgun first?

2 A. Right there on the -- on the ground next to the  
3 residence in the alleyway.

4 Q. All right. Then what did you do?

5 After you found the shotgun and the piece of material,  
6 what did you do after that? You talked to the lieutenant?

7 A. Yes, ma'am. I believe, if I recall correctly, that I  
8 asked Officer Watson to stand by the shotgun there.

9 Q. Okay.

10 A And I went over to the residence to make sure that  
11 Forensics was called, detectives were called, and that we  
12 had the proper people coming who needed to investigate the  
13 scene.

14 Q. All right. And were those folks on their way?

15 A. Yes, ma'am. They were.

16 MS. MILLER: The Court's indulgence, Your Honor.

17 THE COURT: Yes, ma'am.

18 (PAUSE.)

19 BY MS. MILLER:

20 Q. I asked you earlier what -- about what time was it  
21 when you got behind the home.

22 A. Yes, ma'am.

23 Q. I probably ask you that question. I'm going to --  
24 One moment please.

25 (PAUSE.)

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1 Q. I'm going to hand up to you -- would it refresh your  
2 memory if I handed you your incident report and case  
3 summary?

4 A. Yes, ma'am.

5 Q. I'll ask you to look at that, and tell me what time do  
6 you think it was when you were backed in that corner?

7 A. At 9:51 we began conducting surveillance.

8 Q. So about ten till 10:00 at night?

9 A. Yes, ma'am.

10 Q. When -- back when you were behind the house.

11 Actually, when you were up on Crosby, and you saw -- you  
12 roamed with the flashlight and the gun drawn --

13 A. On Calhoun, ma'am?

14 Q. On Calhoun. I'm sorry. On Calhoun.

15 A. Yes.

16 Q. Was -- and when you saw -- when he -- was he pointing  
17 at somebody with his flashlight?

18 A. And his pistol. Yes, ma'am.

19 Q. And was that the same person that you chased from the  
20 home?

21 A. Absolutely. Yes, ma'am.

22 Q. And do you recall what he looked like?

23 A. What he looked like that evening?

24 Q. Yeah, generally.

25 A. Up close or from the distance where I was originally?

OFFICER WILLIAM RIVERA: DIRECT BY MS. MILLER  
CROSS BY MR. JAMIESON

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1 Q. Where you were originally, and then as you were  
2 running, and --

3 A. I observed a dark male -- or, black male, dark  
4 clothing, and dread locks.

5 Q. And how about the person who you caught in the briars.  
6 Who -- about the person you were chasing and the person who  
7 was in the briars?

8 A. Black male, dark clothes, deadlocks, sweating  
9 profusely, breathing heavily, and avidly trying to evade,  
10 get away.

11 Q. All right. Please answer any questions Mr. Jamieson  
12 has for you.

13 A. Yes, ma'am.

14 CROSS EXAMINATION

15 OFFICER WILLIAM RIVERA BY MR. JAMIESON:

16 Q. Officer Rivera, I'm Phil Jamieson, I represent Mr.  
17 Mitchell.

18 This night that you were on directed patrol, what  
19 house were you watching?

20 A. I believe that's it.

21 Q. And was that the house where the robbery subsequently  
22 occurred?

23 A. Yes, sir. It was.

24 Q. So based on the information you had from the field  
25 interview that you conducted earlier, that was the house

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1       you suspected was selling crack cocaine and liquor; is that  
2       correct?

3       A.    I suspected that it might be that one or the one next  
4       to it. Yes, sir.

5       Q.    And when you got there, did you -- were there people  
6       in the yard?

7       A.    I heard voices coming from the direction of the yard,  
8       but I never saw anybody initially.

9       Q.    And was that consistent with what that field interview  
10      person had told you about the yard, that there would be  
11      people in the yard?

12      A.    Yes, sir. He said there would be people in that yard.  
13      Yes, sir.

14      Q.    So is that why you stopped where you stopped?

15      A.    Yes, sir. I heard voices so we stopped.

16      Q.    If you would describe -- The Solicitor has shown a  
17      number of pictures to the jury. Those pictures don't  
18      accurately reflect what the conditions were that night; do  
19      they? They weren't as light as that; were they?

20      A.    No, sir. It was -- one, it was dark; two, those  
21      aerial photos and slides depict a, you know, a lot of  
22      shrubbery and woods and things like that, but it -- this  
23      was October so the leaves were bare -- I'm sorry. The  
24      trees were bare, and you could see, you know. But it was  
25      dark, to answer your questions.

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 Q. And the bushes and truck were there. They just didn't  
2 have leaves on them; is that right?

3 A. Yes, sir.

4 Q. So it was very dark; wasn't it? October at 10:00  
5 o'clock at night, it's pretty dark?

6 A. Yes, sir.

7 Q. And in fact, that's how you were able to hide it was  
8 so dark; is that right?

9 A. Well, I would say, no. As I stated earlier, there was  
10 a light at the corner of Crosby and Hickory, which casts --  
11 it's got light shown -- shining on the front of that house,  
12 which casts a dark shadow on the back. It was abnormally  
13 dark where we were. But there was ambient light in the  
14 area, street lights, porch light.

15 Q. And is there any street lighting in the vicinity of  
16 ?

17 A. I can't advise. I want to say that there are.

18 Q. But you didn't -- you can't advise definitely, there  
19 are or there are not?

20 A. I know there is one at the corner, which is about 50  
21 yards from the side of the house. So I would say that,  
22 yes, there are.

23 Q. And that light casts a shadow on the house you were  
24 behind. Right?

25 A. That's correct. Yes, sir.



OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 Q. And is behind that house; is it not?

2 A. At a greater distance. But, yes, sir.

3 Q. So very dark?

4 A. Yes, sir.

5 Q. So taking you back through the sequence of events, you  
6 saw an individual go into the house; is that correct?

7 A. Yes, sir. That's correct.

8 Q. And had the -- well, strike that. You weren't able to  
9 tell who that person was. You didn't know it was any  
10 particular person at that time; is that correct?

11 A. The person going into the house?

12 Q. Right.

13 A. No, we simply got a report that there was a male  
14 subject with a white shirt selling drugs. When I observed  
15 a male subject with a white shirt walking into the house,  
16 that was, you know -- he matched the description, but  
17 again, there's -- there could be numerous people with white  
18 shirts in the neighborhood.

19 Q. But he walked into ?

20 A. That's correct. He walked in, yes.

21 Q. And you didn't see another person go into  
22 ; did you?

23 A. No, sir.

24 Q. So when two individuals came out, one came out; then  
25 the other came out. One of them fired a shot; is that

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1 correct?

2 A. When I observed the first male in the white T-shirt  
3 walk out, he obviously had my attention, and then I heard a  
4 gunshot come from inside the residence.

5 Q. And did you see he had a shotgun in his hand when he  
6 came out?

7 A. No, sir. I didn't notice.

8 Q. Did you see he had one when he went in?

9 A. I did not, sir.

10 Q. So the shotgun blast got your attention, obviously?

11 A. Absolutely. I initially heard a shot inside, which  
12 got my attention. That diverted my attention to the house.  
13 But then the front door came open, and out came Randy  
14 Mitchell.

15 Q. Now at the time somebody came out of that house, you  
16 could not identify that person as Randy Mitchell; could  
17 you?

18 A. No, sir, no.

19 Q. So you're standing in the dark. People that come out  
20 of the house are standing in the dark. You can't see  
21 what's in anybody's hands; is that right?

22 A. That's correct, sir.

23 Q. So as soon as the shotgun blast happens, you approach;  
24 is that correct?

25 A. Myself and three other officers. Yes, sir.

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1 Q. And this is all happening very quickly?

2 A. Yes, sir.

3 Q. And then people you're pursuing take off, and you take  
4 off behind them; is that --

5 A. We announce, "Rock Hill Police, stop." And they took  
6 off, yes.

7 Q. All right. Now you testified that you work the Boyd  
8 Hill neighborhood on a regular basis; is that correct?

9 A. Yes, sir. I was -- At that time I was a float car.  
10 So I was not assigned to that particular zone. But a float  
11 call is somewhat of a road supervisor who goes to different  
12 zones to assist that zone officer. So I'd been there  
13 numerous times. Yes, sir. I knew -- I know the problem  
14 areas.

15 Q. And this is one of those; is it not?

16 A. That section of Hickory Lane is a problem area. It  
17 has been for years. Yes, sir.

18 Q. And when -- Is it your experience that when the police  
19 get out in a Boyd Hill neighborhood, and they yell, "Stop,  
20 police," people run; don't they?

21 A. Not everybody. I mean, you know --

22 Q. Not everybody.

23 A. Yeah. There are times, you know, when you are in a  
24 high-crime, high-drug area, there are times when, you know,  
25 you get out and announce, "Police," and people run. It

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 does happen. Yes, sir.

2 Q. And, in fact, that's why you stopped several blocks  
3 away and walked in, so that people wouldn't run if they  
4 approached a police car; is that right?

5 A. That's correct, sir. Yes, sir.

6 Q. So you pursued two individuals, and at some point they  
7 split off; is that correct?

8 A. Yes, sir.

9 Q. And you were pursuing them in between houses and down  
10 the street, back behind houses, and so forth?

11 A. No, it was a -- this was, you know -- it's a dream  
12 foot pursuit. They're running down the center of the road,  
13 and it's well-lit, and you -- we -- we're watching these  
14 guys the entire time. They're not ducking in between  
15 houses and all that. It was a -- it was very easy in terms  
16 of foot pursuits: no fences; no yards; nothing crazy like  
17 that, just straight down the middle of the road until the  
18 point they split, sir.

19 Q. And you didn't catch them in the road?

20 A. No, sir.

21 Q. So at some point they ran behind houses; didn't they?

22 A. Ran behind one house. Yes, sir.

23 Q. And you testified earlier there was a fence; didn't  
24 you?

25 A. I did, sir.

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1 Q. So you didn't catch these individuals in the middle of  
2 the road with a street light and so forth; is that correct?

3 A. No, sir.

4 Q. And at some point, you lost sight of the person you  
5 and Officer Rowe were pursuing; is that correct?

6 A. I did. Yes, sir.

7 Q. And you went around the front of the house; is that  
8 correct?

9 A. I did, sir.

10 Q. And you don't know where the -- where the person you  
11 were pursuing went; do you?

12 A. I know that he went behind the house. I did not see  
13 him go behind the house.

14 Q. And so the next time you have contact with him is on  
15 the opposite side of the house; is that correct?

16 A. Yes, sir. Well, the next thing I would see is Officer  
17 Rowe in the roadway looking in a direction with his  
18 flashlight and pistol giving verbal commands.

19 Q. And naturally you follow his --

20 A. Yes, sir. I went to assist Officer Rowe.

21 Q. And you found there, Mr. Mitchell; is that correct?

22 A. Yes, sir. I found Mr. Mitchell attempting to flee.

23 Q. And you had lost sight of the person you were  
24 fleeing -- pursuing for some period of time?

25 A. Yes, sir, for a short period.

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1 Q. Now did you have your flashlight out during the  
2 pursuit?

3 A. No, I did not.

4 Q. And did Officer Rowe have his flashlight out during  
5 the pursuit?

6 A. I would testify, I don't recall. I would say that he  
7 did not. It was well-lit. There was no need to have  
8 flashlights out.

9 Q. Well, if you don't recall, that's fine.

10 So the person you found was Mr. Mitchell; is that  
11 correct?

12 A. Yes, sir.

13 Q. But you had lost sight of the person you were pursuing  
14 for a period of time; is that correct?

15 A. Now at the point that we located Mr. Mitchell, we had  
16 our flashlights out. I don't know if that's relevant or  
17 not.

18 Q. I understand that. You testified to that.

19 But you lost sight of the person you were pursuing for  
20 a period of time; is that correct?

21 A. Yes, sir. I did.

22 Q. And when you located Mr. Mitchell, did he have a gun?

23 A. He did not have one on his person, no.

24 Q. And did you ever see him with a gun?

25 A. No, I did not, sir.

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1 Q. So you arrest Mr. Mitchell. You put him in handcuffs.  
2 You put him in the car, et cetera. And then you start  
3 backtracking?

4 A. I spoke with Mr. Mitchell briefly in the woods.

5 Q. And then you backtracked, I believe was your  
6 testimony; is that correct?

7 A. Yes, sir.

8 Q. And are you what's called, the "case agent" on this  
9 case?

10 A. Yes, sir.

11 Q. Are you the -- And what does that mean?

12 A. The case agent is responsible for the paperwork and  
13 keeping track of everything that goes into the file and  
14 having knowledge of the incident.

15 Q. And so, you would get reports, you'd review reports,  
16 and so forth?

17 A. In a perfect world, yes. That's the way it's supposed  
18 to work.

19 Q. Now do you know that the pistol that you discovered  
20 back behind the house was fingerprinted?

21 A. I believe it was.

22 MS. MILLER: Objection, Your Honor. He can't  
23 testified as to what he doesn't know.

24 MR. JAMIESON: He just testified he did know, Your  
25 Honor.

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 THE COURT: Okay, all right. I'll allow you to ask  
2 the question. You may proceed.

3 BY MR. JAMIESON:

4 Q. So you know it was fingerprinted?

5 A. I believe it was. That would be Forensic's job to  
6 come out and do that.

7 Q. I understand they do it, but you got the report  
8 indicating it was fingerprinted; is that correct?

9 A. Yes, sir.

10 Q. And Mr. Mitchell's prints were not on it; were they?

11 A. That's correct, sir.

12 Q. So you also found a -- what did you call it, a do-rag?  
13 Is that what you called it?

14 A. Like a stocking cap. Yes, sir, a do-rag.

15 Q. And you know that, that was sent off for testing as  
16 well. Right?

17 A. Yes, sir.

18 Q. And it was sent off for DNA testing; is that right?

19 MS. MILLER: Objection, Your Honor.

20 THE COURT: All right. I'm going to sustain the  
21 objection at this point.

22 You may proceed, sir.

23 BY MR. JAMIESON:

24 Q. Did you get a report indicating that the cap had been  
25 sent off for DNA testing?



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1 MS. MILLER: Objection, Your Honor.

2 THE COURT: Let me make sure. You're not asking about  
3 results? You're just asking whether he knows whether it  
4 was sent away for DNA testing?

5 MR. JAMIESON: I'm asking him if he knows it was sent  
6 away and if he got a report.

7 THE COURT: Okay, I'm going to allow you to ask him  
8 whether he knows whether it was sent away for DNA testing,  
9 okay.

10 MR. JAMIESON: All right.

11 THE COURT: You can ask that question.

12 MR. JAMIESON: Your Honor, I think we might need to  
13 take up a matter outside the presence of the jury.

14 THE COURT: Okay, good enough.

15 Ladies and gentlemen, let's take this quick break, and  
16 then we'll come back in fairly shortly.

17 (JURY EXITS COURTROOM AT 10:36 A.M..)

18 THE COURT: All right. The question is, is - you're  
19 saying on the stand is there any forensic reports regarding  
20 DNA or any results of DNA testing on the stocking cap?

21 MS. MILLER: Can I just ask him a quick question?

22 THE COURT: Sure.

23 (SIDE BAR BETWEEN THE ATTORNEYS.)

24 MS. MILLER: If he puts the -- To make things easier,  
25 faster, I don't mind if he wants to introduce the DNA

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1 report and enter it into evidence as a Defense Exhibit at  
2 this time. I don't have a problem with that.

3 THE COURT: Okay. All right.

4 Do you have an issue with it?

5 MR. JAMIESON: I don't have any issue with that, Your  
6 Honor, but this report was addressed to Officer Rivera and  
7 I think I'm entitled to ask him if he'd gotten a report and  
8 if he read it and what it says and that's where I was going  
9 with that. And again, if the reports in evidence, I think  
10 I can ask him that.

11 MS. MILLER: If he puts the report in evidence I don't  
12 have a problem with that. Now I will say this. He doesn't  
13 have the knowledge to talk about what's on the report. I  
14 will just tell you that I do have someone coming later that  
15 he can ask about and he can ask that question. He can talk  
16 about it and ask the results of it.

17 THE COURT: That was kind of the way I was driving at  
18 it. I don't mind that and I think it's appropriate in you  
19 asking do you know if it was sent for DNA testing, but I  
20 don't want to get into questions of this witness about the  
21 results of any DNA testing because I don't think he's  
22 qualified to testify. And if there is another witness who  
23 is going to take the stand and you can ask that very same  
24 question of.

25 MR. JAMIESON: Well, Your Honor, I'm not going to ask

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1 him about DNA testing. Obviously he doesn't know that or  
2 do that, I assume he doesn't. I'm not going to ask him if  
3 he conducted any test, I'm not going to ask him what the  
4 results of the test were but he got a report from SLED that  
5 said testing was done and that my client was excluded as a  
6 contributor to any DNA found. And I think he can testify  
7 that he read a report and that's what it said.

8 MS. MILLER: I would say normally I would object to  
9 that because he really can't. But if he puts the SLED  
10 Report in as a Defense Exhibit into evidence, he can ask  
11 him that general question if he knows whether or not what  
12 were the results of the test. I don't really have a  
13 problem with that for our purposes. And I am going to have  
14 someone here later he can ask more detailed questions if he  
15 wants but if he puts the SLED Report in I don't mind him  
16 asking generally what the report said.

17 THE COURT: Do you intend to put the evidence into the  
18 record?

19 MR. JAMIESON: I'd be glad to put the report in, Your  
20 Honor.

21 THE COURT: Okay.

22 MR. JAMIESON: That's not a problem.

23 Now the copy I have has highlights on it.

24 Can you give me one that doesn't have highlights on  
25 it?

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1 MS. MILLER: I can look for my copy.

2 MR. JAMIESON: I'll be happy to put it into evidence.

3 I'll even put my highlighted copy in. That probably  
4 wouldn't be good.

5 MS. MILLER: I've got one, just give me a second.

6 THE COURT: You all look for it and I was going to  
7 take a break in any event while you all were talking to me.

8 MS. MILLER: I've got it right here. I can give it to  
9 him.

10 THE COURT: Okay. Well let's take a little five  
11 minute break.

12 And, Officer, you take a break too. Remember you're  
13 on the stand, under oath, so you can talk to anybody about  
14 anything you want to except your testimony.

15 (COURT IN RECESS AT 10:40 A.M..)

16 (COURT BACK IN SESSION AT 10:50 A.M.)

17 THE COURT: You all ready for the jury?

18 MR. JAMIESON: Ready. Yes, sir. My client's not in.

19 (DEFENDANT REENTERING COURTROOM.)

20 THE COURT: All right, bring them in.

21 MS. MILLER: Did you already have that marked?

22 MR. JAMIESON: No. Let's do that, it will save a  
23 little time. Smart thinking, I appreciate it.

24 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE, PREMARKED  
25 FOR IDENTIFICATION.)

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 (JURY REENTERS COURTROOM AT 10:51 A.M.)

2 THE COURT: All right, Mr. Jamieson, I believe its  
3 your witness, sir.

4 MR. JAMIESON: Yes, sir. Thank you.

5 CROSS EXAMINATION - CONTINUED

6 OFFICER WILLIAM RIVERA BY MR. JAMIESON:

7 Q. Officer Rivera, we were talking before the jury left  
8 about a do-rag, and let me take you back just a little bit.  
9 You say that when the two individuals came out of the  
10 house, you saw one of them put a do-rag on his head; is  
11 that correct?

12 A. Yes, sir. That's correct.

13 Q. And which one did you see do that?

14 A. The second subject.

15 Q. So that would be the person with the dread locks?

16 A. That's correct. Yes, sir.

17 Q. Now, that do-rag, which is a kind of a hat, is -- was  
18 sent off for testing; was it not?

19 A. Yes, sir.

20 Q. And I'm going to show you what's been marked as  
21 Defense Exhibit One. Is that a report, which is addressed  
22 to you?

23 A. It is, sir.

24 Q. And is that the typical kind of report that you would  
25 get from SLED when a piece of evidence has been sent off

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 and they've tested it, and sent you back the results of  
2 their test?

3 A. Yes, sir. It is.

4 Q. And is that particular report about a DNA test?

5 A. It appears to be. Yes, sir.

6 Q. And turn it over to the back page, the second page.  
7 Does it say that there was DNA found on that -

8 MS. MILLER: Objection, Your Honor. Before he  
9 publishes, Your Honor, if he could introduce.

10 MR. JAMIESON: I'll be glad to do that.

11 THE COURT: All right, sir.

12 MR. JAMIESON: Your Honor, I'd move Defense Exhibit  
13 One into evidence.

14 THE COURT: Any objection, ma'am?

15 MS. MILLER: No. No objection.

16 THE COURT: Okay, all right. Without objection, the  
17 same is moved into evidence as Defense Exhibit One.

18 You may proceed, sir.

19 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER ONE IDENTIFIED  
20 AND MARKED, RECEIVED INTO EVIDENCE.)

21 Q. Now Officer, does that report indicate that DNA was  
22 found on the do-rag?

23 A. What it says -- it says it's a mixture of a least  
24 three individuals not suitable for entry into the combined  
25 DNA index system.

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1 Q. And does it say anything about my client Randy  
2 Mitchell?

3 A. Yes, sir. And then it says, "Randy Mitchell can be  
4 excluded as a possible contributor to this mixture."

5 Q. Thank you, sir.

6 Now, going back to the area where you located Mr.  
7 Mitchell, can you describe that area for me?

8 A. Yes, sir. It's --

9 Q. And would it help for you to have a picture? Would  
10 that help?

11 A. Well, I'll explain to the jury. It's just a grownup,  
12 wooded briars. If you guys have ever gone into the thick  
13 briars of South Carolina, it's, you know, extremely hard to  
14 get into. You know, if I gave you a 2-minute head start,  
15 and you took off running through it, you wouldn't go  
16 anywhere. You'd get about 10 feet in, and you'd be right  
17 where you started.

18 Q. So woods, thick briar, bushes, and so forth?

19 A. Yes, sir.

20 Q. And it was light there or dark there?

21 A. It was dark in that particular section.

22 Q. And y'all had the benefit of flashlights?

23 A. Yes, sir.

24 Q. All right. So once you captured Mr. Mitchell, did you  
25 search around in that area?

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 A. We did, sir.

2 Q. You looked all around in those bushes and so forth?

3 A. We looked in the area where we could immediately see  
4 where he was. If he would have thrown something, we could  
5 not have seen it.

6 Q. So you backtracked. You found a pistol and a wallet.  
7 You backtracked a little further and found a shotgun. Is  
8 that correct?

9 A. Yes, sir. We found a pistol and the wallet. And then  
10 towards the original incident location, we found the  
11 shotgun and the do-rag.

12 Q. And was the shotgun sent off for fingerprints?

13 A. I can't advise. I would assume that it was.

14 Q. Do you know the results of any testing regarding it?

15 A. Not offhand. That would be a Forensics issue.

16 Q. So you went back to the house at that point; is that  
17 correct?

18 A. At what point?

19 Q. After you found the shotgun, the do-rag and secured  
20 that.

21 A. I did, sir. Yes, sir.

22 Q. You went back to the house; is that correct?

23 A. Yes, sir.

24 MR. JAMIESON: I beg the Court's indulgence.

25 THE COURT: Yes, sir.



OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON

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1 (PAUSE.)

2 BY MR. JAMIESON:

3 Q. Did you go in the house?

4 A. Not at that point. No, sir.

5 Q. Did you go into the house that night?

6 A. Briefly, I went into the original den area, just 3  
7 foot into the house. But no, I did not do anything in the  
8 house.

9 Q. And were there occupants in the house when you went?

10 A. Yes, sir.

11 Q. Did you search for evidence in the house?

12 A. Absolutely not, sir.

13 Q. So that's not your responsibility at this point?

14 A. By this point, there was a lot of officers on scene,  
15 Forensics unit was there, detectives were there  
16 interviewing witnesses. There was a lot going on. I was  
17 not a supervisor then. A supervisor was on the scene. No,  
18 that was not my -- I was conducting operations with the  
19 ground troops, the guys who were outside.

20 Q. And was it your responsibility to review any  
21 witnesses, take statements, or any of that stuff?

22 A. No, sir.

23 Q. Did -- Once you arrested two individuals, did they ever  
24 come back to the scene to be viewed by the people who were  
25 at the residence and be identified?

OFFICER WILLIAM RIVERA: CROSS BY MR. JAMIESON  
REDIRECT BY MS. MILLER

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1 A. No, sir. Not while I was there.

2 Q. Do you know if anybody else did that?

3 A. Not to my knowledge, sir.

4 Q. Do you know -Did you conduct a photo lineup of these  
5 individuals and show them to the victims?

6 A. I did not, sir.

7 Q. Do you know if anybody else did?

8 A. No, I'm not aware of that.

9 Q. Did you conduct a actual lineup where people were  
10 standing -- five or six people standing together and the  
11 victims looking --

12 A. No, sir. I never conducted a lineup.

13 Q. Do you know if anybody else did?

14 A. No, sir.

15 Q. Nothing further. Thank you.

16 MS. MILLER: Very, very briefly.

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION

19 OFFICER WILLIAM RIVERA BY MS. MILLER:

20 Q. When you approached the house, you said you heard  
21 voices?

22 A. Yes, sir.

23 Q. And do you know what those -- but you said you didn't  
24 see anyone; is that right?

25 A. That's correct.

OFFICER WILLIAM RIVERA: REDIRECT BY MS. MILLER  
GEORGE WEEKS: DIRECT BY MS. MILLER

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1 Q. And is it possible that, that was from next door?

2 A. Absolutely it's possible. It was just coming from  
3 beyond that solid brick carport. The voices were beyond  
4 that.

5 Q. No further questions.

6 MR. JAMIESON: No recross.

7 THE COURT: Thank you, Officer. I appreciate you  
8 coming, sir. You may step down.

9 (WITNESS LEAVES WITNESS STAND.)

10 MS. MILLER: Your Honor, the State calls George Weeks.

11 MADAME CLERK: Please raise your right hand, place  
12 your left hand on the Bible.

13 (WHEREUPON: GEORGE WEEKS, BEING  
14 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

15 DIRECT EXAMINATION

16 GEORGE WEEKS BY MS. MILLER:

17 Q. Please state your name for the record.

18 A. George Weeks.

19 Q. And where are you employed?

20 A. With York County. I'm actually employed with the  
21 Solicitor's Office.

22 Q. And what is your function?

23 A. I'm the director of the Forensic Services Unit.

24 Q. And on October 3rd of 2010, were you the director of  
25 the Forensic Unit?

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 A. Yes, ma'am.

2 Q. And can you tell us if you reported that night to do  
3 anything?

4 A. Yes, ma'am. I was requested by York County where we  
5 receive our dispatch calls from -- I was actually taking  
6 calls. It was a weekend, and I was actually taking calls  
7 for one of the members of our unit. I typically do not  
8 work after hours, and took calls for them, and received a  
9 call from York County that Rock Hill had requested our  
10 services.

11 Q. And do you respond to that?

12 A. Yes, ma'am.

13 Q. Where did you go?

14 A. Best of my recollection, they -- we -- I was requested  
15 in the vicinity of Calhoun Street.

16 Q. And tell me what you did once you got there.

17 A. Once I arrived, I met two officers. There were  
18 numerous officers in the area. Spoke with several of them,  
19 and they took me back -- I believe Officer Rowe, if I'm not  
20 mistaken, took me back to an area next to a fence on  
21 Calhoun Street around the 1100 block and requested that I  
22 recover some evidence that they had found on an individual.

23 Q. I'm going to show you a picture and ask if you  
24 recognize it?

25 A. Yes, ma'am.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 Q. And what is that a picture of?

2 A. The photo is -- from my understanding, there was an  
3 individual they took into custody at that location. And  
4 there was a shotgun shell, a live shotgun shell, and also a  
5 sherbert cup or a ice cream cup.

6 Q. Okay.

7 MS. MILLER: Your Honor, the State moves to introduce  
8 State's Exhibit Ten.

9 THE COURT: Any objection?

10 MR. JAMIESON: None.

11 THE COURT: Okay. Without objection the same is moved  
12 into evidence.

13 (WHEREUPON: STATE'S EXHIBIT NUMBER TEN IDENTIFIED AND  
14 MARKED, RECEIVED INTO EVIDENCE.)

15 MS. MILLER: If you could hit the lights.

16 (COURTROOM LIGHTS TURNED DOWN.)

17 (EXHIBIT PUBLISHED TO THE JURY ON COURTROOM OVER HEAD  
18 PROJECTOR.)

19 Q. Could you tell the jury what this is?

20 A. Yes, ma'am. The best of my knowledge from what I can  
21 see, Item -- you'd have to tell me the numbers. I cannot  
22 see the one on the left from this -- the numbered cone.

23 Q. Thirty-five and Thirty-six.

24 A. Thirty-five is the shotgun shell, and the one on the  
25 right there is a sherbert cup.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 Q. And did you take these -- what did you do with these  
2 items?

3 A. Those items were collected and packaged there after  
4 photographs were taken of them and seized as evidence.

5 MS. MILLER: Could you turn the lights on?

6 (COURTROOM LIGHTS TURNED BACK UP.)

7 Q. I'm going to hand you what's been marked as State's  
8 Exhibit Twenty-six and ask if you recognize that.

9 A. Yes, ma'am.

10 Q. And what is that?

11 A. It's a plastic sherbert cup.

12 Q. Could you -- let me give this -- show this to the  
13 defense attorney first.

14 MS. MILLER: Your Honor, the State wishes to introduce  
15 State's Exhibit Number Twenty-six.

16 THE COURT: Any objections, sir?

17 MR. JAMIESON: If he testified that he collected it, I  
18 don't have any objection.

19 THE COURT: Can you ask him that question, Ms. Miller?

20 BY MS. MILLER:

21 Q. Did you collect this item?

22 A. Yes, ma'am. I collected it, packaged it, and it  
23 actually has my name on the front of it, and that is my  
24 handwriting on the evidence sheet.

25 Q. And -

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 THE COURT: The same is admitted as State's Exhibit.

2 MS. MILLER: Thank you, Your Honor.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SIX  
4 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 Q. And could you tell us -- show us what that is?

6 A. It is a plastic, Blue-Bunny, orange-sherbert cup.

7 Q. Thank you.

8 I'm going to hand you what's been marked as State's  
9 Exhibit Thirty-two and ask if you recognize this?

10 A. That is my handwriting. It was packaged by myself.

11 Q. And don't take it out yet. I need to show it to the  
12 defense attorney.

13 Do you recognize that?

14 A. I'd have to look at the name on it. If you want to  
15 show it to him, and then I'll look at the name on it.

16 Q. Okay, all right.

17 A. I can identify it by the name of the round.

18 (DEFENSE ATTORNEY REVIEWED EXHIBIT.)

19 Q. What is that?

20 A. It is a 12-gauge, low-brass, shotgun-shell or shot-  
21 shell, Nitro-brand Remington.

22 Q. And where did you collect that?

23 A. That was also beside the fence area there.

24 Q. That you just showed us?

25 A. Yes, ma'am.

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1 MS. MILLER: Your Honor, the State wishes to move to  
2 introduce Exhibit Number Thirty-two.

3 THE COURT: Objection, sir?

4 MR. JAMIESON: No.

5 THE COURT: Without objection the same is moved into  
6 evidence.

7 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY-TWO  
8 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

9 Q. And from -You packaged this evidence, and from there  
10 where did you move to?

11 A. If I can refer to my notes here.

12 Q. Okay.

13 A. I went to another location, 1127 Calhoun Street.

14 Q. I'm sorry?

15 A. 1127 Calhoun Street.

16 Q. And what did you do there?

17 A. I was requested there. Additional evidence had been  
18 located that was believed connected to the case. And I was  
19 requested to photograph and collect a .380-caliber Lorcin  
20 pistol. I unloaded it. It had a magazine. It had three  
21 live rounds in the magazine and one in the chamber.

22 Q. Okay.

23 A. Also there was a black wallet in close proximity to  
24 the firearm there, and they were photographed and then  
25 collected.



GEORGE WEEKS: DIRECT BY MS. MILLER

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1 Q. I'm going to show you what's been -- I'm going to show  
2 you State's Exhibit Eight.

3 A. All right.

4 MS. MILLER: Could you cut the lights?

5 (COURTROOM LIGHTS TURNED DOWN.)

6 Q. And do you recognize that?

7 A. Yes, ma'am. Thirty-seven is the Lorcin 380-caliber  
8 pistol that was loaded and Thirty-eight is the black  
9 wallet.

10 Q. And what did you do with these items?

11 A. Those items, after they were photographed, I collected  
12 them and packaged them and put them with the other  
13 evidence. The case had not ended at that time so they were  
14 stored in my vehicle.

15 Q. I'm going to hand you what identified as State's  
16 Exhibit Number Twenty-eight and ask you if you recognize  
17 it?

18 A. Yes, ma'am. That is my writing, and if you want to  
19 show it to Defense, and then I'll look at the serial  
20 number, see if they match.

21 (DEFENSE ATTORNEY REVIEWED EVIDENCE.)

22 A. Yes, ma'am. That is the same serial number, same  
23 weapon.

24 Q. You can pull it down and show us. What is that?

25 A. It is a .380-caliber -- let me make sure.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 MS. MILLER: Well, Your Honor ---

2 A. It's a Lorcin ---

3 Q. I'm sorry. Let me stop you for a moment.

4 MS. MILLER: Your Honor, the State would move to  
5 introduce State's Exhibit -

6 If you could hand me that bag?

7 MS. MILLER: --- Twenty-eight.

8 THE COURT: Any objection, sir?

9 MR. JAMIESON: I move to renew my earlier objection.

10 THE COURT: Over objection, the same is admitted into  
11 evidence as State's Exhibit.

12 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-EIGHT  
13 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

14 A. It is a Lorcin .380-caliber pistol.

15 Q. And how did you -- was there anything in the gun when  
16 you found it?

17 A. Yes, ma'am. There was a magazine in the weapon.  
18 There was three live rounds in the magazine, and one in the  
19 chamber. So one was chambered.

20 Q. Is that in there?

21 A. Yes, ma'am.

22 Q. And that -Explain to the jury what that is.

23 A. It's a magazine for the weapon. There were three live  
24 rounds in the magazine, and one had been chambered.

25 Q. And I'm going to ask you to hand that to me.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 MS. MILLER: Your Honor, I'm going to -- if the  
2 Defense doesn't object, leave this at my desk separated  
3 from the gun.

4 THE COURT: Okay, no problem.

5 Q. And that's the same gun you found -- that's Item  
6 Number Thirty-seven; is that correct?

7 A. Yes, ma'am.

8 Q. What else did you find at that location?

9 A. At that particular location?

10 Q. Yes.

11 A. Just the weapon and the wallet.

12 Q. And did you look into that wallet?

13 A. Not at that time, I did not. Normally when we collect  
14 evidence, we really don't know what we're gonna actually  
15 process it for, so it was collected. We have gloves on,  
16 collected and packaged, and then looked at it a later time.

17 Q. At some point did you look in the wallet?

18 A. Yes, ma'am. Once the -- I had cleared from the scene  
19 back at Rock Hill PD., I looked at the wallet, and it had  
20 an individual's name on it. That was a Charles Ellis, I  
21 believe. Let me make sure here.

22 Yes, ma'am. There was identification in it to a Mr.  
23 Ellis. One of the Rock Hill police officers, we spoke and  
24 decided to give Mr. Ellis his possessions back.

25 Q. Thank you.

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1 And where did you go from this location?

2 A. Left that location and went to 530 Crosby Street or a  
3 yard located around 530 Crosby Street.

4 Q. And what did you do there?

5 A. I recovered a -- Lieutenant Doster with the Rock Hill  
6 Police Department showed me a black-socking cap, which was  
7 silk and also a XL 12-gauge sawed-off shotgun. And both of  
8 those items were in close proximity to each other.

9 Q. And I'm going to ask if you recognize this? This is  
10 State's Number Five.

11 A. Yes, ma'am.

12 Q. And ask if you recognize this? This is State's Number  
13 Six.

14 A. Yes, ma'am.

15 Q. And what are those pictures of?

16 A. The last one you showed me there was the black silk  
17 stocking cap, and the other one were both the stocking cap  
18 as well as the sawed-off shotgun.

19 MS. MILLER: If you could cut the lights?

20 (COURTROOM LIGHTS TURNED DOWN.)

21 Q. What number is the sawed-off shotgun?

22 A. Thirty-nine.

23 Q. And the stocking cap?

24 A. Item Forty.

25 Q. And what did you do with these items?

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 A. Those items, any time I collect a weapon, first thing  
2 I do -- this particular weapon was opened and found a round  
3 in the chamber that was spent.

4 Q. Okay.

5 A. It had a spent round in the chamber. It was made  
6 safe, collected, packaged, and placed with the other  
7 evidence.

8 Q. I'm going to hand you what's been marked as State's  
9 Exhibit Thirty, and if you'd just tell me whether you  
10 recognize this or not.

11 A. Yes, ma'am.

12 Q. And let me show that to Mr. Jamieson.

13 (DEFENSE ATTORNEY REVIEWED EVIDENCE.)

14 Q. And what is that?

15 A. It is a sawed-off shotgun. I believe the measurement  
16 on the barrel was thirteen and a half inches.

17 Q. And did you package that?

18 A. Yes, ma'am. I did.

19 MS. MILLER: And the State wishes to introduce the  
20 shotgun, which was marked as State's Exhibit Thirty, I  
21 believe.

22 THE COURT: Do you object to that?

23 MR. JAMIESON: I have the same to that as I did to the  
24 previous item.

25 THE COURT: All right, sir.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 Over objection, the same is submitted into evidence  
2 as...

3 (WHEREUPON: STATE'S EXHIBIT NUMBER THIRTY IDENTIFIED  
4 AND MARKED, RECEIVED INTO EVIDENCE.)

5 Q. Did you one more time -- and did you find -- say  
6 something else?

7 A. There's also a spent shot-shell, a Remington high-  
8 velocity Number Six.

9 Q. Where did you find that shell?

10 A. That was chambered in the shotgun.

11 Q. And again this was found at location Thirty-nine,  
12 where your number is. That's Number Thirty-nine?

13 A. Yes, ma'am. The cone number there was Thirty-nine.  
14 Yes, ma'am.

15 Q. I'm going to show you what's been marked as State's  
16 Exhibit Thirty-one and ask you if you recognize that?

17 A. That appears to be the black silk stocking cap.

18 Q. Let me show that to the -- did you collect and package  
19 this?

20 A. Yes, ma'am. That is my writing and my tag on the  
21 front of it.

22 (DEFENSE ATTORNEY REVIEWED EXHIBIT.)

23 MS. MILLER: Your Honor, the State wishes to introduce  
24 State's Number Thirty-one.

25 MR. JAMIESON: No objection.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 THE COURT: Without objection, the same is admitted  
2 into evidence.

3 (WHEREUPON: STATE'S EXHIBIT THIRTY-ONE, IDENTIFIED  
4 AND MARKED, RECEIVED INTO EVIDENCE.)

5 Q. Tell the jury again, once again, what that is.

6 A. My understanding, it is a stocking cap. I don't know  
7 what style stocking cap it is, but it's what I consider a  
8 stocking cap or skull cap, some individuals call it.

9 Q. I'll take that.

10 A. Some type of head wear. It's...

11 Q. Let me take that from you.

12 Then once you collected those items, what did you do?

13 A. Once I collected those items, I was then moved and  
14 requested to go to another location. And I've have to  
15 see -- there was a residence,

16 Q. And did you go there?

17 A. Yes, ma'am. I -- when I entered the -- went up to the  
18 door of the residence, I met with a female who was  
19 allegedly inside the residence at the time. I asked her if  
20 she could tell me what had occurred. I noticed she pointed  
21 to an area near the ceiling where a round allegedly had  
22 been fired from a weapon there and also noticed a spent  
23 .380-caliber shell casing lined next to the wall area. So  
24 those areas were photographed and a close-up photograph of  
25 the .380 shell casing, and then they were collected also.

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1 Q. I'm going to show you what's been marked as State's  
2 Exhibit Eleven through Sixteen and ask you if you recognize  
3 these?

4 A. Yes, ma'am. I do.

5 Q. Let me show these to Mr. Jamieson.

6 (DEFENSE ATTORNEY REVIEWED EXHIBITS.)

7 Q. The State -- actually what are these? What are these  
8 pictures of?

9 A. They are photographs. The first photograph here was  
10 an entrance into the residence prior to entering, depicting  
11 where the round had struck the ceiling.

12 Q. Okay.

13 A. A closer photograph showing the same thing just inside  
14 the entrance door.

15 Q. Okay.

16 A. A little bit closer, same thing. I had marked the  
17 area there so that it could be depicted in the photograph  
18 and seen a little bit easier. This is actually a close-up  
19 photograph of it.

20 And kind of a distance photograph of the shell casing  
21 next to the TV, showing its relationship.

22 And then a close-up photograph of the shell casing.

23 Q. Thank you.

24 MS. MILLER: Your Honor, the State would move to  
25 introduce Exhibits Eleven through Sixteen.



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1 THE COURT: Any objection, sir?

2 MR. JAMIESON: No, sir.

3 THE COURT: All right. So moved into evidence.

4 (WHEREUPON: STATE'S EXHIBIT NUMBERS ELEVEN THROUGH  
5 SIXTEEN IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

6 MS. MILLER: Could you put up Number Eleven? Number  
7 Eleven.

8 (STATE'S EXHIBIT NUMBER ELEVEN PUBLISHED TO THE JURY  
9 ON COURTROOM OVER HEAD PROJECTOR.)

10 Q. And explain to the jury what picture this is.

11 A. That is entry prior to being made through the front  
12 door there into the residence at 1148, I believe the  
13 address is --

14 Q. And the Number Twelve.

15 (STATE'S EXHIBIT NUMBER TWELVE PUBLISHED TO THE JURY  
16 ON COURTROOM OVER HEAD PROJECTOR.)

17 A. Just inside the door, straight ahead just above the  
18 door casing there, showing where the round struck.

19 MS. MILLER: The Court's indulgence, Your Honor.

20 THE COURT: Yes, ma'am.

21 A. Have you got a laser?

22 Can I borrow this one now?

23 Q. Okay.

24 A. Right in this area -- and it's the photograph as I  
25 zoom in on it. It appeared to be very fresh because of the

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 sheet rock dust that was on this paneling here.

2 Q. Okay.

3 And if you could put up Exhibit Thirteen.

4 (STATE'S EXHIBIT NUMBER THIRTEEN PUBLISHED TO THE JURY  
5 ON COURTROOM OVER HEAD PROJECTOR.)

6 A. This area right here, and you can see the fresh sheet  
7 rock dust or the plaster dust that had fallen down onto the  
8 top of the casing here.

9 Q. And Fourteen.

10 (STATE'S EXHIBIT NUMBER FOURTEEN PUBLISHED TO THE JURY  
11 ON COURTROOM OVER HEAD PROJECTOR.)

12 A. Right here next to the receptacle, just below the  
13 receptacle here at the quarter-round molding, is the shell  
14 casing.

15 Q. I'm sorry. Just one minute. Tell the jury what  
16 picture this is.

17 A. That is the continued photograph of the -- where the  
18 projectile struck the ceiling here.

19 Q. And what's that next to it?

20 A. I believe I marked it there. I cannot tell from this  
21 distance what I marked it with. I think it was a piece of  
22 tape so that it would be seen against the white wall there.  
23 That is correct. That is a piece of evidence tape that was  
24 next to it -- I put next to it so that it could be seen.

25 Q. Now State's Exhibit Fifteen.

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1 (STATE'S EXHIBIT NUMBER FIFTEEN PUBLISHED TO THE JURY  
2 ON COURTROOM OVER HEAD PROJECTOR.)

3 Q. I'm sorry. If you could one more time tell us what  
4 this is.

5 A. .380 shell casings spent, meaning it had been fired,  
6 laying right next to the quarter round here.

7 Q. And State's Sixteen.

8 (STATE'S EXHIBIT NUMBER SIXTEEN PUBLISHED TO THE JURY  
9 ON COURTROOM OVER HEAD PROJECTOR.)

10 A. This is a closer view of it, the spent shell casing  
11 here.

12 Q. Okay. And Ms. Shelton, if you could go back to -  
13 Let's try Twelve.

14 (STATE'S EXHIBIT NUMBER TWELVE PUBLISHED TO THE JURY  
15 ON COURTROOM OVER HEAD PROJECTOR.)

16 Q. What is that below -- you explained to us that,  
17 that was --

18 A. Here?

19 Q. Yeah, and you explained that to us, and that was where  
20 allegedly a bullet had entered.

21 A. Yes, ma'am.

22 Q. What's below, what's below that? What piece of  
23 furniture is below that? What is that?

24 A. Just the TV. I think it looks out of place there.  
25 That is the doorframe, the back door here. You're saying

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 what type -- what piece of furniture is directly --

2 Q. I just wanted to know what was -- it's above the TV?

3 A. That's correct. It's above the TV.

4 Q. That's what I wanted.

5 A. It looks like it's set out there from the view of the  
6 photo.

7 Q. And I'm going to show you what's been marked as  
8 State's Exhibit Twenty-nine. Let me make sure that -- yes.  
9 The --

10 Would you go back to State's Exhibit, the last one.

11 Q. Did you -- What did you do with this item?

12 A. It was collected, packaged in this envelope.

13 Q. Let me show this to Mr. Jamieson.

14 (DEFENSE ATTORNEY REVIEWED EXHIBIT.)

15 Q. And could you tell the jury what this is?

16 A. Yes, ma'am. It is a spent .380-caliber shell casing  
17 that has been fired. And it has a head-stamp on it  
18 denoting that it's a federal brand, which is a type of  
19 ammo, ammunition federal.

20 MS. MILLER: Your Honor, the State moves to introduce  
21 Twenty-nine.

22 THE COURT: Objection, sir?

23 MR. JAMIESON: No objection.

24 THE COURT: Without objection, the same is moved into  
25 evidence.

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1 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-NINE  
2 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

3 Q. And just to be clear, where did you collect this from?

4 A. That was from the interior of the residence there,  
5 next to the quarter-round to the right of the TV.

6 Q. And what did you do with all of the -- all of the  
7 items that you collected?

8 A. Once I left the scene, I went back to Rock Hill PD  
9 where I did my -- completed my report, packaged all the  
10 evidence as far as description, and taped everything up,  
11 sealed everything, marked it, and then turned it into  
12 evidence.

13 Q. At some point in time, did you process anything?

14 A. The items were processed at a later time. When I  
15 first got back to Rock Hill PD, I was requested -- It was  
16 my understanding that two individuals had been brought,  
17 possible suspects to the detention facility. And normally  
18 after we --

19 Q. Let me stop you there.

20 A. Okay.

21 Q. I'm asking specifically about those items that we just  
22 looked at.

23 A. Yes, ma'am.

24 Q. For right now, that's all I want to talk about is the  
25 processing of those items.

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1 A. Okay. The shotgun itself, the pistol, the magazine,  
2 the spent shell casing from the .380, the shotgun spent  
3 casing as well as the live round and the sherbert container  
4 were all processed for latent fingerprints.

5 Q. And did you find -- What was the results?

6 A. They were negative on those. The rich detail that was  
7 recovered from them was not comparable.

8 Q. And what does that mean to folks like us?

9 A. There was not enough detail in the -- what was  
10 recovered to compare to anyone.

11 Q. So there were no fingerprints recovered of any kind?

12 A. That's correct.

13 Q. From anyone?

14 A. That's correct.

15 MS. MILLER: Your Honor, may we approach briefly?

16 THE COURT: Yes, ma'am.

17 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
18 THE JURY AT 11:28 A.M..)

19 THE COURT: All right, ladies and gentlemen, as I told  
20 you when we began this case, sometimes I need to hear some  
21 legal arguments about the introduction of evidence and the  
22 mode of proceeding. This is one of those times where I  
23 need to hear some arguments from the attorneys about some  
24 evidence that may or may not be admitted in this case. So  
25 I'm going to ask you to return to your jury room. Please

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1 don't discuss the case. I'll bring you back in, in a short  
2 period of time.

3 (JURY EXITS COURTROOM AT 11:30 AM.)

4 THE COURT: All right, Ms. Miller.

5 MS. MILLER: Your Honor, prior to my asking Mr. Weeks  
6 about gun shot residue, test results, which he does have a  
7 Mr. Crawford and asking him whether or not he attempted to  
8 get gun shot residue, residue test for Mr. Mitchell, which  
9 Mr. Mitchell would not cooperate with; before we did that I  
10 wanted to allow Mr. Jamieson the opportunity to tell the  
11 judge what he wanted tell you.

12 THE COURT: Yes, sir.

13 MR. JAMIESON: Your Honor, I don't object to her  
14 asking questions about a gun shot residue test if one was  
15 done. I do object to any characterization of my client as  
16 being uncooperative. I believe that's highly prejudicial  
17 to my client. There might be many reasons why a person  
18 would chose not to participate in a test like that. But I  
19 do believe it's highly prejudicial to my client to say he  
20 was uncooperative. I think that it doesn't do anything to  
21 prove the State's case more or less. Your Honor had  
22 indicated at bench counsel that you were inclined to let it  
23 in much as you would a refusal for a breath analyzer. I  
24 point out to the Court that that is a different situation  
25 in that the statutory scheme associated with that there is  
26 statutory law that specifically makes that a condition of

1 driving in the United States that you'll submit to a breath  
2 test if requested therefore it's admissible. This is not  
3 in the nature of that, this is a test that my client's  
4 under no obligation to participate in and I believe it  
5 unfairly prejudices my client to say that he was  
6 uncooperative.

7 THE COURT: Okay. Would you like to respond?

8 MS. MILLER: Your Honor, just as if there had been  
9 blood on his arm we would have collected it. Anything on  
10 his body we would have collected had we known it was there.  
11 This would be the same thing. It's gun shot residue it's  
12 not invasive just to take swabs of -- from his hands and his  
13 arms. And, Your Honor, it is like a breath test. It is as  
14 simple as something like that. We ask that we be able to  
15 tell the jury that he did not cooperate when ask to do  
16 that.

17 THE COURT: Okay. I'll tell you, on this issue I've  
18 vacillated all morning long I been thinking about it and I  
19 arrived as I said that a BAC analysis it does occur to me  
20 that associated with your privilege to drive is the  
21 statutory scheme which requires the taking of a  
22 breathalyser test under the circumstances so it's not a  
23 direct analysis.

24 MS. MILLER: Well I do have the case from the Fourth  
25 Circuit, Your Honor, that does define analogous and I can  
26 give you this copy but they only brought me in one.



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1 THE COURT: I'm sure Mr. Jamieson has a photographic  
2 memory of all of the law that has been propagated by the  
3 Fourth Circuit.

4 MS. MILLER: I can get two more if -

5 MR. JAMIESON: If that were all were all we know...

6 MS. MILLER: Your Honor, had there been blood on him  
7 that night, and I had been trying to introduce blood taken  
8 from his arm that was swabbed from his skin, Your Honor.

9 MR. JAMIESON: Your Honor, the question is not whether  
10 it's testimony or non-testimony evidence, the question is  
11 not whether they were entitled to collect it. There is no  
12 argument that they were - if there were blood on his arm  
13 they might be entitled to collect it. That's not the  
14 argument. The argument is its prejudicial to my client to  
15 say that he did not cooperate with the test. I'm not  
16 arguing that had they collected gun shot residue it would  
17 have been admissible, I'm not arguing that it was  
18 testimonial evidence or anything of that nature. That's  
19 not the nature of my objection. The nature of my objection  
20 is that the jury might draw an unfair inference from the  
21 fact that he did not choose to participate in a test which  
22 he had the choice of not participating in.

23 THE COURT: Okay.

24 MS. MILLER: Your Honor, he -- I'm gonna let you go  
25 first.

26 THE COURT: Yeah. Like I said, I vacillated all

1 morning on that and I don't think it's directly analogous  
2 to the BAC because of the statutory scheme that sets it up.  
3 And really I look at it on a more of a 403 analysis. There  
4 is obviously case law which indicates that it was not error  
5 to admit it. And the problem always is he's got a right  
6 not to participate and the question is whether it is unduly  
7 prejudicial to introduce evidence of a failure to  
8 participate in an investigation. Again, this is one of  
9 those that I go back and forth on. And I think either way  
10 it's fairly sound depending on the reason that you use.

11 So, I'm sorry, Ms. Miller, I know you had something to  
12 say before I began to wax poetically. Anything else you  
13 want to add to it?

14 MS. MILLER: Your Honor, just that Number One: The  
15 officers attempted to collect more evidence, they attempted  
16 to do so and were stopped from doing so and with a simple  
17 test that they could have done and Number Two: Like him  
18 running we would be able to tell the jury that he was  
19 running, that he was hiding. We were allowed to tell the  
20 jury that in cases where folks are doing that, they hid  
21 from us, we found them in the closet, we found them hiding  
22 in an attic, he ran from us. It's yes he refused to let  
23 them take the gun shot residue.

24 THE COURT: Okay. I'm going to over rule the  
25 objection and I'm going to allow you to ask that question.  
26 I think under a 403 analysis is not unduly prejudicial and

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1 it's approbative value outweighs the prejudicial nature of  
2 it. I recognize that there is some prejudice to be visited  
3 upon the defendant, but I also recognize the State has no  
4 interest or business in introducing any evidence that isn't  
5 prejudicial in some way to the defendant. It all arguably  
6 is prejudicial. Furthermore I know there is case law  
7 outstanding which would indicate that it was not a  
8 reversible error to admit it pursuant to the ruling in the  
9 United States of America versus Timothy Jackson, Fourth  
10 Circuit Court of Appeals.

11 I do not think that it is directly analogues to the  
12 BAC determination however I do think that it's fairly  
13 close. I also intend to give the jury a charge at the  
14 close of this case regarding his failure to testify if in  
15 fact he does fail to testify in this regard. If he  
16 testifies and obviously that question itself is fair game  
17 for the Solicitor to ask on cross examination and I don't  
18 think it would be appropriate. However I do intend to give  
19 that charge at the end which indicates his failure to  
20 testify it cannot be held against him.

21 MS. MILLER: Thank you, Your Honor.

22 MR. JAMIESON: Your Honor, my client tells me that he  
23 did not participate in this test because he requested the  
24 presence of an attorney. Am I going to be allowed to go  
25 into with this officer whether my client did in fact say I  
26 want an attorney before I participate in this test and we

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 were not allowed to have an attorney he did not  
2 participate?

3 THE COURT: I don't anticipate a problem with that.  
4 Do you have an objection to that?

5 MS. MILLER: No.

6 THE COURT: I frankly don't see no problem with that.  
7 I think on cross examination if those are questions  
8 which are approbative and relevant to the points that you  
9 are trying to elicit, I don't find it objectionable.

10 MR. JAMIESON: Thank you, Your Honor.

11 THE COURT: Okay. I'll give you this.

12 (DOCUMENTS RETURNED TO SOLICITOR MILLER FROM THE  
13 COURT.)

14 THE COURT: Okay. You ready for the jury?

15 MS. MILLER: We are, Your Honor.

16 THE COURT: Okay. Bring them in.

17 (JURY REENTERS THE COURTROOM AT 11:40 A.M..)

18 THE COURT: All right, Ms. Miller, your witness,  
19 ma'am.

20 DIRECT EXAMINATION - CONTINUED

21 GEORGE WEEKS BY MS. MILLER:

22 Q. Did you perform any other tests in conjunction with  
23 this case?

24 A. Once I returned to Rock Hill Police Department, I was  
25 requested to go to the detention facility where they were

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 holding two individuals there and requested to perform a  
2 GSR test on those individuals.

3 Q. And what is a GSR test?

4 A. A GSR test is a gunshot residue test. It's -- there's  
5 a belief that it has something to do with gunpowder, which  
6 it does not. It has to do with primer residue. The primer  
7 that is in a shell. If any of you are familiar with a .22  
8 round, it is a rim-fire round. It has no primer so  
9 therefore, there is no GSR there. It tests for three  
10 metals: barium, antimony, and lead. And there's two  
11 different procedures in each kit that we perform. One is  
12 nothing but an adhesive dabber. The barium and the  
13 antimony and the lead looks like a miniature football if  
14 you look at it under a microscope. And they tend to lay  
15 opinion on the -- which side the weapon ejects the around  
16 from or where the gas is escaped. They'll lay up on top of  
17 the wrist area, the hand area. And we have a little  
18 adhesive dabber that we dab, and the other is merely a  
19 swab, a Q-tip. It has a 5 percent nitric acid on it, which  
20 actually is enough to melt that barium and antimony. They  
21 are metals. But it is enough to melt them and cause them  
22 to adhere to the Q-tip.

23 Q. Okay.

24 A. And then we package it, and that's it. I performed  
25 one test on a subject, Mr. Crawford, and when I finished

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 with his test, requested Mr. --

2 Q. Let me ask you about this proffer. So you did -- did  
3 you -- what were the results of that?

4 A. I administered the test to Mr. Crawford. I'd have to  
5 look at SLED's -- it was then sent to SLED. I'd have to  
6 look at their results, switch over to from SLED to tell you  
7 what the results were.

8 Q. Do you have that with you?

9 A. Yes, ma'am. I should.

10 (WITNESS REVIEWING FILES.)

11 A. Ms. Miller, I do not have the SLED results from the  
12 GSR test.

13 Q. If I hand you that report, would it refresh your  
14 memory?

15 A. Yes, ma'am. According to the South Carolina Law  
16 Enforcement Division, their analysts, the GSR kit from a  
17 Mr. Gregory Crawford, on his right palm, results were that  
18 the quantity of metals found did not indicate the presence  
19 of gunshot residue. On the right back of the hand also did  
20 not indicate any presence of gunshot residue. Same with  
21 the left palm and left back. And Mr. Crawford's hands were  
22 bagged by someone other than myself. We typically bag  
23 hands to keep any of those little metals that I explained  
24 to you, like little footballs from falling off. And the  
25 bags did not contain any gunshot residue.

GEORGE WEEKS: DIRECT BY MS. MILLER

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1 Q. And that was from Mr. Crawford?

2 A. That is correct.

3 Q. And is that unusual or...

4 A. No, ma'am. It was my understanding that Mr. Crawford  
5 was actually -- had admitted to firing the shotgun,  
6 which -

7 MR. JAMIESON: I object to that, Your Honor. Unless  
8 he admitted it to him, it's hearsay.

9 Q. I'm talking about the actual tests. Is it unusual -

10 THE COURT: Do you withdraw the question?

11 MS. MILLER: I withdraw the question, yes. That's not  
12 what I was asking.

13 THE COURT: Good enough.

14 BY MS. MILLER:

15 Q. I'm asking you if it's unusual to do a test and get  
16 negative results?

17 A. No, ma'am. It's not unusual at all.

18 Q. Can you explain that to us?

19 A. Yes, ma'am. It has a lot to do with the time frame.  
20 We typically do GSR tests on deceased individuals that have  
21 been involved in their death caused by a firearm. When a  
22 body is still living, the body is perspiring. Those  
23 elements --

24 Q. Let me ask you this question to make it quick. If you  
25 find negative results in a test like that, does that mean

GEORGE WEEKS: DIRECT BY MS. MILLER  
CROSS BY MR. JAMIESON

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1 they did not fire a gun?

2 A. No, ma'am, not at all.

3 Q. That's all I needed to know.

4 A. Okay.

5 Q. And then what did you do after that?

6 A. I asked --

7 Q. After this was finished.

8 A. The Defendant was brought to the front-counter area at  
9 the detention facility where I explained the GSR test and  
10 how it was performed, and he refused at that time to give  
11 me consent to do a GSR test.

12 Q. Which defendant are you talking about?

13 A. Mr. Randy Mitchell.

14 Q. I just want to make sure -- I believe I asked this,  
15 but I want to make sure. I'm going back in time a little  
16 bit. The wallet that you found with the pistol ---

17 A. Yes, ma'am.

18 Q. --- who did that wallet belong to?

19 A. To a Mr. Charles Ellis.

20 Q. Please answer any questions Mr. Jamieson has for you.

21 CROSS EXAMINATION

22 GEORGE WEEKS BY MR. JAMIESON:

23 Q. Is it Officer or -- what's your title?

24 A. Director

25 Q. Director Weeks, my name is Philip Jamieson. I



GEORGE WEEKS: CROSS BY MR. JAMIESON

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1 represent Mr. Mitchell.

2 You are in the Forensics Unit; is that right?

3 A. That's correct.

4 Q. And what all does that encompass? What all do you do?

5 A. Within the Forensic Services Unit, we work the entire  
6 York County area. We have members from each law  
7 enforcement agency within York County. We have a drug  
8 unit.

9 Q. Maybe I didn't answer -- ask my question very  
10 artfully. What kinds of crime scene searches, evidence  
11 determinations, and so forth do you do?

12 A. We work anything from a very minor crime, whatever is  
13 requested of us, to death scenes. There's a lot more that  
14 encompasses our unit, but as far as the crime scene portion  
15 goes, anything that we are requested on in York County.

16 Q. So they call you out, and you take photographs like  
17 you did; is that correct?

18 A. That's correct.

19 Q. Collect evidence?

20 A. Yes, sir.

21 Q. Send it off for testing?

22 A. We can do some in-house testing. We do a lot of in-  
23 house stuff, but we also --

24 Q. What would be an example of some of the in-house  
25 stuff?

GEORGE WEEKS: CROSS BY MR. JAMIESON

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1 A. We do footwear comparison, fingerprint comparison,  
2 blood-stain analysis, ballistics testing. We can do drug-  
3 testing; many, many different services to York County.

4 Q. So it was your job as the forensics person on this  
5 site, to decide what evidence to collect, and then what to  
6 do with it after it was collected; is that right?

7 A. I collected what was requested of me to collect. Yes,  
8 sir.

9 Q. So if you're the forensic expert, and any particular  
10 officer on any particular crime scene doesn't direct your  
11 attention to one specific thing, but you know it's  
12 evidence, you can't take it on your own initiative to  
13 collect that?

14 A. We make recommendations. Yes, sir. I can.

15 Q. Okay.

16 A. If it has something to do with the case yes, sir.

17 Q. So you showed us a photograph of a bullet in the  
18 ceiling; is that right?

19 A. Where a projectile had struck. Yes, sir.

20 Q. And did you make any effort to recover that  
21 projectile?

22 A. No, sir. We did not.

23 Q. But you could have?

24 A. We could have dismantled the ceiling. Yes, sir.

25 We -

GEORGE WEEKS: CROSS BY MR. JAMIESON

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1 Q. Well, you didn't try. So you don't know what would  
2 have been involved in collecting it?

3 A. Yes, sir. We -- I knew where the round had traveled.  
4 A trajectory rod was put in it, and I knew where it had  
5 traveled, upward and would had -- it would have been -- we  
6 know, basically, that it will be there at a later time if  
7 needed, and to try to keep from destroying a lot of  
8 property of victims, we chose not to. Yes, sir.

9 Q. So you chose not to try?

10 A. That's correct.

11 Q. Okay. And you recovered a shell casing; is that  
12 correct?

13 A. That is correct, sir.

14 Q. And did you do any testing on it absent some  
15 fingerprints? I think you said you did fingerprint  
16 testing.

17 A. That's correct. That casing, no other test was done  
18 on it to my knowledge. We did not here at York County.  
19 No, sir.

20 Q. Are there tests that can be done on a shell casing to  
21 match it to another gun, for example?

22 A. Yes, sir.

23 Q. So there are extraction tests; is that correct?

24 A. That's correct.

25 Q. And that's the marks that the extractor of the gun

GEORGE WEEKS: CROSS BY MR. JAMIESON

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1 makes on the shell casing when it pulls it out?

2 A. That is correct.

3 Q. And that's definitive as to whether or not that shell  
4 was fired in that gun; is that right?

5 A. Yes, sir.

6 Q. You didn't do that?

7 A. No, sir. I did not. No, sir.

8 Q. And then there's also testing of the -- where the  
9 firing pin strikes the primer. ---

10 A. That is correct.

11 Q. --- and leaves a mark. That's also definitive; is it  
12 not?

13 A. That is correct, sir.

14 Q. But you didn't do that?

15 A. No, sir.

16 Q. But you did test -- you did check the gun for  
17 fingerprints?

18 A. Yes, sir.

19 Q. Was my client's fingerprints on that gun?

20 A. No, sir.

21 Q. You checked the magazine for fingerprints; is that  
22 correct?

23 A. Yes, sir.

24 Q. Were my client's fingerprints on the magazine?

25 A. None on there.

GEORGE WEEKS: CROSS BY MR. JAMIESON

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1 Q. You checked the bullets for fingerprints; is that  
2 correct?

3 A. The shell cases, the shotgun shell cases. Yes, sir.

4 Q. What about the bullets from the magazine from the semi

5 -

6 A. Yes, sir. There was a process done on them, but there  
7 was no ridged detailed there.

8 Q. So my client's fingerprints weren't on any of that?

9 A. That is correct.

10 Q. Were his fingerprints on the shotgun?

11 A. No, sir.

12 Q. On the shotgun shell?

13 A. No, sir.

14 Q. Was any fingerprints of my client found in or on  
15 residence?

16 A. There were no fingerprints found anywhere. No, sir.

17 Q. Not on the sherbert cup, none of that?

18 A. No, sir.

19 Q. Wallet?

20 A. No, that wallet was not processed.

21 Q. So it would be fair to say that as far as you're aware  
22 there's no forensics evidence whatever that connects my  
23 client to the house, the guns, or any of the evidence that  
24 was recovered?

25 A. Nothing that I collected, sir. Yes, sir.

GEORGE WEEKS: CROSS BY MR. JAMIESON

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1 Q. Do you know that the black cap -- what would you call  
2 that? What would the term be for that?

3 A. In my report, I call it a stocking-style cap for lack  
4 of a better -- it's silk. That's all I can state.

5 Q. It fits over the top of your head?

6 A. Yes, sir, and tie it around.

7 Q. You tie it around the back.

8 That was sent off for DNA testing?

9 A. That is correct.

10 Q. And was testing done?

11 A. To my knowledge, it was. Yes, sir.

12 Q. And was DNA recovered?

13 A. There was DNA recovered. Yes, sir.

14 Q. Was that my client's DNA?

15 A. Not to my knowledge. I know there was three  
16 contributors to that DNA, and your client was not one of  
17 the contributors.

18 MR. JAMIESON: I beg the Court's indulgence just a  
19 moment.

20 (PAUSE.)

21 Q. When you come out to a crime scene, you don't have any  
22 personal information. You weren't at this scene when this  
23 incident allegedly occurred; were you?

24 A. No, sir. I was not.

25 Q. So you don't have any personal knowledge of who went

GEORGE WEEKS: CROSS BY MR. JAMIESON  
REDIRECT BY MS. MILLER  
RE CROSS BY MR. JAMIESON

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1 where, who dropped what, who possessed what? You don't  
2 anything about that?

3 A. No, sir.

4 Q. All right. Nothing further. Thank you.

5 THE COURT: Redirect?

6 MS. JAMIESON: Just very quickly.

7 REDIRECT EXAMINATION

8 GEORGE WEEKS BY MS. MILLER:

9 Q. There were no fingerprints of anyone found on the  
10 scene; is that correct?

11 A. That is correct. That is correct.

12 Q. No further questions.

13 MR. JAMIESON: I do have a couple of other questions,  
14 Your Honor.

15 RE CROSS EXAMINATION

16 GEORGE WEEKS BY MR. JAMIESON:

17 Q. You testified earlier that you attempted to do a  
18 crime -- a gunshot residue test on my client?

19 MS. MILLER: Objection, Your Honor. It has to be in  
20 response to my redirect.

21 THE COURT: All right. Is that within the scope of  
22 her redirect examination?

23 MR. JAMIESON: It is, Your Honor.

24 THE COURT: All right, well, I'm going to sustain the  
25 objection.

1 MS. MILLER: Your Honor, if -- Court's indulgence for  
2 one moment.

3 (PAUSE.)

4 MS. MILLER: Nothing further from this witness, Your  
5 Honor.

6 THE COURT: All right.

7 Sir, you may step down. Thank you for being here. I  
8 appreciate it.

9 THE WITNESS: Thank you, sir..

10 (WITNESS LEAVING WITNESS STAND.)

11 THE COURT: You may call your next witness, ma'am.

12 MS. MILLER: Your Honor, if we could -- can we excuse  
13 this witness?

14 THE COURT: Any objection to that, sir?

15 MR. JAMIESON: No.

16 THE COURT: Okay, good enough.

17 Yes, sir. No problem.

18 THE WITNESS: Thank you.

19 MS. MILLER: Thank you, Mr. Weeks.

20 Your Honor, the State calls James Williams.

21 MADAME CLERK: Sir, could you please raise your right  
22 hand, place your left hand on the Bible.

23 (WHEREUPON: JAMES WILLIAMS, BEING  
24 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

25 MADAME CLERK: Have a seat right there.

26 DIRECT EXAMINATION



JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 JAMES WILLIAMS BY MS. MILLER:

2 Q. Mr. Williams, could you state your name for the  
3 record?

4 A. James Williams.

5 Q. And what do folks call you?

6 A. Kenny.

7 Q. They call you Kenny?

8 A. That's my middle name.

9 Q. Excuse me?

10 A. My middle name is Kenny.

11 Q. And where do you live, Mr. Williams?

12 A. I live at

13 Q. And how long have you lived there?

14 A. Practically all my life. Ever since I was about  
15 eighteen, nineteen years old.

16 Q. And were you home on October 3rd of 2010?

17 A. Yes, I were.

18 Q. Now I know that was a long time ago. Now I'm going to  
19 ask you what if -- did anything happen that evening that  
20 was unusual?

21 A. Yes.

22 Q. Tell us what happened that night.

23 A. Well, later on that night, that evening, we were  
24 sitting there watching the football game, and two guys come  
25 in the house.

JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 Q. Let's stop. You had some folks there watching  
2 football?

3 A. Yeah.

4 Q. Who was in the house?

5 A. Me, my brother.

6 Q. What's your brother's name?

7 A. Everett.

8 Q. And who else?

9 A. Charles -- Charles Ellis and Ronnie -- Ronnie Adams.

10 Q. Charles Ellis and Ronnie Adams. Who else was in the  
11 house?

12 A. And my girlfriend. She was back there. She was  
13 asleep.

14 Q. And who else was in the house?

15 A. That was it.

16 Q. And you all are watching football?

17 A. Yes.

18 Q. And what happened?

19 A. Well, we was watching football.. I left Everett and  
20 Ronnie, Charles, and Otis was up there watching football.

21 Q. What was the last name that you said?

22 A. Otis.

23 Q. Otis.

24 A. Yeah.

25 Q. I'm sorry. Otis was there too?

JAMES WILLIAMS: DIRECT BY MS. MILLER

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- 1 A. Yeah, he was there too.
- 2 Q. All right. Go ahead. So you left them what?
- 3 A. I left them up there in the front room watching TV
- 4 because there wasn't nowhere -- no place for me to sit in
- 5 there.
- 6 Q. Okay.
- 7 A. So I went back to the bedroom, and we was watching the
- 8 football game. I kept going to the front to give my
- 9 brother trouble about the football game.
- 10 Q. You kept -- okay, and then what?
- 11 A. And then about time -- the last time I was going up
- 12 the hall to give my brother trouble about the football
- 13 game, I met this short guy coming down my hall waiting with
- 14 a sawed-off shotgun.
- 15 Q. What -- Tell me what that fellow had on. Do you
- 16 recall?
- 17 A. He had on, I think, it was a white tank top and a
- 18 black do-rag up around his head.
- 19 Q. And what did he have in his hand?
- 20 A. He had a sawed-off shotgun.
- 21 Q. And did he say anything to you?
- 22 A. Yeah, he said, "Give it up. Give it up. You know
- 23 what time it is."
- 24 Q. What did you do?
- 25 A. And went on back to the bedroom, and right there I had

JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 a cup with my money in it. He told me to reach it to him.  
2 He said, "Give me that cup." I said, "You want it. You  
3 get it yourself."

4 Q. Okay.

5 A. And he said back there, and he say, "I know you got  
6 more than this. I know you do." I said, "Man, you got  
7 everything I got. You got my cup. You got the little  
8 money I got in it. What more do you want?"

9 Q. And then what?

10 A. And then --

11 Q. So he took your cup and your money?

12 A. Yeah, he took that.

13 Q. Okay.

14 A. And that time, his friend hollered back in the room,  
15 say, "Is everything is all right?"

16 Q. Okay.

17 A. And he say, "Yeah." And so we proceed back up to the  
18 hallway -- we went back up through the hallway.

19 Q. So you're going up the hallway. Where is the man with  
20 the shotgun?

21 A. He was behind me in my back and telling me, "Come on."  
22 He say -- The one up in the front room say "Bring everybody  
23 from back there, up there."

24 Q. What was in your back?

25 A. He had a sawed-off shotgun.

JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 Q. So you go back to the TV room?

2 A. Yeah, we goes back -- we goes back up to the TV room,  
3 and that's where I seen that man there with a pistol  
4 pointed up to my brother's face, upside his head, like  
5 this.

6 (WITNESS DEMONSTRATED.)

7 Q. Okay. What happened next?

8 A. And he told me to sit on a friend's lap, Ronnie.

9 Q. He said what?

10 A. He told me to sit on my friend's lap, Ronnie. He  
11 said, "Sit on his" --

12 Q. His lap? He told you to sit on his --

13 A. Sit on his lap, like I was crazy. I was, "Man, I'm  
14 not sitting on this man's lap." I sat on the arm of the  
15 chair.

16 Q. Okay.

17 A. And the other man gave him the cup with the money in  
18 it.

19 Q. Okay.

20 A. And he said, "No man, they even got more than that."  
21 I was like, "Take the cell phone, take the wallet, take  
22 everything." They think I'm kidding. They even looked at  
23 me and say, "I know you got more than that. You think I'm  
24 kidding with you."

25 Q. Who says that to you?

JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 A. That guy right there.

2 MR. JAMIESON: Your Honor, I'm going to object. I've  
3 given him a good deal of latitude about hearsay, but he's  
4 gone on too far.

5 MS. MILLER: He -- Your Honor, he's repeating what the  
6 Defendant said.

7 THE COURT: Okay. I'm going to overrule the  
8 objection.

9 BY MS. MILLER:

10 Q. And while I've got you stopped, what did the fellow  
11 who had the gun to your brother's head, what -- tell me  
12 what he looked like?

13 A. Oh, he was tall. That's the man -- that's him right  
14 there.

15 Q. Well, tell me what he looked like that night.

16 A. He was tall, had on a black -- black shirt, long dread  
17 locks on his head.

18 Q. Okay. So what did he say, before we got stopped?

19 A. What he was saying, "I know you got more than this.  
20 Give it up." Then he told the other guy, "You take all  
21 these cell phones and their wallet because I know these  
22 niggers got more in there."

23 Q. So what did they take from everybody? Do you  
24 remember?

25 A. They took everybody's cell phones and wallet.

JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 Q. Okay.

2 A. And whatever -- if they had the money, they would have  
3 took that too.

4 Q. Okay. All right.

5 MS. MILLER: The Court's indulgence, Your Honor.

6 (PAUSE.)

7 Q. I'm going to show you a picture and ask if you  
8 recognize it.

9 A. Uh-huh.

10 Q. Tell us what that is? What is that, Mr. Williams?

11 A. It's a side door where you enter our den where we  
12 watch TV at.

13 Q. That's your side door?

14 A. Yes.

15 Q. What happened after they took the things from folks?

16 A. Well, the other guy opened the door. He was ready to  
17 go. He was on his way out. And he kept playing with the  
18 pistol trying to cock it. And after he got it cocked, he  
19 think I won't cap, "You think I won't cap it?"

20 Q. He said what? I'm sorry. He said what?

21 A. "You think I won't cap it. You think it won't cap."

22 And he finally got it cocked, and he pointed it up in the  
23 ceiling, and he shot. And he proceeded out the back door,  
24 and on the way out the door he closed the door and said,  
25 "Everybody look out, you get capped." And we already know

JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 this shot.

2 Q. So when you look at this picture, this is -- was that  
3 the TV everybody was watching?

4 A. Yeah, that's the one.

5 Let me put up Number Thirteen.

6 (EXHIBIT PUBLISHED TO THE JURY ON COURTROOM OVER HEAD  
7 PROJECTOR.)

8 Q. And what's that?

9 A. That's the bullet hole where he shot up at the  
10 ceiling.

11 Q. Okay.

12 MS. MILLER: The Court's indulgence, Your Honor.

13 (PAUSE.)

14 Q. James, who lives in this house?

15 A. Me and my brother.

16 Q. You and your brother?

17 A. Yes, Everett.

18 Q. What's your brother's name?

19 A. Everett.

20 Q. I'm going to ask if you recognize this?

21 A. Yeah, that's my cup.

22 Q. Where did you keep this cup?

23 A. On my dresser in my room.

24 Q. What did you keep in it?

25 A. The money I had.



JAMES WILLIAMS: DIRECT BY MS. MILLER

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1 Q. What did you have that night?

2 A. I think I had about a hundred and -- between a hundred  
3 and -- between a hundred and seventy, a hundred and eighty  
4 dollars.

5 Q. Did he take that money?

6 A. Yes, ma'am.

7 Q. Did you see that again, that money again?

8 A. Yes, ma'am. I saw the money again.

9 Q. When did you see it?

10 A. Later on that night at the police department.

11 Q. Did you get it back?

12 A. Yes, ma'am.

13 Q. Okay.

14 MS. MILLER: The Court's indulgence, Your Honor.

15 (PAUSE.)

16 Q. This was -- About what time do you think this  
17 happened, Mr. Williams?

18 A. It was about -- it was late.

19 Q. Was it light or dark outside?

20 A. It was dark. I know it was after 9:00 o'clock. I  
21 know that.

22 Q. Okay. Please answer any questions Mr. Jamieson has  
23 for you.

24 A. Okay.

25

CROSS EXAMINATION

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 JAMES WILLIAMS BY MR. JAMIESON:

2 Q. Mr. Williams, my name is Philip Jamieson. I represent  
3 Randy Mitchell.

4 A. Yes, sir.

5 Q. What were you and all the people in your house doing  
6 that day -- that night?

7 A. Watching the football game.

8 Q. What time did you all start doing that?

9 A. Oh, the Cowboys, I think it was the Cowboys and  
10 somebody were playing. We started watching the game Eight  
11 o'clock -- the 8:00 o'clock, the 8:30 game.

12 Q. And were there people over there before 8:30 in the  
13 morning -- 8:30 at night?

14 A. Sir?

15 Q. Were there people there before 8:30, or did they come  
16 at 8:30?

17 A. No, they was there before -- they was there before  
18 8:30.

19 Q. Were people drinking in your house?

20 A. Yes, we were.

21 Q. And were you drinking?

22 A. Yeah.

23 Q. What were you drinking?

24 A. Bud Light.

25 Q. And what time did you start drinking?

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 A. I started about -- about 6:30.

2 Q. 6:30 at night?

3 A. Yeah.

4 Q. You drank up until what time?

5 A. Well, I ain't had but a 6-pack, and I had drunk four  
6 of them before the game come on.

7 Q. So you had a 6-pack, and did you drink the whole 6-  
8 pack?

9 A. Yes, I drunk the whole 6-pack.

10 Q. Were other people in the house drinking?

11 A. Yes.

12 Q. When this incident occurred, the police were in your  
13 yard; weren't they?

14 A. I have no idea.

15 Q. You don't know that?

16 A. No, my door -- I closed my door. It dark.

17 Q. So you don't know that the police were surveilling  
18 your house because they thought it was a drug house?

19 A. No, sir. No, sir. No, sir. I didn't know none of  
20 that.

21 Q. You never heard that?

22 A. No, sir.

23 Q. And when you testified previously, you didn't testify  
24 that you knew that?

25 A. No, I didn't know that the police was at my house.

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 Q. Now after all this occurred, the police took you down  
2 to the police department?

3 A. Yes, sir.

4 Q. Did they ever show you the individuals they had  
5 arrested?

6 A. No, sir.

7 Q. Did they ever show you a photograph, photographic  
8 lineup of the people they arrested?

9 A. No, sir. No, sir.

10 Q. Did they ever show you a actual lineup of the people  
11 that they arrested?

12 A. No.

13 Q. Somebody standing in a lineup, and you picked anybody  
14 out?

15 A. No, they did not. No, they did not.

16 Q. Did they take a statement from you?

17 A. Yes, they took the statement.

18 Q. So what were they trying to find out from you? What  
19 kind of questions were they asking?

20 A. They was asking me what happened. Do I know the -- do  
21 I know the guys that did it, and I didn't know.

22 Q. Did they want to know what they looked like?

23 A. Did they want to know what they looked like?

24 Q. Yeah.

25 A. No, sir.

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 Q. They never asked you what they looked like?

2 A. Oh, yeah. They asked me what they had on.

3 Q. And did you tell them any information about that?

4 A. Yes, sir.

5 Q. What did you tell them about the people that robbed  
6 you?

7 A. To my recollection I told them what they -- what I --  
8 what I remember what they had on. Greg had on a white tank  
9 top, and Randy Mitchell, he had on black, a black tank top.

10 Q. And did you know these people by name?

11 Do you know these people by name?

12 A. No, I don't really know them right now, but I know  
13 them about since we had to come on back before the Court.

14 Q. But the only way you know their name is because you've  
15 heard their name in court; is that right?

16 A. Yes, sir.

17 Q. All right. So one person had on a white T-shirt, and  
18 what else?

19 A. I can't remember all that. I know he had that  
20 shotgun. That was the short one.

21 Q. So you were paying attention to the gun?

22 A. Yeah, I was paying attention -- more attention to the  
23 gun.

24 Q. I don't blame you. I would have been paying attention  
25 to the gun too.

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1           So you did get a good look at anybody's face; is that  
2           right?

3           A.    Yes, I looked -- I couldn't help but look in his face  
4           when he had the gun in my face.

5           Q.    But you didn't give the police a good description of  
6           anybody's face; did you?

7           A.    I gave them the best I could do.

8           Q.    Well, I understand that. I'm sure it was an exciting  
9           event ---

10          A.    Yeah, it was.

11          Q.    --- and a scary event. I understand. So you told  
12          them the best you could?

13          A.    Yes, I did.

14          Q.    But that wasn't anything about how tall somebody was;  
15          was it?

16          A.    Yes. About how tall that one had that had that pistol  
17          up against my brother head.

18          Q.    You told him how tall he was?

19          A.    I told him he was tall -- he was taller than me. He  
20          was taller than everybody that was in the house.

21          Q.    All right.

22          A.    And he had dreads in his head.

23          Q.    So you told him he was tall, and you told him he had  
24          dreads?

25          A.    Yeah.

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 Q. Did you tell him anything else about him? Did you  
2 tell him about any facial hair or any scars or any tattoos?

3 A. I didn't see no facial hair, scars.

4 Q. Did you tell him anything about how much he weighed?

5 A. No, I couldn't --

6 Q. Did you tell him how much -- how old he was?

7 A. No, I couldn't tell him all that.

8 Q. So you didn't notice any details?

9 A. No, I couldn't -- I couldn't -- I couldn't -- imagine,  
10 I couldn't even -- I wouldn't even know where to start to  
11 tell him how old -- how old I thought he was or how tall he  
12 was.

13 Q. So it would be fair to say that in your statement, you  
14 didn't give any specific information about the person you  
15 saw?

16 A. Yes, I gave -- the person I saw, yes.

17 Q. What specific information did you give?

18 A. I gave the one who robbed me: short -- short -- short  
19 haircut, looked dark skinned and tall. The one with the  
20 gun to my brother head, tall; he had dreads.

21 Q. Did you give them anything more specific than that?

22 A. I knowed he was black.

23 Q. Did you give him anything more specific than that?

24 A. No, I couldn't give him no more.

25 Q. And when the police talked to you, that was this same

JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 night. Right?

2 A. Yes.

3 Q. And would it be fair to say your memory was better  
4 then than it is two years later?

5 A. Back then, yes it was. It's two years later now.

6 Q. So time has passed, obviously.

7 Now, after the two people left your house, you don't  
8 know what happened to them; is that right?

9 A. No, after they shut the door, then he heard that last  
10 shot, I don't know which way they went.

11 Q. And you got some money back from the police  
12 department?

13 A. Yes, sir.

14 Q. You don't know who -- where they got that money; do  
15 you?

16 A. Yes, sir.

17 Q. Where did they get it?

18 A. From me.

19 Q. I mean, where did the -- once the police got it and  
20 gave it to you, do you know who they got it from?

21 A. No, sir. I didn't.

22 Q. And it was just bills and change; is that correct?

23 A. Yes, sir, and it was in my cup.

24 Q. But you didn't get back any cup; did you? Your cup's  
25 in evidence?



JAMES WILLIAMS: CROSS BY MR. JAMIESON

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1 A. No, they didn't give the cup back. They kept that.

2 Q. All right. Did you get anything else back?

3 A. No, that's all they took from me.

4 MR. JAMIESON: I beg the Court's indulgence.

5 THE COURT: All right.

6 (PAUSE.)

7 MR. JAMIESON: Nothing further.

8 THE COURT: Redirect?

9 MS. MILLER: Nothing further from this witness, Your  
10 Honor.

11 THE COURT: You may step down, sir. Thank you.

12 THE WITNESS: Thank you, sir.

13 (WITNESS LEAVING WITNESS STAND.)

14 MS. MILLER: Your Honor, the State calls Charles  
15 Ellis.

16 MS. MILLER: Your Honor, may we approach?

17 THE COURT: Yes, ma'am.

18 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
19 THE JURY AT 12:15 P.M..)

20 MADAME CLERK: Please raise your right hand, place  
21 your left hand on the Bible.

22 (WHEREUPON: CHARLES ELLIS, BEING  
23 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 MADAME CLERK: Thank you. You may have a seat.

25 DIRECT EXAMINATION

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 CHARLES ELLIS BY MS. MILLER:

2 Q. Please state your name for the record.

3 A. Charles Ellis.

4 Q. And Charles, where do you live?

5 A. 1752 Arden Road.

6 Q. And October 3rd of 2010 -- let me ask you this. Do  
7 you know Kenny Williams?

8 A. My cousin.

9 Q. How about Everett Williams?

10 A. My cousin.

11 Q. Do you ever go to their house?

12 A. Yes, I do.

13 Q. When you go there do you watch football over there?

14 A. Oh, yeah, football, basketball, baseball.

15 Q. And on the -- Were you there on October 3rd of 2010?

16 A. Yes, I was.

17 Q. And what were y'all doing over there?

18 A. Watching TV and drinking.

19 Q. How long had you been there that day?

20 A. I'd say about -- from -- maybe from about 1:00 or  
21 2:00.

22 Q. Did anything unusual happen later on that day?

23 A. Yeah, we were sitting in there watching football, and  
24 after a while, the side door just came open, and guys come  
25 in with guns and stuff.

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 Q. Well, let me -- let's back up a little bit.

2 A. Okay.

3 Q. Let's go to the -- the door opened. Is that what  
4 happened?

5 A. Well, it's been a while, and I'm not sure. The only  
6 thing I can say that I seen guys come in with a gun -- I'm,  
7 you know -- I'm sitting up there drinking. I'm being  
8 honest.

9 Q. Right.

10 A. And, you know, and the next thing I know, one went  
11 down the hallway.

12 Q. Now what -- The one that went down the hallway, do you  
13 remember anything about him?

14 A. He was short, bald-headed -- well, not bald-headed --  
15 hair was cut short. And he went down the hallway.

16 Q. Did he have anything with him?

17 A. He had a sawed-off shotgun because I'm sitting in the  
18 chair like this, and the doorway is -- the side door was  
19 like this.

20 Q. All right.

21 A. And I'm sitting there, and my mouth dropped wide open.  
22 The other guy come in with the pistol.

23 Q. Another man came in with a pistol?

24 A. Right.

25 Q. What do you -- let's see. Do you remember anything

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 about him?

2 A. He was tall. He had dread locks. I'm looking dead at  
3 him.

4 Q. Tell me what -- tell us what happened? They walked  
5 in.

6 A. Yeah. And one of them went down the hallway and while  
7 he was standing right in there he had his gun out. He  
8 asked for money. I didn't have no money. He wanted your  
9 phone. Well he took my phone, my wallet, my cigarette  
10 lighter, my cigarettes, and my keys.

11 Q. What kind of cigarettes were you smoking?

12 A. Seneca, one with the menthol.

13 Q. Seneca cigarettes?

14 A. Right.

15 Q. So he was -- took from you ---

16 A. Right.

17 Q. --- your wallet, your cigarettes, and what else?

18 A. My keys and my lighter.

19 Q. Your keys and your lighter?

20 A. Uh-huh.

21 Q. And your cell phone?

22 A. Right, my cell phone.

23 Q. And did he take anything from anybody else?

24 A. Well, he was asking that from everybody. You know,  
25 instead of me getting -- well, I was afraid. I'll put it

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 like that. I just gave what I had on me.

2 Q. Okay. And tell us what happened next. Who took --  
3 let me make clear about this. Who took your cigarettes,  
4 your wallet, your cell phone, your keys? Who took that?

5 A. That young man sitting right over there.

6 Q. Okay.

7 A. I didn't know his name till we came to court.

8 Q. And he's the one that had the pistol?

9 A. Yes, ma'am.

10 Q. What happened next?

11 A. Well, there was -- well, he hollered down the hallway  
12 or something. Then, they come back up. And then after a  
13 while, he put the gun beside my other cousin head, and  
14 everything just went crazy to me.

15 Q. He put the gun up to your other cousin. Who's that?

16 A. Yeah, Everett

17 Q. Everett?

18 A. Everett Williams.

19 Q. What happened next?

20 A. And after they did what they had to do, as they was  
21 going out the door, the -- the guy with the shotgun went  
22 out first. And then he -- And then he was going out --  
23 he -- he was backing up. I'm still sitting in the chair.

24 Q. Well, let me stop you real quick. Let me also ask you  
25 this. I forgot to ask you this earlier. Have you been

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 previously convicted of giving false information to police?

2 A. Yes, I have. Once, yes.

3 Q. Well, let me get back to the story.

4 A. Okay.

5 Q. What -- what were you saying?

6 A. Okay, like the one with the shotgun, he was going out  
7 the door.

8 Q. Okay.

9 A. Okay, he had went out the door. The other guy, he was  
10 standing there fumbling around with the pistol, and I'm  
11 still sitting right there in the chair. And as he was  
12 going out, he shot up above -- well, I say above my head  
13 because I was sitting right there in the chair. And I'm  
14 looking dead at him. Now what happened was what went  
15 outside the door I don't know because I wasn't going out  
16 that door.

17 Q. All right. Did you go to -- did you go to the police  
18 station that night?

19 A. Yes, ma'am. I did.

20 Q. What happened to your wallet?

21 A. Oh, I -- well, I got it back after I got there.

22 Q. You got -- Who gave that to you?

23 A. I forget this detective's name.

24 Q. One of the officers?

25 A. Yes, ma'am.

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 Q. What else did you get back?

2 A. I got my -- I got my cigarettes. I got my lighter. I  
3 got my keys, but I didn't get my cell phone back then.

4 Q. Tell me about your cell phone. When did you get that  
5 back?

6 A. I say, maybe about -- I'm going to say -- I'm going to  
7 say anywhere from five to seven days later. They gave me  
8 the wrong phone to start with.

9 Q. And what -- Tell me about when you went to get your  
10 phone. Did you go back up there?

11 A. Yes, ma'am. I went back and got it, but they said  
12 that was my phone. I told them, "No." And when I went  
13 back again, they say that detective was on vacation or  
14 something. Then I talked to that lady that was standing up  
15 there at the desk. And she says, "The phone back there."  
16 I say, "Look on the back, and that's my phone number."

17 Q. And so your phone number was on the back of the cell  
18 phone?

19 A. On the -- I always -- Yeah, 'cause I can't hardly  
20 remember numbers too fast. I always write my phone number  
21 on a piece of paper and tape it on the back of my cell  
22 phone.

23 Q. Okay.

24 A. And when she called that phone, that number, my phone  
25 rung, and she say, "This your phone."

CHARLES ELLIS: DIRECT BY MS. MILLER

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1 Q. So that phone had your number taped to the back of it?

2 A. On the back. And if you --

3 Q. What kind of phone was that?

4 A. It was a Virgin mobile.

5 Q. Okay.

6 A. Virgin, yeah.

7 Q. Did you get your wallet back that night?

8 A. Yes, ma'am. I did.

9 Q. Did you get your wallet back from the police?

10 A. Uh-huh.

11 Q. Do you have identification in your wallet?

12 A. I had my birth certificate, my ID card, and I had some  
13 credit cards.

14 Q. You got -- Did you get your cigarettes?

15 A. I believe I did.

16 Q. And you were smoking Seneca cigarettes; is that  
17 correct?

18 A. Seneca, right.

19 MS. MILLER: Court's indulgence, Your Honor.

20 THE COURT: Yes, ma'am.

21 (PAUSE.)

22 Q. Mr. Ellis, I'm going to show you what's been marked as  
23 State's Exhibit Number Twenty-three. I'm just going to ask  
24 if you recognize it. Don't say anything about what it is.  
25 Just tell me if you recognize that.



CHARLES ELLIS: DIRECT BY MS. MILLER

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- 1 A. Uh-huh.
- 2 Q. Okay. Just one moment.
- 3 Mr. Rowe, I'm going to ask you -- Mr. -- I'm sorry,
- 4 Mr. Ellis.
- 5 A. Uh-huh.
- 6 Q. I'm going to ask you what this is right there.
- 7 A. That's my signature.
- 8 Q. That's your signature?
- 9 A. Uh-huh.
- 10 Q. And do you remember signing that?
- 11 A. Oh, yeah.
- 12 Q. And why did you sign this?
- 13 A. Oh, it's a -- when I received a copy of that report.
- 14 Q. What's the date on here. Can you read that?
- 15 A. That got the 10th, 18th, of '10.
- 16 Q. Okay, so that was the 18th of October.
- 17 A. Right.
- 18 Q. What did you do at the police later on the 18th? What
- 19 did you do?
- 20 A. I went back to what? To check on my phone.
- 21 Q. Right, okay. So what were you signing this for?
- 22 A. To receive my phone.
- 23 Q. Thank you. That's all I needed.
- 24 MS. MILLER: The Court's indulgence, Your Honor.
- 25 THE COURT: Yes, ma'am.

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 (PAUSE.)

2 Q. Please answer any questions Mr. Jamieson has for you.

3 A. Okay.

4 CROSS EXAMINATION

5 CHARLES ELLIS BY MR. JAMIESON:

6 Q. Mr. Ellis, my name is Philip Jamieson. I represent  
7 Randy Mitchell.

8 You were over at your cousin's house this day?

9 A. Yes.

10 Q. Is that -- Do you go over there pretty regularly?

11 A. On Sunday, just about. Not every Sunday, you know.  
12 When it's nice and warm, I get out and walk.

13 Q. And were there other people there as well?

14 A. Yes, there were.

15 Q. People were sitting around watching the ball game?

16 A. Yes.

17 Q. Were you doing that too?

18 A. Yes.

19 Q. Were people drinking?

20 A. Yes.

21 Q. Were you drinking?

22 A. Yes.

23 Q. How much did you have to drink?

24 A. Right offhand, I couldn't tell you.

25 Q. What were you drinking?

CHARLES ELLIS: CROSS BY MR. JAMIESON

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- 1 A. Liquor.
- 2 Q. What kind of liquor did you drink?
- 3 A. Vodka.
- 4 Q. What time did you start drinking?
- 5 A. I don't know. I might say about midday.
- 6 Q. About midday?
- 7 A. I'd say about from 12:00 or 1:00. I had drunk some
- 8 before I got there.
- 9 Q. And so and this was what time of night did all this
- 10 happen? Do you know?
- 11 A. Everybody else say 9:00 o'clock. Like I said, I don't
- 12 know. I'm just going to be honest with you.
- 13 Q. Well, if you don't know, that's the proper answer.
- 14 But you were drinking all the time from when you started up
- 15 until this incident occurred; is that right?
- 16 A. I drank a little bit here and a little bit there.
- 17 ain't going to say from many, many...
- 18 Q. You drank off and on?
- 19 A. Yeah.
- 20 Q. Okay. And did you remember dealing with the police
- 21 later that night?
- 22 A. Yes, I do.
- 23 Q. Did you go down to the police department later that
- 24 night?
- 25 A. Yes, sir.

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 Q. Did the police ever show you a pictures of anybody  
2 that they said might have robbed you?

3 A. No.

4 Q. Did they show you a lineup of anybody that where they  
5 had a group of people standing and asked you to pick  
6 anybody out?

7 A. No, sir.

8 Q. All right. Did you give the police any description  
9 that day?

10 A. I don't know if I did or not. I don't know.

11 Q. You don't remember?

12 A. No.

13 Q. Is some of this just faded out of your memory with the  
14 passage of time?

15 A. What it been, about two years?

16 Q. Yes, sir.

17 A. Yes.

18 Q. So it would be fair to say that you don't remember as  
19 much about it now as you did back then?

20 A. There's certain parts of it I do.

21 Q. But certain parts of it, you don't?

22 A. Yeah.

23 Q. Now did you describe the pistol?

24 A. I told them the only thing I seen was a nickle-plated  
25 gun, I mean, you know. I call it nickle-plated because

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 it's silver.

2 Q. Do you remember when you testified the last time, that  
3 you described it as something different?

4 A. The only thing I -- well, I don't know. I know I said  
5 it was nickle-plated.

6 Q. So you don't remember testifying that it was, what I  
7 would call, blue-steel?

8 A. Blue-steel?

9 Q. Yes, sir. Do you remember that in your previous  
10 testimony?

11 A. I might have. I don't know.

12 Q. Do you remember in your previous testimony, you told  
13 them it had a pearl handle?

14 A. I know I didn't.

15 Q. I beg your pardon?

16 A. No, sir. I didn't.

17 Q. All right.

18 MR. JAMIESON: Your Honor, this may be a matter we  
19 need to take up outside of the presence of the jury.

20 THE COURT: Okay.

21 Let's take a brief break and come back in. Please  
22 don't discuss the case.

23 (JURY EXITS COURTROOM AT 12:27 PM.)

24 THE COURT: Yes, sir.

25 MR. JAMIESON: Your Honor, as you -- I'm not sure if

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 you're even aware, this case was previously tried. There  
2 is a trial transcript and on Page 153 of James Ellis's  
3 testimony and in that testimony he describes it as a pearl  
4 handle blue steel. That's contrary to what he just  
5 testified, I believe that's more evidence for the jury to  
6 see and to hear and I think we're entitled to have that  
7 read into the record.

8 THE COURT: All right.

9 MS. MILLER: I think he could have just impeached him  
10 right there and read it to them.

11 THE COURT: You can -- You have a copy of the  
12 transcript?

13 MR. JAMIESON: Yes, sir, I do. And the State does as  
14 well.

15 MS. MILLER: He was also, I think, asking him -- he  
16 was asking him about his statement and I think you confused  
17 him. And he said in my statement I said that it was a  
18 nickle plated gloc which is what he said in his statement.  
19 But if he wants to impeach him on what he said then tell  
20 him what he said I don't have a problem with that.

21 THE COURT: If he wants to, you know we do it all the  
22 time in civil cases obviously.

23 Do you want to present him a copy of the transcript  
24 and ask him what he said that's fine and I'll advise the  
25 jury that it's testimony from a prior hearing and that its

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 evidence just like any other evidence.

2 MR. JAMIESON: All right.

3 MS. MILLER: Your Honor, it might be best if we did it  
4 this way. It might be best if Mr. Jamieson said - You ask  
5 him, you testified at a previous hearing and he'll say yes.  
6 And then read him what he said.

7 THE COURT: However he wants to do it. I'm not in the  
8 business of telling you how to do things.

9 MS. MILLER: I think you'll have better luck if you -  
10 Mr. Jamieson, I think you'll have better luck if you  
11 do it that way instead of having him read it.

12 MR. JAMIESON: I don't mean this to be in any way  
13 insulting you, Mr. Ellis, can you read?

14 MR. ELLIS: I read fine.

15 MR. JAMIESON: Okay. I'll have him read it.

16 THE COURT: How ever you want to do it.

17 Let's take a quick break just - but let me ask you  
18 this. How many -- this is your fourth witness, you  
19 anticipate six more or seven?

20 MS. MILLER: I have one, two, three, four, five more,  
21 six. Six.

22 THE COURT: Okay. And do you anticipate the rest of  
23 them will be essentially like the last two which is -

24 MS. MILLER: Yes. There will be two like that.

25 THE COURT: Yes, ma'am.

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 MS. MILLER: And then there'll be three more officers.

2 THE COURT: Right.

3 MS. MILLER: And then they'll be like Officer Rivera.

4 I think they'll all be about like that.

5 THE COURT: Okay.

6 MS. MILLER: So it will be like that.

7 THE COURT: Okay. So it's roughly correct for me to  
8 say we got about six more witnesses that are going to take  
9 half an hour a piece for the State. Okay.

10 Do you have -- Do you intend to put any witnesses on  
11 the stand?

12 MR. JAMIESON: Unless my client decides to testify.

13 THE COURT: Okay. Let's do this. Let's take a short  
14 break, bring them back in. We'll conclude Mr. Ellis'  
15 testimony, we call one more before lunch, take a lunch  
16 break probably for a hour, hour and fifteen minutes, come  
17 back, and then try to get through your case in chief today.

18 MS. MILLER: I think we can do it.

19 MR. JAMIESON: And for my edification, Your Honor,  
20 would you anticipate closing arguments today or closing  
21 arguments tomorrow?

22 THE COURT: Tomorrow. We're not going to do that  
23 today. Okay. Let's take a brief break and come back in in  
24 about five minutes.

25 Mr. Ellis, you take a break too. You just can't



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1 discuss your testimony with anybody, okay.

2 (COURT IN RECESS AT 12:31 PM.)

3 (COURT BACK IN SESSION AT 12:37 PM.)

4 (DEFENDANT REENTERS THE COURTROOM.)

5 MS. MILLER: Your Honor.

6 THE COURT: Yes, ma'am.

7 MS. MILLER: We're gonna do Mr. Ellis and we'll do  
8 another civil witness. I'm gonna let my officers go on to  
9 lunch and come back. A time to tell them to return.

10 THE COURT: Well I'd say 2:30 because if we after we  
11 finish we probably won't get started good on Mr. Ellis  
12 until about a quarter till and then we'll finish him about  
13 five till and we'll go another one so let's say we go at  
14 2:30.

15 MS. MILLER: Okay.

16 2:30.

17 (JURY REENTERS COURTROOM AT 12:42 P.M.)

18 THE COURT: All right, ladies and gentlemen, just so  
19 yo know where we stand, we're gonna take lunch. What I  
20 want to do is finish Mr. Ellis. We should be a few more  
21 minutes. Take one more witness which should be less than  
22 half an hour inclusively on cross and direct then take a  
23 lunch break then come back. After that it's my  
24 understanding that the State will have somewhere between  
25 five and six additional witnesses each of whom will take

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1 about half an hour. The defense may have some witnesses  
2 but I think maybe what we can expect to do today  
3 realistically is to get to the end of the State's case  
4 today because after Mr. Ellis six additional witnesses,  
5 half an hour a piece, approximately three hours if we can  
6 come back from lunch at 2:30 then I'm guessing, I'm hoping  
7 that perhaps this afternoon we'll be able to finish the  
8 remainder of the State's witnesses with the exception of  
9 perhaps one that may remain until tomorrow. But I'm not  
10 going to keep you here past hopefully about 5:30 this  
11 afternoon. We'll try to end before then. So if we look  
12 like those witnesses are getting a little bit longer than  
13 what I had anticipated and just scheduling then we might  
14 hold one over until tomorrow morning, okay. Good enough.

15 You may resume questioning Mr. Ellis.

16 CROSS EXAMINATION - CONTINUED

17 CHARLES ELLIS BY MR. JAMIESON:

18 Q. Mr. Ellis, I asked you before we took a break if you  
19 remembered your previous testimony?

20 A. Yeah.

21 Q. With the Court's permission, I'm going to approach and  
22 show you this document that I have. Do you recognize that  
23 as a -- as your testimony?

24 A. Yes, I do.

25 Q. And starting right here, line 16 on page 153, is --

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1 does that relate to what your testimony was about the gun  
2 you saw?

3 A. Now since I see it, yeah.

4 Q. Would you read that to the jury, please?

5 A. "It was a pearl handle with something like -- it was  
6 something like that. It was a nickle-plated something, you  
7 know, like a -- like what you call a blue-steel, I  
8 believe."

9 Q. So do you recall that, that was your testimony at the  
10 time?

11 A. Yes, it sure was.

12 Q. So at that time when you testified, it was a pearl-  
13 handle gun; is that right?

14 A. Yes.

15 Q. And blue steel; is that right?

16 A. Yes.

17 THE COURT: Mr. Jamieson, before you go on, I'm going  
18 to explain to the jury.

19 Oftentimes, ladies and gentlemen, in cases, pre-trial,  
20 before you actually get to the trial, there may be a  
21 hearing. In this case, Mr. Jamieson has asked Mr. Ellis  
22 questions regarding testimony that he gave under oath in a  
23 prior hearing. I don't know what the nature of that  
24 hearing was. I don't know why it was convened or what the  
25 purpose was. But that's not what matters, and that's not

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1 relevant. It's not important to me, and I can tell you,  
2 it's not important to anything that you are charged with  
3 doing in this case either. The only thing that's relevant  
4 for you to know is that it was testimony that was taken  
5 under oath, and it's a piece of evidence just like any  
6 other evidence that you may take in this case. You decide  
7 whether it's important or not or whether it has value or  
8 not in your deliberations of this case.

9 Go ahead, Mr. Jamieson.

10 MR. JAMIESON: Thank you, Your Honor.

11 Q. Now, Mr. Ellis, the Solicitor asked you about a  
12 previous charge that you had, and you said you'd been  
13 charged with giving false information to the police?

14 A. Yes, I have.

15 Q. So it would be fair to say you -- they were  
16 investigating some crime. You told them ---

17 MS. MILLER: Objection, Your Honor.

18 Q. --- something that wasn't true.

19 THE COURT: What's the basis of the objection?

20 MS. MILLER: He can't go into the -- he can ask the  
21 question, "Yes" or "No."

22 THE COURT: Okay, all right. I'm going to sustain the  
23 objection.

24 MR. JAMIESON: That was what I was asking him to do,  
25 say "Yes" or "No."

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 THE COURT: Okay, all right.

2 Q. Would it be fair to say that they were investigating  
3 an offense, and you gave them something that wasn't true.  
4 You told them something untrue?

5 MS. MILLER: Objection, Your Honor. He asked them if  
6 he had been -- he can answer about the conviction, "Yes" or  
7 "No."

8 THE COURT: I understand. I'm going to let you ask  
9 that specific question. I don't want to get into details.  
10 I think you understand that, and I think y'all might be  
11 saying the same thing. That question -

12 MR. JAMIESON: I don't intend to ask him anything  
13 further than what I just asked him.

14 THE COURT: Good enough. You may ask that question.

15 Q. Again, Mr. Ellis, the police were conducting an  
16 investigation; is that correct?

17 A. Yeah.

18 Q. And you gave them false information?

19 A. Yes.

20 Q. All right. Now, so based on having read your previous  
21 testimony, would it be fair to say that you gave a  
22 different description of the gun then than you gave today?

23 A. Yes.

24 Q. And I think I asked you earlier, but let me just make  
25 sure. You were never asked the day of this incident to

CHARLES ELLIS: CROSS BY MR. JAMIESON

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1 look at anybody and say, "That's the people that robbed  
2 me"; is that correct?

3 A. Correct.

4 Q. You were never shown a photographic lineup; is that  
5 correct?

6 A. Correct.

7 Q. You never were shown a personal lineup where people  
8 were standing in a row?

9 A. That's correct.

10 Q. And it's been two years since this incident occurred?

11 A. Yes.

12 Q. Thank you, Mr. Ellis. Nothing further.

13 MS. MILLER: Nothing further from this witness, Your  
14 Honor.

15 THE COURT: Thank you, Mr. Ellis. You may step down,  
16 sir. Thank you.

17 THE WITNESS: Thank you.

18 (WITNESS LEAVING WITNESS STAND.)

19 MS. MILLER: Your Honor, I ask Counsel and Your Honor  
20 if Mr. Ellis and Mr. James Williams, Kenny, can be excused?

21 THE COURT: Mr. Jamieson, any objection to Mr. Ellis  
22 and Mr. Williams being excused?

23 MR. JAMIESON: No.

24 THE COURT: Good enough.

25 MS. MILLER: The Court's indulgence, Your Honor.

EVERETT WILLIAMS: DIRECT BY MS. MILLER

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1 THE COURT: Yes, ma'am.

2 (PAUSE.)

3 MS. MILLER: I'm sorry, Your Honor.

4 Your Honor, the State calls Everett Williams.

5 MADAME CLERK: Sir, please raise your right hand,  
6 place your left hand on the Bible.

7 (WHEREUPON: EVERETT WILLIAMS,  
8 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 MADAME CLERK: Thank you. You may have a seat.

10 DIRECT EXAMINATION

11 EVERETT WILLIAMS BY MS. MILLER:

12 Q. Please state your name for the record.

13 A. My name is Everett Williams.

14 Q. I can't hear you, so I bet they can't either.

15 A. I said Everett Williams.

16 Q. Everett Williams?

17 A. Yes, ma'am.

18 Q. You're going to have to speak up so that I can hear  
19 you way over here, and they can hear you. Okay?

20 A. Yes, ma'am.

21 Q. Your name is Everett Williams?

22 A. Yes, ma'am.

23 Q. And where do you live, Everett?

24 A. Lane.

25 Q. And how long have you lived there?

EVERETT WILLIAMS: DIRECT BY MS. MILLER

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1 A. Off and on, about all my life.

2 Q. And who do you live there with?

3 A. My brother James Williams.

4 Q. And on October 3rd of 2010, did you live there?

5 A. Yes, ma'am.

6 Q. And what were you doing that day?

7 A. Well, we were going to cook out. We had chipped in  
8 and was gonna have a cookout and, you know, watch the  
9 football game.

10 Q. Okay.

11 A. And then it got dark, and we came inside.

12 Q. You went inside after it got dark?

13 A. Yes, ma'am.

14 Q. And then what did you do?

15 A. We were watching football.

16 Q. Watching football. Did anything unusual -- well, let  
17 me ask you this. Who was in the house?

18 A. That was me -- that was me and James and Charles and  
19 Ronnie and Otis.

20 Q. And Otis. All right. And y'all were just watching  
21 football?

22 A. Yes, ma'am.

23 Q. Did anything unusual happen that night?

24 A. No, ma'am. We just sit around, you know, talking junk  
25 to each other saying who going to win, you know, who not



EVERETT WILLIAMS: DIRECT BY MS. MILLER

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1 going to win. It's just like -- it's like a family.

2 Q. Well, what about later than night? Anything happen?

3 A. It was about dusk dark, there was something out there.

4 It was something out there. Something like that there. Do

5 you know what I'm saying? I heard a knock, a loud knock, a

6 knock on the door.

7 Q. Okay.

8 A. I was sitting beside the door. The door right here,

9 the couch. I sat in it. There was a couch right here.

10 Q. Okay.

11 A. And I went to get up out of the couch and open the

12 door, the door came open. And the tall dude, he ran out

13 put a gun beside my head and told me to sit down.

14 Q. So someone came in, a tall dude. Is that what you  
15 said?

16 A. Yes, ma'am.

17 Q. He had a gun in his hand?

18 A. Yes, ma'am.

19 Q. And he put it up beside your head?

20 A. Yes, ma'am.

21 Q. Do you remember anything else about what he looked  
22 like?

23 A. Yeah, but then a short guy, he came behind him, and he

24 was carrying a shotgun, and he was down the hallway. He go

25 back there in my brother bedroom.

EVERETT WILLIAMS: DIRECT BY MS. MILLER

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1 Q. Okay.

2 A. And then when he came out the bedroom, and he told  
3 Kenny to sit on Ronnie lap, had a shotgun in my brother  
4 back. And the tall dude, right there, had a gun upside my  
5 head, and he told me, "Don't move." "Don't move."

6 Q. Okay.

7 A. Then the dude, he got my brother cup. He went out the  
8 door. The little short dude, he got my brother cup. He  
9 went out the door. He say, "Come on, man. Come on, man.  
10 They got more. They got more. They got more." That what  
11 he say.

12 Q. Okay.

13 A. He told me, "Don't move." Then by the time they, you  
14 know, he got the money. He got money off -- he took my  
15 billfold, he took Charles billfold, and he took my brother  
16 cup. Ronnie didn't have no money. He took Otis cell phone  
17 and Charles cell phone.

18 Q. Okay.

19 A. So and he and the short dude --

20 Q. He took your wallet?

21 A. Yes, ma'am. He took my wallet.

22 Q. Okay.

23 A. How he took my wallet, he had the gun upside my head  
24 and told me to go over on my cousin lap. He went in my --  
25 he went in my back pocket and took my wallet. But then the

EVERETT WILLIAMS: DIRECT BY MS. MILLER

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1 little short dude said, "Come on man. Come on man." He  
2 say, "They got more. They got more." Then when he -- the  
3 short dude, he was already outside. And he backed out the  
4 door, "Y'all think I won't cap? Y'all think I won't cap?"  
5 And then he shot up at the ceiling, backed out the door and  
6 closed the door and slammed the door, and then they took  
7 off. So I got up --

8 Q. Let me ask you to slow down a little, just a little  
9 bit. Slow down a little bit so the court reporter can  
10 understand you.

11 A. Okay.

12 Q. So he shot up?

13 A. Yes, ma'am. He shot up in the ceiling.

14 Q. And which one was that?

15 A. The tall one who had that gun in his hand. And the  
16 short man had the shotgun, he already left. He had left  
17 out the door and the short dude was telling him to come on.

18 Q. So he shot up inside your house?

19 A. Yes, ma'am.

20 Q. The one with the gun in his hand?

21 A. Yes, ma'am. The one the had the gun inside my head.

22 Q. And then what happened?

23 A. Then when he backed out the door and slammed the door,  
24 he said, "Y'all - you come out that door, you're going to  
25 capped. You're going to get shot." And then they

EVERETT WILLIAMS: DIRECT BY MS. MILLER

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1       went -- they split up. Then -- side -- pass the house. I  
2       came out the door. I run behind them to try to get the  
3       police to tell them we had been robbed. The police they  
4       already -- I ran up the street on Calhoun, on Crosby Street  
5       right there. They put them red dots on me 'cause I was the  
6       dude that done the robbery. Told me to lay down in the  
7       street. Then they put handcuffs on me, put me in the  
8       police car, and called in on me. And then come to find  
9       out, you know, my brother had identified me because I was  
10      in back of the police car with handcuffs on.

11      Q.   Now you said you got your wallet stolen; is that  
12      right?

13      A.   Yes, ma'am.

14      Q.   Did you see your wallet again?

15      A.   Yes, ma'am. When the officer gave it to me at the  
16      station.

17      Q.   The officers gave it to you back that night?

18      A.   Yes, ma'am. My ID was peeled off. They peeled my ID  
19      off of it.

20      Q.   Do you have identification in your wallet?

21      A.   Yes, ma'am. I had my ID and Northern -- Northern  
22      Equipment where I -- where I work at and my social security  
23      number and my baby and daughter pictures in there, and  
24      twenty-four others.

25      Q.   And your social security card?

EVERETT WILLIAMS: DIRECT BY MS. MILLER  
CROSS BY MR. JAMIESON

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1 A. Yes, ma'am.

2 Q. All right.

3 MS. MILLER: The Court's indulgence, Your Honor.

4 (PAUSE.)

5 A. Ma'am?

6 Q. Do you see the person in the courtroom who had the gun  
7 up against your head?

8 A. Yes, ma'am.

9 Q. Would you point to him, please?

10 (WITNESS COMPLIED.)

11 MS. MILLER: Please note that he's pointing to the  
12 Defendant Randy Mitchell.

13 (WHEREUPON: THE WITNESS IDENTIFIES THE DEFENDANT.)

14 A. Yes, ma'am.

15 Q. Please answer any questions Mr. Jamieson has for you.

16 A. Yes, ma'am.

17 CROSS EXAMINATION

18 EVERETT WILLIAMS BY MR. JAMIESON:

19 Q. Mr. Williams, my name is Philip Jamieson. I represent  
20 Randy Mitchell. How are you doing today?

21 A. Sir, I couldn't hear you. You've got to come up. I  
22 couldn't hear you.

23 Q. Oh, you can't hear me? All right, I'll speak up. I  
24 was having a little trouble hearing you.

25 I said, how are you doing today?

EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 A. All right, sir.

2 Q. Good.

3 Which person -- what did the -- Who had the handgun,  
4 and who had the shotgun?

5 A. Well, the short one -- the short one had the shotgun.  
6 He came behind the tall one. The tall one come in the  
7 house first. Like the dude pushed and I was fixen to open  
8 the door. He told me, "Sit down." He put the gun inside  
9 my head.

10 Q. So the short person had the shotgun?

11 A. Yeah.

12 Q. And the tall person had a handgun?

13 A. Yes, sir.

14 Q. Did you give a statement to the police the night that  
15 all this occurred?

16 A. Yes, sir.

17 Q. Do you remember telling them something completely  
18 different than that?

19 A. Yes, sir. I said the tall one had the -- the tall one  
20 had the gun inside my head.

21 Q. Did you tell them that the short guy had dread locks?

22 A. Yes, sir.

23 Q. And did you tell them that the tall guy had the  
24 shotgun?

25 A. No, I said, I said the tall one had the handgun inside

EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 my head. I can remember. That's what I'm saying. He told  
2 me to sit down, went in my back pocket and took my money  
3 out.

4 Q. But did you tell them that the short person had dread  
5 locks?

6 A. Yes, sir.

7 Q. And that he had a shotgun?

8 A. Yes, sir.

9 Q. Now you say that the robbers took your wallet; is that  
10 right?

11 A. He did.

12 Q. Did you have any money in that wallet?

13 A. Yes, sir. I had \$24 dollars.

14 Q. \$24 dollars. Did you get that money back?

15 A. Yes, sir.

16 Q. Do you remember in a previous trial that you testified  
17 you had a lot more money than that in your wallet?

18 A. No, sir. I say -- uh-uh, I say \$24 dollars. That's  
19 all I can recall.

20 Q. Is this your name right here, sir, Everett Williams?

21 A. Yes, sir. I ain't got my reading glasses on.

22 Q. I have the same problem. If I don't have reading  
23 glasses, I can't see a thing. Do you want to try mine?

24 A. I see. They might be too strong for me.

25 Q. Well, I doubt it. Does that help? Too strong? I

EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 guess I'm blinder than I thought. Have you got some  
2 glasses somewhere you can get your hands on? Are they in  
3 the courtroom?

4 A. No, I got them at the house.

5 Q. You can't read without glasses?

6 A. No, sir.

7 Q. Okay. Well --

8 A. Anytime I read -- you know without my glasses thee  
9 words come together.

10 Q. Yeah, they do that for me too. That's getting old.

11 But do you remember that you testified at another  
12 trial?

13 A. That's been two years ago.

14 Q. Another hearing? It's been a while back, but you  
15 testified at another hearing; is that right?

16 A. Yes, sir.

17 Q. And can you see your name? Can you see that, that's  
18 your name right there, Everett Williams?

19 A. Yeah, I can see some of it, yeah.

20 Q. And you know that when you're in a trial, there's a  
21 lady taking down what you say just like this lady's doing?

22 A. Yes, sir.

23 Q. And the person asked you a question at that time and  
24 said if you had any money in your wallet. Do you remember  
25 them asking you that?



EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 A. Yes, sir.

2 Q. And your answer was, "Yeah, he took my wallet. I had  
3 \$400 dollars in my wallet."

4 A. I say -- I say \$24. I say \$24. I didn't say no Four  
5 Hundred. I say Twenty-four.

6 Q. But you can't read this to tell me whether that's what  
7 it says in this book?

8 A. No, sir.

9 Q. Okay.

10 A. I say Twenty-four.

11 Q. So do you have any idea why you would have told -- why  
12 the testimony that was taken down would have been Four  
13 Hundred Dollars?

14 A. No, sir. I didn't -- I didn't say -- I say \$24 -- I  
15 say \$24 dollars.

16 Q. Did you get Four Hundred Dollars back?

17 A. No, I got my Twenty-four Dollars back. I didn't get  
18 no Four Hundred Dollars. I'm telling the God's truth.

19 Q. What was going on at your house that day that  
20 everybody was there?

21 A. We were going to cook on the grill. We had chipped in  
22 together to put something on the grill and watch the  
23 football game. And me and Kenny and Charles and Mr. Allen  
24 and Otis. And we was going sit down and watch the football  
25 game because it hadn't got dark outside. I -- we -- we

EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 know -- we drunk some beer. I went to church that Sunday  
2 morning. We drunk some beer, then we were going to wait  
3 until the game come on. I said man it's getting dark  
4 outside I mean they cook on the grill now. They say, "No,  
5 we might be saving it to another day." Then we go on in  
6 the house. Then I heard -- we sat down. We never -- then  
7 we heard the law. Somebody was trying to break in the door  
8 like boom, boom, boom.

9 Q. Let me slow you down. I don't want you to go through  
10 the whole thing again. I just want to ask you some  
11 questions.

12 So you say, "We were drinking beer." Does that mean  
13 you were drinking beer?

14 A. Yes, sir.

15 Q. How much beer did you drink?

16 A. I drink one beer a day.

17 Q. One beer all day?

18 A. Yes, sir.

19 Q. You're not a very heavy drinker; are you?

20 A. No, sir.

21 Q. So after this incident occurred, you ran outside; is  
22 that right?

23 A. Yes, sir.

24 Q. And the police arrested you?

25 A. Yes, sir.

EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 Q. And they thought you were the robber; is that right?

2 A. Yes, sir.

3 Q. But they let you go at some point?

4 A. Yes, sir. My brother had identified me. They had me  
5 -- put them dots across my chest I had to lay down.

6 Q. Well, that was probably a smart thing to do.

7 MR. JAMIESON: I beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (PAUSE.)

10 MR. JAMIESON: I beg the Court's indulgence, one  
11 second.

12 (PAUSE.)

13 Q. I know you told me earlier that you have some trouble  
14 seeing without glasses. Can you see this signature right  
15 down here?

16 A. I see -- I see my scribblin...

17 Q. And is that your name?

18 A. Yes, sir, right here.

19 Q. And do you recognize that as your signature?

20 A. Yes.

21 Q. Okay.

22 MR. JAMIESON: Your Honor, this has been marked as  
23 State's Exhibit Two. I'd ask that that be moved into  
24 evidence.

25 THE COURT: Any objections?

EVERETT WILLIAMS: CROSS BY MR. JAMIESON .

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1 MS. MILLER: None, Your Honor.

2 THE COURT: Without objection, the same is moved into  
3 evidence.

4 (WHEREUPON: DEFENDANT'S EXHIBIT NUMBER TWO IDENTIFIED  
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 MR. JAMIESON: I beg the Court's indulgence one  
7 moment.

8 THE COURT: Yes, sir.

9 (PAUSE.)

10 Q. You gave a statement to the police that night; is that  
11 correct?

12 A. Sir?

13 Q. I said, you gave a statement to the police that night;  
14 is that correct?

15 A. Yes, sir.

16 Q. And it's been two years since that time; is that  
17 correct?

18 A. Yes, sir.

19 Q. It would be fair to say that your memory was better  
20 then than it is now about that event right after it  
21 happened?

22 A. No, sir.

23 Q. So you remember now better than you could then?

24 A. Well...

25 Q. Am I confusing you?

EVERETT WILLIAMS: CROSS BY MR. JAMIESON

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1 A. No. I don't understand your question.

2 Q. Okay well, let's continue. Was your memory -- is your  
3 memory of what happened, was it better right after it  
4 happened, or is it better now?

5 A. It's -- I remember some of it, you know what I'm  
6 saying.

7 Q. I beg your pardon?

8 A. Yeah.

9 Q. All right. Thank you, sir.  
10 Nothing further.

11 MS. MILLER: Nothing further, Your Honor.

12 THE COURT: You may step down, sir. Thank you for  
13 being here.

14 (WITNESS LEAVING WITNESS STAND.)

15 THE COURT: Do you anticipate the next witness being a  
16 like length?

17 MS. MILLER: It will be about like -

18 THE COURT: That took about -- that probably took less  
19 than 10 minutes.

20 MS. MILLER: Okay.

21 THE COURT: If so, let's go ahead and take your last  
22 witness from the scene.

23 MS. MILLER: The State calls Ronnie Adams.

24 (WHEREUPON: RONNIE ADAMS, BEING  
25 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

RONNIE ADAMS: DIRECT BY MS. MILLER

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1

DIRECT EXAMINATION

2

RONNIE ADAMS BY MS. MILLER:

3

Q. Can you tell us what your name is?

4

A. Ronnie Adams.

5

Q. And where do you live, Ronnie?

6

A. 323 -- wait, I got to get it right.

7

Q. Do you live in Rock Hill?

8

A. Yeah, in Rock Hill, yeah.

9

Q. Okay, that's good enough.

10

Do you know Kenny Williams and Everett Williams?

11

A. Yeah, I go there every Sunday, you know, to watch a

12

football game with them.

13

Q. And on October 3rd of 2010, were you at their house  
that day?

15

A. Yes, ma'am.

16

Q. What were y'all doing that day?

17

A. I didn't hear you?

18

Q. What were you doing that day?

19

A. I was sitting there watching the football game.

20

Q. Did anything unusual happen that night?

21

A. Yes.

22

Q. Would you tell us about that?

23

A. I was sitting, facing the TV watching the game and --

24

Q. Who was in there with you?

25

A. It was Everett Williams, Kenny Williams, and -- I

RONNIE ADAMS: DIRECT BY MS. MILLER

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1 can't think of the other one name.

2 Q. Another fellow. Okay. So you're watching the  
3 football game?

4 A. Yes, ma'am.

5 Q. What happened?

6 A. Two guys come in the door and -- and they were waving  
7 the gun, talking about "Don't nobody move. You know -- you  
8 know what time it is. Don't nobody move. You know what  
9 time it is," you know what I'm saying.

10 Q. Now there were two people?

11 A. There was two.

12 Q. There were two people?

13 A. It was two.

14 Q. And tell us about the first guy you saw. What -- Did  
15 he have anything in his hand?

16 A. That first guy?

17 Q. Yes.

18 A. Had a -- a revolver in his hand.

19 Q. And what else -- You said there were two guys. What  
20 about the second guy?

21 A. The second guy had a sawed-off shotgun in his hand,  
22 then he had a white T-shirt on and a do-rag covering his  
23 face.

24 Q. What happened when they came in? They were yelling,  
25 "You know what time it is."

RONNIE ADAMS: DIRECT BY MS. MILLER

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1 A. Yeah, "You know what time it is. You know what time  
2 it is" you know. And after that the -- the short guy went  
3 back there in the room where Kenny was -- and the other  
4 guy, he was still in the room, waving the handgun around  
5 saying, "Y'all know what time it is. Don't nobody move."

6 Q. What did he do while he was in that TV room?

7 A. Well I was getting -- getting ready to get up in order  
8 to use the restroom -- and he said, "Sit down, old man.  
9 Sit your old ass down. You know what time it is."

10 Q. What else did he do?

11 A. At that point of time, you know, he was talking to the  
12 guy that was in the back, and he told the guy in the back,  
13 you know, "Is everything all right back there?" And the  
14 guy told him, "Yeah, everything's all right," you know. So  
15 when he come out -- he told Kenny Williams, you know, "You  
16 get over there, and you sit down on that old man's lap."  
17 So he told him, he say "Well, I ain't sitting on no man's  
18 lap," you know, something like that.

19 Q. And what else happened?

20 A. After that, he kept saying -- the rest of it, I  
21 couldn't remember all of it. You understand that. I say,  
22 I can't remember all of that.

23 Q. Well, did you -- did he take anything from you?

24 A. Well, my wallet got missing, but I never -- I never  
25 did get that back, you know.



RONNIE ADAMS: DIRECT BY MS. MILLER

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1 Q. How did it get missing? Did he take it?

2 A. Well -- well, when he was throwing things around in  
3 the house -- something, you know, like papers out of their  
4 pockets and stuff -- they throwing stuff in the house. I  
5 don't know what --

6 Q. What -- they were -- he was throwing papers out from  
7 where?

8 A. From -- from different -- different one of them  
9 pockets, you know, and stuff.

10 Q. Through their pockets? He went through their pockets?

11 A. Yeah.

12 Q. And was he taking things from their pockets?

13 A. Yeah.

14 Q. He was taking things from their pockets?

15 A. Yeah.

16 Q. And this is the guy with the pistol?

17 A. Yeah.

18 Q. Did they do -- Did he do anything else before he left?

19 A. Not that I could remember.

20 Q. Did you hear anything loud?

21 A. When the -- when the short guy, you know, come out,  
22 and all that stuff, he headed toward the door, you know.  
23 He said, "Come on, man, let's go. Let's go. Let's go" --  
24 look like that. Then he went out, and but the one with the  
25 pistol, he was -- he stayed in there, you know and stuff.

RONNIE ADAMS: DIRECT BY MS. MILLER  
CROSS BY MR. JAMIESON

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1 So he started toward the door. He turned around and say,  
2 -- shot up in the ceiling. Then he say, "Don't nobody come  
3 out. Don't nobody come out," and all that stuff. So after  
4 that, you know, the rest of it were point blank. I  
5 couldn't remember the rest of it.

6 Q. All right. Please answer any questions that Mr.  
7 Jamieson has for you.

8 A. Okay.

9 CROSS EXAMINATION

10 RONNIE ADAMS BY MR. JAMIESON:

11 Q. Mr. Adams, --

12 A. Excuse me. Sir, you'll have to come a little close to  
13 me. I can't hear you.

14 Q. I'll be glad to.

15 My name is Philip Jamieson. I represent Mr. Mitchell.  
16 Can you hear me okay?

17 A. All right.

18 Q. How long had you been at the house on Hickory Lane  
19 that day?

20 A. I had been in there just about all day, you know. I  
21 come over there early in the morning, you know, and hang  
22 around with them, you know.

23 Q. And what were y'all doing that day?

24 A. At that time?

25 Q. Yes, sir.

RONNIE ADAMS: CROSS BY MR. JAMIESON

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- 1 A. We were sitting there talking and watching the  
2 football game.
- 3 Q. Was everybody drinking?
- 4 A. Huh?
- 5 Q. Was everybody drinking?
- 6 A. No.
- 7 Q. Not everybody was drinking?
- 8 A. Uh-uh.
- 9 Q. Were you drinking?
- 10 A. No.
- 11 Q. You don't drink?
- 12 A. Yeah, I drink.
- 13 Q. You just wasn't drinking that day?
- 14 A. Huh?
- 15 Q. You just weren't drinking that day?
- 16 A. I had already had a few drinks before I got there,  
17 yeah, yeah.
- 18 Q. But you didn't drink anything there?
- 19 A. No, uh-uh.
- 20 Q. Do you remember this incident real well?
- 21 A. I can't hear you.
- 22 Q. Do you remember this real well?
- 23 A. I can remember some of it, not all of it.
- 24 Q. It happened pretty quick?
- 25 A. Yeah, it was -- it was -- it was sort of like, fast.

RONNIE ADAMS: CROSS BY MR. JAMIESON

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1 Q. Yes, sir. Like a blur, kind of?

2 A. Huh?

3 Q. Like a blur, kind of?

4 A. I can't understand you.

5 Q. It doesn't matter.

6 You were scared?

7 A. Oh, yeah.

8 Q. Paying attention to the guns more than anything?

9 A. I didn't hear you.

10 Q. Were you paying attention to the guns more than  
11 anything?

12 A. Yeah, yeah because they kept waving it around. And  
13 the one had the shotgun, you know, he kept fumbling with  
14 his, you know. You know, I...

15 Q. That's enough to make anybody nervous?

16 A. Huh?

17 Q. That's enough to make anybody nervous.

18 A. I can't understand you.

19 Q. That's all right.

20 The other guy had a revolver? Is that what you said?

21 A. I'm -- the one with the dread locks had the revolver.

22 Q. Okay.

23 A. And the one with the white T-shirt on, the short guy,  
24 you know, he had the shotgun, yeah.

25 Q. Did they take anything from you?

RONNIE ADAMS: CROSS BY MR. JAMIESON

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1 A. No, but my wallet got missing; that's all.

2 Q. You never did get that back?

3 A. I didn't have no -- I didn't have no money or nothing  
4 in it, no.

5 Q. Okay. Did -- The night this happened, did the police  
6 ever ask you to identify anybody?

7 A. I can't understand you.

8 Q. The night that this happened ---

9 A. Uh-huh.

10 Q. --- did the police show you anybody and ask you if you  
11 recognized them?

12 A. No, sir, no.

13 Q. Did they ever show you any pictures of anybody?

14 A. No.

15 Q. Did they ever have a lineup where people were in line,  
16 and you got to look at somebody and pick them out?

17 A. No, sir, no.

18 Q. All right. Hang on just a minute.

19 A. All right.

20 (PAUSE.)

21 MR. JAMIESON: No further questions, Your Honor.

22 MS. MILLER: None from the State, Your Honor.

23 THE COURT: All right. Thank you.

24 All right, sir, you may step down. Thank you for  
25 being here. I appreciate it.

1 (WITNESS LEAVING WITNESS STAND.)

2 THE COURT: All right, ladies and gentlemen, we're  
3 going to take a break for lunch now. I'm going to ask you  
4 to be back at 2:30. Please don't discuss the case. By my  
5 count, we've got probably four or five witnesses left from  
6 the State, about half-an-hour a piece. So we'll try to  
7 wrap that up this afternoon when we get back from lunch.  
8 You all enjoy your lunch.

9 (JURY EXITS COURTROOM AT 01:15 PM.)

10 MS. MILLER: Your Honor, could we ask that Mr. Adams  
11 and Mr. James be -- Mr. Everett Williams be excused?

12 THE COURT: Yes, ma'am.

13 Any objection?

14 MR. JAMIESON: No objection at all.

15 THE COURT: Okay, without objection, no problem.

16 MS. MILLER: If you'll just wait a minute, I'll  
17 take -- get your right up.

18 THE COURT: We'll break for lunch. Anything we need  
19 to put on record before we take lunch?

20 MR. JAMIESON: Not from the Defense, Your Honor.

21 THE COURT: They gonna have the same fare on the menu  
22 at 1:30 as they do at 11:30 at Italian Garden?

23 MS. MILLER: Yes, sir, they will.

24 MR. JAMIESON: We're back at?

25 THE COURT: 2:30.

26 MR. JAMIESON: 2:30.

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1 (COURT IN RECESS AT 01:16 PM.)

2 (COURT BACK IN SESSION AT 2:33 PM.)

3 THE BAILIFF: Come to order.

4 THE COURT: Take your seats, ladies and gentlemen.  
5 Take your seats.

6 We have all of our jurors. Are you ready to bring  
7 them in?

8 MS. MILLER: We are, Your Honor. And this is my next  
9 witness. So I just had him sit -

10 THE COURT: Oh, that's fine.

11 MS. MILLER: Is that okay?

12 THE COURT: I thought that, that would probably be the  
13 case. Is that the gazelle? Do you know you were  
14 characterized as a gazelle?

15 (JURY REENTERS COURTROOM AT 02:35 P.M..)

16 THE COURT: Welcome back, ladies and gentlemen.

17 Ms. Miller, I believe its your case.

18 MS. MILLER: Your Honor, if it please the Court, the  
19 State calls Officer Rowe.

20 THE COURT: Okay.

21 MADAME CLERK: Sir, please raise your right hand,  
22 place your left hand on the Bible.

23 (WHEREUPON: OFFICER CHRISTOPHER

24 ROWE, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS

25 FOLLOWS:)

26 DIRECT EXAMINATION

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 OFFICER CHRISTOPHER ROWE BY MS. MILLER:

2 Q. Could you state your name for the record?

3 A. Christopher Edward Rowe.

4 Q. And where are you employed?

5 A. Rock Hill Police Department.

6 Q. And how long have you been there?

7 A. Approximately two years.

8 Q. And were you employed with the Rock Hill Police  
9 Department on October 3rd of 2010?

10 A. Yes, ma'am, I was.

11 Q. And were you on duty that night?

12 A. Yes, ma'am, I was.

13 Q. And were you in the Boyd Hill area at some point?

14 A. Yes, ma'am. At then, we were conducting directed  
15 patrol in the area of Boyd Hill.

16 Q. Tell us what y'all were doing.

17 A. Yes, ma'am. We were tasked by our patrol lieutenant,  
18 Lieutenant Don Doster to conduct directed patrol in the  
19 area of Boyd Hill. It's basically a reduction to try to  
20 reduce crime in a particular area.

21 Q. I'm going to ask you to slow down just a little  
22 bit ---

23 A. Yes, ma'am.

24 Q. --- for the court reporter.

25 And so you were working out there. Tell us --



OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 anything come up while you were out there working?

2 A. I was with Officer Rivera or Sergeant Rivera, at the  
3 time we were working with a two-man vehicle. We  
4 encountered an intoxicated male subject on Berry Street  
5 just off of Castle, at which point we further investigated.  
6 We didn't have any warrants or anything of that nature.  
7 However, he did have drug paraphernalia on him, and he  
8 advised us that he had recently purchased narcotics from a  
9 residence on Hickory Lane.

10 Q. Was he specific about which residence?

11 A. Yes, ma'am. He stated the second or third house on  
12 Hickory Lane from Crosby.

13 Q. And with that information, what did you do?

14 A. Yes, ma'am. At that time, Officer Rivera at the time  
15 relayed the information back to Lieutenant Doster. And the  
16 information that we had gotten from the gentleman, at which  
17 point Lieutenant Doster directed us to conduct surveillance  
18 in the area of Hickory Lane to further investigate the  
19 possible sales of drugs.

20 Q. Did you get to Hickory Lane?

21 A. Yes, ma'am, we did.

22 Q. Tell us what you did there, and slow down a little  
23 bit.

24 A. All right. Once we got to -- we parked just on Bynum  
25 Avenue and walked in on foot, myself, Officer Rivera,

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 Officer Hammond, and Officer Watson. We walked in, and we  
2 took a position behind 534 Crosby Street. There was a  
3 street lamp at the corner that provided some shadow behind  
4 the residence where we had concealment where no one would  
5 see us. We stood there.

6 While standing there, we observed a black male subject  
7 walk down Hickory Lane, at which point I looked back at the  
8 residence, which would be the second house on Hickory  
9 Street -- or Hickory Lane. I apologize. I looked back at  
10 the house and observed a black male wearing a white T-shirt  
11 and blue jeans enter the residence. He was later  
12 identified as Mr. Crawford.

13 Q. And what happened next?

14 A. Once Mr. Crawford entered the residence, he walked  
15 into the residence; walked back to the doorway; looked  
16 around outside; didn't come back, actually out the house,  
17 but looked out the door. Then went back -- walked further  
18 into the house where I could no longer see him.

19 Shortly thereafter, Mr. Crawford exited the residence,  
20 made it approximately 30 foot outside the residence, at  
21 which point I observed a muzzle-blast from what appeared,  
22 or what I thought to be a shotgun.

23 Shortly after the shotgun blast, Mr. -- a black male  
24 wearing a black shirt and blue jeans and long dread locks,  
25 later identified as Randy Mitchell, exited the residence.

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1           At that time, myself, Officer's Watson, Rivera, and  
2           Hammond were slowly moving toward the individuals coming  
3           out. At the time of the gun blast, we identified ourselves  
4           as Rock Hill Police officers, at which point both Mr.  
5           Mitchell and Mr. Crawford fled on foot.

6           Q.   And we've got an aerial view up here ---

7           A.   Yes, ma'am.

8           Q.   --- of State's Exhibit One.

9           A.   Yes, ma'am.

10          Q.   If you could tell the jury where you started, and ---

11          A.   Yes, ma'am.

12          Q.   --- take us through your chase.

13          A.   Hickory Lane runs into Crosby Street somewhere here.  
14          It's off the map here. We walked in on foot down to the  
15          corner house of Hickory Lane and Crosby. And this is about  
16          the area that we were standing that night. This is the  
17          second house on Hickory Lane, the second and third house.  
18          These are the houses I would believe to be selling  
19          narcotics, at which point, the black male walked down the  
20          street. Once we -- I realized that he didn't see me or us  
21          standing there, I brought my attention back to the rear  
22          door of the house here, which is when I saw Mr. Crawford  
23          enter the residence.

24          Q.   Let's get to the shotgun blast.

25          A.   Very well.

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 Q. Let's move along.

2 A. All right. Once I entered the residence, Mr. Crawford  
3 was about in this area here.

4 (WITNESS INDICATED ON EXHIBIT.)

5 A. He was about 30 feet away. It looks a little  
6 different on the map here, but about 30 foot away from  
7 where we were. Mr. Mitchell had just exited the residence,  
8 which when we identified ourselves as Rock Hill police  
9 officers, they fled on foot.

10 Q. Now were you back in that corner when you said that?

11 A. We had started moving forward. As soon as they  
12 started coming out the house, we had, kind of, slowly crept  
13 up so that we can close the distance.

14 Q. Okay.

15 A. When they began to flee, they fled between the two  
16 houses toward Crosby Street, turned and ran directly down  
17 Crosby Street until nearing the corner of Crosby and  
18 Calhoun Street.

19 Q. And what happened there?

20 A. Once they got near the corner of Crosby and Calhoun,  
21 Mr. Crawford ran straight down Crosby Street into a house  
22 somewhere in this area. Mr. Mitchell ran to the left  
23 cutting behind the house at the corner of Crosby and  
24 Calhoun, just about in this area.

25 Q. And where were you?

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 A. I was behind him until he turned behind the residence.  
2 It was very dark behind the residence, and for officer  
3 safety I wasn't going to run back into a dark area not  
4 knowing whether he had a gun or not, at which point I  
5 decided I was going to go in front of the residence to try  
6 to cut him off if he were to come in between the houses.  
7 And due to the fact that there was a dog in the backyard of  
8 this, that began barking when we turned the corner, I felt  
9 that Mr. Mitchell would also run this way.

10 I then came down Calhoun Street. Mr. Mitchell did  
11 not. He continued running behind the houses here. I  
12 continued down until about this area right in here. And I  
13 shined my flashlight down in the wood lines, at which point  
14 I identified a black male subject wearing a black shirt,  
15 black jeans, long dread locks, within the wood lines, at  
16 which point I re-identified myself as a Rock Hill police  
17 officer and began pursuing him into the wood line. It was  
18 very thick, and there was a lot of underbrush in the wood  
19 line. At that point, when Mr. Mitchell entered the wood  
20 lines, he fell to the ground, at which point we  
21 closed -- closed the distance there. Mr. Mitchell got back  
22 up, continued to flee. He then fell again at which point  
23 we were on top of him. Officer Rivera arrived shortly  
24 thereafter after I went hands-on with Mr. Mitchell, and we  
25 apprehended Mr. Mitchell.

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 Q. And what did you do with him at that point?

2 A. Once we had apprehended Mr. Mitchell, we walked him  
3 back up to the roadway to Calhoun Street where Officer Reid  
4 was standing by with his patrol vehicle to transport him to  
5 the police department.

6 Q. And what -- Did you search him at that point?

7 A. Yes, ma'am. We conducted a pat-down of Mr. Mitchell's  
8 persons to ensure that he didn't have any weapons on him,  
9 during which several artifacts were found on his persons  
10 that were logged into evidence by myself.

11 Q. If I hand you that evidence log, will it refresh your  
12 memory?

13 A. Yes, ma'am.

14 Q. What items did you take off of him when you patted him  
15 down?

16 A. Yes, ma'am. I filled out two evidence sheets that  
17 showed that at 21:51 hours, I seized one black bag, one  
18 Cricket cell phone, one Virgin mobile cell phone, one cell  
19 phone with charger, two keys on a ring, a pair of black  
20 gloves, and a cell phone case on Mr. Mitchell's persons in  
21 the 1100 block of Calhoun Street.

22 Q. Okay.

23 A. The second evidence inventory sheet shows that I also  
24 seized one pack of green Seneca cigarettes and one cell  
25 phone and a brown case at 21:54 hours. Those were also on

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 Mr. Mitchell's persons in the 1100 block of Calhoun Street.

2 Q. And those were the items that you found on him when  
3 you patted him down?

4 A. That's correct. Yes, ma'am.

5 Q. I'm going to show you what's been marked as State's  
6 Exhibit Twenty-seven.

7 A. Yes, ma'am.

8 Q. I just want to know if you recognize it? I need to  
9 show this to Mr. Jamieson.

10 A. Yes, ma'am. It's a Rock Hill evidence bag showing  
11 that the --

12 Q. I just want to know if you recognize it.

13 A. Yes, ma'am.

14 Q. Okay.

15 (DEFENSE ATTORNEY REVIEWING EXHIBIT.)

16 Q. And what is this?

17 A. Yes, ma'am. These are the items that I retrieved off  
18 of Mr. Mitchell's persons in the 1100 block of Calhoun  
19 Street.

20 Q. And pull those out for us.

21 MS. MILLER: Well actually, at this point, Your Honor,  
22 I'd ask that -- let me see the number again. If I -- if  
23 the State would move to introduce State's Twenty-seven?

24 THE COURT: Any objections, sir?

25 MR. JAMIESON: No.

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 THE COURT: Without objection; the same is moved into  
2 evidence.

3 (WHEREUPON: STATE'S EXHIBIT NUMBER TWENTY-SEVEN  
4 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

5 Q. Now I notice you're taking things out of that bag.

6 A. Yes, ma'am. They were not found in this bag. All the  
7 items were found individually on Mr. Mitchell's persons. I  
8 remember placing these items inside the bag that night so  
9 that I would have something to keep them -- keep them  
10 there.

11 Q. And what --

12 A. It was one pair of black gloves, one cell phone  
13 charger, one black cell phone case, a Cricket cell phone,  
14 two keys on a ring, and a black bag.

15 Q. And, now you mentioned that you took a Virgin mobile  
16 cell phone off of him.

17 A. That's correct.

18 Q. What happened to the Virgin mobile cell phone?

19 A. I believe it was returned to Mr. Ellis, the victim and  
20 owner of the cell phone.

21 Q. The green Seleca -- Seneca cigarettes?

22 A. Those were also returned to the victim.

23 Q. Okay.

24 MS. MILLER: Your Honor, I think we need to approach  
25 for a moment.



OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 THE COURT: Sure, come on.

2 (BENCH CONFERENCE OFF THE RECORD OUT OF THE HEARING OF  
3 THE JURY AT 02:45 P.M..)

4 MS. MILLER: Your Honor, the State would move into  
5 evidence State's Exhibit Twenty-three and Twenty-two.

6 THE COURT: Have you asked him about the information?

7 MS. MILLER: Yes, Your Honor.

8 THE COURT: You did?

9 MS. MILLER: Yes.

10 THE COURT: Any objection, sir?

11 MR. JAMIESON: I do object to Item Number Twenty-  
12 three, Your Honor.

13 THE COURT: Good enough. I respectfully deny the  
14 objection, overrule the objection, and allow it to be put  
15 into evidence.

16 (WHEREUPON: STATE'S EXHIBIT NUMBERS TWENTY-TWO AND  
17 TWENTY-THREE IDENTIFIED AND MARKED, RECEIVED INTO  
18 EVIDENCE.)

19 Q. What else did you do after you patted him down and got  
20 the things out of his pocket?

21 A. Yes, ma'am.

22 Q. What did you do then?

23 A. Yes, ma'am. Once we conducted a pat-down of Mr.  
24 Mitchell's persons, we placed him into Officer Reid's  
25 patrol car, and he was transported to the police

OFFICER CHRISTOPHER ROWE: DIRECT BY MS. MILLER

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1 department. After that I conducted a walk of the area  
2 which we believe Mr. Mitchell ran behind the residences on  
3 Calhoun Street, at which point we found -- located a silver  
4 in color handgun and a wallet. I'm not sure what color it  
5 was. But a wallet behind the house right in this area, in  
6 the same area that Mr. Mitchell had ran. At which point, I  
7 stayed with that piece of evidence until it was collected  
8 by George Weeks.

9 Q. And what else did you do?

10 A. Waiting until George Weeks collected that piece of  
11 evidence, and that was the last -- last thing that I did.

12 Q. Did you have any contact with Mr. Crawford?

13 A. No, ma'am.

14 Q. I'm going to hand you something and ask you if it  
15 refreshes your memory.

16 A. Okay.

17 (WITNESS REVIEWED ITEMS.)

18 A. This is a pair of black gloves that I recovered at  
19 21:51 hours from Gregory Crawford.

20 Q. Do you recall that?

21 A. No, ma'am. I do not.

22 MS. MILLER: The Court's indulgence, Your Honor.

23 THE COURT: Yes, ma'am.

24 (PAUSE.)

25 Q. Please answer any questions Mr. Jamieson has for you.

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 A. Yes, ma'am.

2 CROSS EXAMINATION

3 OFFICER CHRISTOPHER ROWE BY MR. JAMIESON:

4 Q. Officer Rowe, my name is Philip Jamieson. I represent  
5 Randy Mitchell.

6 When you went to Hickory Lane that night, why did you  
7 go there?

8 A. To investigate sales of narcotics from the second or  
9 third house on Hickory Lane.

10 Q. And you testified that you stopped in a little  
11 indentation of the house, which was, from that picture looks  
12 like Hickory Lane and Crosby Street; is that right?

13 A. That is correct, yes.

14 Q. What house were you observing?

15 A. We were observing the second house, here, and possibly  
16 the third house.

17 Q. You obviously chose the vantage point that gave you  
18 the best view of that house right there; is that correct?

19 A. That's correct because if we eliminated this house,  
20 and we can move down and take a vantage point, that would  
21 give us the third house.

22 Q. So you had at least a suspicion based on a previous  
23 investigation that drugs were being sold there; is that  
24 right?

25 A. Yes, sir. At either the second or third house.

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 Q. And what were the conditions during the time you were  
2 there; was it dark?

3 A. Yes, sir. It was dark. Yes, sir.

4 Q. Very dark?

5 A. It was nighttime. There was a street lamp at the  
6 corner of Hickory and Crosby Street, here that shed the --  
7 or, excuse me, cast the shadow on the back of the house,  
8 and then there was lighting at the back door of the  
9 residence.

10 Q. Was that the only light?

11 A. Yes, sir. That I can recall.

12 Q. So when the individual that had the white T-shirt on  
13 came out of the house, did you see a shotgun in his hand?

14 A. No, sir.

15 Q. Did you see anything in his house?

16 A. No, sir. I don't recall seeing anything.

17 Q. When the other individual came out, did you see a --  
18 anything in his house?

19 A. I don't recall seeing anything. No, sir.

20 Q. Let me back you up just a little bit. You said there  
21 was an individual who walked down Hickory Lane before this  
22 incident occurred.

23 A. That's correct.

24 Q. What did that person look like?

25 A. He was a black male. I would say middle-aged male,

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 medium-height. I didn't really look at him for too long.

2 I noticed him out the left-side of my eye. I looked at

3 him, and then I turned my perspective back to the house.

4 Q. Can you tell us anything else about him?

5 A. No, sir.

6 Q. So when the two individuals that came out of the

7 residence ran, you pursued them; is that correct?

8 A. Yes, sir.

9 Q. And do you know where you were in the mix? Were you  
10 at the front, in the back, or in the middle?

11 A. I would have been -- I passed Officers Rivera and  
12 Hammond as we were running up Crosby Street. But I was  
13 behind Officer Watson.

14 Q. And I believe your testimony was that you went around  
15 in front of the first house?

16 A. Yes, sir.

17 Q. And the second house?

18 A. Yes, sir.

19 Q. And then went further down and looked into the wood  
20 lines; is that correct?

21 A. Yes, sir. That's correct.

22 Q. So you lost sight of the person that was running for  
23 some period of time; is that correct?

24 A. Yes, sir. It was a brief period of time. We were  
25 running pretty fast.

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 Q. And it was also dark in that area I take it?

2 A. Yes, sir.

3 Q. And when you saw Mr. Mitchell in the wood line, where  
4 was Officer Rivera at that time?

5 A. Somewhere behind me. I'm not sure. I couldn't  
6 testify to where he was standing at the time.

7 Q. Describe the area in which you first saw Mr. Mitchell.

8 A. Are you referring to the house on Hickory Lane?

9 Q. No, sir. I'm ---

10 A. In the wood line?

11 Q. When you saw him pass these two house on --

12 A. Yes, sir. The area here?

13 Q. Yes, sir.

14 A. It's a vacant lot. It just has grass in it. I would  
15 say no more than knee-high. And then as you enter the wood  
16 line back in this area, it's real thick, vegetation, kudzu,  
17 stuff of that nature.

18 Q. And that's where you noticed Mr. Mitchell?

19 A. Yes, sir. As I turned and shined my flashlight into  
20 the wood line, Mr. Mitchell was just turning to enter the  
21 wood line.

22 Q. And of course, you didn't know what his name was at  
23 that time?

24 A. No, sir. I just knew he was a black male with long  
25 dread locks and a black shirt and black pants.

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 Q. And you say the underbrush was real thick in that  
2 area?

3 A. Yes, ma'am -- yes, sir.

4 Q. Everybody was having a lot of difficulty moving  
5 through there; is that correct?

6 A. Once we entered the wood line. Yes, sir.

7 Q. So you helped secure Mr. Mitchell at that point?

8 A. Yes, sir.

9 Q. Did you conduct any further search of that area?

10 A. Yes, sir. As I testified to earlier, once we placed  
11 Mr. Mitchell into Officer Reid's patrol car, we backtracked  
12 and walked the area, which we thought that he had ran  
13 because we know he didn't run down Calhoun Street because  
14 obviously I was there. So it would have had to have been  
15 back behind these houses. So we walked back down, and they  
16 walked the path. That's when we located the other  
17 evidence.

18 Q. I guess I didn't answer my -- ask my question very  
19 clearly.

20 A. Yes, sir.

21 Q. Did you search that wooded area where he was captured?

22 A. Yes, sir. We backtracked from where we located Mr.  
23 Mitchell back to where we found the piece of evidence. And  
24 then obviously somebody had to stay there with it until it  
25 was collected.

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 Q. Did you do that at -- immediately, or did you do that  
2 after you took Mr. Mitchell out to Calhoun Street?

3 A. It was after we took him to the patrol vehicle.

4 Q. You were -- Were you the first person to reach Mr.  
5 Mitchell, or were you the second person?

6 A. The first person, sir.

7 Q. Did -- When you searched him, did you find a gun?

8 A. No, sir.

9 Q. Find any weapon of any kind?

10 A. No, sir.

11 Q. Now the items that Solicitor asked you about that's  
12 still on the desk there in front of you, Item Number  
13 Twenty-seven.

14 A. Yes, sir.

15 Q. Was that evidence of any crime?

16 A. That was property that was found on his person, and it  
17 is required by policy that we take a suspect's belongs to  
18 make sure that their -- the chain of custody is kept  
19 correctly, that's correct.

20 Q. And I guess that answered my question. They're his  
21 belongings; is that correct?

22 A. They were believed to be his belongings, some of the  
23 items were.

24 Q. As far as you know, they have never been connected to  
25 any crime; is that correct?



OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON

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1 A. Not these belongings here. No, sir.

2 Q. Now you stated that you found a pack of Seneca  
3 cigarettes; is that right?

4 A. Green, Seneca cigarettes. Yes, sir.

5 Q. Do you smoke?

6 A. I used to.

7 Q. Anything special about Seneca cigarettes?

8 A. No, sir.

9 Q. They sell them all over the place. Right?

10 A. Yes, sir.

11 Q. Anybody can buy them?

12 A. Yes, sir.

13 MR. JAMIESON: I beg the Court's indulgence, just a  
14 moment.

15 THE COURT: Yes, sir.

16 (PAUSE.)

17 Q. The Virgin mobile cell phone that you found, do you  
18 know -- do you have any independent knowledge of your own  
19 about what happened to it?

20 A. No, sir. It was returned to Mr. Ellis, but --

21 Q. Do you know --

22 A. I just know what the evidence sheet tells me.

23 Q. And do you have any independent knowledge of your own  
24 that, that was Mr. Ellis' phone?

25 A. No, sir. I do not.

OFFICER CHRISTOPHER ROWE: CROSS BY MR. JAMIESON  
OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 Q. All right. Thank you, sir.

2 A. Yes, sir.

3 Q. Nothing further.

4 MS. MILLER: No further questions of this witness,  
5 Your Honor.

6 THE COURT: Thank you, Officer. You may step down.

7 (WITNESS LEAVING WITNESS STAND.)

8 MS. MILLER: Your Honor, I ask that he -- that this  
9 officer be excused.

10 MR. JAMIESON: I have no objection.

11 THE COURT: Certainly.

12 You may be excused.

13 THE WITNESS: Thank you.

14 THE COURT: Yes, sir.

15 MS. MILLER: Officer Trey Amick.

16 MADAME CLERK: Please raise your right hand, place  
17 your left hand on the Bible.

18 (WHEREUPON: OFFICER TREY AMICK,  
19 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

20 DIRECT EXAMINATION

21 OFFICER TREY AMICK BY MS. MILLER:

22 Q. Please state your name for the record.

23 A. Treylor Amick, III.

24 Q. And where do you work?

25 A. Rock Hill Police Department.

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 Q. How long have you worked there?

2 A. Coming up on three years.

3 Q. And were you on duty on October 3rd of 2010?

4 A. I was.

5 Q. And did you have, at some point, go into the Boyd Hill  
6 area?

7 A. I did.

8 Q. And what were you doing there?

9 A. I was assisting the on-duty officers that were also on  
10 scene. I arrived late. So I really didn't do much on-  
11 scene. I was only there for a few months.

12 Q. What did you do for those -- the officers?

13 A. I was just making sure everybody was okay. And at  
14 that point, I headed back into the jail.

15 Q. And what did you do -- you headed back to what?

16 A. Back to the law center, to the -

17 Q. What did you do once you got back there?

18 A. I went into the jail to assist the officers with  
19 handling the defendants.

20 Q. Which -- And did you have any contact with the  
21 defendant?

22 A. I didn't.

23 Q. Did you have any contact with Mr. Mitchell?

24 A. I did.

25 Q. Would you tell us about that?

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 A. Once we got into the jail, we were in the front part  
2 of the jail. It's the holding area. That's where we  
3 usually un-handcuff them, take all the items out of their  
4 pockets, make sure all of their, you know -- everything is  
5 collected from them. However, the defendant was being  
6 pretty combative, cussing, just causing a scene. So we  
7 separated the two defendants, and at that point, I walked  
8 him down to the back part of the jail where we do the strip  
9 searches.

10 Q. And you went to the back part of the jail?

11 A. Correct.

12 Q. And tell us what happened there.

13 A. At that point, we asked him -- and I was waiting for  
14 another officer because we have to have two officers. And  
15 as we were walking to the little closet that we do the  
16 strip searches in, he made a hand-movement towards the  
17 large trash can that's right in front of the closet. At  
18 that point, I'd ask him what he did, and he said, "Nothing"  
19 and started rummaging through the trash can. At that  
20 point, I put him in the closet and waited for another  
21 officer to then come back there to help me with the strip  
22 search.

23 Q. And did you do the search?

24 A. We did.

25 Q. And then what happened?

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 A. At that point, we got him back to the holding cell,  
2 made sure nobody else went back to -- near the trash can or  
3 near the strip search area. And at that point, I went  
4 through the trash can to find a black wallet.

5 Q. And did you look inside the wallet?

6 A. I did.

7 Q. Who did that wallet belong to?

8 A. The victim Everett Williams.

9 Q. And how did you know that it belonged to Mr. Williams?

10 A. It had a Northern ID in it.

11 Q. I'm going to show you what's been marked as State's  
12 Exhibit Seventeen, Eighteen, Nineteen, and Twenty and ask  
13 you -- just asking if you recognize them.

14 A. No problem.

15 Q. Do you recognize this?

16 A. Yes, ma'am.

17 Q. And this is Exhibit Seventeen. Do you recognize this?

18 A. Yes, ma'am, inside of the search closet.

19 Q. Just tell me if you recognize them, and then I'll ask  
20 you some questions in a minute. Do you recognize this?

21 A. Yes, ma'am.

22 Q. This is Exhibit Eighteen.

23 And do you recognize this?

24 A. Yes, ma'am.

25 Q. And this is Exhibit Seventeen.

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 Let me ask you what these picture are now.

2 A. Okay.

3 MS. MILLER: I'm handing you Exhibit -- actually -

4 I'm going to ask these be introduced, Your Honor, as  
5 State's Exhibit Seventeen, Eighteen, Nineteen, and Twenty.

6 THE COURT: Any objection, sir?

7 MR. JAMIESON: If she laid a more detailed foundation  
8 of when the pictures were taken and whether they depict  
9 that night or some other time, then I would not have an  
10 objection. But if she doesn't do that, I do have an  
11 objection.

12 THE COURT: All right, ma'am. If you'll just lay up a  
13 greater foundation.

14 MS. MILLER: Okay, all right.

15 Q. Can you tell me if this is -- if these pictures are a  
16 fair and accurate representation of the way this hallway  
17 looked on October 3rd, 2010?

18 A. It does.

19 Q. Do you know if these pictures were taken October 3rd  
20 of 2010?

21 A. I don't believe they were.

22 MS. MILLER: Your Honor, we now ask that they be  
23 entered, again, State's Exhibit Seventeen through Twenty.

24 THE COURT: Objection, sir?

25 MR. JAMIESON: No.

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 THE COURT: Good enough. The same is moved into  
2 evidence.

3 (WHEREUPON: STATE'S EXHIBIT NUMBERS SEVENTEEN,  
4 EIGHTEEN, NINETEEN, AND TWENTY IDENTIFIED AND MARKED,  
5 RECEIVED INTO EVIDENCE.)

6 Q. If you could tell me what these are. I'm going to  
7 start with Seventeen. What is that?

8 A. That is the picture of the trash can that's directly  
9 across from the strip-search room.

10 Q. And this is Exhibit Eighteen. What's that picture of  
11 that?

12 A. Looking down the hallway where the strip-search room  
13 is on the right, and the trash can is on the left.

14 Q. This is Exhibit Number Nineteen. Tell us what that  
15 is.

16 A. That's --

17 Q. Could you get that for me?

18 A. That's inside the strip-search closet.

19 Q. And Exhibit Twenty?

20 A. That's looking in the opposite direction down the  
21 hallway with the trash can on the right and the strip-  
22 search closet on the left.

23 Q. Now with this picture up here -- and there should be a  
24 pointer up there somewhere; is there? Okay.

25 Could you explain to the jury this door at the end of

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 the hallway there.

2 A. Right there?

3 Q. Yes. Is that door locked or unlocked or --

4 A. That door is locked from both sides. Only a few  
5 people have that key that actually goes down to the  
6 courtroom.

7 Q. And what's the next door in?

8 A. Right there?

9 Q. Yes.

10 A. That's where they serve the inmates their food.  
11 That's where they make the food.

12 Q. Serve it or make it?

13 A. Well, they make it there and then serve it to them in  
14 their cells.

15 Q. They take it to their cells?

16 A. Yes, ma'am.

17 Q. So -- But they make it in there?

18 A. Yes, ma'am.

19 Q. And what's the next door?

20 A. The next door right there is the strip-search closet.

21 Q. And if you could put up Eighteen.

22 And tell us what this is.

23 A. This is looking back the opposite direction with --  
24 we'd be standing right in front of the locked door that  
25 goes to the courtroom with the trash can on the left and



OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 the strip-search room on the right.

2 Q. That door at the end --

3 A. Down here?

4 Q. Yes. Is that -- what is that? Does that lock or  
5 unlock?

6 A. That -- on that side, I believe it does not lock.

7 Q. Does it lock -- What about the other side?

8 A. On the other side, that goes to the courtroom it does  
9 lock.

10 Q. So you can't get in that way?

11 A. Correct.

12 Q. Without a key?

13 A. Correct.

14 Q. So is there any other way to get out of here?

15 A. On the left-hand side, midway down, there is another  
16 entrance in from the women's side of the jail.

17 Q. And is that secure?

18 A. I'm not a hundred percent on that, so I can't let you  
19 know.

20 Q. So this trash can right here is literally in front of  
21 the strip-search room?

22 A. Yes, ma'am.

23 Q. And that's where it was that evening?

24 A. Yes, ma'am.

25 Q. And so where did -- from which side did you come in?

OFFICER TREY AMICK: DIRECT BY MS. MILLER

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1 A. We came down the hall towards the trash can, so we  
2 were facing the way that we were walking down the hallway.

3 Q. And he made a movement towards the trash can?

4 A. Yes, ma'am.

5 Q. Did he touch the trash can?

6 A. He made a quick hand movement as if, you know, we were  
7 walking where my sight alignment was right behind him, and  
8 I could see part of the trash can, and it looked like he  
9 moved a hand movement towards the trash can.

10 Q. And what did you do with that wallet?

11 A. With that wallet? I took it up to the front of the  
12 jail, and then I processed it. I opened it and then handed  
13 it off to Detective Haire.

14 Q. And I'm going to hand you what is State's Evidence  
15 Number Twenty-two. Did you turn it into evidence?

16 A. I did.

17 Q. And what did you describe it as?

18 A. A black leather wallet.

19 Q. Was there anything else?

20 A. There was. There was a social security card and a  
21 debit card as well.

22 Q. And that was who again?

23 A. Everett Williams.

24 Q. Everett Williams?

25 A. Yes, ma'am.

OFFICER TREY AMICK: CROSS BY MR. JAMIESON

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1 MS. MILLER: The Court's indulgence, Your Honor.

2 THE COURT: Yes, ma'am.

3 (PAUSE.)

4 Q. Please answer any questions Mr. Jamieson has for you.

5 CROSS EXAMINATION

6 OFFICER TREY AMICK BY MR. JAMIESON:

7 Q. Officer Amick, I'm Philip Jamieson. I represent Randy  
8 Mitchell.

9 I'm going to ask you a simple question.

10 A. Yes, sir.

11 Q. What did Mr. Crawford throw in that trash can?

12 A. Mr. Crawford?

13 Q. I mean, Mr. Mitchell. Did you see him throw anything  
14 in that trash can?

15 A. I did not physically see him.

16 Q. So all you saw was a hand movement?

17 A. Yes, sir.

18 Q. Now, you were dealing with Mr. Mitchell; is that  
19 correct?

20 A. I was dealing with your defendant. Yes, sir.

21 Q. Somebody else was dealing with the other individual?

22 A. Yes, sir.

23 Q. Do you know of your own knowledge, that there's no  
24 possibilities that Mr. Crawford was ever near that trash  
25 can?

OFFICER TREY AMICK: CROSS BY MR. JAMIESON

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1 A. Not during that time period.

2 Q. You don't know, or you know he was not?

3 A. I know he was not near that trash can during that time  
4 period.

5 Q. How do you know?

6 A. Because when we walked back out; I had made the  
7 statement that I need to go back and check the trash can.  
8 Nobody else went back there because as soon as I put the  
9 defendant into the holding cell, I went straight back to  
10 that trash can. So there is maybe an instance of a couple  
11 of minutes that I was not back there.

12 Q. And before that?

13 A. Before that, nobody else had been back there.

14 Q. How do you know that?

15 A. Because we brought both defendants in at roughly the  
16 same time.

17 Q. Because what?

18 A. We brought both defendants in at the same time, and  
19 they were both in the front part of the jail where the  
20 booking area is.

21 Q. Do you remember testifying previously that when you  
22 were asked that question, you said, "I don't believe so,"  
23 that you were inside a holding area, and you couldn't be  
24 certain?

25 A. Yes, sir. The holding area is in front of the jail.

OFFICER TREY AMICK: CROSS BY MR. JAMIESON

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1 Q. Do you remember testifying earlier you didn't believe  
2 so, but you couldn't be certain?

3 A. I can't be a hundred percent certain, but I am fairly  
4 certain that nobody else could have made it back there  
5 without passing two or three officers to get back there.

6 Q. So the answer to my question is, you're not certain;  
7 is that right?

8 A. Not a hundred percent.

9 Q. All right. Now, is there video cameras or video  
10 observation of this hallway?

11 A. There are.

12 Q. And do you have a video today that shows what happened  
13 in that hallway?

14 A. I do not.

15 Q. Was it available to you to get?

16 A. At the time I did not know the video cameras. I have  
17 since learned that there are video cameras back there, but  
18 I completely -- never even crossed my mind at the time.

19 Q. Did you search Mr. Mitchell?

20 A. When?

21 Q. When you took him into the strip-search room.

22 A. I did. Yes, sir.

23 Q. Did you recover any items of evidence from Mr.  
24 Mitchell's person?

25 A. No, sir.

OFFICER TREY AMICK: CROSS BY MR. JAMIESON  
REDIRECT BY MS. MILLER

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1 Q. Were you present when a gunshot residue test was done  
2 on Mr. Mitchell?

3 A. I do not believe so.

4 Q. Is that the end of your involvement with my client?

5 A. Yes.

6 Q. Nothing further.

7 MS. MILLER: Just one quick question.

8 REDIRECT EXAMINATION

9 OFFICER TREY AMICK BY MS. MILLER:

10 Q. Was there anybody else back there in that area when  
11 you were back there?

12 A. I had another officer come back and help me. He and  
13 Officer Reid came back. And we have to do a strip search  
14 with a second officer.

15 Q. Was there any other defendant back in that back?

16 A. Not that I believe so. I always -- I had my attention  
17 focused to the front. I was not paying attention to really  
18 who was behind us, but I do not believe so. I believe --

19 Q. In that hallway that we looked at?

20 A. Yes, ma'am.

21 Q. Was -- you're saying that you're not -- you don't know  
22 if there were other defendants back in the hallway?

23 A. I'm almost a hundred percent positive there were not.  
24 I believe Officer Reid put him in the holding area, but I'm  
25 not a hundred percent on that.

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1 Q. No further questions.

2 MR. JAMIESON: Your Honor, nothing further.

3 THE COURT: Good enough.

4 Thank you, Officer. I appreciate your being here,  
5 sir.

6 THE WITNESS: Thank you.

7 THE COURT: Any objection to this officer being  
8 excused?

9 MR. JAMIESON: No, Your Honor.

10 (WITNESS LEAVING WITNESS STAND.)

11 MS. MILLER: Officer Ryan Hammond.

12 Your Honor, my next witness went for a restroom break.

13 MR. JAMIESON: Your Honor, I wouldn't mind doing the  
14 same if -

15 THE COURT: I suppose by acclamation or consensus, we  
16 just take a quick break.

17 Ladies and gentlemen, please return to your jury room.  
18 We'll take a break. We'll come back in, in just a few  
19 seconds. Please don't discuss the case.

20 (JURY EXITS COURTROOM AT 03:14 P.M..)

21 THE COURT: All right, we'll be in recess.

22 (COURT IN RECESS AT 03:15 P.M..)

23 (COURT BACK IN SESSION AT 03:26 P.M..)

24 THE COURT: Would you go around the corner and ask  
25 them to bring the jury in.

26 (JURY IN AT 03:27 P.M..)

OFFICER RYAN HAMMOND: DIRECT BY MS. MILLER

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1 THE COURT: Ms. Miller, you may call your next  
2 witness, ma'am.

3 MS. MILLER: Your Honor, the State calls Officer  
4 Hammond.

5 MADAME CLERK: Please raise your right hand, place  
6 your left hand on the Bible.

7 (WHEREUPON: RYAN HAMMOND, BEING  
8 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

9 DIRECT EXAMINATION

10 OFFICER RYAN HAMMOND BY MS. MILLER:

11 Q. Please state your name for the record.

12 A. Ryan Hammond.

13 Q. And where do you work?

14 A. City of Rock Hill Police Department.

15 Q. How long have you been there?

16 A. It will be six-and-a-half years.

17 Q. Were you working there on October 3rd, 2010?

18 A. Yes, ma'am.

19 Q. And were you on duty that day?

20 A. I was.

21 Q. And did you find yourself in the Boyd Hill area at any  
22 time?

23 A. Yes, ma'am.

24 Q. And did you find yourself on -- Where did you find  
25 yourself in the Boyd Hill area? Hickory Lane? Did you



OFFICER RYAN HAMMOND: DIRECT BY MS. MILLER

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1 find yourself near Hickory Lane?

2 A. Yes, ma'am.

3 Q. Tell us about that.

4 A. I was riding with Officer Watson that night. We had  
5 received some information from Officer Rivera in reference  
6 to a location of possible drug sales. We got together,  
7 moved in on foot to conduct surveillance on that residence.

8 Q. And tell us about what you observed.

9 A. We moved in on foot. We were standing in the shadow  
10 of the house on Crosby Street, on the corner of Hickory and  
11 Crosby, standing in the dark shadow at the rear of the  
12 house conducting surveillance on the house. I observed a  
13 gentlemen, black male wearing a white T-shirt, enter the  
14 side of the residence.

15 Q. What else did you observe?

16 A. Shortly after, I saw an unknown black male walking to  
17 our left down Hickory Lane. At that time I kneeled to the  
18 ground and was watching him to see where he was going and  
19 what he was going to be doing.

20 Q. Okay.

21 A. He walked down Hickory Lane a short distance, near the  
22 top of the driveway of the residence in question on Hickory  
23 Lane, and then he turned around and started walking back --  
24 back up Hickory Lane.

25 Q. What do you remember about him?

OFFICER RYAN HAMMOND: DIRECT BY MS. MILLER

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1 A. Black male, approximately 50 years old, and that  
2 was -- that's all I knew.

3 Q. He had long hair, short hair?

4 A. I didn't see that.

5 Q. Then what happened?

6 A. As I was watching him coming back up to my left, I  
7 heard a gunshot, which came from my right. At that point  
8 in time, all of us began running in the direction and began  
9 pursuing two males on foot.

10 Q. So you didn't see anybody else come out of the house  
11 after the guy with the white T-shirt?

12 A. No, ma'am.

13 Q. And that's because you were looking at the guy over  
14 here?

15 A. That's correct.

16 Q. And so then what happened?

17 A. We pursued the males towards Crosby Street and up  
18 Crosby Street to Calhoun Street. As I reached the top of  
19 Calhoun Street, Officer Rivera, Watson, and Rowe had left  
20 me far behind. I had lost sight of Rivera and Rowe, and I  
21 saw Officer Watson standing near a fence line along Calhoun  
22 Street. He was -- had his weapon drawn and was  
23 challenging, you know, someone that was out of my sight at  
24 that time until I got up next to him.

25 Q. And tell us about that.

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1 A. The suspect had hidden or attempted to hide behind a  
2 wooden fence that runs along a lot there on Calhoun Street,  
3 and there's a chainlink fence behind it. He had laid down  
4 between the two fences.

5 Q. And what did y'all do?

6 A. I -- Watson and I got him from behind the fence. He  
7 was still on the ground, placed him in handcuffs, and we  
8 then searched him on as he was laying on the ground.

9 Q. And what did you find when you searched him?

10 A. He had a ice-cream container with money, and there was  
11 a shotgun shell that was located near where he was laying.  
12 As we stood him up we found it.

13 Q. And then what happened?

14 A. We -- He was placed in handcuffs. We got him secured  
15 in a vehicle, Officer Price's vehicle. And at that time, I  
16 then saw Officer Allen was challenging another person who  
17 was walking up Crosby Street. At that point in time, it's  
18 unknown whether it's a suspect or victim involved in the  
19 incident so I assisted him in detaining that subject.

20 Q. Who was that?

21 A. I'm -- I'm not sure.

22 Q. Did that officer take care of him?

23 A. Yes, ma'am. I assume he did, yes.

24 Q. And did you leave the items that you found, the ice  
25 cream cup and shotgun shell? Did you leave those items at

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1 the spot where you found Mr. Crawford?

2 A. They were -- they were there as Price was sitting  
3 there with -- in his vehicle at that initial location.  
4 Then I walked -- it was a short distance -- back over there  
5 to stand by for -- for FSU.

6 Q. So you left them there?

7 A. Correct.

8 Q. Okay. Good enough. And did you -- Later that night,  
9 what did -- do you go back to the police department?

10 A. Yes, ma'am.

11 Q. And did you meet with the victims at any point?

12 A. Yes, ma'am. We did.

13 Q. What did you do with them?

14 A. Returned property.

15 Q. I'm going to have you look at State's Twenty-two.  
16 Tell us what you returned.

17 A. Do you want me to read each item?

18 Q. Yes.

19 A. Item Number One was a black-leather wallet. It was  
20 returned to E. Williams.

21 Item Number Two is a brown-leather wallet returned to  
22 C. Ellis.

23 Item Three would be green Seneca cigarettes returned  
24 to C. Ellis.

25 Item Four is a cell phone and a brown case returned to

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1 C. Ellis.

2 Item Number Five is a Hundred and Eighty-five Dollars  
3 and six cent in cash returned to J. Williams.

4 Item Number Six is a social security card returned to  
5 E. Williams.

6 Item Number Seven is a debit card returned to E.  
7 Williams.

8 Q. Thank you.

9 MS. MILLER: Court's indulgence, Your Honor.

10 THE COURT: Yes, ma'am.

11 (PAUSE.)

12 Q. Please answer any questions Mr. Jamieson has for you.

13 CROSS EXAMINATION

14 RYAN HAMMOND BY MR. JAMIESON:

15 Q. Officer, my name is Philip Jamieson.

16 Did you have any contact with -- or, were you involved  
17 in seizing Mr. Mitchell that night?

18 A. No, sir.

19 Q. Did you search Mr. Mitchell?

20 A. No, sir.

21 Q. And you testified that Officer Price arrested someone  
22 else. Do you know who that is?

23 A. He was the -- Mr. Crawford was placed in Price's  
24 vehicle.

25 Q. And where did Price come from? He wasn't with the

OFFICER RYAN HAMMOND: CROSS BY MR. JAMIESON

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1 four of you; is that right?

2 A. No, sir. He was working with his patrol shift that  
3 night.

4 Q. Now you returned, according to that list, a Hundred  
5 and Eighty-five dollars to someone, right?

6 A. Yes, sir.

7 Q. Is that all the money that you returned?

8 A. That's all that's on the sheet, yes, sir, that I  
9 returned.

10 Q. Do you know if anybody else returned anything?

11 A. Not right off, only what would be listed on the  
12 evidence sheet.

13 Q. Have you seen the evidence sheets?

14 A. Yes, sir.

15 Q. Do you see any other money on there?

16 A. I don't recall right off.

17 Q. All right.

18 MR. JAMIESON: I beg the Court's indulgence.

19 (PAUSE.)

20 Q. Do you still have that piece of paper with you,  
21 Officer, that you just read from?

22 A. No, sir.

23 Q. Can we get it back for you?

24 MADAME COURT REPORTER: State's Twenty-two, I believe,  
25 Mr. Jamieson.

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1 Q. When did these individuals have that property returned  
2 to them?

3 A. You're asking what time?

4 Q. No, I'm asking what day?

5 A. On the -- October 4th.

6 Q. Do you know of any other property that was returned  
7 any other time?

8 A. I didn't return any property. No, sir.

9 Q. So you wouldn't have any knowledge of it?

10 A. I -- It's my understanding that one of the victims  
11 responded later on and retrieved the cell phone. But I did  
12 not return that item myself, though.

13 Q. You weren't involved in it?

14 A. No, sir.

15 Q. All right. Thank you.

16 Nothing further.

17 MS. MILLER: Nothing further from this witness, Your  
18 Honor.

19 THE COURT: Any objection to this witness being  
20 excused?

21 MR. JAMIESON: No, Your Honor.

22 THE COURT: Have a great day, sir.

23 THE WITNESS: Thank you.

24 THE COURT: I appreciate you being here.

25 (WITNESS LEAVING WITNESS STAND.)

OFFICER SHAUN WATSON: DIRECT BY MS. MILLER

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1 MS. MILLER: Officer Watson.

2 MADAME CLERK: Sir, please raise your right hand,  
3 place your left hand on the Bible.

4 (WHEREUPON: SHAUN WATSON, BEING  
5 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 DIRECT EXAMINATION

7 OFFICER SHAUN WATSON BY MS. MILLER:

8 Q. Please state your name for the record.

9 A. Shaun Watson.

10 Q. And do you -- Where do you work?

11 A. At the Rock Hill Police Department.

12 Q. And did you work there on October 3rd of 2010?

13 A. I did.

14 Q. And were you on duty that day?

15 A. Yes, ma'am.

16 Q. And that evening, did you find yourself in the Boyd  
17 Hill area?

18 A. Yes, ma'am. I did.

19 Q. Can you tell us about that?

20 A. Yes, ma'am. On this night, we were working night  
21 shift at the time. So the first few hours, our lieutenant  
22 or sergeant, whoever's actively supervising us has us go  
23 out different areas of the city and try to be proactive,  
24 get up with other people that are walking, make traffic  
25 stops, just kind of show a presence in high-crime, high-



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1 drug areas. On this night, we were in the Boyd Hill area.

2 Sergeant Rivera called me on my cell phone and asked  
3 to meet with me at the Boyd Hill Recreation Center. So we  
4 were driving an unmarked police car, myself and Officer  
5 Hammond, and Sergeant Rivera and Officer Rowe, in a  
6 separate unmarked police vehicle.

7 So we met. He told me that he had got out with an  
8 individual that had a crack pipe on him and said he  
9 purchased crack from a residence on Hickory Lane. So we  
10 made a plan to get out that night, walk up Hickory Lane,  
11 and find this individual that was supposed to be selling  
12 crack on this night. The individual that Sergeant Rivera  
13 spoke with said the guy selling crack was a black male with  
14 a white shirt.

15 So that night, we got out, we walked up Hickory Lane.  
16 As we got closer towards Crosby, I saw -- because I -- I --  
17 I was -- I think I was in the front at that time. I saw a  
18 black male with a white shirt, later identified as Gregory  
19 Crawford, walking into and shut the door.

20 Q. Where were you at this time?

21 A. We were -- we walked up Hickory, and as we got closer  
22 to Crosby, that's when I saw the black male with the white  
23 shirt, Gregory Crawford, walking into the residence at

24 And at that time, we kind of got into a shadows to  
25 see what was going on.

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1 Q. And then what happened?

2 A. Mr. Crawford went into the residence. We heard a loud  
3 commotion going on, didn't know really what was going on.  
4 It was a Sunday night.

5 So after a couple of minutes, Mr. Crawford came back  
6 out of that house, and he walked over -- we were behind 534  
7 Crosby. The residence beside it to the -- if you're  
8 looking at it from the street, it was on the right. And he  
9 walked in between the houses.. It was about 10 feet  
10 approximately behind the two houses.. When he walked out, I  
11 was closest to him. So I was kind of trying to keep my eye  
12 on him just to see what was going on.

13 We heard a loud noise, which later turned out to be a  
14 gunshot, come from inside the house. So when I was looking  
15 at Mr. Crawford, I heard the gunshot, looked at the house,  
16 by that time, saw an individual wearing a black shirt come  
17 out. He was putting on his black stocking cap. I looked  
18 at him briefly, saw him coming out of the house, and then I  
19 turned my attention back towards Mr. Crawford.

20 At that time, Mr. Crawford raised a shotgun in the  
21 air, fired a single round into the air. And at that time I  
22 pulled out my gun, and I began to approach him, the two  
23 individuals. Mr. -- the second individual walking out was  
24 Mr. Mitchell. I saw him walking toward Mr. Crawford. That  
25 time, sort of like I said, I pulled out my weapon and began

OFFICER SHAUN WATSON: DIRECT BY MS. MILLER

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1 walking towards the two individuals and presented myself  
2 as, "Rock Hill Police. Show me your hands."

3 Q. And then what happened?

4 A. They both looked at me, gave me an, "Oh, no" look, and  
5 they took off running.

6 Q. And where did y'all go?

7 A. They began running towards Crosby. They turned left  
8 on Crosby, and we had a foot chase. We were running on  
9 Crosby towards Calhoun Street. We ran approximately 50  
10 yards. At that time, Mr. Mitchell turned left and began  
11 running left on -- parallel to Crosby, behind a house  
12 towards Glen Street. Crawford continued running straight.

13 I chased Crawford. We went over Calhoun, around the  
14 house, and then I found him hiding behind a fence. And  
15 when I was chasing them and they split, I saw Mr. Mitchell  
16 turn left. I remember looking to my left to think, after  
17 I've heard two gunshots, I want to make sure he wasn't  
18 going to shoot me in the back. I saw him continuing  
19 running. I only saw his back, and then I saw him go into  
20 the shadows. So I just continued to run after Crawford at  
21 that time..

22 Q. And what did you remember about how Mr. Mitchell  
23 looked?

24 A. He had long braids -- like I say, he was putting on a  
25 stocking -- a dark stocking cap; had a dark shirt on; I

OFFICER SHAUN WATSON: DIRECT BY MS. MILLER

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1 believe had he dark pants on as well.

2 Q. And so once you chased the other fellow behind the  
3 fence, you took him into custody at that time?

4 A. Yes, ma'am. I came around the corner. Yes, I saw him  
5 turn the corner. It's like I said, you know, he looked  
6 around the house and was going towards -- pretty much the  
7 way Mr. Mitchell had ran. So when I turned the corner, I  
8 didn't see him. I saw Officer Hammond. He had just got to  
9 the end of Crosby. So I looked behind the fence, and I  
10 immediately saw Mr. Crawford there. So I took him into  
11 custody, without an issue.

12 Q. And what did you do after that?

13 A. We quickly handcuffed Mr. Crawford, Officer Hammond  
14 and I did. I handcuffed him. And then Officer Hammond  
15 began searching him at that time. Once everything was  
16 secured, he was searched with no, you know -- the weapon  
17 was no longer on him. I immediately got up and started  
18 running towards the area that I last saw Mr. Mitchell  
19 running.

20 Q. And then what did you do?

21 A. I went behind a residence on Calhoun, the last place I  
22 saw him. And at that time, I saw a gun and a wallet  
23 laying, pretty much side by side, at the last place I had  
24 seen Mr. Mitchell running. So I stood with it to make sure  
25 the evidence wouldn't go anywhere.

OFFICER SHAUN WATSON: DIRECT BY MS. MILLER  
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1 Q. Okay. And then what?

2 A. A short time later -- and there's still some  
3 confusion, brief confusion, because we're trying to find  
4 out where Sergeant Rivera and Officer Rowe were because  
5 obviously I lost sight of them; didn't know where they had  
6 run. Once we learned that, they had taken Mr. Mitchell  
7 into custody. Officer Rowe came back, relieved me of my  
8 spot, with the -- the handgun and the wallet. And Sergeant  
9 Rivera, myself and Lieutenant Doster began retracing our  
10 steps when we went back to the place where the foot-chase  
11 originally started, and that's where we found a black -  
12 stocking cap and the sawed-off shotgun that Crawford had  
13 fired in the air.

14 Q. Okay.

15 MS. MILLER: The Court's indulgence, Your Honor.

16 THE COURT: Yes, ma'am.

17 (PAUSE.)

18 Q. Please answer any questions Mr. Jamison has for you.

19 CROSS EXAMINATION

20 SHAUN WATSON BY MR. JAMIESON:

21 Q. Officer Watson, my name's Philip Jamieson.

22 What time of the night was this?

23 A. I believe it was approximately Ten o'clock at night.

24 Q. Pretty dark?

25 A. Yes, sir.

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1 Q. Is there much streetlights and that sort of thing in  
2 this neighborhood?

3 A. There -- there are a number of streetlights in that  
4 neighborhood. Yes, sir.

5 Q. Was it illuminating where you were?

6 A. Where we were, no. There's like, I guess, a little  
7 alcove of where the house was, and the way the streetlights  
8 were. We were able to -- like sit in the shadows.

9 Q. You saw a black male with a white shirt go into  
10 ?

11 A. That's correct.

12 Q. And as I understand your testimony, you were looking  
13 for a house on Hickory Lane where a person matching that  
14 description was selling drugs; is that correct?

15 A. That's correct. Yes, sir.

16 Q. And you went into ; is that right?

17 A. Yeah, Mr. Crawford did. Yes, sir.

18 Q. Well, you don't know that, that was Mr. Crawford at  
19 the time. Right?

20 A. At the time, no we did not know that.

21 Q. So after that person came out -- after another person  
22 in a white shirt came out --

23 A. The same person that went in came back out.

24 Q. Well, after that person came out, did you see a  
25 shotgun in his hand?

OFFICER SHAUN HAMMOND: CROSS BY MR. JAMIESON

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1 A. No, I did not.

2 Q. Did you see anything in his hand?

3 A. At the point Mr. Crawford came out? No, I didn't see  
4 anything in his hands at the time.

5 Q. Is that because it was too dark?

6 A. Well, there were some bushes in between us. He could  
7 have had it in his pants. There's a number of reasons why  
8 I couldn't have seen it. I could see him. I could see his  
9 hands, but I didn't see a shotgun at the time.

10 Q. And you -- Did you see another person come out of the  
11 house?

12 A. Yeah, a few moments later.

13 Q. Did you see anything in his hands?

14 A. The only thing I saw in his hands was when he was  
15 putting on his stocking cap.

16 Q. And two individuals took off running; is that right?

17 A. That's correct.

18 Q. And you chased them, and other officers chased them?

19 A. Yes, sir.

20 Q. And you later found a pistol and wallet?

21 A. Yes, sir.

22 Q. Did you see anybody drop that?

23 A. No, sir, I did not see anybody.

24 Q. Did you see anybody drop the shotgun?

25 A. The shotgun that Mr. Crawford dropped, I did not see

OFFICER SHAUN HAMMOND: CROSS BY MR. JAMIESON

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1 him drop it, but I saw it in his hand. So...

2 Q. But you did not see him drop it?

3 A. No, sir. I did not see him drop it.

4 Q. Did you see anybody drop a black cap?

5 A. No, sir.

6 Q. Did you have anything to do with seizing Mr. Mitcham?

7 A. No, sir.

8 Q. So that -- anything that occurred there occurred out  
9 of your sight?

10 A. That's correct. Yes, sir.

11 MR. JAMIESON: I beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (PAUSE.)

14 MR. JAMIESON: Nothing further, Your Honor.

15 MS. MILLER: Nothing further from this witness, Your  
16 Honor.

17 THE COURT: Okay. Any objection to this witness being  
18 excused?

19 MR. JAMIESON: No, Your Honor.

20 MS. MILLER: None from the State, Your Honor.

21 THE COURT: Thank you.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: I appreciate you being here, sir.

24 THE WITNESS: Yes, sir. Thank you.

25 (WITNESS LEAVING WITNESS STAND.)



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1 THE COURT: Anything further from the State?

2 MS. MILLER: Your Honor, if we can take a moment, a  
3 break to discuss that.

4 THE COURT: Sure, good enough.

5 Ladies and gentlemen, we may have reached the point at  
6 which the State elects to rest, although they have the  
7 opportunity to put more evidence into the record should  
8 they deem it appropriate and necessary. So we're going to  
9 take a quick break, and then they can make that decision.  
10 We'll come back in, and we'll go from there.

11 If they elect to rest at this point, probably what  
12 I'll do is I'll send y'all home for the day and ask you to  
13 come back tomorrow morning because they're -- at this close  
14 of the State's case, there's several matters of law that I  
15 have to take up necessarily with the attorneys before we  
16 move forward so that will take us a little bit of time.  
17 That will probably get us past 4:30, and I don't intend to  
18 put any additional evidence into the record beyond 4:30.  
19 And I certainly don't intend to begin argument and charge  
20 after 4:30 because then we'd be here till midnight, and I  
21 know y'all don't want to do that. So if you take a break  
22 right now, please don't discuss the case. Thank you.

23 (JURY EXITS COURTROOM AT 03:50 P.M..)

24 THE COURT: We're gonna take a break. You all let me  
25 know when you're ready.

1 MS. MILLER: Okay.

2 (COURT BACK IN SESSION AT 04:02 P.M..)

3 THE COURT: Anything additional from the State?

4 MS. MILLER: Nothing, Your Honor.

5 THE COURT: Okay. Good enough. What I'll do is I'll  
6 bring them in.

7 I don't know if you prefer to rest in front of the  
8 jury or not, I'll leave that up to you.

9 MS. MILLER: I do.

10 THE COURT: Okay.

11 MS. MILLER: But we want to dispense with our - what  
12 we need to do, not in front of the jury.

13 THE COURT: Oh yeah. I understand. I understand.

14 You all want to let them go first. I don't want them  
15 to wait for us. So bring them in and you can rest and then  
16 dismiss them and then do our directed verdict motions.

17 MS. MILLER: Right. I just want to make sure there is  
18 nothing else for the jury today.

19 THE COURT: Do you want to question the defendant  
20 about whether or not he wanted to testify on the record?

21 THE COURT: Yeah I'll do that.

22 MS. MILLER: Okay.

23 THE COURT: We're not going to argue and charge today.

24 MS. MILLER: Yeah I know that but I just wanted to be  
25 done today with everybody - done.

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1 THE COURT: We will. If we do there will be only the  
2 functory matter of him saying that he rest. We'll go over  
3 all of that today.

4 MS. MILLER: Tomorrow.

5 THE COURT: We will finish it as a practical matter  
6 today.

7 MS. MILLER: Okay.

8 THE COURT: As a practical matter. All right. If.  
9 But I don't know his intentions are and so we'll see okay.  
10 All right. Do you intend to put any evidence into the  
11 record?

12 MR. JAMIESON: I'll need to confer with my client  
13 about whether he wants to testify.

14 THE COURT: Okay. And if you do if you're going to  
15 put evidence in the record we'll do that tomorrow morning.  
16 But I ask tonight and we'll get a commitment one way or the  
17 other so we'll know, okay? Okay.

18 You can bring them in.

19 (JURY REENTERS COURTROOM AT 04:05 P.M..)

20 THE COURT: All right. Anything further from the  
21 State?

22 MS. MILLER: Your Honor, the State rest.

23 THE COURT: Okay. All right, ladies and gentlemen,  
24 I'm going to release you for the day. I'm going to ask you  
25 to be back here tomorrow at 9:30 in the morning. There's

1 several matters that I'm gonna have to take up now. When  
2 we come back in the morning we're gonna do one of two  
3 things. We're either gonna hear additional testimony  
4 presented by the defense, or we're gonna go into argument  
5 and charge. But I'm gonna determine the manner and method  
6 in which we proceed in the next hour or so as we stay here  
7 and discuss this case and handle some legal issues.

8 So be here at 9:30 in the morning. If you would  
9 please be timely and you have been thus far and I do  
10 appreciate that and believe me I notice it and I recognize  
11 it and I appreciate it. And we'll start at 9:30, please  
12 don't discuss the case. I hope you all have a great  
13 evening.

14 (JURY EXITS COURTROOM AT 04:06 P.M..)

15 THE COURT: All right. Mr. Jamieson, you have  
16 motions?

17 MR. JAMIESON: I do, Your Honor. I renew my earlier  
18 objections of course. I do ask the Court to issue a  
19 directed verdict on behalf of Mr. Mitchell. As the Court  
20 knows it's the States burden to prove beyond a reasonable  
21 doubt that my client is guilty as charged. I don't believe  
22 that they have met that burden and therefore request a  
23 directed verdict to my client.

24 THE COURT: Ms. Miller, you care to respond?

25 MS. MILLER: Your Honor, just that the State has I

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1 believe amply proved the case each and every element of the  
2 crime and we would ask Your Honor not to give a directed  
3 verdict. I believe they are plenty to go to the jury.

4 THE COURT: All right. I'm charged with the  
5 responsibility of a directed verdict. First of all I view  
6 the motion in the light most favorable to the nonmoving  
7 party. And also not to determine the weight or sufficiency  
8 of the evidence and not determine whether the State has met  
9 it's burden of proof, but whether there has been any  
10 evidence presented into the record which would support the  
11 charges upon which the State is proceeding. On that very  
12 low standard based on that standard I would respectfully  
13 deny the motion for directed verdict.

14 Now, before we move on is there anything additional we  
15 need to put on the record at this time? I want to handle  
16 obviously the question of whether Mr. Mitchell wants to  
17 testify or not and I'll ask questions regarding that.

18 Do you want me to advise him of his rights with  
19 respect to testifying, Mr. Jamieson?

20 MR. JAMIESON: With the Court's indulgence I'd like to  
21 have a few moments to talk with him about that issue before  
22 he is compelled to make a decision.

23 THE COURT: I will. And what I want to do is I want  
24 to advise Mr. Mitchell on the record of his right to  
25 testify and the ramifications of either doing so and not

1 doing so.

2 So, Mr. Mitchell, if you'd stand up please.

3 Will you raise your right hand to at least you're  
4 capable?

5 (DEFENDANT RAISED HIS RIGHT HAND.)

6 (WHEREUPON: RANDY MITCHELL,  
7 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

8 THE COURT: Okay. You can take your seat.

9 You recognize, sir, that you do have a right to remain  
10 silent guaranteed under the Constitution which means that  
11 in this proceeding you don't have any burden of proof. You  
12 don't have to prove anything to this jury. You don't have  
13 to say anything or do anything. You don't have to put  
14 anything into the record and you don't have to present any  
15 witness' or any evidence because the State has the burden  
16 of proving each and every element of the offenses beyond a  
17 reasonable doubt. Now understand that if you elect not to  
18 testify, I'm gonna instruct the jury that they can't hold  
19 that against you because they can't hold against you the  
20 fact that you choose to exercise your Constitutional right.  
21 As a matter of fact no only will I tell them that, but I'll  
22 also tell them that they are not even allowed to discuss it  
23 in the jury room the fact that you didn't testify.

24 But understand that you do have the right to testify  
25 if you want to. And if you do, then the State will have

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1 the opportunity to cross examine you. And when they cross  
2 examine you they can potentially impeach your testimony by  
3 bringing out admissible prior crimes. That is, if there  
4 are crimes that are admissible under the rules of evidence  
5 in the law they can ask you about those and bring them into  
6 the record. And can also ask you other questions bearing  
7 upon your credibility and potentially impeach your  
8 testimony. Now, do you understand all of that, sir?

9 MR. MITCHELL: Yes, sir.

10 THE COURT: Do you have any questions you want to ask  
11 me regarding your right to testify or your right to remain  
12 silent?

13 MR. MITCHELL: No, sir.

14 THE COURT: Okay. Good enough. All right. And I'm  
15 not going to make you make a decision now. When we come  
16 back on the record tomorrow morning, you let me know, okay?  
17 At this point what I want to do is just ask you if there  
18 are any issues with respect to charge that we need to take  
19 up at this time? Do you have any request for charge? And  
20 I'm more than happy to have a short charge conference in  
21 chambers just to talk generally about the charge.

22 MR. JAMIESON: I do have some request to charge, Your  
23 Honor. And if we can do that now if you want to do that.

24 THE COURT: Okay.

25 MR. JAMIESON: If not, probably can do it in the

1 morning, which ever you choose.

2 THE COURT: Okay. Well, I don't know what your  
3 client's gonna do. We probably better start to do it now  
4 so that if you elect to prepare for closing arguments  
5 tomorrow you'll have an idea of what I'm gonna charge.

6 MS. SHELTON: Your Honor, we won't have any specific  
7 request to charge. If we could just inquire the Court's  
8 reasonable doubt charge. And we'd like the Court to advise  
9 the jury why there is some evidence that will not be going  
10 back just mainly speaking about the live rounds that will  
11 not be going back.

12 THE COURT: Just remind me. With respect to the  
13 reasonable doubt charge, I don't charge the type of doubt  
14 that would cause a reasonable person to hesitate to act. I  
15 charge be firmly convinced standard. That is that if  
16 you're firmly convinced of the defendant's guilt you must  
17 find him guilty under your oath. However if there is  
18 nothing that you can prove beyond any doubt and there is  
19 nothing that you can know with absolute certainly, however  
20 if you find that there is a real possibility that the  
21 defendant is innocent - or excuse me, that the defendant is  
22 not guilty then you must under your oath find him not  
23 guilty. That's essentially it. It will be perhaps  
24 slightly more artful.

25 In that case what we'll do is let's go ahead and



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1 adjourn in chambers and we can talk about it generally.  
2 You may find that the charge I'm going to give are quite --  
3 Excuse me, your request for charge I may be dealing with as  
4 a general matter anyway. Okay?

5 MR. JAMIESON: And if you could, hold yourself to be  
6 instructed to have Mr. Mitchell remain there so that I can  
7 meet with him after that and talk about it?

8 THE COURT: Can you all hold him for a little bit?

9 THE BAILIFF: I'll tell them.

10 MS. SHELTON: Your Honor, can we go ahead and also let  
11 them know what time he needs to be back in the morning  
12 because I think that's been an issue, an issue this  
13 morning?

14 THE COURT: Yeah. Tell them to have him here at 9:00.  
15 We'll start at 9:30 but it may be that we have to take up  
16 some matters before we go on the record so have him back at  
17 9:00.

18 (COURT IN RECESS AT 04:15 P.M..)

19 (COURT BACK IN SESSION, WEDNESDAY, FEBRUARY 29, 2012  
20 AT 09:43 A.M..)

21 THE COURT: Take your seats, ladies and gentlemen.  
22 Good morning. I hope everybody is doing well.

23 All right. We just got the jurors in.

24 Mr. Jamieson, have you and Mr. Mitchell had the  
25 opportunity to discuss his testimony, sir?

1 MR. JAMIESON: We have, Your Honor.

2 THE COURT: All right. Do you intend to offer any  
3 evidence into the record in your case in chief?

4 MR. JAMIESON: No.

5 THE COURT: Okay. Good enough.

6 All right, so we'll proceed straight to argue and  
7 charge. Is that correct?

8 MS. MILLER: Yes.

9 THE COURT: Okay.

10 MR. JAMIESON: Your Honor, as I told you in charging  
11 conference last night, I'd like to make my request to  
12 charge part of the record.

13 THE COURT: All right, sir, I'll be happy to hear  
14 that.

15 MR. JAMIESON: Do you want me to just hand them up?

16 THE COURT: You're welcome to hand them up and I can  
17 make them a Court's Exhibit.

18 MR. JAMIESON: All right.

19 THE COURT: All right. Thank you very much.

20 Okay. I think you may have given me an extra page or  
21 maybe its out of order. No it is - the first page -- the  
22 last page was first. You must have been going through  
23 them.

24 MR. JAMIESON: You're right, I was.

25 THE COURT: Okay. As to Request to Charge Number 18,

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1 I'm giving that general charge as to the credibility of  
2 witness'. It's not specific to police officers but I don't  
3 think that's necessary given the general charge that I will  
4 give. With respect to Request to Charge Number 13, flight  
5 of defendant. I'm gonna allow both parties to argue with  
6 respect to flight. I'm not going to charge anything as to  
7 that. I'm not gonna charge that flight can be considered  
8 evidence of guilt or that it - or to contrary. Certainly  
9 allow you to argue that. Nine, ten and eleven, I don't  
10 think are issues. As to 12, I'm gonna charge that in  
11 substance. Request Charge Number 2 definition of robbery,  
12 I'm gonna charge that in substance. Charge Number 1, armed  
13 robbery I'm going to charge in the substance. And Charge  
14 Number 5, again, I'm gonna charge that in substance as to  
15 the elements of armed robbery. Number -- I charge Number  
16 16, eyewitness reliability, in general I'm gonna charge  
17 that. And Number 17, in my general identification charge.  
18 I believe that is it. So collectively having addressed all  
19 of these I'd like to make them Court's Exhibit Number One.

20 (WHEREUPON: COURT'S EXHIBIT NUMBER ONE IDENTIFIED AND  
21 MARKED, RECEIVED INTO EVIDENCE.)

22 THE COURT: Ms. Miller, will you open or will you  
23 waive opening?

24 MS. MILLER: Waive opening.

25 THE COURT: Okay. So, Mr. Jamieson, you'll proceed

1 first.

2 And then you will close, Ms. Miller. Do you all want  
3 to impose self discipline on yourselves with respect to  
4 time or would you like for me to give you tough love?

5 MS. MILLER: I don't think so. I'm not too long.

6 THE COURT: How long do you need? How about twenty-  
7 five minutes?

8 MR. JAMIESON: That will be sufficient, Judge.

9 THE COURT: Is that good? Okay. Good enough.

10 MS. SHELTON: Your Honor, you ask me about with  
11 charging the jury just to inform them that they will not be  
12 getting the live round.

13 THE COURT: Yes, ma'am. I made a note to myself on  
14 this charge.

15 MS. SHELTON: Thank you.

16 THE COURT: Okay. Will you bring them in please?

17 THE COURT: Mr. Jamieson, do you want me to allow you  
18 to rest on the record or do you just want me to tell them  
19 that you've rested?

20 MR. JAMIESON: It doesn't matter, Your Honor. You can  
21 tell them.

22 THE COURT: Okay.

23 MS. MILLER: Is there any more you need to ask Mr.  
24 Mitchell on the record about his testifying or did we do  
25 everything yesterday?

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1 THE COURT: Yes, ma'am, I think we went through it  
2 yesterday and I'm confident that Mr. Jamieson has spoken to  
3 him about it.

4 (JURY REENTERS COURTROOM AT 09:48 A.M..)

5 THE COURT: All right, good morning everyone. I hope  
6 you all had a great evening. It's good to see you again  
7 this morning. We are going to proceed to closing arguments  
8 at this time. The defense has elected not to put any  
9 evidence into the record which of course is his right and  
10 I'll tell you a little bit more about that in my closing  
11 charge. But we'll proceed to closing arguments this  
12 afternoon.

13 Before I say anything else with respect to closing  
14 arguments, I do want to handle a piece of house keeping and  
15 that is, Mr. Barnes, I've appointed you as Foreperson of  
16 the jury. Congratulations. You can put that on your  
17 resume. Now, the duties of the foreperson are fairly ill  
18 defined under the law from my perspective. What your  
19 duties are specifically are to make sure that in your jury  
20 room during your deliberations that everybody has the  
21 opportunity to be heard, that everybody has a voice. Over  
22 and beyond that I really can't instruct you as to what you  
23 should do in the jury room because that's you all's  
24 exclusive providence and I can't encroach on your business  
25 in way shape or form. So I would just leave it at you have

1 a duty to make sure everybody has the opportunity to be  
2 heard. During the course of your deliberations if you all  
3 have any questions and I'm hopeful that you do not have  
4 questions. There are a lot of questions that I can't  
5 answer once you go back into the jury room but if you have  
6 a question then Ms. Barnes, you can write those down and  
7 get the bailiff's attention and they'll send it to me. If  
8 I can answer it I will. And again I hope that I've  
9 explained things with enough specificity that you won't  
10 have any questions. So having said that, the way we will  
11 proceed is the defense will have the opportunity to make  
12 closing arguments and then the State will make final  
13 closing argument. As I told you when we began the case,  
14 closing arguments are just that, arguments. You have  
15 already heard all of the evidence that you will receive in  
16 this case. The closing arguments from the attorneys are  
17 not evidence to be considered by you. It's simply  
18 advocacy. Advocacy and argument based on the evidence that  
19 has been presented this trial before today so please  
20 consider it in that light.

21 Having said that, Mr. Jamieson, you may proceed.

22 MR. JAMIESON: Thank you, Your Honor, may it please  
23 the Court.

24 THE COURT: Yes, sir.

25 MR. JAMIESON: Ladies and gentlemen, I appreciate

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1       you're being here, our system would not work if you were  
2       not here. I noticed throughout the trial you paid close  
3       attention and both my client and I appreciate that and we  
4       thank you for that.

5               When I started this trial in front of you I told you  
6       that this case was as much about what people didn't do,  
7       what they didn't see and what they didn't know as to what  
8       it was that they did and I think you saw throughout the  
9       trial that was the case. Again I appreciate your patience  
10      but unfortunately I am going to prevail on it just a little  
11      longer to go over the testimony that you heard and the  
12      evidence that you heard and point out to you what I think  
13      are some very important facts.

14             And I'll start with talking to you about the  
15      reliability and the accuracy of the law witnesses, the  
16      people that weren't police officers. Mr. Ellis was one of  
17      those people. Mr. Ellis admitted that he had been drinking  
18      all day the day that this happened. He admitted he was  
19      drinking Vodka and beer that day. He admitted he had drank  
20      pretty much the whole day long. He admitted that he wasn't  
21      paying as good of attention as he could have been paying.  
22      He admitted that his memory was better then than it was now  
23      and he proved that by describing the gun that he saw as  
24      being blue steel and a pearl handle. It's different than  
25      everybody else described. Of course, you remember he is

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1 the individual that had been charged previously with  
2 providing false information to a police officer.

3 You also heard from James Williams. Mr. Williams  
4 admitted that he was mostly paying attention to the gun and  
5 not the people. And of course that's no surprise to  
6 anybody. In a robbery that is what you pay attention to.  
7 You're not looking at people, you're looking at a gun.  
8 Mr. James Williams along with everybody else gave just a  
9 very very general description of the person that they saw.  
10 He didn't give any specific information nor did any of the  
11 other witnesses. And he also admitted he had been drinking  
12 off and on throughout the day.

13 Ronnie Adams came up and he testified and he stated  
14 that he had been drinking all day. He also stated several  
15 times from the stand, "I can't remember this stuff. I just  
16 don't remember." And he proved that by describing the  
17 handgun as a revolver which is different than everybody  
18 else described. He also said his memory was better then  
19 than it is now. And he said everything happened too fast,  
20 I just couldn't pay attention.

21 Everett Williams came up and testified, he admitted he  
22 had been drinking. He admitted his memory wasn't good.  
23 And he described the suspects completely different than  
24 anybody else did. He described the suspects as one of them  
25 being short with dread locks and the other one being tall.



CLOSING ARGUMENT: BY MR. JAMIESON

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1 And of course that's completely the opposite of what  
2 everybody else described.

3 When you take all of what those people told you, it's  
4 clear that the reason that none of them gave anything but a  
5 very general description at the time of the crime and they  
6 aren't able to do any more than that now. It was a quick  
7 occurrence, they were focused on the guns, they were  
8 nervous, they were scared, and rightly so. None of those  
9 folks were allowed to identify anybody at the time when  
10 this would have been most fresh in their memory. And you  
11 got to wonder why that is. Why the police didn't take the  
12 time to do that. And I think I know another thing you  
13 ought to think about when you evaluate these lay witnesses  
14 is why the police were there in the first place. The  
15 police were there because this was a house where they  
16 thought drugs and alcohol was being sold, crack cocaine  
17 specifically.

18 Now I'm sure you noticed just like I did on the stand  
19 that the police tried to soft sell that. They tried to  
20 blame that down but they weren't able to do that. They had  
21 to admit they were watching because we  
22 had information that drugs and alcohol were being sold  
23 there. And that brings us to the police witnesses. And  
24 you remember there were a number of those.

25 The first one you heard from was Officer Rivera. And

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1 Officer Rivera admitted that he was watching the house  
2 because he suspected drugs activity was going on there. He  
3 described his vision as being about thirty feet away and he  
4 tried to say that the light was pretty good but he had to  
5 admit that when the people came out of the house he didn't  
6 see anything in their hands, he didn't see anything in  
7 anybody's hands at any point, he didn't see something as  
8 big as a shotgun in their hands. He also had to admit that  
9 he didn't see anybody drop anything even though again he  
10 described the light as being good when he was chasing them  
11 he wasn't able to testify to any of that.

12 He testified that he saw the tall person put on a do-  
13 rag, and that's a black scarf looking hat. You will see it  
14 in the evidence. But he had to admit when I ask him about  
15 it that it was tested for DNA and three people's DNA was on  
16 that rag but none of them were Randy Mitchell's. He also  
17 testified when I ask him that Randy Mitchell's prints  
18 weren't on the gun, around the magazine, or on the bullets.  
19 But the most important thing he told you was that he lost  
20 sight of the person he was chasing. And he lost sight of  
21 that person for a substantial period of time. And the only  
22 reason he noticed Randy Mitchell was because Officer Rowe  
23 was pointing a flashlight at Randy Mitchell.

24 Officer Rowe testified that he was the other person  
25 that was chasing one of the suspects. He was the one that

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1 was chasing them with Rivera. He also said he never saw a  
2 gun in anybody's hand and never saw anybody drop any gun.  
3 He was a little more forthcoming than Officer Rivera was in  
4 the sense that he said yeah it was extremely dark. And  
5 obviously it was extremely dark, nobody saw them standing  
6 in the yard, the person they described walking down the  
7 road ten feet away didn't see them so it's obviously it was  
8 real dark.

9 Now, Officer Rivera described Officer Rowe as a  
10 gazelle. You remember he said he ran real fast. And  
11 apparently he did, he was in front of the pack. But he  
12 also had to admit that he lost sight of the suspect that he  
13 was chasing, he ran past two houses before he ever located  
14 anybody and saw Randy Mitchell was standing down in the  
15 woods.

16 Now both Rivera and Rowe stated that the area where  
17 Mr. Mitchell was was dense underbrush, dense undergrowth  
18 and woods. And they both also said that they pounced on  
19 Mr. Mitchell, they walked him out to the road and they  
20 never made any thorough search of that area to discover if  
21 anybody else was hiding there. They didn't search it at  
22 all until they walked him out to the road and put him in a  
23 car and then came back.

24 The other two officers that testified were Officer  
25 Hammond and Officer Watson, and they followed the other

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1 fellow, Mr. Crawford. Both of them also testified that  
2 they were watching because it was a drug  
3 house. They also testified that the entire location was  
4 extremely dark and it was hard to see. And they never saw  
5 anybody with a gun in their hand or saw anybody drop a gun.

6 Now the next person you heard from was Director Weeks  
7 and he was the forensic's person. He was the person who  
8 was collecting all the evidence and directing what kind of  
9 test were gonna be done. And Officer Weeks testified that  
10 he didn't bother to recover the bullet that was fired up  
11 into the ceiling. He could have but he didn't.

12           You remember he also told you when I ask him aren't  
13           there other ballistic test you could do? Can't you  
14           discover from the shell casing what gun fired that bullet?  
15           And he said, " yeah, it's absolutely conclusive." And I ask  
16           him, "well did you do that?" "No, didn't bother." Didn't  
17           bother. They did do some testing though. And he had to  
18           admit that all the forensic test he did, none of it  
19           connected Randy Mitchell to that house, to that gun or to  
20           any other evidence. No fingerprints, no DNA, no other  
21           evidence.

22 Now in the face of all that the police did a pretty  
23 poor job. And the main thing they did a poor job with was  
24 at the time that all this happened, when it was fresh in  
25 everybody's mind, they had two people in custody. All they

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1 had to do was drive up in the yard and say, folks, is this  
2 the guys that robbed you? And even if they didn't want to  
3 do that, they could have took them to the police station  
4 and when all those people showed up at the police station,  
5 they could have conducted a line up and said, do you see  
6 the people that robbed you here in this lineup? Didn't  
7 bother to do that either. They could have done a photo  
8 lineup, they could have taken pictures, laid out  
9 photographs and said you know do you see the person that  
10 robbed you? Didn't bother to do that either.

11 Now the State's here asking you to convict my client.  
12 And is it fair for them to do that when they didn't do what  
13 they could have done to make this clear to you, to make the  
14 evidence clear to you to solidify this case? Is it fair  
15 for them to do that? But in fairness to the police, I have  
16 to give them credit about one thing. And I'm sure you  
17 noticed it just like I did. Not one of those four police  
18 officers got on that stand and said, when those two guys  
19 came out of the house, I saw their face. And when I caught  
20 Randy Mitchell that was the guy. They could have done  
21 that. They could have not told you the truth about that.  
22 But they did tell the truth about it and I got to give them  
23 credit where credits due. Not one of them, not one of them  
24 said when I saw that person walk out of that house I got a  
25 good look at him. Some of them said fifteen feet away,

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1 some of them said thirty feet away. And when I caught that  
2 person after I had run around those two houses and lost  
3 sight of them for a period of time, it was the same guy.  
4 Didn't ask if they could have done that but I appreciate  
5 the fact that they didn't.

6 The police made a lot of assumptions that night  
7 because they lost sight of a suspect and then saw somebody  
8 at another place close by they assumed he was the guy and  
9 they arrested Randy Mitchell. They assumed a lot of things  
10 They assumed they didn't need to keep all the evidence.  
11 They give some of it back so it wasn't here for you to see.  
12 They assumed that wasn't important. They assumed that we  
13 don't need to do all the test that we can do, we don't need  
14 to do that. We don't need to bother. The biggest  
15 assumption they made was they assumed we don't have to  
16 conduct a lineup although it would have been real easy.  
17 They had the people in custody, they had the witnesses all  
18 down to the police department. Everyone of them testified  
19 they went down there and gave statements and got their  
20 property. Just a little more effort, just a little more  
21 effort. But they assumed we don't need to do that. We  
22 don't need to bother. Instead they went two years before  
23 these people came to the stand and testified. Two years  
24 between the time the crime had happened and they came into  
25 this courtroom. Now let's face it, folks, it ain't too

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1 hard to figure out who the suspect is. He's the only  
2 person sitting at the table with me. If you're on the  
3 stand and you're ask to identify somebody and you're not  
4 real sure it ain't too hard to figure out.

5 It didn't have to be like that. The police could have  
6 done their job, they could have preserved the evidence,  
7 they could have done the test, they could have done the  
8 lineup at the time. They didn't bother. And they didn't  
9 bother because they hoped that you're gonna make the same  
10 assumptions they did. They hope you're gonna assume that  
11 because they caught somebody at the scene that's the  
12 person. They hope you're gonna assume that it doesn't  
13 really matter that they did a lineup at the time. They  
14 hope you're gonna assume it didn't matter that they  
15 preserved all of the evidence. They're gonna assume that  
16 you assume that it doesn't matter that they didn't do test  
17 they could have done. They are going to put the  
18 responsibility of convicting someone on you but not give  
19 you the tools you need to do that.

20 Maybe they didn't make assumptions. Maybe they knew  
21 at the time that they couldn't identify them. Maybe that's  
22 the reason. We'll never know. But the fact is they didn't  
23 do it. They didn't do it. And if the police were  
24 entirely clear and sure about what they did and maybe those  
25 assumptions wouldn't be quite as bad. But they couldn't

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1 have been as clear as they should have been, they arrested  
2 one of the people from they house when he came outside.  
3 You heard that man testify that they put -- I think the way  
4 he characterized it was "they put the red dots on my chest,  
5 made me get on the ground and put me in handcuffs." Does  
6 that sound like the police knew exactly what they were  
7 doing and exactly who they were after? It doesn't to me.  
8 Lucky for that man somebody came along and got him.

9 Now the last police officer they put up was Officer  
10 Amick. He fell right in line with the rest of them and  
11 made a bunch of assumptions. He saw Randy Mitchell make  
12 some kind of hand movement. I think he said a ---- hand  
13 movement. And I ask him let's just be honest about it,  
14 let's just be blunt about it. What did you see him throw  
15 in the trash can? Nothing. Then I ask him "are you sure  
16 that Crawford, the other person that was charged, was never  
17 aback at that trash can before Mr. Mitchell?" Oh yeah I'm  
18 sure." I said, "well when you testified earlier, it's  
19 right here in this book when you testified earlier you said  
20 something different. You said you couldn't be sure."  
21 "Well actually I can't be sure." But he made one more big  
22 assumption. There were video cameras right there in the  
23 police department. He could have brought a video to you  
24 all and said here you go. I didn't see it but the camera  
25 sure did. Here's Mr. Mitchell throwing a wallet in the



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1 trash can. I ain't seen a video. Have you?

2 The judge is gonna tell you in a little while that my  
3 client is presumed innocent until you decide otherwise.  
4 Not the prosecutor, not the police, not anybody else - you.  
5 He's presumed innocent. That's not a theory, that's not an  
6 idea, that's not some nice concept, that's the foundation  
7 and bedrock of our judicial system. My client's presumed  
8 innocent. And you don't over come that presumption with  
9 assumptions. You don't over come that presumptions with  
10 not doing everything you can do. We put a heavy burden on  
11 the prosecutor. They got to prove to you beyond a  
12 reasonable doubt that my client's guilty. And there is a  
13 reason why we do that. There's a reason why that's the  
14 cornerstone of our system. Its' because we don't want an  
15 innocent person to be punished for something they didn't  
16 do. And you've all heard that saying, "we rather have a  
17 number of guilty people go free than wrongly convict  
18 somebody." That's the reason that burden is there.

19 The burden is they have to prove beyond a reasonable  
20 doubt that my client is guilty and you don't do that with  
21 assumptions. You don't do that by not doing everything you  
22 can do. That's your responsibility. Like it or not, agree  
23 with it or not, that's their responsibility to prove it  
24 beyond a reasonable doubt and do everything in their power  
25 to do that.

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1           Now you heard my talk about reasonable doubt, you'll  
2   hear the judge talk about reasonable doubt, I imagine  
3   you'll even hear the prosecutor talk about reasonable  
4   doubt. What is reasonable doubt? There is a variety of  
5   definitions. Our Supreme Court has defined it as the kind  
6   of doubt that would cause a person to hesitate to act in  
7   matters of importance. The kind of doubt that would cause  
8   a person to hesitate in matters of importance. The judge  
9   will give you a definition, it may be that or it may be  
10   something different. But not only does the solicitor have  
11   to go up to reasonable doubt, they have to go beyond a  
12   reasonable doubt with their proof. And the judge is going  
13   to tell you that if there is any reasonable doubt it's not  
14   a question who gets that. My client gets that. If there  
15   is any reasonable doubt about this my client's entitled by  
16   law to that reasonable doubt.

17           The police could have done a lot of things to resolve  
18   the matter. They chose not to do that. They could have  
19   conducted searches of that area where they found Mr.  
20   Mitchell to see if anybody else was hiding. They could  
21   have done test, they could have done a lineup; something as  
22   simple as a lineup. Cost them no time to speak of, cost  
23   them no money. Something as simple as a lineup. But they  
24   want you to make the same assumptions they did.

25           Now, ladies and gentlemen, if the person they were

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BY MS. MILLER

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1 pursuing and lost sight of could have gone behind those  
2 houses or gone in those bushes and laid down, and then they  
3 saw Randy Mitchell and arrested him, I submit to you that's  
4 reasonable doubt if that could have happened. That's for  
5 you to judge. But if that could have happened, if they  
6 could have lost sight of that person who ran past two  
7 houses before they found Randy Mitchell, then that's  
8 reasonable doubt.

9 You've spent a lot of time here. My client  
10 appreciates it, I appreciate it. I know you will do your  
11 job. Evaluate the evidence, think about the people that  
12 testified, think about what they told you, think about what  
13 they didn't tell you. Thank you.

14 MS. MILLER: May it please the Court.

15 THE COURT: Yes, ma'am.

16 MS. MILLER: What really struck me during this trial  
17 and maybe especially when Officer Watson was on the stand,  
18 and I think maybe because he looked so young to me, he did.  
19 And I thought throughout that trial, those four men had  
20 courage that night. They were out in the dark working and  
21 so often I think we don't appreciate what police officers  
22 do. I don't think we think about when things like this  
23 that they do. They are in the dark, they hear a gun shot  
24 in a house, they don't back up against the wall, "Well what  
25 was that?" Guy comes out of the house and they creep

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1 forward. Another guy comes out of the house. The first  
2 guy pulls a trigger on a shot gun. There is a shotgun  
3 blast. They don't back up against the wall and duck down  
4 and fall onto the ground. Lord what was that? They moved  
5 forward more at people who they know are armed. They yell  
6 to let them know we're standing here "Rock Hill police" in  
7 full view of them. That took courage. Then when the two  
8 men who came out of the house turn and ran they were right  
9 behind them. They were right behind them. Two men they  
10 know were armed and they don't stop. They chase them up  
11 the street. And when Officer Watson said when he was  
12 running up the street when they split and Mitchell went  
13 this way and Crawford went this way he decided to go after  
14 Crawford and you remember he said "I looked back over my  
15 shoulder to make sure he wasn't gonna shoot me in the  
16 back." And he kept going towards a man he knew had a  
17 shotgun. That is bravery and that is courage.

18 What happened to those old fellows that night sitting  
19 in the house watching football? Not bothering anybody,  
20 having a good time visiting with each other. Old friends.  
21 Been doing this a long time watching football together.  
22 All of a sudden somebody starts banging on the door.  
23 Everett stands up, somebody bust in the door. Here comes a  
24 man, tall man with dread locks with a gun in his hand. He  
25 puts that gun up against Everett's head. Can you imagine

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1 just seeing these old folks in there and he's got that gun  
2 up against Everett's head? By him comes another man, he's  
3 got a shotgun and he bulldozes back to the back where Kenny  
4 is and their yelling "you know what this is, give it up,  
5 give it up. I know you got more than that." He talks  
6 Kenny's money he's got in that sherbert cup. He had a  
7 Hundred and Eighty Five dollars he had sitting on his  
8 dresser in that sherbert cup. Takes the whole cup shoves  
9 it in his pocket. Out in the living room Randy Mitchell  
10 got the gun up against poor ole Everett pushes him to the  
11 side, takes his wallet out of his pants. Making everybody  
12 else give up what they've got, cell phones, wallets and  
13 cigarettes; Seneca cigarettes. And then he says "You don't  
14 think I won't cap you, you don't think I won't cap you?"  
15 And he shoots up into the ceiling like they weren't scared  
16 of nothing. You don't think those old fellows weren't  
17 scared enough?

18 They run out of the house. Well actually they didn't  
19 really run did they? They walked out of the house and the  
20 officer's standing in the yard. What is the chance of  
21 that? That was a bad day for them. Four officers, Rock  
22 Hill Police Department, brave ones too standing in the  
23 yard. I guess ole Gregory Crawford thought it wasn't  
24 enough he'd robbed the old folks, he was gonna shoot off  
25 his shotgun to show how big he is. Well when they saw the

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1 police you could imagine. Four Rock Hill Police standing  
2 around here and they take off, officers right behind them,  
3 right behind them. They're together, they run through  
4 those two houses they turn left on Crosby they're running  
5 Watson and Rowe right behind them, Rivera right behind  
6 them, Hammond back there a little bit. They get almost to  
7 the end of Crosby Mitchell decides he's gonna go off to the  
8 left as he does. He goes off to the left, Rowe right  
9 behind him. He goes behind the house on the corner, so  
10 does Rowe. He's with him behind the house. That's what he  
11 testified to. He didn't go around the house. He testified  
12 he went behind the house. He said when Mitchell went --  
13 they were behind the house Mitchell went that way and he  
14 said " I decided to go around the second house and catch  
15 him on the side." That's what he said, that's what he  
16 said. So Mitchell goes this way he goes around the house  
17 on this way, he shines his flashlight back in that wood  
18 line and he's in there caught up in briars and kudzu and it  
19 was a bad night for him let me tell you. He wasn't going  
20 anywhere in that mess.

21 Officer Rowe said he went down to him he's trying to  
22 get away, he keeps falling in the kudzu, in the briars and  
23 the over growth. While that's going on Watson has chased  
24 Mr. Crawford right up to the end of Crosby Street and found  
25 him behind a fence. He had on him the sherbert cup with

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1       Kenny's money in it, shotgun shell underneath him. They  
2       got everybody in handcuffs. Officer Rowe searched Randy  
3       Mitchell. And I ask him, he said it, more than one officer  
4       said it, "The man who came out of that house was tall, had  
5       a dark shirt on, dark pants, had dread locks." That's what  
6       they said. And that was the same man they said that they  
7       caught in the briars and the kudzu. Tall, long dread locks,  
8       dark shirt, dark pants. That was the same man. So Officer  
9       Rowe pats him down, takes out of his pocket Seneca  
10      cigarettes. Took those cigarettes from Charles Ellis. He  
11      found a bunch of stuff on him one of which was Virgin cell  
12      phone that belonged to Charles Ellis. I ask Charles, "how  
13      do you know that's your cell phone?" "Because I can't  
14      remember things good too much any more and I got my cell  
15      phone number taped to the back of my phone" when he went to  
16      pick it up at the police department. So he's taken into  
17      custody, Mr. Crawford's taken into custody.

18             Now they go back track. They're gonna do their job,  
19      gonna back track. They come around from where they  
20      arrested Randy Mitchell, come around to the back of that  
21      house where Rowe and Randy Mitchell ran, remember? Before  
22      they went like that. And what do they find? They find a  
23      pistol, find a wallet. Who does the wallet belong to?  
24      Charles Ellis. That's Charles Ellis' wallet. Keep back  
25      tracking, come to the point where they ran between the two

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1 houses find there a do rag and the shotgun, the shotgun  
2 that Gregory Crawford dropped. I don't know who dropped  
3 the do rag because there was testimony they both had one  
4 on. It was found near the shotgun that Mr. Crawford  
5 dropped. Those ole fellows came in here told you what  
6 happened. They told you that those fellows came in there  
7 and took property from them, money from them. They pointed  
8 right at Randy Mitchell. One of them, I think it was  
9 Charles, no it was Kenny. He used his hand like this.

10 (SOLICITOR DEMONSTRATED.)

11 MS. MILLER: He said "That's him right there" when we  
12 were talking about the man that had the gun up to his  
13 brother's head. And he pointed right at him, "that's the  
14 man right there." Charles Ellis did the same thing.  
15 "That's the man right there. That's the man right there."  
16 That's him looking right at him.

17 Charles told you he was a tall guy with dred locks.  
18 Everett said it was a tall dude. That's what he called  
19 him. He put the gun to my head. It was the tall dude that  
20 took the wallet from my pocket. Ronnie said the one with  
21 the revolver had dred locks. The one with the revolver had  
22 dred locks.

23 Let's go to the jail. Now it was Randy Mitchell the  
24 tall man with the dred locks with the gun up against  
25 Everett's head who pushed him over took Everett Williams'



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1 wallet out of his back pocket. And it was Randy Mitchell  
2 who Officer Amick told you when he was walked back to the  
3 search area that he same made movement towards that trash  
4 can with his hand. That was Randy Mitchell. So when the  
5 officer went back to look in the trash can to see what he  
6 had done, he found Everett Williams' billfold, found his  
7 wallet. Well Randy Mitchell knew they were about to search  
8 all of his clothes. They were about to get down to a real  
9 search and they were gonna find that wallet on him, the one  
10 that he took from Everett Williams when he had the gun up  
11 against his head. He's the one that had Everett's wallet.  
12 He's the one that took Everett's wallet.

13 I want to show you the picture one more time of the  
14 neighborhood. Just watch real quick. If you're looking at  
15 these in the back I want you to be able to orient yourself.  
16 This is the house right here that was robbed. It's got the  
17 little car shed in front of ti when you're trying to worry  
18 yourself so just look for that and I will help you orient  
19 yourself, the little shed in the back. And in one of the  
20 pictures, one of the pictures is from this view of this  
21 corner and you can see this little shed. You look on it  
22 and you'll see that little shed and you'll say Oh I  
23 remember this, these houses on this corner here. Remember  
24 the officers said they were here. Randy Mitchell and  
25 Gregory Crawford came out of the house here. They chased

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1       them through these houses straight up the middle of the  
2       street. Randy Mitchell took a left right here with Officer  
3       Rowe right behind him. Officer Rowe said here that  
4       Mitchell went this way, he went around the house. He said  
5       he went around the house to catch him if he came out the  
6       other side. He went around this next house. And then this  
7       is where he caught him right here. Right here is where the  
8       pistol and the wallet were found. Right there. Right here  
9       is where the shotgun and the do rag were found. Once again  
10      this is the house that was robbed when you're looking at  
11      the pictures if you do in the back.

12             Randy Mitchell is charged with armed robbery. He's  
13      charged with burglary first degree. And we submit that we  
14      have shown you ample evidence to find him guilty of it.  
15      Mr. Jamieson talked about reasonable doubt. When I did my  
16      opening statement I said to you "use the common sense that  
17      you came in here with." If there ever was a case to use  
18      your common sense this is it. Reasonable doubt,  
19      reasonable. Don't forget that Mr. Charles Ellis' Seneca  
20      cigarettes were found on Randy Mitchell. His Virgin cell  
21      phone was found on Randy Mitchell. The man, the tall man  
22      with the dred locks that everybody's been talking about.  
23      And you've seen him in the courtroom here. He's a tall man  
24      with dred locks. They told you it's the same man that came  
25      out the door, it's the same man they arrested in the briars

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1 and the undergrowth trying to run away, trying to get away.  
2 We submit that we have proven that Randy Mitchell is guilty  
3 of armed robbery and burglary first degree. We ask you to  
4 find him guilty of burglary first degree and armed robbery.  
5 The officers that night they did their duty. We ask you to  
6 do yours today.

7 THE COURT: All right, ladies and gentlemen, it's time  
8 for me to give you a charge on the law and I'm gonna do  
9 that. But I'm going to take a brief break first just to  
10 allow me and you to refresh. It's only going to take me  
11 fifteen or twenty minutes to do it but let's get up,  
12 recharge our batteries and then come back in and I'll give  
13 you a charge on the law. Please do not discuss the case  
14 yet. Thank you.

15 (JURY EXITS COURTROOM AT 10:30 A.M..)

16 THE COURT: All right, we'll take a brief break.

17 (COURT IN RECESS AT 10:31 A.M..)

18 (COURT BACK IN SESSION AT 10:39 A.M..)

19 THE COURT: You all take your seats.

20 (JURY REENTERS COURTROOM AT 10:40 A.M..)

21 THE COURT: All right, ladies and gentlemen, time has  
22 come for me to give you a charge on the law. I'm sorry I  
23 didn't let you smoke at that break but it won't take that  
24 long. It will only take about fifteen or twenty minutes.

25 I told you at the beginning of the trial that your job

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1 as jurors is to be the finders of the facts and my job is  
2 the finder of the law. And under your oath you swore and  
3 promised to accept the law as I give it to you, therefore,  
4 I'm going to tell you what the law is as it relates to this  
5 case. Under your oath you are required to accept it which  
6 means if you come into this courtroom with any preconceived  
7 notion of what you think the law is or what you think the  
8 law ought to be, then forget about that. Disabuse yourself  
9 of that because you must accept it as I give it to you.

10 Now you obviously are the finders of the fact and as  
11 finder of the facts you will review the evidence and you're  
12 going to make a determination of whether the State has met  
13 its burden of proof. Now I've said at any number of times,  
14 at least twice in this trial, and I'll say it again, that  
15 the defendant, Mr. Mitchell, is presumed innocent until  
16 proven guilty beyond a reasonable doubt. The State has the  
17 burden of proving the defendant beyond a reasonable doubt  
18 and has the burden of proving each and every element of the  
19 offenses beyond a reasonable doubt.

20 Now we have bandied about this term reasonable doubt  
21 so that begs the question what is reasonable doubt? How is  
22 it defined under the law? In any number of cases and you  
23 may have watched TV, you may have been a juror in another  
24 cases, in civil cases, you have heard other burdens of  
25 proof such as burden of - the burden of proof of

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1 preponderance of the evidence which is the greater weight  
2 of the evidence. And that is the prevailing burden of  
3 proof in most civil cases.

4 You also have the burden of proof which is clear and  
5 convincing evidence which is a greater burden than  
6 preponderance. But in criminal cases the burden of proof  
7 is beyond a reasonable doubt. And proof beyond a  
8 reasonable doubt is that proof which leaves you firmly  
9 convinced of the defendant's guilt. Now understand there  
10 is nothing in this world that we can know to an absolute  
11 certainty. And the law doesn't require that the State  
12 prove it's case beyond any possible doubt. But know that  
13 after your review of the evidence if you find you are  
14 firmly convinced of the defendant's guilt, remember your  
15 oath, you must find him guilty. However understand that  
16 after your review of the evidence if you find that there is  
17 a real possibility that the defendant is not guilty then  
18 under your oath you must find him not guilty.

19 Now, you'll make a determination of whether the State  
20 has met it's burden of proof by reviewing the evidence in  
21 this case. And you're going to review the evidence  
22 considering two separate and distinct charges. Okay.  
23 There are multiple charges as you know. There is a  
24 burglary first and there is an armed robbery. Understand  
25 that those are two separate and distinct indictments. That

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1 means you consider both of those indictments separately and  
2 distinctly. You look at all the evidence as to one and  
3 make a determination on one. And look at all the evidence  
4 as to the other and make a determination on that one. And  
5 when I say that what I'm suggesting to you is that just  
6 because you find the defendant either guilty or not guilty  
7 on one of the indictments, does not mean that you must  
8 correspondingly find him guilty or not guilty of the other  
9 indictment. They are separate and distinct, you make  
10 separate and distinct decisions based on the law and the  
11 evidence on each separate indictment.

12 Now, ladies and gentlemen, you know, you saw that the  
13 defendant did not testify in this case. It is his right  
14 not to testify. Under the Constitution all citizens of the  
15 United States enjoy the right to remain silent. The  
16 Defendant has simply exercised his Constitutional right.  
17 You can't hold that against him. You can't hold it against  
18 a person because they elect to exercise their  
19 Constitutional right. There are so important as a matter  
20 of fact that not only can you not hold it against him, it's  
21 not even appropriate for you to discuss in your jury  
22 deliberations because that is in fact his Constitutional  
23 right.

24 Now, evidence takes two separate forms. It can be  
25 classified as two different things or two different

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1 categories. Direct evidence and circumstantial evidence.  
2 You may have heard some of both in this case. Direct  
3 evidence is that evidence which immediately establishes a  
4 fact to be proven such as an eyewitness account of  
5 something. I saw it, I touched it.

6 Circumstantial evidence is indirect evidence. It's  
7 proof of a chain of facts which together prove the main  
8 facts to be proven. Proof of collateral facts which then  
9 lead to prove the fact to be proven. Now that's a pretty  
10 simple definition but sometimes its better to put it in  
11 context and give you an example of the difference between  
12 direct and circumstantial evidence so I'll give you an  
13 example.

14 Let's say that one January evening you decide to go to  
15 bed. You walk past your front window or your front door  
16 and you look out on your front lawn or you look in your  
17 parking lot, and you see that there is no precipitation,  
18 absolutely nothing. You got bed you wake up the next  
19 morning and you come back down or across the -- you get in  
20 front of that same window or door and you look out of that  
21 window and you see if there is a blanket of snow on the  
22 ground in your yard or in your parking lot. You also  
23 notice that in that snow there are footsteps which lead to  
24 your door and lead away. So under that set of  
25 circumstances you got direct evidence that it snowed last

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1 night because you can pick it up and you can feel it and  
2 you can touch it and you can taste it. But you also have  
3 circumstantial evidence that somebody came to your door  
4 either that morning or early that morning or that night.  
5 You don't see that person, he or she is not right there but  
6 you see the footprints in the snow that come to your door  
7 and lead away. Those footprints could only have come to be  
8 subsequent to the snow. So you know that in that time  
9 frame someone must have come to your door and gone away.  
10 That's circumstantial evidence.

11 Now understand that under the law there is no  
12 preference for either direct or circumstantial evidence.  
13 They are of the same value under the law. You will decide  
14 what weight to put on any and all evidence. You will  
15 decide whether any direct or circumstantial evidence has  
16 that value and if so what value you should place on that  
17 evidence.

18 Now you also in determining the value of evidence will  
19 make a judgment as to the credibility of witnesses. And  
20 you will determine who's credible and who's not credible.  
21 You can determine whether a heart of someone's testimony is  
22 credible and then whether a part of their testimony is not  
23 credible. I mean you can accept part of it or all of it or  
24 you can accept none of it. That's all in your discretion.  
25 You put whatever weight or whatever value that you



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1 determine is appropriate on those witnesses testimony and  
2 you determine who's credible.

3 Now you determine credibility based from your own  
4 common sense. You had the opportunity to hear people  
5 testify. You could see them, you could see what they  
6 looked like, you could see their body language and their  
7 mannerisms, their expressions. You also make a  
8 determination of who may have some bias or prejudice. Who  
9 has something to gain or something to loose from the  
10 testimony that they proffered into the record in this case.  
11 You will make a determination of who's believable and who's  
12 not.

13 Now, ladies and gentlemen, there was some evidence of  
14 witnesses having prior records. Understand that the  
15 introduction of a prior record of a witness doesn't  
16 disqualify that witness or invalidate his or her testimony.  
17 That is just an element for you to consider in determining  
18 his or her believability. And evidence of a prior record  
19 of a witness can only be considered when determining or  
20 weighing that witness's credibility..

21 Now, ladies and gentlemen, I'm going to read a little  
22 bit to you now because I'm going to get into fairly  
23 precisely definitions. I don't like to read to you because  
24 it's boring. I suggest to you that I don't know the law  
25 well enough to tell you or that I'm too lazy to learn it

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1 and these lawyers may argue both are true, but I would  
2 suggest to you it's because we spent a couple of days on  
3 this case and it's an important case. And I just want to  
4 make sure the definitions I give you are very precise. So  
5 in advance I apologize to you for reading a few pages,  
6 okay.

7 At issue in this case is the identification of a  
8 witness. And understand that the State has the burden of  
9 proving the credibility of the accuracy of the  
10 identification beyond a reasonable doubt. Identification  
11 testimony is an expression or belief or impression by a  
12 witness. You must first determine the accuracy of the  
13 identification of the defendant. You must consider the  
14 believability of each identification witness in the same  
15 way as any other witness. You may consider whether the  
16 witness had adequate opportunity to observe the offender at  
17 the time of the offense. This will be effected by things  
18 like how long or short a time was available, how far or how  
19 close the witness was, the lighting conditions, whether the  
20 witness had the chance to see or know the person in the  
21 past. Once again I instruct you that the burden of proof  
22 on the State extends to every element of the crime charged.  
23 And this specifically includes the burden of proving beyond  
24 a reasonable doubt the identify of the defendant as the  
25 person who committed the crime. If after examining the

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1 testimony you have a reasonable doubt as to the accuracy of  
2 the identification then under your oath you must find the  
3 defendant not guilty.

4 Now, two charges in this case, burglary first degree  
5 and armed robbery. As to burglary first degree the State  
6 must prove beyond a reasonable doubt that the Defendant  
7 entered a dwelling without consent. A dwelling is any  
8 building or portion of a building in which a person  
9 ordinarily sleeps. In order to prove that the Defendant  
10 entered the dwelling, the State does not have to show the  
11 defendant's entire body entered the dwelling. The smallest  
12 entry is sufficient. The State does not have to prove that  
13 force was used to gain entry. If a person enters a  
14 building by using deception, artifice, trick or  
15 misrepresentation to enter, this is an entry without  
16 consent.

17 Next the State must prove beyond a reasonable doubt  
18 that the Defendant intended to commit a crime at the time  
19 of the entry. The mere entry into a dwelling without  
20 consent is not a burglary. If the intent to commit a crime  
21 is formed after the entry it's not a burglary. On the  
22 other hand if the Defendant intended to commit a crime at  
23 the time of the entry, it is a burglary even if the intent  
24 was abandoned after the entry. It does not matter what the  
25 intended crime was or does not matter that the intended

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1 crime was not completed.

2 Now, ladies and gentlemen, criminal content is a  
3 mental state, a conscious wrong doing. Intent may be shown  
4 by acts or conduct of the Defendant and other circumstances  
5 from which you may naturally and reasonably infer intent.  
6 It's up to you to determine the Defendant's intent based on  
7 the evidence that was presented and the circumstances based  
8 on your analysis of the evidence.

9 Finally, ladies and gentlemen, the State must prove  
10 beyond a reasonable doubt one of the following.

11 One: When entering while in the dwelling or fleeing  
12 the Defendant or an accomplice was armed with a deadly  
13 weapon or explosive. A deadly weapon is any article,  
14 instrument or substance which is likely to cause death or  
15 great bodily harm.

16 Or, ladies and gentlemen, they must prove beyond a  
17 reasonable doubt Two: When entering while in the dwelling  
18 or when fleeing the Defendant or an accomplice used or  
19 threatened to use a dangerous object. Or, Three: When  
20 entering while in the dwelling or when fleeing the  
21 Defendant or an accomplice displayed what was or appeared  
22 to be a knife, pistol, revolver, rifle, shotgun, machine  
23 gun or other firearm. Or ladies and gentlemen, they must  
24 prove beyond a reasonable doubt or that the Defendant  
25 entered or remained in the dwelling in the night time.

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1 Night time is the period between sunset and sunrise during  
2 which there is not enough day light to recognize a person's  
3 face except by artificial light or moon light.

4 All right, ladies and gentlemen, the next charge is  
5 armed robbery. The State must first prove beyond a  
6 reasonable doubt that the Defendant took personal property  
7 from the person or presence of another person. Property  
8 is in the presence of a person if it is within the person's  
9 reach, inspection, observation or control so that the  
10 person could if not over come with violence or prevented by  
11 fear keep possession of the property.

12 The State must also prove beyond a reasonable doubt  
13 that the Defendant carried the property away intending to  
14 permanently deprive the owner of the property and to keep  
15 the property for the Defendant's own use. The slightest  
16 removal of the property or the complete possession of the  
17 property even for an instant by the Defendant is sufficient  
18 to show a taking and carrying away of the property. The  
19 taking and carrying away of the property must have been  
20 done with violence, or by putting the owner of the property  
21 in fear of violence. Finally the State must prove beyond a  
22 reasonable doubt that the Defendant was armed with a deadly  
23 weapon during the robbery. A deadly is an article,  
24 instrument or substance which is likely to cause death or  
25 great bodily harm. Whether an instrument has been used as

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1 a deadly weapon depends on the facts and circumstances of  
2 each case.

3 Now, ladies and gentlemen, mere presence at the scene  
4 of a crime is not sufficient to prove someone guilty of a  
5 crime. A defendant's presence where a crime is being  
6 committed or mere association with a person who commits a  
7 crime does not make a defendant an accomplice or an aider  
8 and abetter of the person committing the crime. The burden  
9 is on the State to prove every element of the crime  
10 charged. If you find after reviewing all of the evidence  
11 that the State has proved that the defendant was only  
12 present at the scene of the crime, and that they have not  
13 proved beyond a reasonable doubt of any other participation  
14 in the crime then you must find the defendant not guilty.  
15 The law is that proof of at the scene of the crime is not  
16 sufficient to find someone guilty.

17 Now, I'm gonna read -- I can tell during that period  
18 of time I was reading I was losing you all a little bit.  
19 That's why I don't like to read. So, I have two verdict  
20 forms here and I'm gonna take and send these verdict forms  
21 with you back to the jury room. Your verdict must be  
22 unanimous. That is there must be twelve people who agree  
23 on the verdicts in this case. It can't be eleven to one or  
24 ten to two or any other combination of numbers that add up  
25 to twelve. It's got to be a unanimous verdict. Your

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1 verdict cannot be the product of any passion, or prejudice,  
2 or any bias, or any emotion. Your verdict has to be based  
3 upon the measure of deliberation and analysis of the  
4 evidence that was entered in this courtroom and upon the  
5 law as I give it to you.

6 Now by way of example I'm gonna show you the first  
7 verdict form. I've got two, one for each, burglary first  
8 and armed robbery. The reason I've got two is just because  
9 like I told you earlier you have to consider them  
10 separately so I break them out into two separate verdict  
11 forms. The first one is burglary first degree and it's  
12 very very simple. You see it has the caption on it and  
13 then it begins "As to the charge of burglary first degree  
14 we the jury unanimously find the defendant, Randy Lamond  
15 Mitchell" and then two options, "not guilty or guilty."  
16 What you will do, Ms. Barnes, is you will X or check or  
17 mark clearly in either one of those and then sign as the  
18 foreperson and date it when the jury has come to a  
19 unanimous verdict and will do so for each of the charges  
20 and for each of the indictments.

21 Now when you have reached a verdict what I would like  
22 for you to do is let the bailiff know you have come to a  
23 unanimous decision and we'll come back in and receive the  
24 verdict. Now we're almost at that point now where I'm  
25 going to let you start deliberating but not quite, not

CHARGE TO THE JURY

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1 quite. Because what's gonna happen now is after you leave  
2 the attorneys are going to have the opportunity to take  
3 exception to my charge. That is to correct me, to tell me  
4 okay you left this out or you misstated this. Hopefully I  
5 won't have to bring you back in and correct something that  
6 I said or correct an error that I made but it happens from  
7 time to time. So please don't begin to consider the case  
8 yet. You'll know when it's time to consider the case  
9 because I'm gonna have the bailiff to deliver to you the  
10 verdict forms and the evidence that was presented in this  
11 case so you'll have it. Now understand that you're gonna  
12 get all of the evidence with the exception of a few things.  
13 I don't know you know whether you all have formed a bond  
14 with one another or not so I'm not gonna send back the  
15 ammunition. So know if you're looking for the bullets or  
16 the shells, I've got those. Okay. All right. So if you  
17 would please retire to your jury room and I'll be with you  
18 in a second.

19 (JURY EXITS COURTROOM FOR DELIBERATIONS AT 11:00  
20 A.M..)

21 THE COURT: All right, Counsel, exceptions to the  
22 charge?

23 MS. MILLER: None from the State.

24 MR. JAMIESON: Your Honor, perhaps. Normally they are  
25 charged that they have to make an individual decision, each



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1 has to come to their decision separately and apart from the  
2 others to reach a unanimous verdict and I don't remember  
3 hearing you say that.

4 THE COURT: Okay. All right. I didn't, I didn't say  
5 that and I didn't say that precisely but I think I  
6 suggested it. And I'm comfortable that the law that I gave  
7 them with respect to the verdict was sufficient under the  
8 prescribed law in the State of South Carolina. So I don't  
9 know if that was an objection or not but to the extent that  
10 it may have -

11 MR. JAMIESON: It was.

12 THE COURT: Okay. To the extent that it was I  
13 respectfully deny same.

14 MR. JAMIESON: Thank you, Your Honor.

15 THE COURT: Okay. All right if you all want to do an  
16 inventory of the evidence and then send it back.

17 Thank you all for having tried an excellent case. I  
18 do appreciate it.

19 And good luck to you, Mr. Mitchell.

20 Will you tell the two alternates to come on back to my  
21 office. I'm gonna release the two alternates from chambers  
22 okay.

23 (COURT IN RECESS AT 11:05 A.M..)

24 (BACK ON THE RECORD 11:54 A.M..)

25 THE COURT: Take your seats, ladies and gentlemen.

## VERDICT

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1           It is my understanding that the jury has reached a  
2 verdict. Are you prepared to receive the verdict?

3           MR. JAMIESON: Yes, Your Honor.

4           MS. MILLER: We are, Your Honor.

5           THE COURT: Will you bring the jury in please.

6           (JURY REENTERS COURTROOM AT 11:56 A.M..)

7           THE COURT: Ms. Barnes, has the jury reached a  
8 unanimous verdict?

9           MS. BARNES: Yes we have, Your Honor.

10          THE COURT: Okay. Would you hand the verdict form to  
11 the bailiff please, ma'am.

12          (VERDICT RECEIVED UP BY THE COURT.)

13          THE COURT: Thank you, sir.

14          All right, Madame Clerk, will you publish the verdict  
15 please, ma'am.

16          MADAME CLERK: Indictment 2011-GS-46-507 the State  
17 versus Randy Lamond Mitchell as to the charge of armed  
18 robbery we the jury unanimously find the defendant Randy  
19 Lamond Mitchell guilty signed by the Foreperson dated  
20 today's date.

21          Indictment 2011-GS-46-506 the State versus Randy  
22 Mitchell as to the charge of burglary first degree we the  
23 jury unanimously find Randy Mitchell guilty signed by the  
24 Foreperson dated today's date.

25          Ladies and gentlemen of the jury, if that be your

## SENTENCING

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1 verdict so say you all by raising your right hand.

2 Let the record show all jurors affirmed this verdict.

3 THE COURT: All right. Counsel, anything further from  
4 this jury?

5 MR. JAMIESON: No, Your Honor.

6 MS. MILLER: Nothing from the State.

7 THE COURT: Ladies and gentlemen, at this time we'll  
8 proceed to sentencing and I'll invite you to stay for  
9 sentencing or you may exit the courtroom. But I do want to  
10 tell you that I appreciate your service in this case and I  
11 know that it was a difficult case and I appreciate you  
12 having been attentive and having done your duty under the  
13 law. I do need to discharge you from your jury duty on  
14 this case and not only on this case but for the remainder  
15 of the week as well. And I want to do that in your jury  
16 room and give you the opportunity to ask me any questions  
17 that you may have and just informally thank you as well.  
18 So what I'm gonna do now is I'm gonna proceed to  
19 sentencing. You're welcome to stay for sentencing if you'd  
20 like to, however, you can wait in your jury room for just a  
21 few more minutes. I'm not gonna be very long at all and  
22 keep you waiting that long if you decide to wait in the  
23 jury room. Of course you can remain in the courtroom if  
24 you'd like to all right.

25 All right. We may proceed with sentencing.

## SENTENCING

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1 MS. MILLER: All right. Solicitor, I have heard the  
2 facts in this case, if we don't need anything else with  
3 respect to the facts but is there anything additional that  
4 you need to put on the record with respect to sentencing?

5 MS. MILLER: Your Honor, Mr. Mitchell was noticed some  
6 time ago, certainly more than ten days prior to trial of  
7 the intention of the State to go forward with life without  
8 parole. He had a prior conviction for a most serious  
9 offense of attempted armed robbery. I gave him written  
10 notice of that in court, I gave him written notice and I  
11 gave his attorney separate written notice also at the same  
12 time as well as notice on the record of our intention.

13 THE COURT: Okay. Good enough. All right.

14 Mr. Jamieson, anything you'd like to tell me, sir?

15 MR. JAMIESON: Your Honor, you heard the facts of the  
16 case, we certainly argue that there was reasonable doubt,  
17 the jury found other wise. I'd ask the Court to consider  
18 the facts of the case in sentencing my client.

19 THE COURT: Mr. Mitchell.

20 Go ahead.

21 MS. MILLER: I'm sorry. And if you want me to I'll  
22 also give the rest of his record, if it matters I can do  
23 so.

24 THE COURT: Yeah I want to hear that.

25 MS. MILLER: He has a possession of a weapon which is

## SENTENCING

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1 a federal conviction; possession of crack cocaine, failure  
2 to stop for a blue light. He had a strong armed robbery,  
3 attempted armed robbery.

4 THE COURT: All right, Mr. Mitchell, I'd be happy to  
5 hear from you, sir. Is there anything you'd like to tell  
6 me?

7 MR. MITCHELL: First of all I ain't got no attempted  
8 armed robbery on my record for this to be my third offense.  
9 That's what I talked to my lawyer about. During the time  
10 she has not produced that warrant that say on my third  
11 strike. I went to prison for common law robbery, or strong  
12 armed robbery. I know it was a non-violent sentence  
13 because I did a non-violent time. It was not a violent  
14 offense. You know what I'm saying? So she says she was  
15 going to produce a warrant that said that I had a third  
16 offense, that I'm on my third offense. But even if it was  
17 that was only the first violent offense of my end of time.  
18 And this is all summed up in one case so you can't make  
19 this my third offense like that.

20 THE COURT: Does the NCIC and all those records  
21 demonstrate that there was a most serious offense for which  
22 he was convicted?

23 MS. MILLER: Your Honor, I personally prosecuted him  
24 for it so Number One. Number Two: I gave him and his  
25 attorney a certified sentencing sheet, conviction sheet of

## SENTENCING

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1       that. Let me see if I've got it in my notebook.

2               THE COURT: I'll ask you, Mr. Jamieson, do you take  
3       exception to the fact that this would constitute a second  
4       most serious strike?

5               MR. JAMIESON: She provided me a certified copy of a  
6       conviction at the beginning of the trial, Your Honor.

7               THE COURT: And was that conviction for a most serious  
8       offense?

9               MR. JAMIESON: Yes, Your Honor.

10              THE COURT: All right. Mr. Mitchell, you certainly  
11       have, you've lodged your exception on the record. You have  
12       appellate rights, you got ten days from today's date to  
13       appeal your conviction, and any sentences handed down. You  
14       also have a right to file an application for post  
15       conviction relief if you feel that the sentence was  
16       inappropriate revealed. Given the evidence that I have in  
17       front of me, given the law in the State of South Carolina I  
18       don't have any discretion. It is -- I'm required to impose  
19       life without the possibility of parole. Under the law  
20       there is nothing I can do with respect to that. I also  
21       recognize that because you were facing life without the  
22       possibility of parole that you didn't have much choice but  
23       to go to trial and I recognize that. I don't fault you for  
24       having done that.

25              MS. MILLER: Your Honor, can I just add to the record?

## SENTENCING

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1 THE COURT: Yes, ma'am.

2 MS. MILLER: You indicating now, I did want to put on  
3 the record that he was provided an offer to this case that  
4 was instead of life without parole he was given an offer  
5 prior to trial and prior to notice.

6 THE COURT: Okay. All right. You know I don't think  
7 that's -- I'm happy to know that and I'm glad you told me.  
8 But as I suggested I don't think I have any discretion and  
9 I'm held by and the law requires me to impose a sentence of  
10 life without the possibility of parole on each of the  
11 offenses. And pursuant to my duty under the law I have,  
12 and the sentence of the court is you be committed to the  
13 Department of Corrections for a period of the remainder of  
14 your natural life without the possibility of parole.

15 Mr. Mitchell, good luck to you, sir.

16 (DEFENDANT ESCORTED FROM THE COURTROOM.)

17 THE COURT: All right, ladies and gentlemen, I'll meet  
18 you in the jury room.

19 (WHEREUPON: COURT'S EXHIBITS ONE, TWO AND THREE AND  
20 FOUR IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

21 (JURY DISMISSED AT 12:05 P.M..)

22 (COURT ADJOURNED AT 12:05 P.M..)

23 -- END OF THE TRANSCRIPT OF RECORD. --

24

25

CERTIFICATE OF REPORTER

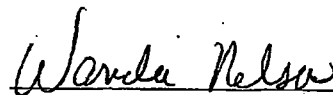
State of South Carolina )

)

County of York )

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 27th, 28th and 29th days February, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Wanda Nelson, CVR  
Certified Verbatim Reporter,  
Official Court Reporter,  
Notary Public, in and for  
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 6-27-2012



County: YorkDate: February 27, 28, 29, 2012VOIR DIRE/BATSON SHEETCase No: 2011-GS-46-00506Judge: John C. Hayes, IIIState/Plaintiff StateState/Plaintiff's Atty: Sol. Betty MillerAsst. Sol. Misti SheltonDefendant: Randy Lamond Mitchell Defense Atty: Mr. Philip JamiesonCourt Reporter: Wanda Nelson

| Juror # | Name                 | Sex | Race | Strikes |           |         |        |
|---------|----------------------|-----|------|---------|-----------|---------|--------|
|         |                      |     |      | Court   | Plaintiff | Defense | Accept |
| 127     | Latondrea McCoy      | F   | B    |         |           |         | X      |
| 62      | David Defreitas      | W   | M    |         |           |         | X      |
| 146     | Ruthann Naufftus     | W   | F    |         |           | X       |        |
| 31      | April Readett        | W   | F    |         |           |         | X      |
| 94      | Angelique Holland    | W   | F    |         |           | X       |        |
| 153     | Anna K. McManus      | W   | F    |         |           | X       |        |
| 223     | Billy Trusdale       | B   | M    |         |           |         | X      |
| 210     | Shane H. Spitzer     | W   | M    |         |           | X       |        |
| 142     | Sammy K. Morris, Jr. | B   | M    |         |           |         | X      |
| 151     | Ruth M. Ostrum       | W   | F    |         |           |         | X      |
| 114     | Ted Y. Lemmond       | W   | M    |         |           | X       |        |
| 181     | Michael D. Robinson  | W   | M    |         | X         |         |        |
| 201     | Kane Sinakhonerath   | O   | M    |         |           | X       |        |
| 187     | Tracy G. Sanford     | W   | F    |         |           |         | X      |
| 9 **    | Mary C. Barnes       | B   | F    |         |           |         | X      |
| 110     | John R. Kochilla     | W   | M    |         |           | X       |        |
| 243     | Khary J. Wilson      | B   | M    |         | X         |         |        |
| 90      | Shawn J. Henry       | B   | M    |         |           |         | X      |
| 78      | Sara E. Freeman      | W   | F    |         |           | X       |        |
| 189     | Tiffany T. Schaeffer | W   | F    |         |           | X       |        |

|     |                       |   |   |  |   |   |   |
|-----|-----------------------|---|---|--|---|---|---|
| 53  | Brian C. Cothern      | W | M |  |   |   | X |
| 67  | Blair D. Ebersold     | W | M |  | X |   |   |
| 61  | David M. Decker       | W | M |  |   | X |   |
| 124 | Joshua O. Martin      | W | M |  |   |   | X |
| 150 | Jason W. Osborn       | W | M |  |   |   | X |
| 55  | Jenifer D. Crawford   | W | F |  |   | X |   |
| 45  | Cynthia F. Chitwood   | W | F |  |   |   | X |
| 174 | Charles D. Richardson | W | M |  |   |   | X |
| 41  | Shelly L. Carter      | W | F |  |   |   | X |
| 11  | Marcus E. Barwick     | W | M |  |   | X |   |
| 172 | Christy B. Rice       | W | F |  |   |   | X |
|     |                       |   |   |  |   |   |   |

In the Court's column, indicate who made the motion to strike the jurors "for cause". C-Court; P-Plaintiff; D-Defense

\*\* Foreperson

## FORM 5

2014CP46-1048

STATE OF SOUTH CAROLINA )

COUNTY OF YORK )RANDY LAMOND MITCHELL )  
Full name and prison number (if any) of Applicant. )

v. )

State of South Carolina )

IN THE COURT OF COMMON PLEAS )

APPLICATION FOR )

POST-CONVICTION RELIEF )

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in YORK (legally handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. - Place of detention LIEBER C.T. P.O. Box 205 Ridgeville, SC 29472
2. - Name and location of Court which imposed sentence GENERAL SESSIONS COURT OF YORK/YORK CO. SC
3. Name(s) of co-defendant(s) (if any) GREGORY CRAWFORD
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2011-GS-46-00506
  - (b) 2011-GS-46-00507
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) FEBRUARY 29, 2012
  - (b) LIFE without the Possibility of Parole

FILED-RECEIVED  
2014 APR - 3 AM 11:27  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC

CERTIFIED TRUE COPY  
2014 APR - 4 AM 8:52  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC  
Revised 3/2007

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ☒ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
YES!
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. MARCH 12, 2014
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) SEE ATTACHMENT SHEET!
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT SHEET!
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO!
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO!
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO!
- (d) any other petitions, motions or applications in this or any other Court? NO!
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_
- (c) the disposition thereof:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- iv. \_\_\_\_\_
- (d) the date of each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No!

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- (b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) This is the first opportunity
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? \_\_\_\_\_
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
  - i. Philip Jamieson, 242 Oakland Ave Rock Hill SC 29730 / TRIAL LAWYER
  - ii. BENJAMIN J. TRIPP, DIVISION OF APPELLATE DEFENSE 1330 Lady St. Suite 401 Columbia
  - iii. S.C. 29201-3332
- (b) the proceedings at which each such attorney represented you:
  - i. Philip Jamieson - "JURY TRIAL"
  - ii. BENJAMIN J. TRIPP - "DIRECT APPEAL"
  - iii. \_\_\_\_\_

19. State clearly the relief you seek in filing this application:

NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO!

STATE OF SOUTH CAROLINA )

County of DORCHESTER )

## VERIFICATION

I, RM, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Randy Mitchell

SWORN to and subscribed before me this 31<sup>st</sup>  
day of March, 2014.

Ludeman Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2026



**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, AM, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Randy L. Mitchell  
Applicant

SWORN or affirmed to and subscribed before me this  
31<sup>st</sup> day of March, 2014.

Ludeman Bryant  
Notary Public

My Commission Expires: May 26, 2020

Attachment

Applicant set forth this Cause of action Pursuant to the Jurisdiction that are set forth in Chapter 17-27-20 (1) (b) "Collateral attack upon his Conviction on any grounds or alleged error heretofore available under this uniform Post Conviction Relief Act that are being submitted or amended."

The Applicant asserts ineffective assistance of trial Counsel, Applicant also asserts that due to his lack of understanding of the law, Applicant request that Counsel be appointed Pursuant to N.J (d) SERCiv. P., and S.C. Code of Laws 17-27-90.

The Applicant Further asserts that due to the lack of records and the assistance of Counsel, it would be Chronologically impossible for the Applicant to carry such burden to show his entitlement for relief by a Preponderance of the evidence, and for the appointment of Counsel to insure that all available grounds for relief are included in the application.

Therefore, Applicant request that this Court appoint Counsel in the above mention application. Applicant moves this Honorable Court to grant leave to amend this application in this Cause of action due to the lack of Counsel and Applicant is a Lay Person at Law.

Applicant seeks this Court approval of this application so that Applicant right to a PCR won't be deem abandon due to the fact that Applicant has only one year to file this application from the date of a final Judgment or from the remittitur to the lower Court which ever comes first.

Respectfully Submitted,

Date 3-28-14

Randy L. Mitchell

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

Randy Lamont Mitchell, #247782,

2014-CP-46-1048

Applicant,

v.

**RETURN**

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 3, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the February 2011 term of the York County Grand Jury for Burglary, 1<sup>st</sup> degree (2011-GS-46-0506) and Armed Robbery (2011-GS-46-0507). Phillip Jamieson, Esquire, represented him. On February 27-29, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Robin Stillwell sentenced the Applicant to confinement for Life without Parole.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Mitchell, 2014-UP-104 (filed March 12, 2014). The Remittitur was issued on March 31, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcripts. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In

other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

#### V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

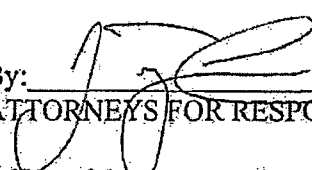
Respectfully submitted,

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Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
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J. RUTLEDGE JOHNSON  
Assistant Attorney General

By:   
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October 15, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

RANDY MITCHELL, #247782

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

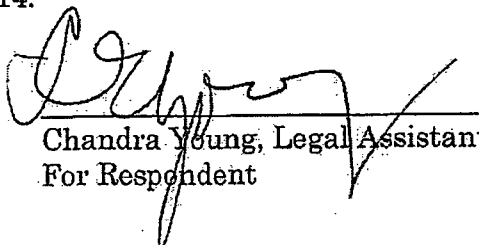
IN THE COURT OF COMMON PLEAS

2014-CP-46-1048

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire  
 235 East Main Street; Suite 115  
 Rock Hill, SC 29730

DATED this 15<sup>th</sup> day of October, 2014.


Chandra Young, Legal Assistant  
 For Respondent

1 STATE OF SOUTH CAROLINA ) TRANSCRIPT OF RECORD  
2 COUNTY OF YORK ) CASE NO: 2014-CP-46-3141  
3  
4 -----  
5

6 B E F O R E: The Honorable J. Ernest Kinard

7 April 14, 2015  
8 -----  
9

10 RANDY L. MITCHELL,

11 Petitioner,  
12

13 vs.  
14

15 STATE OF SOUTH CAROLINA,  
16

17 Respondent.  
18 -----

19 APPEARANCES:

20 Leah Moody, Esq.  
For the Petitioner

21 J. Rutledge Johnson, Esq.  
For the Respondent.  
22

23 Court Reporter:  
24 Aminah R. Hardy, CM  
25



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I-N-D-E-X

WITNESS

PAGE

RANDY MITCHELL

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(No exhibits were marked.)

## P-R-O-C-E-E-D-I-N-G-S

MR. JOHNSON: May it please the Court. Your Honor, this is the case of Randy Mitchell versus State of South Carolina, Case No. 2014-CP-46-1048. Mr. Mitchell was indicted by the February 2011 term of the York County Grand Jury for burglary first degree and armed robbery.

On February 27th through 29th, 2012, he proceeded to a jury trial, pursuant to which he was found guilty as indicted. The Honorable Robin Stilwell sentenced him to confinement for life without parole. A notice of appeal was filed on his behalf. An appeal was perfected. The Court of Appeals affirmed his conviction and sentence, remittitur was thereafter issued on March 31st, 2014. He filed a timely PCR application April 3rd, 2014, and the State filed its return October 15th, 2014, and he's represented here today by Ms. Leah Moody.

THE COURT: Okay, Ms. Moody.

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

## DIRECT EXAMINATION

BY MS. MOODY:

Q Mr. Mitchell, please state your full name for the record.

A Randy Lamar Mitchell.

Q And where are you currently incarcerated?

RANDY MITCHELL - DIRECT EXAMINATION

- 1 A Lieber Correctional Institution.
- 2 Q How long have you been in Lieber?
- 3 A Three years.
- 4 Q And you're there based off the burglary first
- 5 charge -- well, conviction -- and armed robbery?
- 6 A Yes, ma'am.
- 7 Q And who was your attorney during that case?
- 8 A Phil Jamieson.
- 9 Q And you went to trial on this case?
- 10 A Yes, ma'am.
- 11 Q That was the second trial in your case?
- 12 A Yes, ma'am.
- 13 Q Who was your attorney then?
- 14 A BJ Barrowclaugh and Harry Dest.
- 15 Q But for purpose of this hearing, your PCR application
- 16 relates to Mr. Jamieson?
- 17 A Yes, ma'am.
- 18 Q Now, you went to trial with BJ Barrowclaugh and Harry
- 19 Dest first. What happened with that trial?
- 20 A It was jury hung.
- 21 Q How did you come to be represented by Mr. Jamieson?
- 22 A Relief of Mr. Barrowclaugh, been some issues with
- 23 him, and they appointed -- I relieved him.
- 24 Q You had Mr. Barrowclaugh relieved?
- 25 A Yeah.

RANDY MITCHELL - DIRECT EXAMINATION

1 Q And you got appointed Mr. Jamieson?

2 A Yes, ma'am.

3 Q Okay. And do you recall when you first met with  
4 Mr. Jamieson?

5 A Probably about three months after I  
6 leaved Mr. Barrowclaugh.

7 Q After the Court relieved him, you first met with him  
8 in three months?

9 A About three months later.

10 Q Did you have any written communication with him  
11 during those three months?

12 A No. No. Not until -- I didn't even know who he was  
13 until he came to talk.

14 Q Okay. And was that the -- how far before your trial  
15 was that meeting?

16 A About seven months.

17 Q And during that time, did you give him any  
18 information as it related to your case?

19 A Yes, ma'am.

20 Q And what information did you give him?

21 A What I went through with Barrowclaugh about the  
22 evidence, certain evidence, about all that.

23 Q Okay. So you discussed with him the case and gave  
24 him information to help him in representing you?

25 A Yes, ma'am.

RANDY MITCHELL - DIRECT EXAMINATION

1 Q Now, based on your application you filed for  
2 ineffective assistance of counsel, and you filed for  
3 prosecutorial misconduct, can you please relate to the  
4 Court what your issues are with Mr. Jamieson?

5 A First, I'd like to ask the Court to allow me to let  
6 the transcripts of the -- trial transcripts be read into  
7 the record, Your Honor.

8 THE COURT: We got it. We're not going to read it.  
9 We're not going read it verbatim, but it's in the record.

10 THE DEFENDANT: And I'd like to ask that the Rule 5  
11 motion be read into, because this is where I'll be  
12 pulling my facts and evidence and proof from to gain  
13 release, sir.

14 Q Well, tell the Court the issues that you have with  
15 your attorney. You realize the trial transcript and the  
16 discovery that was given to your attorney, that was what  
17 the trial was based on?

18 A Yes, ma'am.

19 Q Okay. So you indicated that your attorney -- you  
20 recall talking to me that your attorney failed to  
21 investigate?

22 A Well, first is ineffective assistance of counsel,  
23 failure to suppress inadmissible evidence, and failure to  
24 objection to false testimony by the government witness. I  
25 stated the defense counsel rendered ineffective assistance

RANDY MITCHELL - DIRECT EXAMINATION

1 of counsel to failing to suppress --

2 Q Slow down because she's got to take what you're  
3 saying and the judge has to understand what you're saying.

4 A And not objecting to the false testimony. Because on  
5 1/4/11 BJ Barrowclaugh had the weapon charges dismissed in  
6 preliminary hearing because the serial numbers didn't  
7 match up, know what I'm saying. So after he had the  
8 weapons charge dismissed, we go to trial, the gun shows  
9 up. This is with Barrowclaugh. So anyway, the jury hung.

10 After that, I had Mr. Jamieson, and I tell  
11 Mr. Jamieson about this, that the gun and the serial  
12 number didn't match up, according to Mr. Barrowclaugh,  
13 that's because they got dismissed in preliminary hearing.

14 Q Let me slow you up right there. You're saying the  
15 gun that was entered into evidence by the State did not  
16 match the serial number that they indicated was on the gun  
17 they found at the scene of the crime?

18 A That's right. Mr. George Weeks logged in a gun with  
19 a serial number 541498. I don't know what the serial  
20 number is on that weapon, but according to  
21 Mr. Barrowclaugh, it didn't add up. And I asked the  
22 defense counsel, Jamieson, to investigate to see if it was  
23 the same serial number that Detective Weeks collected.  
24 And if it did not match, he should move to have it  
25 suppressed. He advised me he investigated the pistol and

RANDY MITCHELL - DIRECT EXAMINATION

1 it was the same serial number. The day of trial, he  
2 showed me two photos, one of the serial number from the  
3 sawed off shotgun that was in the picture, and I told him,  
4 okay, I can see the serial number on that one, and then he  
5 showed me the one supposed to have been the serial number  
6 on the pistol. I told him I don't see nothing. He told  
7 me he took the picture with his cell phone. So I said I  
8 don't see it. I don't see no numbers on the picture.

9 So --

10 Q So -- wait a minute. Let's be clear. You're saying  
11 that the number that Mr. Weeks entered into evidence, the  
12 gun they recovered from the scene, those numbers didn't  
13 match?

14 A Yes, ma'am.

15 Q So the gun they recovered from the scene had a serial  
16 number?

17 A All I know is Mr. Barrowclough got the charge throwed  
18 out in preliminary hearing because the serial number  
19 didn't match. So if the charge was throwed out, then how  
20 did the gun get in, you see what I'm saying? And I'm  
21 trying to figure out how the gun is getting in. After  
22 that, I told him I could see them numbers on there. He  
23 just continued to tell me it got the serial number, got  
24 the serial number. He told me he took the video of the  
25 cell phone and all that, but he kept on telling me -- next

RANDY MITCHELL - DIRECT EXAMINATION

1 thing you know forensic -- Detective Weeks come up on the  
2 stand. The State tried to enter in the gun, and I tell  
3 Jamieson check to see the serial number there. He said he  
4 looked at it and said, okay, he admitted it in, like it  
5 was there.

6 Q So you're saying he didn't object to that particular  
7 gun coming in?

8 A No, he ain't object to it coming in. He did not  
9 object to it.

10 Q Was this during the actual trial?

11 A During the trial. It was going on, know what I'm  
12 saying. And I told him -- so then after he let the gun in  
13 for forensic, George Weeks testified that the serial  
14 numbers matched. He testified that they matched, one,  
15 from his paper, from his report, to the gun, that they  
16 matched. He said they matched, so they let it in. So I  
17 said -- Detective Weeks testified the numbers from the  
18 forensic report matched the ones on the pistol, when there  
19 was no serial number on the pistol, from what the defense  
20 counsel showed me. There was no serial number on the gun,  
21 from what he showed me.

22 Q Okay. Let's be clear, because you had two trials and  
23 you had two sets of lawyers. So when you're saying that  
24 the lawyer that showed you the gun that had no serial  
25 number, was that BJ Barrowclaugh?



RANDY MITCHELL - DIRECT EXAMINATION

1 A Ma'am, I'm talking about this trial, this man right  
2 here. I'm past BJ Barrowclaugh. No disrespect, but I'm  
3 past BJ Barrowclaugh. I'm talking about Mr. Jamieson.

4 Q So when he showed you the picture -- I'm just trying  
5 to be clear. When he showed you the picture, there was no  
6 serial number on the picture?

7 A No serial number on the picture.

8 Q Okay. So you're saying that your attorney didn't  
9 object?

10 A To the weapon coming in.

11 Q To the weapon coming in. So Mr. Weeks testified what  
12 he had on paper; he didn't testify from what was on the  
13 gun?

14 A No, ma'am. Mr. Weeks had the pistol in this hand and  
15 the piece of paper in this hand. This is false testimony  
16 by him. He said, Same serial number, same weapon. Told  
17 it in front of the jury and all that. He said, Same  
18 serial number, same weapon.

19 MR. JOHNSON: Can you point me in the transcript  
20 where he said that?

21 THE DEFENDANT: That would be on Page 131, Line 18  
22 through 23.

23 MR. JOHNSON: Thank you.

24 A I say this act prejudices me, the defense. I  
25 requested my PCR lawyer to have the pistol here to be

RANDY MITCHELL - DIRECT EXAMINATION

1 examined by the judge to see if the serial numbers match.  
2 Counsel was ineffective for failure to suppress this  
3 pistol under the grounds and failing to object to  
4 Detective Weeks' false testimony.

5 Q Okay. Now, let me ask you this. During the trial --  
6 and obviously it's in the transcript -- was there a  
7 suppression hearing on this issue?

8 A No, ma'am, no suppression hearing on the issue.

9 Q Okay. And then, again, there was no objection at the  
10 time when the officer -- the detective testified to it?

11 A No. No, ma'am.

12 Q But you and Mr. Jamieson discussed this prior to the  
13 trial?

14 A Prior to trial. Told him this one day when he came  
15 to visit me, I said -- I told him what happened with me  
16 and Mr. Barrowclaugh. I asked him would he go investigate  
17 the pistol. He came back and told me that it -- it wore  
18 the serial number.

19 Q I'm sorry, what?

20 A That it wore the serial number.

21 Q That it was the serial number?

22 A Yeah, the serial number on the gun.

23 Q Anything else as to the gun issue?

24 A No, just that this prejudiced me and denied me due  
25 process of law.

RANDY MITCHELL - DIRECT EXAMINATION

1 Q Wait a minute. You're saying that it prejudiced you  
2 and denied you your due process of the law?

3 A Yes, ma'am, and violated my 6th and 14th Amendment,  
4 know what I'm saying, had not been for the lawyer's  
5 unprofessional error.

6 Q Well, 14th and 5th go to due process of law.

7 A 14th, yeah, and 6th.

8 Q And the 6th, yes, goes to your due process rights?

9 A Yes, ma'am.

10 Q Okay. Anything else as to the gun?

11 A No, ma'am, that was it. That was it on the gun.

12 Q Okay. Now, you have another issue as to the  
13 suppression hearing; is that correct?

14 A Next -- the next issue is dealing with my life  
15 notice.

16 Q Your life without parole notice?

17 A Life without parole notice, know what I'm saying. I  
18 say he was ineffective for not investigating or keeping  
19 the Defendant informed of important developments in the  
20 course of the case.

21 Q Let me stop you right there. In your first trial --  
22 we're not here on the first trial, that's clear.

23 A Yes, ma'am.

24 Q On your first trial, were you served with a notice of  
25 life without parole?

RANDY MITCHELL - DIRECT EXAMINATION

1     A     No, ma'am, never came up. Only after the jury hung,  
2     and maybe a month before trial, after he came to me with a  
3     plea, I still refused to plea, so he came -- Mr. Jamieson  
4     came -- Jamieson came to see me. He said, They're taking  
5     you in front of the judge to serve you with life notice,  
6     and I was like life notice, I'm not on my third strike,  
7     what is they talking about? I'm not on no third strike.

8     Q     Now, when you informed him of that, did he explain  
9     anything about life without parole?

10    A     No, ma'am. He said, Well, she said you're on your  
11    third strike and they're serving you with papers. I said  
12    I'm not on my third strike. He said, Okay, well, they  
13    doing it. So we come up here, and they served me with  
14    papers. I try to talk to the judge about it, he said to  
15    talk to your lawyer. So, anyway --

16    Q     Let me ask you. Did you talk to your lawyer?

17    A     When we left out of here -- when we left out of here  
18    I talked to him. I said how are they serving a life  
19    notice on me and I'm not on my third strike. He said she  
20    said she was going to give the sentence on one. She was  
21    going to give the sentence on one and give it to him, and  
22    he was going show it to me to show I was on my third  
23    strike, so.

24    Q     Did you ever meet with him again to go over the  
25    sentencing warrant?

RANDY MITCHELL - DIRECT EXAMINATION

1 A Not to -- only thing he told me was, first of all,  
2 she got to find you guilty and she hasn't been successful  
3 at that, that's what he said. So we continued to go over  
4 the blueprint of what we going to do at trial.

5 Q Let me ask you this. What was the original offer  
6 that you received?

7 A At first, it was 15.

8 MR. JOHNSON: Objection. There is no allegation  
9 about failure to convey a plea offer.

10 THE COURT: All right.

11 MS. MOODY: I'm not going on that, I'm just asking  
12 for information.

13 MR. JOHNSON: I find it irrelevant.

14 THE COURT: He can say. That forms his basis for  
15 filing the whole thing, so.

16 Q What was the offer?

17 A Offer was 15 years, at first; then when I hung the  
18 jury, they came and said ten years.

19 Q And so let me be clear. When you talked to  
20 Mr. Jamieson and y'all were getting ready to go to trial,  
21 was the offer again submitted to you?

22 A No, ma'am. There was nothing about no offer after  
23 that.

24 Q So you didn't discuss any offer; it was just y'all  
25 were going to trial?

RANDY MITCHELL - DIRECT EXAMINATION

1 A That was it, we went to trial. We went to trial.

2 Q No. No. I'm trying to make sure I'm clear. There  
3 was no offer on the table for you to accept instead of  
4 going to trial the second time? The State made no offer?

5 A No, ma'am.

6 Q Okay. So you got your notice of life without parole,  
7 and y'all proceeded on --

8 A Yes, ma'am.

9 Q -- to a trial.

10 A I said -- counsel informed me the state was going to  
11 serve me with life papers, and I stressed to him I was not  
12 on my third strike. At that point, I feel like he should  
13 have went over my record, and if he would have went over  
14 my record, he would have saw that I was not on my third  
15 strike, and that probably would have prompt him to go to  
16 the 17-45 guidelines, the life notice guidelines. I don't  
17 know if he was not knowledgeable of it, if it was a  
18 two-strike law or not, I don't know, but he never informed  
19 me it was a two-strike law, if he did know, know what I'm  
20 saying. But he never did come to me and say,  
21 Mr. Mitchell, it's not a three-strike law, it's a  
22 two-strike law. He never said that.

23 Q Okay. So I understand there was no offer on it, but  
24 during the hearing giving notice of the life without  
25 parole, would have prompted you to try to engage in

RANDY MITCHELL - DIRECT EXAMINATION

1 negotiations with the State, or you still would have gone  
2 to trial?

3 A If I knew I was facing a life sentence and could be  
4 getting life sentence if found guilty, I wouldn't have  
5 went to no trial. I wouldn't have gone to trial, no, not  
6 no life sentence. I don't know about two strikes. I  
7 stressed to him over and over again that I wasn't. Even  
8 at the end of the sentencing -- before the sentencing came  
9 about, I told him -- I told the judge on Page 328, Line 5  
10 and 6,, I talked to the judge about it.

11 Q During the trial, you talked to the judge about?

12 A Again, on Page 227 I testified to the judge over and  
13 over again that I was not on my third strike. 327 --  
14 Page 327, Line 7 through 11 and 15 through 16 I stressed  
15 to the judge over and over I was not on my third strike.  
16 This is the evidence I'm trying to present to show that I  
17 was not properly informed of the guidelines of the  
18 17-25-45 being a two-strike law.

19 Q So you're saying that even while you were talking to  
20 the judge, your attorney didn't say to you that this is  
21 two strikes, this is based off of two strikes?

22 A No, ma'am.

23 Q And he did not say any of that before going into the  
24 life without parole notice hearing?

25 A No, ma'am.

RANDY MITCHELL - DIRECT EXAMINATION

1 Q And he didn't say it during the hearing or discuss  
2 it, to your knowledge, with the State?

3 A No, ma'am. He never did say anything. The counsel  
4 rendered ineffective assistance of counsel by failing to  
5 keep me informed of important developments in the course  
6 of the prosecution. Counsel informed me of the  
7 deliverance of a conviction warrant. She say she  
8 delivered a conviction warrant, so the judge asked him on  
9 Page 323, Line 5 and 6 -- 328, Line 5 and 6, about the  
10 conviction warrant, was it delivered to him, Mr. Jamieson.  
11 He said, yeah, at the start of the trial they delivered  
12 the sentencing warrant to him.

13 Q So that goes to --

14 A But he didn't never tell me. He ain't never said,  
15 Mr. Mitchell, here is the sentencing warrant, this shows  
16 you on your third strike, or this show you can be facing  
17 life. He never said none of that. He never told me  
18 nothing about the woman, the solicitor, giving him a  
19 two -- a sentencing warrant. That's an important  
20 development in the case. I felt like I should have knew  
21 that. If I knew she delivered a sentencing warrant to  
22 him, he would have said, okay, she delivered it, and I  
23 would have been like, hold up, let me see the warrant.  
24 I'd look at it and then I still would have said I ain't on  
25 my third strike, because I'm not.



RANDY MITCHELL - DIRECT EXAMINATION

1 Q Okay. So with that, would you have gone to trial?

2 A No, ma'am, I wouldn't have went to trial; I would  
3 have took the plea.

4 Q Even if it wasn't a plea offer?

5 A Even if it wasn't a plea offer. I would have asked  
6 for a plea or something because I'm 36 years old. I'm not  
7 fixing to go to jail for the rest of my life about that.  
8 He never informed me about the two-strike law. He never  
9 made me competent of the fact that I was going to the  
10 courtroom and I could be given a life sentence.

11 Q Okay. Outside of him having the warrant that showed  
12 you were on your second or third strike, you still knew  
13 you were facing life without parole going into the trial?

14 A No, ma'am, I didn't know that. Because --

15 Q But you went through a hearing, that is what I'm  
16 trying to understand. You went through a hearing prior to  
17 the trial with the judge?

18 A We went through a hearing that they said we are  
19 serving you life notice. We went through a hearing like  
20 that, but like I say, I was, like, you can't give me no  
21 life because I wasn't on my third strike.

22 Q Just trying to be clear. So because of that, knowing  
23 the position you took, you were waiting for your attorney  
24 to come back with the information showing that you  
25 weren't?

RANDY MITCHELL - DIRECT EXAMINATION

1 A Yes, ma'am.

2 Q Or you were just going to roll with it?

3 A I was waiting on him to come back, because like he  
4 said, she was going to deliver the sentencing warrant to  
5 show I was on my third strike, and it never came back. He  
6 never brung it to me. And like I said, in the trial, he  
7 told the judge she delivered it to him at the beginning of  
8 the trial, at the beginning of the trial. He didn't tell  
9 me this.

10 Q So you were in trial, right?

11 A Yeah.

12 Q So when he was saying this in the courtroom, are you  
13 saying that you didn't know prior to the judge taking the  
14 bench she had delivered it to him, and y'all never  
15 discussed it?

16 A Never knew it.

17 Q So the only time that he acknowledged receiving it  
18 was on the record when you all were in front of the judge,  
19 and he said she just delivered it to me, that was the  
20 first time you were made aware?

21 A First time.

22 Q And after the Court was made aware, did y'all have an  
23 opportunity to discuss it then?

24 A No, ma'am, never -- no, ma'am.

25 Q So when the jury came back -- or before the jury went

RANDY MITCHELL - DIRECT EXAMINATION

1 out to deliberate, did y'all talk about it then?

2 A This was after they came in with their guilty  
3 verdict.

4 Q But I'm saying, did you and your attorney alone have  
5 an opportunity to talk about it?

6 A No, ma'am. He never did bring it up. Like I said,  
7 he told me -- as I'm waiting on him to tell me she  
8 delivered a sentencing warrant, or whatever. He never did  
9 come and tell me, so I felt like that I was not going up  
10 under...

11 Q But did you ask him about it?

12 A No, ma'am. No, ma'am.

13 MR. JOHNSON: Your Honor, I hate to interrupt. This  
14 is just -- I just received notice that -- I'm not sure  
15 Mr. Mitchell was ever sworn, so if we could swear him and  
16 ask him about that, and ask about the previous testimony.

17 (RANDY MITCHELL, after having first being duly sworn,  
18 testified under oath as follows:)

19 Q Moving on from the life sentence issue. You  
20 indicated that your attorney failed to investigate some  
21 other things or failed to object to them throughout the  
22 process of the trial?

23 A Defense counsel rendered for failing to object to  
24 reference to inadmissible evidence by a government witness  
25 during the trial. The solicitor and the officer wore a

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1 pair of black gloves and asked if they refresh his memory.  
2 Officer Rowe reviewed the gloves and states, This is a  
3 pair of black gloves that I recovered at 21:51 hours from  
4 Gregory Carver -- Gregory Carver is my codefendant in the  
5 case. There was -- on page trial transcript 236, Line 14  
6 through 15. Counsel failed to object to this inadmissible  
7 evidence because the black gloves was not part of the  
8 evidence recovered in the case. It was referenced to and  
9 presented and not entered into evidence. They referenced  
10 it, showed it to the jury and all this, but they didn't  
11 never enter it in. They let the officer testify that he  
12 got it from a codefendant, and I felt like this was done  
13 just to draw a connection between me and my codefendant,  
14 know what I'm saying, just to try to say that I was with  
15 him.

16 Q But if it wasn't entered into evidence --

17 A But it was presented in front of the jury, that is  
18 why I feel like I was prejudiced. It was like he --  
19 earlier in the trial, the same officer stated he found a  
20 pair of black gloves out of my pocket, know what I'm  
21 saying. The evidence sheet and the Rule 5 states they  
22 found a pair of black gloves out of my pocket, but nowhere  
23 in the evidence sheet do it show them recovering a pair of  
24 black gloves from Gregory Carver, the codefendant. It  
25 never showed that, so I feel like I was prejudiced on this

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1 piece of evidence, false evidence. This gave the jury a  
2 false conception as far as that me and him was together.  
3 He had black gloves. He had black gloves, so they had to  
4 be together.

5 Q Did you tell your -- did you discuss that with your  
6 attorney?

7 A Well, like I said, they just popped the gloves out of  
8 nowhere. The gloves just popped up out of nowhere, like  
9 where do those gloves come from. No, he did not say that.

10 Q They were not entered into the evidence log?

11 A They were not entered in, they were just shown in  
12 front of the jury.

13 Q They didn't move to put the gloves in?

14 A No, they didn't put them in, just handed them to the  
15 man, he said, yeah, these are the pair of gloves I got off  
16 Gregory Carver, the codefendant in the case.

17 Q And so there was no tie to how those gloves -- where  
18 those gloves actually came from, other than your  
19 codefendant?

20 A No, ma'am.

21 Q Your codefendant testified?

22 A No, he didn't testify.

23 Q Okay. So there was no other draw to those gloves?  
24 There was no -- there was no link to your codefendant, and  
25 there was no link to you based on the evidence sheet of

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1 that second set of gloves?

2 A No, ma'am.

3 Q Okay. And so you felt your attorney should have  
4 objected to that, and he did not?

5 A He did not.

6 Q Okay. Now, there was another piece of evidence that  
7 came in that you felt your attorney should have objected  
8 to?

9 A The issue was failure to properly object to  
10 inadmissible evidence not part of Rule 5, and failure to  
11 challenge the chain of custody of the evidence sheet,  
12 Exhibit 23. And I said -- and try to state -- the State  
13 asked the victim witness about his signature on the Rock  
14 Hill Police Department inventory sheet, Exhibit 23, that  
15 stated he received the cell phone from Rock Hill Police  
16 Department. The cell phone was not entered into evidence  
17 physically or photographically. The Rock Hill Police  
18 evidence sheet stated that they recovered his cell phone  
19 out of my possession.

20 Later in trial, the State moved to enter Exhibit 23  
21 and 22 into evidence. Exhibit 23 is not part of the  
22 evidence I received from Mr. Barrowclaugh. In the Rule 5  
23 I get from Mr. Barrowclaugh, this Exhibit 23 was not  
24 there.

25 Q So when you're talking about the Exhibit 23, the

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1 sheet, the actual sheet, you're saying it wasn't --

2 A Yeah, just the evidence sheet.

3 Q And did your -- did you get another set of discovery  
4 from Mr. Jamieson?

5 A No. No. I never did get -- I already had my motion  
6 of discovery.

7 Q I understand that, but you didn't get -- when that  
8 sheet, the property evidence sheet, was not in your  
9 documents that you received from Mr. Barrowclaugh, you're  
10 saying that they never -- you don't know if they gave this  
11 at some later date to Mr. Barrowclaugh?

12 A No, they didn't give it to him on another date.

13 Q So then at the trial they submit this evidence sheet?

14 A Not this -- in the first trial, Mr. Barrowclaugh -- I  
15 had -- I got an evidence sheet, and they put it in. And  
16 it does not state none of this that Exhibit 23 states.

17 MR. JOHNSON: Objection to anything that happened in  
18 first trial; it's irrelevant.

19 THE COURT: Well, let him go.

20 Q So it's kind of confusing what you're talking about.

21 As to the evidence sheet and 23, in the trial with  
22 Mr. Jamieson, out of all the documents that you received  
23 from the State that is the evidence against you, the  
24 Exhibit 23 was not one of the pieces of documents that you  
25 received from the state?

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1 A No, ma'am, it was not part of the evidence. It was  
2 not one of them. It was a whole different sheet. It had  
3 the same items on it. It had the same items on it, but it  
4 did not read the same. It read something different. It  
5 was not the -- it was not it. It read -- Exhibit 23, it  
6 read that -- it read all the same items, but it read one,  
7 and then had a line all the way down through the box to  
8 the last item. The one I received had one, two, three,  
9 four, five, six, seven, every item on it, you know what  
10 I'm saying. This is a whole other sheet. I don't know  
11 where it come from.

12 Q And what was the number one item?

13 A It was -- the sheet I recovered was one of two, and  
14 two of two.

15 Q But what was the item?

16 A They said cell phone, that's what they said on it.  
17 Exhibit 23, they said cell phone that C. Ellis went down  
18 there and got from the police department.

19 Q Okay.

20 A They said that he came and got.

21 Q Did you tell your attorney that this sheet was  
22 different from what you had in your discovery?

23 A Yes, ma'am, I let him know that. I told him  
24 Exhibit 23 was not part of the Rule 5, and he objected to  
25 it, 23, on Page --



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1 Q He objected to it?

2 A He objected to Exhibit 23 not coming in, but he said  
3 he accept Exhibit 22. That was another evidence sheet.

4 Q And you received that evidence sheet?

5 A Yes, ma'am.

6 Q So help me understand what you mean by the chain of  
7 custody on Exhibit 23.

8 A The chain of custody was not met because there was no  
9 signatures on it. Chain of custody -- first, I asked for  
10 chain of custody was missing, it was, that the items  
11 wasn't there physically.

12 Q But he objected to it?

13 A They were not there physically, so if the items  
14 wasn't there physically, then I feel like that the  
15 evidence sheet should have met the chain of custody  
16 requirements. This is what you using, a piece of paper,  
17 to find me guilty of -- find me in possession of a victim  
18 witness property. You don't got the physical evidence  
19 there saying, okay, or no pictures of these items, or  
20 nothing like that. You just using a piece of paper that  
21 somebody could have just wrote.

22 Q But he objected to it?

23 A He objected to it coming in, but he never did give a  
24 reason why, know what I'm saying. So they still used it.  
25 They still used it coming in.

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1 Q So you're saying that because they didn't have the  
2 picture, they didn't have the item, they improperly  
3 connected you to the victim through that cell phone with  
4 that exhibit sheet?

5 A With that exhibit sheet. And Exhibit 23 was not part  
6 of my evidence to prove that -- Exhibit 23 was not part of  
7 the Rule 5 motion, and the Rock Hill evidence sheet I  
8 received is sheet one of two, and two of two, from my  
9 motion of discovery. Rock Hill evidence sheet state the  
10 same item, like I said. It state the same item in the  
11 same order. Exhibit 23 does not state one through seven,  
12 know what I'm saying.

13 Q So you're saying that it couldn't have been the same  
14 one?

15 A It couldn't have been the same one. There's no badge  
16 number or officer signature, none of this is written on  
17 this piece of paper right here that states it went through  
18 these officers' hand, know what I'm saying. No badge  
19 number, no I received this into evidence, nobody --  
20 nothing on there, just a piece of paper with all of this  
21 on there.

22 Q And so because he didn't state a reason for the  
23 objection, did that -- did that prevent you from being  
24 able to appeal that issue?

25 A Yes, ma'am, all because he didn't preserve it. He

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1 didn't give a reason behind what he's objecting to. He  
2 just said I object to it.

3 Q And it came in?

4 A It came in.

5 Q All right.

6 MS. MOODY: Beg the Court's indulgence.

7 A That was all on that issue right there.

8 Q Now, is there any other issue you have you feel the  
9 Court needs to be aware of?

10 A Yes, ma'am. I got a couple more issues I need to get  
11 out. Next issue is on the same level as Exhibit 22, Rock  
12 Hill Police Department evidence sheet. I said he was  
13 ineffective for failing to challenge the custody of that  
14 sheet. None of those items was at trial physically or  
15 photographically either. This same piece of paper -- and  
16 that same piece of paper states that C. Ellis signed where  
17 he present for his phone back on this piece of paper, too.  
18 It's another evidence sheet, Exhibit 22, states the same  
19 thing.

20 Q But was that sheet signed?

21 A No, it was not -- no, his name was printed.

22 Q Okay. But now did you receive that in the first --  
23 you received those documents at the beginning?

24 A Yes, ma'am, I received that document in the  
25 beginning. Like I said, his name was printed in there,

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1 but it don't have no signature, no badge number of the  
2 officer, none of that on there. It don't say nothing on  
3 there, but it got his name signing for a phone.

4 Q But you received that information?

5 A Yes, ma'am. So like I say, if this one -- if this  
6 sheet right here is saying that this here his phone right  
7 here, how can Exhibit 23 say he signed for his phone over  
8 here, and they're not the same sheet? These are two  
9 different sheets. I feel like he should have challenged  
10 the chain of custody on that, should have been suppressed,  
11 not been allowed to come in because it didn't meet the  
12 chain of custody requirements.

13 Q Now, did you have any suppression hearing at the  
14 beginning of the trial, any kind of motions to suppress?

15 A No, ma'am, none.

16 Q And so at the point that it came up in the trial,  
17 you -- did you have an opportunity to discuss it with your  
18 attorney at the time it came up in the trial? What -- in  
19 terms of when he made the objection, were you showing him  
20 or were you telling him anything about it?

21 A I told him that that paper could have just been made  
22 up without the evidence being here, because they -- know  
23 what I'm saying. The evidence ain't here. They trying to  
24 say this is the evidence that they are going to use to  
25 find me guilty. It's not here, so how they using a piece

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1 of paper to do this? I said that piece of paper shouldn't  
2 be allowed in. He was like he can't tell them what to put  
3 into evidence and what not to put into evidence.

4 Q And he made an objection to that?

5 A No, he ain't make no objection to that. He ain't  
6 make no objection to Exhibit 22.

7 Q So on Exhibit 23, he made an objection. On  
8 Exhibit 22, he didn't make the objection, and Exhibit 22  
9 was not preserved for your appeal?

10 A No, ma'am.

11 Q Okay. And 23 was objected to, but the reason behind  
12 it was not preserved for --

13 A Yes, ma'am.

14 Q Okay. Is there anything else you want to tell the  
15 Court?

16 A On that issue right there, I just state that...

17 Q You finished with Exhibit 22 and 23. Is there  
18 anything else that you stated to Court?

19 A Yes, ma'am. Failing you -- counsel was ineffective  
20 for failing to object to the inadmissible evidence, once  
21 again, not part of the Rule 5, and tried to -- State moved  
22 to introduce Exhibit 17, 18, 19 and 20. Pictures of the  
23 hallway, trash can, the strip closet of the Rock Hill City  
24 jail. Counsel testified --

25 Q Your lawyer didn't testify.

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1 A I'm saying solicitor testified.

2 Q Solicitor?

3 A Lawyer testified if she can -- I was like she can't  
4 use those pictures, how can she use those pictures? Them  
5 pictures ain't part of the motion of discovery. How is  
6 she using these pictures. So he -- I said, "Object to  
7 it." He gave her the opportunity. He said if she would  
8 lay a more detailed foundation of when the pictures were  
9 taken and whether they depict the night or some other  
10 time, then I would not have an objection; but if she does  
11 not do that, I do have an objection. And that was on  
12 Page 248, Line 3 through 21. Counsel knew these pictures  
13 were not part of the Rule 5, inadmissible evidence, but  
14 failed to object to.

15 These pictures were not taken the night of the crime.  
16 They did not prove the witness officer's testimony that  
17 there was a black wallet in the trash can. These pictures  
18 were used to manipulate and influence the jury, know what  
19 I'm saying, into believing the witness' story, know what  
20 I'm saying?

21 Q So you didn't have copies of those pictures given to  
22 you for this particular trial?

23 A And the officer testified that they were not taken  
24 the night of the crime. I ain't got no pictures of them,  
25 because if I would have got pictures of them, it was

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1 supposed to have proved what the officer said, that there  
2 was a wallet in the trash can. So he was able to come up  
3 here and say there's a wallet in the trash can and let --  
4 know what I'm saying, and they used the pictures, and it's  
5 not even showing here. It's not showing.

6 Q It didn't show a wallet in the trash can?

7 A It didn't show no wallet in a trash can. These  
8 pictures were not taken the night of the crime. How can  
9 you go two years later and just take pictures and say,  
10 okay, we're going to use them in the trial, know what I'm  
11 saying? They was not part of the Rule 5. I feel like he  
12 was supposed to have objected to it and had those --

13 Q The pictures suppressed?

14 A Pictures suppressed, yes, ma'am.

15 Q And there was no motion to suppress any evidence?

16 A No motion to suppress none of it.

17 Q Is there anything else you want to tell the Court?

18 A Yes, ma'am. I got dealing with -- I said there was  
19 no evidence, no physical evidence, presented in the trial  
20 that connected me to this crime.

21 MR. JOHNSON: Objection, Your Honor, that would be a  
22 direct appeal issue.

23 THE COURT: All right.

24 Q Let's stay within what your lawyer didn't do. Is  
25 there any specific other items your lawyer did not take

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1 care of that you alleged in your application for failure  
2 to provide effective assistance?

3 A He was ineffective for failure to suppress in-court  
4 identification. This case had already been tried. This  
5 is the only way I can get it out, is say how I need to say  
6 it, because all this evidence was presented against me,  
7 and when it's presented against me, all these paper, but  
8 it didn't show me. So what I can say? All I can say is I  
9 was not the man at the crime. So the victim, his  
10 cross-examination was on the victim's accuracy. The prior  
11 description he gave to the police the night of the crime,  
12 it changed to identify the suspect in a physical line-up  
13 or photo line-up. This was what he was cross-examining  
14 these people on.

15 Q But was there a motion as to identification?

16 A There was no motion for it?

17 Q In the retrial?

18 A That's what I said, he was ineffective for not  
19 motioning for a suppression hearing of in-court  
20 identification. They all gave testimony that they was  
21 drinking that night. They all gave testimony that they  
22 was not -- never asked to identify anyone in the line-up.  
23 They all gave a vague description, a tall dude with  
24 dreads. Nobody said there is some pictures or photo  
25 line-up, do you see the man that robbed you. They all



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1 said nobody asked us that, nobody asked us that. But they  
2 was allowed to come up in the courtroom when I'm the only  
3 man in here two years later and say, yeah, that's the man  
4 who robbed me right there. They was able to give in-court  
5 identification, know what I'm saying. When they never did  
6 make an out-of-court identification, know what I'm saying.  
7 How can they make an in-court identification when they  
8 never made an out-of-court identification? So I was like  
9 he should have made a motion to suppress in-court  
10 identification; he failed to do that.

11 Q Did you discuss this with your attorney?

12 A Yes, ma'am. I told him that off the record. When we  
13 were getting ready to go to trial, I told him, listen,  
14 them people out there saying I'm the man who robbed them,  
15 I'm the man that robbed them, but they ain't never picked  
16 me out of no physical line-up or photo line-up, how they  
17 going to be able to come up in here and point me out.

18 Q Now, as to anything else in terms of your attorney  
19 failing to investigate, was there anything else that you  
20 needed to tell the Court?

21 A I just want to ask the Court, because I will have to  
22 bag up if I have to, because I wanted to enter these in as  
23 exhibits. Would I be allowed to enter these as exhibits?

24 Q Well, you just testified -- you just testify,  
25 correct?

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1 A No. I testified, but I ain't getting them in, all  
2 the references he need to go to, and they are right here  
3 on this piece of paper, that's why I write it out like  
4 this.

5 Q What do you mean "references," the page number in the  
6 transcripts?

7 A Page numbers and that where he need to go to find all  
8 the information.

9 THE COURT: He can put it in, I'll look at it.

10 A Yes, ma'am.

11 MR. JOHNSON: Your Honor, State objects, but I  
12 understand your ruling.

13 Q Is there anything else you need to tell the Court?

14 A Not about ineffective assistance of counsel. I had  
15 an issue on prosecutor misconduct.

16 MR. JOHNSON: That was not on the application, and  
17 I'm going to vehemently object.

18 THE COURT: If it's not in the application, you can't  
19 raise it.

20 MS. MOODY: I believe we did put you on notice of the  
21 amendment.

22 MR. JOHNSON: Say what?

23 MS. MOODY: There was an amendment to the  
24 application.

25 MR. JOHNSON: I did not receive one.

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1 THE COURT: If it's an amendment, he can raise it, I  
2 don't know.

3 MR. JOHNSON: Let me see if I received that  
4 amendment, Your Honor.

5 MS. MOODY: January 15, 2015, Mr. Rutledge -- the  
6 amendment to Mr. Mitchell's PCR application needs to be  
7 amended under Question 10, that may generally describe  
8 prosecutorial misconduct.

9 MR. JOHNSON: That's fine. Your Honor, if I may have  
10 time to get Betty Miller -- to get her right now so she  
11 can hear his testimony.

12 THE COURT: All right.

13 MR. JOHNSON: It's not a formal amendment, it was a  
14 letter, so I would not treat that as a formal amendment.  
15 It's not filed; I still would object to it.

16 THE COURT: Okay.

17 MS. MOODY: We put him on notice.

18 THE COURT: I understand.

19 MR. JOHNSON: So if I may try to get her. If we may  
20 take a break, Your Honor.

21 (A recess was taken.)

22 MR. JOHNSON: Your Honor, may I renew my objection?  
23 One, this is the first time I have seen any of this, and  
24 it includes a Rock Hill Police Department. State's  
25 position is he can't authenticate any of this. And

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1 looking at his handwriting, it is legal argument which he  
2 is not entitled to -- in this the hearing to do that;  
3 that's actually for counsel. So I would object to this  
4 entire packet coming in as Applicant's 1.

5 THE COURT: Well, what is it?

6 MR. JOHNSON: It's what he says his references are,  
7 but he also makes legal arguments and legal conclusions,  
8 and there are other...

9 THE COURT: All right. It can't come in, but he can  
10 briefly tell her to brief it, if she wants to.

11 MR. JOHNSON: Thank you, Your Honor.

12 Q All right. Mr. Mitchell, you were getting ready to  
13 testify about the prosecutorial misconduct?

14 A Yes, ma'am.

15 Q Can you, in your own words, sum up what the  
16 prosecutorial conduct was, misconduct on you?

17 A Prosecutor misconduct was...

18 Q The Brady violation, the discovery issue you talked  
19 about?

20 A Yes, ma'am. It was -- first one was that she never  
21 did stop Detective Weeks from his false testimony when she  
22 know it was false. She knew that the pistol didn't have  
23 that serial number on it. She allowed him to go ahead and  
24 do it. And her bringing those gloves in, present them to  
25 the jury in front of the jury like that. The second pair

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1 of black gloves that was stated my codefendant had them,  
2 and they was not entered into evidence or nothing like  
3 that, she just did it just for the reference just to draw  
4 the connection.

5 MR. JOHNSON: Objection, speculation. He has no idea  
6 why she would have introduced those.

7 THE COURT: He can put it in. He's got to state his  
8 objection, though.

9 A And the pictures from the Rock Hill Police  
10 Department, that was not part of the Rule 5 that was used,  
11 when they was not even supposed to have been used. There  
12 was -- I feel like that was prosecutorial misconduct. I  
13 feel like that's false evidence, know what I'm saying,  
14 just making up something. And then the Exhibit 23 of the  
15 Rock Hill Police Department evidence sheet, states this  
16 man got his phone back from Rock Hill Police Department, I  
17 never did receive it. I never did receive it, so if I  
18 ain't never receive it, it becomes material to my guilt.  
19 If it's material to my guilt, I should have been able to  
20 know it was material to my guilt, and I could have been  
21 like, hold up, you got this evidence against me and I  
22 could have been I ain't going to trial because you got  
23 some evidence against me.

24 Q Now --

25 A But she never did disclose that evidence to me.

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1 That's on the Brady.

2 Q Now, when you all went forth with the trial, was it  
3 your understanding you had received everything from the  
4 State they had against you?

5 A Yes, ma'am. They stated they gave me everything at  
6 the beginning of the trial.

7 Q So the thing that you're talking about, the serial  
8 number, the black gloves and I believe the black wallet,  
9 and then with this cell number, all that goes back to  
10 Exhibit 22 and 23?

11 A Uh-huh.

12 Q The sheets that were not signed?

13 A Yes, ma'am.

14 Q You did not receive Exhibit --

15 A 23.

16 Q -- 23 that had, I guess --

17 A Mr. C. Ellis signing for an item, but he don't state  
18 what item, just state his name down there. Don't state  
19 what item that he's receiving back, just states his name  
20 on the signing for something. But she testified to the  
21 jury that he was receiving his phone back, but it just got  
22 his signature on there, don't state no item.

23 Q Okay.

24 A And if it was stating that, like I say --

25 Q You understand it has Item 4 on that sheet, which at

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1 the top part it has, Item 4, cell phone in a brown case,  
2 and then below it shows C. Ellis signing receipt of it,  
3 Item Number 4, which would reference up top the cell  
4 phone?

5 A You're looking at Exhibit 22 now.

6 Q Yes.

7 A That's Exhibit 22. I'm talking about Exhibit 23 that  
8 got C. Ellis signing for the cell phone, that's what they  
9 stated, Exhibit 23. I don't even got it.

10 Q You don't have it?

11 A No, I don't even got it, know what I'm saying? When  
12 they came in, I looked over and I told my lawyer what is  
13 that, where that come from, know what I'm saying. This is  
14 a whole other exhibit.

15 Q So these exhibits you have here --

16 A Yes, ma'am, that's what I got.

17 Q These are the documents you received in discovery?

18 A Yes, ma'am.

19 Q Okay.

20 A That's Page 2 of 2, right?

21 Q Yes.

22 A Okay. That's Exhibit 22 right there.

23 Q Okay. But you're saying you never received  
24 Exhibit 23?

25 A Yes, ma'am.

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1 Q And that was before the actual trial, right? So when  
2 they signed -- when they recovered these items, it says at  
3 the top on 22, 10-3-2010, and then the next day it has  
4 listed 10-4-2010, which means that they would have had a  
5 signed exhibit sheet or Exhibit 23, they would have had it  
6 when they sent the discovery out --

7 A That's right.

8 Q -- to your attorney, and then your attorney gave you  
9 a copy?

10 A Yes, ma'am.

11 Q Okay. And you wanted your attorney to object to  
12 those things because you never saw that?

13 A Yes, ma'am.

14 Q Okay. And as to the prosecutorial misconduct, would  
15 those items -- that's what that relates to -- the  
16 original -- the first thing you said for prosecutorial  
17 misconduct was the false testimony, and that goes as to  
18 the serial number on the gun --

19 A Yes, ma'am.

20 Q -- that Mr. Weeks testified to?

21 A Yes, ma'am.

22 Q And the sheet that you saw the serial number was on,  
23 was an evidence sheet?

24 A Forensic evidence sheet.

25 Q Okay. And so you're saying that the prosecutor let



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1 him testify to that knowing that the number on the gun --  
2 that the charge -- or that issue was taken up in a  
3 preliminary hearing?

4 A Yes, ma'am, it was took up in a preliminary hearing..  
5 That's what the gun was brought up for, so we can look at  
6 the serial number and see that it matched now, that's what  
7 I thought the PCR was about.

8 (A discussion was held off the record.)

9 MS. MOODY: Your Honor, may I approach the witness?

10 Q Can you identify that sheet?

11 A I don't know nothing about the sheet.

12 Q What does it say on the sheet?

13 MR. JOHNSON: He can't testify if he can't identify  
14 it, Your Honor.

15 THE DEFENDANT: I don't know -- I don't know where  
16 the sheet come from, all I know is the gun that was just  
17 here, Your honor, the gun was just here. The gun was  
18 sitting right here. We had a chance to look at that gun,  
19 see they had the serial number. Now they want to take the  
20 gun out of here and then bring the piece of paper up in  
21 here.

22 THE COURT: All right.

23 MS. MOODY: Your Honor, at some point we'd ask the  
24 clerk, if it is possible, to have the clerk bring the gun  
25 so you can see the gun and look at the actual gun.

RANDY MITCHELL - DIRECT EXAMINATION

1 THE COURT: Yep.

2 MS. MOODY: Thank you, Your Honor.

3 Q He's going to look at the gun. Is there anything  
4 else you want to tell the court?

5 THE DEFENDANT: You're not going look at it now?

6 THE COURT: I don't have it now.

7 MS. MOODY: We have to call the clerk.

8 THE DEFENDANT: I just -- I'm trying to go home,  
9 brother. That's all I'm trying to do, just trying to get  
10 a righteous judgment here.

11 MS. MOODY: He's going to look at the gun.

12 THE COURT: All right.

13 MS. MOODY: Is there anything else you want to tell  
14 the Court?

15 THE DEFENDANT: Just you say that I can't enter these  
16 in? I can't enter these in?

17 THE COURT: You can mark them.

18 MS. MOODY: He wants them marked as an exhibit, and I  
19 think the Court instructed me to type them out and give  
20 them to the State, and I will send it to the judge.

21 THE COURT: Right.

22 THE DEFENDANT: Because this explains the issues. It  
23 explains the --

24 THE COURT: If it's in the right format, it will come  
25 in, that's all; if it's not, it won't.

RANDY MITCHELL - DIRECT EXAMINATION

1 Q What relief are you seeking from the judge here  
2 today?

3 A I'm seeking on Issues 1, 3, 4, 5, 6, 7, 8, I'm  
4 looking for a retrial.

5 Q So you want to the Court to grant you a new trial?

6 A A new trial. And if they -- on the Issue 2, Issue 2,  
7 yes. On Issue 2, I'm asking to be resentenced.  
8 Sentenced.

9 Q Would you tell the judge what the Issue 2 is, for the  
10 record?

11 A Failure to investigate and keep Defendant informed of  
12 important developments in the course of the prosecution  
13 dealing with the life notice that was not competent to the  
14 fact of what I was facing. My lawyer didn't tell me -- I  
15 should be able to, if I'm not competent of the fact of  
16 knowing what I'm facing, that should be his duty. I  
17 should have the opportunity to at least take the plea.

18 Q So you're asking for a new trial and the possibility  
19 of a new trial or a possibility of a plea, a new plea?

20 A Yes, ma'am.

21 Q Okay. Is there anything else you want to tell the  
22 Court?

23 A No, ma'am. I just -- I just want to get resolved,  
24 the issue about the gun, that's it.

25 Q The judge is going see the gun. Do you understand

RANDY MITCHELL - DIRECT EXAMINATION

1 he's going to see the gun?

2 A Now?

3 THE COURT: They're going to bring it. I don't have  
4 it right now.

5 THE DEFENDANT: Y'all call back in here when they  
6 bring it?

7 THE COURT: Yeah.

8 THE DEFENDANT: All right.

9 MS. MOODY: He's going to look at the gun. Here's  
10 the gun, Your Honor. He wants you to look at the serial  
11 number on the gun.

12 THE COURT: Okay. I see it. 55 -- it's hard to  
13 read. It's been X'ed over. Looks like 544498, I don't  
14 know.

15 THE DEFENDANT: Wrong number, wrong pistol.

16 MR. JOHNSON: Objection, move to strike that  
17 testimony.

18 MS. MOODY: What was the number that you received?

19 THE DEFENDANT: That's not the pistol, Your Honor,  
20 not the pistol. It's not the pistol in the photo in this  
21 evidence. That's not the right pistol. That's not even  
22 that pistol. It's not the pistol. And the serial number,  
23 State's 5 --

24 MR. JOHNSON: Your Honor, I object. He's making  
25 legal conclusions, which his lawyer has to make per Rule

RANDY MITCHELL - DIRECT EXAMINATION

1 11.

2 THE COURT: Yup.

3 THE DEFENDANT: According to Mr. Weeks --

4 MR. JOHNSON: Your Honor, I object and strike  
5 anything that he's testifying to right now.

6 THE COURT: All right. Your attorney will cover that  
7 for you.

8 Q Mr. Mitchell, the number that the judge read out, how  
9 is it different from the number that you say Mr. Weeks  
10 originally documented?

11 A It documented on his forensic report as --

12 MR. JOHNSON: Objection, that would be hearsay, Your  
13 Honor.

14 A On the forensic report that's right here.

15 THE COURT: If the report came in, he can refer to  
16 it.

17 A Here you go right here. It states 541498, not no 55,  
18 nothing. It's 541498, and that's not the same pistol in  
19 that picture.

20 THE COURT: All right.

21 MS. MOODY: Your Honor, I'd ask him to read that  
22 number again one more time.

23 A 541498 is the serial number off of the log that  
24 Mr. George Weeks collected. The serial number the judge  
25 just read, she got. It's not the same.

RANDY MITCHELL - DIRECT EXAMINATION

1 Q Okay. Anything else from you?

2 A No.

3 Q Nothing else you want to tell the judge?

4 A That's all the issues I have.

5 MS. MOODY: Thank you. Please answer any questions  
6 the State may have.

7 MR. JOHNSON: Thank you, Your Honor. May it please  
8 the Court.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON

11 Q Mr. Mitchell, will you admit that you had an  
12 attempted armed robbery conviction in 2004?

13 A That...

14 Q That's true?

15 A 2004?

16 Q Yes, sir.

17 A Yeah.

18 Q Okay. You also understand, even with the life  
19 without parole notice, that burglary in the first degree  
20 carries up to a life sentence; do you understand that?

21 A Up to life, yeah.

22 Q So even if the LWOP notice was taken off the table,  
23 you could still be sentenced to life without parole?

24 A All right.

25 Q Yes?

RANDY MITCHELL - CROSS-EXAMINATION

1 A Yes.

2 Q Thank you. One of your other issues is that your  
3 attorney should have objected to an in-court  
4 identification of you, correct?

5 A Yes, sir.

6 Q Are you aware that in the law of this state states  
7 that suppression motion need not apply to in-court  
8 identifications; do you understand that?

9 A I hear what you're saying, but I don't know.

10 MR. JOHNSON: Your Honor, the case I'm referencing is  
11 State versus Lewis.

12 MS. MOODY: Objection, Your Honor. He's asking you  
13 to draw a legal conclusion.

14 MR. JOHNSON: I'm just pointing out a case; that's  
15 not a legal conclusion whatsoever.

16 MS. MOODY: Okay.

17 MR. JOHNSON: The case would be 363 S.C. 37, it's a  
18 2005 Supreme Court case, but I'll move on.

19 Q Mr. Mitchell, you will agree with me that two of the  
20 witnesses that were in the apartment that night testified  
21 that they see you come in with dreadlocks and I believe a  
22 dark shirt and a shoot -- hold a pistol to somebody's head  
23 and you discharge a pistol in the ceiling; isn't that what  
24 the witnesses testified to?

25 A They testified that that's what happened to them, and

RANDY MITCHELL - CROSS-EXAMINATION

1 with me, the only man in the courtroom, yeah, that's what  
2 they said, it was me. Yeah, that's what they said, it was  
3 me.

4 Q And Mr. Williams specifically testified that you are  
5 the perpetrator of these crimes?

6 A Yes, with me the only man in courtroom. Yes, he said  
7 it was me.

8 Q Did you have dreadlocks at the time?

9 A I had dreadlocks.

10 Q And the police arrested you pretty shortly after this  
11 crime was allegedly to have taken place; isn't that  
12 correct?

13 A Probably about I -- I don't know how long it was  
14 after they -- all I know is they pulled me over on the  
15 side of the road and said it was me. That's all I know.

16 Q Didn't they find you in a patch of briars and brush?

17 A No. They caught me coming out of a pass, out of a  
18 pass that everybody walks.

19 Q They also testified that they find you throwing one  
20 of the victim's -- I think Mr. Everett William's -- wallet  
21 in the trash can at the jail, isn't that correct? Isn't  
22 that what they testified to?

23 A He testified to it, but there's no evidence to prove  
24 that. I didn't see no picture. I saw the trash can, I  
25 saw the pictures of the trash can, I ain't see no wallet



RANDY MITCHELL - CROSS-EXAMINATION

1 in it.

2 Q That's the evidence that was presented to the jury;  
3 am I correct?

4 A That's the evidence that was presented to the jury,  
5 just words.

6 Q You also talk about these black gloves that were  
7 found on Mr. Crawford, your codefendant, and you have  
8 admitted that they were not entered into evidence?

9 A They was not entered into evidence, but they were  
10 talked about and showed to the jury.

11 Q That wasn't my question. My question was: They were  
12 not entered into the evidence?

13 A They were not entered into evidence --

14 Q Thank you.

15 MR. JOHNSON: That's all the questions I have at this  
16 time, Your Honor. Thank you.

17 THE COURT: Step down. He's entitled to stay in the  
18 courtroom.

19 MS. MOODY: No further witnesses.

20 MR. JOHNSON: The first witness we call is Betty  
21 Miller, please.

22 (BETTY MILLER, after having first being duly sworn,  
23 testified under oath as follows:)

24 MR. JOHNSON: May it please the Court.

25 DIRECT EXAMINATION

RANDY MITCHELL - CROSS-EXAMINATION

1 BY MR. JOHNSON

2 Q Good afternoon, Ms. Miller, how are you?

3 A Good.

4 Q Explain to the Court how you became involved in this  
5 case.

6  
7 A I'm going to try to remember. I just found out a few  
8 minutes ago that I was coming in here, so I'll try to put  
9 myself back. I believe we had -- I was assigned this case  
10 after one of our assistant solicitors left. I was  
11 assigned to try the case, is my recollection.

12 Q And did you try the first trial, or just the second  
13 trial?

14 A Second trial. That's right, it was tried before,  
15 that's right.

16 Q And did you provide discovery to Mr. Jamieson?

17 A I did.

18 Q And if you -- probably can't remember specifically,  
19 but do you remember how much discovery there was in the  
20 case?

21 A I don't remember that. My tendency is to give  
22 everything I've got. It was a lot of stuff. I know that  
23 Mr. Jamieson and I met on several occasions, spoke on  
24 several occasions, and right now in the courtroom I can't  
25 remember specifics, but I normally give everything I have.

BETTY MILLER - DIRECT EXAMINATION

1 Q One of the allegations is prosecutorial misconduct  
2 for not giving over -- or putting up perjured testimony  
3 about an obliterated serial number on the gun; could you  
4 please shed light on that issue?

5 A I can't right now. If I had a moment to read the  
6 transcript and look at what he's talking about, I could  
7 get my mind back there, but right now -- it was too long  
8 ago for me to remember without thinking about it.

9 Q Second issue, whether the LWOP notice was proper; do  
10 you remember serving Mr. Mitchell with the notice to seek  
11 life without parole?

12 A I can tell you this. I always am very careful about  
13 how I serve LWOP notices. I don't remember specifically.  
14 My practice is to do it on the record with the defendant  
15 and the defense attorney present.

16 Q Do you remember providing him with any offers in this  
17 case?

18 A I'm sure that I did. You're asking me right -- I  
19 haven't even looked at notes. I'm sure I've got them.  
20 I'm sure that I did give him an offer.

21 Q One of issues he's bringing is failure -- is  
22 Mr. Jamieson's failing to object to inadmissible evidence,  
23 which he states there is a pair of black gloves found on  
24 his codefendant, Mr. Crawford, that I believe you  
25 attempted to show to the officer, and he said he didn't

BETTY MILLER - DIRECT EXAMINATION

1 recognize them, and they weren't entered thereafter. Was  
2 there any reason you would have shown those to the  
3 officer?

4 A Not that I recall.

5 Q Okay.

6 MR. JOHNSON: Your Honor, if I may end my direct, but  
7 reserve the right to recall her after she gets to read the  
8 transcript and read her notes.

9 THE COURT: All right.

10 MR. JOHNSON: Thank you, Ms. Miller.

11 THE COURT: We can call her back tomorrow or some  
12 other time.

13 MR. JOHNSON: Thank you, Your Honor.

14 MS. MOODY: No questions for this witness, Your  
15 Honor.

16 THE COURT: Step down.

17 MR. JOHNSON: Your Honor, State calls Philip Jamieson  
18 to the stand.

19 (PHILIP JAMIESON, after having first being duly  
20 sworn, testified under oath as follows:)

21 MR. JOHNSON: May it please the Court, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. JOHNSON

24 Q Good afternoon, Mr. Jamieson.

25 A Good afternoon.

PHILIP JAMIESON - DIRECT EXAMINATION

1 Q Can you explain how you became involved in this case?

2 A Mr. Mitchell had a trial that was a hung jury. He  
3 was retried, I was appointed to represent him on the  
4 retrial.

5 Q How long after the first trial did you get appointed  
6 to this case?

7 A Don't remember exactly. It was several months after  
8 the retrial. I met with him the first time on the 29th of  
9 August of 2011.

10 Q And what would you have discussed in that meeting?

11 A My notes say that I discussed a plea offer with him,  
12 which had been extended to him, discussed with him a  
13 possibility that he was going to be facing life without  
14 parole, and that in light of his record and light of the  
15 evidence they had against him, I thought that the plea  
16 offer was a very good one and he ought to take it.

17 Q So you discussed there was a potential for a LWOP  
18 sentence?

19 A Yes.

20 Q So he fully understood that going into the second  
21 trial?

22 A Yes.

23 Q Did you receive or file or receive discovery in the  
24 case?

25 A Yes.

PHILIP JAMIESON - DIRECT EXAMINATION

1 Q Can you recall -- I understand it's a very large  
2 file, but what would have been contained in that  
3 discovery?

4 A There were a lot of things in it. There were police  
5 reports, witness statements, evidence sheets, there were  
6 photographs, a typical criminal file. It had a lot of  
7 information in it. There were some DNA tests, which were  
8 run. There were results of gunshot residue tests. There  
9 was quite a lot of information.

10 Q Were the documents which he claims not -- that were  
11 not in Rule 5, actually in the Rule 5 that you received?

12 A As far as I can tell from looking at -- having heard  
13 it in court and thumbing through my file very quickly, it  
14 appears they were in there, but his references were a  
15 little confusing, so that's the best answer I can give  
16 you. There are some evidence sheets in my Rule 5. I'm  
17 not sure if they're what he's referring to because his  
18 references were a little confusing.

19 Q Exhibit 23 is what he really hammered on, is that  
20 something you received in the discovery process?

21 A I received evidence sheets, several of them. I  
22 received an evidence sheet that had the items he was  
23 describing as Exhibit 23, yes.

24 Q And when they -- "they" being the State -- introduced  
25 Exhibit 23 into evidence, did you not object?

PHILIP JAMIESON - DIRECT EXAMINATION

1 A I did object to it, yeah.

2 MR. JOHNSON: And, Your Honor, for point of  
3 reference, that's page 235.

4 Q The pictures from to jail with the trash can and that  
5 set of pictures, would you have received that in  
6 discovery?

7 A Yeah. I saw them a minute ago when I was thumbing  
8 through the file and I remember the pictures. Yes, I got  
9 them in discovery.

10 Q And would you have had a basis to object to those  
11 pictures coming into evidence?

12 A No. They were demonstrative of the testimony that  
13 the officer gave of the hallway and the jail, the place  
14 where prisoners were taken for strip search. In fact,  
15 there's a trash can located in that area and the general  
16 structure of the building that existed at that time.  
17 There was testimony that the pictures were taken. The  
18 person who testified, testified they accurately depicted  
19 the hallway in question at the time, so I didn't see any  
20 basis to object to it.

21 Q Do you believe that witness laid a proper foundation  
22 for the introduction?

23 A Yes, they did.

24 Q And do you have to have a proper basis to object as  
25 an attorney?

PHILIP JAMIESON - DIRECT EXAMINATION

1 A Yes, you do.

2 Q Let me take these one by one. Failure to suppress  
3 inadmissible evidence, failure to object to the  
4 government's witness' false testimony. Is there a reason  
5 you would or would not have objected to Mr. Weeks'  
6 testimony concerning the gun?

7 A I'm not aware of any testimony that he gave that was  
8 false. There was -- the gun did have serial numbers that  
9 had been partially obliterated, and to the best of my  
10 recollection, they were hard to read. I'm not aware of  
11 any false testimony that he gave, and certainly had he  
12 given false testimony and I was aware of it, I would have  
13 objected to it.

14 Q Would the obliterated serial number be relevant to  
15 your preparation of the case?

16 A No. Those charges had been dismissed. He had been  
17 charged with possessing a firearm with an obliterated  
18 serial number, but to the best of my understanding, that  
19 happened before I was involved. But they were dismissed  
20 at a prelim of the case, so they weren't a part of the  
21 trial. The pistol that was entered into evidence as  
22 having been recovered by the police officer, but there  
23 wasn't any testimony that demonstrated Mr. Mitchell  
24 specifically possessed that pistol.

25 Q And did you review the chain of custody for that



PHILIP JAMIESON - DIRECT EXAMINATION

1 pistol?

2 A Yes.

3 Q Did you find any gaps or --

4 A I didn't see any problems with it. Again, the serial  
5 numbers are hard to read, best of my recollection. It's  
6 been three or four years since I've seen the gun, but that  
7 is my recollection, they were hard to read.

8 Q And the fact that Mr. Mitchell never possessed that  
9 gun, was that not part of your trial strategy?

10 A Yes, of course it was. I elicited testimony from  
11 several people whether or not they could identify the gun,  
12 whether they could put the gun in his hand, whether anyone  
13 saw him drop the gun, and no one was able to say they had  
14 seen it.

15 Q And there were no fingerprints recovered from the  
16 gun?

17 A No fingerprints recovered. Mr. Mitchell was -- a  
18 gunshot residue test was attempted, but they apparently  
19 were not able to successfully do a gunshot residue, so  
20 there wasn't any residue connected to it either.

21 Q Concerning the LWOP notice, let's go back on this.  
22 Did you inform him of the two most-serious offense law in  
23 South Carolina?

24 A Yes.

25 Q And did he seem to understand that?

PHILIP JAMIESON - DIRECT EXAMINATION

1 A He seemed to at the time. We -- and, of course, we  
2 had a hearing in front of a judge where the notice was  
3 served, and he had -- I discussed with him on several  
4 occasions in light of life without the possibility of  
5 parole, the offer was a particularly good one, and I felt  
6 he should take it.

7 Q And whose decision was it to reject the offer?

8 A It was his. In fact, at the conclusion of the trial  
9 when he was sentenced to life, he said, "I don't have  
10 anybody to blame but myself, do I?" And I said,  
11 "Unfortunately, that's true."

12 Q Another claim is you failed to deliver the conviction  
13 warrant, I guess it would be the life without parole you  
14 received from Ms. Miller right before the trial?

15 A I'm not sure I understand the question.

16 Q He was testifying that there was a conviction warrant  
17 stating he was eligible for life without parole, or it  
18 would be mandatory if he was found guilty; do you remember  
19 this conviction warrant?

20 A I'm not sure what he's referring to as conviction  
21 warrant, but I was given notice of his -- I was given  
22 certified copies of his previous convictions.

23 Q Did you share the certified copy with Mr. Mitchell?

24 A Yeah. But I don't know what he means by a conviction  
25 warrant.

PHILIP JAMIESON - DIRECT EXAMINATION

1 Q Once again, he understood fully, eyes wide open,  
2 going into trial that if he were to be convicted, he was  
3 getting a life without parole sentence?

4 A We discussed it on a number of occasions and I  
5 encouraged him vehemently not to go to trial. This case  
6 was a particularly strong one for the State. Mr. Mitchell  
7 was accused of having robbed a crack house that the police  
8 were surveilling at the time he robbed it, and he ran out  
9 into the arms of the police. At one point, the officer  
10 testified he was within 20 feet of them. So it was a  
11 particularly strong case for them, and I felt the  
12 possibility of him beating the charge was slim or none,  
13 and I conveyed that to him several times.

14 Q And I must ask, why do you think it was slim to none?  
15 Just based on the evidence?

16 A Again, he ran out into the arms of the police. They  
17 pursued him a very short distance from the scene of the  
18 crime and secured him there. They located property from  
19 the victim in his possession. Pretty strong case. You  
20 don't typically have a case where someone commits a crime  
21 and runs out into the arms of the police.

22 Q Another allegation is that you failed to object to  
23 reference of inadmissible evidence, the black gloves the  
24 codefendant, Crawford. Did you not object to these?

25 A Yes, I did.

PHILIP JAMIESON - DIRECT EXAMINATION

1 Q Was the witness able to identify those gloves?

2 A No. Apparently, he was shown the gloves to see if  
3 that refreshed his recollection, and he testified --  
4 apparently, truthfully -- that it didn't refresh his  
5 recollection, so it didn't come in. But they were not  
6 alleged to have been recovered from Mr. Mitchell in any  
7 event. They were alleged to have been recovered from  
8 Mr. Crawford.

9 Q Did you see a reason to move for a mistrial at that  
10 point?

11 A No.

12 Q And why not?

13 A They were not offered as to Mr. Mitchell, and they  
14 didn't come into evidence. I objected, and the objection  
15 was sustained.

16 Q Another allegation is you failed to object to the  
17 Rock Hill Police Department's police report that C. Ellis  
18 printed his name instead of signing his name. I think  
19 that was Exhibit 22. Would you be familiar with that  
20 exhibit?

21 A I don't particularly recall whether he printed or  
22 signed his name. No, I don't recall that.

23 Q Had you --

24 A But if his signature is printed, that's still a valid  
25 signature. I think the issue was the Rock Hill Police

PHILIP JAMIESON - DIRECT EXAMINATION

1 Department returned several items to the victims rather  
2 than kept them in evidence. Of course I would prefer them  
3 to have kept them in evidence.

4 Q And those are personal items: Cell phone, wallet?

5 A Wallet, cell phone, pack of cigarettes. Best I  
6 recall, there were a best of Seneca cigarettes, and they  
7 maybe gave back to the victim. In my opinion, it would  
8 have been better if they kept them.

9 Q Would you have objected if you found a real reason  
10 to?

11 A Yes. And I think I did raise the fact -- best I  
12 recall, I did raise the issues of the fact that the items  
13 were not here for the jury to see. I think I raised them  
14 in my closing argument, saw that in my closing argument.

15 Q Moving on. We've already gone over the failure of  
16 the jail photos.

17 MR. JOHNSON: That's all the questions I have for  
18 this witness at this time, Your Honor.

19 THE COURT: All right.

20 CROSS-EXAMINATION

21 BY MS. MOODY

22 Q Good afternoon, Mr. Jamieson.

23 A How are you?

24 Q Fine. Initially, you indicated that you got  
25 appointed as his attorney, Mr. Mitchell's attorney, and

PHILIP JAMIESON - CROSS-EXAMINATION

1 you received a plea offer?

2 A Yes.

3 Q What was that plea offer?

4 A Ten years.

5 Q Ten years. And did you receive that in writing, or  
6 did you convey that to Mr. Mitchell in writing or any  
7 other form?

8 A I didn't convey it to him in writing. I had  
9 discussions with him on numerous occasions, but I didn't  
10 write him a letter to say your offer is ten years.

11 Q And how did you receive the offer?

12 A I got it in an e-mail, and verbally as well.

13 Q And you had the document in your file?

14 A Yes.

15 Q Can you pull that out?

16 A I'll see if I can find it. May take a while. Got a  
17 lot of stuff here. I'll see if I can find it.

18 Q While you're looking, I'll ask you this: Did you  
19 receive that offer from the previous trial attorney, or  
20 you received that from Ms. Betty Miller?

21 A I'm not sure what you mean by the "previous trial."

22 Q The assistant solicitor that originally tried the  
23 case, they were no longer with the office, is what  
24 Ms. Miller testified.

25 A I don't know who originally trialed the case.

PHILIP JAMIESON - CROSS-EXAMINATION

1 Q Your only --

2 A The e-mail I saw earlier was from Misty Shelton, who  
3 was assistant solicitor who tried the case with  
4 Ms. Miller, but I don't know who tried the case  
5 originally, I don't have that.

6 Q Okay. So you received that when you got it from the  
7 attorney that tried the case, when you tried the case, the  
8 offer?

9 A Yes.

10 Q Okay.

11 A I don't know whether he was given an offer in the  
12 first case, but I assume he probably was, but I don't know  
13 that for a fact.

14 Q Okay. And so as to -- I believe you testified  
15 earlier that the number on the gun, it was faint, but you  
16 did see a number on it?

17 A I don't -- I think I saw some numbers. I don't know  
18 that I remember that I saw all the numbers, and I  
19 certainly don't remember what the numbers were. I  
20 remember that someone had made an attempt to obliterate  
21 the numbers and they were difficult to read.

22 Q Okay.

23 A But I don't remember that -- I don't remember what  
24 the numbers were.

25 Q Okay. And so did you all have discussions -- I

PHILIP JAMIESON - CROSS-EXAMINATION

1 believe you testified you all had discussions about the  
2 gun?

3 A Yes, certainly. And I found the e-mail, if you want  
4 it.

5 Q Can you tell us the date you received that offer?

6 A This one is August 22, of 2011.

7 Q So that was shortly after you --

8 A Six or seven days before I met with him to tell him  
9 about the offer.

10 Q Okay. And you met with him on August 29, 2011?

11 A Uh-huh.

12 Q Okay. And at that time, what was his position as the  
13 offer?

14 A He wasn't interested in taking it. He had just come  
15 off a trial where he had a hung jury and he felt that that  
16 was due to lack of evidence. I called some of the prior  
17 jurors and asked them. It was 11 to 1 guilty, and their  
18 perception was there was one person on the jury that was  
19 not to going convict anybody for anything, and I conveyed  
20 that to Mr. Mitchell and told him I didn't think the prior  
21 trial was any indication that he wouldn't be convicted  
22 this time; in fact, the reverse. I thought it was likely  
23 he would be convicted this time.

24 Q His position was he didn't --

25 A He was going to trial.



PHILIP JAMIESON - CROSS-EXAMINATION

1 Q When y'all got the LWOP hearing notice, I believe  
2 y'all were calling it different things. You called it a  
3 certified copy of his conviction, and he calls it a  
4 warrant paper showing his conviction.

5 A I'm not sure we're referring to the same thing, but  
6 what I got was a certified copy of his convictions.

7 Q What was it that you understood you would be  
8 receiving from Ms. Miller supporting her position on the  
9 LWOP?

10 A Certified copy of his convictions.

11 Q And so did you -- did he give you any convictions he  
12 had prior that you knew of when you discussed his  
13 potential for this LWOP?

14 A I had his criminal history as part of the discovery  
15 process.

16 Q So you had his rap sheet?

17 A Yes.

18 Q And on that rap sheet, it had the convictions on  
19 there?

20 A Yes.

21 Q And so --

22 A But you don't rely on the rap sheet, obviously,  
23 because mistakes can be made.

24 Q Did you discuss this rap sheet with him?

25 A Yes.

PHILIP JAMIESON - CROSS-EXAMINATION

1 Q All right. As to the -- you mentioned in the  
2 evidence you received you had a large file and it had  
3 police statements, witness statements, evidence sheet and  
4 DNA sheets?

5 A No, I said there were DNA tests done. There wasn't  
6 any DNA that linked Mr. Mitchell to anything.

7 Q So you all discussed all this evidence again. Did  
8 you give him a copy of that packet you received?

9 A I don't remember. Normally I would, unless he told  
10 me that he already had discovery, and since he had already  
11 gone through a trial, he probably did already have  
12 discovery, so I don't remember.

13 Q And as to Exhibit 23, the evidence log with a  
14 signature, Mr. Mitchell testified that he only had a copy  
15 of Exhibit 22 that had -- basically shows that the items  
16 were returned to the victim. Did you have any kind of  
17 evidence log that had signatures where the victim signed  
18 in lieu of them receiving the actual evidence that was  
19 collected?

20 A I saw -- when I was thumbing through my file last  
21 night in preparation, I saw evidence sheets. I don't know  
22 if they were specifically Exhibit 23. Here are some  
23 evidence sheets.

24 MS. MOODY: May I approach the witness, Your Honor?

25 A I don't know if that's all the evidence sheets, but

PHILIP JAMIESON - CROSS-EXAMINATION

1 those are some I found right away.

2 Q So this document you have that has a signature, I  
3 believe it has Mr. Charles Ellis' signature on it?

4 A That's what it looks like to me.

5 Q So you had that sheet at the time of the trial?

6 A Yes.

7 Q Okay.

8 A Whether this is Exhibit 23, I don't know.

9 Q Okay. But you had this -- this is from the packet of  
10 stuff you had?

11 A Yes.

12 Q Okay. So did you discuss these sheets with  
13 Mr. Mitchell?

14 A We looked at them and went over them, yes.

15 Q So when y'all went over your evidence -- when y'all  
16 went over the discovery, did he have his set of discovery  
17 and you had your set of discovery, or what happened?

18 A Whenever I meet with a client with discovery I bring  
19 it with me. We go over it page by page by page of  
20 anything that's relevant.

21 Q Okay. When y'all were going over it, did he have his  
22 packet?

23 A I don't remember.

24 Q Okay.

25 A He may have or may not have, I don't remember.

PHILIP JAMIESON - CROSS-EXAMINATION

1 Q So before trial you went over the evidence sheet, you  
2 went over all you had in your possession?

3 A Yes.

4 Q And I --

5 A I do remember he brought papers with him, but I don't  
6 know if it was a complete set of discovery or not.

7 Q Earlier you testified that Mr. Mitchell stated that  
8 he blamed himself at the trial; was that in front of the  
9 judge you were saying?

10 A It was while we were in the courtroom. I don't know  
11 whether the judge heard it. It was -- it was said to me  
12 standing beside him.

13 Q Okay. So you all were talking, and that's what  
14 you're referring to?

15 A When the verdict was read, yes.

16 Q Okay. Now, as to the gloves that were presented, can  
17 you tell us why you didn't ask for any kind of  
18 instructions as to -- you objected, if I recall, to the  
19 gloves, but did you ask the judge to give any kind of  
20 specific instruction as to those gloves?

21 A No, I didn't.

22 Q So you wanted to object to them so they wouldn't move  
23 it in?

24 A I didn't want them in evidence, but I would not have  
25 actually asked for an instruction after that, because all

PHILIP JAMIESON - CROSS-EXAMINATION

1 that does is emphasize to them for the jury. They were  
2 not connected to Mr. Mitchell. They were not offered as  
3 to Mr. Mitchell. They were offered as corpus delicti that  
4 things were recovered at the crime scene, and so to  
5 object, I kept them out, but to ask for an instruction  
6 would have emphasized them and made them more significant  
7 to the jury. I didn't think that was a smart thing to do.

8 Q So that was part of your strategy in dealing with the  
9 issue?

10 A Yes.

11 Q So those gloves were part of -- I guess the wallet,  
12 the cell phone, all the things you would have preferred  
13 them keeping in their custody, that's how they were --  
14 those were the items when you say corpus delicti that they  
15 found?

16 A The gloves were not returned to anyone. They were  
17 here at the trial. There were certain things they  
18 recovered at the scene, like wallets, identification, cell  
19 phones that I would prefer they had kept. I think that  
20 would be the better practice. If you are going to  
21 introduce them into evidence, have them in the courtroom  
22 with you. I don't control that, and the prosecutor  
23 doesn't control that. That was done essentially the night  
24 of the crime or the next day after, so nobody has any  
25 ability to control that. But as a general practice, I

PHILIP JAMIESON - CROSS-EXAMINATION

1 think it would be better for police to keep everything  
2 they recover.

3 Q Okay.

4 A But I can understand why somebody would want their  
5 driver's license back. It's a judgment call on their  
6 part.

7 Q I believe -- last question -- I believe you indicated  
8 about the chain of custody after reviewing the documents  
9 or the discovery, you felt there was nothing wrong with  
10 the chain of custody?

11 A I did not detect anything wrong with the chain of  
12 custody. Had I done so, I would have objected to it.

13 Q And did you have an opportunity -- when you all went  
14 over your discovery, did you have an opportunity to  
15 discuss that with Mr. Mitchell?

16 A I met with Mr. Mitchell nine times in preparation for  
17 the case. We discovered -- we talked about the discovery  
18 in detail.

19 Q From his point of view, it was a trial from day one.  
20 And so every meeting I had with him, there was some  
21 discussion about trial prep, about trial strategy, about  
22 what his theory of the case was, and I met with him nine  
23 different times, so...

24 MS. MOODY: No further questions, Your Honor.

25 THE COURT: Okay.

PHILIP JAMIESON - REDIRECT EXAMINATION  
PHILIP JAMIESON - RECROSS-EXAMINATION

1 MR. JOHNSON: Just brief redirect, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. JOHNSON

4 Q Mr. Jamieson, did you base your trial strategy on  
5 information provided by Mr. Mitchell?

6 A To some extent, yes. But certainly that wasn't all  
7 my trial strategy.

8 Q But you based it also on facts of the case and the  
9 evidence the State was going to present?

10 A Yes.

11 Q And about Exhibit 23, you have testified that you  
12 did, in fact, discuss that with Mr. Mitchell?

13 A Well, again, I don't have Exhibit 23 in front of me,  
14 but assuming it was evidence sheets, yes, we discussed  
15 that. I had evidence sheets in my discovery, and we went  
16 over the discovery.

17 Q And you objected to evidence, the Exhibit 23 coming  
18 into evidence?

19 A Yes. I did.

20 MR. JOHNSON: No further questions, Your Honor.

21 THE COURT: Step down.

22 MS. MOODY: Your Honor, I do have a question.

23 RECROSS-EXAMINATION

24 BY MS. MOODY

25 Q When you objected to Evidence 23 coming in, why did

PHILIP JAMIESON - REDIRECT EXAMINATION  
PHILIP JAMIESON - RECROSS-EXAMINATION

1 you object?

2 A I don't remember now, frankly. I have to look back  
3 at the transcript to refresh my recollection on that. I  
4 just know that I objected to it.

5 MS. MOODY: No further questions.

6 A If you give me a reference, I'll be glad to look at  
7 the transcript.

8 THE COURT: You can step down.

9 MR. JOHNSON: One moment, Your Honor. Your Honor, at  
10 this point, the State has no further witnesses, although I  
11 would move to leave the record open for 30 days for Ms.  
12 Miller to --

13 THE COURT: Okay. We can leave it open for 30 days.

14 MR. JOHNSON: Is that all right with you, Leah?

15 MS. MOODY: No objection.

16 THE COURT: Thank you, Your Honor.

17 MS. MOODY: Your Honor, I would ask -- are we coming  
18 back to have her testify?

19 MR. JOHNSON: Let me review -- see if she needs to  
20 review anything but, you know.

21 THE COURT: If necessary.

22 MS. MOODY: Okay. Thank you.

23 THE COURT: If she doesn't testify again, prepare me  
24 some proposed orders, send them to Camden. But I'm  
25 willing to come back.



PHILIP JAMIESON - REDIRECT EXAMINATION  
PHILIP JAMIESON - RECROSS-EXAMINATION

1 MR. JOHNSON: Thank you, Your Honor.

2 (Whereupon, the proceedings concluded.)

3 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA                   )  
                                                          )  
COUNTY OF YORK                               )

I, Aminah R. Hardy, CM, Official Court Reporter  
for the 16th Judicial Circuit of the State of South  
Carolina, do hereby certify that the foregoing is a true,  
accurate and complete Transcript of Record of the  
proceedings had and evidence introduced in the hearing of  
the captioned case, relative to appeal, in the Court of  
Common Pleas for York County, South Carolina, on the 14th  
day of April, 2015.

July 2nd, 2015

A handwritten signature in dark ink, appearing to read "Aminah R. Hardy", is written over a horizontal line.

Aminah R. Hardy, CM

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Randy Lamont Mitchell, #247782,

Applicant,

vs.

State of South Carolina,

Respondent,

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

C.A. No.: 2014-CP-46-1048

ORDER

FILED-RECEIVED  
2015 OCT 13 PM 3:18  
DAVID HAMILTON  
C.C.P. & S.S.  
YORK COUNTY, Y.C.

Applicant filed this Post-Conviction Relief application on April 3, 2014. The case was heard before the late Judge Ernest J. Kinard on April 14, 2015. Applicant was represented by Leah B. Moody, Esquire; the Respondent was represented by J. Rutledge Johnson, Esquire.

Due to the death of the Honorable Ernest J. Kinard, the undersigned assigned this case to himself pursuant to Rule 63, South Carolina Rules of Civil Procedure. The undersigned received the Transcript of the April 14, 2015 hearing on September 22, 2015. There is no reason for an additional hearing.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's Orders of Commitment. The applicant was indicted by the February 2011 term of the York County Grand Jury for Burglary, 1<sup>st</sup> degree (2011-GS-46-0506) and Armed Robbery (2011-GS-46-0507). Phillip Jamieson, Esquire, represented him on February 27-29, 2012; the Applicant proceeded to a jury trial and was found guilty as indicted.<sup>1</sup> The Honorable Robin Stillwell sentenced the Applicant to confinement for Life without Parole.

<sup>1</sup> This was a retrial. The initial trial resulted in a hung jury.

*gc*

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Mitchell, 2014-UP-104 (filed March 12, 2014). The Remittitur was issued on March 31, 2014.

In his application for post-conviction relief, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"

By letter dated January 5, 2015, Applicant, through Ms. Moody, amended his application to include the additional ground of "Prosecutorial Misconduct."

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984)). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690. The applicant must overcome this presumption in order to receive relief. Cherry, 300 S.C. at 118.

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18 (quoting Strickland, 466 U.S. at 694). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that

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"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, 466 U.S. at 691; see also Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

A review of the Transcript of Applicant's Post-Conviction Relief hearing indicates Applicant claims trial counsel was ineffective for not having a gun suppressed,<sup>2</sup> failing to advise Applicant that he faced life without parole, failing to object to the display to the jury of a pair of black gloves, failing to object to State witness's "false testimony," and failing to object to the introduction of certain State's exhibits.

Applicant testified at his hearing that the gun introduced at trial had a different serial number from the gun found at the scene of the burglary for which he was on trial. However, the Trial Transcript reflects that the handgun introduced at trial was the handgun, identified by serial number, which was found in the proximity of the alleged burglary. (Trial Tr. p. 131, LL 18-23). In fact, trial counsel objected to the gun being entered into evidence. (Trial Tr. p. 132, L 9).<sup>3</sup> Applicant testified at the PCR hearing at great length as to the "gun issue." In spite of his lengthy arguments about the gun, the Trial Transcript reflects trial counsel objected to its introduction, which is all he could do at the time.

Applicant testified at the PCR hearing that Officer George Weeks offered false testimony regarding the gun and that trial counsel should have objected to this testimony. There is nothing in the record to support this claim. Trial counsel testified he did not know of any false testimony to which he could object. (PCR Tr. p. 57, LL 7-8).

<sup>2</sup> At his PCR hearing, Applicant testified that the gun charge had been dismissed at a preliminary hearing. (PCR Tr. p. 8, LL 15-21). This is true. (See PCR Tr. p. 57, LL 14-24).

<sup>3</sup> Trial counsel objected by stating, "I move to renew my earlier objection." This "earlier" objection cannot be found in the Trial Transcript. In any event, trial counsel objected to the introduction of the gun.

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Applicant testified at length that he was not aware he was facing life without parole and that, had he known, he would have accepted a plea bargain. However, in spite of his somewhat rambling explanation of why he was not subject to life without parole, he was aware the State's position was that he was subject to such a sentence. (PCR Tr. p. 13, L 1—p. 18, L 21).

Trial counsel testified he discussed with Applicant the fact he was facing life without parole (PCR Tr. p. 54, LL 12-15, 19-22) and that Applicant seemed to understand this (PCR Tr. p. 58, L 25—p. 59, L 6; p. 60, LL 1-4). Trial counsel also testified he showed Applicant his "rap sheet." (PCR Tr. p. 66, LL 24-25). At his PCR hearing, Applicant testified broadly that trial counsel was ineffective for not keeping him informed regarding the State seeking life without parole. As noted herein, trial counsel testified Applicant was aware he faced a life without parole sentence even though Applicant disputed he was subject to such a sentence.

Applicant testified at his PCR hearing that trial counsel was also ineffective for not objecting to the admission into evidence of the pair of black gloves, or objecting to the gloves being shown to the jury. The record reflects that the gloves were shown to State's witness, Christopher Rowe, who testified that they were recovered from Applicant's co-defendant, Gregory Crawford. The gloves were not offered into evidence, and therefore, there was nothing to which trial counsel could object. (Trial Tr. p. 236, LL 14-21).

Trial counsel testified he saw no reason to make a motion for a mistrial based on the displaying of the gloves. (PCR Tr. p. 69, L 16—p. 70, L 10). Trial counsel further testified that he chose not to ask for any curative instruction regarding the gloves because it would not have been a smart thing to do as it would emphasize the gloves to the jury. Id. Trial counsel testified that such a decision was a trial strategy decision (PCR Tr. p. 70, LL 8-9).

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At Applicant's trial, the State introduced a Rock Hill Police Department Property Evidence Inventory as Exhibit 23. Applicant testified he had not received the exhibit through discovery, and that it was therefore inadmissible. Trial counsel testified he received evidence sheets pursuant to his Rule 5 discovery request, and while he could not identify the sheet entered as Exhibit 23, he received a sheet listing the items on Exhibit 23. (PCR Tr. p. 55, LL 21-23). Trial counsel testified he showed the Applicant all of the evidence produced by the State in discovery. (PCR Tr. p. 68, LL 15-p. 69, L 3).

At Applicant's PCR hearing, he testified trial counsel was ineffective for not objecting to the introduction of Exhibit 22, another Rock Hill Police Department's Evidence Inventory. Trial counsel did not object to the admission into evidence of Exhibit 22. (Trial Tr. p. 235, 4-12). Applicant claims trial counsel should have objected to the introduction of Exhibit 22 based on "the custody of the sheet" (PCR Tr. p. 28, LL 12-14), and the "chain of custody" of the sheet (PCR Tr. p. 29, LL 9-12). Trial counsel testified he found nothing wrong with the chain of custody of the evidence introduced at trial. (PCR Tr. p. 71, LL 7-12).

At his PCR hearing, applicant testified trial counsel was ineffective for not objecting to the introduction into evidence of Exhibits 17, 18, 19 and 20 based on the State's Rule 5 SCRCMP violation. Trial counsel did object to the introduction of these exhibits based on a lack of foundation, not on the basis of a Rule 5 violation (Trial Tr. p. 248, LL 6 11), and practically withdrew the objection thereafter (Trial TR, p. 248, LL 24-25). Trial counsel testified he received the pictures entered as Exhibits 17-20 in discovery. (PCR Tr. p. 56, LL 4-9).

At Applicant's PCR hearing, he testified trial counsel was ineffective for failing to move to suppress an in court identification of him by the victim. This claim is without merit. See State v. Lewis, 363 S.C. 37, 609 S.E.2d 515 (S. Ct. 2004).

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The record does not reflect that any of the victims identified Applicant in any pre-trial proceeding or line-up. Since this was a re-trial, the witnesses had, of course, seen Applicant at the previous trial. The record does not contain any of the Trial Transcript from the first trial. The Court cannot gauge what impact the identity from the first trial impacted the identification in the second. However, based on Lewis, the in court identification in the first trial would not have been subject to a Motion to Suppress. Id. Therefore, whatever impact it may have had on the second in court identification is immaterial.

Victim Charles Ellis pointed out the Applicant, from the witness stand, as the person who robbed him. Ellis admitted he knew Applicant's name only through Ellis coming to court. (Trial Tr. p. 183, L 27). Victim Everett Williams also pointed out Applicant as the person who robbed him. (Trial Tr. p. 207, LL 6 - 12).

Trial counsel attacked the in court identification as Lewis, in the manner prescribed in Lewis. Id. Trial counsel did not, and the Court finds this proper, challenge the in court identification as being based in any way on the first trial.

Applicant's claim of prosecutorial misconduct is that the Solicitor: did not stop a witness, Officer Weeks, from giving false testimony the Solicitor knew to be false; put the gun into evidence knowing it did not have a serial number on it; presented the gloves to witness Officer Rowe, presented pictures from the Rock Hill Police Department, which were not part of Rule 5 discovery responses; and failed to provide trial counsel with what was introduced into evidence as Exhibit 23. That the solicitor vigorously prosecuted Applicant and presented evidence the State felt pointed to Applicant's guilt, is not prosecutorial misconduct. This claim is patently without merit.

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Judge Kinard looked at the gun in question and read into the record a serial number from the gun. (PCR Tr. p. 45, LL 12 14). The number read into the record was 544498. Applicant, apparently reading from a forensic report, testified the correct serial number was 541498. (PCR Tr. p. 46, LL 17 – 18). Trial counsel testified the gun's serial number was partially "obliterated" and "hard to read." (PCR Tr. p. 57, LL 7 – 10).

While it could be purely coincidental that the "obliterated," "hard to read" number has at least 5 of the same 6 numbers, the gun was identified properly as the seized gun and admitted into evidence based on this testimony. (Trial Tr. p. 131, L 15 through p. 133, L 7).

Trial counsel testified that the possession of a handgun with an obliterated serial number charge was dismissed, and there was no evidence Applicant specifically possessed the pistol. (PCR Tr. p. 57, LL 14 – 25). Trial counsel testified that part of his trial strategy was that no witness could put the gun in Applicant's hand or saw the gun, and Applicant's fingerprints were not found on the gun. (PCR Tr. p. 58, LL 10 17).

Reviewing trial counsel's representation of Applicant, I find, by a preponderance of the evidence, that Applicant has not proven trial counsel represented Applicant ineffectually.

Applying the Cherry and Strickland tests, it is clear to the Court that trial counsel's representation of Applicant was not deficient, was reasonable when examined under the rubric of professional norms, and was well within the range of competence required in criminal cases. I find trial counsel rendered adequate assistance and made all significant decisions, including those based on trial strategy in the exercise of reasonable professional judgment.

As to the issue of trial strategy, I find trial counsel articulated a valid reason for his trial strategy decisions.

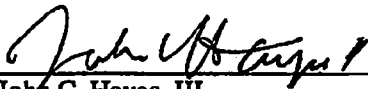
*For R 42*  
7

Wherefore, I find Applicant has not carried his burden of proof, and has neither proven trial counsel was ineffective, nor proven any prosecutorial misconduct.

Therefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

  
\_\_\_\_\_  
John C. Hayes, III  
Judge  
HC

October 12<sup>th</sup>, 2015  
York, South Carolina

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**WITNESSES**

RHPD/Rivera

dc

**ARREST WARRANT NUMBER**

K-617736

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Signature]*  
Foreperson of Grand Jury  
Date: 2/17/11

**VERDICT**

Foreperson of Petit Jury  
Date:

DOCKET NO. 2011-GS-46- 00506

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**February 17, Term 2011**

**THE STATE**

**vs.**

**RANDY LAMOND MITCHELL**

**Indictment for  
BURGLARY FIRST DEGREE**

SC Code: 16-11-311  
CDR Code: 079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

INDICTMENT

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of York County present upon their oath:

**BURGLARY FIRST DEGREE**

The Defendant, Randy Lamond Mitchell, did in York County, South Carolina, on or about October 3, 2010, willfully and unlawfully in the nighttime enter the dwelling of Everette Williams, located at \_\_\_\_\_, Rock Hill, South Carolina, without consent and with the intent to commit a crime therein and the defendant while inside the dwelling was armed with a deadly weapon. The defendant did commit said offense during the nighttime. All in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATEYork  
VS.

Randy Lamond Mitchell

AKA:

Race: BLACK Sex: M Age: 33

DOB:

Address

City, State

DL#:

SID#: SC01115437

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was  
TO: Burglary 1st Degreein violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079  
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ § 17-25-45The 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.

Attorney

Miller, Betty A.

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 48E days/months/years or ☐ under the Youthful Offender Act not to exceed     years  
and/or to pay a fine of \$    ; provided that upon the service of     days/months/years and/or payment  
of \$    ; plus costs and assessments as applicable\*; the balance is suspended with probation for    months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.☐ The Defendant is to be placed on 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   | \$ | 100 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$ |     |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$ |     |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$ |     |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$ |     |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ | 25  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ |     |
| § 50-21-114 (BUI Breath Test Fee)      | \$50    | \$ |     |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$ |     |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ | 5   |
| 3% to County (if paid in installments) |         | \$ |     |
| TOTAL                                  |         | \$ | 130 |

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

INDICTMENT/CASE#: 2011GS4600506

A/W#: K617736

Date of Offense: 10/3/2010

S.C. Code § : 16-11-0311

CDR Code #: 0079

## SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2158

2-29-12

**WITNESSES**

RHPD/Rivera

dc

**ARREST WARRANT NUMBER**

K-617737

**ACTION OF GRAND JURY**

**TRUE BILL**

*Jay Bol*  
Foreperson of Grand Jury

Date: 2/17/11

**VERDICT**

Foreperson of Petit Jury

Date:

DOCKET NO: 2011-GS-48-00507

**The State of South Carolina**

**County of York**

**COURT OF GENERAL SESSIONS**

**February 17, Term 2011**

**THE STATE**

**vs.**

**RANDY LAMOND MITCHELL**

**Indictment for**

**ARMED ROBBERY**

SC Code: 16-11-0330

CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

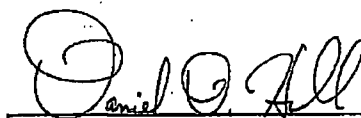
COUNTY OF YORK )

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of York County present upon their oath:

**ARMED ROBBERY**

The Defendant, Randy Lamond Mitchell, did in York County, South Carolina, on or about December 3, 2010, while armed with a deadly weapon, to wit: a pistol, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the persons or presence of the victims, James Williams, Everette Williams, Otis Mobley, Charles Ellis and Daniel Ronnie Adams by means of force or intimidation various goods and/or monies of said victims. All in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

COUNTY OF York  
STATE VS.  
Randy Lamond Mitchell

AKA: \_\_\_\_\_  
Race: BLACK Sex: M Age: 33  
DOB: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State: \_\_\_\_\_  
DL#: \_\_\_\_\_ SID#: SC01115437

\*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 violation of § 16-11-330 CA of the S.C. Code of Laws, bearing CDR Code #  
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Betty A. Miller SC Bar# \_\_\_\_\_ Defendant Miller, Betty A. Attorney for Defendant 69431 SC Bar# \_\_\_\_\_

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

#### SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |        |
|----------------------------------------|---------|--------|
| *Fine:                                 | \$      |        |
| § 14-1-206 (Assessments 107.5 %)       | \$      |        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$     |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$     |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$     |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$     |
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| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$     |
| Proviso 90.5 (SCCJA Surcharge)         | \$5     | \$ 5   |
| 3% to County (if paid in installments) | \$      | \$     |
| TOTAL                                  | \$      | \$ 130 |

Clerk of Court/ Deputy Clerk David Hamilton

Court Reporter: Wanda Nelson

SCCA/217 (03/2011)

#### IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4600507

A/W#: K617737

Date of Offense: 10/3/2010

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

#### SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

0139 ☒ §17-25-45

w/minor 1st or Lewd Act)

☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant 69431 SC Bar# \_\_\_\_\_

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of \_\_\_\_\_ 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.

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

#### SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |        |
|----------------------------------------|---------|--------|
| *Fine:                                 | \$      |        |
| § 14-1-206 (Assessments 107.5 %)       | \$      |        |
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| 3% to County (if paid in installments) | \$      | \$     |
| TOTAL                                  | \$      | \$ 130 |

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel,  
§ 47.12 requires \$500 be paid to Clerk  
during probation.

Presiding Judge \_\_\_\_\_

Judge Code: 2158

Sentence Date: 2-29-12



## SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 05/08/14

C0511

MITCHELL, RANDY LAMON FBI # 555265EB9 SID# SC01115437 SCDC # 247782

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: LIEBER CORRECTIONAL INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING...: YES

SOCIAL SECURITY #...

DORM.....: AB0039A

RACE....: B SEX...: M

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: BUILDING #3

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 35 DATE OF BIRTH...:

PREVIOUS NUMBERS:

Y00247782

| CURRENT OFFENSES          | SENTENCE |     |     |       | COUNTY | SENTENCE   |     |   | CATEGORY |
|---------------------------|----------|-----|-----|-------|--------|------------|-----|---|----------|
|                           | YRS      | MOS | DYS | START |        | V/NV       |     |   |          |
| ARMED ROBBERY             | 999      | 99  | 999 |       | YORK   | 10/ 4/2010 | V   | 4 |          |
| BURGLARY-1ST DEGREE       | 999      | 99  | 999 |       | YORK   | 10/ 4/2010 | V   | 4 |          |
| LEAVING SCENE OF ACCIDENT | 0        | 0   | 0   |       | YORK   | 12/13/20   | 0 N | 2 |          |
| STRONG ARM ROBBERY        | 5        | 0   | 0   |       | YORK   | 7/22/20    | 0 N | 3 |          |

PRIOR COMMITMENTS OVER 90 DAYS:

3/ 9/ 4 \*POSSESSION OF WEAPON

0 YRS 77 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

\*NO DETAINERS\*

ESCAPES:

6/29/ 0 OTHER ESCAPE RELATED CODE NOT IN TABLE

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

9/19/ 1 FIGHTING WITHOUT A WEAPON CONVICTED MAJOR

NON-ASSAULTIVE DISCIPLINARIES:

4/ 2/14 USE, POSS NARC, MARIJ, UNAU DROPPED MAJOR

12/ 2/13 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

7/10/13 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

10/15/12 USE, POSS NARC, MARIJ, UNAU CONVICTED MAJOR

9/ 4/12 THREATENING TO INFLICT H NOT GUILTY MAJOR

1/ 3/ 3 STEALING NOT GUILTY MINOR

9/23/ 2 DAMAGE, DESTROY, PROP. VALU OTHER

HISTORY OF MOVEMENTS:

| DATE     | LOCATION   | STATUS               | REMARKS                      |
|----------|------------|----------------------|------------------------------|
| 4/18/12  | LIEBER     | INCARCERATED         | ADMINISTRATIVE               |
| 3/ 6/12  | KIRKLAND   | INCARCERATED         | NEW SENT W/O PR/CS/SF REV    |
| 3/14/ 3  | YORK CO    | PROBATION            | RELEASED TO PROBATION        |
| 11/ 4/ 2 | CATAWBA    | INCARCERATED         | LABOR CREW                   |
| 10/ 1/ 1 | RIDGELAND  | INCARCERATED         | ADMINISTRATIVE               |
| 9/19/ 1  | STEVENSON  | INCARCERATED         | DISCIPLINARY                 |
| 9/10/ 1  | WALDEN     | INCARCERATED         | ADMINISTRATIVE               |
| 8/15/ 1  | KIRKLAND   | INCARCERATED         | YOA CONVERSION               |
| 8/15/ 1  | KIRKLAND   | INCARCERATED         | ADMINISTRATIVE               |
| 12/19/ 0 | TURBEVILLE | INCARCERATED         | RETURN FROM COURT            |
| 11/27/ 0 | YORK CO    | AUTH ABSENCE (AWL)   | TO COURT                     |
| 10/27/ 0 | TURBEVILLE | INCARCERATED         | ADMINISTRATIVE               |
| 10/17/ 0 | KIRKLAND   | INCARCERATED         | YOA PAROLE VIOLATOR          |
| 8/ 1/ 0  | YORK CO    | AUTH ABSENCE (AWL)   | LOCKUP-FRM EPA, SF, PAR, PRB |
| 7/31/ 0  | UNK        | DEAD TIME            | WARRANT ISSUED               |
| 4/14/ 0  | YORK CO    | YOA PAROLE - CONDITI | PAROLE BOARD ACTION          |
| 11/ 8/99 | TURBEVILLE | INCARCERATED         | RETURN FROM COURT            |
| 10/29/99 | YORK CO    | AUTH ABSENCE (AWL)   | TO COURT                     |
| 7/16/99  | TURBEVILLE | INCARCERATED         | ADMINISTRATIVE               |

436

4/15/99 · KIRKLAND

INCARCERATED

YOA PAROLE VIOLATOR

MITCHELL, RANDY LAMON FBI # 555265EB9 SID# SC01115437 SCDC # 247782 (CONTINUE  
 6/ 8/98 YORK CO YOA PAROLE - CONDITI SHOCK INCAR-PROB COMPLETE  
 3/10/98 STEVENSON INCARCERATED SHOCK INCARC/YOA BOOT  
 3/ 3/98 KIRKLAND INCARCERATED NEW ADMISSION

## HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB<br>DESCRIPTION   | START<br>DATE | END<br>DATE | TERMINATION<br>REASON   | JOB<br>LVL |
|----------------------|---------------|-------------|-------------------------|------------|
| WARDKEEPER ASSISTANT | 06/27/13      | 0/ 0/ 0     |                         | 3F5        |
| LABOR CREW/WORK PROG | 11/05/02      | 3/14/ 3     | RELEASED/PAROLED        | 2F5        |
| WARDKEEPER           | 07/16/02      | 11/ 4/ 2    | INSTIT TRANSFER         | 2F5        |
| LANDSCAPE GARDENER   | 03/22/02      | 7/15/ 2     | INMATE REQUEST          | 2F5        |
| LANDSCAPE GARDENER   | 10/04/01      | 3/21/ 2     | MI ELIGIBLE FOR LEVEL 2 | 3F5        |
| MACHINE OPERATOR     | 09/11/01      | 9/19/ 1     | PLACED IN ST/SP CUSTODY | 2F5        |

## HISTORY OF EARNED EDUCATION CREDITS:

| EEC<br>DESCRIPTION        | START<br>DATE | END<br>DATE | TERMINATION<br>REASON |
|---------------------------|---------------|-------------|-----------------------|
| LVL 2 - FULL TIME(NO EWC) | 12/28/00      | 8/15/ 1     | INSTIT TRANSFER       |
| LVL 2 - FULL TIME(NO EWC) | 11/09/00      | 11/27/ 0    | COURT                 |
| LVL 2 - FULL TIME(NO EWC) | 11/18/99      | 4/14/ 0     | RELEASED/PAROLED      |
| LVL 2 - FULL TIME(NO EWC) | 07/20/99      | 10/29/99    | COURT                 |

\*\*\*\*\* END OF REPORT \*\*\*\*\*

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 05/08/14  
OMCOMITA RELEASE DATE SCREEN C051132  
SCDC# > 247782 LOC: LIEBER  
MITCHELL, RANDY LAMON SCDC CLASSIFICATION...: VIOLENT  
OFFENDER TYPE....: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N  
SEXUAL PREDATOR...: NOT APP  
DNA STATUS.....: COMPLETED  
GPS REQUIREMENT...: N  
PREA DECISION....:  
CURRENT SENTENCE: CONSECUTIVE SENTENCE ...:  
LIFE CURRENT SENT START DATE: 10/04/2010  
PROJECTED COMPLETION DATES  
MAXOUT DATE .....: 99/99/9999 CURRENT EWC ..:  
YOA SIX YEAR DATE: CURRENT EEC ..:  
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000  
  
TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE  
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00  
TOTAL SERVICE TIME EARNED ...: 000000 ISS.....:  
  
PFKEYS: 5:HISTORY OF DATE CHANGES  
4-© 1 Sess-1 167.7.50.33 SCDC1126 3/11

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from York County

Robin B. Stilwell, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RANDY MITCHELL,

APPELLANT

Appellate Case No. 2012-209626

---

INITIAL BRIEF OF APPELLANT

---

BREEN RICHARD STEVENS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred pursuant to Rule 403, SCRE, by permitting the State to elicit testimony that the Appellant was not cooperative and failed to give consent to a GSR test when asked to do so by the police?



STATEMENT OF THE CASE

Appellant Randy Lamond Mitchell was indicted by the York County grand jury on February 17, 2011, for armed robbery and first degree burglary. Tr. 6, lines 15-25; R. \* (Indictments). His case proceeded to trial for the Honorable Robin Stillwell and a jury from February 27th through 29th, 2012. Philip Jamison (Counsel) represented Appellant, while Betty Miller represented the State. Tr. 1.

The jury found Appellant guilty as charged, and the trial court imposed concurrent sentences of life without possibility of parole pursuant to Section 17-25-45 of the South Carolina Code. Tr. 324, lines 16-24; Tr. 326, line 5—Tr. 329, line 14; R. \* (Sentence sheets).

### STATEMENT OF THE FACTS

Four officers from the Rock Hill Police Department arrived on foot near the residence of James and Everett Williams (the Williams residence) on the night of October 3, 2010, to investigate a tip regarding the sale of crack cocaine; the tipster indicated he purchased the crack from an individual wearing a white T-shirt and blue jeans. Tr. 76, line 3—Tr. 79, line 10; Tr. 81, line 9—Tr. 82, line 9. Codefendant Gregory Crawford (Crawford) was observed entering and later leaving the Williams residence; he was wearing a white T-shirt and blue jeans. Tr. 84, line 6—Tr. 85, line 21; Tr. 228, lines 6-19. Shortly after, Appellant Randy Mitchell also exited the same residence, and Crawford then fired a sawed-off shotgun into the air. The four officers, who were only ten to fifteen feet away from Crawford at the time he fired a shotgun, identified themselves and attempted to arrest not only Crawford, but also Appellant. Tr. 86, line 18—Tr. 87, line 15; Tr. 228, line 20—Tr. 229, line 5. A foot chase ensued, and Appellant was eventually arrested in a thicket of briars by Officer Christopher Edward Rowe and Sergeant William Rivera. Tr. 90, line 10—Tr. 91, line 17; Tr. 231, lines 12-25. Although a silver handgun was later found by law enforcement after tracing back over the path taken during the chase, none of the officers ever witnessed Appellant with the gun at any time. Tr. 94, line 20—Tr. 95, line 13; Tr. 112, lines 22-25; Tr. 231, lines 2-4; Tr. 236, lines 1-8; Tr. 241, line 10—Tr. 242, line 10.

At Appellant's trial, the State produced testimony not only from occupants of the Williams residence who indicated they were robbed,<sup>1</sup> but also from George Weeks (Weeks) of the York County Solicitor's Office forensic unit who sought to collect gunshot residue

---

<sup>1</sup> Testimony from witnesses who were inside the residence indicated Appellant used a silver handgun. Tr. 167, line 2—Tr. 168, line 17; Tr. 190, line 23—Tr. 191, line 11; Tr. 207, lines 6-14; Tr. 208, lines 3-13.

(GSR) evidence from both Crawford and Appellant. Tr. 125, line 18—tr. 126, line 1; Tr. 150, line 22—Tr. 154, line 13. Specifically, the State sought permission from the court “to tell the jury” that Appellant did not cooperate when asked to submit to a GSR test. Counsel objected, arguing that such testimony was unduly prejudicial. Specifically, Counsel asserted (1) that the State’s characterization of Appellant as being uncooperative was highly prejudicial because there may be many reasons why a person would choose not to participate in a GSR test; (2) that Appellant did not participate in the GSR test because he requested the presence of an attorney; (3) that Appellant was under no obligation to participate in the GSR test; and (4) whether Appellant granted or denied consent to a GSR test did nothing to prove the State’s case. Tr. 145, line 13—Tr. 147, line 22

The trial court overruled Counsel’s objection, finding such testimony was not unduly prejudicial and that its probative value outweighed the prejudicial nature of it. Tr. 148, line 24—Tr. 149, line 10. As a result, the State was permitted to elicit the following testimony from Weeks on direct examination:

A. The Defendant was brought to the front-counter area at the detention facility where I explained the GSR test and how it was performed, and he refused at that time to give me consent to do a GSR test.

Q. Which defendant are you talking about?

A. Mr. Randy Mitchell.

Transcript 154, lines 8-11.

The jury found Appellant guilty as charged, and the trial court imposed concurrent sentences of life without possibility of parole pursuant to Section 17-25-45 of the South Carolina Code. Tr. 324, lines 16-24; Tr. 326, line 5—Tr. 329, line 14; R. \* (Sentence sheets). This appeal follows.

### ARGUMENT

**The trial court reversibly erred pursuant to Rule 403, SCRE, by permitting the State to elicit testimony that the Appellant was not cooperative and failed to give consent to a GSR test when asked to do so by the police.**

Appellant asserts that the trial court erred under rule 403 of the South Carolina Rules of Evidence by permitting the State to elicit testimony from Weeks that Appellant was approached by Weeks while in custody at the police station and refused consent to a GSR test. Tr. 148, line 24—Tr. 149, line 10. Specifically, Counsel argued that: (1) the State's characterization of Appellant as being uncooperative was highly prejudicial because one there may be many reasons why a person would choose not to participate in a GSR test; (2) that Appellant did not participate in the GSR test because he requested the presence of an attorney; (3) that Appellant was under no obligation to participate in the GSR test; and (4) whether Appellant granted or denied consent to a GSR test did nothing to prove the State's case. Tr. 145, line 13—Tr. 147, line 22.

Rule 403 of the South Carolina Rules of Evidence allows for even relevant evidence to be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see also State v. Kelley, 319 S.C. 173, 177, 460 S.E.2d 370 (1995) ("It is well settled that evidence should be excluded when its probative value is outweighed by its prejudicial effect."). "The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." Old Chief v. United States, 519 U.S. 112, 180, 117 S.Ct. 644, 650 (1997); see also State v. Alexander, 303 S.C. 377, 382, 401 S.E.2d 146, 149 (1991). "For purposes of the Rule 403 weighing of the probative against the prejudicial, the functions of the

competing evidence are distinguishable only by the risk inherent in the one and wholly absent from the other.” Id. 519 U.S. at 910, 117 S.Ct. at 655.

In the present case, the trial court erred under rule 403 of the South Carolina Rules of Evidence by permitting the State to elicit testimony that Appellant was uncooperative by refusing to consent to a GSR test. As indicated by Counsel, there could be many valid reasons for refusing to consent to such a test. For example, it could have been for the very legitimate and legal purpose of first seeking the advice of counsel before submitting to any tests or inquiries by police. Further, Appellant was under no obligation to give his consent. Also, the results of a GSR test would have been irrelevant to prove the state’s case against Appellant. No one—neither the occupants inside the Williams residence who were purportedly robbed, nor the four officers who observed Appellant leaving the residence—ever observed Appellant firing a gun of any sort. Thus, the probative value of introducing anything to do with a GSR test from Appellant’s hands was extremely low.

On the other hand, the prejudicial nature of such evidence was high. As indicated by the State itself, the jury would liken Appellant’s refusal to consent to a gunshot residue test to trying to run and hide. Tr. 148, line 17-23. In other words, the state intentionally sought to introduce Weeks his testimony as a type of character evidence against Appellant indicating guilt. Therefore, the only value of admitting such evidence was to introduce facts that were irrelevant to the charged offenses, yet prejudicial to Appellant. In this way, the evidence could have lured the jury “into declaring guilt on a ground different from proof specific to the offense charged.” Old Chief, 519 U.S. at 180, 117 S.Ct. at 650; see also Alexander, 303 S.C. at 382, 401 S.E.2d at 149. Accordingly, the trial court erred in admitting Weeks his testimony regarding Appellant’s

refusal to submit to a GSR test, and Appellant was likely prejudiced by the improper admission of this testimony as it reasonably could have affected the outcome of the trial. See, e.g., State v. Davis, 371 S.C. 170, 181-82, 638 S.E.2d 57, 63 (2006) (“Error is only harmless ‘when it could not reasonably have affected the result of the trial.’”) (quoting State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985)).

CONCLUSION

For the foregoing reasons, Appellant Randy Mitchell respectfully requests reversal of his convictions, and remand for a new trial.

Respectfully submitted,

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Breen Richard Stevens  
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of January, 2013.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County  
Robin B. Stilwell, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

RANDY MITCHELL,

APPELLANT

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Trial transcript, pp. 1-18;
- (3) Trial transcript, pp. 62-67;
- (4) Trial transcript, pp. 74-193;
- (5) Trial transcript, pp. 196-223;
- (6) Trial transcript, pp. 226-274;
- (7) Trial transcript, pp. 278-279;
- (8) Trial transcript, pp. 284-285;
- (9) Trial transcript, pp. 288-330;
- (10) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 28th, 2013

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Breen Richard Stevens  
Appellate Defender  
South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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(803) 734-1343



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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

The State, Respondent,

v.

Randy Mitchell, Appellant.

Appellate Case No. 2012-209626

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Appeal From York County  
Robin B. Stilwell, Circuit Court Judge

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Unpublished Opinion No. 2014-UP-104  
Submitted January 1, 2014 – Filed March 12, 2014

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**AFFIRMED**

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Appellate Defender Benjamin John Tripp, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Mark Reynolds Farthing, both of  
Columbia, for Respondent.

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**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following  
authorities: *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The  
admission of evidence is within the discretion of the trial court and will not be

reversed absent an abuse of discretion."); *id.* ("An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ."); *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 207 (Ct. App. 2008) ("A trial [court's] decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." (internal quotation marks omitted)); *State v. McDowell*, 266 S.C. 508, 515, 224 S.E.2d 889, 892 (1976) ("As a general rule, any guilty act, conduct, or statements on the part of the accused are admissible as some evidence of consciousness of guilt.").

**AFFIRMED.**<sup>1</sup>

**SHORT, WILLIAMS, and THOMAS, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.