

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Perry H. Gravely, Circuit Court Judge

CARRIE CALLAHAM,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001744

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,	)	TRANSCRIPT
PLAINTIFF,	)	OF
VS.	)	RECORD
CARRIE CALLAHAM,	)	
DEFENDANT.	)	2011-GS-32-1216 2011-GS-32-1218

May 23rd, 2012
Lexington, South Carolina

B E F O R E:

THE HONORABLE GEORGE C. JAMES, JR., Judge.

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P R O C E E D I N G S

(WHEREUPON, the following takes place within the presence of the entire jury panel.)

THE COURT: Can I see the lawyers up here in the next case?

SOLICITOR WHETSTONE: Yes, sir.

(WHEREUPON, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: All right. Mr. Wedekind.

SOLICITOR WEDEKIND: Yes, Your Honor.

The State would call the case of State versus Carrie Callaham, Indictment Number 2012-GS-32-12, 1218 and 1216, charges of armed robbery and burglary first degree, sir.

THE COURT: All right. You can hand up the indictment please.

SOLICITOR WEDEKIND: Yes, sir.

THE COURT: All right. Ladies and gentlemen of the jury, we're going to now select a jury for the trial of the case of The State of South Carolina versus Carrie Denise Callaham, C-A-L-L-A-H-A-M.

You are under oath, and the questions that I'm gonna ask you are designed to make sure we impanel a jury that is fair, impartial, and one which will base a verdict on the evidence and the law and free from any improper influence or

1 motivation. So, listen carefully. If I ask you a question
2 that applies, simply stand. If I have to I'll have you come
3 up and we'll take some information on the record, but rather
4 privately.

5 Of course, as you know, the fact that someone has been
6 arrested or charged or indicted for any criminal offense is
7 not itself any evidence of guilt. I'm gonna refer to the
8 indictments simply to let you know what the case is about so
9 that I can ask you the question of whether or not you've
10 heard anything about it or have any knowledge about it at
11 all.

12 The indictment for burglary states that on or about
13 June 16, 2010, the defendant did, in this county, knowingly
14 and willfully enter a dwelling or conspire with others to
15 enter a dwelling at [REDACTED], West Columbia,
16 South Carolina being the dwelling of Rigaberto Ramirez
17 without consent and with the intent to commit a crime
18 therein and was armed with a deadly weapon. That is the
19 burglary charge.

20 The other indictment states that on or about the same
21 date, the defendant did, while armed with a deadly weapon,
22 or did conspire with others armed with a deadly weapon,
23 specifically a handgun, take from Rigaberto Ramirez and
24 Abdul Bargas by means of force, threats, or intimidation
25 goods or monies being describe as a wallet and its contents

1 with the intent to deprive the owner permanently of that
2 property.

3 Of course, the defendant has entered pleas of not
4 guilty to these two charges, and those pleas put the burden
5 on the State to prove guilt beyond a reasonable doubt. The
6 defendant has no burden whatsoever.

7 Having referenced the indictments, my question
8 obviously is there anyone on this panel who knows anything
9 about this case?

10 Has anyone heard anything about it, even in passing,
11 read anything about it, listened to anything about it, or
12 gathered any knowledge at all or acquired any knowledge at
13 all other than what I just referenced from the indictment?

14 (No response.)

15 THE COURT: All right. No one stood.

16 Carrie Denise, if she could please stand and face the
17 jury panel.

18 DEFENDANT: Yes, sir.

19 (Defendant complies.)

20 THE COURT: Thank you, ma'am.

21 And Mr. Rigaberto Ramirez and Abdul Bargas, are they
22 present in the courtroom?

23 (Both parties stand at this time.)

24 THE COURT: Face the jury panel please.

25 (Parties comply.)

1 SOLICITOR WEDEKIND: One, one additional witness, Your
2 Honor, is Ms. Mirna Herrera.

3 THE COURT: All right. I'll call those out separately.

4 SOLICITOR WEDEKIND: Yes, sir.

5 THE COURT: All right. You can have a seat. Thank
6 you.

7 All right. Ladies and gentlemen, as you know, even
8 though we're creating a new record for this case, I'll say
9 it again, as you know, I mean if I use the term immediate
10 family member, that means father, mother, brother, sister,
11 or child, or anyone else that you consider to be a close
12 family relative.

13 Is there anyone on this panel or is there any member of
14 your immediate family who might be related by blood or
15 marriage, some people say kin, to either Ms. Callahan, the
16 defendant, or Rigaberto Ramirez, or Adbul Bargas?

17 (No response.)

18 THE COURT: Is there anyone on this panel or any member
19 of your immediate family who has any type of connection or
20 acquaintance or association with any of these three
21 individuals, and that might be from any association at all,
22 work with them, go to church, or perhaps being a
23 organization with them, any connection at all, and that
24 would be now or in the past?

25 (No response.)

1 THE COURT: All right. No one stood in response to
2 either of those questions.

3 I will call out the names of some potential witnesses,
4 and if the witnesses are here please stand, and the question
5 will be the same, and that is, is there anyone on the panel
6 or any member of your immediate family is related by blood
7 or marriage to these witnesses or any of them or do you have
8 any connection or acquaintance or association with them now
9 or in past.

10 Sergeant Robert McIntyre, West Columbia Police
11 Department.

12 (Witness stands.)

13 THE COURT: Investigator Page Moore of the West
14 Columbia Police Department.

15 (Witness stands.)

16 THE COURT: Officer Art Seboe, West Columbia Police
17 Department.

18 (Witness stands.)

19 THE COURT: Mirna or Mirna Herrera.

20 (Witness stands.)

21 THE COURT: Chuck Bramlett of the West Columbia Police
22 Department.

23 (Witness stands.)

24 THE COURT: Anyone respond to that question?

25 (No response.)

1 THE COURT: No one stood.

2 All right. Mr. Wedekind, you can stand and introduce
3 yourself and anyone else in your office who may be assisting
4 you with this trial, and then Mr. Casto can follow you.

5 SOLICITOR WEDEKIND: Yes, sir. Thank you.

6 I'm Larry Wedekind of the Eleventh Circuit Solicitor's
7 Office, and assisting me will be William Whetstone, also
8 assistant solicitor in the Solicitor's Office.

9 THE COURT: All right.

10 MR. CASTO: I am Bennett Casto. I'm a lawyer here in
11 Lexington. Throughout the trial of the case I will be
12 joined by Mr. Robert Madsen, a lawyer in my office here in
13 Lexington as well.

14 THE COURT: Thank you.

15 All right. Ladies and gentlemen, is there anyone on
16 this panel or to your knowledge any member of your immediate
17 family who is related by blood or marriage to any of these
18 lawyers or have you or do you or any immediate family
19 member, to your knowledge, have any type of connection or
20 acquaintance or association, business or social, whatever it
21 might be, and that would be now or in the past.

22 (No response.)

23 THE COURT: Similarly, is there anyone on this panel or
24 is there, to your knowledge, is there anyone on the, in your
25 immediate family who has been represented by any of these

1 lawyers or their offices within the past five years?

2 (No response.)

3 THE COURT: Is there anyone on the panel who has a
4 close family relationship or, for that matter, perhaps
5 someone you might be considered to be a very close personal
6 friend who is employed by any law enforcement agency?

7 That would be city, county, state, or federal.

8 (Jurors respond.)

9 THE COURT: All right. Your name, sir?

10 THE JUROR: James McMannis.

11 THE COURT: McMannis?

12 THE JUROR: Yes, sir.

13 CLERK: He's Number 143.

14 THE COURT: Yes, sir.

15 THE JUROR: My father recently retired from the
16 Lexington County Sheriff's Department.

17 THE COURT: How long did he work there?

18 THE JUROR: Twenty something years, Your Honor.
19 Twenty-five I think.

20 THE COURT: Anyone else in your family?

21 THE JUROR: No, sir.

22 THE COURT: Could you set aside that circumstance and
23 your father's employment in that regard and be completely
24 fair and impartial to all parties and base your verdict on
25 the evidence and the law in this case?

1 THE JUROR: I believe so, sir, yes, sir.

2 THE COURT: Are you, are you entirely positive that you
3 can do that?

4 THE JUROR: Yes, sir.

5 THE COURT: All right. Thank you, Mr. McMannis.
6 Your name, sir?

7 THE JUROR: Kevin Garren, 74.

8 THE COURT: All right. Come on up please, Mr. Garren.

9 (WHEREUPON, the following takes place out of the
10 hearing of the remaining jurors.)

11 CLERK: Seventy-four, Your Honor.

12 THE COURT: All right. I know that you, you responded
13 to that question the other day, and you said you could not
14 be fair, is that correct?

15 THE JUROR: Yes, sir.

16 THE COURT: Is that still the case?

17 THE JUROR: I don't think so.

18 THE COURT: All right. You don't think so, that's
19 still your answer?

20 THE JUROR: I mean I could be fair with this one.

21 THE COURT: Okay. And why is that?

22 THE JUROR: It's the difference in the charges.

23 THE COURT: Okay. And what is it about the difference
24 in the charges?

25 The other one that you---

1 THE JUROR: The other one was the theft of the car, the
2 theft of---

3 THE COURT: The break-in, breaking and entering of the
4 car?

5 THE JUROR: Yes, sir. They're just -- it was
6 everything seemed to me to be coinciding---

7 THE COURT: Okay.

8 THE JUROR: ---if you know what I mean.

9 THE COURT: All right. Okay. All right. Thank you,
10 sir. You can have a seat.

11 BAILIFF: 149, Your Honor.

12 THE COURT: Your last name?

13 THE JUROR: Mendenhall.

14 THE COURT: Yes, sir.

15 THE JUROR: I have a brother that's a retired police
16 officer.

17 THE COURT: From where?

18 THE JUROR: Chamblee, Illinois. The other one I
19 believe was Seaside, California.

20 THE COURT: Would that any, have any impact on your
21 ability to be fair to all the parties in this case?

22 THE JUROR: No.

23 THE COURT: Sir?

24 THE JUROR: No, it would not.

25 THE COURT: And you could base your verdict on the

1 evidence in this case?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you, sir.

4 All right.

5 BAILIFF: 135, Your Honor.

6 CLERK: It's Matthews.

7 THE COURT: Mrs. Mathews?

8 THE JUROR: Yes.

9 THE COURT: Yes, ma'am.

10 THE JUROR: I have -- my son's an assistant DA in North
11 Carolina.

12 THE COURT: Okay. And we went over this yesterday, but
13 since we have a new case, we'll talk about it again, could
14 you be fair and impartial in this case and set aside the
15 fact that your son is an assistant DA?

16 THE JUROR: I don't think so.

17 THE COURT: Okay. Thank you.

18 BAILIFF: 128, Your Honor.

19 THE COURT: Yes, ma'am, your last name?

20 THE JUROR: Nicole Lynch.

21 THE COURT: Lynch, yes, ma'am.

22 THE JUROR: I'm friends with Eddie Richardson,
23 Lexington County Police Department.

24 THE COURT: Okay. How long have you known him?

25 THE JUROR: A good seven years.

1 THE COURT: Okay. And his last name is?

2 THE JUROR: Richardson.

3 THE COURT: Okay. And you are close friends with him?

4 THE JUROR: Yes, sir.

5 THE COURT: If this case involves testimony from law
6 enforcement officers, even from a different jurisdiction,
7 could you be fair and impartial---

8 THE JUROR: Yes, sir.

9 THE COURT: ---and base your verdict on the evidence in
10 this case?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay.

13 BAILIFF: 179, Your Honor.

14 THE COURT: Yes, sir, your last name?

15 THE JUROR: Richburg.

16 THE COURT: Yes, sir.

17 THE JUROR: My brother's a park ranger.

18 THE COURT: Okay. Where?

19 THE JUROR: At Boman State Park.

20 THE COURT: Okay. And in that regard, if there was
21 testimony in this case from law enforcement officers, could
22 you be fair and impartial to all the parties and set aside
23 the fact that your brother is a park ranger?

24 THE JUROR: Yes, Your Honor.

25 THE COURT: And would you do that --

1 THE JUROR: Yes, sir.

2 THE COURT: -- base your verdict on the evidence in
3 this case?

4 THE JUROR: Yes, sir, Your Honor.

5 THE COURT: Thank you.

6 All right. Any other comments so far?

7 MR. CASTO: Your Honor, we simply ask -- I have
8 probably some reservations about the gentleman who spoke,
9 who had the conversation---

10 THE COURT: Mr. Garren.

11 MR. CASTO: Yes, sir.

12 THE COURT: Based on his responses the other day I just
13 don't think he could be fair and impartial.

14 THE COURT: Mr. Wedekind.

15 SOLICITOR WEDEKIND: What was the difficulty he had
16 earlier, sir?

17 THE COURT: Well, the last, the last jury that was
18 selected in the other case, he said he just could not be
19 fair and impartial because of the---

20 MR. CASTO: And that's---

21 THE COURT: Because of his father was a law enforcement
22 officer.

23 MR. CASTO: So---

24 SOLICITOR WEDEKIND: I mean again---

25 THE COURT: And today he said he could be.

1 SOLICITOR WEDEKIND: Yes, that -- well---

2 THE COURT: I'm gonna, I'm gonna excuse him, Mr. Garren

3 --

4 MR. CASTO: Thank you, Your Honor.

5 THE COURT: -- and Mr. Mendenhall.

6 MR. CASTO: Yes, sir.

7 THE COURT: Which one was he?

8 CLERK: Mr. Mendenhall was 149. He has the two
9 brothers that are retired.

10 THE COURT: Okay. He's okay. And Mrs. Matthews, we're
11 gonna take her off.

12 CLERK: Yes, sir.

13 THE COURT: Okay. So far.

14 (WHEREUPON, the following takes place within the
15 hearing of the entire jury panel.)

16 THE COURT: All right. Mrs. Mathews, this next
17 question would not apply to you since you've already stood
18 and given us that information.

19 But the next question, is there anyone on this panel or
20 was there any member of your immediate family who is
21 employed by any prosecuting authority, and that would
22 include but is not limited to an Attorney General's Office,
23 a solicitor's Office, or in another state it's called a
24 District Attorney's Office, or any other prosecuting
25 attorney's office?

1 (No response.)

2 THE COURT: All right. No one stood.

3 Is there anyone on the panel who is a member of or an
4 employee of or a contributor to or even a volunteer for any
5 organization that has as its primary focus the promotion of
6 law enforcement or the enforcement of victim's rights?

7 These organizations would include, but are not limited
8 to Citizens Against Violent Crime, South Carolina Law
9 Enforcement Officers Association, Mothers Against Drunk
10 Driving, Students Against Drunk Driving, Sister Care, CADRY,
11 or CADRY or any other such organizations.

12 (Juror responds.)

13 THE COURT: Yes, sir, your name?

14 THE JUROR: It's Cliffton Skeleton, 207.

15 THE COURT: Skeleton?

16 THE JUROR: Yes, sir.

17 THE COURT: Yes, sir.

18 THE JUROR: In my employment with the Department of
19 Motor Vehicles we have the authority to enforce federal
20 regulations, State Law pertaining to commercial driver's
21 license and third party testing program.

22 THE COURT: Okay.

23 THE JUROR: I didn't know if that would meet your
24 definition or not.

25 THE COURT: Well, I appreciate you standing. You know,

1 in that regard, let me ask you this question.

2 would any of your involvement with the DMV in that
3 capacity or in other capacity have any impact on your
4 ability to be fair and impartial to the State and to the
5 defendant?

6 THE JUROR: No, sir.

7 THE COURT: All right. Thank you, sir.

8 All right. Ladies and gentlemen, is there anyone on
9 this panel or is there any member of your immediate family
10 or any person, any person you would consider to be a very
11 close personal friend who has ever been the victim of or who
12 has ever been accused of what would be considered a violent
13 crime, and these include, but they're not limited to, a
14 burglary, which is the entering into a dwelling or building
15 without consent with the intent to commit a crime inside, or
16 armed robbery, or a sexual assault, or a, a crime of that,
17 that kind, murder, attempted murder, anything along those
18 lines.

19 THE COURT: All right. If you folks come form a line
20 in the center we'll have you come up and I'll take that
21 information up here.

22 (WHEREUPON, the following takes place outside the
23 hearing of the remaining jurors.)

24 BAILIFF: 128, Your Honor.

25 THE COURT: Your last name again please, ma'am?

1 THE JUROR: Lynch.
2 THE COURT: Lynch?
3 THE JUROR: Yes.
4 THE COURT: Yes, ma'am.
5 THE JUROR: My cousin was a victim of burglary.
6 THE COURT: When was that and where was that?
7 THE JUROR: That was in a -- I'm wanting to say Conway.
8 THE COURT: Okay. How long ago?
9 Do you know?
10 THE JUROR: Seven years.
11 THE COURT: Seven years ago.
12 THE JUROR: Yes, sir.
13 THE COURT: Would, would any of that, Mrs. Lynch, have
14 an impact on your ability to be fair and impartial to the
15 state and to the defendant?
16 THE JUROR: No, sir.
17 THE COURT: Could you set what happened to your cousin
18 aside and base your verdict completely on the evidence and
19 the law in this case?
20 THE JUROR: Yes, sir.
21 THE COURT: Thank you.
22 BAILIFF: 122, Your Honor.
23 THE COURT: Your last name please?
24 THE JUROR: Leban.
25 THE COURT: L-E-B-A-N?

1 THE JUROR: Uh-huh. (Affirmative.)

2 THE COURT: Yes, ma'am.

3 THE JUROR: I'm not sure if this applies or not, but,
4 of course, but I have a family member that was charged with
5 armed robbery.

6 THE COURT: Okay. All right. Would you have any
7 impact on your ability to be fair to everybody in this case?

8 THE JUROR: No, sir.

9 THE COURT: And could you base your verdict on the
10 evidence in this case?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay. And would you do that?

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you, ma'am.

15 BAILIFF: 196, Your Honor.

16 THE COURT: Yes, sir, your last name?

17 THE JUROR: Seigler.

18 THE COURT: S-I?

19 THE JUROR: S-E-I.

20 THE COURT: S-E-I-G-L-E-R?

21 THE JUROR: Correct.

22 THE COURT: Yes, sir.

23 THE JUROR: My house was broken into back in the Fall.
24 We weren't there. But someone broke in while we were at a
25 football game.

1 THE COURT: Was anybody arrested?

2 THE JUROR: No.

3 THE COURT: Okay. And if the -- if this case involved
4 allegations of a burglary, could you be fair and impartial
5 to the State and to the defendant?

6 THE JUROR: Yes.

7 THE COURT: And base your verdict on the evidence and
8 the law?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. Thank you, sir.

11 BAILIFF: 103, Your Honor.

12 THE COURT: Your last name again, ma'am?

13 THE JUROR: Hunt.

14 THE COURT: Okay. Ms. Hunt, yes, ma'am.

15 THE JUROR: About four, like about four months ago, my
16 ex-boyfriend had a gun and he broke into my home, and he was
17 charged with burglary. My mother was home and he grabbed my
18 keys and I screamed.

19 THE COURT: Ex-boyfriend?

20 THE JUROR: Yes.

21 THE COURT: What's his last name?

22 THE JUROR: Daniel Thomas Warren.

23 THE COURT: Daniel Thomas Warren?

24 THE JUROR: Uh-huh.

25 THE COURT: So, basically your mother and you were on

1 the receiving end of that?

2 THE JUROR: I was at my mom's house when he decided to
3 break in. He was very possessive and he broke into her
4 house, and y'all charged him with burglary.

5 THE COURT: Was he arrested?

6 Is he still being charged with that?

7 THE JUROR: I'm not sure, but the charges -- he escaped
8 I guess.

9 THE COURT: Okay. Could you set aside all that in this
10 case involving an allegation of burglary?

11 THE JUROR: Yes.

12 THE COURT: Are you sure?

13 THE JUROR: Yes.

14 THE COURT: Could you base your verdict on the evidence
15 and the law in this particular case and set aside completely
16 what happened to you and your mother?

17 THE JUROR: Yes.

18 THE COURT: Okay. Thank you.

19 BAILIFF: Number 10, Your Honor.

20 THE COURT: Your last name, sir?

21 THE JUROR: Baker.

22 THE COURT: Baker?

23 THE JUROR: Yes, sir.

24 THE COURT: Yes, sir.

25 THE JUROR: We had a general conversation yesterday,

1 house broken into about 25 years ago.

2 THE COURT: And where was that again?

3 THE JUROR: Summerville.

4 THE COURT: Could you set aside that circumstance and
5 be fair to everybody?

6 THE JUROR: Yes, sir.

7 THE COURT: Base a verdict on the evidence and the law?

8 THE JUROR: Yep.

9 THE COURT: Thank you.

10 BAILIFF: Number 27, Your Honor.

11 THE COURT: Your last name?

12 THE JUROR: Bush.

13 THE COURT: Bush, yes, ma'am.

14 THE JUROR: My cousin was car jacked at gunpoint with
15 his girlfriend and the girlfriend's baby, and they
16 threatened to shoot and kill the baby if they didn't give
17 them the car.

18 THE COURT: How long ago was that?

19 THE JUROR: A year or two ago.

20 THE COURT: where?

21 THE JUROR: West Columbia right at the Blossom Street
22 bridge.

23 THE COURT: Okay. And was anybody arrested?

24 THE JUROR: Yeah, they got them. He had killed
25 somebody right before and used the car to get away.

1 THE COURT: Okay. Do you know what became of that
2 charge?

3 THE JUROR: No.

4 THE COURT: Do you remember his last name?

5 THE JUROR: No.

6 THE COURT: You don't?

7 Who was your cousin?

8 THE JUROR: Gary Bush.

9 THE COURT: Okay. And, so, he would have been the
10 victim in that case?

11 THE JUROR: Yes.

12 THE COURT: Okay. Taking into account what you told
13 me, could you set aside all of that as a juror and be fair
14 and impartial to everyone involved in this case and base
15 your verdict on the evidence in this case only?

16 THE JUROR: Yes, sir.

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

18 BAILIFF: 28, Your Honor.

19 THE COURT: Yes, ma'am, your last name?

20 THE JUROR: Callaho.

21 THE COURT: Yes, ma'am.

22 THE JUROR: My son -- was it family members or just me?

23 THE COURT: Family member too.

24 THE JUROR: My son was convicted of burglary and
25 murder.

1 THE COURT: Where?

2 THE JUROR: Lake Wateree.

3 THE COURT: All right. And was it this county?

4 THE JUROR: No, I think it's Kershaw.

5 THE COURT: Kershaw County?

6 THE COURT: Okay. That's Kershaw County, some of it
7 is.

8 How long ago?

9 THE JUROR: Possible five years ago.

10 THE COURT: Is he in prison now?

11 THE JUROR: Yes, sir.

12 THE COURT: Okay. So, he's convicted?

13 THE JUROR: Yes.

14 THE COURT: Could you set aside what happened to your
15 son and all of that scenario and base your verdict on the
16 evidence and the law in this case?

17 THE JUROR: Yes.

18 THE COURT: And would you do that?

19 THE JUROR: Yes.

20 THE COURT: Could you be fair to both sides?

21 THE JUROR: Yes.

22 THE COURT: Thank you, ma'am.

23 BAILIFF: 200, Your Honor.

24 THE COURT: Your last name, sir?

25 THE JUROR: Shawnshank.

1 THE COURT: Shawshank, yes, sir.

2 THE JUROR: I have -- in my immediate family I got a
3 brother-in-law that was in a double homicide in Richland
4 County in the last five weeks.

5 THE COURT: Was he a victim or is he the accused?

6 THE JUROR: Well, it's still an ongoing investigation.

7 THE COURT: What's his last name?

8 THE JUROR: Cabinhurst.

9 THE COURT: All right. And that -- so, has he, has he
10 been arrested or do you know?

11 THE JUROR: No, he was shot.

12 THE COURT: Okay. Could you set all of that aside and
13 be fair and impartial to the State and the defendant in this
14 case?

15 THE JUROR: I don't know.

16 THE COURT: Okay. All right. Thank you,
17 Mr. Shawshank. You can have a seat.

18 BAILIFF: 45, Your Honor.

19 THE COURT: Your last name, sir?

20 THE JUROR: Cook.

21 THE COURT: Cook?

22 THE JUROR: Cook.

23 THE COURT: All right. Mr. Cook.

24 THE JUROR: My ex-wife, when we were dating in high
25 school, she was robbed at gunpoint, and at the old All

1 American Video and then my stepsister was robbed down at CVS
2 I guess about five years ago.

3 THE COURT: Okay. So, when did the first thing happen?

4 THE JUROR: It's 15 years ago probably.

5 THE COURT: In either instance, was anyone ever
6 arrested?

7 THE JUROR: I don't think so.

8 THE COURT: And do you have the Family Court appearance
9 tomorrow or is that somebody else?

10 THE JUROR: That's somebody else.

11 THE COURT: Okay. Okay. Either of those situations,
12 could you---

13 THE JUROR: I do need to leave tomorrow at 6:00.

14 THE COURT: In the evening?

15 THE JUROR: Yes, sir.

16 THE COURT: Okay. And where, where is that?

17 THE JUROR: It's in Batesburg.

18 THE COURT: Batesburg.

19 THE JUROR: Okay.

20 THE COURT: Okay. We should be okay. But how long
21 does it take you to get to Batesburg?

22 THE JUROR: Forty-five minutes.

23 THE COURT: And what do you have to do there?

24 THE JUROR: Some classes.

25 THE COURT: Oh, yeah. Okay. For the CDV.

1 Okay. And going back to the other instances that you
2 mentioned, could you set aside all of those and be fair and
3 impartial in this case?

4 THE JUROR: I think so.

5 THE COURT: You think so or you know so?

6 THE JUROR: I can.

7 THE COURT: And could you base your verdict on the
8 evidence in this case and set aside all of that other
9 circumstance?

10 THE JUROR: Yes, sir.

11 THE COURT: All right. Thank you, sir.

12 Okay. Any, anything so far?

13 Of course I'm gonna set aside Number 200, and other
14 motions?

15 MR. CASTO: None, Your Honor.

16 SOLICITOR WEDEKIND: No, sir.

17 THE COURT: Okay.

18 (WHEREUPON, the following takes place within the
19 hearing of all the jurors.)

20 THE COURT: All right. Ladies and gentlemen, as I
21 mentioned to you, the defendant's pleas of not guilty do put
22 the burden on the State to prove guilt beyond a reasonable
23 doubt. So, the State will have to present evidence in that
24 regard.

25 Having said that, is there anyone on this panel who has

1 such strong feelings regarding the allegations of the
2 charges in this case that you simply could not be fair and
3 impartial as a juror?

4 (Juror responds.)

5 THE COURT: All right. Come on up please, ma'am.
6 Why don't y'all just come on up here?

7 (WHEREUPON, the following takes place outside the
8 hearing of the remaining jurors.)

9 THE COURT: Your last name please?

10 THE JUROR: Sann, 197.

11 THE COURT: Sann, 197. Yes, ma'am.

12 THE JUROR: I was in a college course and have the
13 opinion often victims have problems because of the fact you
14 will not report to law enforcement as well as my husband and
15 I carry weapons, concealed weapons. We know people use them
16 for violent acts and threaten your life, but we do carry
17 them.

18 THE COURT: All right. Mrs. Sann, I understand your
19 side.

20 THE COURT: Okay.

21 (WHEREUPON, the following takes place within the
22 hearing of the remaining jurors.)

23 THE COURT: This is a similar question to the one I
24 asked previously, if you knew anything about the case.

25 Is there anyone on the panel who has been exposed to

1 any type of news report regarding this case?

2 (No response.)

3 THE COURT: All right. No one stood.

4 Is there anyone on the panel who knows of any reason at
5 all why you should not serve as a juror during the trial of
6 this case?

7 (No response.)

8 THE COURT: I know there's some, some of you who have,
9 I guess what I'll call a Thursday situation or a Friday
10 situation, and we have your names already noted. So -- all
11 right.

12 So, we've already taken care of that, but is there
13 anyone who knows of any reason why you shouldn't serve?

14 (No response.)

15 THE COURT: Anyone know of any bias or prejudice that
16 you might have for or against the State, the defendant, any
17 of the witnesses, or any of the attorneys?

18 (No response.)

19 THE COURT: Any other questions from the State?

20 SOLICITOR WEDEKIND: None, Your Honor.

21 THE COURT: Any from the defendant?

22 MR. CASTO: No, sir, Your Honor.

23 THE COURT: And both sides agree, five, ten?

24 SOLICITOR WEDEKIND: Yes, sir.

25 THE COURT: Two alternates with one and two on both?

1 SOLICITOR WEDEKIND: That's correct, sir.

2 MR. CASTO: That's correct, Your Honor.

3 THE COURT: Okay. All right. Ladies and gentlemen,
4 you know the procedure so far. If your name is called, once
5 the list is printed, you come forward and we'll begin the
6 jury selection. If your name is called, simply bring
7 whatever belongings you have with you just in case you are
8 chosen.

9 (WHEREUPON, the jury panel was selected at this time.)

10 THE COURT: All right. Is there any motion or issue or
11 other matter pertaining to jury selection from the State?

12 SOLICITOR WEDEKIND: Not from the State, sir.

13 THE COURT: From the defendant?

14 MR. CASTO: No, sir, Your Honor.

15 THE COURT: All right. Can I see the lawyers up here
16 for just a minute?

17 (WHEREUPON, a bench conference was held out of the
18 hearing of the jury at this time.)

19 THE COURT: All right. Ladies and gentlemen who have
20 been selected as jurors for the trial of this case, we're
21 gonna begin the trial at 2:30. So, I'm gonna release you
22 now to go to lunch and go on about your business for the
23 next two hours and ten minutes.

24 You may not discuss this case at all amongst yourselves
25 or with anyone else. As I typically tell jurors, this is

1 likely the only thing that all you have in common. It is
2 the only thing you can't talk about. Don't talk about it
3 with anyone. That includes anyone you might see during
4 lunch or during the next two hours or somebody you see may
5 know that you're on jury duty. They may want to know what
6 you're doing, and if you casually mention even what the
7 charge is, that person will say something, and that will
8 have an impact on your decision making.

9 So, don't talk about the case with anyone. Not even
10 what the charge is. Certainly not who the people are
11 involved as witnesses or the defendant or any of the
12 lawyers.

13 Likewise, you're not permitted at anytime, from now
14 forward, to do any type of research or information gathering
15 on your own. You can't research in newspapers, magazines,
16 other periodicals. You can't research the Internet at all.
17 Nothing. You can't gather any information about it at all.

18 You may have heard a reference to it, a geographical
19 place when I referenced the indictment. You can't go to
20 that property and take a look at it on your own. You can't
21 do that.

22 The oath that you will take will be that you will try
23 this case according to the evidence and the law and you will
24 get all of that right here in this courtroom.

25 All right. So, I'll see you back at 2:30.

1 Mrs. Derrick, I'm gonna appoint you as foreperson of
2 the jury. So, when you come back in the bailiff will tell
3 you where to sit. Frankly I don't care where anybody sits.
4 But they like to know where you are. But I'll see everybody
5 back at 2:30. Please be back at that, promptly by that
6 time.

7 Thank you.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: We may be able to accomplish one other
11 thing. Lawyers come up here.

12 (WHEREUPON, a bench conference was held at this time
13 and court was in recess for the lunch hour.)

14 THE COURT: We're on the record now on Indictment
15 2012-1218, 2012-1216.

16 The lawyers have told me that there's a Jackson versus
17 Denno motion, search and seizure motion, a motion to quash,
18 and what was the other motion?

19 SOLICITOR WEDEKIND: Sir, what was the question?

20 THE COURT: You said four I believe, Mr. Casto?
21 You had four motions?

22 MR. CASTO: Just the sequestration.

23 THE COURT: Okay. Any objection to sequestration other
24 than the victims, the interpreter, and your primary officer?

25 SOLICITOR WEDEKIND: No, sir, that would be our

1 position on the matter.

2 THE COURT: Okay. So, if you make -- I want to know
3 who the witnesses are.

4 SOLICITOR WEDEKIND: Yes, sir, Page Moore is the lead
5 investigator. She was---

6 THE COURT: Well, you know who they are. If they
7 wonder in the courtroom, you don't have eyes in the back of
8 your head. So, I may, at some point, say who's that, that
9 is that just walked in, and you can, can confirm it.

10 How about potential defense witnesses, would you
11 request they be sequestered?

12 SOLICITOR WEDEKIND: We, we do, Your Honor.

13 THE COURT: Do you have their names---

14 MR. CASTO: Yeah.

15 THE COURT: ---or I won't know when they come in.

16 MR. CASTO: Yes, sir, only, the person that we might
17 call is Trisha Reese. She's an investigator with our
18 office. We submit that she's our investigator. So, she
19 would be allowed to sit with us, but that's---

20 THE COURT: You agree with that?

21 SOLICITOR WEDEKIND: I have no objection, sir.

22 THE COURT: Okay.

23 MR. CASTO: That's the only one.

24 THE COURT: And make sure you instruct all of your
25 witnesses that they are not to discuss what they've been

1 asked with any witness who has not testified---

2 SOLICITOR WEDEKIND: Yes, sir.

3 THE COURT: ---or discuss any of the testimony or that
4 they hear after they've testified.

5 SOLICITOR WEDEKIND: Certainly, sir. Just for the
6 record, we designate Page Moore, investigator. She will
7 stay and Ms. Herrera and Mr. Bargas are the two victims.

8 THE COURT: How about Ramirez?

9 SOLICITOR WEDEKIND: He will not be present, Your
10 Honor. I am not planning on calling him.

11 THE COURT: And your interpreter.

12 SOLICITOR WEDEKIND: Mr. -- the, the interpreter I---

13 THE COURT: Certainly won't sequester, but he'll be
14 under oath.

15 SOLICITOR WEDEKIND: Yes, sir, he will.

16 THE COURT: All right. Okay. The first motion.

17 MR. MADSEN: Your Honor, we would move to quash both of
18 the indictments, 2012-GS-32-1216 and 1218. 1216 is a, is a
19 indictment for burglary first. The substance on the
20 indictment indicates that on June 16th, 2010, did
21 knowingly, willfully enter a dwelling or conspire with
22 others to enter a dwelling. Similarly, on 1218 it indicates
23 that on or about June 16th, 2010, knowingly and
24 unlawfully, while armed with a deadly weapon, or did
25 conspire with others armed with a deadly weapon.

1 Your Honor, we do not believe that that is appropriate.
2 We believe that when you put when, they have that in the
3 indictment, that would be lessening the State's burden.
4 Even under a hand of one hand of---

5 THE COURT: As to elements, not --?

6 MR. MADSEN: As, as to the elements of the crime. They
7 have to prove that under, even under hand of one, hand of
8 all, that someone was part and parcel or what we would I
9 guess call accomplice liability. Certainly Your Honor is
10 aware that there's a statute, 16-17-410, that deals with the
11 conspiracy charges. In other words, having a tacit
12 understanding or some type of verbal understanding with
13 someone else. We believe that when the State has placed
14 that in there that ultimately that that is potentially
15 reducing the burden of proof that they have or the elements
16 in this case and that it's inappropriate.

17 One of the discussions that we had internally and my
18 research has shown me is generally, if you have surplusage
19 in a warrant, if you strike that out, the warrant's good on
20 its face. So, you can kind of go forward. The problem is
21 that these are true billed warrants that have gone to the
22 Grand Jury that the Grand Jury has heard this, and certainly
23 I think the State's position is not going to be that Ms.
24 Callahan was, was in the residence. I think their position
25 is going to be that she was a driver of the vehicle, and

1 when this is presented to the Grand Jury, and they base
2 their true bill indictments on this, we do not believe that
3 it's appropriate and we believe that, because of that, that
4 these warrants or both of these indictments should be
5 quashed.

6 THE COURT: So, you say that the indictment process was
7 tainted, but that you are on notice that you're facing an
8 actual armed robbery and burglary charge, not a conspiracy?

9 MR. MADSEN: Yes, Your Honor, and given the fact that
10 the Grand Jury is a secret process, no one in this room or
11 even, you know, law enforcement who presents it can sit
12 there and tell what was, you know, why did the Grand Jury
13 true bill this, did they true bill it because afterwards
14 they heard oh, she did conspire with them.

15 Certainly, Your Honor, if the State's position is that
16 this is a conspiracy and she's looking at zero to five years
17 on each one of these charges, I'll sit down and shut up. I
18 don't think that that's their position.

19 Like I said, this might be---

20 THE COURT: All right.

21 MR. MADSEN: ---kind of inartfully drawn and, and we
22 certainly understand what they were intending to kind of
23 come through, but when we say conspire, those are or that's
24 a word that has a significant legal meaning within the realm
25 of the juris prudence of this state, and, so, we don't

1 believe that that's appropriate, and we believe that,
2 because of that, that the warrants should be or that the
3 indictments should be quashed.

4 THE COURT: Any cases that you know of that on, that
5 are on point?

6 MR. MADSEN: Not in particular. Obviously we pulled
7 the Statute 17-19-90 that says we've got to make this before
8 the jury is sworn. But I could not find anything in
9 particular that talks about adding this language, and to a
10 certain extent, reducing, reducing the burden of proof of
11 what the State has to end up proving because certainly I
12 think that everyone would agree that if, that they have to
13 prove more than a conspiracy, and that's what the indictment
14 says is that or they just have to prove the conspiracy,
15 which we don't believe is appropriate.

16 THE COURT: Mr. Wedekind.

17 SOLICITOR WEDEKIND: Yes, sir, originally I would note
18 that these were straightly presented indictments to the
19 Grand Jury just recently. Originally the indictments were
20 for armed robbery and burglary. There was also some
21 kidnapping charges, which we did not go forward on.

22 But in reviewing, in preparation for the trial, in
23 reviewing the original indictments, it just listed Carrie
24 Callaham as the person who knowingly and willfully entered
25 the dwelling and I had a problem with that because she never

1 did. She stayed in the car.

2 THE COURT: But you can be charged with that under the
3 hand, hand of one---

4 SOLICITOR WEDEKIND: Yes, sir.

5 THE COURT: ---even if you never set foot in there.

6 SOLICITOR WEDEKIND: Yes, sir, that is correct and
7 originally that was done, but, on reflection, we thought
8 that would cause a question or a problem for the jury
9 because it says did go in and, did, did commit the robbery,
10 and that we would have to explain the hand of one hand of
11 all.

12 THE COURT: But you're still gonna have to do that.

13 SOLICITOR WEDEKIND: Yes, sir, and that, that is the
14 allegations of how the State plans on going forward with the
15 hand of one, hand of all. But considering it, I thought
16 well, would it be necessarily an accessory before the fact,
17 and if she had not -- if she had prepped it, loaded the
18 guns, or helped them, or given them a map to their house,
19 that, knowing that they were gonna commit the armed robbery,
20 that would of been an accessroy before the fact, but she
21 would not have been able to of been present in proximity to
22 the scene.

23 So, we thought that wouldn't be accessory before the
24 fact, and was, the question was how to tie her as the
25 getaway driver, explain it to the jury that it was the hand

1 of one, hand of all, we used the term she did, in fact,
2 factually plan with these guys, and we're gonna submit that
3 she had activities that she took with them.

4 She drove up to the scene with the two of them in her
5 Tahoe, helped them load their weapons because she has three
6 rounds in her pocket that matched the two guns that were
7 loaded, and she says in a statement that we're gonna go
8 forth in the Denno hearing that she was present while they
9 said they had to take care of some business. At one o'clock
10 in the morning they started loading the guns up in her
11 presence and a couple of the rounds dropped on the floor and
12 she picked up the errant rounds and stuck them in her
13 pocket.

14 So, it was a conspiracy knowing that they were gonna go
15 and---

16 THE COURT: Are you charging her with the offense of
17 conspiracy?

18 SOLICITOR WEDEKIND: No, sir, it is the armed robbery.
19 It is just that she is the hand of one hand of all -- I
20 guess a better word would of been confederate in that she
21 was with them all the way. It was not -- but she had, she
22 had to talk with them and plan and work it out to conspire
23 with them to commit the robbery. She did commit the robbery
24 as well as talked it out with them. It's only that she
25 remained in the vehicle. She never crossed the threshold

1 and went inside. She never crossed the threshold and
2 pointed the guns, but she was outside as, with them---

3 THE COURT: All right.

4 SOLICITOR WEDEKIND: ---knowing what was gonna happen.

5 THE COURT: All right. So, his argument is that when
6 he used the word conspire in these indictments that taints
7 the Grand Jury process because it -- and he said lessens the
8 burden of proof. I think more correctly it would be changes
9 or changes what you have to prove. Not how you prove it
10 beyond a reasonable doubt. But that you only have to prove
11 conspiracy instead of actual committing, actually committing
12 the offense---

13 SOLICITOR WEDEKIND: Yes, sir, and if---

14 THE COURT: ---personally or by the hand of one hand of
15 all.

16 SOLICITOR WEDEKIND: And I think the hand of one hand
17 of all charge is the way that it's cured, sir. That if
18 that's given, I think it's fine. It's just language that
19 says conspiracy. The jury doesn't know that that's a lesser
20 charge of conspiracy, but we---

21 THE COURT: He's challenging the indictment process.

22 SOLICITOR WEDEKIND: Yes, sir, and, and I don't -- I
23 think there was no, nothing to hide or, or lessen the amount
24 to the jury about planning, conspiring, or planning to pull
25 this job and pulling the job. It just shows that she was

1 with them as the hand of one hand of all.

2 THE COURT: All right. Okay. Mr. Madsen.

3 MR. MADSEN: Judge, I guess that's my point. If myself
4 and Mr. Casto sit down and we conspire to commit an armed
5 robbery, and then I stop at that point in time, and he goes
6 out and does it, and I don't do anything else, I might be
7 guilty of that conspiracy, but I'm not guilty of that armed
8 robbery. And, so, as Your Honor pointed out, I don't -- I
9 think that it's changing the substance of the offense by
10 putting that in there, and, and, you know, I struggled with
11 the wording.

12 I don't know if it's the lessening of the burden of
13 proof, but it's substantially changing that. I don't
14 believe that that's appropriate, and, like I said, I think
15 that there might be elements of that in their case. But
16 she's not charged with the conspiracy, and if she was just
17 guilty of that, she would be, you know, guilty under
18 16-17-410.

19 THE COURT: All right.

20 SOLICITOR WEDEKIND: He would be correct if she did
21 nothing more than sit in the apartment, but she went in the
22 car, waited with them, let them pull the job, and---

23 THE COURT: I understand that. He's not talking about
24 what you're gonna be presenting to the jury---

25 SOLICITOR WEDEKIND: Yes, sir.

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1 THE COURT: ---and what the jury's gonna hear. He's
2 talking about the Grand Jury process.

3 SOLICITOR WEDEKIND: Yes, sir.

4 THE COURT: Okay. Next motion.

5 MR. CASTO: Your Honor, we had a motion with regard to
6 suppress the stop and search of this vehicle.

7 THE COURT: Okay. You have a witness on that?

8 SOLICITOR WEDEKIND: Yes, we have Deputy -- well, he's
9 not -- he went to lunch. I sent him to lunch. But I
10 thought we were just gonna do the Denno hearing. I didn't
11 know we were going to the other one.

12 THE COURT: Okay. Let's go to the Denno hearing.

13 The motion for sequestration is granted along the lines
14 that I earlier stated. So, that would be the third one, and
15 I'll be glad to hear your witnesses on the Denno motion, and
16 you better get somebody to get that person on the phone, and
17 get them back here by two o'clock.

18 SOLICITOR WHETSTONE: Yes, Your Honor.

19 State would call Page Moore.

20 THE COURT: All right.

21 SOLICITOR WHETSTONE: Your Honor, if I may lower the
22 screen?

23 THE COURT: Okay.

24 PAGE MOORE, being first duly sworn,
25 testified as follows:

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1 CLERK: Have a seat please. Once seated, state your
2 full name spelling your last for the record.

3 WITNESS: My name is Page Moore. My first name is
4 P-A-G-E and Moore, M-O-O-R-E.

5 DIRECT EXAMINATION

6 BY SOLICITOR WHETSTONE:

7 Q Sergeant Moore, where do you work?

8 A I'm currently employed with West Columbia Police
9 Department.

10 Q Okay. How did you become involved in the case we're
11 having today?

12 A I'm an investigator and I was the investigator on call
13 the night of this incident.

14 Q When was this incident?

15 A June 16th --

16 Q Okay.

17 A -- of 2010.

18 Q Okay. Do know approximately what time?

19 A Approximately 1:10AM in the morning.

20 Q Did you have the opportunity to take the statement of
21 Carrie Callahan in this case.

22 A Yes, I did.

23 Q Okay. When was that?

24 A That was on June 16th approximately. If you don't
25 mind me looking at my notes?

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1 Q No, ma'am.

2 A Approximately 2:50AM.

3 Q Okay. Where was it taken?

4 A It was taken at the West Columbia Police Department.

5 Q And where in the West Columbia Police Department?

6 A We have an interview room that's inside our building
7 inside our squad room.

8 Q Okay. And who was present in that room during that
9 time?

10 A Myself and Investigator Nick Williams.

11 Q Okay. And did you notice Ms. Callaham to be under the
12 influence of any alcohol or drugs when you were in the room
13 with her?

14 A No.

15 Q Did she appear to understand what was going on?

16 A Yes.

17 Q Okay. Did Ms. Callaham have any mental or physical
18 disability that would of kept her from understanding what
19 was going on?

20 A Not that I saw.

21 Q Okay. Can you describe the physical surroundings of
22 the meeting room you took the statement in?

23 A Just a small square room. Nothing on walls. It's a
24 desk and a chair on one side and a chair on the other side
25 of a door with a window that you can see out into the squad

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1 room.

2 Q Okay. And y'all were all seated at the same table?

3 A Yes, sir.

4 Q Okay. Do you know how, approximately how long this
5 interview, or the time you took the statement, how long that
6 lasted?

7 A Approximately maybe -- it looks like an hour, maybe an
8 hour and a half.

9 Q Okay. Were any breaks taken during the interview?

10 A I don't recall. Prior to she was in a holding cell
11 with a bathroom and water, and, you know, a place to sit.

12 Q Okay. Did, did Ms. Callaham herself ever ask for a
13 break to be taken during the interview process?

14 A Not to my knowledge.

15 Q Okay. Was she denied access to telephone, bathroom,
16 food, or drink during the interview?

17 A No.

18 Q Okay. Did -- were any threats or promises from law
19 enforcement made to Ms. Callaham in exchange for her
20 statement?

21 A No, sir.

22 Q Okay. Was she under arrest at the time of the
23 statement?

24 A I believe she was under arrest for driving under
25 suspension.

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1 Q Okay. Was she free to go at anytime during the
2 questioning?

3 A I guess to clarify that, she was read her Miranda
4 rights and she could of stopped talking at anytime.

5 Q Okay. The investigation or the incident y'all were
6 investigating, was it focused on Ms. Callaham at the time?

7 A Could you reask that?

8 Q Yeah.

9 The subject you were interrogating her about, was she a
10 focus of that investigation?

11 A She and the two males if I'm understanding you
12 correctly.

13 Q Okay. Was she responding to interrogating questions
14 involving the incident?

15 A Yes.

16 Q Okay. Was she advised of the nature of the
17 investigation?

18 A Yes.

19 Q Okay. Was she advised of her Miranda rights before
20 questioning?

21 A Yes, she was.

22 Q Okay. Do you recall how the advisements of, of rights
23 were done?

24 A Yes. When I first arrived she had given officers the
25 name I believe Myra Nicole, and they had already checked

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1 that name, and it did not come back or I believe it, excuse
2 me, if I'm correct, the DMV photo did not match her. So, we
3 doubled checked with her, and then she gave a second name,
4 which was Myra Edwards, and, so, I again pulled the DMV
5 trying to check her criminal history prior to interviews and
6 we pulled Myra Edwards DMV photo and clearly it did not
7 match what she looked like. So, we spoke to her again and
8 that's when she gave me the name Courtney Callaham.

9 Q Okay. And did this all happen in the meeting room?

10 A The first two prior to the meeting room because I was
11 trying to get her criminal history. Once in the meeting
12 with Myra Edwards, I informed her, you know, clearly this
13 isn't you, and that's when she give me the name Courtney
14 Callaham, and the other investigator asked dispatch to run
15 that name, and, again, that name did not come back. And,
16 so, I spoke to her and I said, you know, these are serious
17 charges, you need to help yourself, and that's when she said
18 that her real name was Carrie Denise Callaham, and that was
19 the name we were able to run and pull a DMV photo that
20 matched her.

21 Q Okay.

22 (WHEREUPON, the advice of rights form was marked as
23 State's Exhibit No. 1 for identification purposes only at
24 this time.)

25 Q I'm gonna show you what's marked as State's Exhibit No.

Page Moore - Direct examination
by Solicitor Whetstone

1 1 for ID.

2 Do you recognize that?

3 A Yes, sir.

4 Q What is it?

5 A It's Miranda warning rights with the name Courtney
6 Callahan on it --

7 Q Okay.

8 A -- and my initials are up top and it says false name.

9 Q Thank you.

10 Officer Moore, what time was this taken?

11 A Approximately 2:50AM in the morning on June 16th.

12 Q And what date again?

13 A June 16th, 2010.

14 Q Okay. On this part of the advisement of rights form,
15 well, it's not working now, but the, the top part, what does
16 that say below the date?

17 A Below the date, the time and the case number and then
18 her name and address.

19 Q Okay. Did she fill out that part or did you?

20 A No, she always fills out that part --

21 Q Okay.

22 A -- with her name and address, Social Security number,
23 date of birth.

24 Q Okay. And below that is the Constitutional rights
25 part.

Page Moore - Direct examination
by Solicitor Whetstone

- 1 A Yes, sir.
- 2 Q How did you go over that, this section?
- 3 A I read those aloud to -- each person that I interview
- 4 read those aloud and ask them to initial it if they
- 5 understand each one that I read.
- 6 Q Okay. Did you go line-by-line, 1 through 6?
- 7 A I did, yes, sir.
- 8 Q Did she initial after every line that you read?
- 9 A She did. Those are her initials.
- 10 Q Okay. And did she indicate she understood these
- 11 rights?
- 12 A Yes, sir, number five says do you understand these
- 13 rights, and I asked her to circle yes or no and initial, and
- 14 she circled yes and initialed.
- 15 Q Okay. And did she sign after being read her rights?
- 16 A Yes, she did.
- 17 Q Okay. And she also signed the -- did you read the
- 18 waiver or Miranda rights section to her?
- 19 A Yes, sir, I have them read that to make sure that they
- 20 understand what that last statement says in order to discuss
- 21 the case with them and they sign it.
- 22 Q And -- okay. And then she -- after you read it, did
- 23 she sign and date?
- 24 A Yes, sir, she did, on the right side.
- 25 Q Okay. And is that your signature on the left?

Page Moore - Direct examination
by Solicitor Whetstone

1 A Yes, sir, it is.

2 Q okay. Did you verify the name and address information
3 she had given?

4 A We tried to run the name Courtney Callaham. While we
5 were in the interview, the other officer, investigator did,
6 and that name did not come back with anything. So that told
7 us that either that's not her or either she's given us a
8 different name for a certain purpose, either wanted or
9 something to that. And that's when I spoke to her again and
10 told her, you know, look, the name Courtney Callaham's not
11 coming back either, you know, is this your real name, and
12 facing serious charges, and that's when she gave me the
13 Carrie Denise Callaham.

14 Q Okay. And as a result of that, did you go over another
15 advisement of rights form?

16 A I did. I went over another Miranda form with the
17 correct name and form.

18 THE COURT: No. 2 ID?

19 SOLICITOR WHETSTONE: Yes, Your Honor.

20 (WHEREUPON, an advice of rights form was marked as
21 State's Exhibit No. 2 for identification purposes only at
22 this time.)

23 SOLICITOR WHETSTONE: Your Honor, The State would move
24 to have State's Exhibit No. 1 moved in as a Court's Exhibit.

25 THE COURT: Why don't we just leave it for ID. I'll

Page Moore - Direct examination
by Solicitor Whetstone

1 accept it for the purpose of this hearing, and when you --
2 if you -- of course I guess you will have to use it with the
3 jury if I let the statement in, and then you can offer it
4 after it's still marked for ID at that time.

5 Okay?

6 SOLICITOR WHETSTONE: Thank you.

7 THE COURT: That will avoid having to put too many
8 stickers on it.

9 SOLICITOR WHETSTONE: Yes, sir.

10 showing you what's marked as State's Exhibit 2, do you
11 recognize that?

12 A Yes, sir.

13 Q Okay. What is it?

14 A It's a Miranda warning rights form --

15 Q Okay.

16 A -- with Carrie Callaham's name.

17 Q All right. Okay. And this form was signed and dated
18 at what time?

19 A Dated June 16th, 2010, and the time was 03:20AM in
20 the morning.

21 Q Okay. And Ms. Callaham's personal information, did she
22 fill that in herself?

23 A Yes, sir, she did.

24 Q Okay. And did that come back as actually being her
25 personal information?

Page Moore - Direct examination
by Solicitor Whetstone

- 1 A Yes, sir, it did.
- 2 Q Okay. Did you, at that point, redo the Constitutional
- 3 rights section, Questions 1 through 6?
- 4 A Yes, sir, I did.
- 5 Q Okay. Did you read those line-by-line?
- 6 A I did. I advised her that we'd go through those again
- 7 with her correct name on it --
- 8 Q Okay. And after---
- 9 A -- and she initialed each one.
- 10 Q She initialed each one after you read each line?
- 11 A Yes, sir.
- 12 Q Okay. Did she indicate to you she understood these
- 13 Constitutional rights?
- 14 A Yes, sir, she circled yes on number five and initialed
- 15 also.
- 16 Q Okay. And did she sign below there on the signature of
- 17 suspect?
- 18 Is that her signature --
- 19 A Yes, sir.
- 20 Q -- that she signed after y'all went over the
- 21 Constitutional rights?
- 22 A Yes, sir.
- 23 Q Okay. And did you read aloud her waiver of Miranda
- 24 rights?
- 25 A Yes, sir, again, she, she read those and she initialed,

Page Moore - Direct examination
by Solicitor Whetstone

1 signed to the right.

2 Q Okay. And then -- and that's your signature to the
3 left?

4 A Yes, sir.

5 Q Okay. At this point did you take a statement from Mrs.
6 Callahan?

7 A Yes.

8 Q Okay. How was this done?

9 A She writes it. It was not recorded or -- but she
10 writes it.

11 Q Okay. And did, did the defendant, in fact, sign the
12 statement?

13 A Yes, sir, she did.

14 Q Okay.

15 (WHEREUPON, the statement was marked as State's Exhibit
16 No. 3 for identification purposes only at this time.)

17 Q I'm gonna show you what, what's marked State's Exhibit
18 No. 3. I'm sorry.

19 THE COURT: For ID?

20 SOLICITOR WHETSTONE: For ID, yes, sir.

21 Q Again, I'm gonna show you what's marked State's Exhibit
22 3.

23 Do you recognize that?

24 A Yes, sir.

25 Q What is it?

Page Moore - Direct examination
by Solicitor Whetstone

- 1 A It's the voluntary statement and where she filled out
2 the above Carrie Callaham.
- 3 Q Okay. Is she the one that actually filled out the
4 statement --
- 5 A Yes, sir, she did.
- 6 Q -- by herself?
- 7 A Yes, sir, it's her writing.
- 8 Q Okay. Were you present the whole time --
- 9 A Yes.
- 10 Q -- while this statement was given?
- 11 A Yes, sir.
- 12 Q Okay. Did you sign this statement after it was
13 written?
- 14 A Yes, sir, I did.
- 15 Q Okay. Did Ms. Callaham?
- 16 A Yes, sir, she did.
- 17 Q Okay. And there are two pages here.
18 Did you -- I'm gonna show you again State's Exhibit 3.
19 Did you witness each page?
- 20 A I did. I signed both pages --
- 21 Q Okay.
- 22 A -- Page 1 and Page 2 --
- 23 Q Okay.
- 24 A -- and she did also.
- 25 Q Okay. Thank you.

Page Moore - Direct examination
by Solicitor Whetstone

1 Beg the Court's indulgence one moment.

2 (Pause.)

3 Q Officer Moore, I show you again State's Exhibit 3.

4 Are there any deletions on Page 1?

5 A Looks like there's a scratch out on the maybe third
6 line down --

7 Q Okay.

8 A -- in the middle.

9 Q Who, who did that?

10 A She did that.

11 Q Okay.

12 A And then also on Page 2 on the, looks like the last
13 line of her statement, and she initialed the end of it.

14 Q Okay. And did you ask her, during, any questions
15 during this statement?

16 A I did. I asked her two questions.

17 Q Okay. And what were those?

18 A The first question was what is Black's real name.

19 Q Okay. And how did she respond?

20 A She responded I don't know his real name.

21 Q Okay. And what else did you ask her?

22 A The second question, what is his friend's name, and she
23 responded I don't know his name. I met him tonight. Black
24 pants, white shirt.

25 Q Okay. Were there any additions to this statement?

Page Moore - Direct examination
by Solicitor Whetstone

1 A No, that's all.

2 Q Thank you, Officer Moore.

3 THE COURT: Mr. Casto.

4 MR. CASTO: Yes, sir, briefly, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. CASTO:

7 Q How you doing, Investigator Moore?

8 A Good. Thank you.

9 Q Now, you interviewed Carrie at the police station, is
10 that right?

11 A Yes, sir.

12 Q And that was the night or the early morning hours of
13 June 16th, 2010, is that right?

14 A Yes, sir.

15 Q And at that time, when she comes to the police station,
16 she's not free to leave, is she?

17 A No, because she's under arrest for driving under
18 suspension I believe.

19 Q Can't, can't just walk out of the room, can she?

20 A No, sir.

21 Q Against, against your rules?

22 A Yes, sir.

23 Q So, she -- you do submit that she is in custody?

24 A Yes, sir.

25 Q Now, this car that she was riding in is pulled over at

Page Moore - Cross-examination
by Mr. Casto

1 12:30 that evening approximately?

2 A I believe so, yes, sir, according to the report.

3 Q Just, just after midnight?

4 A Yes, sir.

5 Q Now -- and you told us that she makes this statement at
6 approximately 3:00AM in the morning, is that correct?

7 A Yes, sir.

8 Q Now, who did you say was in the room with you?

9 A Investigator Nick Williams.

10 Q Any other officers in and out?

11 A No, sir, just he and I.

12 Q All right. And he witnesses all this, is that right?

13 A Yes, sir.

14 Q But, but he's not here for the trial of the case, is
15 he?

16 A No, sir.

17 Q I see.

18 So, it's basically just you -- well, you two and Carrie
19 in the room, is that right?

20 A Yes, sir.

21 Q Now, this, this interrogation, custodial interrogation
22 wasn't filmed at all, was it?

23 A No, sir.

24 Q You know, in other words, we can't see what happened in
25 the room?

Page Moore - Cross-examination
by Mr. Casto

1 We have -- we're only asking you about it, is that
2 right?

3 A Yes, sir.

4 Q Obviously there was some talking in the room beyond
5 what was written down on paper, isn't that right?

6 A I don't know what you're referring to.

7 Q In other words, there were more words said in that room
8 other than what Carrie wrote down in her statement?

9 A According to my notes. I can read those for you.

10 Q You say you do agree that there were other things
11 talked about besides what she wrote down?

12 A Yes, as far as this, telling her the seriousness,
13 seriousness, of the charges and -- yes.

14 Q But we can't see what all was talked about because it,
15 it wasn't filmed, isn't that correct?

16 A No, sir.

17 Q Now, you clear up that her name is actually Carrie
18 Callaham, is that right?

19 A Yes, sir.

20 Q But your investigation reveals that one, that she is
21 driving under suspension, is that right?

22 A Yes, sir.

23 Q An arrestable offense in South Carolina, is that right?

24 A Yes, sir.

25 Q And that, interestingly enough, that your investigation

Page Moore - Cross-examination
by Mr. Casto

1 also reveals that other people called her Courtney Callaham,
2 is that right?

3 A I don't recall. Not unless you can point out to me in
4 my notes. I don't recall.

5 Q Point of interviewing the other codefendants, they call
6 her Courtney, don't they?

7 A I believe they do, yes.

8 Q Now, do you speak with Carrie for a little while before
9 she writes a statement for you?

10 A Under the name Myra Edwards I believe we might have
11 spoke with her. If you see the differences in the Miranda
12 warnings. It was maybe 30 minutes.

13 Q And, so, you speak with her for about 30 minutes before
14 she gives you the statement?

15 A Yes, sir, before she gives us the correct name.

16 Q And that's denoted by the times on those pieces of
17 paper?

18 A Yes, sir.

19 Q Now, during, during this time, what was the
20 conversation about before, you know, before she writes this
21 statement?

22 A Initially, as you can see, I try to get a little bit of
23 background information where she went to school, was she
24 married, or, you know, her family, where she lives, that
25 type of information to try to find out who she is before I

Page Moore - Cross-examination
by Mr. Casto

1 start talking to her.

2 Q And during that time, was there anytime devoted to any
3 type of things suggested by you to motivate her to write a
4 statement?

5 A Not to my knowledge. I mean -- in reference to finding
6 out her real name, you know, I told her she was -- you know,
7 these are serious charges.

8 Q And, so, you emphasize the seriousness of the charges
9 and---

10 A To let her know what---

11 Q Uh-huh. (Affirmative).

12 And put it in context that she is facing a lot of
13 trouble?

14 A Yes.

15 Q Basically were there any promises made if you do this
16 then maybe this could happen?

17 A No, sir, I never made any promises.

18 Q Were there any threats made in there that it would be
19 easier for her should she make a statement?

20 A No, sir.

21 Q Were there any threats with or statements with regard
22 to she needs to tell the truth and what better time than
23 now?

24 A No, sir.

25 Q Any statements to the effect to comment on that if she

Page Moore - Cross-examination
by Mr. Casto

1 should get a lawyer that it gives the appearance that she is
2 guilty?

3 A I never said that, no, sir.

4 Q Did anybody else in the room make any type of similar
5 statement or allude to that?

6 A Not to my knowledge.

7 Q So, how do you fill the half an hour of time with this
8 conversation before she started writing?

9 A Just asking background information and talking to her.

10 Q Now, you never knew Carrie before this evening?

11 A No, sir.

12 Q More than likely she never knew you?

13 Fair statement?

14 A Yes, sir.

15 Q And, so, you don't know her personally obviously cause
16 y'all met for the first time that night, isn't that correct?

17 A Yes, sir.

18 Q And it would be difficult for you to tell, upon meeting
19 her for the first time, whether she was under the influence
20 of any substances, isn't that correct?

21 A It would be difficult for me to tell or -- I don't
22 understand the question.

23 Q It could be difficult to tell whether she was under the
24 influence of any illegal substance?

25 A Possibly.

Page Moore - Cross-examination
by Mr. Casto

- 1 Q And your agency has methods to test whether somebody
2 has been drinking or something else, isn't that correct?
- 3 A As far as a breathalyzer?
- 4 Q Yes, ma'am.
- 5 A Yes.
- 6 Q And she wasn't given a breathalyzer, was she?
- 7 A We didn't smell alcohol on her breath and she wasn't
8 stopped for a DUI.
- 9 Q But it'd be important to know if she was, had been
10 drinking before she---
- 11 A Sure.
- 12 Q ---gives a statement, right?
- 13 A Sure.
- 14 Q Would it surprise you that she had been drinking?
- 15 A It probably would because I didn't, didn't smell it.
- 16 Q If, if she had drank too much, it would have an effect
17 on her statement being voluntary, wouldn't it?
- 18 A (Witness nods affirmatively.)
19 I think somewhat it would.
- 20 Q Additionally it's three, three o'clock or a few minutes
21 after in the morning?
- 22 She may be tired as well, correct?
- 23 A Yes.
- 24 Q Could also have a bearing on voluntariness of her
25 statement, isn't that right?

Page Moore - Cross-examination
by Mr. Casto

1 A It could, yes.

2 Q And at what point in this conversation did you
3 Mirandize Carrie?

4 A From the get-go. From the start.

5 Q The first words that you said when you entered the room
6 were Miranda?

7 Is that your testimony today?

8 A Well, when we were trying to find out who she was
9 before we started the interview, I spoke with her, and, you
10 know, showed her the DMV photos and said clearly this isn't
11 you.

12 Q But how do we know that you won't testify to statements
13 that she made before she was Mirandized?

14 A I don't understand your question.

15 Q In other words, there were things talked about before
16 she was Mirandized.

17 How do you know that you wouldn't speak about that
18 because that would not be protected by Miranda?

19 A Those are right there in my notes, and they're not
20 pertaining to the case at hand.

21 Q Were there any written statements that Carrie started
22 to write that were, that were stopped and destroyed by you
23 or Officer Williams?

24 A No.

25 Q There were no statements in that room that were ripped

Page Moore - Cross-examination
by Mr. Casto

1 up as, as insufficient and, and destroyed?

2 A No, our, our practice, common practice, at West
3 Columbia is that they start a statement, it's not correct,
4 then we make them initial it, we stop that, and we save
5 that, and it goes in the case.

6 Q It would of---

7 A So, in this case, no, there was no statement that was
8 started and stopped and destroyed.

9 Q But before you get the statement, she tells you what
10 happened twice, and it's at that point that you decide to
11 get a written statement from her, is that correct?

12 A Once I got her correct name and felt like she was
13 trying to be honest with me. Once she gave me her correct
14 name, and I could, I could honestly prove that, that she was
15 telling the truth about something, and then that's when I
16 talked with her and she told her story and we asked her to
17 write a statement.

18 Q Okay. Didn't bother to get a statement from the other
19 two I guess at this time, did you?

20 A We spoke to them and we couldn't prove their, their
21 identity either. So, same process.

22 Q If there were statements that had been stopped and
23 started, I mean obviously your office would, y'all would
24 have those on hand?

25 A Yes, sir.

Page Moore - Cross-examination
by Mr. Casto

1 Q Eventually you say Carrie gives this statement, is that
2 right?

3 A Yes, sir.

4 Q And at that point she leaves I believe your interview
5 room, is that right?

6 A Yes, sir.

7 Q And she's not given a copy of that statement?

8 She's just, I guess, processed down the hall, is that
9 correct?

10 A She's sat in a holding, holding cell.

11 Q Okay.

12 A Yes, sir.

13 Q Okay. But she's not given a copy of the statement
14 though?

15 A She can ask for one at my time. It says down at the
16 bottom of it that she's welcome to ask for one and I'd be
17 glad to give her one.

18 Q Okay. Thank you, ma'am.

19 A Thank you.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY SOLICITOR WHETSTONE:

23 Q Officer Moore, Sergeant Nick Williams was with you,
24 correct?

25 A Yes, sir, he was.

Page Moore - Redirect examination
by Solicitor Whetstone

1 Q Okay. Is he working with West Columbia PD anymore?

2 A No, sir, he's no longer with us. He's moved out to
3 California I believe.

4 Q Okay. And as far as going to the interview, did you
5 notice that Ms. Callaham smelled of alcohol?

6 A No, sir.

7 Q Was her speech slurred or did she appear to be impaired
8 in anyway?

9 A No, sir.

10 Q Thank you.

11 THE COURT: Anything else?

12 MR. CASTO: No, sir, Your Honor.

13 THE COURT: You may step down.

14 WITNESS: Thank you.

15 THE COURT: Any other witnesses from the State on this
16 point?

17 SOLICITOR WHETSTONE: No, Your Honor.

18 THE COURT: Any from the defendant?

19 MR. CASTO: Your Honor, we, we would call Ms. Carrie
20 Callaham.

21 THE COURT: All right. It's quarter of 2:00, and I had
22 the -- we had the conversation up -- we're gonna hear from
23 her right now, and I'm not rushing you. But in the future,
24 when I ask y'all when you were gonna be finished and you
25 said you'd be finished at 1:30, and you said it would be

1 fairly brief. so, call your witness and we'll go forward
2 until we stop.

3 so, my apologies to the court reporter for, for no
4 lunch.

5 okay. Come on up please, ma'am.

6 SOLICITOR WHETSTONE: Your Honor, would it be all right
7 if I turned this up for you?

8 THE COURT: Well, are you, are you gonna need that?

9 MR. CASTO: Yes. Oh, I'm sorry. We will need the
10 lights is what I was referring to.

11 THE COURT: You need the lights, but not the projector?

12 MR. CASTO: That's right, yes, sir.

13 THE COURT: Okay.

14 MR. CASTO: Your Honor, before we begin, may I
15 consult -- I beg the Court's indulgence. We may not need
16 Ms. Callahan.

17 THE COURT: All right.

18 (Pause.)

19 MR. CASTO: Your Honor, after conferring with my
20 client, we declined to call Ms. Callahan.

21 THE COURT: Okay. All right. The State's argument on
22 the statement or do you have any other witnesses?

23 MR. CASTO: No, sir, Your Honor.

24 THE COURT: State's argument on the statement, and I
25 guess y'all may do it differently here.

1 Nobody wants to tell me what the statement is, is it,
2 or is that relevant to my inquiry, my decision?

3 I guess it's not.

4 SOLICITOR WEDEKIND: Just whether her -- I'm sorry.

5 THE COURT: Just whether it's freely and voluntarily
6 given, so forth and so on.

7 SOLICITOR WEDEKIND: Yes, sir.

8 THE COURT: Okay. All right. Go ahead.

9 SOLICITOR WHETSTONE: Your Honor, the State would argue
10 that she, she was fully appraised of her rights, agreed to
11 give the statement to Officer Moore at that time, and that
12 there have been no additions or deletions to the statement,
13 and it should stand in its full context.

14 THE COURT: All right. Thank you.

15 Mr. Casto.

16 MR. CASTO: Thank you, judge. You know, we submit that
17 she was in custody as the investigator testified to.

18 THE COURT: No doubt about that.

19 MR. CASTO: No doubt about it, and, you know, that it
20 does appear to us, after, upon hearing, during this hearing,
21 that she was Mirandized. Right up front, Your Honor, we
22 submit that, that it -- we don't challenge these statements
23 at this time, Your Honor.

24 THE COURT: Okay. All right. Okay. In that regard,
25 then I do find the statement is admissible. It appears that

1 there's no dispute that it was freely and voluntarily given.
2 She was advised of all of her rights including the Miranda
3 rights, which were referenced on the form, and that was the
4 product of her free and unconstrained will. No promises, no
5 inducements, or any, any other, anything untoward. I do
6 make that finding by the greater weight of the evidence.

7 On the issue pertaining to the indictment, I'm gonna
8 respectfully deny the defendant's motion to quash the
9 indictment. That should not be seen, and I'm talking about
10 the indictment process only. The indictment does place the
11 defendant on notice that she is facing an armed robbery
12 charge for that one and a burglary charge on the other
13 indictment.

14 The use of the words or did conspire is unusual, but I
15 don't think it defeats the indictment. But it is something
16 that I'll have to take a look at when the State begins
17 presenting its evidence because the State says it's not
18 going on any conspiracy charge. This is a hand of one hand
19 of all, no accessory, to before or after. This is an actual
20 commission of the offense within the context of accomplice
21 liability.

22 Is that correct?

23 SOLICITOR WEDEKIND: That is correct, sir.

24 THE COURT: Okay. All right. The sequestration motion
25 is granted in the particulars that I mentioned earlier, and

1 we'll have to get back together in about 30 minutes, 25
2 minutes on the top.

3 Okay. Let's go ahead and -- I'm gonna go ahead and --
4 now, how long, how long is that gonna take?

5 SOLICITOR WEDEKIND: Not long, sir.

6 THE COURT: Your best judgment of your part and his
7 part --

8 SOLICITOR WEDEKIND: Okay.

9 THE COURT: -- and how many witnesses you've got and
10 all things of that nature. I'm not looking for a low
11 number. I'm looking for an accurate number.

12 SOLICITOR WEDEKIND: Yes, sir, we have two witnesses.
13 I feel like we can probably get by with just one, and I
14 would say---

15 THE COURT: And who is that?

16 SOLICITOR WEDEKIND: Sergeant McIntyre who's now
17 present, Your Honor.

18 THE COURT: Okay.

19 SOLICITOR WEDEKIND: It would be 15 to 20, 20 minutes
20 with the, with the---

21 THE COURT: With everybody?

22 SOLICITOR WEDEKIND: Yes, sir. Well, you know, I don't
23 know how many---

24 THE COURT: Well, but you've been around long enough to
25 know how long he's gonna take.

1 SOLICITOR WEDEKIND: Thirty minutes, Your Honor.

2 THE COURT: Okay. The jury, we're just gonna have to
3 have the jury sit in the back.

4 MR. CASTO: Your Honor, respectfully, we, after
5 conferring with co-counsel, what I would -- we actually
6 won't go forward on that---

7 THE COURT: Okay.

8 MR. CASTO: ---pretrial motion. So, that -- we believe
9 that will help.

10 THE COURT: All right. And, again, I want to make sure
11 you understand that I'm not quarreling with you taking all
12 the time that you need. It's just when I tell people to be
13 back and I'm trying to juggle things, I want to make sure
14 I'm as accurate as possible, and I'm not looking for any
15 artificially low numbers just to satisfy me. I just really
16 want to know.

17 MR. CASTO: Yes, sir.

18 THE COURT: All right. Mr. Wedekind, what do you think
19 you would be able to accomplish this afternoon?

20 SOLICITOR WEDEKIND: I think it will be a little slow
21 because the two first witnesses we have are the Spanish
22 speaking witnesses, Your Honor.

23 THE COURT: All right.

24 SOLICITOR WEDEKIND: So, that may cause a, slower a
25 process, but I think we can get those two done. I think we

1 can get our first three witnesses done.

2 THE COURT: Okay.

3 SOLICITOR WEDEKIND: And there's a total of five.

4 THE COURT: If, if we reach the point of four or so,
5 we'll probably stop because of, the length of time that this
6 hearing, these hearings have taken today, and I want to
7 accommodate everybody who's here with the Clerk's Office and
8 the court reporter as much as I can. The interpreter is
9 gonna be in place from the beginning.

10 Is he gonna be equipped or she equipped with headphones
11 or how are they gonna do that?

12 Do you---

13 SOLICITOR WEDEKIND: Yes, sir, he has the remote
14 headphone---

15 THE COURT: Okay.

16 SOLICITOR WEDEKIND: ---transmission device.

17 THE COURT: All right. All right. Thank y'all. I'll
18 see y'all about -- why don't you be back at twenty after---

19 SOLICITOR WEDEKIND: Yes, sir.

20 THE COURT: ---and we'll put our heads together. Thank
21 you.

22 MR. CASTO: Yes, sir.

23 SOLICITOR WEDEKIND: All right. Thank you.

24 (WHEREUPON, Court was in recess for the lunch hour.)

25 THE COURT: All right. I believe we're waiting on one

1 juror. We got five minutes before at least according to the
2 clock before we start.

3 Is there anything else the State can think of before we
4 begin the trial?

5 SOLICITOR WEDEKIND: Yes, sir, there's one matter that
6 came up. I talked with Investigator Bramlett from West
7 Columbia Police Department. He's here as the evidence
8 custodian. Not a fact witness.

9 Would it be okay if we exempt him from the
10 sequestration order?

11 THE COURT: Mr. Casto.

12 MR. CASTO: We don't have any objection to that, Your
13 Honor.

14 THE COURT: All right.

15 SOLICITOR WEDEKIND: Thank you, sir.

16 THE COURT: Of course, he'll be under the same order
17 not to relate any testimony to any witnesses who have not
18 testified about what anybody has said.

19 SOLICITOR WEDEKIND: Yes, sir, and one moment.

20 THE COURT: Mr. Casto, do we need to wait?

21 I notice Mr. Madsen is not here.

22 Would you like us to wait for your cocounsel to get
23 here?

24 MR. CASTO: No, sir.

25 THE COURT: Mr. Wedekind, are your witnesses here, sir?

1 SOLICITOR WEDEKIND: Yes, sir, we do have a matter of
2 there are some weapons we would like to put into evidence,
3 and I know there are security problems perhaps the Court
4 wants to address---

5 THE COURT: Okay.

6 SOLICITOR WEDEKIND: ---at this time.

7 THE COURT: You can tell me about those.

8 SOLICITOR WEDEKIND: Yes, sir, Investigator Bramlett
9 has -- we have two pistols with their respective magazines,
10 ammunition. He has a chain cable lock that goes through the
11 weapon and makes it inoperative and it will be secured. He
12 will maintain the keys. Those weapons have -- and I will
13 have him talk about it, but he has certified those empty,
14 and -- okay. The clerk has the keys. But the weapons are
15 cleared by him, and the locks are in place. So, they are
16 inert as far as any danger to that.

17 The ammunition matter, I don't believe it should be a
18 problem for the jury to have that since the weapons won't be
19 operable and they're not---

20 THE COURT: They're not loaded at all?

21 SOLICITOR WEDEKIND: They have live cartridges, but
22 they will not be able to be inserted into the weapons to be
23 used.

24 THE COURT: I know they're live cartridges.

25 SOLICITOR WEDEKIND: Yes, sir.

1 THE COURT: But they're not in the weapons?

2 SOLICITOR WEDEKIND: No, sir. No, sir.

3 THE COURT: Okay.

4 SOLICITOR WEDEKIND: And then there are three rounds of
5 ammunition that the State alleges were found in Ms.
6 Callahan's pocket, and they're a like caliber to the
7 cartridges that were used in the weapons, and we'll also be
8 seeking to introduce those, introduce those independently to
9 the jury.

10 THE COURT: Okay. But as far as me telling the jury
11 and me making sure that all that's in line, what I typically
12 tell a jury is that when a, the first time that a weapon is
13 referenced, it is been confirmed that the weapon is
14 unloaded, incapable of being fired in its current form.

15 Is there a trigger guard or a strap or what?

16 INVESTIGATOR BRAMLETT: Your Honor, it's all subject --
17 if you'll allow me to. Each one weapon is a semiautomatic.
18 It's locked back in the open position, this is placed
19 through the chamber, down through the slide, and locked, and
20 the clerk of court has both of the keys to these.

21 THE COURT: Okay. And I'll also tell the jury that, at
22 all times when the weapons are being handled, they will be
23 pointed at the floor at all times.

24 SOLICITOR WEDEKIND: Yes, sir.

25 THE COURT: The business end of the weapon will be

1 pointed at the ground.

2 SOLICITOR WEDEKIND: Yes, sir.

3 THE COURT: Cause even if they're unloaded in that
4 state, if they're waved around, it's very disconcerting.

5 Any objection to that?

6 SOLICITOR WEDEKIND: Yes, sir, and there was one thing.
7 I don't know if the defense will object to that, but we do
8 have some replica guns that we may use that are rubber or
9 casting of firearms that would just be for demonstrative
10 purposes.

11 THE COURT: All right. First things first, do y'all
12 object to, Mr. Casto, to my proposed instruction to the jury
13 about the weapons, that they're incapable of being fired?

14 Also if a lawyer wants to use those during any type of
15 argument, got to get my permission.

16 MR. CASTO: Yes, sir.

17 THE COURT: But, Mr. Casto, do you have any objection
18 to me telling the jury what I mentioned?

19 MR. CASTO: None whatsoever.

20 THE COURT: All right. As far as the replicas, y'all
21 can handle that -- are you gonna object to those?

22 MR. CASTO: We would.

23 THE COURT: I'll just let you bring that up if you
24 think it's appropriate.

25 MR. CASTO: Yes, sir.

1 THE COURT: Of course, if you use even a replica,
2 you're not gonna point it at anybody.
3 Not, not anybody on the jury.
4 SOLICITOR WEDEKIND: Not anybody on the jury, no, sir.
5 THE COURT: Okay.
6 SOLICITOR WEDEKIND: It would be demonstrative for them
7 to show, to show what happened with their child.
8 THE COURT: All right. Yes, sir, Mr. Casto.
9 MR. CASTO: That, that answers that for us.
10 THE COURT: Okay.
11 CLERK: And, Your Honor, if I may, I'm locking these in
12 the vault that nobody has access. Not even the deputies.
13 THE COURT: You're locking---
14 CLERK: So they'll be secured. The keys.
15 THE COURT: Okay.
16 BAILIFF: And, Your Honor, if I may -- if you may, I'd
17 like to make sure we can check those weapons before there,
18 before Court starts and also request that the ammo and the
19 gun not be in the jury room at the same time.
20 THE COURT: Okay. Well, I'll take care of that then.
21 BAILIFF: You know what I'm saying, they can be swapped
22 out and whatnot, but---
23 THE COURT: All right. You can go ahead and confirm
24 that now.
25 BAILIFF: Thank you, Your Honor.

1 SOLICITOR WEDEKIND: Your Honor, in the interest of
2 saving time, Mr. Madsen and -- if they wanted to examine the
3 gun, I don't have a problem with that for just a minute.

4 THE COURT: Sure.

5 (Pause.)

6 SOLICITOR WEDEKIND: Judge, if I may approach?

7 THE COURT: Yes.

8 SOLICITOR WEDEKIND: These are the inert rubber
9 weapons.

10 (Pause.)

11 THE COURT: All right. Is the State ready whenever --
12 I think we're still waiting on our alternate.

13 SOLICITOR WEDEKIND: State's ready through, sir.

14 THE COURT: Mr. Casto.

15 SOLICITOR WEDEKIND: One other -- we don't have our
16 interpreter here, Your Honor. I just noticed that. He was
17 here earlier, and he heard the 2:30 return. So, I don't
18 know where he is.

19 THE COURT: All right.

20 SOLICITOR WEDEKIND: I don't have control,
21 unfortunately, of him.

22 THE COURT: Is he gonna be interpreting or translating
23 during the course of everything?

24 SOLICITOR WEDEKIND: He is, Your Honor. The, the
25 procedure that we use here in Lexington I think is in

1 compliance with the Supreme Court's directives that we apply
2 to Court Administration or to the chief administrative judge
3 and attest to him that the service of a court reporter are
4 needed because of a language barrier problem.

5 THE COURT: Interpreter you mean?

6 Not a court reporter.

7 SOLICITOR WEDEKIND: I'm sorry. The interpreter who
8 works more or less as a interpreter for the court reporter
9 as well as for the witness to, to speak. So, Judge Keesley
10 signed an order saying that the services of Communicar as a
11 translation for the court reporter and the courtroom would
12 be advisable. So, he was hired by the Court, but we have
13 coordinated with him about being here and he was here
14 earlier. I just don't know where he is today or at the
15 moment.

16 THE COURT: All right. Maybe he's with the alternate.
17 I don't know.

18 I tell you what, I'll just go ahead and step down, and
19 as soon as the alternate gets here, and the interpreter,
20 maybe you can find out where he is?

21 SOLICITOR WHETSTONE: Yes, sir.

22 THE COURT: We'll go ahead and go forward.

23 SOLICITOR WHETSTONE: Yes, sir.

24 THE COURT: In the mean time, I think everybody's tried
25 a case with me. I don't have any heartburn at all if you --

1 I know very well the responsibility you have to protect the
2 record. So, at any given time, if you think you need to err
3 on the side of caution and make the objection again, I'm not
4 gonna take any offense at it. I very clearly tell the jury
5 that that is your responsibility as an advocate and the
6 rules to make sure that any objections are noted even though
7 they might be overruled.

8 SOLICITOR WEDEKIND: Yes, sir.

9 THE COURT: So, don't think that I'm going to frown on
10 that. I know the responsibility that you have.

11 SOLICITOR WEDEKIND: Sir, it sounds like -- I know we
12 have our interpreter present. So, we're just waiting on the
13 alternate.

14 (Pause.)

15 THE COURT: Okay. All right. I think it's pertinent,
16 just in case it comes up later on, the alternate, who is not
17 here, who is Ms. Dozer, I just wanted to put that on the
18 record, Number 62. She is not here. I assume that she
19 hasn't, hasn't called the Clerk's Office.

20 CLERK: No, sir.

21 (Pause.)

22 THE COURT: As I put on the record a minute ago, Ms.
23 Dozer, the second alternate selected, is not here. It's ten
24 minutes until 3:00.

25 What is the State's position on how we proceed?

1 SOLICITOR WEDEKIND: Your Honor, I think she was the
2 second alternate. So, I would just say we would proceed
3 with the one alternate that we have.

4 THE COURT: Well, if -- in Criminal Court it's
5 different from Civil Court. You draw an alternate blindly
6 by lot. So, it might be the first alternate seated. I'm
7 not inclined to wait on her much longer, but I'll be glad to
8 hear from the defendant.

9 MR. CASTO: We agree with the Court. I mean she's
10 definitely late. I would say just -- we could wait another
11 five minutes and just we go forward without her.

12 THE COURT: Mr. Wedekind.

13 SOLICITOR WEDEKIND: I say go forward. I say we go
14 forward without her.

15 THE COURT: If she gets here in the next five minutes,
16 I'm not gonna say or do anything until after the trial is
17 over. But I am gonna fine her if she doesn't have a good
18 explanation.

19 MR. CASTO: Yes, sir.

20 THE COURT: All right. But I wouldn't, I wouldn't do
21 that while the trial is going on.

22 Okay. Five more minutes.

23 (WHEREUPON, a short recess was taken at this time.)

24 THE COURT: Does either side object to moving forward?

25 SOLICITOR WEDEKIND: No, sir.

1 MR. CASTO: No, Your Honor.

2 THE COURT: Okay. If---

3 MR. CASTO: Just answering -- no, Your Honor.

4 THE COURT: Okay. If, if she does appear here I want
5 her in the back of the courtroom. She's not going anywhere
6 at all.

7 BAILIFF: Yes, sir, Your Honor.

8 THE COURT: And you can even have her sit wherever you
9 prefer in whatever room is behind that mirror. I assume
10 there's some room back there.

11 SOLICITOR WEDEKIND: It's a media room.

12 THE COURT: She will stay here the rest of the trial.
13 She's not going anywhere.

14 CLERK: Your Honor, I just got a thing back. The
15 number has been disconnected. My juror clerk checked her
16 juror line. The juror did call and left a message at 2:25,
17 and I -- the phone number was -- the message she left Carol
18 is the number I just wrote down. The juror said she got
19 stopped by the cops and she wanted to know if she could have
20 the rest of the day off.

21 THE COURT: The answer to that is no.

22 Okay. State ready?

23 SOLICITOR WEDEKIND: State's ready, sir.

24 THE COURT: Okay. Defendant ready?

25 MR. CASTO: Yes, sir, Your Honor.

1 THE COURT: All right. You can bring in the jury.

2 (WHEREUPON, the following takes place within the
3 presence of the jury.)

4 THE COURT: All right. Thank you, ladies and
5 gentlemen. We're gonna now move forward with the trial of
6 this case. Actually the first order of business will be for
7 you to receive an oath or, or give an oath. So, if you
8 would please stand.

9 (WHEREUPON, the jury panel was placed under oath at
10 this time.)

11 THE COURT: Thank you, ma'am.

12 All right. Ladies and gentlemen, what I'm gonna talk
13 to you about now is intended to be or serve as an
14 introduction to the trial of this case, and I want to make
15 sure you understand a few basic things.

16 First of all, ladies and gentlemen, you are the
17 selected jury in this case, and, as you know, we had to wait
18 a fair amount of time for one of your number to get here,
19 and that juror did not ever appear. The reason I tell you
20 that is, first of all, to apologize for making you wait in
21 the jury room, and, secondly, to tell you how important your
22 responsibilities are during this case because the State and
23 the defendant have selected you to try this case, no one
24 else, and that's why it was incumbent on me to wait as long
25 as we could for a selected juror to come back.

1 I want to make sure that you, ladies and gentlemen, do
2 understand that you should take your responsibilities very
3 seriously, and that is because the oath that you have taken
4 puts the burden on you to try this case according to the
5 evidence and the law. That's your responsibility.

6 Now, in that regard, you are the sole judges of the
7 facts in this case. In any case where there's a jury, the
8 jury decides what the verdict is going to be, and you are
9 the judges of the facts.

10 In this particular case, and in any case, the facts are
11 gonna come to you by evidence. Evidence is going to come to
12 you in different ways. It will come to you by way of
13 testimony that is introduced. It is going to come to you by
14 way of exhibits that are introduced into evidence, and may
15 also come to you in a third way, and that's by stipulation.
16 That's when the lawyers or the parties announce to me that
17 they have agreed that a certain fact is true.

18 It may be something as fundamental as May the
19 10th was a Wednesday. It may -- it could be anything they
20 agree is a, is a, is a true fact. It's gonna be your
21 responsibility to weigh all that evidence. No one else in
22 the world can do that.

23 I am not permitted, under the law, to have any opinion
24 or view on the facts. That would infringe on your view of
25 the facts. You will notice that, during the course of this

1 trial when the witnesses testify, they'll be testifying to
2 you. Not to me. The exhibits that are going to be
3 introduced will be introduced to you and not to me. In many
4 instances I will never even see an exhibit, and those
5 consist of things like photographs, pieces of paper. I've
6 seen cases where an exhibit is a car or it might be a rock.
7 It might be a piece of flooring tile. Whoever knows what it
8 might be. Those are typically things that you can see and
9 touch.

10 Those will be introduced to you, and it really doesn't
11 matter what I think about then except in one respect I'll
12 discuss in a moment because you are the judges of the facts.
13 It's your responsibility to give the lawyers and the
14 witnesses your complete and undivided attention because you
15 can not fulfill your oath to try this case according to the
16 evidence and the law and unless you pay close attention to
17 all that, and I know that you'll do that.

18 Now, I know it's three o'clock. Most of you probably
19 had lunch. The is the time of day where, guess what, you
20 might want to take a snooze. Well, today is the day you
21 can't do that, and the reason, again, is because your role
22 is so important.

23 Now, as the fact finders in this case, it's going to be
24 important for you to determine the believability of
25 witnesses who testify. We also call that credibility.

1 Now, you can believe every word of what a witness has
2 to say if that's what you would like to do cause you'll be
3 looking at them and saying can I believe this person. Use
4 your common sense in determining that. You can believe
5 every word, disbelieve every word, or believe parts and
6 reject the rest. Again, that's all up for you.

7 Now, you, you can believe one witness over several,
8 several over one or however else, however you choose to do.
9 Also, ladies and gentlemen, you can take into account things
10 such as how the witness appears on the stand when you're
11 trying to determine whether or not you believe him or her.
12 You can take into account whether or not you believe that
13 witness' testimony has been strengthened or weakened by
14 other testimony or evidence that's in the record.

15 Also, you can take into account whether or not that
16 witness has a reason or a motive to give testimony that
17 would help or hurt one side over the other, and you can also
18 take into account whether or not or what was that witness'
19 ability to know the facts that he or she claimed to know,
20 and those are just some of the tools that you can use within
21 common sense to determine whether or not you believe the
22 witnesses.

23 Now, ladies and gentlemen, I -- on the other hand, I'm
24 the judge of the law. I will make certain legal rulings in
25 the case from time to time, and, at the end of the case, I

1 will give you a charge on the law. I'll tell you what the
2 law is. You put your common sense view of the evidence
3 together with the laws I give it to you at the very end of
4 the case and that's how you reach a verdict in this case and
5 in any other case.

6 Now, from time to time you may hear or see the lawyers
7 for any particular side stand up and make objections. They,
8 they'll start it off with objection, Your Honor. They may
9 state grounds and my ruling on the objection is guided by my
10 interpretation of the South Carolina Rules of Evidence.
11 This brown book that I have has the rules which are about
12 this much. The rest of it's interpretation.

13 These lawyers are very capable, very experienced
14 lawyers, and they will make objections when they believe
15 it's appropriate, and, and don't become concerned about when
16 the lawyer objects. That doesn't mean the lawyer's trying
17 to hide something.

18 Also, if an attorney asked a question that's objected
19 to, don't automatically think that the lawyer's trying to
20 hide something or slip something in that you ought not hear
21 because they have a good faith obligation to try their case
22 in accordance with their responsibilities, and objections
23 are just part of that.

24 I will rule on the objections, and don't take from
25 anyway that I rule that I favor one side over the other

1 because I don't, and, in addition to that, ladies and
2 gentlemen, the, the objections are situations where I may
3 have to send you out of the courtroom for a period of time.
4 Typically that's because I'm not quite sure what they want
5 to tell me, and I want to make sure that they have the right
6 to make their arguments fully and freely, and sometimes they
7 may ask -- they may say we have a point of law we'd like to
8 take up outside of the jury's presence. So, I'll send you
9 out of the courtroom to do that. Sometimes, very rarely,
10 I'll send you out and make a ruling, you come back in,
11 something else comes up, I may have to send you right back
12 out.

13 Please don't take offense at that. If you hold it
14 against somebody, hold it against me.

15 All right. Now, ladies and gentlemen, in this
16 particular case, the defendant has been charged with two
17 offenses, and those offenses are burglary in the first
18 degree and armed robbery. The State has the burden of
19 proving the defendant guilty of those charges beyond a
20 reasonable doubt, and, ladies and gentlemen, the defendant
21 doesn't have to prove or disprove anything. The sole burden
22 is on the State of South Carolina.

23 The case itself will be tried in stages. In a moment
24 the lawyers will be standing up and giving -- they'll be
25 giving you opening statements, and that is their opportunity

1 to tell you what they believe the evidence will or will not
2 establish in this case. The State will present first
3 opening statement.

4 The defendant doesn't even have to present an opening
5 statement. They can wait -- they can wait until the State
6 closes its evidence and give an opening statement then or
7 not at all. That's entirely up to the lawyers and their
8 good judgment.

9 Now, after the opening statements, the State will
10 present evidence in its case in chief, and they'll do that
11 by calling witnesses and presenting other evidence. After
12 that, the defendant, if she so chooses, can also call
13 witnesses and present evidence even though, again, she has
14 no obligation to do so whatsoever.

15 After all the evidence is in, the lawyers will make
16 closing arguments. After that I will give you a charge on
17 the law, and more than likely it will be some time tomorrow
18 that you will be released to deliberate this case.

19 Goal number one of yours is to pay very close
20 attention, and goal number two is to make sure that the
21 verdict, in the end of, at the end of this case is one that
22 absolutely speaks the truth.

23 Now, ladies and gentlemen, during the course of the
24 trial you may not discuss this case with anyone. For
25 example, when we -- we may take a break in an hour. You

1 can't go back to that jury room and talk about what you just
2 heard or what you just saw. You can't go home this evening
3 and discuss with family members or friends or co-workers or
4 anyone else in the world what you, what you have been doing
5 today and what the case about. You can't do it because
6 you've sworn an oath to try this case according to the
7 evidence and the law, and you will get all of that right
8 here in this courtroom.

9 So, it would be inappropriate, and I'll be telling you
10 more than once, you'll get tired of me telling, don't talk
11 about it. You can't listen to anything about it. You can't
12 watch anything about it, can't read anything about it. You
13 can not undertake to do any research. If you have one of
14 those phones that has all those bells and whistles on it,
15 you can't do any searching on the phone, and you certainly
16 you can't independently talk to anyone at all.

17 Madam Forelady, you're the foreperson of the jury. You
18 can sit right there during the rest of the trial. I know
19 that we have an alternate juror, Mr. Earhart. You can sit
20 there. It doesn't really matter to me if you mix with the
21 rest of the jury. It's not gonna, it's not gonna create any
22 problems, but if you -- if you want, you two can have those
23 assigned seats, and everybody else can just fill in as, as
24 you go down the row.

25 You don't have any greater authority, but, during the

1 course of the trial now, if anyone on the jury has any
2 concerns or questions, you can -- they can relay those to
3 you, and you relay those to one of the bailiffs and then
4 I'll deal with that.

5 All right. Now, any objections to those remarks from
6 the state?

7 SOLICITOR WEDEKIND: No, sir.

8 THE COURT: Any from the defense?

9 MR. CASTO: No, sir, Your Honor.

10 THE COURT: All right. One final thing, what the
11 lawyers tell you in just a minute in their opening
12 statements is not evidence. You go with what the evidence
13 is as presented by the witnesses and the exhibits and any
14 stipulations, and -- but this is their opportunity to talk
15 to you about what they believe the case is about.

16 All right.

17 SOLICITOR WEDEKIND: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 SOLICITOR WEDEKIND: Ladies and gentlemen, there's an
20 old saying, maybe most of you have heard it, but it goes
21 that trouble always come in threes, and on the night of June
22 the 16th, 2010, trouble came looking to those two
23 individuals over there, to their home, to the home of
24 Rigaberto Ramirez, to the home of Abdul Bargas, to the home
25 of Mirna Herrera, Herrera, and her children, her two

1 children that were in that residence.

2 It wasn't a real big home. It was a humble home. It's
3 a single wide trailer in a trailer park in west Columbia.
4 But it's where they live. It's where they slept. It's
5 where she was trying to raise her family, and but for that
6 trouble coming in the form of three people, two men, and
7 that woman sitting right there who was the driver of the
8 vehicle that they came, they planned to come in, rob the
9 place, and leave in, and she acted as the getaway driver.
10 Just as guilty as the two individuals who went in.

11 But you're gonna hear that they were sleeping. Mirna
12 was sleeping with her children, and her boyfriend in the
13 living room. They'd been watching TV, and they fell asleep.
14 Their roommate, Rigaberto, being a good roommate, went
15 outside to talk on the phone in the wee hours of that
16 morning. It was just, just after midnight, thereabouts
17 12:30, one o'clock in the morning, and he was outside
18 talking on the phone.

19 Then all of a sudden, to their knowledge, a big
20 commotion breaks out and Rigaberto's being dragged into
21 their, pushed into the trailer at gunpoint by two black
22 males carrying automatic pistols screaming, yelling, demands
23 for cash break out. Nobody knows exactly what's gonna
24 happen, why this is going down. They just woke up from a
25 slumber, and the demand's for cash. Give us the gun or give

1 us cash, give us your money, give us whatever valuables you
2 have.

3 Mirna had their little stash of cash, and she went and
4 retrieved it. But to make sure she was giving everything
5 up, they grabbed her little year and a half old son, held
6 him upside down, and put a gun to his head just to make sure
7 he knew that they meant business. Imagine how she felt.

8 Then, if that wasn't enough, after she gave the wallets
9 up and what meager cash assets that they had, they took a
10 necklace off Rigaberto and ran out the door with it.

11 And where did they run?

12 They didn't just run on a foot, foot getaway. They ran
13 straight to the place where they knew she had parked. They
14 ran straight to the place where they knew she had dropped
15 them off, and that was the place where they knew that they
16 could get in that car and she'd be out there waiting with
17 the engine running to get them out of there as fast as
18 possible.

19 But as fast as she would go, and as fast as they could
20 get there, it couldn't beat the electronic signals of a cell
21 phone. Because of the commotion that was going on that hour
22 of the morning, a neighbor heard the commotion and called
23 and said that there was an altercation taking place at that
24 tailer park. The dispatcher then called the police officers
25 of the West Columbia Police Department.

1 And who was on duty?

2 You're gonna hear that it was Sergeant McIntyre and
3 officer Seboe were the first two units in the neighborhood,
4 and they responded very quickly and were converging on the
5 location of the trailer park at Dew Avenue, and as they
6 closed in on it, they were told to be on the look out for a
7 dark blue Tahoe SUV.

8 Low and behold, as they come around the corner, what do
9 they see, about a quarter mile away from Dew Avenue as
10 they're approaching it, a dark blue Tahoe. They stop that
11 vehicle. They secure it. They realize that they got it
12 surrounded. They, they approach the vehicle and they asked
13 the driver of the vehicle for her driver's license. That
14 driver seated right there. That driver's Carrie Callaham.

15 But Ms. Callaham didn't say oh, officers, I'm Carrie
16 Callaham. She said she didn't have a driver's license.
17 That triggers a response from the police officer. If it was
18 you or I, just left our home and forgot our wallet, as a
19 courtesy they'll ask you your name, and if you can tell them
20 your name, and they check it, cross-reference it with the
21 computer to find out there is a valid driver's license
22 associated with that name and address, they'll usually just
23 write you a citation and you'll pay a fine later on for
24 driving without a license or maybe get a warning.

25 But in this case it was just enough to hold her until

1 an amplifying phone call came there because officer, another
2 third officer had arrived at the home and got some more
3 detailed information about what had gone down, and it wasn't
4 just a fight or a commotion. It was a burglary. It was an
5 armed robbery utilizing firearms, and, at that point, the,
6 the whole complexion changed. The officers got the word
7 armed robbery took place, weapons were used, they started
8 looking.

9 At that point they got the passengers out of vehicle,
10 and you're gonna hear, from the testimony of the officers,
11 that when they got that front passenger, Ricky Bell was his
12 name, out of the vehicle, as Ricky stepped out, a gold
13 necklace fell onto the ground, spilled out of the door as he
14 got out of the door. You're gonna hear that the officer
15 then retrieved that necklace and put it on the seat. But,
16 as he bent down, his eye was down and he looked in the car
17 and he saw a pistol under the front seat.

18 So, based on the information that he heard an armed
19 robbery, he seized a weapon under the seat. They start to
20 look inside the vehicle. They find a second gun under the
21 seat in the back seat along with, and you'll see this, along
22 with two wallets. Those two wallets were later recovered
23 and examined, and they contained the information, the ID of
24 Mr., Mirna Herrera and it also had Rigaberto's
25 identification in it.

1 So, there you have it, ladies and gentlemen. This is
2 not gonna be a who done it. It's not gonna be a real
3 mystery case. But you're gonna hear corroborating testimony
4 from these officers that they just happened to get on the,
5 the scene, in a very expeditious manner, and they found Ms.
6 Callaham driving that vehicle.

7 But that's not where the case really just ends. It
8 would be good if that's all it was. But the officers wanted
9 to follow it up. They brought them all down to the station
10 and you're gonna hear that when they were brought in for
11 questioning, under arrest, they were advised of their
12 rights. When they were advised of their rights, some of
13 them initially started playing games, but you will hear that
14 Ms. Callaham had given a false name to that police officer.
15 The first time, when he asked her for her driver's license,
16 she gave one name. The officers followed it up and found
17 out -- they got the driver's license record of that name,
18 and printed it out, and when they looked at the picture
19 associated with that driver's license, it wasn't that face
20 that you're seeing looking at you right now. It was
21 somebody different.

22 So, they went in and they said hey, this is, this is
23 not, this is not you. So, then, oh, yeah, yeah, okay, I got
24 a different name. The vehicle was registered to a Mr. Mark
25 Edwards, her uncle. So, she said my name is Myra Edwards

1 instead of Myra Nicole. That was the first name she gave.

2 So, they go back and they check again and they pull a
3 Myra Edwards, and yet again that face doesn't match up with
4 the driver's license and the face you see sitting at the
5 table right there.

6 So, they went back again and they said hey, Mystery,
7 Mystery Lady, that's just not who we say you are, who, who
8 are you now. So, she came about a third tape, and she said
9 I'm Courtney Callaham, and she even wrote down a Social and
10 a date of birth and wrote that name out, and you're gonna
11 see that, and then the officers checked that out, and they
12 said no, you still, still haven't got it right. You really
13 want to just come and tell us who you are, and she said my
14 name's Carrie Callaham, Carrie Denise Callaham and here we
15 are today, ladies and gentlemen.

16 She gave a statement. You're gonna see that. I'm not
17 gonna go into details about what's in the statement, but
18 that's gonna be pretty much the case in a nutshell. You're
19 gonna hear from these victims, and you're gonna hear from
20 the police officers, and there was an element of luck in
21 that case, but this won't be a real hard case. It will be
22 an important case.

23 But at the end of it, you're gonna hear all this
24 testimony, and I feel confident you'll come back with a
25 verdict of guilty.

1 Thank you.

2 THE COURT: Any opening statement at this time,
3 Mr. Casto?

4 MR. CASTO: Yes, sir, Your Honor.

5 THE COURT: All right.

6 MR. CASTO: May it please the Court, opposing counsel,
7 Mr. Wedekind, Mr. Whetstone.

8 From the outset we agree, we agree with the State that
9 the actions of those two individuals who have names Rick
10 Bell and Quincy Holland you'll hear all throughout this
11 trial, and we agree that what they did was terrible and
12 despicable. They terrorized an innocent family the night
13 of, of June 16th, 2010.

14 You'll hear all about those two names, Ricky Bell and
15 Quincy Holland, and basically how they believe that they're
16 in control, and that they call the shots, and what they say
17 goes, and how to step on anyone to assist them in doing
18 their dirty work including my client, Carrie Callahan.

19 Now, by way of introduction, that's my client seated at
20 the table. Carrie's waited a long time for her day in court
21 and it matters to her. It's important to her.

22 My name, again, is Bennett Casto. I'm a lawyer in the
23 area, and throughout the trial of the case you hear from me,
24 and you'll also hear from my co-counsel, Mr. Robert Madsen.
25 Together we have the pleasure of getting to tell Carrie's

1 story to you here today and what really happened on that
2 night.

3 Now, from the outset, an out and out confession that
4 this will not be a case, an episode of Perry Mason. We
5 won't have the southern charm found in an episode of
6 Matlock, of CSI, of Law and Order. But unlike all those
7 shows, this case is real life, and simply stated it matters
8 to Carrie.

9 In tying this back to your role as jurors, you, the
10 jury, serve as a buffer, a buffer or a shield from the
11 awesome power of the State and the awesome power they have
12 to strip a fellow citizen of their liberty, and it's a huge
13 responsibility from the outset of our nation. Well, that
14 responsibility shielded ordinary citizen like you-all from
15 false charges and plain old ordinary lack of evidence.

16 Now, at this point you've only heard one side of the
17 story, the State's side, and keep in mind it's the same
18 State that has to carry what's called the burden of proof.
19 Their job is to try and prove that Carrie's guilty, and they
20 have the burden of proof or burden of proving their case.
21 We don't have to prove anything at all.

22 Now, the State, for each offense alleged, several
23 elements exist, and those elements are much like puzzle
24 pieces, and if reasonable doubt should exist for one of
25 those elements, you must find Carrie not guilty of that

1 offense charged. You must find her not guilty of that
2 offense charged.

3 Now, reasonable doubt, much has been made and said about
4 what reasonable doubt is from shows and stories and
5 television. South Carolina Courts have defined it this way.
6 Very simply, reasonable doubt, the type of doubt that would
7 cause an ordinary person to pause or to hesitate before they
8 act. Stated again, reasonable doubt is the type of doubt
9 that would cause an ordinary person to pause or to hesitate
10 before they act.

11 The burden is not on us, to be very clear. We don't
12 have to present any evidence. Carrie need not testify. The
13 burden's all on the State. We don't have to prove she's
14 innocent. We don't have to prove anything at all. The
15 burden is on the State.

16 Now, a word or two, the pressure's somewhat off this
17 jury because sometimes jury believe that it's their job to
18 solve the case. Well, no, the pressure is off because that
19 job is left to law enforcement. This jury sits to weigh the
20 evidence and decide whether there's enough evidence to strip
21 Carrie of her liberty.

22 Now, how to analyze the case?

23 Listen to everything that is paraded before you, and
24 what everybody says from that witness stand. Listen to the
25 things that are said. Listen to the things that are not

1 said from the witness stand. Body language, any bias, any
2 motive.

3 Keep an open mind throughout the course of the case. A
4 case that appears simple, such straightforward, may turn out
5 to be anything but, and as your chief tool in your analysis
6 is your plain old ordinary common sense. Don't check it in
7 at the door. Use it, arm yourself with it, throughout the
8 course of the trial.

9 We submit to you that reasonable doubt abides with us
10 in this case and is here, and at the conclusion of all the
11 evidence we would ask that you find Carrie not guilty of
12 the, the offenses alleged.

13 Thank you.

14 THE COURT: All right. First witness.

15 SOLICITOR WEDEKIND: Yes, sir, the State would call
16 Mr. Abdul Bargas.

17 THE COURT: All right. The interpreter can come up as
18 well.

19 SOLICITOR WEDEKIND: Yes, sir.

20 THE COURT: Please administer the oath to him.

21 CLERK: Please state your name for the record.

22 INTERPRETER: Brett, B-R-E-T-T, Hunt, H-U-N-T.

23 (WHEREUPON, the interpreter was placed under oath at
24 this time.)

25 ABDUL BARGAS, being first duly sworn,

Abdul Bargas - Direct examination
by Solicitor Wedekind

1 testified as follows:

2 CLERK: Have a seat. Once he's seated, state your full
3 name on the record spelling your last.

4 THE COURT: Mr. Hunt, if the speed of the conversation
5 is inappropriate for you, raise your hand.

6 Okay?

7 INTERPRETER: Thank you, Your Honor.

8 THE COURT: All right. Mr. Wedekind.

9 SOLICITOR WEDEKIND: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR WEDEKIND:

12 Q Are you ready?

13 Mr. Bargas, are you ready?

14 A Yes.

15 Q Please tell the jury, if you would, your name.

16 A My name is Abdul Bargas Perez.

17 Q And where do you come from, sir?

18 THE COURT: Let him say---

19 A My name is Abdul Bargas Perez.

20 From West Columbia.

21 Q Where did you originally come from?

22 A Mexico.

23 Q Not the other Colombia?

24 A West Columbia.

25 Q That's where you live?

Abdul Bargas - Direct examination
by Solicitor Wedekind

1 A Yes.

2 Q In 2010?

3 A Yes.

4 Q Precisely on June 16th of 2010 did you live in west
5 Columbia, South Carolina?

6 A Yes.

7 Q And did you live at the address -- what address did you
8 live at?

9 Do you know the trailer park address?

10 A It was called Henry, Henry.

11 Q Okay. And you lived -- is that -- was that here in
12 Lexington County?

13 A Yes.

14 Q Who lived with you in that trailer park in west
15 Columbia?

16 A With my wife, Mirna Herrera, and my brother-in-law,
17 Rigaberto Herrera.

18 Q And were there any other individuals that lived with
19 y'all?

20 A Her brother, Roberto Herrera.

21 Q And were there children?

22 A Yes, my son, Alexander Bargas, was there, and Idalia
23 Bargas.

24 Q And were they a boy and girl?

25 A Yes.

Abdul Bargas - Direct examination
by Solicitor Wedekind

1 Q What were their ages?

2 A My son was about a year and a half old, and my
3 daughter, three years old.

4 Q Tell the jury, if you would, what happened after
5 midnight at your home in West Columbia that night in 2010,
6 on June the 16th, 2010, just after midnight.

7 A I found myself sleeping along with my family. That
8 night we were in the living room watching TV. At that time
9 my brother-in-law was outside talking on the phone. At that
10 time a neighbor arrived at his house, and at that point two
11 black men came up to the window of his car and started
12 knocking on it, and he got on his phone and the black men
13 started running, and then they got -- they hid behind my
14 trailer and waited for my brother-in-law to get out.

15 But the neighbor was watching everything. And then
16 when my brother-in-law got out, the two black men came up,
17 held a pistol to his head, and said to let him in, let them
18 in. He didn't want to open cause he said there was family
19 there, but they forced him to and he opened the door.

20 And when he opened the door, we were there sleeping.
21 And at that moment we woke up, and when we woke up they were
22 asking for money. They kept asking for money, and one of
23 them grabbed my little boy by his foot, and with his other
24 hand he pointed the pistol at his head, and my wife begged
25 them to let him go, let him go, and they said no, they

Abdul Bargas - Direct examination
by Solicitor Wedekind

1 wanted money, and I started to stand up to give it to them,
2 and they said no, you're not -- not you. Her.

3 Q Let me interrupt.

4 How old was the boy?

5 A One year and a half.

6 Q Okay. I'm sorry. Please proceed.

7 A She stood up and she gave them the money, but they
8 wanted more, and they wanted more and more, and they wanted
9 more and then my brother-in-law said I have a flat screen TV
10 in my room, take it, and they said no. They wanted money.
11 They wanted money.

12 But at that point the neighbor had realized that they
13 went inside and he had already called the police. And then
14 when they wanted more money and my brother-in-law didn't
15 want to give them anymore, they hit him in the head with the
16 pistol, and then when they hit him in the head they were
17 offered the gold chain.

18 Q Did -- what type of pistol did they have?

19 Do you remember?

20 A Really I don't know that much about them. I just know
21 it was about this long. It was small.

22 Q Okay. Please continue.

23 A Really I was very scared because they wouldn't let go
24 of my son, and those types of people, they just dedicated
25 themselves to robbing people and they don't have any heart.

Abdul Bargas - Direct examination
by Solicitor Wedekind

- 1 Q Well, let me interrupt again. You said your
2 brother-in-law gave a chain up.
3 what did it look like?
4 A Yes, it was a thin chain.
5 Q Was it -- where was it worn?
6 A Where, where did he use it?
7 Q Where was it worn?
8 what type, a necklace, bracelet?
9 A Around the neck.
10 Q And what color?
11 A It was yellow and he pulled it off. He gave it to
12 them, but they wanted more, they wanted more, and more. And
13 my wife said that we didn't have anymore, to let go of the
14 child, and they said no, they wanted more and more. And at
15 that point, I don't know how or why, but they let him go and
16 then they left, and then when they left, the, the woman over
17 there was waiting for them outside.
18 Q Did you see her driving the car or did you just hear
19 that?
20 A Truthfully I only heard that.
21 MR. CASTO: Judge, without, without -- I would object
22 then and ask it be stricken from the record as hearsay.
23 THE COURT: Any objection?
24 SOLICITOR WEDEKIND: No objection, Your Honor, sir.
25 THE COURT: All right. Ladies and gentlemen, the

Abdul Bargas - Direct examination
by Solicitor Wedekind

1 witness' statement about what he heard about the defendant
2 is stricken. You're not to consider that at all.

3 Q Did, did they take anything other than the cash
4 offered?

5 Did they take any wallets?

6 A Yes, they took my wife's wallet and also my
7 brother-in-law's wallet.

8 Q And who -- was your brother-in-law Rigaberto?

9 A Rigaberto.

10 Q And, just for the record, your wife was Mirna?

11 A Yes.

12 SOLICITOR WEDEKIND: Beg the Court's indulgence a
13 moment?

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q Now, you say that the two men with the guns, did they
17 both have pistols?

18 A Yes.

19 Q They left, but you did not see them and you don't know
20 where they left once they left your trailer?

21 A No.

22 Q Had you ever seen those men before?

23 A No.

24 Q Had you ever see them -- well, never mind.

25 Do you know how they got to your trailer park?

Abdul Bargas - Direct examination
by Solicitor Wedekind

1 A No, I don't.

2 Q And you don't know if anyone drove them or took them
3 away?

4 A No, I don't know how they arrived.

5 Q And then do you recall the police coming later to speak
6 with you?

7 A Yes.

8 SOLICITOR WEDEKIND: Okay. Beg the Court's indulgence
9 one more moment.

10 THE COURT: Yes, sir.

11 (Pause.)

12 Q No further questions. Thank you very much. Please
13 answer any questions that the defense may have.

14 THE COURT: Mr. Madsen.

15 CROSS-EXAMINATION

16 BY MR. MADSEN:

17 Q Is it -- is your last name Bargas or Perez?

18 A Bargas Perez.

19 Q So, if you were identified on your statement as Bargas,
20 it should be Bargas Perez?

21 A Yes, my name is Louis Bargas Perez.

22 INTERPRETER: Excuse me.

23 A My name is Edu1 Bargas Perez.

24 Q How do you spell that, Edu1?

25 A E-D-U-L.

Abdul Bargas - Cross-examination
by Mr. Madsen

- 1 Q Mr. Bargas Perez, you were sleeping, is that correct?
- 2 A Yes.
- 3 Q You said you were watching TV and fell asleep in the
- 4 living room?
- 5 A Yes, we were sleeping in the living room.
- 6 Q Do you know what time about you fell asleep?
- 7 A Around 11:00 or 11:30, something like that.
- 8 Q And when you woke up, that's when you see these two
- 9 black men in the trailer?
- 10 A Yes.
- 11 Q So you don't see them come in?
- 12 A No, I did not see them come in.
- 13 Q You have no idea how they got there?
- 14 A Well, they pointed their guns at my brother-in-law and
- 15 forced him to open the door.
- 16 Q Did you see that?
- 17 A No.
- 18 Q I'm only, I'm only asking what you saw.
- 19 A Oh.
- 20 Q So, you have no idea how they got there?
- 21 When you woke up they were in the trailer?
- 22 A Yes.
- 23 Q You don't know if they walked in there on foot or drove
- 24 cause you didn't see that, did you?
- 25 A Yes.

Abdul Bargas - Cross-examination
by Mr. Madsen

- 1 Q You didn't personally hear a neighbor or anyone call
2 the police?
- 3 A No.
- 4 Q You never saw any vehicle yourself?
- 5 A No.
- 6 Q You never saw where they went when they left outside
7 of, of that trailer, did you?
- 8 A No.
- 9 Q So, when you testified as to what, about your neighbor
10 and seeing the car, none of that is what you saw or heard
11 yourself?
- 12 A Yes.
- 13 Q And you had said that they came with Ms. Callahan.
14 You never saw that or heard that, did you?
- 15 A No.
- 16 Q She was never in your trailer?
- 17 A No.
- 18 Q You never saw her outside?
- 19 A No.
- 20 Q You never saw them get in a car that she was in?
- 21 A No.
- 22 Q You have no idea where that car was parked, whether it
23 was in front, down the street, or anywhere else, do you?
- 24 A No.
- 25 Q You have no idea what she saw?

Abdul Bargas - Cross-examination
by Mr. Madsen

1 A what who saw?

2 Q what Ms. Callahan saw.

3 A No.

4 Q Cause you, cause you -- you have no idea where she was
5 at?

6 A No.

7 Q And, in fact, that entire night you never saw her at
8 all, did you?

9 A No.

10 MR. MADSEN: Beg the Court's indulgence.

11 (Pause.)

12 MR. MADSEN: That's all the questions I have, Your
13 Honor.

14 THE COURT: Redirect.

15 SOLICITOR WEDEKIND: Briefly, sir.

16 REDIRECT EXAMINATION

17 BY SOLICITOR WEDEKIND:

18 Q Abdul, just to be clear for the jury, in the early
19 morning hours of June 16th, 2010, the facts that you
20 personally saw with your own eyes are the two men came into
21 your trailer, burst into your trailer --

22 A Yes.

23 Q -- forcing Rigaberto at gunpoint into your home, waking
24 you, your wife, and your children up?

25 A Yes.

Abdul Bargas - Redirect examination
by Solicitor Wedekind

- 1 Q Is that correct?
- 2 A That's correct.
- 3 Q They had those guns and they shifted to your son, who
- 4 is one and a half years old, picked him up and held a gun to
- 5 his head?
- 6 A Yes.
- 7 Q Is there any doubt whatsoever about those facts?
- 8 A No.
- 9 Q Two pistols?
- 10 A Two pistols.
- 11 Q Didn't see her?
- 12 A No.
- 13 Q But you saw them?
- 14 A I did see them.
- 15 Q They took a gold necklace from your brother-in-law?
- 16 A Yes.
- 17 Q They took a wallet from him?
- 18 A Yes.
- 19 Q They took your wife's wallet?
- 20 A Yes.
- 21 Q Yelled some more at your son with a gun to his head --
- 22 A (Witness nods affirmatively.)
- 23 Q -- and when they couldn't squeeze out anymore money
- 24 they left?
- 25 A Yes.

Abdul Bargas - Redirect examination
by Solicitor Wedekind

1 Q And I know you're not trying to be tricky, but you
2 didn't see where they went after they left your trailer?

3 A No.

4 Q And, like you said before, you don't know how they got there
5 and you don't know how they left there?

6 A Yes, I don't know how they arrived or how they left.

7 Q But you do know you didn't invite them into the house?

8 A I did not invite them in.

9 Q And it was nighttime outside?

10 A Yes, it was.

11 Q That's your trailer here in Lexington County?

12 A Yes.

13 Q Thank you.

14 THE COURT: Anything else without repetition?

15 RE CROSS EXAMINATION

16 BY MR. MADSEN:

17 Q You told me that you were asleep and that when you woke
18 up they were in the home, right?

19 A Yes.

20 Q But you just told Mr. Wedekind that you saw them force
21 your brother-in-law with a gun, which isn't true, is it?

22 You did not see that?

23 A No, when I woke up they were there I said.

24 Q So, that's not true, is it, that you saw it?

25 A No, I told him I didn't see.

Abdul Bargas - Redirect examination
by Solicitor Wedekind

1 MR. MADSEN: That's all the questions I have, Your
2 Honor.

3 THE COURT: All right.

4 SOLICITOR WEDEKIND: One question, sir.

5 THE COURT: As long as it's not one previously asked.

6 SOLICITOR WEDEKIND: No, sir.

7 REDIRECT EXAMINATION

8 BY SOLICITOR WEDEKIND:

9 Q The question would be the, your brother-in-law was held
10 at gunpoint.

11 When you woke up they had guns on him, correct?

12 A Yes.

13 Q Thank you.

14 THE COURT: All right. You can step down.

15 Everybody on the jury okay?

16 Anybody need to take a break?

17 (No response.)

18 THE COURT: Next witness.

19 SOLICITOR WEDEKIND: State would call Mrs. Mirna
20 Herrera, sir.

21 MIRNA HERRERA, being first duly
22 sworn, testified as follows:

23 CLERK: Have a seat. Once you're seated, speak up loud
24 and clear stating your name on the record.

25 WITNESS: My name is Mirna Idalia Herrera Rivas. It's

Mirna Herrera - Direct examination
by Solicitor Wedekind

1 M-Y-R-N-A.

2 Excuse me. Interpreter error.

3 M-I-R-N-A. I-D-A-L-I-A. H-E-R-R-E-R-A. R-I-V-A-S.

4 DIRECT EXAMINATION

5 BY SOLICITOR WEDEKIND:

6 Q Okay. Mirna, would you please tell the jury what
7 occurred at your home -- well, where did you live at that
8 time in June of 2010?

9 A I lived in West Columbia.

10 Q And did you live in a trailer park in Lexington County,
11 in West Columbia, in Lexington County?

12 A That's correct.

13 Q And were you living in a trailer in West Columbia?

14 A That's right.

15 Q Who was in the trailer living with you?

16 A In the trailer, Rigaberto, my brother, Abdul, me, and
17 my little son and little daughter.

18 Q Tell the jury what happened at around 1:00, between
19 12:00 and 1:00AM on June 16th that morning in the early
20 morning hours.

21 A That day I was with my family in the living room. We
22 were, we were watching TV. Around 11:30 my husband, my kids
23 and I, kind of fell asleep watching TV.

24 Q Okay. What else?

25 A Suddenly we woke up and I saw two black men with white

Mirna Herrera - Direct examination
by Solicitor Wedekind

1 t-shirts and one of them had a white handkerchief on his
2 head.

3 Q Okay. And then what happened?

4 A So they had my brother-in-law with a pistol against his
5 head, and they said to my brother-in-law calm down,
6 nothing's gonna happen. What they want is money he said,
7 and at that point I had my son. I was hugging him close to
8 me.

9 One of them grabbed my son and threw him down, and then
10 when they grabbed him they grabbed him by the leg and had
11 him hanging. So, my son started crying, and I told them to
12 give them back, and they said no. We need money if you want
13 us to give you your son back, and a mother who's desperate
14 will do anything for her son.

15 And, so, my husband said he was gonna give up and give
16 them the money that we had saved, and one of them said no,
17 let her get up. So, I got up and went to get my wallet,
18 it's a pink wallet, and there I found about \$300 all in
19 twenty dollar bills. And then when I opened my billfold
20 they saw there was a lot of money there. They grabbed it
21 and at that point they still didn't give my son back and
22 they were asking for more money, and I didn't have any other
23 choice. But I just got up and pulled my son back.

24 They said we need more money. So, they took my
25 brother-in-law's wallet, and my brother-in-law said I have a

Mirna Herrera - Direct examination
by Solicitor Wedekind

1 plasma TV in my room if you want to take that, and they said
2 no, we don't want that, we want money. And my
3 brother-in-law had a gold chain, and he took it off and gave
4 it to, gave it to them. Even then they didn't want to
5 leave. I don't know really how it happened, but they
6 decided to go.

7 Q Okay. And then what happened?

8 A Well, after that, when they left the parking, the, the
9 trailer park or when they left our house, we went out to see
10 what was going on, to see could we see who it was. My
11 brother-in-law, my husband, and I went outside. I want to
12 clarify that I did not see what type of car they were in,
13 but they were some neighbors outside.

14 Q Without going into -- don't go into what other people
15 saw. Only what you saw or you could hear and see.

16 A Okay.

17 Q So, did you see how they got there?

18 A I did not see how they arrived.

19 Q And after they put your son down and stopped pointing
20 the guns and left, did you see where they, how they left
21 there?

22 A No, we don't know how they left.

23 Q But you saw the guns?

24 A Yes, I saw two pistols, black pistols.

25 Q Okay. And you saw that it was nighttime?

Mirna Herrera - Direct examination
by Solicitor Wedekind

- 1 A Yes, it was nighttime.
- 2 Q It was your home?
- 3 A That's right.
- 4 Q Was anyone struck with the pistol?
- 5 A Yes, my brother-in-law was hit in the head with the
- 6 pistol.
- 7 Q Okay. Did they take any wallets from, from people?
- 8 A Yes, they took my wallet, they took his wallet, and the
- 9 chain.
- 10 Q Whose wallet when you say his?
- 11 A Mine, his, and his chain.
- 12 Q And who is his?
- 13 A Rigaberto, my brother-in-law.
- 14 Q Okay. And then after they took those items, they left?
- 15 A That's right.
- 16 Q Had you ever seen those two men before?
- 17 A No.
- 18 Q Did you invite them into your home?
- 19 A No.
- 20 Q Did you ever see Ms. Callahan in the home?
- 21 A No.
- 22 SOLICITOR WEDEKIND: Beg the Court's indulgence for a
- 23 moment, sir?
- 24 THE COURT: Yes, sir.
- 25 (Pause.)

Mirna Herrera - Direct examination
by Solicitor Wedekind

1 SOLICITOR WEDEKIND: Your Honor, if I could have these
2 marked for identification?

3 THE COURT: Four, five, and six?

4 SOLICITOR WEDEKIND: Yes, sir.

5 (WHEREUPON, two photographs were marked as State's
6 Exhibit Nos. 4 and 5 for identification purposes only at
7 this time.)

8 Q I want to show you, Mirna, what's marked for
9 identification as two photographs, State's No. 4 and State's
10 No. 5.

11 A Okay.

12 Q Does State's No. 4 for ID show your wallet or what
13 you -- does that appear to be your wallet?

14 A Yes, my wallet, my brother-in-law's wallet, and the
15 pistols.

16 Q Is there just one pistol?

17 A There were two pistols.

18 Q But this just shows one, right?

19 A Yes.

20 Q Does that, does that appear that it could be the, one
21 of the guns?

22 Does it look similar to the gun that was used in the
23 robbery of you?

24 A It looks like it.

25 Q Okay. So, four shows what appears to be your wallet

Mirna Herrera - Direct examination
by Solicitor Wedekind

- 1 and Rigaberto's wallet?
- 2 A That's right.
- 3 Q Okay. And State's identification No. 5 shows a picture
- 4 of what?
- 5 A My brother-in-law's necklace.
- 6 Q So, does it appear to be -- you don't have a name on
- 7 it, but does it appear to be the same one that was taken
- 8 from your brother-in-law?
- 9 A That's right.
- 10 SOLICITOR WEDEKIND: Okay. Beg the Court's indulgence
- 11 a moment, sir?
- 12 THE COURT: Yes, sir.
- 13 (WHEREUPON, a photograph was marked as State's Exhibit
- 14 No. 6 for identification purposes only at this time.)
- 15 Q I show you now what's marked for identification State's
- 16 No. 6.
- 17 Does that appear to be the trailer park that you lived
- 18 in --
- 19 A That's right.
- 20 Q -- from an overhead shot?
- 21 A That's right.
- 22 Q Are they all single wide trailers?
- 23 A That's right.
- 24 Q Was this a wealthy neighborhood?
- 25 A It's a humble neighborhood.

Mirna Herrera - Direct examination
by Solicitor Wedekind

1 Q And did many people from Hispanic background, Spanish
2 speaking people live there?

3 A That's right.

4 Q What day of the week was June 16th, 2010?
5 Do you recall?

6 A I don't remember exactly what day it was.

7 SOLICITOR WEDEKIND: Your Honor, I'd ask the Court to
8 take judicial notice that June 16th, 2010, was a Friday.

9 THE COURT: Any objections?

10 MR. CASTO: No objection, Your Honor.

11 THE COURT: All right. June 16, 2010, was a Friday.

12 Q Now, Mirna, where do come from originally?

13 A Mexico.

14 Q Okay. And were you here at, in June 16th, 2010,
15 without a documented visa?

16 A I'm sorry?

17 Q Were you here legally in the United States?

18 A Illegally.

19 Q Okay. And did you work a job where you had a regular
20 pay check or did you get paid in cash?

21 A I've worked in a laundry, a laundromat, and when I
22 first arrived here I worked in yard work.

23 Q But you got -- did you get paid on Fridays in cash?

24 A Yes.

25 Q Okay. And was Rigaberto here legally?

Mirna Herrera - Direct examination
by Solicitor Wedekind

1 A Illegal.

2 Q Illegal.

3 How about Abdul?

4 A Illegal.

5 Q Okay. Thank you. Please answer any questions that the
6 defense may have.

7 A Okay.

8 CROSS-EXAMINATION

9 BY MR. CASTO:

10 Q And to be sure, you go by Mirna, is that right?

11 A That's right.

12 Q All right. And when -- your story is this, that when
13 you wake up in the living room you see these two black males
14 in your living room, isn't that right?

15 A That's right.

16 Q And you've never seen them before then, have you?

17 A That's right.

18 Q And because you were sleeping you don't know how they
19 arrived there?

20 A That's right.

21 Q And because you were inside the house you don't know
22 how they left, is that right?

23 A That's right.

24 Q And each of these black males have or has a gun?

25 A That's right.

Mirna Herrera - Cross-examination
by Mr. Casto

- 1 Q And they're threatening you, correct?
- 2 A First they were threatening Ed, my brother-in-law.
- 3 Q And they eventually threatened everyone in that
- 4 trailer, is that right?
- 5 A That's right.
- 6 Q And they demand money from you-all, is that right?
- 7 A That's right.
- 8 Q And because they had guns they made you scared
- 9 obviously, right?
- 10 A Of course.
- 11 Q And because you were scared of them that they would
- 12 hurt you, you gave them whatever you could give them, isn't
- 13 that right?
- 14 A The main fear I had was that they had taken my, my son
- 15 away from me.
- 16 Q And because of that fear you thought that, that's why
- 17 you gave them those items you had?
- 18 A That's right.
- 19 Q And you didn't see you -- well, I'm sorry.
- 20 You only saw those two black males in that house that
- 21 evening, is that right?
- 22 A That's right.
- 23 MR. CASTO: I beg the Court's indulgence.
- 24 (Pause.)
- 25 MR. CASTO: No further questions. Thank you.

Mirna Herrera - Cross-examination
by Mr. Casto

1 THE COURT: Redirect?

2 SOLICITOR WEDEKIND: No, nothing further, sir.

3 THE COURT: Thank you, ma'am. You may step down.

4 All right. Can I see the lawyers just for a moment?

5 MR. MADSEN: Yes, sir.

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: All right. Okay. Next witness.

9 Let's, let's do this. Anybody in the jury need to take
10 a break?

11 (No response.)

12 THE COURT: I believe -- if you do, let me know.
13 otherwise we can go with this witness and conclude for the
14 day.

15 (No response.)

16 Okay. Go ahead. Call your next witness.

17 SOLICITOR WEDEKIND: State would call Sergeant
18 McIntyre.

19 ROBERT MCINTYRE, being first duly
20 sworn, testified as follows:

21 CLERK: Have a seat. Once you're seated, speak up loud
22 and clear. State your full name spelling your last.

23 WITNESS: Full name is Robert Paul McIntyre.

24 M-C-I-N-T-Y-R-E.

25 DIRECT EXAMINATION

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 BY SOLICITOR WEDEKIND:

2 Q Sergeant McIntyre, you just stated your name obviously.

3 Give the jury a little, little bit of your background
4 and experience and where you, where you grew up and what you
5 currently do.

6 A I was born and raised in Irmo, South Carolina. I went
7 to the Criminal Justice Academy in October of 2000. Started
8 my law enforcement career with the City of Cayce, worked
9 there for about three years, and I've been with West
10 Columbia for right at nine or ten years.

11 Q And you're currently a sergeant, is that correct?

12 A Currently a sergeant over the narcotic's unit West
13 Columbia.

14 Q And tell the jury a little bit about your
15 responsibilities as a sergeant.

16 A Well, I -- again I'm -- right now I'm in charge of the
17 narcotics unit. We do narcotics, narcotic related things
18 throughout the city.

19 Q And back in 2010, in June, particularly, were you a
20 sergeant then?

21 A I was. I was a patrol sergeant at that point in time.

22 Q What would your duties detail at that point?

23 A I was the reigning officer on shift. All the decisions
24 made through the city would of, would of been coming through
25 me, and I was kind of in charge of the day-to-day

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 operations.

2 Q Okay. And in particular on the date of June 16th,
3 what shift were you working?

4 A Night shift, which would of been 7:00PM to 7:00AM.

5 Q So, a 12-hour shift?

6 A Yes, sir.

7 Q Okay. And do you recall anything in particular
8 happening just after midnight on the date of June 16th,
9 2010?

10 A Yes, sir, we -- our dispatch dispatched all---

11 MR. CASTO: Objection. Calls for hearsay.

12 THE COURT: Yes, sir, Mr. Wedekind.

13 SOLICITOR WEDEKIND: Your Honor, just---

14 THE COURT: The question is did he receive a call?

15 SOLICITOR WEDEKIND: Yes, sir.

16 THE COURT: All right. And your objection is that's
17 hearsay?

18 MR. CASTO: What I think is coming -- I think that
19 question is fine, Your Honor.

20 THE COURT: He can answer the first question. You can
21 be more specific when we go from there.

22 SOLICITOR WEDEKIND: Yes, sir.

23 Q Did you receive a call from dispatch just after
24 midnight?

25 A Yes, sir.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 Q Okay. And as a result of that dispatch call, did --
2 were you looking for a particular vehicle of any sort?

3 A Yes, sir.

4 MR. CASTO: Objection. Calls for hearsay.

5 THE COURT: Overruled.

6 Q What were you looking for as a result of that dispatch
7 radio call?

8 A A dark blue Chevy Tahoe.

9 Q Okay. And did you, in fact, come across, anywhere in
10 that neighborhood or West Columbia jurisdiction, a dark blue
11 Tahoe?

12 A Yes, sir, about a block away from the incident
13 location.

14 Q Okay. And when you say incident location, you were
15 told to head to a particular address?

16 A [REDACTED].

17 Q Okay. And is that located in West Columbia?

18 A City of Columbia, Lexington County.

19 Q Okay. And let me show you what's marked for
20 identification as State's ID No. 6.

21 Do you recognize that, sir?

22 A Yes, sir.

23 Q Okay. What is that a picture of?

24 A That's an aerial view of [REDACTED], the trailer
25 park located there.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 Q And does it have Dew Avenue on there?

2 A Yes, sir.

3 Q And does it show Holland Street?

4 A Yes, it does.

5 Q And does Holland Street roughly parallel Dew Avenue?

6 A Yes, sir.

7 Q And the trailer park is in a U-shape configuration off
8 of Dew Avenue?

9 A Yes, sir.

10 Q Okay. Does this fairly and accurately depict the
11 appearance of that trailer park in West Columbia?

12 A Yes, sir.

13 Q As it appeared in June of 2010?

14 A Yes, sir.

15 SOLICITOR WEDEKIND: Your Honor, at this point the
16 State would move into evidence State's ID No. 6.

17 THE COURT: Any objection?

18 MR. CASTO: None, Your Honor.

19 THE COURT: All right. Six is in.

20 (WHEREUPON, State's Exhibit No. 6 was received into
21 evidence at this time.)

22 SOLICITOR WEDEKIND: And the State would request to
23 publish to the jury, sir.

24 THE COURT: You mean on the projector?

25 SOLICITOR WEDEKIND: Yes, sir.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 THE COURT: Yes, sir.

2 Q Okay. Is that the trailer park area that we're
3 circling right there?

4 A Yes, sir.

5 Q Okay. And what is this right here?

6 A That would be Dew Avenue.

7 Q And what is that right here?

8 A Holland Street.

9 Q Okay. So, Holland and Dew Avenue are parallel, is that
10 correct?

11 A Yes, sir.

12 Q Okay. When you were given a call from dispatch, where
13 were you located, and I'll, I'll give you the pointer.

14 A Well, the pointer actually wouldn't help. I was --
15 when the call initially came out I was at the intersection
16 of Jarvis Clap and where Highway 1 splits.

17 Q Okay. And roughly where would that be in configuration
18 or orientation to this photograph?

19 A Down there around the floor somewhere.

20 Q Okay. So, so, we're talking -- it would go about off
21 in, off in this direction?

22 A Right.

23 Q Okay. And you -- what happened -- let's see. You
24 started moving in the direction of this trailer park, and
25 from somewhere down in this area, right?

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 A Yes, sir.
- 2 Q Okay. And what -- tell the jury what you encountered
3 as you were making that movement in the direction of the
4 trailer park.
- 5 A I was coming up Hook Avenue approaching the
6 intersection of Hook Avenue and Holland Street. That's a
7 four way stop sign.
- 8 Q Okay.
- 9 A Dew Avenue is actually in the next block. I was
10 looking at Dew Avenue, and saw a dark color, dark blue Chevy
11 Tahoe at that stop sign.
- 12 Q And roughly, in configuration again, just point to it
13 where you would of intercepted and met that dark blue Tahoe.
- 14 A Where I initially saw him?
- 15 Q Where you saw him and where you pulled him over. It's
16 backwards.
- 17 A Oh, sorry. It's right around there maybe.
- 18 Q Okay. So, you, you were told to look for a dark blue
19 Tahoe, one o'clock in the morning roughly?
- 20 A Yes, sir.
- 21 Q And you saw a dark blue Tahoe.
22 what did you do?
- 23 A I initiated a traffic stop on it.
- 24 Q Okay. And when you, when you pulled that vehicle over,
25 what occurred?

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 A I made contact with the driver.

2 Q Were you alone?

3 A No, sir, I was -- two other officers were with me.

4 Q Two other officers.

5 Okay. And what, what did you and those officers do
6 when you pulled over the dark blue Tahoe?

7 A I made contact with the driver. The other two officers
8 made contact with the front seat passenger, which was a
9 black male, and back seat passenger, which was another black
10 male.

11 Q And who was the driver?

12 A The defendant.

13 Q Okay. So, is it a female?

14 A Black female, yes, sir.

15 Q Okay. And do you see -- you said the defendant, but
16 did you see her in the courtroom today?

17 A I do.

18 Q Would you please point her out or describe her?

19 A (Witness points.)

20 Young lady right there.

21 Q At the table with the---

22 A The brown button up shirt.

23 SOLICITOR WEDEKIND: Your Honor, if the record could
24 reflect that he identified the defendant, Ms. Carrie
25 Callaham.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 THE COURT: (Nods affirmatively.)

2 Q So, you said that she was the person that was behind
3 the wheel.

4 Did you---

5 A Yes, sir.

6 Q What happened then?

7 what did you do when you saw her as the driver?

8 A I asked for her driver's license and paperwork for the
9 vehicle.

10 Q And did she provide that to you?

11 A No, she did not. She said she didn't have her driver's
12 license on her.

13 Q Okay. And what action, if any, did you take after
14 getting a response that she didn't have her driver's
15 license?

16 A I asked for her name and her date of birth, which is a
17 common practice.

18 Q Okay. And what would that have done for you?

19 A We can run her name and date of birth versus her
20 driver's license number. If she provided a driver's
21 license, I can run a number, but we can also run her name
22 and date of birth and it will come back with her driver's
23 license information.

24 Q So, the DMV -- you have a database access to the
25 Department of Motor Vehicle records?

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 A Yes.

2 Q And it would of told you if there was a valid license
3 under a particular name?

4 A Yes.

5 Q And date of birth?

6 A Yes.

7 Q So, she gave you the name of what?

8 A Myra Nicole.

9 Q Okay. And did you get a date of birth?

10 A Yeah, but I don't recall the date of birth she gave me.

11 Q But did you follow up that information and see if it
12 was valid?

13 A Right. I requested her name, that name and date of
14 birth through the Department of Motor Vehicles, and it came
15 back that it wasn't on file, which means that, by that name
16 and date of birth, there was no driver's license attached to
17 it.

18 Q Did she provide you with a registration?

19 Did you ask for it?

20 A I asked for it. I'm not -- I can't remember if she
21 provided the registration or not.

22 Q And you said two other officers were with you, is that
23 correct?

24 A Yes, sir.

25 Q Okay. And the other individuals, what were they doing

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 in the car?

2 A Just sitting there.

3 Q And did you receive -- did you contact dispatch and
4 said that you had located the dark blue Tahoe?

5 A Yes, when I was initially calling out the traffic stop.

6 Q And without going into anything that somebody said, did
7 your demeanor or handling of the case suddenly change as a
8 result of contact with the dispatch?

9 A Yes, we were -- yes.

10 Q And what, what was the change in your stop technique?

11 MR. CASTO: Objection. This would call for hearsay.

12 THE COURT: Mr. Wedekind, you say it changed from one
13 type of stop to another?

14 SOLICITOR WEDEKIND: Yes, sir.

15 THE COURT: Okay. He can, he can, he can testify to
16 that.

17 Q Okay. What, what change, if any, did you make in your
18 stop procedures or technique?

19 A The, the nature of the call changed from a, from what
20 came out initially as a burglary to, to an armed robbery.

21 Q Okay. And what, what did you do differently once you
22 heard it was an armed robbery?

23 A It was also ascertained that the armed robbery involved
24 at least one handgun. Based on that information we got all
25 three of the occupants out of the vehicle.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 Q Okay. And you placed them out of the vehicle.

2 Did you put them in handcuffs?

3 A Yes, for investigative detention.

4 Q Did you separate them from each others company?

5 A Yes, sir.

6 Q And where were they separated and how?

7 A They were sat down individually in three separate
8 police cars.

9 Q Okay. And those other officers again were who?

10 A Officer Art Seboe and Investigator Nick Williams.

11 Q Okay. And once they were out of the vehicle, what, if
12 anything, happened when the front passenger got out?

13 Do you recall?

14 A Yes, sir, there was a gold bracelet of some sort, when
15 he got out of the car, it fell from his lap.

16 Q Okay. And what, what happened?

17 Where did it land?

18 A In the floorboard of the vehicle.

19 Q Okay. Was it recovered?

20 A Yes, it was.

21 Q What was observed when it was recovered?

22 A In plain view there was a, the, a butt of a pistol.

23 Q Okay. And at that point did you look into the vehicle
24 any further?

25 A Yes, sir, based on that we did a probable cause search

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 of the vehicle and found another handgun, which was located
2 in the back seat.

3 Q Okay. And did you notice anything else about the, the
4 vehicle, the interior?

5 Did you disturb anything?

6 A Not, not initially, no, sir. We took pictures of --.

7 Q You said you took photographs, right?

8 A Yes, sir.

9 SOLICITOR WEDEKIND: Beg the Court's indulgence for a
10 moment, sir.

11 (Pause.)

12 SOLICITOR WEDEKIND: Your Honor, if I could have these
13 marked for identification please?

14 THE COURT: All right. State's 7, 8, 9?

15 SOLICITOR WEDEKIND: There's several, sir. I'm gonna
16 have them --.

17 (WHEREUPON, six photographs were marked as State's
18 Exhibit Nos. 7 through 12 for identification purposes only
19 at this time.)

20 Q Sergeant McIntyre, showing you what's marked for
21 identification as State's ID No. 4, State's ID No. 5,
22 State's ID No. 7, 8, 9, 10, 11, and 12.

23 Do you recognize those, sir?

24 A Yes, sir.

25 Q Did you take those photographs?

Robert McIntyre - Direct examination
by Solicitor Weдекind

1 A I did.

2 Q Do they fairly and accurately depict the condition of
3 that dark blue Tahoe that you stopped on June 16th, 2010?

4 A Yes, they do.

5 Q Okay. And have there been any additions, alterations,
6 or deletions to those photographs that you took?

7 A No, sir.

8 SOLICITOR WEDEKIND: Okay. Your Honor, at this time
9 the State would move these exhibits into evidence.

10 THE COURT: Four, five, 7 through 12?

11 SOLICITOR WEDEKIND: Yes, sir.

12 MR. CASTO: No objection, Your Honor.

13 (WHEREUPON, State's Exhibit Nos. 4, 5, and 7 through 12
14 were received into evidence at this time.)

15 SOLICITOR WEDEKIND: Your Honor, if I may publish?

16 THE COURT: Yes, sir.

17 Q States ID No. 4, what is that a picture of?

18 Let me give you a laser pointer. They keep coming down
19 or anything.

20 A The pink wallet there.

21 Q Is that the wallet that you -- is that in the condition
22 that you saw it and you took a photograph?

23 A Yes, sir, and then the blue wallet right there was also
24 taken from---

25 Q What, what is that right there?

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 A That's the handgun.
- 2 Q One of the two?
- 3 A One of the two, yes, sir.
- 4 Q Okay. Now, did you -- once, once these were
- 5 photographed, did you then take them into custody and
- 6 examine them?
- 7 A Yes, sir.
- 8 Q Okay. Was there any identification associated with
- 9 that?
- 10 A Yes, sir.
- 11 Q And whose name is on it?
- 12 Do you recall?
- 13 A Do we have the report?
- 14 I don't have that up here with me. I think it was the
- 15 female, female identification.
- 16 Q We'll get you a copy.
- 17 A I'm sorry.
- 18 Q It's okay.
- 19 A I don't see in here the pink wallet and any sort of
- 20 identification in it.
- 21 Q Let me show you this to see if it refreshes your memory
- 22 of the incident reports in these paragraphs right here.
- 23 A Yes, it says that the---
- 24 Q Does that refresh your memory?
- 25 A Yes.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 Q And the, when you looked at this wallet, whose
2 identification, if any, was in there?

3 A That's what I'm saying. I don't -- the, the only
4 identification that was found -- hang on. Let me make sure
5 I'm reading this right. I'm sorry. It did contain
6 Mr. Ramirez's identification.

7 Q The blue one had Mr. Rigaberto's?

8 A According to this, it had -- the pink one had both the
9 victim's identification in it.

10 Q Okay. I show you State's 5.
11 what is that a picture of?

12 A Gold necklace.

13 Q Okay. And State's No. 7, is that a depiction of the
14 same necklace on the seat?

15 A Yes, sir.

16 Q Okay. Just from a wider shot?

17 A Right.

18 Q What color is the side of that vehicle that you're
19 looking in the door of?

20 A Dark blue.

21 Q Okay. And State's No. 12, does that depict the wallet
22 that had Mr. Rigaberto's ID in it?

23 A No, sir, the pink wallet had it.

24 Q The pink one was the owner.

25 Okay. Does this depict what, what are of the car?

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 A That is the floorboard of the back seat of, directly
2 behind the driver.
- 3 Q And that's the same as what we saw in State's 4, but
4 just from a -- this is a tighter shot of what you saw the
5 wide shot of, the last?
- 6 A Yes, sir.
- 7 Q And this is a depiction in State's No. 11 of what?
- 8 A Handgun.
- 9 Q And State's No. 8 shows --?
- 10 A I can't really see that.
- 11 Q Let me show you it to you directly. For some reason
12 that color's not coming through.
- 13 A Yes, that's another handgun.
- 14 Q Okay. So, that's one of the two guns you found in the
15 vehicle?
- 16 A Yes, sir.
- 17 Q State's No. 9, what does that depict?
- 18 A That would of been the inside of the purse that was
19 found --
- 20 Q Okay.
- 21 A -- and its contents.
- 22 Q Okay. And then State's No. 10, can you tell?
23 Give it to you again.
- 24 A No, sir, I'm sorry.
- 25 Q What is State's 10?

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 A Oh, it's the glove box. I'm sorry.
- 2 Q And were you able to find any registration as to who
- 3 that vehicle, that dark blue Tahoe was registered to?
- 4 A Yes, sir, when we towed it we had to have, got the
- 5 registered owner, the registered owner's information and put
- 6 on the tow sheet.
- 7 Q So, you said it was registered to who?
- 8 I'm sorry.
- 9 A I, I do not recall the owner's name.
- 10 Q Okay.
- 11 A But, again, it would, it would be on the tow sheet.
- 12 Q All right. Now, did you take those two firearms that
- 13 were in the photographs that we just looked at, did you take
- 14 those into custody?
- 15 A I did.
- 16 Q Okay. And what condition were they in when you picked
- 17 them up?
- 18 Were they loaded or unloaded?
- 19 A Excuse me again. This case is two years old. I think
- 20 they were -- they were loaded.
- 21 Q Okay. And what caliber were they?
- 22 A 9-millimeter.
- 23 Q Okay. Both?
- 24 A Yes, sir.
- 25 Q Okay. And did you record the serial numbers for those

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 two pistols?

2 A Yes, sir.

3 Q Okay. And do you have access to those in your incident
4 record that reflect that?

5 A I think they're on the evidence sheet.

6 Q Let me show you a document.

7 Does that refresh your memory?

8 A Yes, sir, this is the evidence sheet we have to fill
9 out every time we log in evidence.

10 Q Okay. And whose name is on that?

11 A Mine.

12 Q And who collected the evidence that you're referring
13 to?

14 A Me.

15 Q Okay. Do you have any recollection now as to the
16 serial numbers of the two pistols that you recovered?

17 A Yes, sir.

18 Q Would you read them out for the jury please?

19 A One of them, the 9-millimeter Taurus, the serial number
20 is T as in Tom, N as in Nancy, B as in Bravo, 46198, D as in
21 Delta.

22 Q Okay. And what's the other one?

23 A T as in Tom, C as in Charlie, K as in kilo, 46173.

24 SOLICITOR WEDEKIND: Your Honor, I'm gonna take these
25 one-by-one.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 THE COURT: All right.

2 SOLICITOR WEDEKIND: But just for the edification---

3 THE COURT: Ladies and gentlemen, if, if any firearm or
4 any weapon of any kind is handled in the courtroom I wanted
5 to assure you that it is been confirmed that the weapon is
6 not capable of being fired in its current state. It is --
7 the, the chamber is opened, it is locked, and the key to
8 that lock you see is back there locked in another box. So,
9 there's, there's no way that that guard can be released,
10 and, again, if anybody handles it, it will be pointed down
11 at the floor at all times.

12 SOLICITOR WEDEKIND: Your Honor, I'm gonna pass this to
13 the witness.

14 THE COURT: Yes, sir, make sure you point that down.

15 SOLICITOR WEDEKIND: Yes, sir.

16 And, Officer McIntyre, if you please examine the serial
17 number and markings on that weapon?

18 A Yes, sir.

19 Q Okay. And would you compare that with the property
20 sheet that you turned into evidence?

21 A They're one in the same.

22 Q Okay. So, is that the same weapon that you recovered
23 in the back of the vehicle?

24 A Yes, sir.

25 Q And just on looks alone, does that correlate to this

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 pistol in State's No. 8?

2 A Yes, sir.

3 SOLICITOR WEDEKIND: Okay. Your Honor, this one is
4 also secured.

5 THE COURT: All right. The same, the same instruction,
6 ladies and gentlemen.

7 Q And if you'd do the same. Please examine the serial
8 number and compare it to the property sheet.

9 A Okay.

10 Q Does that compare -- does that compare identically with
11 the one that you wrote on the property sheet?

12 A Yes, sir.

13 Q And does that comport to be the same one that you
14 recovered from the back of the vehicle---

15 A Yes, sir.

16 Q ---depicted in State's 11?

17 A Yes, sir.

18 SOLICITOR WEDEKIND: Your Honor, at this time the State
19 would ask to identify, mark the two pistols. One as State's
20 No. 13 I believe.

21 THE COURT: And the other?

22 SOLICITOR WEDEKIND: State's 14.

23 (WHEREUPON, the two guns were marked as State's Exhibit
24 Nos. 13 and 14 for identification purposes only at this
25 time.)

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 SOLICITOR WEDEKIND: And, Your Honor, at this time the
2 state would move into evidence State's ID 13 and State's ID
3 14.

4 THE COURT: Objections?

5 MR. CASTO: No, Your Honor.

6 THE COURT: State's 13 and 14 are in.

7 SOLICITOR WEDEKIND: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit Nos. 13 and 14 were
9 received into evidence at this time.)

10 Q Were you able to discern the caliber of both of those
11 weapons?

12 A Yes, sir.

13 Q And what are they?

14 A 9-millimeter.

15 SOLICITOR WEDEKIND: If we could have these marked as
16 15 and 16, sir.

17 (WHEREUPON, two evidence bags were marked as State's
18 Exhibit Nos. 15 and 16 for identification purposes only at
19 this time.)

20 Q I'm gonna show you what's marked as identification as
21 State's ID 15 and State's ID 16.

22 Do you recognize those?

23 A Yes, sir, that would of been the clips and ammunition
24 used for both of the aforementioned handguns.

25 Q Thank you.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 And did you inventory those on the property receipt?

2 A Yes, sir.

3 Q And what did you -- what did you inventory the first
4 magazine, State's No. 15?

5 Does that correlate to a particular firearm, State's
6 No. 13?

7 A Yes, sir.

8 Q Okay. And does the second one correlate to be the
9 magazine to State's No. 14?

10 A Yes, sir.

11 Q And is one longer in length than the second one---

12 A Yes, sir.

13 Q ---than the other?

14 So, the long one goes with the, the longer handle
15 pistol, State's ID or State's No. 13?

16 A That's right.

17 Q And the shorter one that you have that's State's No.
18 16, that goes with State's No. 14?

19 A Yes, sir.

20 Q And the loose cartridges that are in the bottom, were
21 these contained in this state or were they in the magazines
22 when you first took it from the weapon?

23 A With, within the magazine.

24 SOLICITOR WEDEKIND: Okay. Your Honor, at this time
25 the State would move into evidence State's ID No. 15 and No.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 16.

2 THE COURT: Objections?

3 MR. CASTO: We object. We don't believe the proper
4 foundation's been laid. They don't have serial numbers on
5 them or---

6 THE COURT: They what?

7 MR. CASTO: There isn't the proper chain of custody
8 specifically.

9 THE COURT: All right. We'll deal with that later.

10 MR. CASTO: Yes, sir.

11 THE COURT: They have been offered and we'll, we'll
12 rule on that, we'll discuss that later and I'll rule on it.

13 SOLICITOR WEDEKIND: Yes, sir, I'll develop that.

14 THE COURT: Okay.

15 Q Sergeant McIntyre, regarding the property receipt that
16 we were just referencing, you said you inventoried what you
17 took from that vehicle, correct?

18 A Yes, sir.

19 Q You've listed it?

20 A Yes, sir.

21 Q And you wrote down the serial numbers?

22 A Yes, sir.

23 Q And you turned it into what technique -- what did you
24 do with them?

25 A We have a evidence drop box that's a secured area that

Robert McIntyre - Direct examination
by solicitor Wedekind

1 only our evidence custodian has access to.

2 Q Okay. And did you put them in any kind of container
3 when you were inventorying them?

4 A Yeah, there's the plastic bags that they're currently
5 in.

6 Q Okay. And what are they called?

7 A Evidence bags.

8 Q Okay. And are they designed with any particular
9 function when you, when you put items inside of them?

10 Can you---

11 A Yeah, they're red line across where your hand is. It's
12 a, just seals it up and it's kind of designed to mutilate
13 itself if it's been tampered with.

14 Q So, when you taped the bag, before you put something in
15 it, do you mark what's gonna be put inside the bag?

16 A Yes.

17 Q And just call out for the jury -- I know this is
18 simple.

19 But what, what's written at the top and then also
20 slightly down on the bag?

21 A Are you talking about this part here?

22 Q Yes.

23 A Evidence/property, and then chain of custody.

24 Q Okay. And did you fill out those markings on that bag?

25 A I did.

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 Q Is that your handwriting?
- 2 A Yes.
- 3 Q Did you annotate it and sign what it contained?
- 4 A Yes, sir.
- 5 Q And when you talked about that red mark at the top, did
- 6 you seal it?
- 7 A Yes, sir.
- 8 Q Okay. And after you put those contents in there, what
- 9 did you do with it?
- 10 A I dropped it in that, that, our evidence locker, our
- 11 evidence room.
- 12 Q Okay. And then can anybody just walk in and fish it
- 13 out and get anything out of that box?
- 14 A No, sir.
- 15 Q So, once you put it in and it's in that bag, you seal
- 16 it?
- 17 A Yes, sir.
- 18 Q And then you drop it into a, what kind of container?
- 19 A It's like a little, almost like a mail slot is kind of
- 20 what it is.
- 21 Q Like a mail box?
- 22 A It's a little bit bigger and it just goes right into
- 23 the secured room.
- 24 Q So, things go in, but they don't come out?
- 25 A Not unless our evidence custodian gives it to us.

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 Q Okay. And does that apply as well to State's No. 16?
- 2 A Yes, sir.
- 3 Q Did you do the same with this?
- 4 A Yes, sir.
- 5 Q Did you annotate and fill out this?
- 6 If you would, examine it.
- 7 A Yes, sir.
- 8 Q And what did you do after you sealed, put those items
- 9 in there and sealed it?
- 10 A Put it in that little drop box.
- 11 Q Okay. Sergeant McIntyre, I'm showing you a West
- 12 Columbia Police Department record of towed vehicle report.
- 13 Do you recognize that?
- 14 A Yes, sir.
- 15 Q Okay. Who filled that out?
- 16 A I did.
- 17 Q And did you sign it at the bottom?
- 18 A I did, yes, sir.
- 19 Q Does that annotate a record about a vehicle?
- 20 A Yes, sir, it does.
- 21 Q Would you describe the vehicle please?
- 22 A 2003 Chevrolet Tahoe.
- 23 Q And---
- 24 A Blue in color.
- 25 Q Blue in color.

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 Okay. Who was listed as the driver?
- 2 A Myra Edwards.
- 3 Q Okay. And is that the first name that you were given
- 4 by the defendant, Carrie Callahan?
- 5 A No, sir.
- 6 Q You were given what name?
- 7 A Myra Nicole.
- 8 Q Okay. And what was the second name you were given?
- 9 was it listed on that sheet?
- 10 A Yes, sir, Myra Edwards.
- 11 Q Okay. And who is the vehicle ultimately -- did you
- 12 search that vehicle and find out who it was titled and
- 13 registered to?
- 14 A Yes, sir.
- 15 Q And what is the name of that person?
- 16 A Mark Anthony Edwards.
- 17 Q Okay. Sergeant McIntyre, I'm showing you a brown paper
- 18 bag marked evidence property at the top.
- 19 Would you examine that please?
- 20 A Talking about the contents?
- 21 Q Well, first, the brown bag on the outside.
- 22 A Okay.
- 23 Q Do you recognize that?
- 24 A Yes, sir.
- 25 Q And what is that, sir?

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 A It's an evidence bag.
- 2 Q Okay. And is that a little different than what we just
- 3 looked at with the plastic ones?
- 4 A Yes, sir.
- 5 Q Okay. And what was listed on the evidence property
- 6 that was put into that bag on the outside?
- 7 A Three 9-millimeter Ruger, Ruger bullets located in the
- 8 front pocket.
- 9 Q Okay. And looking at that, would you mark what you did
- 10 with it with the chain of custody?
- 11 Do you recall?
- 12 A Uh-huh. (Affirmative).
- 13 Q What did you do?
- 14 A I put it in that same drop box --
- 15 Q Okay.
- 16 A -- after sealing it.
- 17 Q Okay. Now, if you would, look on the interior of the
- 18 bag, and what is contained inside the bag?
- 19 A Four rounds of ammunition.
- 20 Q And what caliber?
- 21 If you look at them on the head stamps.
- 22 A All of them being 9-millimeter.
- 23 Q Okay. So, in your property report you listed how many
- 24 rounds?
- 25 A Three.

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 Q But what's actually in the bag?
- 2 A Four.
- 3 Q Okay. And your receipt that you filled out on there,
- 4 how many did you list in the receipt?
- 5 A Three.
- 6 Q Three. Great.
- 7 Okay. Where did you recover those three or four as in
- 8 this bag?
- 9 Where did you recover those 9-millimeter rounds from?
- 10 A The front packet of the defendant.
- 11 Q By defendant, which one are you talking about?
- 12 A Ms. Callahan.
- 13 Q So, how did you go about finding those rounds in her
- 14 person and where did you find them?
- 15 A We just did a, based on the totality of the
- 16 circumstances, we did a search of her person.
- 17 Q You had placed her under arrest and you searched her
- 18 person why?
- 19 A Because of the -- I mean because of the, because of the
- 20 incident.
- 21 Q Okay. So, you had searched Mr. Quincy Holley?
- 22 A Yes, sir.
- 23 Q Okay. And you searched Mr. Ricky Bell?
- 24 A I did.
- 25 Q And he was in the vehicle, and you searched who?

Robert McIntyre - Direct examination
by Solicitor Wedekind

- 1 A Ms. Callaham.
- 2 Q Okay. So, in finding -- Mr. Ricky Bell was seated
- 3 where?
- 4 A I say he was in the front seat.
- 5 Q Okay. And that's where State's 13 was found?
- 6 A Yes, sir.
- 7 Q Okay. And Quincy Holly was seated where?
- 8 A Directly behind Ms. Callaham.
- 9 Q And that's where State's 14 was found?
- 10 A Right.
- 11 Q Okay. When you searched those other two individuals,
- 12 Quincy Holly and Ricky Bell, did you find any additional
- 13 weapons on them?
- 14 A I don't believe. Not on their person, no, sir.
- 15 Q Okay. And when you searched Carrie Callaham, it was
- 16 under what basis?
- 17 You thought what?
- 18 A It was for -- I mean at that point in time it was for
- 19 officer safety and---
- 20 Q Okay.
- 21 A ---because of the threat of a weapon.
- 22 Q And you found these four rounds where?
- 23 A In her pocket.
- 24 Q Okay. You took them from her and then what did you do
- 25 with them?

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 A sealed them in that envelope or that bag.

2 Q And you put it in there and you noted on your property
3 sheet?

4 A Yes, sir.

5 Q And do these appear, the four rounds that are in here,
6 appear to be the same caliber as what went into State's 15
7 and 16?

8 A Yes, sir.

9 Q And are they're all, all three bags contain the same
10 cartridge or caliber and chamber rounds?

11 A Yes, sir.

12 Q All of like ability to go in both weapons?

13 A Right.

14 SOLICITOR WEDEKIND: Your Honor, if we could have this
15 marked as State's 17 I believe.

16 THE COURT: The bag?

17 SOLICITOR WEDEKIND: The bag, yes, sir.

18 THE COURT: State's 17.

19 (WHEREUPON, the evidence bag was marked as State's
20 Exhibit No. 17 for identification purposes only at this
21 time.)

22 Q So, you said you searched her and you found those
23 cartridges inside, and you said she gave you the name of
24 Myra Nicole?

25 A Yes, sir.

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 Q That was the first name?

2 A Yes, sir.

3 Q And then there was a second name of what?

4 A Myra Edwards.

5 Q Okay. And at that point you had searched her, she was
6 taken into custody, did you turn her over to any other
7 officer at the West Columbia Police Department?

8 A Yes, sir, they were, they were subsequently interviewed
9 by Investigator Moore.

10 Q Okay. And at that intersection where you had the blue
11 Tahoe, how -- did you take them somewhere from there, from
12 that scene, the three individuals?

13 A We, we transported them back to the West Columbia
14 Police Department.

15 Q And how far approximately is that from where you made
16 the stop?

17 A Two miles maybe.

18 Q Okay. So, you put them in the car, you drove them to
19 the West Columbia Police Department, you turned them over
20 for interviews with investigators?

21 A Yes, sir.

22 Q Was that the conclusion of your activity that night?

23 A Yes, sir.

24 Q When you asked -- after the initial question about the,
25 about the, the driver's license and the absence of it, did

Robert McIntyre - Direct examination
by Solicitor Wedekind

1 you then Mirandize all those, three of those individuals
2 before you put them in your car?

3 A No, sir.

4 Q Okay. Did you interrogate them further other than to
5 ask for their names and identification?

6 A No, sir.

7 Q And you said that you ran the initial check on Myra
8 Nicole and that came up a negative?

9 A Right.

10 Q And what about the other name, Edwards, Ms. Edwards?

11 A I believe that also came back that it wasn't on file.

12 Q And did you do that through a DMV motor records check
13 with a comparison of the photographs of that individual
14 driver's license with the individual you saw?

15 A I didn't, no, sir.

16 Q Okay. Thank you. Please answer any questions that
17 defense may have of you.

18 MR. MADSEN: Your Honor, may we approach?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 THE COURT: All right. Thank you. Ladies and
23 gentlemen, we're going to break for the day. Appreciate
24 your attention this afternoon. We're gonna get back
25 together tomorrow morning at 9:30. Please be in your jury

1 room at that time.

2 I know you know, but I'm going to tell you now. That
3 is you may not discuss this case with anyone. You can not
4 read anything about it, listen to anything about it, or
5 undertake to do any research on your own. Just put this
6 case, as far as the information is concerned, out of your
7 mind, and we'll be getting back together tomorrow morning
8 and resume the trial.

9 Thank you very much for your attention this afternoon.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Sergeant, you can step down.
13 You are not permitted to discuss your testimony with anyone
14 at all, and, of course, if someone wants to inquire in that
15 tomorrow, they're able to do so. So, sir, just follow that
16 instruction.

17 WITNESS: Yes, sir.

18 THE COURT: Make sure that the court reporter has any
19 exhibits that have been marked and you're going to give them
20 to the clerk before you leave.

21 All right. If everybody can be here about 9:15 in the
22 morning.

23 MR. CASTO: Yes, sir.

24 THE COURT: The defendant's custody status?

25 MR. CASTO: Your Honor, she is out on bond. She's been

1 out. I believe she got out a couple months after this
2 incident. So, she's been out well over a year and a half.
3 I've never had any issue with her.

4 THE COURT: What's the State's position?

5 SOLICITOR WEDEKIND: Your Honor, I'm sorry. On the
6 gravity of these charges, I would never recommend her not
7 being out. I'm sorry.

8 MR. CASTO: And, Your Honor, we ask that Court allow
9 her to stay out. She's always come by and I've always known
10 where to find her and has not been hard to find or anything
11 like that. Hasn't given me any indication of any problem.

12 THE COURT: All right. Stand up, Ms. Callaham.

13 (WHEREUPON, the defendant was placed under oath at this
14 time.)

15 THE COURT: You are Carrie Denise Callaham?

16 DEFENDANT: Yes, sir.

17 THE COURT: I'm gonna allow you to remain out on your
18 own recognizance on one condition, and it will be a simple
19 condition.

20 You can put your hand down.

21 You be back in this courtroom tomorrow morning no later
22 than ten minutes after 9:00.

23 DEFENDANT: They told me to be back at their office.

24 THE COURT: All right. If your lawyers want you at a
25 different location, I know their offices are here, but if

1 they, they want you somewhere else, you go where they tell
2 you. But you need to be in this room at ten after.

3 DEFENDANT: Yes, sir.

4 THE COURT: All right. And if you're not, two things
5 are gonna happen. I'll send somebody to find you and then
6 you'll be in custody the rest of the trial during the breaks
7 and so forth and also we'll go on without you if you're not
8 present.

9 Do you understand that?

10 DEFENDANT: Yes, Your Honor.

11 THE COURT: In addition, if we break for any reason,
12 you're not to go anywhere without my specific permission,
13 and will be required to be back exactly if not before the
14 point that we are to resume. In addition, you may not have
15 any contact with any witnesses in this case. I don't know
16 what your lawyer's may have planned in that regard. They
17 can certainly contact witnesses, but you can't. You're
18 forbidden from doing it.

19 Do you understand that?

20 DEFENDANT: Yes, sir.

21 THE COURT: All right. Is that suitable, Mr. Casto?

22 MR. CASTO: Yes, sir. It sure is. Thank you.

23 THE COURT: All right. That's over the State's
24 objection in this case.

25 Okay. Anything before we break?

1 SOLICITOR WEDEKIND: No, sir, Your Honor.

2 THE COURT: All right.

3 SOLICITOR WEDEKIND: Except for Mr. Whetstone. He will
4 not be with us. He has a family obligation.

5 THE COURT: That's right. He told me that and I guess
6 he'll be on his own.

7 All right. Thank you very much and we'll move forward
8 tomorrow.

9 If I could see the lawyers up here for a moment.

10 MR. CASTO: Yes, sir.

11 (Whereupon, a bench conference was held at this time.)

12 MR. CASTO: Thank you, Your Honor.

13

14

15 (WHEREUPON, Court was in recess for the evening.)

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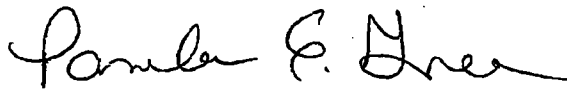
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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Lexington County, South Carolina, on the 23rd day of May, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 11th, 2012



PAMELA E. GREEN, Court Reporter

1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

3
4
5 STATE OF SOUTH CAROLINA

6 -vs-

7 CARRIE DENISE CALLAHAM,

8 Defendant.
9

}
} TRANSCRIPT OF RECORD

}
} 11-GS-32-01734, et al
}

10 May 24, 2012
11 Lexington, South Carolina
12
13

14 B E F O R E:

15 HONORABLE GEORGE C. JAMES, JR., Judge; and a jury.
16
17

18 A P P E A R A N C E S:

19 LAWRENCE G. WEDEKIND, Asst. Solicitor
20 Attorney for the State

21 ROBERT M. MADSEN, Public Defender
22 BENNETT E. CASTO, Asst. Public Defender
23 Attorneys for the Defendant
24

25 L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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DEFENDANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Rap sheet	169	

1 (The following proceedings are reported on
2 May 24, 2012.)

3 THE COURT: If the lawyers would note for any
4 appellate purposes that we do have a new court reporter
5 in the case. Before it was Pamela Green. Sometimes if
6 you look back on the schedule it might not show a
7 substitution. Of course, we have Ms. Pantsari today.
8 Just note that for your file.

9 I understand the State has an issue?

10 MR. WEDEKIND: Yes, sir. The State would
11 request to expand the witness list. We have found one
12 other witness who we believe we would like to call in
13 the case in chief. It is a Mr. Marcelo Prado.

14 THE COURT: How do you spell that?

15 MR. WEDEKIND: It's M-A-R-C-E-L-O, P-R-A-D-O.

16 THE COURT: And his input would be?

17 MR. WEDEKIND: He is the person who made the
18 9-1-1 call, sir, that initiated the police response in
19 this case.

20 THE COURT: What else is he going to say?

21 MR. WEDEKIND: He is going to say -- the gist
22 of his testimony, having talked with him a couple of
23 minutes ago -- is that he and some friends had been out
24 drinking. They returned home. They saw the blue Tahoe,
25 which was not -- it was unusual to the neighborhood.

1 They said they saw a female behind the wheel.

2 He walked into his trailer across the street
3 from 6, which is where the incident occurred, and that
4 shortly thereafter he heard a knock at the door. He
5 didn't answer it.

6 Then he got a quick phone call from another
7 friend who is an adjacent to, I guess, Number 5 next to
8 Number 6 saying, "Hey, don't go out. There is a robbery
9 going on in 6." So he said "Why don't you call the
10 police?" And the guy said, "Because I'm afraid." So he
11 then made the call to the police.

12 THE COURT: Did he see anything else?

13 MR. WEDEKIND: He says he did not see
14 Rigiberto at gunpoint on the outside, but I think the
15 fact that he said there was a robbery in progress would
16 indicate that somebody saw something on the outside that
17 led to the incident.

18 THE COURT: Somebody told him there was a
19 robbery?

20 MR. WEDEKIND: Yes, sir. We would submit that
21 was an excited utterance. He said the fellow was very
22 agitated.

23 THE COURT: First of all, does the defendant
24 object to the witness being called at all or do you
25 object to parts of the testimony that they indicate they

1 want to offer?

2 MR. MADSEN: We absolutely object to the
3 witness being called at all. This is almost a
4 two-year-old case, Your Honor. Apparently they just
5 talked with this guy. They alluded to it in their
6 opening statement.

7 They have known this was going on. They
8 called the case. The only thing I can think of is
9 things haven't been going like they had planned and so
10 they are kind of scrambling and adding to it.

11 Ultimately, Judge, when they give a witness
12 list and it comes to court and then they just add
13 witnesses later, why even have a witness list? Why even
14 get to that point? And we would strenuously object to
15 the adding of this witness.

16 THE COURT: Why this late date? Didn't you
17 know he was out there?

18 MR. WEDEKIND: As you know, sir, this is
19 rather difficult with the linguistic issues.

20 THE COURT: No, it's not, because it has been
21 two years. It's not.

22 MR. WEDEKIND: Yes, sir.

23 THE COURT: It's not difficult at all. His
24 name is on somebody's record as having made a phone
25 call. So it's not difficult to get his name.

1 MR. WEDEKIND: Yes, sir, that part is not
2 difficult. You are absolutely right. The difficulty is
3 managing witnesses who move around quite frequently in
4 this Hispanic community when they are illegal.

5 We always knew of Rigiberto. We didn't know
6 Rigiberto had recently gone back to Mexico. So it makes
7 it extremely hard to subpoena Rigiberto in Mexico to
8 bring him back to prove the element of the burglary
9 first.

10 I think any competent lawyer -- and that would
11 certainly include these two gentlemen -- will make a
12 motion for directed verdict because we will not have a
13 witness saying the breaking and entering occurred out
14 there. We would say that there was a robbery that
15 certainly occurred with Rigiberto but getting him from
16 outside to inside --

17 THE COURT: Well, I think circumstantially a
18 gun to the head, somebody is not in the house when all
19 of sudden they are, that shows entry without consent
20 circumstantially. But in any event all the prosecutors
21 put witnesses down, at least their names.

22 MR. WEDEKIND: Yes, sir.

23 THE COURT: And then they are not called
24 either because they can't find them or because their
25 testimony really will not add anything.

1 MR. WEDEKIND: Yes, sir.

2 THE COURT: Of course, it's within my
3 discretion to permit this. Is he here?

4 MR. WEDEKIND: He is here, sir.

5 THE COURT: And has he been in the same place
6 the whole time?

7 MR. WEDEKIND: Mr. Prado? Yes, sir.

8 THE COURT: He has been in the -- living in
9 the same residence for the last two years?

10 MR. WEDEKIND: Yes, sir. He has stayed in
11 that trailer park. I know that Mirna and he have moved
12 because there was -- it certainly was not her, but the
13 other codefendants had assaulted them at the trailer
14 park. Their car was set on fire. There was attempts
15 made at intimidation to get them too scared to not
16 appear in court.

17 THE COURT: Say that again now.

18 MR. WEDEKIND: There were attempts made
19 against this family to keep them from testifying and not
20 appearing in court against Ricky Bell and Quincy Holley.
21 We couldn't pinpoint which of those two gentlemen -- who
22 have been convicted by guilty plea -- but their car was
23 set on fire. They moved to Cayce. Their car was set
24 afire again.

25 When Ms. Mirna was in her trailer with her

1 children, there was an attempt to break in and get to
2 her, but the police kind of arrived and scattered them
3 away.

4 THE COURT: Is he going to be your next
5 witness after the cross of the officer finishes?

6 MR. WEDEKIND: We can call him whenever.

7 THE COURT: Well, I will have to hear his
8 testimony. If I allow it, I will have to hear his
9 testimony about this excited utterance.

10 MR. WEDEKIND: Yes, sir, we can call him right
11 after the cross.

12 THE COURT: Anything else, Mr. Madsen?

13 MR. MADSEN: Judge, I just want to point out
14 if he has been in the same house for the last two years,
15 I think that just kind of adds to the point that I made
16 as far as they are just trying to change it at this
17 point in time.

18 It's not like they have been looking for him
19 for the last two years and have just found him. I mean,
20 according to the solicitor he has been living in the
21 same house.

22 THE COURT: When I examine the prejudice part,
23 what I will want to know -- and I don't think there is
24 any real dispute from y'all that she was driving the
25 car. It sounds like to me the dispute is whether or not

1 she was a willing participant. She was pulled over and
2 she was identified as the driver.

3 MR. MADSEN: We would not disagree that she
4 admits that she was driving the car.

5 THE COURT: We will finish with the cross, and
6 then I will make my determination on that. I am likely
7 going to permit it. I will have to voir dire the jury.
8 The question will then become is what happens if one,
9 two, or three -- or how many people -- say, "Yeah, I
10 know him and I know him very, very pleasantly. I can be
11 fair. Certainly I can be fair."

12 Well, if they had known that before, they
13 might not have taken that juror. That will be a
14 determination for me of whether or not I permit the
15 testimony --

16 MR. MADSEN: Yes, sir.

17 THE COURT: -- in the first place.

18 MR. MADSEN: Judge, if I understand correctly,
19 after this witness you are going to in camera or at
20 least out of the presence of the jury question or have
21 the State proffer what he says?

22 THE COURT: If I allow his testimony, then he
23 will presented as a proffer. What he says, unless you
24 would like to debate that, I don't know whether what we
25 says will make up my mind as to whether or not I let him

1 testify in the first place.

2 MR. MADSEN: One of the problems I think we
3 have -- and I am assuming that he is a Spanish-speaking
4 individual?

5 MR. WEDEKIND: Yes.

6 MR. MADSEN: One of the problems that we've
7 had and I think Your Honor has seen it -- and we have
8 kind of let it go on -- is we have let some of the
9 witnesses where we would have normally objected to
10 testimony in the narrative, have kind of let that go on
11 a little bit.

12 Because obviously if we were to object, it
13 would draw this out to days. The problem that we have
14 come up with obviously is we have had some witnesses
15 testify as to stuff that they didn't see, they didn't
16 hear, that would have been ended up being hearsay. It's
17 kind of tough to stop that in the narrative.

18 THE COURT: Maybe Mr. Wedekind can begin to
19 break it up a little bit more.

20 MR. WEDEKIND: I think if we do it in the
21 proffer, sir, we can certainly channel the witness to
22 keep to his observations.

23 MR. MADSEN: Obviously, it sounds like even
24 what he says, if he does testify, what he is going to
25 testify to, we are going to have objections to it as far

1 as his hearsay.

2 THE COURT: Narratives always have everybody
3 on the edge of their seats.

4 MR. MADSEN: Like I said, we knew that. We
5 made a conscious decision because we figured we would
6 handle what was said in cross examination as far as what
7 was seen and someone having personal knowledge of
8 something.

9 MR. WEDEKIND: We will certainly instruct the
10 witness there. I don't want to mislead anybody. I
11 think that --

12 MR. MADSEN: I just want to make sure of that
13 because if Your Honor decides to allow it, we might have
14 some objections to the substance of the testimony.

15 MR. WEDEKIND: He will be mouthing hearsay
16 regarding a phone call that came to him about the
17 robbery. I hope everybody understands that.

18 THE COURT: Does the defendant take the
19 position that an in-camera examination needs to occur
20 before I even allow -- make up my mind as to whether or
21 not he can testify, period?

22 MR. MADSEN: Yes, Your Honor.

23 THE COURT: I'm not talking about the
24 substance of his testimony. I'm talking about whether
25 or not in my discretion I allow him to be testifying as

1 a witness added late.

2 MR. MADSEN: I believe that would be
3 appropriate.

4 THE COURT: You think that we should hear what
5 he has to say before I even make that decision?

6 MR. MADSEN: Yes, Your Honor.

7 THE COURT: That's probably reasonable.

8 MR. WEDEKIND: Yes, sir.

9 THE COURT: Otherwise, are you ready for the
10 jury?

11 MR. WEDEKIND: Yes, sir.

12 THE COURT: Is the defendant ready?

13 MR. CASTO: Yes, sir, Your Honor.

14 THE COURT: Mr. Casto, you will be examining
15 the witness?

16 MR. CASTO: Will be finishing him up, yes,
17 sir.

18 THE COURT: Mr. McIntyre, you can come back
19 up, sir.

20 ROBERT McINTYRE, having been
21 previously duly sworn, resumed the witness stand and
22 testified as follows:

23 THE COURT: You are still under oath. I will
24 tell the jury that when they come in.

25 Is everybody ready?

1 MR. WEDEKIND: Yes, sir.

2 MR. CASTO: Yes, sir, Your Honor.

3 THE COURT: You can bring them in.

4 (The jury returns to the courtroom at

5 9:35 A.M.)

6 THE COURT: Ladies and gentlemen, I hope you
7 had a nice evening and were able to get your morning off
8 to a good start. We are ready to move forward.

9 Mr. McIntyre is still on the witness stand, and the
10 cross examination will begin.

11 Mr. Casto.

12 MR. CASTO: Thank you, Judge.

13 CROSS EXAMINATION

14 BY MR. CASTO:

15 Q Hey, Officer McIntyre. How are you doing today?

16 A Good.

17 Q Since the break let's recap if you will. Is that
18 all right?

19 A Yes, sir.

20 Q You are the one that pulled this vehicle over;
21 isn't that right?

22 A Yes, sir.

23 Q And that's based on the fact that it matched the
24 description given to you by dispatch; isn't that
25 right?

ROBERT McINTYRE -- CROSS -- MR. CASTO

17

- 1 A Yes, sir.
- 2 Q Now, admittedly you were quite a distance away when
3 you got this call; isn't that right?
- 4 A Yes, sir.
- 5 Q And how far do you think you were away
6 approximately?
- 7 A As the crow flies, probably a quarter of a mile.
- 8 Q So it takes you some time to respond to this call;
9 isn't that correct?
- 10 A I would say less than 30 seconds running lights and
11 sirens.
- 12 Q So basically you respond from a distance away to
13 this call; isn't that right?
- 14 A Yes, sir.
- 15 Q Interestingly enough, you stop this car at only a
16 block away from where the incident happened; isn't
17 that right?
- 18 A No, sir. I saw the vehicle, initially saw the
19 vehicle about a block away from the incident
20 location. I stopped it maybe three or four blocks
21 from it.
- 22 Q In other words, when you first see this vehicle,
23 they are only a block away from where this incident
24 happened; isn't that correct?
- 25 A Yes, sir.

1 Q So somebody has called to report this; isn't that
2 right?

3 A Yes, sir.

4 Q Basically to dispatch. Then the call is routed to
5 you; isn't that right?

6 A Yes, sir.

7 Q And then you respond and see this vehicle only a
8 block away from this incident location; isn't that
9 right?

10 A Yes, sir.

11 Q So essentially you see this vehicle and you get
12 behind it eventually; is that right?

13 A Yes, sir.

14 Q You turn on your blue lights?

15 A Yes, sir.

16 Q You turn on your siren?

17 A No, sir.

18 Q This vehicle, once you turn on the blue lights,
19 just pulls over for you; isn't that right?

20 A Yes, sir.

21 Q In other words, there is no step on the gas or
22 attempt to flee from you; isn't that right?

23 A No, sir.

24 Q When you stop this vehicle, eventually you are
25 joined by several other officers; isn't that right?

ROBERT MCINTYRE -- CROSS -- MR. CASTO

19

1 A Two immediately. Then one or two after a while,
2 yes, sir.

3 Q So total number of folks, law enforcement officers,
4 on the scene that responded to this traffic stop,
5 how many would you say approximately?

6 A Three or four.

7 Q Including you?

8 A To the traffic stop, yes, sir.

9 Q Particularly when you stop this vehicle, you
10 naturally walk up to the driver's side of the
11 vehicle; correct?

12 A Right.

13 Q You made contact with the driver of the vehicle?

14 A Right.

15 Q And eventually you learned this person is Carrie;
16 isn't that right?

17 A Yes, sir.

18 Q Admittedly she doesn't tell you that her name is
19 Carrie Callaham at first; does she?

20 A No, sir.

21 Q But eventually it's learned that Carrie Callaham's
22 driver's license is suspended; isn't that right?

23 A Yes, sir.

24 Q So she's driving a car with a suspended license,
25 which is illegal; isn't that right?

1 A Yes, sir.

2 Q Under South Carolina law, this is a crime where
3 somebody can be arrested for it; isn't that right?

4 A Depending on the nature of the suspension. It's in
5 the officer's discretion.

6 Q But they could be arrested for it?

7 A Right.

8 Q And if she is arrested, it could obviously lead to
9 more questions and possibly a search of the
10 vehicle; isn't that right?

11 A Yes, sir.

12 Q And it would lead to a search of the vehicle with
13 these two men, Ricky Bell and Quincy Holley, in the
14 car with her; isn't that right?

15 A Say that one more time.

16 Q This potential search could lead to -- or potential
17 arrest. I'm sorry -- could lead to a potential
18 search of the vehicle with Ricky Bell and Quincy
19 Holley in the vehicle with her?

20 A Yes, sir.

21 Q Now, to recap where everybody is sitting, Carrie is
22 sitting in the driver's seat; isn't that right?

23 A Yes, sir.

24 Q And Ricky Bell is sitting in the passenger seat;
25 isn't that right?

ROBERT McINTYRE -- CROSS -- MR. CASTO

21

1 A Yes, sir.

2 Q And now immediately behind Carrie sitting in the
3 rear is Quincy Holley?

4 A That's correct.

5 Q So while Ricky Bell and Quincy Holley are in the
6 car, they could likely overhear her conversation
7 with you; isn't that right?

8 A Yes, sir.

9 Q Because they are sitting right there; isn't that
10 right?

11 A Right.

12 Q So, in other words, if she told on Ricky Bell and
13 Quincy Holley, they would likely know it?

14 A Potentially, yes, sir.

15 Q Because they are sitting right there; isn't that
16 right?

17 A Yes, sir.

18 Q Now, if she was attempting or if she attempted to
19 tell on or inform law enforcement of Ricky Bell and
20 Quincy Holley's deeds, there could likely be
21 consequences for her; isn't that right?

22 A I have no idea. I don't know what their
23 relationship is between Ms. Callahan and the other
24 two people.

25 Q But it's possible?

1 A Yes, sir.

2 Q Basically one of your --

3 MR. WEDEKIND: Objection, Your Honor. He is
4 calling for speculation on the part of the witness. He
5 has asked and answered the question. He said he doesn't
6 know.

7 THE COURT: Mr. Casto?

8 MR. CASTO: He said it was possible, Your
9 Honor.

10 THE COURT: The question has been asked and
11 answered in that fashion.

12 MR. CASTO: We are going to move on.

13 THE COURT: You can continue.

14 MR. CASTO: Yes, sir.

15 BY MR. CASTO:

16 Q Now, in your line of work, do you work with the
17 narcotics team?

18 A Currently?

19 Q Yes, sir.

20 A Yes, sir.

21 Q And essentially if a confidential informant -- and
22 y'all use those in a lot of types of cases; isn't
23 that right?

24 A Yes, sir.

25 Q And that's somebody who basically is working with

ROBERT McINTYRE -- CROSS -- MR. CASTO

23

- 1 law enforcement about illegal activity in the
2 community; isn't that right?
- 3 A Yes, sir.
- 4 Q And their names are seldom revealed; isn't that
5 right?
- 6 A Correct.
- 7 Q That's because if they tipped off -- if their names
8 are learned by the people that police are after,
9 well then there could be consequences for the
10 confidential informant; isn't that right?
- 11 A Yes, sir.
- 12 Q And here we have a situation where Ricky Bell and
13 Quincy Holley have demonstrated on that very night
14 that they are capable of terrible violence; isn't
15 that right?
- 16 A Yes, sir.
- 17 Q They just held a family at gunpoint; isn't that
18 right?
- 19 A Yes, sir.
- 20 Q So at this point of the traffic stop, you are
21 talking to Carrie, as I understand, by the driver's
22 side; isn't that right?
- 23 A That's correct.
- 24 Q And it's Officer Williams that comes up and is
25 speaking with Ricky Bell on the passenger side?

- 1 A Right.
- 2 Q I believe you said Officer Seboe eventually joins
3 as well?
- 4 A And he is directly behind me with eyes on
5 Mr. Holley.
- 6 Q And as I understand it, they are ordered out of the
7 vehicle; isn't that right?
- 8 A They are asked out of the vehicle.
- 9 Q They are asked out of the vehicle. When Ricky gets
10 out, this necklace falls; isn't that correct?
- 11 A Yes, sir.
- 12 Q It's Officer Williams that sees that necklace?
- 13 A Correct.
- 14 Q And when he bends down to look at the necklace, he
15 sees the handle of a gun?
- 16 A Correct.
- 17 Q It's a gun also in that passenger seat with Ricky
18 Bell; isn't that right?
- 19 A It's underneath the seat.
- 20 Q Underneath the passenger's seat?
- 21 A Right.
- 22 Q And that's where Ricky Bell was seated?
- 23 A Yes, sir.
- 24 Q So suffice it to say that Officer Williams made
25 some pretty important finds that night; isn't that

ROBERT MCINTYRE -- CROSS -- MR. CASTO

25

1 right?

2 A Yes, sir.

3 Q In other words, there wasn't a gun by Carrie. It
4 was in the passenger seat; isn't that right?

5 A I'm sorry?

6 Q It was up under the passenger's seat?

7 A Say that again.

8 Q There wasn't a weapon by Carrie. The weapon found
9 that was found was under the passenger's seat;
10 correct?

11 A Right, but within arm's length of Ms. Callaham.

12 Q But under the passenger seat?

13 A Right.

14 Q And the other weapon was found in the floorboard by
15 Quincy Holley, who is sitting in the rear?

16 A Also in Ms. Callaham's arm's reach.

17 Q But in the rear with Quincy; isn't that right?

18 A Right.

19 Q Now, there is no victim's property that is located
20 by Carrie admittedly; isn't that right?

21 A No, sir.

22 Q There were several officers that responded to this
23 traffic stop, and I assume that there were several
24 officers that responded to the incident location
25 itself; isn't that right?

- 1 A At least one. I'm not sure.
- 2 Q You are not sure how many?
- 3 A No.
- 4 Q But probably more than one?
- 5 A Again, I'm not sure. I know at least one.
- 6 Q But at least one. Now, upon all of the occupants
- 7 in the vehicle being removed, each are handcuffed;
- 8 isn't that right?
- 9 A Yes, sir.
- 10 Q They are separated from each other; isn't that
- 11 right?
- 12 A Yes, sir.
- 13 Q I believe that they were each placed in different
- 14 police cars?
- 15 A Yes, sir.
- 16 Q And all the police vehicles, they are parked pretty
- 17 close; isn't that right?
- 18 A Yes, sir.
- 19 Q So by looking out the window, Carrie could likely
- 20 see that Ricky Bell is over here (indicating) and
- 21 Quincy Holley is over here (indicating) in this
- 22 car; isn't that right?
- 23 A Yes, sir, potentially. I'm not sure exactly how
- 24 the cars were lined up.
- 25 Q Well, just as likely, Ricky Bell and Quincy Holley

ROBERT MCINTYRE -- CROSS -- MR. CASTO

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1 could see which car she was in?

2 A Correct.

3 Q And could see whether or not she was speaking with
4 law enforcement; isn't that right?

5 A Yes, sir.

6 Q Eventually at that point, once they are all in the
7 vehicles, all three are transported to police
8 headquarters; isn't that right?

9 A Yes, sir.

10 Q Now, about the stop and search itself, there wasn't
11 any video of this; was there?

12 A I don't recall if there was any video. I don't
13 think so.

14 Q But you would agree that video would assist in our
15 understanding of what happened during that stop and
16 search; isn't that right?

17 A Yes, sir.

18 Q I mean, essentially we could see and hear what was
19 said and what wasn't said; isn't that right?

20 A Correct.

21 Q In fact, most law enforcement vehicles have video
22 for, say, D.U.I. stops and the like; isn't that
23 right?

24 A Yes, sir.

25 Q You can see that this case is infinitely more

1 important than something like that; isn't that
2 right?

3 A I'm not willing to speculate on what is more
4 important.

5 Q But here we are dealing with a home invasion type
6 case?

7 A Right.

8 Q But you are not aware of any video taken by you or
9 any other officers during that traffic stop that
10 night?

11 A No, sir.

12 MR. CASTO: Beg the Court's indulgence.

13 THE COURT: All right.

14 (Pause.)

15 MR. CASTO: No further questions. Thank you,
16 Officer.

17 THE COURT: Redirect?

18 MR. WEDEKIND: Yes, sir.

19 **REDIRECT EXAMINATION**

20 BY MR. WEDEKIND:

21 Q Sergeant McIntyre, back in 2010 with the West
22 Columbia Police Department, is it the world's best
23 equipped law enforcement agency?

24 A No, sir.

25 Q It's not the worst?

ROBERT MCINTYRE -- REDIRECT -- MR. WEDEKIND

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1 A No, sir.

2 Q But it's not necessarily got every bell and whistle
3 out there for law enforcement?

4 A It's not L.A.P.D.

5 Q And back in 2010, is it true that only traffic
6 assigned units has dash cameras in their vehicles?

7 A Not entirely true, no, sir. Some patrol officers
8 had in-car cameras.

9 Q But now the standard is that all patrol cars in
10 West Columbia do have it?

11 A Right.

12 Q But back two years ago, it was in progress to equip
13 all cars?

14 A Correct.

15 Q And it just was the case that your car didn't have
16 a camera?

17 A I'm not real sure if my car had a camera at that
18 point in time or not. I couldn't tell you.

19 Q Now, you said you were about a quarter of a mile
20 away when you actually stopped the vehicle. The
21 location where you ended or initiated the stop was
22 about a quarter of a mile away from where the
23 crime had occurred?

24 A When the call initially came out, I was about a
25 quarter of a mile away from the incident

1 location.

2 Q And 60 miles an hour is a mile a minute; right?

3 A Yes, sir.

4 Q So how long would it take to go a quarter of a
5 mile?

6 A Again, 30 seconds with lights and sirens going, if
7 that.

8 Q Isn't it a quarter mile? A mile a minute, 15
9 seconds?

10 A Sure.

11 Q So it wouldn't have taken you long to get to where
12 you were going?

13 A No, sir.

14 Q And once you received that 9-1-1 call, what do you
15 do? Do you just saunter over gently or do you go
16 at full tilt?

17 A No, I am running lights and sirens.

18 Q And you said you were almost instantly assisted by
19 Officer Seboe and Officer Williams?

20 A Officer Seboe was actually -- he and I were pretty
21 much -- he was right behind me when the initial
22 call came out; so he and I responded together.

23 Q So there was no real gap between you two?

24 A No, sir.

25 Q And once you said you got all these witnesses or

ROBERT MCINTYRE -- REDIRECT -- MR. WEDEKIND

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1 Quincy Holley, Ricky Bell, and Carrie Callahan out
2 of the vehicle, you segregated them into separate
3 vehicles?

4 A Correct.

5 Q Were they searched and do you just thrown them in
6 there and let them sit in the back of the vehicle
7 without knowing whether they had weapons on them?

8 A No, it's standing operating procedure to search
9 everyone.

10 Q And you said you found the pistol under Ricky's
11 seat in the front?

12 A Correct.

13 Q And you found a pistol under the seat where Quincy
14 had been in the back?

15 A Correct.

16 Q Nothing on Carrie Callahan?

17 A No, sir.

18 Q But you did find the bullets in her pocket?

19 A That's correct.

20 Q But no weapon, no pistol?

21 A Right.

22 Q So they were disarmed. You searched them and
23 Quincy nor Ricky had a weapon on them?

24 A Correct.

25 Q She was completely safe at that point in a police

1 vehicle from any danger from them; correct?

2 A Yes, sir.

3 Q Were there any other 9-1-1 calls that had been
4 made, other than the one that you received from
5 dispatch to your knowledge?

6 A Not to my knowledge, no, sir.

7 Q Was there a cell phone in Carrie Callaham's car?

8 A I believe so, yes, sir.

9 Q And, again, there was no 9-1-1 call, other than the
10 one you received at dispatch?

11 A Correct.

12 Q Ms. Callaham to your knowledge didn't drive away
13 when the robbery went down; did she?

14 A No, sir.

15 MR. CASTO: Objection, calls for speculation.

16 THE COURT: Overruled.

17 BY MR. WEDEKIND:

18 Q Did she ultimately ever tell you why she gave false
19 names?

20 A She didn't tell me, no, sir.

21 Q On your first contact. Thank you.

22 MR. WEDEKIND: No further questions.

23 THE COURT: Anything else?

24 MR. CASTO: No questions, Your Honor.

25 THE COURT: Thank you, sir. You may step

ARTHUR SEBOE -- DIRECT -- MR. WEDEKIND

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1 down.

2 (Witness leaves the witness stand.)

3 MR. WEDEKIND: The State would call Officer
4 Seboe, sir. And may the witness stay in?

5 THE COURT: Any objection to the witness
6 remaining in the courtroom?

7 MR. CASTO: No objection.

8 ARTHUR LEWIS SEBOE, being
9 first duly sworn, testifies as follows:

10 CLERK: State your full name, spelling your
11 last on the record.

12 THE WITNESS: My name is Arthur Lewis Seboe.
13 The last name is S-E-B-O-E.

14 DIRECT EXAMINATION

15 BY MR. WEDEKIND:

16 Q Arthur, or do you go by Art?

17 A Art.

18 Q Art, please tell the jury if you would your
19 experience with law enforcement and your
20 background.

21 A I am going on my third year as a police officer for
22 the West Columbia Police Department.

23 Q Are you a graduate of the Criminal Justice Academy?

24 A Yes, sir, I am.

25 Q Were you employed by the West Columbia Police

1 Department back on June 16, 2010?

2 A Yes, sir.

3 Q Had you just come on shift a couple of hours
4 beforehand?

5 A Yes, sir.

6 Q You are relatively new to law enforcement at that
7 point?

8 A Yes, sir.

9 Q Not quite a rookie. You have been at it for a
10 year?

11 A Yes, sir.

12 Q Did anything remarkable happen just after midnight,
13 between midnight and 1:00 A.M., on the 16th of
14 June, 2010?

15 A Yes, sir.

16 Q What occurred? What did you hear?

17 A We received a call for any available units to
18 respond to a possible breaking and entering in
19 progress.

20 Q Where was that location identified at?

21 A [REDACTED].

22 Q Were you heading to that direction? What was your
23 response to hearing that radio message?

24 A We were actually fairly close in that vicinity; so
25 we immediately started heading that way.

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1 Q Were you told to look for any particular thing?

2 A Yes, sir. We were given a description of a blue,
3 dark blue in color, Chevrolet Tahoe.

4 Q Did you, in fact, have circumstances develop where
5 you encountered a dark blue Tahoe?

6 A Yes, sir, we did.

7 Q What happened?

8 A As we turned onto Hook Avenue and we started
9 heading toward Dew Avenue, we could see the
10 headlight of a vehicle coming to a stop at the
11 four-way intersection of Hog Street and Hook. So
12 when we got to the intersection, we could see it
13 was a dark blue in color Chevrolet Tahoe.

14 Q When you say the word "we," tell the jury if you
15 would who you meant by "we."

16 A I was in my patrol car. Sergeant McIntyre was
17 ahead of me in his patrol car. As it happened,
18 Investigator Williams was coming up Holland Street
19 to that same four-way intersection in his patrol
20 vehicle.

21 Q So it was the convergence of police vehicles from
22 two directions?

23 A Yes, sir.

24 Q What happened? Who made first contact with that
25 vehicle?

- 1 A Sergeant McIntyre was the first officer.
- 2 Q And what did you observe occur upon the vehicle
- 3 stopping?
- 4 A Sergeant McIntyre made a driver's side approach and
- 5 was speaking with the driver. Officer Williams and
- 6 I made a passenger side approach, and we were
- 7 talking with the passenger of the vehicle.
- 8 Q And were there any persons in the vehicle?
- 9 A Yes, sir. There was a female driver, there was a
- 10 male in the passenger's seat, and there was a male
- 11 behind the driver's seat in the back seat.
- 12 Q So two in the front and one in the back?
- 13 A Yes, sir.
- 14 Q A woman driving and a man in the passenger seat?
- 15 A Uh-huh. (Indicating affirmative response.)
- 16 Q And then a man in the back?
- 17 A Yes, sir.
- 18 Q What occurred after that? You observed the
- 19 occupants of the vehicle. What happened?
- 20 A Officer Williams asked the front seat passenger to
- 21 step out of the vehicle. As that man was stepping
- 22 out, a gold chain fell out of his lap. He got him
- 23 to the back of the vehicle. Sergeant McIntyre was
- 24 getting the driver to the back of the vehicle about
- 25 the same time.

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1 They were placed in handcuffs. Officer
2 Williams went back up to pick up the gold chain
3 where it had dropped out of the man's lap. As he
4 was putting it back in the seat of the truck, he
5 could see --

6 MR. MADSEN: Judge, I will object. I don't
7 think he can testify as to what someone else saw.

8 THE COURT: Sustained.

9 MR. WEDEKIND: Yes, sir.

10 BY MR. WEDEKIND:

11 Q Just talk about the actions. What actions did
12 Williams undertake?

13 A Officer Williams put the chain back in the seat,
14 and he said --

15 MR. MADSEN: I will object to hearsay.

16 THE COURT: Yes, sir.

17 BY MR. WEDEKIND:

18 Q You can't say what other people said.

19 A I was watching him though.

20 Q I will couch it in a question for you.

21 A Okay.

22 Q What actions did you take -- upon him bending down,
23 did you take any actions at that point related to
24 the stop?

25 A I was standing at the back of the vehicle watching

1 Officer Williams.

2 Q Did the nature of how you treated the stop, after
3 Williams picked up the chain, did some action occur
4 that changed the nature of the stop?

5 A There was conversation going over the radio. We
6 were getting more information over the radio.
7 Corporal Vinkmulder had responded to [REDACTED]
8 [REDACTED] and he was telling us what he was getting
9 from the victims at the scene there. He had said
10 that there was --

11 MR. MADSEN: Judge --

12 BY MR. WEDEKIND:

13 Q Not what he said.

14 THE COURT: You can testify as to what you
15 did, but not specifically -- you can testify what you
16 did based on what was said or done but not what anybody
17 said.

18 MR. WEDEKIND: Your Honor, if I may.

19 BY MR. WEDEKIND:

20 Q Did your security procedures change in any way
21 about the stop?

22 A Yes, sir.

23 Q What changed occurred? After Williams saw the gold
24 chain and moved the gold chain, what happened? Did
25 your security awareness change?

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1 A We realized that this was going to be more than a
2 simple traffic stop.

3 Q And what was -- through observations what had
4 changed?

5 A We knew there were weapons involved.

6 Q So there was a weapon spotted. Did you directly
7 observe a weapon in the front seat?

8 A Yes, sir.

9 Q Did you observe a weapon in the back seat?

10 A I didn't deal with the back seat.

11 Q But you did see the one under the front seat?

12 A Yes, sir.

13 Q And were those individuals placed into detention?
14 Did you put them in handcuffs?

15 A Yes, sir, we did.

16 Q Who did what with who to your recollection?

17 A We had more officers respond to the scene. We
18 secured all three of the subjects individually in
19 separate patrol cars. I transported one back to
20 headquarters, and the female officer escorted the
21 female back to headquarters, and another male
22 officer escorted the other male to headquarters.

23 Q Did you witness any photographs being taken of the
24 vehicle?

25 A I don't recall.

1 Q But you were just there backing up -- initially you
2 were backing up your fellow officers?

3 A Yes, sir.

4 Q Thank you. Please answer any questions the defense
5 may have.

6 THE COURT: Mr. Madsen.

7 CROSS EXAMINATION

8 BY MR. MADSEN:

9 Q Good morning, Officer Seboe. How are you doing?

10 A I'm well. How are you?

11 Q Good. So you get out there and I guess your car is
12 behind Sergeant McIntyre's car; is that correct?

13 A Yes, sir.

14 Q When you initially get the call, where are you at?
15 Do you recall?

16 A We were at the intersection of Highway Number 1 and
17 Jarvis Klapman Boulevard.

18 Q When you say we, who do you mean by we?

19 A Officer McIntyre was in his car next to me. We
20 were in patrol in the same area.

21 Q Got you. Once you get there, you are dealing
22 with -- you ultimately deal with the front
23 passenger, Ricky Bell?

24 A Yes, sir.

25 Q And if I understand correctly, what you had

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1 testified to is once you get him out of the
2 vehicle, Carrie ends up going to the back of the
3 vehicle, and Ricky Bell is right beside her?

4 A Uh-huh. (Indicating affirmative response.)

5 Q That is correct?

6 A That's correct.

7 Q And you become aware that where Ricky Bell is
8 sitting, there is a gun under his seat?

9 A Yes, sir.

10 Q And I guess there is a third individual in the car,
11 but he is sitting right behind where Carrie is?

12 A Correct.

13 Q And that's not your responsibility; that was
14 someone else?

15 A At that point, no, that was not my responsibility.

16 Q But you become aware that not only is there a gun
17 in the front passenger seat, but there is also one
18 straight behind Carrie in the back seat?

19 A Yes, sir.

20 Q And you had made mention of a female officer? Who
21 is that?

22 A Anna Bailey.

23 Q Anna Bailey?

24 A Yes, sir.

25 Q When did she arrive?

- 1 A I don't recall exactly when. It was at the same
2 time we were realizing this was becoming more than
3 a regular traffic stop. We went ahead and called
4 for more officers. We knew they were going to
5 have to be taken to headquarters to investigate
6 further. So she was called somewhere immediately
7 thereafter.
- 8 Q When she comes out, since she is a female officer,
9 she is the one who ends up transporting Carrie?
- 10 A Correct.
- 11 Q So she is going to end up having the interaction
12 with Carrie as compared to you; correct?
- 13 A Yes.
- 14 Q And I guess generally in law enforcement if you
15 have a female officer, it's always probably smarter
16 to have them transport a female individual; isn't
17 that right?
- 18 A Yes, sir.
- 19 Q Because if you do it as a law enforcement officer,
20 being a male law enforcement officer, don't you
21 generally have to call into dispatch and say, "Hey,
22 this is Officer Seboe. It's this time. This is my
23 mileage, and I'm going here." And that kind of
24 stuff is documented?
- 25 A Yes, sir.

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1 Q It's just smarter in the end to have a female
2 officer deal with female individuals?

3 A Yes, sir.

4 Q And that's what ended up happening?

5 A Yes, sir.

6 Q Give me an idea how long after this traffic stop
7 before Carrie is transported to West Columbia
8 headquarters?

9 A Five to ten minutes.

10 Q And you have no idea what her and Officer Bailey
11 were discussing?

12 A No, sir.

13 Q Was your vehicle equipped with a video camera?

14 A I think so.

15 Q Did you take any video that night?

16 A I don't recall.

17 Q Is your car not set up to where -- did you turn on
18 your blue lights at some point in time when the
19 traffic stop is being initiated or when you get
20 behind the vehicle?

21 A I did but that was three or four cars ago, and I
22 don't recall which one I had.

23 Q Your car was not equipped with something that when
24 you turn on your blue lights, the camera
25 automatically engages?

1 A It may or may not have. That was several cars
2 back. My current vehicle does, but I don't
3 remember which one I had at that time.

4 MR. MADSEN: Beg the Court's indulgence.

5 (Pause.)

6 MR. MADSEN: No further questions, Your Honor.

7 THE COURT: Redirect?

8 MR. WEDEKIND: No further questions, sir.

9 THE COURT: Thank you, sir. You can step
10 down.

11 (Witness leaves the witness stand.)

12 THE COURT: Next witness.

13 MR. WEDEKIND: The State would call
14 Investigator Chuck Bramlett, sir.

15 CHARLES D. BRAMLETT, JR.,
16 being first duly sworn, testifies as follows:

17 CLERK: State your full name, spelling your
18 last on the record.

19 THE WITNESS: Charles D. Bramlett, Jr.,
20 B-R-A-M-L-E-T-T.

21 DIRECT EXAMINATION

22 BY MR. WEDEKIND:

23 Q Investigator Bramlett, please tell the jury if you
24 would how long you have worked in law enforcement?

25 A I've been with West Columbia 19 years and nine

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1 months.

2 Q And did you have a career before that?

3 A I did. I am 20 years retired Air Force.

4 Q And do you have any specific duties that you
5 perform that are somewhat unique at the West
6 Columbia Police Department?

7 A I do. I wear many hats in West Columbia. I'm the
8 evidence custodian. I am one of the crime scene
9 investigators. I'm an accident reconstructionist
10 when there is a fatality in a vehicle accident, and
11 I'm also the team leader for our crisis or hostage
12 negotiators.

13 Q There wasn't any issue of a hostage negotiation in
14 this case; was there?

15 A Not in this case, no.

16 Q This is not any whodunit, blood spatter of
17 fingerprint to be lifted; right?

18 A Not in this case.

19 Q So your sole roll in this case is to do what?

20 A I am the evidence custodian in charge of the
21 evidence pertaining to this case.

22 Q And without belaboring the point, if you would
23 please the jury -- since they don't have any
24 familiarity -- what does an evidence custodian do?

25 A An evidence custodian maintains the care and

1 custody of all evidence that is turned in in any
2 case, whether it be a disorderly conduct, a D.U.I.,
3 an assault. Any evidence that the officer
4 collects, they fill out -- at that time they fill
5 out an evidence collection sheet.

6 What we have in West Columbia is our evidence
7 room is a self-contained concrete room. I have a
8 metal door. In the wall, the outside wall, is like
9 a mailbox drop. As you would go into the post
10 office, you open up a door. They drop the
11 evidence.

12 It falls into a shoot that has a trap door
13 that allows it to slide into the evidence room, but
14 you can't gain it from reaching in. There is a
15 door that prevents that from happening.

16 Once it's dropped inside our evidence room,
17 it's there and stays there until we -- being myself
18 or the other evidence custodian -- picks it up,
19 logs it in, and then we store it for whatever,
20 whether it's for court or for long-term storage.

21 Q Do they just take guns and knives and just drop
22 them right in there in that slot? Is there a bin
23 on the other side?

24 A There is a box on the other side that when they
25 drop a piece of evidence, whether it's a gun,

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1 knife, or whatever, it slides in this chute, and it
2 falls into a bin inside our room.

3 Q But if you had two different cases and two
4 different guns that were dropped in of similar
5 manufacture, is there a way that you can
6 distinguish one between the other because of the
7 procedures that you all use?

8 A The procedures that we use, as they were showing
9 earlier, there are evidence bags or plastic bags
10 that have a preprinted form. The officer fills it
11 out.

12 Each case they go on is assigned a case
13 number, and that case number relates to the
14 property sheet that they annotate the evidence on,
15 and that case number correlates with the evidence
16 bag in which the evidence is placed in and then
17 sealed. Then they drop that in.

18 When I pick up my evidence and I may have two
19 or three different bags, I am looking at the
20 evidence log sheet with the case number. I find
21 the property that coincides with that. It's listed
22 on my evidence sheet, and the bag itself has that
23 coinciding case number on it.

24 Q Again, you get a property sheet. Say an officer
25 has five items in five separate bags, how do you

1 tell they are all affiliated with the same case
2 investigation?

3 A It will have the case number on each bag. First of
4 all, they will have it listed on the evidence
5 sheet, and then one of those bags will have that
6 case number related to that case and that evidence
7 sheet.

8 Q And did you have cause to receive items into
9 evidence related to the State versus Quincy Holley,
10 Ricky Bell, and the defendant here today, Carrie
11 Callahan?

12 A I did.

13 Q And what was that case number?

14 A The case number for this particular case is
15 1016637.

16 Q Did you bring -- were you asked by me to bring all
17 the evidence that you received --

18 A I was.

19 Q -- in this case. And you brought them here
20 yesterday?

21 A What I have in my care, yes, I did.

22 Q Now, those items, if they are put in those plastic
23 bags -- and sometimes other than plastic, paper
24 bags; is that correct?

25 A Correct.

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1 Q When those are sealed, do you just open them up and
2 investigate what is in there?

3 A No. The plastic bag itself is clear enough that I
4 can look in the bag, the outside of the bag, and
5 see if it's a gun, if it's a knife, if it's
6 marijuana, whatever is listed on the front of the
7 bag.

8 Q So you just document it at that point?

9 A Right.

10 Q But if there is a request to examine any of those
11 items that were gathered, say, for fingerprints,
12 would you undertake to pull that item out and look
13 at it?

14 A I would.

15 Q Would that apply to things such as drugs? Would
16 you then have it removed and sent to another
17 location for investigation?

18 A I would, depending on the type drug. Some of our
19 drugs has to go out to the South Carolina Law
20 Enforcement Division, which is S.L.E.D., for
21 testing. It would have to be removed out of that
22 original bag, rebagged, and sent to S.L.E.D.

23 Q Once it goes in that bag, unless there is a request
24 to have something analyzed, it stays sealed;
25 correct?

- 1 A Correct.
- 2 Q Now, did you receive -- let me show you what is
3 marked for identification as State's Exhibit I.D.
4 Number 13. Do you recognize this?
- 5 A I do.
- 6 Q How would you do so?
- 7 A This is a Taurus 9-millimeter. It is identified by
8 the serial number, TMB-46198. On my evidence
9 sheet, Item C. is listed as a 9-millimeter Taurus
10 handgun, and it has it identified as serial number
11 TMB-46198-D. There is a D. on it.
- 12 Q So your receipt matches with the serial number?
- 13 A It does.
- 14 Q Now, did you acknowledge receiving that and from
15 who?
- 16 A The property was dropped by R.P. McIntyre,
17 Investigator McIntyre, on 6/16/10.
- 18 Q And who logged it into the evidence room?
- 19 A I did.
- 20 Q You received it?
- 21 A Yes, I did.
- 22 Q Has that been in your care and custody since it was
23 received by Officer McIntyre?
- 24 A Yes, it has.
- 25 MR. WEDEKIND: Your Honor, at this time the

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1 State would move into evidence State's I.D. Number 13.

2 MR. MADSEN: Judge, I actually think that that
3 came into evidence yesterday without objection, but no
4 objection no matter. I think it came in.

5 THE COURT: It did. Number 13, 14. Fifteen
6 and 16 I still have as I.D.

7 MR. WEDEKIND: I'm sorry. You said 13 and 14
8 are still I.D.?

9 THE COURT: No, 13 and 14 are in. Fifteen and
10 16 are still I.D. according to my notes.

11 MR. WEDEKIND: Seventeen, sir?

12 THE COURT: Seventeen for I.D. is the brown
13 bag.

14 MR. WEDEKIND: Yes, sir.

15 THE COURT: I still have got that for I.D.
16 The court reporter's notes may be more contract.

17 MR. MADSEN: I believe that that's correct.
18 Both the handguns are already into evidence without
19 objection.

20 THE COURT: Yes, sir.

21 MR. WEDEKIND: I wouldn't belabor the point.

22 BY MR. WEDEKIND:

23 Q Let me show you what is marked for I.D. as State's
24 Number 15. Do you recognize that?

25 A Yes, this is one of our plastic evidence bags.

1 This is marked Item C.

2 Q And did that get dropped off into your evidence
3 room?

4 A Yes, it did.

5 Q How do you know that?

6 A Because it has the case number, the same Item C.,
7 which is located -- or which is listed on my
8 evidence sheet. It shows the date and time that it
9 was dropped, and it shows the person that dropped
10 it. It lists the item that was in this bag
11 originally.

12 Q What are the contents listed?

13 A In this bag is a 9-millimeter Taurus handgun with
14 serial number TMB-46198 with magazine and 13
15 bullets.

16 Q And is that -- without the pistol included -- was
17 the seal broken by you?

18 A Yes, it was. I had removed the handgun because it
19 was coming to court. We had to remove the handgun
20 and make it safe, being with the gun lock. Then I
21 took and heat sealed it back to close the bag to
22 maintain the bullets and the clip.

23 Q So prior to you undertaking that action, you had
24 received that from who?

25 A This was dropped in our box from McIntyre.

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1 Q And the seals were intact until such time as you
2 broke the seals and cut it open?

3 A I believe so, yes.

4 Q And that was to remove the pistol?

5 A I removed the pistol and secured it.

6 Q But everything else, the 13 rounds and the clip,
7 were left inside?

8 A Yes.

9 Q What is present in that bag right now?

10 A There's bullets and the clip that belongs to that
11 gun.

12 MR. WEDEKIND: Your Honor, at this time the
13 State would move into evidence State's I.D. Number 15.

14 MR. MADSEN: Can I see it, please.

15 (Pause.)

16 (Attorneys confer.)

17 MR. MADSEN: No objection.

18 THE COURT: Fifteen is in.

19 (State's Exhibit Number 15 is received into
20 evidence.)

21 BY MR. WEDEKIND:

22 Q Let me show you State's I.D. 16. What does that
23 contain?

24 A This is an evidence bag containing a clip and
25 ammunition. This is identified as Item D. Item D.

1 on my sheet would have been the black in color
2 Taurus handgun with the serial number of TZK-46173,
3 and a magazine and seven bullets.

4 MR. WEDEKIND: At this time the State would
5 move into evidence State's I.D. Number 16.

6 MR. MADSEN: No objection.

7 THE COURT: It's in evidence.

8 (State's Exhibit Number 16 is received into
9 evidence.)

10 BY MR. WEDEKIND:

11 Q If you would look at the contents of the rounds in
12 State's I.D. Number 16. Can you identify what
13 caliber the cartridges contained in there are?

14 A It's a Ruger 9-millimeter.

15 Q For State's 15 can you tell what kind of cartridges
16 are contained in that bag?

17 A It's a 9-millimeter. It appears to be Luger
18 bullets as well.

19 Q I show you what is marked for I.D. as State's I.D.
20 17.

21 (Attorneys confer.)

22 MR. MADSEN: Judge, I will have a matter of
23 law.

24 THE COURT: Ladies and gentlemen, please go to
25 your jury room. You may not discuss the case.

1 (The jury retires to the jury room.)

2 MR. MADSEN: Judge, we are going to have an
3 objection to what has been marked as State's I.D.
4 Number 17. This is an unsealed evidence property bag
5 that lists on the outside, as far as description and/or
6 location, three 9-millimeter Ruger, R-U-G-E-R, bullets
7 located in front pocket. Contained within the bag are
8 four bullets.

9 THE COURT: I wrote that down yesterday. I
10 thought I had just misheard it but go ahead.

11 MR. MADSEN: There are four bullets in here,
12 and I am pulling them out, none of which, I believe, are
13 Rugers.

14 THE COURT: Can't you cross examine him on
15 that?

16 MR. MADSEN: I am going to ultimately object
17 because I think that is not just a weakness in a
18 potential chain, but it's extremely fatal if what is in
19 an unsealed bag is not what is purported to be in the
20 bag.

21 THE COURT: You can question the witness about
22 the chain, and we will see where that goes. What I
23 wrote down yesterday is: Brown evidence slash property
24 bag, three Ruger 9-millimeter bullets found in front
25 pocket. Then I wrote two question marks beside -- y'all

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1 bear with me and listen to what I have got.

2 MR. WEDEKIND: Yes, sir.

3 THE COURT: Inside the bag are four rounds of
4 ammunition. The witness -- I believe Mr. McIntyre --
5 said he recovered those from the defendant's pocket. So
6 I wrote all that down. Of course, I'm not the weigher
7 of evidence. They were not offered at that time.

8 So tell me, Mr. Wedekind -- well, why don't
9 you go ahead and question the witness, and we will see
10 where this may go from a legal standpoint.

11 MR. WEDEKIND: Yes, sir.

12 IN CAMERA DIRECT EXAMINATION

13 BY MR. WEDEKIND:

14 Q Let me show you what is marked for I.D. as State's
15 17. Do you recognize that?

16 A This is an evidence bag marked Item A.

17 Q And you recorded on the face of that bag as three
18 rounds of 9-millimeter Ruger, R-U-G-E-R; is that
19 correct? Is that what is listed on the front?

20 A I did not record this, but that is what is listed
21 on the front.

22 Q So Sergeant McIntyre recorded that. Is your
23 knowledge of firearms that detailed as to certain
24 rounds or cartridges having different names, even
25 though it's the same identical cartridge?

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- 1 A Yes.
- 2 Q For instance, is the .380 A.C.P. also known as the
- 3 .380 auto?
- 4 A Yes.
- 5 Q And does the A.C.P. stand for automatic colt
- 6 pistol?
- 7 A I believe so, yes.
- 8 Q So even though -- it's also called the 9-millimeter
- 9 short?
- 10 A Right.
- 11 Q And do cartridge manufacturers affix different
- 12 stamps that are called head stamps; is that
- 13 correct?
- 14 A Yes.
- 15 Q Do different manufacturers sometimes identify the
- 16 cartridge, even though it's identical, it can fit
- 17 in the same weapon, but it can have a different
- 18 label on it?
- 19 A Correct.
- 20 Q So, for instance, Remington may call theirs .380
- 21 auto?
- 22 A Right.
- 23 Q But Federal ammunition manufacturing may call it
- 24 .38 short?
- 25 A Correct.

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1 Q And then Winchester may call it .380 A.C.P.?

2 A Right. Each manufacturer would have their own
3 identifying name for it.

4 Q So does it astound you to find 9-millimeter
5 cartridges referred to as 9-millimeter Luger?

6 A No, sir.

7 THE COURT: Did you say Luger or Ruger?

8 MR. WEDEKIND: Luger, L-U-G-E-R.

9 BY MR. WEDEKIND:

10 Q Was the weapon originally designed --

11 THE COURT: Wait just a second. What is on
12 this bag, Luger or Ruger?

13 MR. WEDEKIND: Ruger, R-U-G-E-R, sir. That's
14 the confusion that I think Mr. Madsen is bringing forth.

15 BY MR. WEDEKIND:

16 Q Was the weapon that we are talking about or the
17 cartridge we are talking about, the 9-millimeter
18 cartridges that you have in your possession,
19 originally designed for the German Army's standard
20 side arm in 1903?

21 A I wouldn't know.

22 Q Did it fit in a weapon called the Luger?

23 A There was a weapon called a Luger, yes.

24 Q And it did have that round chambered?

25 A It would have had it chambered, yes.

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1 Q Is the 9-millimeter Luger cartridge also sometimes
2 called the 9-millimeter Parabellum?

3 A I don't know about that.

4 Q Do you know anything about Latin?

5 A No, sir, I do not.

6 Q So Parabellum meaning four wars, that doesn't have
7 any ring to you?

8 A No, sir, I know absolutely nothing about Latin.

9 Q Have you also seen those same cartridges with the
10 markings of a 9-millimeter even though it's the
11 same chambering as a 9-millimeter Luger?

12 A I have seen just a bullet that says 9-millimeter.

13 Q And so in realty do you interpret that being a
14 scrivener's error or maybe a misreading by the part
15 of the officer when he dropped it in the bag?

16 MR. MADSEN: Judge, I would object. I think
17 that would be speculation.

18 THE COURT: Sustained. But he can answer the
19 question for the purposes of the proffer, if he has any
20 clue.

21 MR. WEDEKIND: Yes, sir.

22 A I have trouble looking at that bullet head or the
23 stamp on the bullet. I have to get a magnifying
24 glass sometimes to determine exactly what it is.
25 If they put a Ruger, they may have looked at it and

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1 said it was an R. That's just -- I would think it
2 would be an error on whoever wrote it as thinking
3 it was a Ruger instead of a Luger.

4 Q Now, there is a firearm's company called Ruger,
5 Sturm Ruger; is there not?

6 A I believe there is.

7 Q And they are commonly known as Ruger?

8 A Yes.

9 Q Do they make rifles?

10 A I believe they do.

11 Q Do they make pistols?

12 A Yes.

13 Q Do they make shotguns?

14 A I believe they do.

15 Q So to your knowledge are they really big into
16 ammunition manufacturing?

17 A Yes.

18 Q So do you know of any 9-millimeter Ruger cartridge
19 that is out there commonly available?

20 A I'm sure there are. I don't know, but I'm sure
21 there are. Just like you can buy various -- I have
22 various weapons, and I know that I can buy
23 ammunition from Winchester, from C.C.I. Different
24 companies make the same type ammunition that I can
25 shoot in my rifles or my handguns.

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1 MR. WEDEKIND: That would be pretty much it,
2 Your Honor.

3 THE COURT: Do you have any questions of the
4 witness?

5 MR. WEDEKIND: I'm sorry, Your Honor. There
6 is the ambiguity.

7 BY MR. WEDEKIND:

8 Q It's labeled three. When you opened it, you looked
9 at it and told me yesterday there were four
10 cartridges; is that correct?

11 A This bag had been stapled close. We removed the
12 staples for court, and when I opened it yesterday,
13 I did see that there were four in there.

14 THE COURT: I just want to clarify for the
15 record. He didn't testify yesterday. You must have
16 been talking about just a general conversation.

17 MR. WEDEKIND: Yes, sir. When he brought the
18 evidence and we were prepping the case, he brought it to
19 my attention after he opened it that, "Hey, there is
20 four cartridges actually in here not three." Then I
21 informed Mr. Madsen and Mr. Casto of that fact.

22 THE COURT: Okay. Any other questions at this
23 point?

24 MR. WEDEKIND: No, sir.

25 THE COURT: Yes, sir, Mr. Madsen.

1 IN CAMERA CROSS EXAMINATION

2 BY MR. MADSEN:

3 Q Investigator Bramlett, did you do an evidence sheet
4 in association with -- I believe that is State's
5 I.D. 17?

6 A I verified that there was accounted for -- that
7 there was three bullets in Item A.

8 Q And that is identified as Item A.?

9 A Yes.

10 Q So when you say that you verified, did you actually
11 look in there and confirm the three bullets? We
12 are saying bullets. Aren't they, I guess,
13 technically cartridges? Isn't the bullet the thing
14 that comes out the end?

15 A Well, you have a casing and a projectile.

16 Q They call them together a cartridge; right?

17 A Together they would classify them as -- that what's
18 I call them, a bullet.

19 Q Me too but S.L.E.D. was always telling me I was
20 wrong when I called it a bullet.

21 A I call it a bullet. That's what I am used to
22 calling it.

23 Q And there are -- the outside of the bag, which you
24 did not fill out, says that there are three Ruger
25 bullets; correct?

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1 A It says three 9-millimeter Rugers.

2 Q And if you look, it appears that there are three
3 9-millimeter Luger -- with an L. -- bullets, not
4 Ruger; correct?

5 THE COURT: For my clarification is it three
6 or four actually in the bag?

7 MR. MADSEN: There are four in the bag. Three
8 are Luger bullets.

9 THE WITNESS: Yes, this says Luger.

10 THE COURT: And one is?

11 MR. MADSEN: The next one is A-M-E-R-C.

12 THE WITNESS: To answer your original
13 question, there are three Lugers.

14 BY MR. MADSEN:

15 Q And Luger is a different manufacturer than Ruger;
16 correct?

17 A I believe, yes.

18 Q Both are German origin maybe?

19 A Could possibly be.

20 Q But they are separate manufacturing companies?

21 A Yes.

22 Q And the bag says Ruger, with an R. These bullets
23 are Luger?

24 A Correct.

25 Q There is actually a fourth bullet in there;

- 1 correct?
- 2 A Yes.
- 3 Q And that is neither a Ruger or a Luger. It is an
- 4 A-M-E-R-C, I believe?
- 5 A Something like that. Without a magnifying glass, I
- 6 couldn't really see and make out those.
- 7 Q Are you familiar with that manufacturer?
- 8 A No.
- 9 Q And you would agree with me that you didn't do any
- 10 of the writing on the outside of the bag?
- 11 A Correct.
- 12 Q And you had said that the head stamps can be a
- 13 little bit tough to see?
- 14 A Yes.
- 15 Q But as far as whether there's three or four in the
- 16 bag, it's a little bit tougher to explain; isn't
- 17 it?
- 18 A Yes, it is.
- 19 Q And that is not like State's 16 and 15. When it
- 20 comes, it is not heat sealed; is it?
- 21 A No, it is not.
- 22 Q It's just a brown paper bag?
- 23 A That was stapled closed.
- 24 Q And you don't know who recorded that information on
- 25 the outside of that bag; correct?

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1 A There are two names. One name is scratched out --
2 which was Leah Smith. That name is scratched out
3 and you have McIntyre.

4 Q Who is Leah Smith?

5 A She is another one of our investigators.

6 Q And you don't know who placed those items in the
7 bag, whether it was Leah Smith or Investigator
8 McIntyre; do you?

9 A No, I do not. I was not there.

10 Q You simply get that from your evidence repository?

11 A Correct.

12 Q They do not hand that directly to you?

13 A No, not in this case they did not.

14 MR. MADSEN: That's all the questions I have,
15 Your Honor.

16 THE COURT: Any other questions at this time?

17 MR. WEDEKIND: No, sir.

18 THE COURT: May I see those, please?

19 THE WITNESS: These are the three Lugers.

20 (Hands to Court.)

21 THE COURT: On the bottom of the bag, it says,
22 "Condition of bag," there is a block for opened, there
23 is a block for sealed, a block for other, and a block
24 for opened by. Is that typically filled out?

25 THE WITNESS: Usually when they first

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1 initially drop it, they do. Once it comes to our care,
2 I don't annotate that when I open the bag.

3 THE COURT: All right. Has there been any
4 testimony about what type of rounds were in 15 and 16?

5 MR. WEDEKIND: Yes, sir, 9-millimeters.

6 THE COURT: Brand?

7 MR. WEDEKIND: Not by brand of manufacturer
8 but by the type of cartridge.

9 THE COURT: In light of my questions of the
10 witness, does either side have anymore questions at this
11 time?

12 MR. WEDEKIND: Just one, sir.

13 IN CAMERA REDIRECT EXAMINATION

14 BY MR. WEDEKIND:

15 Q Were the seals intact when you received that with
16 the staples?

17 A Yes, there were staples in it, but there is a lot
18 of holes. So that means that it was stapled --
19 it's got a number of holes in it.

20 Q According to your chain of custody, when you
21 receive items, are they sealed?

22 A Stapled or sealed, yes.

23 Q Would you have thought it bizarre in your
24 procedures if the staples were broken and you just
25 got an open bag?

CHARLES BRAMLETT -- IN CAMERA RECROSS -- MR. MADSEN⁶⁷

1 A Yes.

2 Q So did you make any annotation on your chain of
3 custody that you received an opened bag or a sealed
4 bag there?

5 A There is no annotation either way.

6 Q So you received the bag and you opened the bag? Is
7 that what your chain of custody reflects?

8 A It shows that I took custody of this item, yes.

9 Q And when you broke the seals, were you the one who
10 opened the bag and unsealed it?

11 A Originally I would have because I have signed into
12 custody the items that were listed on this sheet.

13 MR. WEDEKIND: Thank you, sir. That would be
14 all my questions.

15 THE COURT: Mr. Madsen?

16 IN CAMERA RECROSS EXAMINATION

17 BY MR. MADSEN:

18 Q You have been an evidence custodian for, I guess,
19 as long as I have known you, at least ten years;
20 haven't you?

21 A Yes, sir.

22 Q Do you find it bizarre to get something that says
23 there's three bullets and open it up, and that's
24 not what is in there? That's odd; isn't it?

25 A It is. It's odd that I didn't catch it if this is

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1 the way it was because normally we account for
2 everything. If it's not right, we try -- or we get
3 with the officer and find out why it's not
4 annotated correctly.

5 Q And you handle a lot of cases because there is a
6 lot of evidence that ends up coming through your
7 department; correct?

8 A Yes, I do.

9 Q And it's hard for you to remember one case as
10 compared to another one because of all the
11 different evidence you handle?

12 A Correct.

13 Q And that's why stuff, like whether something is
14 opened or sealed or "other," is put on the bag and
15 filled out to help you remember those things;
16 correct?

17 A Yes.

18 Q So you can't sit here and say, "Hey, I remember
19 specifically opening this bag on this day." Can
20 you?

21 A No, I have accounted for it on my signature; so...

22 Q But independent recollection you can't?

23 A No.

24 MR. MADSEN: That's all the questions, Your
25 Honor.

1 THE COURT: All right.

2 MR. WEDEKIND: Do you want to hear argument,
3 sir?

4 THE COURT: Yes, sir.

5 MR. WEDEKIND: It goes to its weight, not to
6 its admissibility. He is merely the chain of custody
7 custodian. He says he received the bag sealed. He
8 transported it here, and he opens it and he sees four
9 bullets.

10 He is not here to vouch for the contents or
11 how they got there. He's just saying he brought them
12 here. Officer McIntyre testified he put three bullets
13 in there.

14 Now, it's marked three bullet on the front.
15 That goes to -- certainly they can challenge it. But as
16 far as its admissibility, the chain is proven from
17 McIntyre, slot box, to him, and to here.

18 THE COURT: Mr. Madsen?

19 MR. MADSEN: Judge, I don't think we are just
20 talking about a weakness in the chain. I think we are
21 talking about a significant problem here that this
22 evidence should be excluded because of that.

23 Obviously, there are a lot of times where
24 there is situations where you make an argument to the
25 jury about a weakness in the chain. This is entirely

1 different.

2 What that indicates is in that bag is not in
3 that bag. Certainly I think the State wants to say,
4 "Well, there is just a misreading of a head stamp," but
5 there is a fourth magic bullet in there.

6 You can't equate that to the misreading of
7 the head stamp. Certainly we think there is a problem
8 with this a mile wide, and we would ask that it be
9 excluded.

10 THE COURT: You are asking that this physical
11 evidence be excluded but certainly not Mr. McIntyre's
12 testimony?

13 MR. MADSEN: I think he can testify. I think
14 that cat is out of the bag to be quite honest. Maybe if
15 we had known about that back then, but the physical
16 evidence, I think the testimony is already in.

17 MR. WEDEKIND: I would submit and I don't want
18 to make his case for him, but I have given him a little
19 bit of something to work with with four bullets. But if
20 he wants to keep it out by all means, sir, because the
21 statement that she wrote in her confession says, "Yeah,
22 I had picked up three bullets in my pocket." So I am
23 giving him a gift of making hay with four, but if he
24 wants to keep it out, that State will happily accede to
25 that.

1 THE COURT: So you don't object to this
2 exhibit not coming in?

3 MR. WEDEKIND: That is perfectly fine, sir.

4 MR. MADSEN: I think we are happy.

5 THE COURT: Let's do this. It's still for
6 I.D. If the landscape changes and you decide you want
7 to offer it, I will make my determination of whether or
8 not the glitch or problem in the chain of custody or at
9 least the writing on the bag coupled with the testimony.
10 If you change your mind --

11 MR. WEDEKIND: You know what, sir, I think I
12 have. We will ask for a ruling about the admissibility
13 of it.

14 THE COURT: Let's do this. It's 10:35. We
15 will take a few minutes for our morning break. Of
16 course, Mr. Bramlett, you may not discuss your testimony
17 with anyone.

18 THE WITNESS: Yes, sir.

19 MR. WEDEKIND: Your Honor?

20 THE COURT: Yes, sir.

21 MR. WEDEKIND: There is one matter
22 administratively. Investigator Moore has to be
23 downstairs for a bond motion for a case that is for one
24 of the codefendants in a capital case at 11.

25 THE COURT: Is she your next witness?

1 MR. WEDEKIND: She will be my next witness.
2 Perhaps we can take up the additional witness I have and
3 not lose any time.

4 THE COURT: Would you propose to call
5 Mr. Prado before her?

6 MR. WEDEKIND: Why don't we do that. That
7 gives her the maximum opportunity to take care of what
8 she needs to.

9 THE COURT: Okay. That's fine. We will take
10 a few minutes as our morning break. You can step down.
11 Thank you.

12 (Whereupon there is a recess.).

13 THE COURT: Any additional argument from the
14 State or the defendant?

15 MR. WEDEKIND: No, sir.

16 MR. MADSEN: No, Your Honor.

17 THE COURT: I don't have a copy of it because
18 I don't have immediate access to a printer here, but I
19 e-mailed it to my law clerk to print. There is a case
20 called State versus Hatcher, which I believe is the
21 latest case on chain of custody.

22 Of course, that dealt with illegal drugs which
23 were fungible items, and I think probably in the context
24 of this case, the bullets or at least 9-millimeters are
25 fungible.

1 Proof of the chain does not have to negate all
2 possibility of tampering, but I guess to put it bluntly,
3 there has to be a reasonable probability that the evidence
4 is what it purports to be, specifically at least three
5 of those four bullets in that bag are the bullets he
6 took from Ms. Callahan.

7 I don't know at this point that that exists.
8 I don't think that my decision as to whether or not they
9 are in or out at this time is crucial to the continuing
10 trial of this case.

11 I was just kind of wondering why Mr. McIntyre
12 was not questioned about that, that the State didn't
13 meet that issue head on yesterday. But, of course, I
14 have been in the trial of a case many times as an
15 attorney.

16 Questioning witnesses is always a moving
17 target, and you have got your own points to cover. I'm
18 certainly not faulting anybody for that, but I would
19 have been curious to hear what he had to say about that.

20 You have got Ruger versus Luger. I don't know
21 if Ruger even makes 9-millimeter rounds.

22 MR. WEDEKIND: They don't, sir. That's my
23 testimony. I thought we did have him say --

24 THE COURT: He said he imagined they did, but
25 he didn't know.

1 MR. WEDEKIND: Yes, sir.

2 THE COURT: I think that's what he said, but I
3 myself didn't think that they did. The American is the
4 A-M-E-R-C quite obviously. I have got boxes of those at
5 home. Luger obviously makes them, but I would have been
6 curious to hear what Mr. McIntyre's testimony would have
7 been yesterday how four got into that bag.

8 The first thing I noticed when I looked at the
9 bag is the multiple staple holes in there, and I also
10 wondered why they weren't put into something the
11 equivalent of a best kit. I am not going to let 17 in
12 at this point. That may change. I will reserve the
13 right to change my ruling.

14 MR. WEDEKIND: Yes, sir.

15 THE COURT: I don't think there is enough for
16 me to determine that a jury could reasonably conclude
17 based on the chain evidence now that three of those four
18 bullets are the three bullets that he took from her
19 pocket.

20 It may all get lost in the shuffle if her
21 statement is introduced, which I have already said it
22 can be, that she picked up -- I haven't seen the
23 narrative -- but some certain number of bullets off of
24 somewhere and stuck them in her pocket.

25 So all that may get lost in the shuffle

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1 anyway. So the defendant's objection is sustained at
2 this point.

3 Mr. Wedekind, do you have any other -- I
4 assume you will have other questioning of the witness
5 when the jury comes back in?

6 MR. WEDEKIND: Yes, sir, very briefly.

7 THE COURT: Then you will cross, and we would
8 take a recess to deal with Mr. Prado's issue.

9 MR. WEDEKIND: Yes, sir.

10 THE COURT: You can bring in the jury.

11 (The jury returns to the courtroom.)

12 THE COURT: Mr. Wedekind, you can continue.

13 MR. WEDEKIND: Thank you, sir.

14 **DIRECT EXAMINATION**

15 BY MR. WEDEKIND:

16 Q Investigator Bramlett, did you also receive into
17 evidence some wallets? Do you show that on your
18 property list?

19 A I do.

20 Q What did you get? If you could describe those.

21 A Item G. lists here as one blue wallet containing
22 \$121 and miscellaneous papers. One pink wallet,
23 change, and miscellaneous paperwork.

24 Q What about a cell phone?

25 A There was one gray-colored flip cell phone.

- 1 Q And what about a necklace?
- 2 A There was a yellow in color necklace. Also, there
- 3 was \$200 cash entered on the same evidence sheet.
- 4 Q Who did you receive those from?
- 5 A They were dropped by Robert McIntyre.
- 6 Q Do you have those with you today?
- 7 A No, I do not.
- 8 Q What happened to those items?
- 9 A The necklace, the two wallets, and the money was
- 10 returned back to both victims.
- 11 Q And who were those persons in particular? Did they
- 12 sign it?
- 13 A I have one signature for the yellow in color
- 14 necklace, one of the wallets, and the flip phone
- 15 was Rigiberto. The \$200 and a wallet was returned
- 16 back to Mirna Hernandez -- I think Hernandez. I
- 17 can't read the last name.
- 18 Q Ms. Herrera?
- 19 A Herrera.
- 20 Q I will show you State's Number 4 and State's Number
- 21 5. Are those the wallets that you are talking
- 22 about returning?
- 23 A Yes, the pink wallet and the blue wallet.
- 24 Q And if you would look at State's Number 15. Does
- 25 that appear to be a gold chain that you returned?

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1 A The yellow in color necklace. We identify it as
2 yellow in color instead of gold because we don't
3 know if it's gold or not. So we have to identify
4 it and we are taught back in the academy to
5 identify it by color, as a yellow in color
6 necklace.

7 THE COURT: What number is that, please?

8 MR. WEDEKIND: Four and 5, sir.

9 THE COURT: Thank you.

10 BY MR. WEDEKIND:

11 Q So these were returned, the necklace to Rigiberto.
12 What color wallet was given to Rigiberto?

13 A The blue wallet, miscellaneous papers, and the
14 money.

15 Q Please answer any of their questions. Thank you
16 for your time.

17 CROSS EXAMINATION

18 BY MR. MADSEN:

19 Q You had one flip phone in evidence, and you gave
20 that back to, I guess, Mr. Rigiberto; is that
21 correct?

22 A Yes, one flip phone was given back to Rigiberto.

23 Q He might have a different last name or something.
24 Is that a first name or a last name?

25 A It's just how he signed here, Rigiberto, R.

1 MR. MADSEN: That's all the questions I have.

2 MR. WEDEKIND: Nothing further, sir.

3 THE COURT: Thank you, sir. You can step
4 down.

5 (Witness leaves the witness stand.)

6 MR. WEDEKIND: Your Honor, I believe we have
7 that matter.

8 THE COURT: Ladies and gentlemen, as I
9 mentioned to you, sometimes I may send you out and come
10 back in, and then we will send you back out. There is
11 something I need to review with the attorneys that
12 should not take much time.

13 If you would kindly step to your jury room.
14 If we see that it will take longer than I thought, we
15 may rearrange things and have an earlier lunch. Please
16 make yourself comfortable in your jury room. You may
17 not discuss the case. Thank you very much.

18 (The jury retires to the jury room.)

19 THE COURT: Mr. Wedekind.

20 MR. WEDEKIND: Yes, sir, the State would call
21 Mr. Prado.

22 THE COURT: I will tell the jury if he
23 testifies that the interpreter is still under oath.

24 MARCELO PRADO SERNA, being
25 first duly sworn, testifies as follows:

MARCELO PRADO -- IN CAMERA DIRECT -- MR. WEDEKIND 79

1 CLERK: Have a seat right up there. Once you
2 are seated, state your name for the record, spelling
3 your last for us.

4 THE WITNESS: (Through the interpreter)
5 Marcelo Prado Serna.

6 IN CAMERA DIRECT EXAMINATION

7 BY MR. WEDEKIND:

8 (THROUGH THE INTERPRETER)

9 Q Do you go by Mr. Prado or Mr. Serna?

10 A Prado.

11 Q So, Mr. Prado, do you recall the evening of the
12 early morning hours of June 16, 2010?

13 A Uh-huh. (Indicating affirmative response.) Yeah.

14 Q Do you also recall -- well, tell the judge what
15 you remember occurring that night at just after
16 midnight?

17 A I just remember that I had arrived with a friend of
18 mine. We had gone to get some food.

19 Q Where did you arrive at?

20 A To my house.

21 Q Which is where?

22 A [REDACTED].

23 Q The trailer park?

24 A Yeah, trailer park.

25 Q Go ahead.

MARCELO PRADO -- IN CAMERA DIRECT -- MR. WEDEKIND 80

1 A There was a vehicle parked next to my house, an
2 S.U.V. Then I went to see what it was, but my
3 friend had already left. He called me on the phone
4 to say that they were robbing unit Number 6.

5 Q Did you see who was driving the blue -- or the
6 S.U.V.?

7 A I just saw it was a woman, but I didn't see her
8 very well. I just saw it was a woman.

9 Q Then you said you got a phone call?

10 A Yes.

11 Q What was that about?

12 A That they were robbing house Number 6.

13 Q And who made that call to you?

14 A The friend who was with me when we went to buy
15 food.

16 Q Was he upset or was he calm when he talked to you?

17 A He was calm but at the same time surprised.

18 Q Was he warning you or just informing you?

19 A He was just informing me, and I asked him why he
20 hadn't call the police, and I figured he was
21 nervous and scared.

22 Q And after you heard that this -- you said a robbery
23 was taking place at Number 6?

24 A Uh-huh. (Indicating affirmative response.)

25 Q Did he say he was inside Number 6 or was he

MARCELO PRADO -- IN CAMERA CROSS -- MR. MADSEN

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1 outside?

2 A When he passed by, there was someone outside.

3 Q And then after you got that call, did you call the
4 police?

5 A Yes.

6 Q You dialed 9-1-1?

7 A Yes.

8 Q You reported a robbery?

9 A Yes.

10 Q Did you report a color of a vehicle and a type?

11 A Yes.

12 Q What did you report?

13 A I told them I couldn't remember the brand, but I
14 thought it was a blue Suburban.

15 Q And what color, light or dark?

16 A A little dark.

17 MR. WEDEKIND: Thank you, Your Honor. I think
18 that would be all the questions.

19 THE COURT: First of all, any questions of the
20 witness?

21 MR. MADSEN: Yes, Your Honor.

22 IN CAMERA CROSS EXAMINATION

23 BY MR. MADSEN:

24 Q Mr. Prado, has anyone from the prosecutor's office
25 or law enforcement come and spoke with you prior to

1 yesterday?

2 A No.

3 Q And you lived in that same residence since June of
4 2010 until today?

5 A Yes.

6 Q You haven't been hiding from anyone?

7 A No.

8 Q When they asked you to come to court you came?

9 A Yes.

10 Q But no one asked prior to yesterday?

11 A No.

12 Q And you had mentioned your friend. What is his
13 name?

14 A Omar.

15 Q What is Omar's last name?

16 A I made a mistake. It's Ramon but he is not here.
17 He went back to Mexico.

18 Q When did he go back to Mexico?

19 A About a half a year ago, but he was deported. He
20 didn't want to go back.

21 Q Do you know why he was deported?

22 A Because he was caught driving.

23 Q And do you know what his last name was?

24 A No.

25 Q And you and he got back to your residence?

MARCELO PRADO -- IN CAMERA CROSS -- MR. MADSEN

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- 1 A No, he stayed in his house and I stayed in mine.
- 2 Q Had y'all been drinking together that night?
- 3 A No, we weren't drinking.
- 4 Q You hadn't drank any alcohol?
- 5 A No, nothing.
- 6 Q And you said you saw a woman in an S.U.V.?
- 7 A Yes.
- 8 Q Do you remember whether the car was on or off?
- 9 A It was on.
- 10 Q And when Ramon called you, you said he was calm,
- 11 but you were surprised to get the call?
- 12 A Not really surprised but just more concerned about
- 13 what was going on.
- 14 Q So he was concerned?
- 15 A Yes.
- 16 Q And that's why he called you?
- 17 A Yes.
- 18 Q And you called 9-1-1?
- 19 A Yes.
- 20 Q And told them about the blue Suburban?
- 21 A Yes.
- 22 Q After you called how long did it take for police to
- 23 get there?
- 24 A It seems like it was around eight to ten minutes.
- 25 Q How long did you talk with Ramon on the phone

MARCELO PRADO -- IN CAMERA REDIRECT -- MR. WEDEKIND 84

1 before you hung up and called 9-1-1?

2 A Just after he told me I hung up.

3 Q But how long was your -- did your conversation last
4 with Ramon?

5 A I would say between three and four minutes.

6 MR. MADSEN: That's all the questions I have.

7 THE COURT: Mr. Wedekind?

8 IN CAMERA REDIRECT EXAMINATION

9 BY MR. WEDEKIND:

10 Q Mr. Prado, you knew Rigiberto who lived in
11 Number 6?

12 A Yes.

13 Q And where is Rigiberto now? Do you know?

14 A I haven't seen him.

15 Q Did he go back to Mexico?

16 A Truthfully I don't know.

17 Q But you know that your other friend Ramon did?

18 A Yes.

19 Q Thank you.

20 THE COURT: Anything else?

21 MR. WEDEKIND: No, sir.

22 MR. MADSEN: No, sir.

23 THE COURT: You would like to call him and get
24 in the generalities or the specifics as a matter of fact
25 as to what he just testified to?

1 MR. WEDEKIND: Yes, sir, as to -- and if we
2 can, I would instruct him if he is allowed to testify --
3 of course we have to validate him with the jury -- but
4 he would be going into the hearsay of the phone call
5 that he had with Ramon.

6 THE COURT: First of all, is there anything,
7 Mr. Madsen, that you would like to argue about whether
8 or not he can be called, period?

9 MR. MADSEN: Judge, we had started this trial.
10 Like I said, Your Honor heard the opening statements.
11 The solicitor talked about a lot of stuff. So certainly
12 he knew about these things, was contemplating these
13 things, never puts him on the witness list.

14 We have spoken with Mr. Prado, who has not
15 been hiding. He has lived in the same address for the
16 last two years. We do not believe that he should be
17 allowed to testify at all because of that.

18 Because obviously if the State can come in and
19 just things are not going like they like, change it up,
20 why even have a witness list? And that's the problem.
21 We obviously have some concerns about an excited
22 utterance from someone who is calling as calm and
23 concerned, but I think we need to get past that first
24 issue.

25 THE COURT: That's why I was asking you: Is

1 there anything that he said that you would like to argue
2 on the issue of why he should -- whether or not he
3 should be permitted to actually sit in that chair?

4 MR. MADSEN: I mean, two years.

5 THE COURT: All right. Yes, sir.

6 MR. WEDEKIND: Sir, I don't think there is
7 anything that has been hidden from them. I believe it's
8 in the discovery citing his existence, and I don't think
9 there is any prejudice to them.

10 It's just we didn't anticipate we were going
11 to need him until we realized that Rigiberto was not
12 available and that the family members were asleep and
13 did not see Rigiberto being dragged into according to
14 their testimony.

15 So the reason I would like to use this witness
16 is to establish the breaking and entering element of the
17 burglary first charge.

18 THE COURT: Did he see that?

19 MR. WEDEKIND: He did not, but the call that
20 he made was related to a person outside the trailer who
21 would have had no idea what was going on in the trailer
22 who would have seen --

23 THE COURT: Someone being robbed. He didn't
24 say anything about entering in.

25 MR. WEDEKIND: Yes, sir, but being robbed

1 outside. That would be from trailer 6, which he ends up
2 in there, which is what I am trying to bridge the gap
3 to.

4 THE COURT: Anything else, Mr. Madsen?

5 MR. MADSEN: Not related to that.

6 THE COURT: I am going to allow him to be
7 called. At least I will voir dire the jury if there is
8 no problem with the jury, which we will have to take up
9 if somebody says they know him or have some acquaintance
10 with him. Then we will have to deal with that issue
11 separately. They may be able to present a compelling
12 argument that they perhaps would not have selected the
13 juror.

14 But the excited utterance portion of it, your
15 argument on that, Mr. Madsen?

16 MR. MADSEN: Judge, it's just not an excited
17 utterance. Under 803, Subsection (2), an excited
18 utterance is a statement relating to a startling event
19 or condition made while the declarant was under the
20 stress of the excitement caused by the event or
21 condition.

22 I am sure if someone would have mentioned
23 something, if Rigiberto would have called Mr. Prado up
24 and said, "Hey, I'm being robbed," that's an excited
25 utterance.

1 His testimony was clear that the individual
2 who called him was calm but concerned; so it just does
3 not meet the parameters of Rule 803. It's almost kind
4 of -- it's an excited utterance of something that is
5 happening to someone else.

6 So it's almost even once removed from the
7 excited utterance. We do not believe that that meets
8 the parameters of the hearsay exception and certainly
9 believe that it should be excluded.

10 THE COURT: Mr. Wedekind?

11 MR. WEDEKIND: I can think of few things that
12 would be more excitable than to witness somebody under
13 gunpoint being pistol whipped and driven into their home
14 and then being excited about that and calling.

15 Obviously it was 1:00 o'clock in the morning,
16 and this person felt compelled to call his friend
17 saying, "Heads up. Be careful. There is a robbery
18 going on. Don't stick your nose out."

19 THE COURT: No, he didn't say that. He said
20 he was calm but surprised.

21 MR. WEDEKIND: Yes, sir.

22 THE COURT: And then I think --

23 MR. WEDEKIND: Nervous, I think.

24 THE COURT: Concerned.

25 MR. WEDEKIND: Yes, sir.

1 THE COURT: I don't think he said anything
2 like, "Heads up. Don't go outside. There is a robbery
3 going on." He just said, "The people in Number 6 are
4 being robbed."

5 MR. WEDEKIND: Of course, I am using my
6 prosecutorial prospective. But obviously when they came
7 in, they saw this alien vehicle in the neighborhood. It
8 probably had -- my impression of hearing what he said
9 was the hair stood up on their head. They knew
10 something was strange with a car with the engine running
11 that they didn't know in the neighborhood.

12 They go in and then he gets a call from the
13 friend telling him there is a robbery next door to him.
14 That's obviously the inference there. He is warning his
15 friend there is a robbery going on.

16 THE COURT: All right. Anything else?

17 MR. MADSEN: You know, Judge, the problem is
18 that I think what Mr. Wedekind wants there to be said is
19 not being said. He says a friend calls and is calm and
20 says, "There's a robbery." Mr. Wedekind gets up and
21 says, "People are -- guns are out there. They are
22 being driven into the house," which is not what he is
23 told.

24 THE COURT: I will not allow him to lead the
25 witness in that fashion nor can he argue to the jury

1 that that is what the caller said because it's not what
2 I heard, at least from this witness.

3 What I have got to look at is whether or
4 not -- and I don't think the word excitement has to be
5 used -- but there has to be a demonstration to me that
6 the declarant, who is Ramon, was under the stress or
7 excitement of a startling event, and the stress or
8 excitement was caused by that event.

9 I have to be assured that the spontaneity and
10 therefore the trustworthiness of this supposed comment
11 is intact. I've got to look at the totality of the
12 circumstances.

13 On the one hand, it happened close in time to
14 where these two, Prado and Ramon, saw the vehicle, saw a
15 female in it. It happened within a very short time or
16 at least the phone call did. On the other hand, the
17 witness says that Ramon was calm but surprised, and
18 that's what it really boils down to.

19 Anything else?

20 MR. MADSEN: Judge, ultimately also, even
21 above and beyond that, even when he is just giving,
22 "Hey, someone is being robbed," we don't have any
23 explanation about what that means ultimately and why
24 that person is basing that off of that.

25 So we believe that even with the problem with

1 803(2), you would also -- we would ask that it be
2 excluded even on top of that under 403, more prejudice
3 than probative.

4 We don't have Ramon here. Apparently no one
5 has ever gone and tried to search Ramon out or talk with
6 him even though apparently he was still here for the
7 last -- or here for 18 months.

8 THE COURT: Okay. State versus McHoney, 344
9 S.C. 85, is a 2001 case. It says this: "An excited
10 utterance expresses the real belief of the speaker --
11 Ramon -- because the utterance is made over the
12 immediate and uncontrolled domination of the senses,
13 rather than reason and reflection. In determining
14 whether a statement falls within the excited utterance
15 exception, the Court must consider the totality of the
16 circumstances."

17 Then State versus Dennis, a '99 case, "A
18 startling event suspends the declarant's process of
19 reflective thought reducing the likelihood of
20 fabrication."

21 I think all in all, the witness' testimony of
22 what was said to him by Ramon would meet that exception.
23 So I will allow the testimony, but I am certainly not
24 by any stretch -- and I will call you down very quickly
25 if you try to extrapolate what the witness actually

1 said.

2 MR. WEDEKIND: Yes, sir. I think, if I could,
3 just in that interest, I have not worked with this
4 witness obviously. I don't know if he is that familiar
5 with American jurisprudence. I just want to instruct
6 him right now to limit his observations of what he heard
7 on the phone and the fact he didn't actually eyeball --

8 THE COURT: And what he saw himself.

9 MR. WEDEKIND: Yes, sir.

10 THE COURT: I would anticipate that the
11 witness won't be adding anything. Sometimes that
12 happens. Our arguments and comments back and forth have
13 not been translated, which I think is the better thing
14 to do anyway.

15 MR. WEDEKIND: Yes, sir. If I could I will
16 take that opportunity right now, sir.

17 THE COURT: No, I think his testimony -- do
18 you object to that, Mr. Madsen?

19 MR. MADSEN: I do, Your Honor. I would like,
20 since he is a witness that was added, I would like a
21 rap sheet. I think we are entitled to that under the
22 rules.

23 THE COURT: All right. Marcelo Prado or
24 Marcelo Prado Serna or Marcelo Serna.

25 MR. MADSEN: I think they would need that and

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1 a date of birth.

2 THE COURT: Ascertain his date of birth,
3 please.

4 Mr Madsen, I would not have a problem with him
5 just asking him now if he has a criminal record.

6 THE WITNESS: (Through the interpreter.)

7 [REDACTED]

8 THE COURT: Eighty-nine?

9 THE WITNESS: Yes.

10 MR. WEDEKIND: Spell the name fully, please.

11 THE WITNESS: M-A-R-C-E-L-O, P-R-A-D-O,
12 S-E-R-N-A.

13 MR. WEDEKIND: Your Honor, does he have a
14 Social Security number here in the United States?

15 THE WITNESS: No.

16 THE COURT: Would you like to ask him,
17 Mr. Madsen?

18 IN CAMERA CROSS EXAMINATION

19 BY MR. MADSEN:

20 Q Mr. Prado, do you have a criminal record?

21 A No.

22 Q You have never been arrested or convicted?

23 A Just for driving.

24 Q So you have been convicted of something?

25 A No.

1 Q When you say just for driving, can you explain to
2 me what you mean?

3 A I was driving for work and was stopped.

4 Q Did they give you some type of ticket?

5 A Yes.

6 Q What was that for?

7 A For speeding, no driver's license, no seat belt,
8 and no insurance.

9 Q Did you have to pay some kind of fine or something?

10 A Yes, ticket.

11 Q When was that?

12 A About five or six years ago.

13 Q Have you ever been stopped and had to pay any type
14 of fines on anything else?

15 A Yes, just about two or three weeks ago, a traffic
16 stop.

17 Q What did they charge you with at that traffic stop?

18 A It was a license check stop, I believe.

19 Q So did they give you a ticket?

20 A Yes.

21 Q What was the ticket for?

22 A For no license.

23 Q Have you paid that ticket?

24 A Yes, I paid it.

25 Q Have you ever been stopped other than those two

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1 times?

2 A No.

3 Q Have you ever gone to jail?

4 A Yes.

5 Q What did you go to jail for?

6 A When they stopped me that first time.

7 Q And other than that you have not been to jail?

8 A No.

9 MR. MADSEN: I would still like obviously the
10 rap sheet --

11 THE COURT: You can go ahead and get it.

12 MR. MADSEN: -- before I start my cross.

13 THE COURT: Yes, sir. Mr. Madsen, you know
14 the rules. If you feel compelled, in order to preserve
15 the record, to object when the jury comes in if he is
16 called, to him actually being called, that's fine with
17 me.

18 MR. MADSEN: Yes, sir.

19 THE COURT: Also, at any given point during
20 the testimony that you think is appropriate, you can
21 object.

22 MR. MADSEN: Thank you, Your Honor.

23 THE COURT: Mr. Wedekind, anything else?

24 MR. WEDEKIND: No, sir.

25 THE COURT: You can step down. He will be

1 resworn when the jury comes back.

2 MR. WEDEKIND: Your Honor, just for
3 housekeeping wise, would you want me to have him stand
4 up and identify himself for the jury or should we just
5 call him?

6 THE COURT: He can sit right there when I voir
7 dire the jury. I will be using Marcelo Prado, Marcelo
8 Prado Serna, and Marcelo Serna, and there he is.

9 MR. WEDEKIND: Yes, sir.

10 THE COURT: Any specific questions the lawyers
11 would like me to ask the jury, other than the ones I
12 typically use that you have heard repeatedly?

13 MR. WEDEKIND: No, sir.

14 THE COURT: You can bring the jury if they are
15 ready.

16 (The jury returns to the courtroom.)

17 THE COURT: Ladies and gentlemen, thank you
18 for your patience. Let me have your attention for just
19 a moment. At the beginning of the trial or before you
20 were actually selected as jurors, I did ask some
21 questions about whether or not any of you were perhaps
22 kin to or had any connection or acquaintances with
23 certain witnesses. I am going to go over this now with
24 you. Of course, you are under oath so respond to the
25 questions truthfully.

1 Is there anyone on this jury, the 13 of you,
2 who has or anyone in your immediate family who has any
3 type of relationship or kinship by blood or marriage
4 with Marcelo Prado Serna, S-E-R-N-A? Mr. Serna or
5 Mr. Prado, if you would please stand. Also, perhaps
6 Marcelo Serna? He is the gentleman who just stood
7 before you.

8 Likewise, is there anyone on this jury or any
9 member of your immediate family who has any type of
10 connection or acquaintance or association with him?
11 That would be now or in the past. That would be any
12 type of acquaintance or association? If so, simply
13 please raise your hand.

14 (There is no response.)

15 THE COURT: Any other questions from the State
16 in that regard?

17 MR. WEDEKIND: No, sir.

18 THE COURT: Any others from the defendant?

19 MR. MADSEN: No, Your Honor.

20 THE COURT: Mr. Wedekind, you can proceed.

21 MR. WEDEKIND: Yes, sir, the State would call
22 Mr. Marcelo Prado Serna.

23 THE COURT: Ladies and gentlemen, the
24 interpreter remains under oath to translate and
25 interpret all this truthfully.

1 MARCELO PRADO SERNA, being
2 first duly sworn, testifies as follows:

3 CLERK: Once you are seated, state your full
4 name on the record, please.

5 THE WITNESS: (Through the interpreter)
6 Marcelo Prado Serna.

7 DIRECT EXAMINATION

8 BY MR. WEDEKIND:

9 (THROUGH THE INTERPRETER)

10 Q Do you go by Mr. Prado or Mr. Serna?

11 MR. MADSEN: Judge, I would like just to renew
12 my pretrial objections at this point in time.

13 THE COURT: Yes, sir. Thank you.

14 A Prado.

15 Q Mr. Prado, tell the jury if you would where you
16 live.

17 A Trailer park, [REDACTED].

18 Q And is that here in Lexington County?

19 A No, that's West Columbia.

20 Q But in Lexington County?

21 A Yes.

22 Q So you lived there. How long have you lived at
23 that trailer park?

24 A Eight years.

25 Q And so you were living there on June 16, 2010?

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1 A Yes.

2 Q And do you recall what unit you lived in?

3 A One.

4 Q Now, tell the jury if you recall anything -- do you
5 recall the night of June 16th or early morning
6 hours about midnight to 1:00 A.M.?

7 A Yes.

8 Q Tell the jury what you saw just after midnight in
9 the trailer park.

10 A I saw a blue car. The car was running and there
11 was a woman inside the car. That was when I had
12 arrived back with a friend of mine after having
13 just bought some food.

14 Q Do you remember what particular type of car it was?

15 A I think it was a Suburban, I think.

16 Q But it was an S.U.V.?

17 A Yes, it was an S.U.V.

18 Q Was the engine on or off?

19 A It was on.

20 Q Had you seen that car or that S.U.V. in your
21 neighborhood before?

22 A No.

23 Q So it was strange to you?

24 A Yes.

25 Q Then what happened?

1 A We ate there at my house and then my friend left,
2 and after he left he called me to say that there
3 was -- they were robbing at Number 6.

4 Q There was what at Number 6?

5 MR. MADSEN: Judge, I will renew my objection
6 under 803 Subsection (2) and also 403.

7 THE COURT: Thank you, sir. It's overruled.

8 BY MR. WEDEKIND:

9 Q So you said there was what occurring at Number 6?

10 A They were robbing.

11 Q Who was this friend? What was his name?

12 A Ramon.

13 Q And where is Ramon now?

14 A In Mexico.

15 Q So Ramon calls you and says there is a robbery at
16 Number 6?

17 A Yes.

18 Q Did he say who was being robbed? Did he know?

19 A I don't know if he knew them or not, but since he
20 lived nearby he may have.

21 Q Did he say who was conducting the robbery?

22 A He said it was a black guy who was outside.

23 Q And after he told you that, did you make a phone
24 call after you talked to your friend?

25 A Yes.

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1 Q And did your friend tell you -- was he calling from
2 inside Number 6 or was he outside Number 6?

3 A No, when he called me, he was at his house. The
4 thing is he lived further in. So he got home and
5 he called me once he was safely inside his house.

6 Q And you said you made a phone call. To who?

7 A Me?

8 Q Yes.

9 A The police.

10 Q So you dialed 9-1-1?

11 A Yes.

12 Q What did you report?

13 A A robbery.

14 Q Why did not Ramon make the call? Did he say?

15 MR. MADSEN: Judge, I would object to hearsay.

16 THE COURT: Sustained.

17 BY MR. WEDEKIND:

18 Q But you made the call after talking to Ramon?

19 A Yes.

20 Q And to your knowledge Ramon was in his home?

21 A Yes.

22 Q Thank you. Please answer any questions that the
23 defense may have.

24 THE COURT: Would you like to wait?

25 MR. MADSEN: I would actually. I apologize

1 for the delay.

2 THE COURT: Do you know what the status of
3 that is?

4 MR. WEDEKIND: I don't, sir.

5 THE COURT: Just step across. We will wait
6 just a moment. If we have to, we will take a brief
7 break.

8 (Pause.)

9 THE COURT: Ladies and gentlemen, I will ask
10 you to step to your jury room just for a moment. Of
11 course, don't discuss the case.

12 (The jury retires to the jury room.)

13 THE COURT: I figured it would be less awkward
14 for them to review it a minute.

15 MR. MADSEN: Judge, the only thing -- and
16 it's kind of tough because we are doing it now, but
17 there is one thing that I see on here that is
18 potentially impeachable is there is an arrest in 2008
19 for supplying false information to obtain identification
20 card is what this lists it at.

21 It appears to be a magistrate's court level,
22 but I believe because it's a false info that if he was
23 convicted of that, that would be impeachable, and I
24 would be allowed to ask him about that.

25 THE COURT: Has there been a conviction?

1 MR. WEDEKIND: Mr. Bunge is researching that
2 right now.

3 MR. MADSEN: There is no way to tell. Rap
4 sheets are kind of -- you put good stuff in and you get
5 good stuff out.

6 THE COURT: I have often said that -- and it's
7 very trite -- but we can put a man on the moon, but we
8 can't make a rap sheet readable to a college professor.

9 MR. MADSEN: According to him back in 2008, he
10 had paid fines, but there is a reckless driving, a
11 driving without a license, and uninsured, and none of
12 those have a disposition.

13 THE COURT: If you would like, you can ask him
14 questions about it. That kind of opens up another --

15 MR. MADSEN: Well, I mean, I had asked him and
16 he said he had paid a fine, which there is kind of
17 confusion because technically that is a conviction.

18 THE COURT: Well, technically it's a
19 conviction but many layman don't see it as that.

20 MR. MADSEN: So I don't think he was being
21 untruthful with me.

22 THE COURT: Let me see the information.

23 (Hands to Court.).

24 MR. MADSEN: I guess that was the point. I
25 didn't think he was being untruthful, but many laymen

1 don't think a traffic ticket is necessarily a
2 conviction.

3 THE COURT: It's a little curious as to how or
4 why the reckless driving had been speeding. In other
5 words, that is really speeding. Driving without a
6 license, uninsured vehicle, all offense date of
7 August 11, 2008.

8 The same day he was arrested for supplying
9 false information to obtain an identification card. I
10 don't know what the elements of that offense are. It's
11 16-13-451. I don't have immediate access to that.

12 MR. WEDEKIND: My guess, Judge, is sometimes
13 the labelings are literal on there. My guess is he had
14 a fake I.D. when they pulled him and a fake driver's
15 license, and they just hit him for having a bogus
16 driver's license. That's just my guess.

17 THE COURT: I have to look at it.

18 MR. CASTO: Your Honor, that statute was
19 again?

20 THE COURT: The cite?

21 MR. CASTO: Yes.

22 THE COURT: It's 16-13-451. That's what is on
23 here.

24 MR. WEDEKIND: Mr. Bunge is reporting that
25 Ms. Frick would have access to the D.M.V. record.

1 CLERK: I think we can call West Columbia.
2 That would be the place that would have the record.

3 MR. MADSEN: The problem is not knowing he is
4 there. There is no way to research it. I don't think
5 the index system would have the municipalities.

6 THE COURT: Let's go off the record for a
7 moment so there won't be any confusion about the court
8 reporter taking down y'all talking.

9 MR. WEDEKIND: Yes, sir.

10 (Whereupon there is a discussion off the
11 record.)

12 THE COURT: Okay.

13 MR. MADSEN: I think, given what his testimony
14 is, it would be our intent on just that charge to ask
15 him: Isn't it true on 8/11/2008, that you were
16 convicted of supplying false information to obtain -- or
17 basically just, I guess to shorten it from talking with
18 the officer, just that you were convicted of false
19 information to police.

20 THE COURT: Well, what the statute says is
21 that it's unlawful, I think, to present false
22 identification.

23 MR. MADSEN: I could ask him: It's true that
24 you...

25 MR. WEDEKIND: If I may suggest, sir, why

1 don't we just ask him did he have a bogus driver's
2 license, and he can answer that for us.

3 THE COURT: And present to it the police.

4 MR. WEDEKIND: Yes, sir.

5 MR. MADSEN: I don't have a problem with that.

6 THE COURT: Ask him that, Mr. Madsen.

7 IN CAMERA CROSS EXAMINATION

8 BY MR. MADSEN:

9 (THROUGH THE INTERPRETER)

10 Q Mr. Prado, you had mentioned that you had paid some
11 tickets back a few years ago in 2008?

12 A Yes.

13 Q Isn't it true that you had submitted false
14 information to the police at that point in time,
15 and that was one of your tickets?

16 A No.

17 Q So you were not charged with unlawful submission of
18 documentation?

19 A I would just like to say before I continue that I
20 was asked to give information related to the case
21 we are talking about. What is the things you are
22 asking about now have to do with the robbery?

23 THE COURT: Let's stop right there. The
24 witness does not control what questions are asked and
25 what questions are answered.

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1 THE WITNESS: Okay.

2 THE COURT: Here is my question, sir. This is
3 not a situation where you are going to get in trouble
4 for what you did as far as your driving record is
5 concerned.

6 The lawyers have the right to ask you about
7 your past criminal record, and that's what these
8 questions are about, not as to whether or not you will
9 get in any trouble, but whether or not your testimony is
10 believable.

11 You may ask the question, Mr. Madsen, and the
12 witness will answer it.

13 BY MR. MADSEN:

14 Q Mr. Prado, back in 2008 you were charged with
15 supplying false information to obtain identification
16 card?

17 A No, I never gave any false information to the
18 police.

19 Q Was that one of the tickets that you paid?

20 A No, not that I remember, no.

21 Q But you had testified that you were charged with
22 driving an uninsured motor vehicle; correct?

23 A Yes.

24 Q And at the same time charged with driving without a
25 license?

1 A Uh-huh. (Indicating affirmative response.)

2 Q It also shows you were charged with reckless
3 driving?

4 A What do you mean reckless?

5 Q They indicate that they charged you with -- or that
6 law enforcement charged you with reckless driving.

7 A I don't understand the word reckless.

8 Q It would mean dangerous driving.

9 A Driving quickly, yes.

10 Q You were charged with four different offenses?

11 A Yes.

12 Q What was the fourth offense then?

13 A The fourth?

14 Q They show that you were charged with reckless
15 driving, driving without a license, uninsured motor
16 vehicle, and they show that you were charged with
17 supplying false information to obtain
18 identification card.

19 You tell me you remember the first three. You
20 are disputing the fourth, but I am trying to figure
21 out is what was the fourth that you say you were
22 charged with?

23 A I don't remember. It was a long time ago. I do
24 know that they stopped me and I got a ticket for
25 that, but it has been a while. That was the day

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1 also they took me to jail.

2 MR. WEDEKIND: Your Honor, didn't he say he
3 got stopped for not wearing a seat belt earlier?

4 THE COURT: I don't know if that was the first
5 one or the last one. Any other questions?

6 MR. MADSEN: I guess that's an important issue
7 that I would like to be able to flesh out, whether or
8 not I can ask him that or not.

9 THE COURT: I agree. Mr. Wedekind, anything
10 else?

11 MR. WEDEKIND: No, sir.

12 THE COURT: Do you have any other questions
13 you would like to ask him? Obviously, you do, short of
14 that. You haven't even started your cross yet; right?

15 MR. MADSEN: Right. I obviously have some
16 cross examination questions.

17 THE COURT: We can break for lunch.

18 MR. MADSEN: It's up to Your Honor.

19 THE COURT: I will leave it up to you.

20 MR. MADSEN: If Your Honor wants me to start,
21 I can get to a certain point. Then I can kind of beg
22 off and say, "Hey, Judge, at this point in time I think
23 it would be a great time to break."

24 If we resolve that issue and he doesn't have a
25 conviction, then I will just be done at that point in

1 time. If he does, then I would like leave to just ask
2 him about that.

3 THE COURT: The specific code section which
4 you will able to read during the break seems to be
5 tailored as to those who actually make fake I.D.s.
6 Maybe the stopping officer had the code section
7 confused. It might have been he just gave him a fake
8 driver's license. I don't know.

9 MR. MADSEN: It's tough to know. As I have
10 said, sometimes a rap sheet, you find someone shows up
11 that they are convicted of armed robbery, but then you
12 look and they say armed robbery, and they got three
13 years, which we all know is not subject to the minimum.
14 So we know there is a problem there. That's the problem
15 when you are dealing with a rap sheet at this point in
16 time.

17 THE COURT: As far as your cross is concerned,
18 would you like to go as far as you can and then stop or
19 would you like to stop?

20 MR. MADSEN: I would rather do that because if
21 this issue is resolved, then we can move forward from
22 there. Even it's not, I only think it will take less
23 than a minute or two to resolve that.

24 THE COURT: You can bring in the jury.

25 (The jury returns to the courtroom.)

MARCELO PRADO -- CROSS -- MR. MADSEN

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1 THE COURT: Mr. Madsen, you may question the
2 witness.

3 MR. MADSEN: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. MADSEN:

6 Q Mr. Prado, you mentioned that you were with Ramon?

7 A Uh-huh. (Indicating affirmative response.)

8 Q And you and he went out and got something to eat?

9 A Yes.

10 Q Where did you go?

11 A Waffle House.

12 Q Did you walk or did you drive?

13 A Driving.

14 Q And you had mentioned that once you got back, you
15 saw a blue Suburban?

16 A Uh-huh. (Indicating affirmative response.)

17 Q And when I say back, you and Ramon went back to
18 your home?

19 A To my house, yes.

20 Q And you lived at, I believe, [REDACTED]?

21 A Dubbs Drive? Uh-huh. (Indicating affirmative
22 response.)

23 THE COURT: Ask him to say yes or no.

24 A Yes.

25 Q And that's at the front entrance of the trailer

- 1 park?
- 2 A Yes.
- 3 Q And so Number 6 is a ways into the trailer park;
- 4 isn't it?
- 5 A Yes.
- 6 Q You can't really see it from inside of your home;
- 7 can you?
- 8 A No.
- 9 Q And it's dark when you get home; isn't it?
- 10 A Yes.
- 11 Q And you said that you and Ramon had eaten inside
- 12 your residence?
- 13 A Yes.
- 14 Q So you get -- I guess you got takeout from Waffle
- 15 House?
- 16 A Yes.
- 17 Q So you see this car. You and he go inside. You
- 18 eat in your home; right?
- 19 A Yes.
- 20 Q And then at some point in time he leaves?
- 21 A Yes, when he was ready to go to his house.
- 22 Q And then later he calls you?
- 23 A Yes.
- 24 Q And you eventually call the police?
- 25 A Yes.

MARCELO PRADO -- REDIRECT -- MR. WEDEKIND

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1 Q And I believe that after you call the police, it
2 takes them eight to ten minutes to get out there;
3 doesn't it?

4 A Yeah. Because when I was talking, I saw the car go
5 out, and then I went out to see which way the car
6 was going so I could give the information to the
7 police.

8 Q And ultimately Ramon has been deported back to
9 Mexico; correct?

10 A Yes.

11 Q And that was about six months ago?

12 A More or less.

13 Q And when you called police, it was almost two years
14 ago?

15 A More or less.

16 MR. MADSEN: That's all the questions I have,
17 subject to that one issue, Your Honor.

18 THE COURT: Mr. Wedekind, any redirect at this
19 point?

20 MR. WEDEKIND: Very briefly, sir.

21 REDIRECT EXAMINATION

22 BY MR. WEDEKIND:

23 Q Do you know what Ramon was deported for?

24 A For driving with no license.

25 Q And do you know how long -- you said you saw the

1 blue S.U.V. drive away?

2 A Yes.

3 Q And you were still on the phone line with the
4 police?

5 A Yes, yes.

6 Q Do you know or not know how long it took for the
7 police to find that vehicle?

8 A When I was talking to them and I went outside and
9 looked down the street and saw the Suburban
10 turning, I would say two or three minutes later, I
11 saw the police cars.

12 Q Did you see the police cars in that eight minutes
13 you talked about when they came to investigate
14 Number 6?

15 A Yes. After I hung up, I went to their house and
16 after that the police arrived.

17 Q I am showing you State's Exhibit --

18 MR. MADSEN: Judge, I believe we are past
19 redirect.

20 THE COURT: What exhibit is that?

21 MR. WEDEKIND: This is the trailer park. I
22 was going to show where Number 1 was in relation to
23 Number 6.

24 MR. MADSEN: I withdraw it then if that's it.

25 THE COURT: I believe that is appropriate.

MARCELO PRADO -- REDIRECT -- MR. WEDEKIND

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1 Thank you.

2 BY MR. WEDEKIND:

3 Q I am showing you State's Number 6. Do you
4 recognize your trailer park?

5 MR. MADSEN: Judge, can I approach so I can
6 see?

7 THE COURT: Yes, sir. Wait just a second so
8 he can get up here.

9 MR. MADSEN: I wanted to get behind you.

10 BY MR. WEDEKIND:

11 Q Does that look like your trailer park?

12 A Yes.

13 Q This (indicating) is Dew Avenue?

14 A Yes.

15 Q Which one do you live in?

16 A This one (indicating).

17 Q And Number 6 -- that (indicating) is Number 1?

18 A Yes.

19 Q Which is Number 6?

20 A (Indicating).

21 Q One, 2, 3, 4, 5, 6, 7. Which is which?

22 A I'm not sure if they do them that way. I just know
23 which is Number 1 and 9 or 10.

24 Q But you were living in the trailer right on Dew
25 Avenue?

1 A Yes.

2 Q Thank you.

3 MR. WEDEKIND: No further questions.

4 THE COURT: Mr. Madsen, any additional
5 questions?

6 MR. MADSEN: No, Your Honor, subject to the
7 other.

8 THE COURT: Ladies and gentlemen, what we are
9 going to do at this point is take our lunch break a
10 little bit earlier than we normally would. If you would
11 please be back in your jury room by 1:15, we will begin
12 at that time.

13 Of course, during the interim you may not
14 discuss the case at all. Don't undertake to do any type
15 of research at all. Don't get any information about it
16 at all. I will see you back at 1:15. Thank you.

17 (The jury is excused for lunch at 12:03 P.M.)

18 THE COURT: Mr. Prado, if you would please be
19 back in the courtroom at 1:00 o'clock or 1:15, whenever
20 they let you in because there may be some additional
21 questions that these lawyers would like to ask you.

22 THE WITNESS: Yeah, I will come back. The one
23 thing is I told my work that I was probably going to be
24 there around 9:30 or 10. Is there any way I can get
25 some type of letter saying I was here?

1 THE COURT: Yes, sir, you may. Thank you.
2 Please understand, you may not discuss your testimony
3 with anyone during the next hour and a half; all right?

4 THE WITNESS: That's fine.

5 THE COURT: Thank you, sir. You can step
6 down. Anything before we break?

7 MR. WEDEKIND: No, sir.

8 MR. MADSEN: No, sir.

9 THE COURT: If I could see y'all in the back,
10 we will talk about perhaps the skeletal part of the jury
11 charge.

12 MR. WEDEKIND: Yes, sir.

13 (Whereupon there is a luncheon recess.)

14 THE COURT: Is the State ready?

15 MR. WEDEKIND: Yes, sir.

16 THE COURT: Defendant?

17 MR. CASTO: Yes, sir, Your Honor.

18 THE COURT: Did you get the issue resolved?

19 MR. MADSEN: We have not gotten anything.

20 THE COURT: Has somebody been checking on that
21 during lunch?

22 MR. WEDEKIND: I certainly wasn't, sir.

23 THE COURT: I thought somebody was checking on
24 the disposition of that criminal charge.

25 MR. MADSEN: Your Honor, our position would be

1 that that is something that would need to be turned over
2 by Rule 5.

3 THE COURT: And I thought -- wasn't somebody
4 checking with some authority to see what the disposition
5 of it was?

6 MR. WEDEKIND: I don't think we were, sir. We
7 gave them the rap sheet. I'm not trying to be flippant.
8 I thought they were going to send their investigator out
9 to check with the magistrate to get the public record.
10 I will check with Mr. Bunge, but I don't think he was
11 retrieving that.

12 THE COURT: I thought I heard you say before
13 we adjourned that Mr. Bunge was going to check with the
14 magistrate or somebody -- I didn't quite catch who it
15 was -- to see what had happened with that charge.

16 (Pause.)

17 THE COURT: Does the rap sheet say who pulled
18 him over?

19 MR. MADSEN: It says the Highway Patrol.

20 THE COURT: What jurisdiction? What county
21 was it in?

22 MR. MADSEN: Highway Patrol District I. I am
23 not familiar with where District I is.

24 CLERK: District I consists of Richland,
25 Lexington, and Newberry Counties and Calhoun.

1 THE COURT: Mr. Prado is under oath. I will
2 ask him if he knows what county he was in when he was
3 pulled over.

4 CLERK: Your Honor, if I may, sir.

5 THE COURT: Yes, ma'am.

6 CLERK: Also, to let you know, I called our
7 central traffic court that handles all highway cases in
8 Lexington County. There is no record under the name or
9 the number.

10 There is a ticket number on the rap sheet, and
11 I have also confirmed that they checked it. We have
12 checked it every way we possibly can. There is no
13 record here in Lexington of it.

14 MARCELO PRADO SERNA, having
15 been previously duly sworn, resumed the witness stand
16 and testified as follows:

17 THE COURT: Thank you. Mr. Prado, you are
18 still under oath. Do you know what county you were in
19 when you were pulled over in 2008 for the violations
20 that were discussed earlier?

21 THE WITNESS: I can't remember which county
22 it is. I just remember it was Exit 70 off of
23 Interstate 20.

24 THE COURT: Where did you go to pay the
25 ticket? What jail were you taken to?

1 THE WITNESS: The one that is on Exit 5 of
2 Interstate 77.

3 THE COURT: Sir?

4 THE WITNESS: The one that is on Exit 5 of
5 Interstate 77.

6 THE COURT: That's Richland County; isn't it?

7 CLERK: Alvin S. Glenn, and Exit 70 is 321 and
8 I-20 in Richland County, Fairfield Road. That's my
9 exit.

10 THE COURT: Yes, sir.

11 MR. WEDEKIND: Mr. Bunge, he only followed up
12 with Ms. Frick, and there was no additional search made
13 for a Richland County driving record.

14 THE COURT: What does the State propose that
15 we do now?

16 MR. WEDEKIND: I guess the evidence we have is
17 he said he doesn't have any ticket of it, and Ms. Frick
18 says the central -- is that statewide or is that just
19 limited to --

20 CLERK: No, that's just Lexington County. I
21 was only checking Lexington because I was not sure where
22 he was stopped.

23 MR. WEDEKIND: We can call the Highway Patrol
24 and see if they can perhaps have any record of it. If
25 he wants to impeach him with it, I have no objection to

1 that.

2 THE COURT: That he was charged with it?

3 MR. WEDEKIND: That's fine. Let him run with
4 that. I don't really think it goes too much to his
5 credibility.

6 THE COURT: I understand that.

7 MR. WEDEKIND: Let him impeach him with it. I
8 think that's the holdup.

9 THE COURT: Mr. Madsen?

10 MR. MADSEN: Judge, I think that that is a
11 problem because he is saying he doesn't have that. I
12 mean, he says he got something from that day. We have
13 got something on the rap sheet that seems to match up.

14 That is one of the things that we are allowed
15 to and that Rule 5 provides that is supposed to be
16 provided to us with a witness is obviously impeachment
17 of any crimes that fit under the rules.

18 So to get up there and say, "You have this,"
19 and he says "No," you know, it would be nice if he said
20 no and we could say, "Here, we have got this document."
21 They are supposed to turn that over.

22 THE COURT: What do you propose we do now?
23 Two things are going to happen. One is we are going to
24 sit here and wait. The other is if he doesn't have the
25 information and we can't get it within a reasonable

1 time, I am going to mistry the case because they have
2 the right to cross examine effectively --

3 MR. WEDEKIND: Yes, sir.

4 THE COURT: -- the opportunity to cross
5 examine. I supposed had I known this in the first
6 place, I probably wouldn't have let you call him. I
7 really don't know what his testimony is adding to any
8 equation, but in any event he is on the stand. That
9 horse is out of the barn. So those are going to be my
10 two choices.

11 MR. MADSEN: Judge, I would just move then if
12 they don't have it to strike his testimony, and we will
13 move forward.

14 THE COURT: That's a third possibility. I
15 thought about that possibility during lunch. I was
16 assuming you wouldn't want that under the theory that
17 you can't unring the bell.

18 I'm not the jury. I don't know what his
19 testimony adds. Evidently there is a statement she gave
20 in which she admits to being the driver, picking up some
21 bullets, and that these two guys were the perpetrators.

22 I'm assuming that is the statement. I am
23 assuming also her statement had some indication that she
24 was under duress, but that just is suspicion on my part.
25 There is enough to get to the jury on burglary if that

1 was your concern.

2 MR. WEDEKIND: That was it, sir.

3 THE COURT: Circumstantially you have got
4 somebody who is asleep on a couch, and they wake up and
5 somebody has just come in a door and has a gun to his
6 head, that is certainly -- I couldn't order it -- but
7 that is certainly rather conclusive proof that that
8 person came in without consent.

9 But it's easy for me to sit here and say all
10 that when I'm not the one who is having to fit all these
11 elements together. I am not faulting you for bringing
12 him. I am just saying from where I sit, I don't see
13 what it adds to anything. But since he is on the stand,
14 we have got to figure out what to do.

15 MR. WEDEKIND: Yes, sir. Mr. Bunge has gone
16 to see if he can research with the Highway Patrol about
17 the ticket number with Richland County. I apologize. I
18 thought their investigator -- we gave them the
19 information. I thought their investigator was tracking
20 it down. Apparently they thought our investigation was
21 taking place.

22 THE COURT: Okay.

23 MR. MADSEN: Judge, my suggestion -- and I am
24 sure Your Honor is obviously concerned with the fact you
25 have a jury sitting back there and rightfully so. My

1 suggestion is we could take their next witness out of
2 order, give them a chance to try to get that
3 information, and then --

4 THE COURT: And yours too if you want to.

5 MR. MADSEN: Sure. And then address it after
6 that. That should give them sufficient time.

7 THE COURT: My main concern is to make sure
8 both sides have full opportunity to present the case and
9 defend the case and that the defendant's rights are
10 protected.

11 As a practical matter, the jury is a concern
12 too. I don't like keeping a captive audience waiting.
13 I am not getting irked about it. I just want to make
14 sure that everybody has their input on what ought to be
15 done.

16 Of course, the State can present all the proof
17 it believes it needs to present on the element of entry
18 without consent because, again, it doesn't matter what I
19 think. It matters what the jury thinks.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: Do you have any objection to the
22 witness stepping down and going forward with
23 Investigator Moore?

24 MR. WEDEKIND: No, sir.

25 THE COURT: And she will take roughly an hour?

1 MR. WEDEKIND: Yes, sir, I think so with cross
2 examination.

3 THE COURT: Mr. Prado will just stay. You
4 will get a work excuse, sir. Either I or the Clerk of
5 Court or both will sign it. I'm not going to ask him
6 whether he has any transportation.

7 MR. WEDEKIND: He does. His stepfather is
8 seated in the back there, sir.

9 THE COURT: He can step down.

10 (Witness leaves the witness stand.)

11 THE COURT: The record pertaining to
12 Mr. Prado's testimony will remain open and Investigator
13 Bunge can continue his efforts.

14 MR. WEDEKIND: Yes, sir.

15 THE COURT: Ready for the jury?

16 MR. WEDEKIND: Yes, sir.

17 MR. MADSEN: Yes, Your Honor.

18 THE COURT: Bring them in.

19 (The jury returns to the courtroom at
20 1:27 P.M.)

21 THE COURT: Ladies and gentlemen, we are ready
22 to move forward. We are going to do one particular
23 thing out of order. The defendant will be permitted to
24 cross examine Mr. Prado at some point this afternoon.
25 Mr. Prado is here. It's just that we have a couple of

1 issues to resolve that don't require your participation,
2 but the State is going to call its next witness at this
3 time.

4 MR. WEDEKIND: The State would call
5 Investigator Page Moore.

6 PAGE McCRAW MOORE, being
7 first duly sworn, testifies as follows:

8 CLERK: Once you are seated, state your full
9 name, spelling your last.

10 THE WITNESS: My name is Page McCraw Moore.
11 My first name is P-A-G-E. My last name is Moore,
12 M-O-O-R-E.

13 DIRECT EXAMINATION

14 BY MR. WEDEKIND:

15 Q Investigator Moore, who are you employed by?

16 A I am employed by the West Columbia Police
17 Department.

18 Q And how long have you been working there?

19 A I've been there seven years.

20 Q Is that the full range of your law enforcement
21 experience?

22 A No, sir. I started out in May of 1999 through the
23 South Carolina Criminal Justice Academy. Through
24 mental health is who I acquired my certification
25 and from there I went to Chapin, South Carolina. I

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1 was their first female officer there and from there
2 to Richland County and now at West Columbia, been
3 there seven years.

4 Q And you were with West Columbia back in 2010?

5 A Yes, sir, I was.

6 Q And what duty assignments did you have back in
7 June of 2010?

8 A I was an investigator and I was on call when I got
9 called out for this.

10 Q So were you called just after midnight, sometime
11 between midnight and 1:00 to the investigation?

12 A Yes, sir, I was.

13 Q Tell the jury what you found when you first arrived
14 at that scene and your involvement.

15 A Approximately 1:10 in the morning I was called by
16 the shift sergeant since I was on call. He
17 explained what kind of call they had, and I
18 responded out to it. It was approximately -- I
19 believe it was the 2100 block of Holland where the
20 blue Tahoe was.

21 Q And did you have contact with the defendant,
22 Ms. Carrie Callahan?

23 A Not at that time I did not. I get briefed by the
24 sergeant on what had occurred prior to my arrival,
25 such as the incident that occurred at the residence

1 and then prior to what happened at their stop.

2 Q So without going into what other people are saying,
3 you were gathering background information?

4 A Right, for my personal use.

5 Q Was there a purpose why you do that?

6 A Yes, so I can meet with the three suspects. I was
7 informed that it was two black males and a black
8 female, and I would go back to my headquarters and
9 interview them.

10 Q And when you do an interview with somebody when you
11 are investigating a crime, does it help to know the
12 background of what is going on?

13 A Yes, sir, it does.

14 Q Why is that helpful?

15 A Well, pretty much to kind of tell where they are
16 coming from or if they have any kind of other
17 criminal history and exactly the circumstances of
18 what took place.

19 Q So you are trying to make an assessment to make an
20 intelligent question and answer session possibly?

21 A Yes, sir.

22 Q So you had done that. Then after you had laid that
23 foundation and got as much as you could within the
24 short span of time, what did you then do?

25 A I then went back to my headquarters and was

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1 acquiring identification on the three suspects to
2 be able to interview them.

3 Q You said three suspects. Who were they?

4 A One suspect was Ricky Bell, the second suspect was
5 Quincy Holley, and the third suspect was
6 Ms. Callaham.

7 Q Do you see Ms. Callaham present?

8 A Yes, sir, I do.

9 Q Is she here?

10 A Yes, sir.

11 Q If you would describe her.

12 A She is in pink today.

13 Q That's the person you met with?

14 A Yes, sir.

15 MR. WEDEKIND: Your Honor, left the record
16 reflect that she identified the defendant Ms. Carrie
17 Callaham.

18 BY MR. WEDEKIND:

19 Q So when you get the information, you get these
20 individuals together or are they separate?

21 A No, sir, they are separate.

22 Q And you went in and what did you initially have as
23 a name for Ms. Callaham? Did she tell you a name
24 right off the get-go?

25 A She had given officers a first name, and then after

1 that I was given the name of Myra Edwards.

2 Q What was the first name you said?

3 A Myra Nichole.

4 Q Did that check out?

5 A No, sir. The officers had already ran that. It

6 didn't come through.

7 Q How did you find out that that was not correct?

8 A I was informed by the officers.

9 Q Was there a D.M.V. check with the name Myra

10 Nichole?

11 A Yes, sir. They run it through D.M.V. records.

12 When it doesn't come back a name or a photo, then

13 they assume, you know, something is wrong with

14 that.

15 Q So if I entered in the name Myra Nichole into the

16 driver's license records, it would produce what?

17 A A D.M.V. photo.

18 Q So you take that photo and compare it to what?

19 A To her.

20 Q And if the photo that you got from the record

21 doesn't match the individual, what does that mean?

22 A It's not her.

23 Q So you said there was a second name that she gave.

24 Was that given directly to you?

25 A Yes, sir.

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1 Q What was that name?

2 A She told me Myra Edwards.

3 Q And did your investigation lead you to find out the
4 registration of that Tahoe, the blue Tahoe that she
5 was driving, who owned that vehicle?

6 A Yes, sir, we normally run the South Carolina tag.
7 It tells us who the vehicle belongs to, and
8 officers do that prior to my arrival. That's
9 information that I also get, and it came back to a
10 Mark Edwards.

11 Q So did you believe there was a connection between
12 the name Myra Edwards and Mark Edwards?

13 A According to her and the names being similar, I
14 thought they were.

15 Q And did that check out?

16 A The name Myra Edwards? It came back with another
17 D.M.V. photo. Clearly I looked at it and looked at
18 her and could tell that it was not her.

19 Q Did you then go back and confront her the second
20 time about her identification?

21 A I did. I went back and I said the D.M.V. photo
22 that I have and the name you are giving me is not
23 who you are.

24 Q Did she then give you another name?

25 A She did. She gave me the name of Courtney

1 Callaham.

2 Q So Courtney Callaham was given. Did she give you a
3 Social and a date of birth?

4 A I believe she did because we filled out a Miranda
5 rights form.

6 Q Which brings me to the next point. Did you then
7 advise her of her rights under Miranda as it is
8 called?

9 A Yes, sir, I did.

10 Q What were those rights? Do you recall?

11 A Well, we go over a form with that. She fills out
12 the top part with her name and address, date of
13 birth, Social Security number, and then the rights
14 we go through together and have her initial.

15 Q Let me show you what is marked for identification
16 as State's I.D. Number 1. Do you recognize this?
17 It's a document entitled at the top Miranda rights
18 warning. Does that look familiar?

19 A Yes, sir.

20 Q And is that a document that you assisted in the
21 preparation of?

22 A Yes, sir, I did. It has my signature on it.

23 Q In the block marked witness?

24 A Witness signature.

25 Q That's your name. You affixed the pen to paper to

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1 that?

2 A Yes, sir.

3 Q Does that fairly and accurately depict the document
4 that you signed as a witness?

5 A Yes, sir.

6 Q Have there been any changes, alterations, or
7 substitutions to it since the day you prepared it?

8 A No, sir.

9 MR. WEDEKIND: Your Honor, at this time the
10 State would move into evidence State's I.D. Number 1.

11 THE COURT: Mr. Casto?

12 MR. CASTO: No objection.

13 THE COURT: Number 1 is in.

14 (State's Exhibit Number 1 is received into
15 evidence.)

16 MR. WEDEKIND: May I publish it, sir?

17 THE COURT: Yes, sir.

18 BY MR. WEDEKIND:

19 Q So just we can collaborate here, I will give you a
20 laser pointer, and you can follow along with me if
21 you would. At the top of the block it says what,
22 right up here (indicating)?

23 A It gives the date -- or Miranda warning rights and
24 then it gives the date and time and our case
25 number.

- 1 Q Who filled that information out?
- 2 A That's my handwriting. I filled that out.
- 3 Q And then it says, "I," comma blank, what does it
4 say in there and who put that?
- 5 A It says, "I, Courtney Callahan," and then she gives
6 her address, telephone number, date of birth,
7 Social Security number, and the grade and either
8 she can read or cannot read. She initialed it.
9 That's her handwriting. They fill that top out.
- 10 Q So this is her pen touched to paper and provided
11 this information?
- 12 A Yes, sir.
- 13 Q And then it says, "The Constitution requires that
14 you be informed that, one." What does that say?
- 15 A "You have the right to remain silent."
- 16 Q Did you read that to her?
- 17 A Yes, sir.
- 18 Q Did you have any difficulty communicating with her?
- 19 A No, sir. She put her initials.
- 20 Q If you spoke to her, did she seem to understand
21 what you were saying?
- 22 A Yes, sir.
- 23 Q And then by putting these marks right here
24 (indicating), what are those?
- 25 A Those are her initials.

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- 1 Q What does that signify?
- 2 A That she understands that that I just read.
- 3 Q So you read to her this and then asked her to
- 4 initial it if she understood it?
- 5 A Yes, sir.
- 6 Q And she did that?
- 7 A Yes, sir.
- 8 Q And then what about item two, what does that say?
- 9 A It says, "Anything you can say will be used in
- 10 court as evidence against you."
- 11 Q And there's marks there. What is that?
- 12 A Her initials again.
- 13 Q Item three?
- 14 A Item three says, "You are entitled to talk to a
- 15 lawyer now and to have him or her present now or at
- 16 any time during questioning."
- 17 Q And, again, initialed by her?
- 18 A By her, yes, sir.
- 19 Q Four?
- 20 A "If you cannot afford a lawyer, one will be
- 21 appointed for you without cost."
- 22 Q And that pretty much wraps up the mandatory Miranda
- 23 rights, but there is an additional item here five.
- 24 What is that?
- 25 A Yes, sir. It asks her does she understand those

1 rights as I just read them, and I asked her to
2 circle yes or no if she understood them.

3 Q And did she do that?

4 A Yes, sir, she put her initials at the line and also
5 circled yes and initialed.

6 Q So before the block and even at the line of yes or
7 no?

8 A Yes, sir.

9 Q You didn't have any difficulty with her
10 understanding what you were saying?

11 A No, sir, I did not.

12 Q And you didn't have any problem understanding her
13 when she would answer you?

14 A No, sir, I did not.

15 Q Were her answers what you considered to be
16 responsive? If you would ask a question, she -- if
17 you asked her how old she was, she told you an age?

18 A Yes, sir.

19 Q And then item six. What is that?

20 A It says, "If you decide to answer questions now
21 without a lawyer present, you will still have the
22 right to stop answering questions at any time. You
23 also have the right to stop answering questions at
24 any time until you talk to a lawyer."

25 Q Then there is a signature there. Who signed that?

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- 1 A She signed that.
- 2 Q That's the name of what?
- 3 A Courtney Callahan.
- 4 Q Now, the same document, if we go down a little bit
- 5 further, what is there?
- 6 A It's a waiver of rights that we ask them to read
- 7 over that lets them know I didn't threaten them or
- 8 promise them anything.
- 9 Q Which brings me to the next point. How long did
- 10 you have her in there? You said it started
- 11 June 16th at what time? At the top what does that
- 12 say right there?
- 13 A At 2:50 A.M.
- 14 Q So this is after she had been -- you think you got
- 15 to the scene around 1:10, and this was about an
- 16 hour and 30 or 40 minutes later?
- 17 A Yes, sir.
- 18 Q Now, going back to this section here (indicating),
- 19 did she ask for any breaks when you were talking or
- 20 meeting with her?
- 21 A No, sir, she didn't.
- 22 Q If she had would you have provided her a bathroom
- 23 break or snack or drink?
- 24 A Yes, sir.
- 25 Q Was she under any complaints about any injuries or

- 1 physical ailments?
- 2 A No, sir.
- 3 Q Did she talk about a need or concern for her
- 4 safety?
- 5 A No, sir.
- 6 Q And what about this right here (indicating) where
- 7 it says signature of suspect, who signed that?
- 8 A She did.
- 9 Q Who affixed the date?
- 10 A She did.
- 11 Q And then what about this witness signature? Is
- 12 that where you signed it?
- 13 A That's my signature, yes, sir.
- 14 Q What is this dark area right here (indicating)?
- 15 A That's her handwriting.
- 16 Q So this was under the name, the third name, I
- 17 believe you were given?
- 18 A Yes, sir.
- 19 Q Let me show you what is marked as State's I.D.
- 20 Number 2. Do you recognize this document?
- 21 A Yes, sir, I do.
- 22 Q What is that?
- 23 A It's a second Miranda warning rights.
- 24 Q Why was the second one prepared?
- 25 A The first one was a false name and the second one

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1 was prepared because when I talked to her and
2 explained to her that her name didn't match along
3 with the photo -- excuse me -- that she didn't
4 match along with the photo and that we knew she
5 still wasn't giving us the correct name and she was
6 facing serious charges that she could only help
7 herself, and she told me her real name, Carrie
8 Denise Callaham. So I redid the Miranda rights
9 form in the correct name.

10 Q So yet a third time she gives you a name, and yet a
11 third time you check the D.M.V. records; is that
12 correct?

13 A Yes, sir.

14 Q What was the result?

15 A On this one it came back that it matched her.

16 Q But about the Courtney Callaham, when you got that,
17 it came back as what?

18 A It did not match.

19 Q So the face, again, didn't match the name?

20 A No, sir.

21 Q For her?

22 A No, sir.

23 Q So then you are given a fourth name?

24 A Yes, sir.

25 Q And that was what?

- 1 A The fourth name was Carrie Denise Callahan.
- 2 Q So you went and prepared State's Exhibit I.D.
- 3 Number 2 because it was a new identity?
- 4 A Right.
- 5 Q And is that your name at the bottom?
- 6 A Yes, sir, it is. It's my signature.
- 7 Q Have there been any additions, deletions, or
- 8 substitutions made to this since the time that you
- 9 prepared it?
- 10 A No, sir.
- 11 Q Just to save time -- well, let me do this.
- 12 MR. WEDEKIND: At this time, Your Honor, the
- 13 State would move into evidence State's I.D. Number 2.
- 14 THE COURT: Any objections?
- 15 MR. CASTO: Without objection.
- 16 THE COURT: Number 2 is in.
- 17 (State's Exhibit Number 2 is received into
- 18 evidence.)
- 19 BY MR. WEDEKIND:
- 20 Q Let me show you what is marked for identification
- 21 as State's I.D. Number 3. Do you recognize that?
- 22 It's entitled voluntary statement?
- 23 A Yes, sir, I do.
- 24 Q Is that your signature affixed to the bottom?
- 25 A Yes, sir, it is, the bottom left.

1 Q It's two pages; is it not? Would you check the
2 second page.

3 A Yes, sir, that's it.

4 Q Does that also have your signature?

5 A Yes, it does.

6 Q Any additions or deletions or substitutions to that
7 document from the date you prepared it?

8 A No, sir.

9 Q And in putting this together, who actually filled
10 out the top information?

11 A She fills out the top of it.

12 Q And who put pen to paper on the body of the
13 statement?

14 A She does.

15 Q Did you make any questions and answers on the
16 second page?

17 A I had two questions for her on the second page, and
18 she had two answers.

19 Q So you wrote out the questions and she wrote the
20 answers?

21 A She writes the answers.

22 MR. WEDEKIND: At this time, Your Honor, the
23 State would move into evidence State's I.D. Number 3?

24 MR. CASTO: Without objection, Your Honor.

25 THE COURT: Three is in.

1 (State's Exhibit Number 3 is received into
2 evidence.)

3 MR. WEDEKIND: If I may, sir, I will publish
4 these. Is that okay, sir?

5 THE COURT: Yes, sir.

6 BY MR. WEDEKIND:

7 Q Looking at State's Number 2, basically that's the
8 same form that we just looked at in State's 1;
9 correct?

10 A Yes, sir.

11 Q The date is the same. The time is what?

12 A It's 3:20 at that time.

13 Q This is 30 minutes after the first one was
14 prepared?

15 A Yes, sir.

16 Q Is that the time frame that you explored Courtney's
17 identity and found out it didn't match the woman
18 you had in front of you?

19 A Yes, sir, filling that out and getting her
20 information and finding out that she had a
21 different name.

22 Q So then you were back and who filled out this
23 portion again?

24 A She did.

25 Q At this time she wrote her real name in?

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1 A Yes, sir.

2 Q And the address is the same but what about the
3 Social Security number?

4 A Let me look. There is a change to it. There is --
5 it's looks like a 1 on the first one and a 2 -- a 2
6 on the first one and 1 on the second one.

7 Q Close but not quite right?

8 A (Witness nods.) (Indicating affirmative response.)

9 Q And you went through the same advisement of rights,
10 one through six; correct?

11 A Yes, sir.

12 Q Any difficulties with her understanding?

13 A No, sir.

14 Q She did the same thing on each one and affixed her
15 initials to it?

16 A Yes, sir.

17 Q Signed it again?

18 A Yes, sir.

19 Q This time she signed it Carrie straight through.
20 She didn't have to realize her error and change it;
21 right?

22 A Yes, sir.

23 Q Because in this one it looks like, just out of
24 habit, she starts signing Carrie instead of
25 Courtney; is that correct?

1 A Yes, sir.

2 Q Now, after these advisement of rights were given in
3 State's 1 and 2, finally you got to her real name
4 after the fourth attempt; right?

5 A Yes, sir.

6 Q I am going to show you State's Number 3. Who
7 filled out this information at the top?

8 A She does.

9 Q And that does match up to what she gave you on the
10 Miranda rights; correct?

11 A Yes, sir.

12 Q And this was done when? After the Miranda
13 statement?

14 A Yes, sir. I gathered some more information again
15 and retalked with her. She filled it out.

16 Q I am going to ask you -- I am going to move this up
17 and get to the body where it says, "I freely
18 answers questions and make the following
19 statement."

20 Would you read that for the jury if you
21 would, please. Can you read it from there.
22 Start here (indicating) and read through the whole
23 page.

24 A "On June 15, 2010, I, Carrie Callaham, met Black on
25 Farrow. I only known him for a couple of days.

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1 Mr. Black and his friend asked me to drive them to
2 West Columbia so they can deal with something.

3 Mr. Black had a gun and his friend. It was
4 two auto guns. Mr. Black dropped some shells in
5 the car. I picked them up and put the shells in my
6 pocket. At this time I was parked in front of some
7 trader (verbatim)."

8 Q Is that trailer or trader?

9 A It says trader but you can assume it's trailer.

10 Q Okay.

11 A "Mr. Black and his friend told me if I opened my
12 mouth, I would be hurt. They got out of the car
13 and walked away. When they returned to the car,
14 Mr. Black still had the gun, telling me to drive.

15 When the police came behind us, he told me if
16 I say anything, me and my kids will be hurt. At
17 this time I see two handguns, one little one and
18 one large gun.

19 Mr. Black put his gun under the seat of the
20 car. At this time I did not know what him or his
21 friend was doing. I asked them where their
22 (verbatim) get the gun. He would not let me know
23 at this time. I was contact at 10:00 P.M. I met
24 Mr. Black friend tonight of this (verbatim)."

25 Q And then there is some lined-out matters here.

- 1 A Right.
- 2 Q Who scratched that out?
- 3 A Her initials. She did.
- 4 Q And then there's some other marking here
- 5 (indicating) where it says Investigator Page Moore,
- 6 Q. What does that mean?
- 7 A Q. is for question. It says, "What is Black's real
- 8 name?"
- 9 Q The answer to that?
- 10 A She wrote beside A. for answer, "I don't know his
- 11 real name."
- 12 Q Then the second question?
- 13 A Mine is, "What is his friend's name?"
- 14 Q And her response?
- 15 A She answered, "I don't know his name. I met him
- 16 tonight, black pants, white shirt."
- 17 Q Is that signed and dated by both you and her?
- 18 A Yes, sir.
- 19 Q At this time she got her name right?
- 20 A Yes, sir.
- 21 Q Investigator Moore, after you got this statement,
- 22 did you ask her any amplifying questions? Did you
- 23 talk with her anymore after the statement was
- 24 obtained?
- 25 A No, sir, the interview was ended.

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1 Q Without going into particular exact numbers, do you
2 know the location of Mr. Ricky Bell and Mr. Quincy
3 Holley?

4 MR. CASTO: Objection.

5 THE COURT: Sir? Come on up.

6 (Whereupon there was a bench conference off
7 the record in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: Ladies and gentlemen, please step
10 to your jury room for a moment. You may not discuss the
11 case.

12 (The jury retires to the jury room.)

13 THE COURT: You may answer the question. The
14 jury is out of the room.

15 IN CAMERA DIRECT EXAMINATION

16 BY MR. WEDEKIND:

17 Q Do you know where Mr. Quincy Holley is and Ricky
18 Bell?

19 A Where they are at currently?

20 Q Yes. Where are they?

21 A The South Carolina Department of Corrections.

22 MR. WEDEKIND: That's it, sir. I didn't want
23 to know the number of years or wasn't going to specify
24 what charges or plea or anything.

25 THE COURT: It seems to me -- well, go ahead,

1 Mr. Casto. Your objection is based on?

2 MR. CASTO: Really based on relevance, Your
3 Honor. We were actually, I think, coming fairly close
4 to -- we didn't want to elicit any information for a
5 long time or anything to comment on that, Your Honor.

6 THE COURT: Do you have any objection to her
7 just saying that they are in S.C.D.C.? If I determine
8 it's relevant.

9 MR. CASTO: We don't believe it's relevant.
10 We really don't have any issue.

11 THE COURT: Why is it relevant to her guilt or
12 non-guilt, where they are?

13 MR. WEDEKIND: The fact they are not here and
14 the State is not putting them up. They already got
15 their day in court and they are done. I'm not going to
16 go into how they got there, just that their absence is
17 explained by them being in the Department of
18 Corrections.

19 THE COURT: You can still call them from
20 there.

21 MR. WEDEKIND: Yes, sir. I just wanted them
22 to know that their book is closed.

23 THE COURT: Anything else, Mr. Casto?

24 MR. CASTO: The thought that I have is I am
25 worried that it's fairly close to saying guilt by

1 association. In other words, "Hey, these guys are in
2 prison. Well, she is the third musketeer." I think it
3 comes close to that so to speak.

4 THE COURT: I believe the question is
5 irrelevant. So I will sustain the objection. It seems
6 to me that whatever your argument is going to be, the
7 jury can probably be able to infer where they are
8 because I don't think you guys dispute these guys robbed
9 them. The defendant doesn't dispute that these two
10 robbed the victim.

11 MR. CASTO: No, sir.

12 THE COURT: You don't want that association
13 mentioned, but I will sustain the objection.

14 MR. CASTO: Yes, sir, and we would move to
15 strike.

16 THE COURT: She didn't answer the question;
17 did she?

18 MR. CASTO: I don't believe she did but the
19 question itself, Your Honor.

20 THE COURT: Anything else?

21 MR. WEDEKIND: No, sir.

22 THE COURT: Will you have anymore questions of
23 the witness, Mr. Wedekind?

24 MR. WEDEKIND: Yes, I do, sir.

25 THE COURT: You can bring the jury in if they

1 are ready.

2 (The jury returns to the courtroom.)

3 THE COURT: Mr. Wedekind, you can continue
4 with your questioning.

5 MR. WEDEKIND: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. WEDEKIND:

8 Q So, Investigator Moore, I just wanted you to very
9 specifically answer the question. Do you know
10 where Mr. Ricky Bell is?

11 A S.C.D.C.

12 Q By that you mean what?

13 A South Carolina Department of Corrections.

14 Q What about Mr. Ricky Bell?

15 A The same, South Carolina Department of Corrections.

16 Q So Quincy and Ricky are both there. Do you have
17 any idea what happened with -- you said you
18 searched the vehicle or were also assisting in
19 taking photographs. Did you take any pictures?

20 A When I arrived on scene, I had taken photos.

21 Q Did you ever get a request for assistance for
22 security from Ms. Callaham, that she was in danger?
23 Did she ever communicate that to you?

24 A No, sir.

25 Q Other than what she said in the statement?

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1 A No, sir.

2 Q Did you ever check out the 9-1-1 calls and hear a
3 9-1-1 call prior to the one that was put forth by
4 Mr. Prado? Was that the only 9-1-1 call you
5 received in this case?

6 A To my understanding that's the only 9-1-1 call was
7 the witness outside.

8 Q You didn't get a 9-1-1 call from the defendant; did
9 you?

10 A No, I did not.

11 Q Did she ever offer you an explanation as to why she
12 didn't just drive away at the trailer park --

13 A No, sir.

14 Q -- when she left her car running?

15 A No, sir.

16 Q She was in the car, she said, alone; right? Isn't
17 that what she told you, she was in the car alone?

18 A Well, according to her statement, she was in the
19 car, and they got out of the car and they came
20 back.

21 Q But she never offered you an explanation of why she
22 didn't drive away when they were gone?

23 A No, sir, she didn't.

24 Q How far away is the West Columbia Police Department
25 from the trailer park on Dew Avenue?

1 A Probably three minutes, two to three minutes.

2 Q If you came across from Columbia to get there, what
3 bridge would you have to cross?

4 A You could cross in front of Jarvis Klapman right in
5 front of the police station.

6 Q You would drive right in front of the West Columbia
7 Police Station?

8 A Yes, sir.

9 Q Did she ever tell you that she had tried to make a
10 phone call to ask for help while she was at the
11 trailer park?

12 A No, sir, she didn't.

13 Q Please answer any questions the defense may have.
14 Thank you.

15 A Yes, sir.

16 **CROSS EXAMINATION**

17 BY MR. CASTO:

18 Q Investigator Moore, how are you?

19 A Good.

20 Q You testified that you had responded to this
21 traffic stop the early morning hours of June 16th;
22 isn't that right?

23 A Yes, sir.

24 Q Of 2010?

25 A Yes, sir.

1 Q And you had arrived there after the car had been
2 stopped; correct?

3 A Yes, sir.

4 Q About 1:30ish? Is that fair to say?

5 A My time was approximate. It was about 1:10 is what
6 I have in my notes.

7 Q And you received information from the other
8 officers that kind of debrief you on the situation
9 of what they have at the traffic stop?

10 A Yes, sir, that's correct.

11 Q Basically to recap, there were photos taken of the
12 car; isn't that right?

13 A Yes, sir.

14 Q And obviously there is a gun under the passenger
15 seat found; right?

16 A Yes, sir.

17 Q And there is a gun on the floorboard of the rear
18 seat behind where Carrie is sitting; isn't that
19 right?

20 A Yes, sir.

21 Q No victim's property in the driver's seat found;
22 was there?

23 A I believe a necklace had dropped out of one of the
24 suspect's laps, and it was placed in the front. So
25 that was in the front.

1 Q Of the passenger Ricky Bell; isn't that right?

2 A Right.

3 Q Now, your investigation of these victims and their
4 household didn't reveal lots of cash or narcotics
5 or anything like that on hand at all; isn't that
6 right?

7 A As far as what the victims had when it was taken?

8 Q Yes, ma'am.

9 A I believe one of the victims said she had over
10 \$300.

11 Q But they didn't have hordes of money under the bed
12 or anything like that is what I'm saying?

13 A According to her statement, she had money that they
14 had saved up.

15 Q And essentially they didn't have -- we have no
16 earthly idea how much that was; isn't that right?

17 A Only the information she gave, which was \$300 that
18 was in her wallet, and money that they had saved
19 up, which I don't recall what that amount was.

20 Q But there is no evidence that these parties ever
21 knew each other before this incident; isn't that
22 right?

23 A I have no way of knowing that.

24 Q Did anything in your investigation reveal that they
25 had any prior interaction?

1 A Yes. As far as her saying that she picked them up
2 and that she had met them a couple of days prior,
3 which tells me, you know, that she did meet them
4 and she picked them up.

5 Q I'm speaking with regard to the victims and these
6 two black males. Had those parties ever met before
7 this night? Did your investigation reveal anything
8 about that?

9 A No.

10 Q So they storm into that house that night, the two
11 males; isn't that right?

12 A Yes.

13 Q And your investigation, as I understand, continues
14 at West Columbia --

15 A Yes, sir.

16 Q -- Police Department?

17 A Yes, sir.

18 Q And this takes place, your investigation, continues
19 in the form and fashion of interviewing those folks
20 in custody; isn't that right?

21 A Yes, sir.

22 Q Now, you naturally want to question each person
23 because not everything that is known about the case
24 was learned at the traffic stop; isn't that right?

25 A Yes, sir, that's correct.

1 Q And one question on that. Were these interviews
2 videotaped at all?

3 A West Columbia doesn't videotape.

4 Q But in neighboring law enforcement agencies, say
5 Lexington or Columbia, it's common practice to
6 videotape interviews; isn't that correct?

7 A I believe each department is different. As stated
8 earlier, we may not have been up to par as far as
9 equipment wise. So we just don't videotape our
10 interviews.

11 Q But you would agree if it was videotaped, we would
12 be able to see and hear everything that went on in
13 that room; correct?

14 A I would agree, yes, sir.

15 Q During the course of that interview with Carrie,
16 you let her know verbally that she was facing
17 serious charges; isn't that right?

18 A Yes, sir, I did.

19 Q And that she could only help herself if she wrote a
20 statement? Isn't that what you testified to?

21 A Not according to writing her statement. She could
22 help herself if she told the truth.

23 Q If she made some type of disclosure of some kind?

24 A As far as giving false names and finally getting to
25 her correct name and as far as telling the truth.

1 Q With regard to what happened.

2 A I don't understand your question.

3 Q In other words, you said, "You can only help
4 yourself if you tell the truth." Isn't that right?

5 A Right.

6 Q There weren't any tests done to see if any one of
7 these three were under the influence of any
8 substance or anything like that; isn't that right?

9 A Yes, sir, that's right. They weren't --

10 Q And you -- I'm sorry. I didn't mean to cut you
11 off.

12 A I was going to say they weren't stopped for a
13 D.U.I.

14 Q Well, wouldn't it be important to know before you
15 interview somebody whether they were sober or under
16 the influence of any drugs or narcotics or anything
17 like that?

18 A Sure it would be nice to know.

19 Q But I don't believe there were any tests performed;
20 were there?

21 A No, sir.

22 Q Now, by the time Carrie makes a statement, it is
23 about 3:00 A.M.? Isn't that fair to say?

24 A I think by the second Miranda form it was 3:20, I
25 believe.

1 Q And you would agree that this is pretty late; isn't
2 that correct?

3 A Yes, sir, late in the morning. Yes, sir.

4 Q And you had no way of knowing whether she was very
5 tired when she made her statement or anything like
6 that?

7 A No, sir.

8 Q Now, in backtracking here, one of the first things
9 done in the interview is clear up Carrie's
10 identity; isn't that right?

11 A Yes, sir.

12 Q And you know or it comes to your attention that she
13 is not Myra Edwards; isn't that right?

14 A Yes, sir.

15 Q And eventually you learned her name is Carrie
16 Callahan?

17 A Yes, sir.

18 Q You also learn that Carrie' driver's license is
19 under suspension; isn't that right?

20 A Yes, sir.

21 Q And that's an offense that somebody can get
22 arrested for under South Carolina law?

23 A Yes, sir.

24 Q And if Carrie is arrested for that offense, the
25 vehicle could have been searched that night upon

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1 arrest; isn't that right?

2 A Yes, sir.

3 Q And the vehicle would have been searched with Ricky
4 Bell and Quincy Holley sitting right beside her;
5 isn't that right?

6 A Yes, sir.

7 Q And the main concept that Carrie's interview --
8 what she basically tells you is that she's afraid
9 of both Ricky Bell and Quincy Holley? Isn't that
10 in her statement to you?

11 A Yes, sir, that's in her statement.

12 Q And not only she is afraid for her own sake, but
13 she is afraid for her kids; isn't that right?

14 A That's what her statement says.

15 Q And in her statement there is that line that the
16 State alluded to that is scratched out, and it says
17 something to the effect of, "Please don't let
18 Mr. Black found out (verbatim) I'm writing this."
19 Isn't that in that statement as well?

20 A I haven't read it.

21 MR. CASTO: If we could get the screen down.

22 (Attorneys confer.)

23 BY MR. CASTO:

24 Q Now, this scratched-out portion is what I'm
25 interested in. You can make out some lettering and

1 some words from where that was scratched out; can't
2 you?

3 A Yeah, you can make it out.

4 Q And who scratched that out? Did you scratch that
5 out?

6 A No, she did.

7 Q She scratched it out?

8 A It's got her initials.

9 Q You can still see what it says; isn't that right?

10 A Yes.

11 Q "Please don't let Mr. Black read this. He knows
12 where my kids are," is what it says; isn't that
13 right?

14 A Yes.

15 Q So clearly she is afraid of these two guys; isn't
16 she?

17 A According to her statement.

18 Q In her statement?

19 A Yes.

20 Q And essentially in her statement, these two
21 individuals threaten her and her family with some
22 type of violence; isn't that right?

23 A That's what she says in her statement.

24 Q She says in her statement that -- well, actually
25 that night what we are here to talk about is Ricky

1 Bell and Quincy Holley stormed in a house and held
2 a family at gunpoint that very evening; isn't that
3 right?

4 A Yes.

5 Q And so her fear that these two people are violent
6 individuals, they have demonstrated that that very
7 evening; isn't that right?

8 A Yes.

9 Q And you also learn that Courtney is the name that
10 Ricky Bell and Quincy Holley call her; isn't that
11 right?

12 A Yes, I believe one of them said he called her by
13 Courtney.

14 Q And Carrie says that she hasn't known Ricky but for
15 just a couple of days; isn't that right?

16 A That's what her statement says, yes, sir.

17 Q And she met Quincy that very evening; isn't that
18 right?

19 A I believe according to my notes. Let me see. I
20 think -- I want to say she said she met him that
21 evening.

22 Q So she wasn't familiar with him at all? Met him
23 that night?

24 A That's what she says.

25 Q Now, you eventually request this written statement

1 from Carrie during her interview with you; isn't
2 that right?

3 A Yes, sir.

4 Q You don't get one from Ricky Bell initially; do
5 you?

6 A I don't believe I do.

7 Q You don't get one from Quincy initially; do you?

8 A No, because they gave false names just like she
9 did.

10 Q And she complies with your request for a statement?

11 A Yes, sir.

12 MR. CASTO: Beg the Court's indulgence.

13 THE COURT: All right.

14 (Pause.)

15 MR. CASTO: No further questions.

16 THE COURT: Redirect?

17 MR. WEDEKIND: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. WEDEKIND:

20 Q Investigator Moore, do you have your notes from the
21 case?

22 A Yes, sir.

23 Q Could you refer to the ones that are made about
24 just before -- I will show you this page. If you
25 could reference it, the time frame of just before

1 4:30. Are you with me. It starts at the top with
2 the truth about his name?

3 A Yes, sir.

4 Q If you go down in your notes, does it reflect
5 around the middle of the page where it says she
6 knew -- or how long she had known Ricky Bell?

7 A I'm not sure where you are referring to.

8 Q Let me show you directly. Did she tell you, when
9 you were interviewing her, where she had met
10 Mr. Ricky Bell and how long she had known him prior
11 to this night?

12 A Yes.

13 Q By that night I mean June 16, 2010.

14 A Yes.

15 Q How long did she tell you she had been acquainted
16 with Ricky Bell?

17 A It says that she stated she met Black, which is
18 Ricky, at Farrow Road by the H.Q. at B&B vegetable
19 stand. She stated she met him a couple of days
20 prior.

21 Q And she said she was staying with who?

22 A I believe it was her grandmother.

23 Q That's right. And the night in question, they had
24 met up about what time?

25 A Black called her about 10:00 P.M.

1 Q And particularly she says why they were getting
2 together right below that. What did she tell why
3 he wanted to meet with her and what did he want to
4 do with her?

5 A I believe the correct place is she stated that
6 Mr. Black and his friend asked her to drive them to
7 West Columbia so they could deal with something.

8 Q Right. Then she says further what?

9 A She stated that Mr. Black had a gun and his friend.

10 Q And they were what type?

11 A There were two auto guns?

12 Q And who dropped some shells in the car?

13 A She stated that Mr. Black dropped some shells in
14 the car.

15 Q And what do you think shells are, peanut shells?
16 What?

17 A Bullets.

18 Q She did what with those retrieved shells she had
19 found or had dropped on the floor? What did she do
20 with those shells?

21 A She picked them up and put the shells in her
22 pocket.

23 Q As far as sobriety testing, without a search
24 warrant, can you just take blood from somebody when
25 you are meeting with them?

1 A No, sir.

2 Q Without probable cause can you force somebody to
3 take a breathalyzer test?

4 A No, sir.

5 Q When you interview somebody, is it usually a better
6 practice to get them as quickly as possible through
7 the interrogation process or to wait a long period
8 of time?

9 A No, sir, to get them as quickly as possible, but I
10 had three people to interview.

11 Q In fact, you were starting one, suspending it, and
12 picking up another; is that correct?

13 A Yes, sir.

14 Q Why do you do that?

15 A Because the first one gave me false information.
16 So I went to the second one, was talking to him,
17 and seeing if I could get correct information.
18 Then I would go to the next one.

19 Q Do you use, as a practice of interrogation, some
20 information you might obtain from one, shell the
21 other, and then they tell you another bit?

22 A Yes, sir, I do.

23 Q Then you bounce back and forth. Eventually what
24 happens?

25 A You get to the truth.

1 Q In this case the truth didn't spill out right out
2 of the gate; did it?

3 A No, sir, I had a difficult time.

4 Q Was she sitting next to Ricky Bell? Do you usually
5 let people keep their guns in the West Columbia
6 Police Department?

7 A No, sir.

8 Q And were they all together in the same room but in
9 a different corner when you are doing these
10 interrogations?

11 A No, sir, they were in three separate holding cells.

12 Q She said she had met Quincy Holley just that night;
13 right? She had never laid eyeballs before on him;
14 isn't that correct?

15 A Yes, sir.

16 Q She says that not only in her written statement but
17 to you orally; didn't she?

18 A Yes, sir.

19 Q Did she offer any explanation of how Quincy was
20 supposed to know where she and her kids were?

21 A No, sir.

22 Q If she just met Ricky Bell, did she offer any
23 explanation as to how he was supposed to know where
24 she lived and could threaten her kids?

25 A No, sir. She said she met him at the vegetable

1 stand.

2 Q Did she offer any explanation of why she picked up
3 the shells and put them in her pocket?

4 A No, sir.

5 Q Any amplification of what the business that they
6 were going to take care of was?

7 A No, sir.

8 Q Was he a gun salesman?

9 A Don't know.

10 Q At 1:00 o'clock in the morning? Would that
11 particularly impress you is that some legitimate
12 business transaction was going to be undertaken?

13 A No, it doesn't.

14 Q Thank you.

15 MR. WEDEKIND: No further questions.

16 THE COURT: Anything else, Mr. Casto?

17 MR. CASTO: Just briefly.

18 **RECROSS EXAMINATION**

19 BY MR. CASTO:

20 Q She stated to you verbally that Mr. Black and his
21 friend told her if she opened her mouth, she would
22 be hurt; isn't that right? That's in your notes, I
23 believe?

24 A Yes, sir, I am looking for it. Yes, it says she
25 stated at that time she was parked in front of the

1 trailer. She stated that Mr. Black and his friend
2 told her if she opened her mouth that she would be
3 hurt.

4 MR. CASTO: No further questions.

5 MR. WEDEKIND: Nothing further.

6 THE COURT: Thank you, ma'am. You can step
7 down.

8 THE WITNESS: Thank you.

9 (Witness leaves the witness stand.)

10 MR. WEDEKIND: Your Honor, may we approach?

11 THE COURT: Yes, sir.

12 (Whereupon there was a bench conference off
13 the record in the presence of the jury but out of the
14 hearing of the jury.)

15 THE COURT: Mr. Wedekind, that concludes
16 Investigator Moore's testimony.

17 Is the defendant ready to cross examine
18 Mr. Prado?

19 MR. MADSEN: Yes, Your Honor.

20 THE COURT: He can come on in. He is still
21 under oath.

22 MARCELO PRADO SERNA, having
23 been previously duly sworn, resumed the witness stand
24 and testified as follows:

25 THE COURT: The witness is still under oath.

1 You may tell him that, please.

2 Mr. Madsen.

3 CROSS EXAMINATION

4 BY MR. MADSEN:

5 (THROUGH THE INTERPRETER)

6 Q Mr. Prado, it's true back on October 7th of 2008,
7 you were convicted of a false I.D. card?

8 A Huh-uh. (Indicating negative response.) No.

9 Q No?

10 A No.

11 MR. MADSEN: I would like this marked as
12 defense for I.D.

13 (Defendant's Exhibit Number 1 is marked for
14 identification).

15 BY MR. MADSEN:

16 Q Let me show you what has been marked as Defense
17 Exhibit Number 1 for I.D. purposes. This
18 indicates up here that the defendant's name is
19 Marcelo Prado?

20 A Uh-huh. (Indicating affirmative response.)

21 Q And you are Marcelo Prado; correct?

22 A Yes.

23 Q And it indicates an address of [REDACTED],
24 Number 1 in West Columbia?

25 A Yes.

- 1 Q And that's where you live?
- 2 A Yes.
- 3 Q And that is where you lived back on October 7,
- 4 2008?
- 5 A Yes.
- 6 Q And it indicates here that the charge is false I.D.
- 7 card?
- 8 A It wasn't false because I had my correct name on
- 9 it. It was just an identity card to show where I
- 10 lived.
- 11 Q And this shows that your date of birth is
- 12 [REDACTED]?
- 13 A Yes.
- 14 Q And the disposition indicates that you were found
- 15 guilty at a bench trial?
- 16 A I'm not sure how that was handled, but I just have
- 17 to say that it wasn't a false identification
- 18 because it had my true name on there. If it would
- 19 have been a false identification, it would have
- 20 some other person's name.
- 21 Q But you were convicted of it?
- 22 A I didn't ever know anything about that.
- 23 MR. MADSEN: That's all the questions I have.
- 24 THE COURT: Redirect?
- 25 MR. WEDEKIND: Very briefly, sir.

REDIRECT EXAMINATION

1

2 BY MR. WEDEKIND:

3 Q And you do admit you were convicted of reckless
4 driving? Speeding?

5 A Yes.

6 Q And that was that day, the same day you were
7 charged with the fake driver's license?

8 A I didn't know that I was charged with a false
9 driver's license. The thing is the identification
10 I had was just one that I had that showed my name
11 for purposes of identification.

12 Q But you were charged with not having a driver's
13 license and you admit that?

14 A Yes, yes.

15 Q And you admit you were driving fast to the point of
16 being reckless?

17 A Yes.

18 Q And you were driving without insurance?

19 A Yes.

20 Q And you are an illegal alien; correct? Here
21 illegally?

22 A Yes.

23 Q And the big mystery is that you had allegedly a
24 fake driver's license?

25 A The thing is they took that I.D. I didn't have any

1 other type of identification to identify myself.

2 So I went to a Mexican store to make me some type
3 of I.D.

4 Q Okay.

5 A On the back of that I.D. it said that that is not a
6 driver's license.

7 Q So you had --

8 A It was just an identification.

9 Q So you had a card that had your name on it
10 correctly, but it was just not a legitimate
11 government-issued card?

12 A Uh-huh. (Indicating affirmative response.)

13 Q So you feel in your mind that it was not false
14 information; it was correct information. It was
15 just a non-government legitimate card?

16 A Yes, it was the correct information. It just
17 wasn't valid.

18 Q Ah, there we go. Now we are at the bottom of
19 mystery; is that correct?

20 A (Witness nods.) (Indicating affirmative response.)

21 Q Thank you.

22 THE COURT: Anything else, sir?

23 RECROSS EXAMINATION

24 BY MR. MADSEN:

25 Q So what wasn't valid on it?

1 A The I.D.?

2 Q So when you got convicted, they got that wrong?

3 A Yes, I suppose so because I never held that out to
4 be a driver's license. They just said I need some
5 identification, and I showed them that. That was
6 the only identification I had.

7 MR. MADSEN: That's all the questions I have.

8 MR. WEDEKIND: Nothing further.

9 THE COURT: You can step down. Thank you,
10 sir.

11 (Witness leaves the witness stand.)

12 THE COURT: Next witness.

13 MR. WEDEKIND: At this point, Your Honor the
14 State rests.

15 THE COURT: Ladies and gentlemen, the rules
16 that we follow require me to take a recess at this
17 point. The State has rested, which means the State has
18 presented all the evidence it's going to present in its
19 case in chief. Please go to your jury room. You may
20 not discuss the case.

21 (The jury retires to the jury room.)

22 THE COURT: Any motions from the defendant?

23 MR. MADSEN: Yes, Your Honor. We would move
24 for a directed verdict as to both charges. Initially
25 just to perfect the record, we believe that given the

1 evidence in the light most favorable to the State that
2 there is not enough information to go forward to the
3 jury.

4 We do have some specific parts of that.
5 Judge, there has been some question as to the burglary
6 first. I don't know if there is anything in the record.
7 I believe the burglary first indictment indicates that
8 it is simply the dwelling home of Rigiberto Ramirez.

9 I'm not sure if there is sufficient evidence
10 within this record that that was his dwelling.
11 Certainly, you have Ms. Herrera who had testified that
12 she had lived there. Also, I believe her husband who
13 has testified, but we believe that that is lacking from
14 the indictment.

15 Initially, as Your Honor has pointed out, we
16 have --

17 THE COURT: Proof of a dwelling in other
18 words?

19 MR. MADSEN: Proof of Mr. Rigiberto's
20 dwelling. That is what is specifically alleged within
21 the indictment.

22 THE COURT: Okay.

23 MR. MADSEN: Obviously, there is somewhat
24 cloudy but lack of testimony as to how the individuals
25 get in the car. The testimony from Ms. Herrera and also

1 from --

2 THE COURT: How they get in the car?

3 MR. MADSEN: In the home. I'm sorry, in the
4 home. For Mr. Bargus Perez and Ms. Herrera is they wake
5 up and these individuals are in the home with
6 Mr. Rigiberto.

7 There is no one to say that they are not in
8 the home and that things don't go south. Obviously,
9 burglary, a portion of that burglary, has to be that
10 there has to be an intent when entering, not after they
11 get inside. We just believe that there is a lack of
12 evidence at this juncture and time.

13 Additionally, Your Honor, we believe that we
14 should be granted a directed verdict on the theory of
15 mere presence. We would simply -- we would point the
16 Court to State versus Bennie Lee Johnson, 291 S.C. 127,
17 that indicates that there was insufficient evidence in
18 that case. There was a statement where Mr. Johnson
19 indicated that he was on the scene.

20 The State extracted some evidence that said
21 that the fellow -- it was a murder case -- that the
22 fellow who was dead, there was a footprint or something
23 on the back, but no one could put in any evidence saying
24 that that footprint came back to Mr. Johnson. He was
25 convicted of that, but the Court reversed on the basis

1 of insufficient evidence because his statement was that
2 he was there.

3 In conjunction with that, Your Honor, we do
4 not believe at this point in time that the State has
5 shown sufficient evidence to get by a directed verdict
6 because of a problem with the corpus delicti.

7 Obviously, Your Honor, corpus delicti or what
8 is commonly called the corroboration rule requires that
9 an extra-judicial confession of a defendant be
10 corroborated by proof -- and I always butcher this word
11 if I don't say it right -- I would say aliunde of the
12 corpus delicti. That comes from State versus Osborne,
13 335 S.C. 172.

14 It indicates that the rule is satisfied if the
15 State provides sufficient independent evidence which
16 serves to corroborate the defendant's extra-judicial
17 statements and together with such statements permits a
18 reasonable belief that the crime occurred.

19 THE COURT: In other words, you are saying
20 there has to be some corroboration of her own statement?

21 MR. MADSEN: I believe so, Your Honor.
22 Obviously, I think that is something that we had talked
23 about and people have thought. If you take her
24 statement out of this, there is nothing in the record to
25 show that she is part and parcel and that she is -- even

1 under the hand of one is the hand of all -- that she is
2 part and parcel of this crime. I believe the record is
3 obviously devoid of that.

4 Certainly, if the State had wanted to they
5 could have called the codefendants, and the codefendants
6 could have got up and testified as to what they had
7 discussed or done.

8 All we have is her in the car. So we do not
9 believe that they have established the corpus delicti
10 and believe that a directed verdict should be granted
11 because of that.

12 Finally, Your Honor, we would say that with
13 the evidence that the State does have in the record at
14 this point in time, quite honestly if she was guilty, I
15 believe it would be only for accessory after the fact.

16 You have no one testifying as to what happened
17 beforehand, that there was any type of communication,
18 any type of planning, anything that they got together
19 and said, "Hey, this is what is going to happen,"
20 whether it was by words, whether it was by written, or
21 whether it was by simply a tacit understanding of the
22 parties.

23 Certainly, I think the State could end up
24 making an argument that in the end she potentially
25 somehow knew what they had done, but the evidence in is

1 that a car is parked at Number 1 and that ultimately
2 what occurs, occurs way down at Number 6.

3 So we believe if the State quite honestly had
4 anything, it would have been an accessory after the fact
5 and not charged as a principle, considering the
6 distance. So based on that, Your Honor, we would move
7 for a directed verdict.

8 THE COURT: All right. So part of these are
9 geared towards the armed robbery as well?

10 MR. MADSEN: Yes, Your Honor. I'm sorry if I
11 didn't make that clear.

12 THE COURT: Burglary is --

13 MR. MADSEN: I started with the burglary.

14 THE COURT: The definition of dwelling and
15 entry to the dwelling are unique to burglary.

16 MR. MADSEN: And the corpus delicti, the mere
17 presence, and the fact that if they had anything, it
18 would be an accessory after. I apologize that I did not
19 make that clear. Those were arguments on not only the
20 armed robbery but also the burglary.

21 THE COURT: All right. Mr. Wedekind.

22 MR. WEDEKIND: Yes, sir. According to my
23 recollection of the testimony that we elicited, both
24 Ms. Mirna Herrera and Mr. Adul Bargas Perez both stated
25 that Rigiberto dwelled with them in that residence.

1 I went through that exhaustively with both of
2 them. Who lived there? She said Rigiberto, her
3 brother-in-law, her husband, her children, and herself,
4 and Mr. Perez said the same thing.

5 I don't know where Mr. Madsen was raising that
6 there was no validity to the indictment as far as naming
7 Mr. Bargas and Mr. Ramirez as residents of that dwelling
8 place.

9 We further put in Ms. Mirna Herrera. She was
10 not listed in the indictment, that is correct. But she
11 did witness the wallet being taken from Rigiberto as far
12 as the armed robbery.

13 As far as the mere presence --

14 THE COURT: How about entry into the dwelling?
15 That was his next point.

16 MR. WEDEKIND: Yes, sir, the entry to the
17 dwelling --

18 THE COURT: With the intent to commit a crime
19 therein.

20 MR. WEDEKIND: Yes, sir. We thought that
21 after they said they had not had -- they were not awake
22 when they saw the actual crossing of the threshold
23 occur, that there certainly could be circumstantial
24 evidence that the person who dwelled there with them,
25 Mr. Rigiberto, had been outside talking on the phone and

1 that all of a sudden they wake up to him standing in the
2 doorway with two black males with guns held to his head,
3 that would be indicative of circumstances of him being
4 forced into the residence.

5 I think before he did testify without
6 objection to saying that his roommate, Mr. Rigiberto,
7 was outside, resisted coming in. He was ordered to open
8 the door by them, and he resisted.

9 He had relayed to Mr. Adul Bargas -- because
10 he said under a present excited utterance that
11 Mr. Rigiberto had told him right afterwards that he had
12 resisted coming in because it was family. I think that
13 was a quote from the record.

14 He said they then hit him in the head and he
15 came inside and relented and went inside. At that point
16 there is no ambiguity about the circumstantial evidence
17 of them all waking up and seeing guns being pointed at
18 Rigiberto's head. Then they shifted to the infant boy
19 and held him upside-down at gunpoint.

20 THE COURT: What about the mere presence?

21 MR. WEDEKIND: Oh, and one other thing. We
22 did develop, sir, with Mr. Prado's testimony that an
23 individual outside made a phone call to him with an
24 excited utterance.

25 There is no way that that person in another

1 dwelling -- which I asked him was he in Number 6. He
2 said no, he was in his home. There is no way that a
3 person could see with X-ray vision through those walls.
4 He had to see the confrontation outside with the gun
5 drawn to force him in to get into that house to commit
6 the robbery.

7 So we think that with the testimony of
8 Mr. Prado, it certainly meets the necessities to take
9 the charge to the jury as far as the breaking and
10 entering of the threshold. The circumstances certainly,
11 as you have pointed out, I think also meet that burden,
12 sir.

13 Now, regarding the mere presence, I think when
14 the totality of the circumstances are put together, she
15 was seen parking a car a very short distance up, five
16 trailers away. State's Number, I think it is, 3 or 4
17 shows how small and compact that trailer park actually
18 is.

19 That combined with the fact she was waiting in
20 the vehicle and her statement orally and in her written
21 statement, she says, "They were taking care of business,
22 and he had some business to take care of."

23 That business entailed apparently two
24 automatic pistols. She was well aware of that. She was
25 a little inconsistent in her statement when she says,

1 "Oh, yeah, I saw one gun."

2 "No," she said, "there were two guns," and
3 then she saw one gun. She admits to two guns again when
4 she feels like it's helping shade her version of the
5 facts a little bit more.

6 Then they had to be loading the guns up to get
7 the four bullets that had fallen on the ground. That
8 had to be people loading the clip up, and they just
9 dropped some out, and she picked put them up and put
10 them in her pocket.

11 How she claims that she didn't know what was
12 going down with people at 1:00 o'clock in the morning
13 taking care of business with two guns, you know
14 something criminal is about to happen.

15 You just don't walk into people's home without
16 busting in, and you don't earn your pay on a Friday
17 night when the pickings are easy with the illegal
18 immigrants flush with cash who are going to be out
19 there.

20 I think they were prospecting and they hit a
21 little bit of pay dirt, but they got a little bit more
22 than what they expected. As far as her mere presence,
23 Your Honor, I think that is gone when you look at the
24 totality of the circumstances.

25 Only when she felt she was in the hole and she

1 had to dig herself out a little bit and play the victim
2 role herself, that's when she made those statements. So
3 I think it's not just relying on her statement however.
4 It's the fact that she had those rounds in her pocket.

5 Even though the cartridges are not in, we have
6 the testimony of, I think, Sergeant McIntyre, plus I
7 believe Page Moore who said that they were recovered
8 from her pocket.

9 She said she put them in her pocket in her
10 statement to Page Moore, and Investigator McIntyre talks
11 about the fact that he actually searched her and found
12 the rounds in her pocket.

13 THE COURT: Corpus delicti?

14 MR. WEDEKIND: In the corpus delicti, again --
15 I'm sorry. I am forgetting what the basis of that was,
16 sir.

17 THE COURT: No corroboration of her own
18 statement.

19 MR. WEDEKIND: Yes, sir. Again, the
20 totality, her statement mixed with finding the rounds
21 in her pocket, plus the statement of Mr. Prado saying
22 he saw her sitting there waiting patiently while they
23 were --

24 THE COURT: He didn't say patiently. He said
25 he saw a female waiting.

1 MR. WEDEKIND: She is waiting with the engine
2 running at the front entrance to the trailer park, which
3 was in the State's Exhibit. He said right there on Dew
4 Avenue parked there.

5 Either she was very patient -- but if she was
6 under duress like she was saying, she never -- she sure
7 was patient in waiting for them to come back and cause
8 her harm.

9 She could have driven off and within a mere
10 matter of minutes, she could have been at the West
11 Columbia Police Department seeking help if she was
12 willing to be doing that.

13 If she was a participant, she was waiting with
14 the engine running like a good getaway driver would do.
15 The bullets were in her pocket. They are confederating
16 when they are talking about taking care of business and
17 loading their weapons in her presence.

18 She knew what was about to go down, and I
19 think with the timing of it at midnight, 1:00 o'clock.
20 As far as the issue of her being under duress, I mean,
21 that is a question for the jury to determine.

22 We would counter that saying she just met this
23 guy that night, one of them, Quincy Holley. Ricky Bell,
24 she met him at a vegetable stand according to her
25 statement.

1 How he would have known all about her
2 background and life unless she was a close associate, it
3 wasn't this casual relationship like she was trying to
4 make out.

5 THE COURT: Anything else?

6 MR. WEDEKIND: That would be it, sir.

7 THE COURT: From the defense?

8 MR. MADSEN: Judge, obviously I think
9 certainly -- I guess not necessarily to that issue --
10 but just jumping ahead for a second, obviously when
11 lawyers get up and argue and cross, they certainly can
12 argue anything that has come in the record.

13 Also, they can certainly argue any reasonable
14 inferences from what is in the record, but at the same
15 time -- and I think Your Honor has kind of caught onto
16 this or pointed to this.

17 The solicitor has received testimony that
18 isn't necessarily what he wants. So when he talks
19 about how they are loading weapons and dropping the
20 bullets, the only thing is in her statement that,
21 "Mr. Black dropped some shells in the car, and I picked
22 them up."

23 I don't think that the solicitor should be
24 able to expand and say, hey, they are loading the
25 weapon, and that's how they drop it.

1 THE COURT: What does the statement say again?

2 MR. MADSEN: "Mr. Black dropped some shells in
3 the car. I picked them up." The solicitor wants to go
4 on and say, "Hey, they are loading the weapon and
5 dropped that. She is waiting patiently."

6 If that comes up, obviously I would object in
7 closing to that because I don't think that is
8 appropriate to put words that are not into evidence, but
9 I'm kind of getting ahead of myself.

10 THE COURT: He can't say that the testimony is
11 that she was waiting patiently. He can say, "Ladies and
12 gentlemen --

13 MR. MADSEN: We believe it shows.

14 THE COURT: -- we submit that it shows.

15 MR. MADSEN: Sure.

16 THE COURT: You are right about the former.

17 MR. MADSEN: Yes, sir.

18 THE COURT: Anything else?

19 MR. MADSEN: No, Your Honor. We believe that
20 there is just not sufficient evidence by the grounds
21 that we have stated to go forward and that a directed
22 verdict should be granted as to both charges.

23 THE COURT: As to the source of your argument
24 dealing with the dwelling, the indictment does say the
25 dwelling of Mr. Ramirez. I think the evidence certainly

1 would support the conclusion that he lived there, along
2 with the individuals who did testify and the small
3 children.

4 As far as entry into the dwelling without
5 consent and with the intent to commit a crime, it would
6 be at the time of entry. I think circumstantially there
7 is enough evidence there in the manner in which
8 Mr. Wedekind just explained.

9 The mere presence part of your argument, I
10 also respectfully disagree with that. Of course, I'm
11 not here to debate the weight, simply the existence of
12 the evidence in that regard.

13 Likewise, I believe, should the jury choose to
14 accept it, they may believe that the circumstantial
15 evidence corroborates her own statement, that she was
16 involved at least as the transporter of these two people
17 who actually physically committed the burglary and the
18 robbery.

19 Lastly, while evidence would point to her
20 being an accessory after the fact, I noted that you
21 didn't say it also might point to her being an accessory
22 before the fact.

23 If you are an accessory before the fact and
24 accessory after the fact and you are there, that's what
25 the hand of one, hand of all is all about, at least from

1 my standpoint. So I will deny your motions at this
2 time.

3 MR. MADSEN: Thank you, Your Honor.

4 THE COURT: Have the defendant come forward,
5 please, and be sworn. You can come up right to that
6 lecturn.

7 CARRIE DENISE CALLAHAM is first
8 duly sworn.

9 THE COURT: Your name, please, ma'am?

10 THE DEFENDANT: Carrie Denise Callaham.

11 THE COURT: Ms. Callaham, we have now reached
12 the stage of the trial where you may present your
13 defense. As you have heard, the State has rested.
14 Since we have reached the stage where you may present
15 your defense, you have the right to claim the
16 protections given to you by the Fifth Amendment to the
17 Constitution of the United States.

18 The pertinent part of that amendment is this:
19 No person shall be compelled in any criminal case to be
20 a witness against himself. It reads literally himself
21 but also includes herself.

22 What that means, Ms. Callaham, is that no one
23 can make you testify in this case. Nobody can force you
24 to take this witness stand and answer questions. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The reason for that, ma'am, is
3 that the right that you have or the rights that you have
4 under the Fifth Amendment are personal. So since they
5 are personal, nobody can give them up except for you.

6 Your own lawyer can't call you to the stand
7 against your will. The prosecutor cannot. I cannot.
8 Nobody in the world can force you to take that witness
9 stand because that's the way the Constitution is in this
10 country.

11 If you decide to testify, you will be subject
12 to the same basic rules that govern the direct and cross
13 examination of the other witnesses who have testified.
14 Of course, you have been here the entire time, and you
15 have seen that direct and cross examination; is that
16 correct?

17 THE DEFENDANT: Yes, sir, that's correct.

18 THE COURT: In addition, if you have any
19 convictions for crimes that involve dishonesty or false
20 statement and the conviction or your release from
21 confinement was within the last ten years, those can be
22 introduced for the purpose of attacking your
23 believability. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor, I understand.

25 THE COURT: Also, if you have been convicted

1 of a crime that didn't involve dishonesty or false
2 statement but the possible imprisonment was for more
3 than one year, if I determine that the probative value
4 of admitting that conviction outweighs any prejudicial
5 impact to you, then that conviction can be introduced as
6 well. Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If you decide to testify, that
9 decision on your part has to be made freely and
10 voluntarily and with full knowledge on your part of your
11 rights under the Fifth Amendment and the consequences of
12 your decision to testify.

13 If you decide not to testify, I will emphasize
14 very strongly to the jury that they cannot give the fact
15 that you did not testify any consideration at all. I
16 tell them they can't think about it, they can't talk
17 about it, and that cannot enter into their decision
18 making in any way.

19 In the end it's left entirely up to you as to
20 whether or not you do or do not testify. You can
21 consult further with your attorneys, but, again, in the
22 end the final decision is yours.

23 Does she have any convictions that the State
24 would seek to introduce?

25 MR. WEDEKIND: No, sir. She has some

1 convictions, but nothing that we would seek to
2 introduce.

3 THE COURT: So no crimes of dishonesty, no
4 convictions involving imprisonment for more than a year?

5 MR. WEDEKIND: She has one -- well, actually,
6 sir, she has a forgery conviction which she got a
7 three-year sentence suspended upon the service of two
8 years. So that would be a charge that would be
9 sufficient.

10 Then there's multiple fraudulent checks, and I
11 don't think -- the original one comes from 2005. There
12 is a second forgery from 2008, but she only got a
13 one-year sentence on that. So I think it would just be
14 the one forgery charge that would be applicable, sir.

15 THE COURT: Forgery, Mr. Casto, do you dispute
16 that forgery is a crime of dishonesty?

17 MR. CASTO: We do not, Your Honor.

18 THE COURT: So likely the forgery that
19 Mr. Wedekind would seek to introduce would come in, and
20 I would tell the jury they could not use that to
21 determine whether or not you actually committed this
22 crime that you are on trial for but simply to determine
23 whether or not they should believe you. Do you
24 understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you understand everything that
2 I have explained to you?

3 THE DEFENDANT: The majority, that whatever I
4 say -- how I present the situation that was at hand,
5 it's up to me to let the jury hear my side basically is
6 what you are saying?

7 THE COURT: You don't have to do that.

8 THE DEFENDANT: Oh, okay. I don't have to.

9 THE COURT: You don't have to testify. What
10 I'm telling you is that you have the right to testify --

11 THE DEFENDANT: Okay.

12 THE COURT: -- and you have the right not to
13 testify. The decision is yours.

14 THE DEFENDANT: Do they need me to testify?

15 THE COURT: That is not for me to determine.
16 That's for you, after consultation with your lawyers, to
17 determine. I don't know how much y'all talked. What I
18 will do is give you some time to talk about it. In the
19 end the decision is up to you.

20 THE DEFENDANT: No, I think everything is
21 okay.

22 THE COURT: Do you have any questions about
23 what we have been over?

24 THE DEFENDANT: Yes, sir, I do have two
25 questions, but I don't want to seem like I'm trying to

1 attack the officers or anything.

2 THE COURT: My question is this: Do you have
3 any questions about your rights under the Fifth
4 Amendment?

5 THE DEFENDANT: I don't know what type of
6 questions to ask because I don't know too much about the
7 law.

8 THE COURT: For the last three or four minutes
9 I have been over the fact that you have -- no one can
10 make you testify. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If you do testify, you will be
13 subject to direct questioning by your lawyers and cross
14 examination by the prosecutor.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Also, he has requested to
17 introduce a conviction of forgery so the jury can use
18 that in determining whether or not they believe what you
19 say. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about
22 those things or anything else that you and I have gone
23 over?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you need some time to talk to

1 your lawyers?

2 THE DEFENDANT: We agreed upon for me not to.

3 THE COURT: Is that still your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What we are going to do right now
6 is we are going to take a break for about five minutes.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you change your mind, you let
9 your lawyers know, and, of course, they will let me
10 know.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Mr. Casto, Mr. Madsen, would you
13 have any other witnesses if she does not testify?

14 MR. CASTO: No, sir, Your Honor.

15 THE COURT: So in that regard what we will do,
16 after I take a very brief recess, is we will go over the
17 jury charge. One of the things that I want to talk to
18 you about is the defense of duress and who both sides
19 think has the burden as to that charge.

20 MR. CASTO: Yes, sir.

21 THE COURT: Have a seat. Thank you, ma'am.
22 We will take a few minutes.

23 (Whereupon there is a recess.)

24 THE COURT: Mr. Casto, have you had enough
25 time to talk to Ms. Callahan about her decision?

1 MR. CASTO: Yes, sir.

2 THE COURT: Ms. Callaham, you are still under
3 oath. Have you made your decision?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What is that decision?

6 THE DEFENDANT: Not to.

7 THE COURT: Has anybody forced you to make
8 that decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anybody promised you anything
11 to get you to make that decision?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you made that decision based
14 on your own free will with full knowledge of all your
15 rights?

16 THE DEFENDANT: That's correct.

17 THE COURT: Thank you, ma'am.

18 Again, will the defendant be offering any
19 other witnesses?

20 MR. CASTO: No, sir, Your Honor.

21 THE COURT: Is everybody ready to talk about
22 the charge?

23 MR. WEDEKIND: Yes, sir.

24 MR. CASTO: Yes, sir.

25 THE COURT: I have from the defendant a charge

1 -- in no particular order -- on mere knowledge, I guess,
2 and mere presence. Intent, which is identical to my
3 criminal intent charge, and duress.

4 Let's talk about the mere knowledge and mere
5 presence. Does the State object to either one of those?

6 MR. WEDEKIND: I don't think -- no, sir, I
7 think the mere presence charge and the mere knowledge
8 would be appropriate.

9 THE COURT: Those, as a practical matter, are
10 part of the hand of one, hand of all charges that I will
11 give. Do you object? I know you object from the
12 standpoint you don't think there is enough evidence to
13 go to the jury anyway, but do you object to hand of one,
14 hand of all for any other reason?

15 MR. CASTO: No, sir, Your Honor.

16 THE COURT: In other words, I know you have
17 argued that you don't believe there is sufficient
18 evidence to support the charge continuing, but since I
19 have overruled you on that, I will give the hand of one,
20 hand of all charge over your objection.

21 The criminal intent charge that you have
22 handed up is almost word-for-word identical to my
23 general charge. I will give that, maybe not in the
24 exact form, but a little bit more expansive than that.

25 Duress, I have got a standard duress charge.

1 The last case on this is State versus New, a 2007 case.
2 The Supreme Court of South Carolina -- as a matter of
3 fact, it's a Lee County case, Judge King's case.

4 What the Court said is it's not like
5 self-defense, and it still requires the defendant to
6 prove that defense by the greater weight of the evidence
7 because it does not negate -- the defense itself does
8 not negate any element of the crime. It just excuses
9 the crime. Does the defendant disagree with that?

10 MR. MADSEN: Your Honor, we do understand what
11 the law is. Certainly, as Your Honor is aware,
12 self-defense was not required by the State at one point
13 in time to be disproved beyond a reasonable doubt, which
14 it is now.

15 So we would request that Your Honor charge the
16 jury that in regards to duress, that the State must
17 disprove that beyond a reasonable doubt. We understand
18 where the law stands as of now, but we would request
19 Your Honor to do so.

20 THE COURT: I will respectfully deny that.
21 The New court said the appellate contends that the State
22 should have the burden of disproving duress for
23 basically the same reason that the State has the burden
24 of disproving self-defense.

25 The Court goes on to say that courts around

1 the country has disagreed on what should be done, but
2 our Court decided to fold the rational in Dixon versus
3 the United States, which is a 2006 U.S. Supreme Court
4 decision, holding that the trial court need not charge
5 that the State has the burden of disproving it.

6 The burden of proof in that regard will be by
7 the greater weight of the evidence, and I will certainly
8 explain that to the jury. The duress charge that I will
9 give is a little bit more expansive than the one that
10 you have asked for. Does either side want me to read
11 it?

12 MR. WEDEKIND: Yes, sir.

13 THE COURT: Just a second. It says the
14 defendant has raised the defense of coercion or duress.
15 Coercion or duress is when a person makes another person
16 commit a crime against that person's will by the threat
17 of immediate physical violence.

18 The coercion or duress must be present,
19 imminent, and of the type to create a well-grounded fear
20 of death or serious bodily harm if the act is not done.
21 The fear of injury must be reasonable.

22 Coercion or duress is not a defense if there
23 is any reasonable way, other than committing the crime,
24 for the defendant to escape the threat of harm. The
25 defendant must prove the defense of duress by a

1 preponderance of the evidence.

2 If you find that the defendant was coerced
3 into committing the crime, you must find the defendant
4 not guilty. That will be coupled with the charge that
5 you have handed up. I think a lot of the language is
6 the same. It's just maybe in the order.

7 Does the State object to a duress charge?

8 MR. WEDEKIND: Well, sir, I think they haven't
9 put any evidence on it, other than her self-serving
10 statement that the State put on, but there is some
11 presence of her statement saying that she was under
12 duress, but it's self-serving. She didn't put a case on
13 it.

14 THE COURT: I will give the charge over the
15 State's objection. Any other specifics that you
16 gentlemen would like?

17 MR. MADSEN: Judge, obviously I want to make
18 sure that when Your Honor charges that certainly we have
19 the potential for duress, but that is obviously
20 different than being merely present or having mere
21 knowledge.

22 THE COURT: Right. I think my charge as a
23 whole -- I'm not going to comment specifically on the
24 differences -- I will let you gentlemen do that -- but
25 I'm not going to combine the two.

1 MR. MADSEN: Thank you, Your Honor.

2 MR. WEDEKIND: As to reasonable doubt, sir,
3 what will you charge?

4 THE COURT: A reasonable doubt is the kind of
5 doubt that would make an honest, sincere, and
6 conscientious person in search of the truth to hesitate
7 to act.

8 Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the defendant's guilt.
10 There are very few things on this earth that we know
11 with absolute certainty.

12 The law does not require the State to present
13 proof that overcomes every possible doubt, but it does
14 require the State to present proof that overcomes every
15 reasonable doubt. If your examination of the evidence,
16 so forth and so on, it will go from there. That's the
17 guts of it.

18 MR. WEDEKIND: Yes, sir. That's pretty close
19 to it. I'm going to put it up on the screen as to my
20 interpretation of what reasonable doubt is, and I will
21 certainly explain that they will go with your
22 interpretation over mine as argument.

23 THE COURT: You are going to put up what?

24 MR. WEDEKIND: If I may, sir, should I show it
25 to you?

1 THE COURT: Yes, sir. While he is doing that,
2 is the defendant asking for any lesser-included charge
3 on either offense? I don't think there is room for any,
4 but I just thought I would ask.

5 MR. MADSEN: No, sir.

6 MR. WEDEKIND: There we go, sir (showing on
7 screen).

8 THE COURT: That's almost word for word what I
9 give but not in complete form.

10 MR. WEDEKIND: Yes, sir, some of it is
11 abbreviated.

12 THE COURT: Does the defendant have any
13 objection to that?

14 MR. MADSEN: The only problem that I have is
15 that ultimately certain people process information
16 certain ways. I certainly process information a lot
17 better reading than it sitting there hearing it.

18 I do worry about the confusion, if Your Honor
19 is ultimately the judge of the law, giving that law to
20 them, and they have got something up here that even
21 though substantially similar somehow is a little bit
22 different. So we do not believe it would be
23 appropriate.

24 THE COURT: As far as the law is concerned,
25 what do you propose to put on the screen?

1 MR. WEDEKIND: Your Honor, I have burglary
2 first as to the elements that I must prove, and also the
3 armed robbery elements. There is the burg first. It
4 encompasses -- it's taken directly from the statute. I
5 have just eliminated the portions about penalties.

6 THE COURT: I can't read the red part maybe
7 because of the angle. It's armed with a deadly weapon
8 or explosive or causes physical injury to a person who
9 is not a participant. Who is that, Mr. Rigiberto?

10 MR. WEDEKIND: Yes, sir. He got pistol
11 whipped.

12 MR. MADSEN: Judge, I don't believe that that
13 is in the indictment though.

14 THE COURT: Well, I think somebody testified
15 that he got hit in the head with it while he was in
16 there.

17 MR. WEDEKIND: Yes, sir.

18 THE COURT: Uses or threatens the use of a
19 dangerous instrument.

20 MR. WEDEKIND: Yes, sir.

21 THE COURT: Mr. Wedekind, I can't read that
22 last part.

23 MR. WEDEKIND: In fact, I will change them
24 right now.

25 THE COURT: How about the nighttime? You

1 don't want that in there?

2 MR. WEDEKIND: I believe it's there in the
3 very first -- let me change the color, sir.

4 THE COURT: If y'all can read it, I guess it's
5 okay. It's hard for me.

6 MR. WEDEKIND: It looks better when it's not
7 on the projector, sir. I guess I should have checked
8 that out.

9 (Pause.)

10 THE COURT: Now I can see it better.

11 MR. WEDEKIND: Enters a dwelling without
12 consent and either...

13 THE COURT: You don't have anything in there
14 about nighttime.

15 MR. WEDEKIND: Actually I do need to add that.
16 I'm sorry. I forgot nighttime.

17 MR. MADSEN: Judge, we would simply object.
18 The indictment says without consent and with intent to
19 commit a crime therein and was armed with a deadly
20 weapon. That is the only thing that they have alleged
21 in the burglary first indictment.

22 THE COURT: Cut up the lights. I can't see
23 the indictment. I guess I'm struggling with what is the
24 magic in the PowerPoint on the law?

25 MR. WEDEKIND: I was just going to explain the

1 elements.

2 THE COURT: I understand that. But the
3 indictment says that she did -- hand of one, hand of all
4 would cure that -- knowingly enter a dwelling without
5 consent and with the intent to commit a crime therein
6 and was armed with a deadly weapon.

7 MR. WEDEKIND: Yes, sir. Well, we will just
8 stick with that and not use the nighttime.

9 THE COURT: I don't know of any law against it
10 as far as argument is concerned. I just have
11 reservations about lawyers putting the law up on the
12 screen.

13 MR. WEDEKIND: Okay, sir.

14 THE COURT: I don't particularly have a
15 problem with it from a legal standpoint. It's just my
16 preference.

17 So, reasonable doubt, that could cut both
18 ways. You can use your reasonable doubt PowerPoint. I
19 will tell the jury that if a lawyer refers to a point of
20 law, I will give them the complete law.

21 MR. WEDEKIND: Yes, sir.

22 THE COURT: And if the lawyer refers to bits
23 and pieces, they are to take the law completely as I
24 give it to them, and they are not to selectively pull
25 out one thing.

1 MR. WEDEKIND: Yes, sir. I will just remove
2 then burg first and the armed robbery.

3 THE COURT: As far as my charge is concerned,
4 what does the State want me to charge on burglary first
5 that makes it a burglary first? Let's just call it an
6 aggravating factor.

7 MR. WEDEKIND: The weapon, armed with a
8 weapon, causing (A), (B), (C), and (D) that are
9 presented there. I guess I will go for all the marbles
10 and ask for nighttime too.

11 THE COURT: Yes, sir, Mr. Madsen.

12 MR. MADSEN: Judge, I would just object
13 because all they alleged was armed with a deadly weapon.

14 THE COURT: That's what I will charge.

15 MR. WEDEKIND: What? I'm sorry.

16 THE COURT: I will charge armed with a deadly
17 weapon. I will hold you to the indictment.

18 MR. WEDEKIND: And no nighttime?

19 THE COURT: No, sir.

20 MR. MADSEN: Judge, in regards to the
21 indictment, we had the pretrial discussion in the
22 beginning about the "or did conspire with."

23 THE COURT: He is not going to talk about any
24 conspiracy.

25 MR. MADSEN: I wanted to make sure. Normally

1 I think you would read the indictment. That part will
2 be redacted out?

3 THE COURT: I'm not going to read it.

4 MR. MADSEN: I just wanted to make sure.

5 THE COURT: I am going to tell them that the
6 State has to prove the elements of burglary in the first
7 degree, prove the elements of armed robbery and that
8 they have to be proven beyond a reasonable doubt. I'm
9 not going to specifically refer to the indictment
10 language.

11 MR. MADSEN: Your Honor sends back verdict
12 sheets and not the indictments?

13 THE COURT: I will not send back the
14 indictments.

15 MR. MADSEN: Thank you, Your Honor.

16 THE COURT: Lexington and Darlington are the
17 only counties, where after the verdict, the Clerk's
18 Office has the foreman sign the indictment just for
19 recordkeeping purposes. Evidently they still have some
20 thread to the old days.

21 MR. MADSEN: Yes, sir, I believe that that is
22 consistent with what they do here.

23 THE COURT: Anything else before we begin?

24 MR. WEDEKIND: Are we going to bring the jury
25 in or should I put the screen up?

1 THE COURT: You can leave the screen down but
2 leave the PowerPoint off for now.

3 MR. WEDEKIND: Yes, sir.

4 THE COURT: Verdict form, there will be two of
5 them. As to the charge of armed robbery, we find the
6 defendant -- unanimously find -- the defendant not
7 guilty or guilty, and the same as to burglary in the
8 first degree.

9 MR. WEDEKIND: Yes, sir.

10 THE COURT: How long do you think it will take
11 you, Mr. Wedekind, to make your argument?

12 MR. WEDEKIND: Not more than 30 minutes, sir.

13 THE COURT: I will not bang my fist, but I
14 will be watching. How about you, Mr. Madsen, Mr. Casto,
15 who will do the argument?

16 MR. MADSEN: I am going to do the argument.

17 THE COURT: How long do you need?

18 MR. MADSEN: Not as long as Mr. Wedekind.

19 THE COURT: Like I said, it's hard to get a
20 straight answer out of a lawyer how long something is
21 going to take. Not long means different things. Are
22 you ready for the jury?

23 MR. MADSEN: Yes, Your Honor.

24 THE COURT: I will ask if the defendant has
25 any witnesses, and you can rest at that time. I will

1 note all motions made.

2 MR. MADSEN: Thank you, Your Honor.

3 THE COURT: Bring in the jury.

4 (The jury returns to the courtroom.)

5 THE COURT: Thank you, ladies and gentlemen.
6 We are now ready to move forward. The State has rested.
7 Will the defendant be presenting any witnesses?

8 MR. CASTO: Your Honor, at this time the
9 defense rests.

10 THE COURT: Ladies and gentlemen, that was
11 done for the record. The attorneys had alerted me to
12 that. So we spent some time going over some things that
13 we would have taken care of during another break. So we
14 kind of jumped forward. I will note that any and all
15 motions have been made for the record.

16 We are going to move forward now, ladies and
17 gentlemen, to the closing arguments. This is a very,
18 very integral part of this trial. I want you to
19 continue, as you have been, to pay very close attention.

20 This is the time that the attorneys have the
21 right and the obligation to argue to you the conclusions
22 that they believe the evidence or lack of evidence would
23 compel you to reach in this case. You have to give them
24 your undivided attention because they do have that
25 solemn responsibility.

1 The State will present the first argument, and
2 then the defendant will present the last argument.
3 After that I will give you a charge on the law. That's
4 what we have been going over because the lawyers have
5 the right to know what I am going to charge you as far
6 as the law is concerned so they can tailor their
7 arguments accordingly.

8 Now, during the course of the arguments if the
9 lawyers or either of them reference a point of evidence
10 that does not correspond with your memory of what the
11 evidence actually was, you go with your memory, not with
12 what they say the evidence is.

13 Also, the lawyers are permitted to frame their
14 arguments within the context of the law as I will give
15 it to you. They may refer to bits and pieces or points
16 of law, and they can do that. That's certainly
17 appropriate.

18 But when I give you the charge on the law, I
19 will give you a complete charge on the law.
20 Specifically, if a lawyer recites or refers to a point
21 of law that does not correspond to the law as I give it
22 to you, you go with the law as I give it to you.

23 Now, the reason you have to pay very close
24 attention is that your responsibilities are continuing,
25 and that responsibility is to fulfill your oath to try

1 this case according to the evidence and the law.

2 I expect that you will pay very close
3 attention, and the attorneys, all of whom are very
4 capable and experienced lawyers, will frame their
5 arguments appropriately.

6 Mr. Wedekind, is the State ready?

7 MR. WEDEKIND: The State is ready, sir.

8 THE COURT: Mr. Casto, Mr. Madsen?

9 MR. CASTO: Ready, sir.

10 THE COURT: Go ahead, Mr. Wedekind.

11 MR. WEDEKIND: Thank you, Your Honor. Your
12 Honor, just for the edification of the jury, this is a
13 dummy weapon.

14 THE COURT: Ladies and gentlemen, that is
15 completely plastic or rubber.

16 Mr. Wedekind, if you would still kindly not
17 point it at anyone.

18 MR. WEDEKIND: Yes, sir.

19 THE COURT: Just point it to the ground unless
20 you want to do something different. Is anyone going to
21 want to use the actual exhibits during the argument?

22 MR. WEDEKIND: No, not me, sir.

23 MR. MADSEN: No, sir.

24 THE COURT: Thank you.

25 MR. WEDEKIND: I may pick up the cartridges,

1 but that's it, sir.

2 THE COURT: Yes, sir.

3 CLOSING ARGUMENT

4 MR. WEDEKIND: Ladies and gentlemen, I told
5 you this was going to be not too long of a trial, but it
6 was going to be important because very important issues
7 were involved in this case.

8 A young family trying to making a living,
9 living in impoverished circumstances, doing they best
10 they could, saving their money as a family unit, they
11 were violated. They were robbed. Their home was
12 breached, never to feel safe again.

13 Because trouble on June 16, 2010, came in the
14 form of three people: Quincy Holley, Ricky Bell, and
15 the person seated right over there, Carrie Callahan.
16 Now, you are going to hear from the defense some sad
17 story and tale that she didn't know what was going on.
18 She had no idea about what was going to happen at
19 1:00 o'clock in the morning.

20 She kind of gets a little wrapped around that
21 story though when you read what is in this statement.
22 Because when she starts self-serving, when she starts
23 shading the truth -- because it ain't the whole truth.
24 It's just a portion of it, enough that she felt she
25 could get out of it.

1 What did she do that night? Lied about her
2 name, Myra Nichole. That's not going to work. She's
3 got to come up with a new lie. "Oh, I'm Myra Edwards,"
4 because she knew they had the car under her uncle's
5 name.

6 She figures, "I can shade that truth a little
7 bit. That doesn't work because they check me again."
8 She's not acting too bright because they keep going back
9 to the driver's license record and pointing out to her,
10 "You are not who is in this picture."

11 What did she do? "Well, I'll get a little
12 closer. I will give my sister's name and maybe change
13 one number on my Social Security number." That doesn't
14 work either.

15 Finally, when she realizes she is out of
16 options, she gives her real name. Only when she is
17 pushed and cajoled into it and confronted with the
18 actual facts does she actually tell the truth.

19 Then she thinks she is in a corner, and you
20 saw it also when she wrote the first Miranda warning,
21 State's 2. Here she is pretending to be Courtney, gets
22 advised of her rights.

23 The devil is in the details because right
24 there (indicating) she forgot. She wrote Courtney. She
25 signed Courtney, and then the second time she started to

1 sign it Carrie because that truth was starting to leak
2 out. But then she scratched it out a little bit and
3 corrected it and finished it with Courtney.

4 The facts confront her. She only tells just
5 enough of the truth to get by. But in this statement
6 she says, "I just met these guys or I just met Ricky a
7 couple of days before." She tells orally to Page Moore,
8 "I met him at a vegetable stand a couple of days before,
9 but I live with my grandmother."

10 It's not really a close tie according to her
11 how he is going to know where she lives, all about her.
12 Then she says, "I never even met Quincy Holley until
13 that night when Ricky brought him to meet me."

14 So what does she have to fear from guys who
15 don't even know anything about where she lives? She
16 just meets them at a vegetable stand, gets called up on
17 the phone at 10:00 P.M., and drives out and rides around
18 with these guys for a couple of hours until it's after
19 midnight.

20 Then it's, "Oh, I've got to take care of some
21 business." Well, what kind of business gets done after
22 midnight in a trailer park in West Columbia? Risky
23 business, ladies and gentlemen, bad business.

24 But that's not enough. In her presence they
25 pull out two pistols. She kind of changes a little bit

1 more in the statement and says, "Oh, there was one," and
2 then she goes back to two autos.

3 But ask yourself for this inference. Who is
4 going to do business having to pull out guns and arming
5 themselves? I submit to you even though it doesn't say
6 it particularly in here, she says she sees bullets and
7 some get dropped on the floor.

8 Use your common sense on that, ladies and
9 gentlemen. What were they doing? They were loading
10 those magazines. You can infer from that that some of
11 these in the dark at 1:00 o'clock in the morning, some
12 of those rounds that they are stuffing into that
13 magazine to get ready to do the job that they intended
14 and take care of business, loading up this gun
15 (indicating) with 13 rounds, loading up this gun
16 (indicating) with 9-millimeter rounds.

17 She says in this statement that those rounds
18 dropped -- some extra rounds dropped out. They are all
19 compatible. You heard Sergeant McIntyre say when he
20 searched her, he found some projectiles in her pocket.
21 She says, "I picked them up. They spilled them on the
22 floor. I picked them up and I put them in my pocket."

23 What kind of business at 1:00 o'clock in the
24 morning calls for two 9-millimeters to conduct it? The
25 kind of business when it's a Friday night in an

1 immigrant, illegal alien little trailer park, like foxes
2 in a hen house.

3 That's where they were going to get paid to
4 get some extra money because they knew these people deal
5 in cash. They know they like to lay low, and they don't
6 like to draw attention to themselves. So it's easy
7 pickings to find a little family of immigrants living in
8 those trailers and hit them.

9 What were they doing? You saw Mr. Prado pull
10 up. He kind of sensed something was fishy because he
11 noticed that car in the neighborhood. It's a tight
12 little community. It's not very big. It's a little
13 trailer park in a U. configuration. You drive in one
14 end and out the other.

15 It's just six deep, 150-yards at the most.
16 Use your common sense on that. He said he was in
17 trailer 1 right here (indicating) on Dew Avenue. I
18 would submit to you one, two, three, four, five, six --
19 six trailers back is where the crime occurred.

20 He heard -- he sensed a little something wrong
21 because he looked at the car. Carrie had the engine
22 running in that blue S.U.V. He was a little off on it
23 being a Suburban instead of a Tahoe. That is not an
24 uncommon mistake. They both are Chevrolet products.

25 It was enough to get the police involved when

1 he called on the phone because he knew something was
2 wrong, and then his friend called and said, "Hey,
3 something is going on down there at 6. There is a
4 robbery."

5 Why would he get that call? Because his
6 friend was concerned for him. "Don't go out because
7 that fishy car upfront is probably involved in it."
8 Ladies and gentlemen, that car was involved in it.

9 Mr. Madsen is going to get up and paint some
10 sorry story about how she is a mother, wanting to take
11 care of her kids. She was under duress. These guys
12 just popped these guns up out of nowhere. She didn't
13 know what was going on for three hours. They are just
14 driving around and she is just biting her nails
15 wondering.

16 Ladies and gentlemen, does that really ring
17 true? Because if that was the case, if she was that
18 afraid, when they came in, they were just less than two
19 miles from the West Columbia Police Department.

20 When they go out searching for prey like two
21 little foxes running around looking for some chickens to
22 pluck, why didn't she just drive off? She could have
23 drove away and left them high and dry. They would be
24 standing there trying to catch a cab with two guns in
25 their hands.

1 Maybe they would have a little cash, but she
2 could have just driven straight away, ran right to the
3 police station, and been protected. But, no, she didn't
4 do that. She sat there and waited. She waited for them
5 to return with ill-gotten gains because she was a part
6 of it.

7 She could have dialed -- you also heard there
8 was a cell phone. She could have picked up and made a
9 call, but she didn't do that either. Ask yourself why.
10 Why wouldn't you call for help if you were in trouble
11 and nobody was there to immediately threaten you?

12 Why wouldn't you drive away when you've got
13 the car when there is no immediate danger, and you could
14 get help? Why when the officers disarmed them and put
15 them in separate vehicles and she was protected in a
16 third vehicle, why couldn't she have come clean?

17 Why did she start lying, giving false names
18 when the driver's license was done initially? Secondly,
19 once they confront her at the police station, she is
20 still giving a second lie as to her name. The third lie
21 is Courtney.

22 Then she finally comes clean only when she is
23 confronted with no other options. Why? Is that duress?
24 Or is that somebody covering themselves and trying to
25 find a way to get a jury down the road to believe they

1 were in trouble, and that's why they were doing it, not
2 that she was a party to this. It just doesn't run true,
3 ladies and gentlemen.

4 As far as the elements of the offense,
5 burglary requires that there be a breaking and entering
6 into a dwelling place. We have shown you that this was
7 a dwelling place of this little family of a one and a
8 half year old boy, a three-year-old girl, the father and
9 the mother and the brother-in-law.

10 Now Rigiberto, the brother-in-law, was outside
11 being polite while the family was inside sleeping in a
12 small single wide. You can see they are all single
13 wides in that subdivision. It was tight quarters.

14 He was being polite while they were snoozing,
15 and he was outside talking on the telephone when he is
16 confronted by two guys with guns. They whacked him in
17 the head. When he tries to resist going in, they order
18 him into the house.

19 You heard testimony from Adu1 saying that he
20 resisted, but he was confronted and cajoled and beat in
21 the head. He goes inside and there wakes up Mirna and
22 her husband Adu1 and grabs that little son. Because
23 what is the most precious thing to that mother, to any
24 mother, is her baby boy.

25 But he doesn't just grab that boy and threaten

1 him. He takes that gun, grabs the boy by his feet,
2 shaking and holding him, and puts that gun to that boy's
3 head. Can you imagine the way a mother is going to
4 feel? To be woken from a slumber at 1:00 o'clock in the
5 morning and have that terror befall you?

6 Just because somebody wants some money?

7 That's what they went through. She gave everything, all
8 her hard-earned cash that she had to save her son, and
9 it wasn't enough. They still kept shaking and
10 threatening.

11 Rigiberto pulls -- well, they give up their
12 wallets, they get their I.D.s, and they are caught
13 red-handed with that just a quarter of mile away when
14 the police pulled them over.

15 But only because of that commotion and some of
16 the other people in the community sensing what was wrong
17 was that 9-1-1 call made a little earlier. It took them
18 time to get that.

19 When they left, gold chains ripped off by
20 Rigiberto and given to them, everything they had. They
21 were just trying to get them out of there. They did
22 what they had to do to survive.

23 Finally, the fox has had enough. They took it
24 and they left, but they got caught, caught red-handed
25 because that gold chain dropped out of Ricky's front

1 lap, no doubt about that.

2 The officer picked it up, saw the gun, and
3 knew that this was not just a disturbance or a regular
4 call. This is something involving a crime of violence,
5 something involving weapons.

6 So at that point they pull everybody out.
7 They find the second gun. You have seen these
8 photographs. There is the back seat where Quincy was.
9 The pink wallet -- common sense -- you heard Mirna said
10 that's her pink wallet with her cash.

11 The blue wallet from Rigiberto. It's got
12 America written at the bottom, C.A. I don't know. I
13 suppose that is Central America. It's certainly not
14 written in what we see as standard English.

15 That's their life's savings. That's all the
16 stuff they had that they would give up in exchange to
17 save the life of that little nephew and little son. All
18 the hard work they put in to doing it. Oh, then we are
19 going to impeach Mr. Prado with, "Okay. He's an illegal
20 alien. He gets caught driving too fast."

21 And what has he got? He has got an I.D.
22 card that does have his name on it, does have his age,
23 and date of birth. It's just not an official
24 government-issued card, and he was convicted of that.

25 If you want to think that that is going to

1 impeach what he said, well, it's pretty consistent
2 because there was a 9-1-1 call made. There was a blue
3 Tahoe or a blue S.U.V. involved, and there was a
4 robbery. Everything he said on that phone call, it
5 wasn't a lie. That was just somebody who was trying to
6 do the right thing, unlike Carrie Callaham.

7 Ladies and gentlemen, I submit to you the
8 right thing to do in this case is to find her guilty,
9 guilty of a burglary in the first degree, breaking into
10 a dwelling of another, their little house, while armed
11 with a weapon causing injury to another by bashing
12 Rigiberto in the head with intent to commit a crime,
13 stealing wallets, stealing a cell phone, all of which
14 were returned to the rightful owners.

15 We don't have them here. We have photographs
16 of them, but we returned their property to them because
17 they have meager resources. The gold chain, caught
18 red-handed. It's all there, ladies and gentlemen.

19 If you use a weapon to break into a home to
20 take the goods of another while armed with a weapon,
21 that is robbery. And if you have that weapon, a pistol,
22 two guns, I submit to you that is armed robbery. That
23 is what we have. There is no real dispute about that.

24 Ricky and Quincy were the inside men. She was
25 the outside gal. The hand of one -- you are going to

1 hear this from the judge -- the hand of one is the hand
2 of all. If you believe she was it on it with them, it
3 doesn't mean she had to be in there.

4 As long as she was helping and assisting them
5 and working for the same goal, going to catch a share of
6 that profit of ill-gotten gain, she is just as guilty,
7 just as guilty as if she was the one inside the door, if
8 she was the one with her hand on the trigger.

9 Why do we do that, ladies and gentlemen? So
10 we don't let people who are trying to profit from doing
11 wrong get away with it. It would be the easiest thing
12 in the world when you do get caught to come up with a
13 lie about duress; wouldn't it?

14 Talk about, "I didn't want to do it. They
15 forced me to do it. I didn't have the gun. They forced
16 them on me." Wouldn't that be a convenient lie to make
17 up to get out of trouble, acting like a school kid.

18 Ladies and gentlemen, it's a tough choice but
19 it won't be a difficult choice. Find her guilty of
20 burglary in the first degree and armed robbery. Thank
21 you.

22 THE COURT: Thank you, Mr. Wedekind.

23 Mr. Madsen.

24 MR. MADSEN: May it please the Court.

25 THE COURT: Yes, sir.

1 **CLOSING ARGUMENT**

2 MR. MADSEN: Solicitor. Speculation,
3 conjecture, and presumption. Speculation, conjecture,
4 and presumption. We agree with the solicitor. There is
5 a rule of three in this case. There is speculation,
6 there is conjecture, and there is presumption.

7 Now, you heard one of the first things that
8 the judge told you is that the lawyers' opening
9 statements are not evidence. We have the right to
10 comment about what we think is going to happen, but in
11 the end the opening is not evidence.

12 It's what you hear from that witness stand,
13 and as Mr. Casto told you, it's also kind of what you
14 don't hear from that witness stand. You heard the
15 solicitor get up and give this grand tale. Did he
16 deliver it? Or was it speculation?

17 Interestingly, as you heard his closing
18 statement about how Rigiberto was outside on the phone
19 and was forced in, who testified to that? Is Rigiberto
20 here to testify to that? Did anyone testify to that?

21 Now, Mr. Bargas Perez gets up and he does say
22 all that; doesn't he? But then I start asking him, "So
23 wait a second. You see all this that you just
24 testified?"

25 "No, I was asleep and I woke up, and they are

1 in there."

2 "Do you see a car? Do you see the neighbor?"

3 "No, no."

4 "Do you see any kind of forced entry?"

5 "No."

6 "Do you see how they leave?"

7 "No."

8 "Do you see Carrie?"

9 "No. No, no, no."

10 The solicitor gets up and tells you, "This is
11 what happens. He is forced in there." Who testified to
12 that? Who got up there and said that they saw that? Or
13 is that simply speculation?

14 Ladies and gentlemen, it is never appropriate
15 to convict someone based on speculation. Now, you did
16 hear from the husband and wife who are sleeping, and
17 when they wake up, these men are in their house.

18 I am not going to sit here and tell you that
19 those aren't despicable men, that they aren't terrible,
20 that they aren't the low of the low, that they come in
21 there with guns and that they are not dangerous people
22 that holds that gun to their child's head.

23 They are exactly where they should be, in the
24 Department of Corrections, because they are dangerous,
25 and that's where dangerous people who do that need to

1 be. But what did Ms. Herrara tell you? "Oh, they had
2 my child and I was going to do anything."

3 I tell a lot of people, I love some meat. But
4 I know if my child got in something I would have no
5 problem pushing them out of the way, taking the bullet,
6 doing whatever I could for my child. That doesn't make
7 me special. That makes me a dad, and she was doing the
8 same thing. She wanted to protect her child.

9 As you heard, Carrie was scared about herself,
10 her children. We will talk about that a little bit
11 more. You heard about how she didn't know one of those
12 fellows at all, knew the other one for a few days.

13 You know, it was interesting because both
14 Ms. Herrara and Mr. Bargas, they didn't see her. That's
15 important because doesn't that kind of also mean that
16 the inverse is probably true. They had no idea where
17 she is at. She has no idea what is going on.

18 According to Mr. Prado, at least six houses
19 away, middle of the night, no idea what those fellows
20 are doing. The State wants you to rely on conjecture.
21 Everything is conjecture.

22 You know, ladies and gentlemen, it's not
23 appropriate to convict someone on just conjecture. It's
24 not what our system of justice is based on. It's not
25 appropriate.

1 You know, it's interesting because when the
2 officer gets up there, they have that kind of little
3 diagram. He is off the screen. He is way down low, but
4 yet when he gets there, this car that the Solicitor says
5 is right out there, ready to go, only makes it a block
6 away before he sees it. Something just doesn't sound
7 right about that.

8 I'm the getaway driver. Someone is going to
9 go do a robbery. They are going to get in the car. I'm
10 going to haul butt. I'm going to stop at the stop sign?
11 They are going to get behind me, and the chase is not
12 going to be on?

13 But you heard she pulls over. There is no
14 chase. There is no failure to stop for a blue light.
15 You hear when the officers get to the car, there is a
16 gun to the right of her, and there is a gun right behind
17 her, right behind where she is at.

18 You know, interestingly, the solicitor talks
19 about this phone. "Oh, she could have called 9-1-1."
20 Whose phone was it? Rigiberto's? You heard
21 Investigator Bramlett. That phone went back to
22 Rigiberto.

23 That phone doesn't get in the car until they
24 get back in the car. That's at least six houses away in
25 the middle of night behind closed doors, but according

1 to the State, somehow she is supposed to know about
2 that.

3 These are despicable men that she gave a ride
4 to. People that she does not know. And what does she
5 tell Investigator Moore that they tell her? They will
6 hurt her, hurt her kids if she says anything -- hurt her
7 and hurt her kids.

8 You know, the interesting thing -- and there's
9 12 of you, and y'all can figure this out a lot better
10 than I ever will. Carrie gives a written statement in
11 her own handwriting about what goes on, and for some
12 reason scribbles out, "Please don't tell Mr. Black --
13 Ricky Bell because she doesn't even know his name --
14 please don't tell or let Mr. Black read this. He knows
15 where my kids are."

16 You know, the interesting thing is we are
17 sitting here a couple of years later, and we know how
18 the story ends. We know where the bad people are. They
19 are in S.C.D.C., but does she know that sitting out
20 there that day?

21 Are we going to judge her because we know how
22 the story ends and she doesn't? Just because they take
23 them into custody doesn't mean that that's not
24 potentially going to put her children at risk.

25 You know, the officer takes her around to the

1 back of the car. She is right beside Ricky Bell. Do
2 you want those people to really know who you are? To
3 know what your names are?

4 Remember, she also tells Investigator Moore,
5 they said to her, "If you open your mouth, you will be
6 hurt." I have known her ever since she came to West
7 Columbia. This is a dog-gone good investigator. What
8 did she tell you she did?

9 She went from one person to the other and
10 takes the tidbits and ends up coming up with the truth.
11 Because that's what she is trained to do and she gets it
12 out.

13 Why in the world is it scratched out? "Please
14 don't let Mr. Black read this. He knows where my kids
15 are." She is not part and parcel with them. She is not
16 part of the game. She is not part of the three
17 musketeers.

18 It is never someone's burden of proof to prove
19 themselves innocent. The entire burden of proof is on
20 the State. The entire burden of proof is on the State
21 to prove someone guilty beyond all reasonable doubt.

22 Everything you have here is conjecture. Her
23 just driving the car is not enough. Her just driving
24 the car is not enough. She has to be part and parcel,
25 and the State must prove that beyond all reasonable

1 doubt.

2 She doesn't have to prove anyone. They have
3 that entire burden of proof. They have that sole
4 burden. There is nothing but conjecture here. Ladies
5 and gentlemen, conjecture in and of itself is never
6 appropriate to convict someone.

7 The next thing I want to kind of talk about is
8 that third party. We talked about speculation. We
9 talked about conjecture. Now let's talk about
10 presumption. It's a little bit different.

11 Everyone has the presumption of innocence. It
12 is a bedrock principle of our criminal justice system.
13 You don't have to prove yourself innocent. It is the
14 State's burden and solely the State's burden to prove
15 someone guilty beyond a reasonable doubt.

16 Everyone is presumed to be innocent. Now, as
17 I told you, I have children. I have got a son, and we
18 are kind of in a lull for me. I'm a big sports fanatic,
19 but I'm a huge football fan.

20 I never got to play myself. When I graduated
21 high school, I was 125-pounds. Unfortunately I have
22 gotten a little bit heavier, but I've got a third grader
23 and he does play football.

24 We've got a couple of months before his
25 football season is going to pick back up, and I love

1 watching peewee football. I love college football, pro
2 football. I watched the X.F.L. when it was on, arena
3 football.

4 One of the interesting things that when you
5 watch a football game that you see, sometimes there ends
6 up being a play that is somewhat disputed on the field.
7 Depending on what league you are in, sometimes there are
8 referees these sit up in a box. They can take a look at
9 it.

10 A lot of times -- I think it might be even in
11 the pros -- where the coaches have like this red hankie
12 that they can pull out and throw out and say, "We
13 challenge the call."

14 Well, in football the call on the field stands
15 unless there is indisputable video evidence. So the
16 call on the field in a football game is that the call
17 stands unless there is indisputable video evidence.

18 That kind of got me thinking that that can be
19 similar or analogous to what we have here in the
20 courtroom. See, here in this courtroom, the call on the
21 field is that Carrie is not guilty. The call on the
22 field is that Carrie is not guilty.

23 It's the State's burden of proof beyond all
24 reasonable doubt to prove her guilty. Speculation,
25 conjecture, and then you have got the presumption. This

1 wasn't a long trial, but dog-gone it's important. We
2 believe that the State has failed in their burden of
3 proof, and we ask you to find Carrie not guilty.

4 THE COURT: Thank you, Mr. Madsen.

5 Ladies and gentlemen, is there anybody on the
6 jury who like to take a brief break before I begin the
7 charge?

8 (There is no response.)

9 (Whereupon the Court charges the jury as
10 follows.)

11 THE COURT: Let me have your attention for a
12 few minutes, ladies and gentlemen. I am going to give
13 you now what is called the charge on the law. As I
14 mentioned to you a while ago, you will have to accept
15 the law exactly as I give it to you.

16 During the course of this charge, I will be
17 reviewing several different legal principles, and these
18 include but they are not limited to the burden of proof,
19 the presumption of innocence.

20 I will explain to you the hand of one is the
21 hand of all. I will talk to you about burglary in the
22 first degree. I will talk to you about armed robbery.
23 I will talk to you about the offense of duress or
24 coercion.

25 Now, during the course of this charge, I will

1 be repeating myself. The reason for that is not that I
2 am trying to bore you to death. It's not I am trying
3 to -- or not that I have lost my place. It's simply
4 that legal principles do intertwine with one another.

5 So if I talk about one in the beginning, I
6 will more than likely talk about it consistently as I go
7 through the charge. If I discuss a point of law and I
8 repeat it and I repeat it again, that doesn't mean that
9 I am emphasizing it because I think I want you to
10 consider that over all points.

11 That's not it. I am trying to give you a full
12 explanation of what the law is and the law that you are
13 to apply. In that regard you may come into this case
14 with a preconceived notion of what you think the law is
15 or what you think it ought to be.

16 But today you put that out of your mind.
17 Under your oath you have to accept the law exactly as I
18 give it to you. Even if you disagree with it, you have
19 got to accept it exactly as I give it to you.

20 Now, obviously during the course of this
21 trial, you and I have had certain duties to perform. As
22 the trial judge, it has been my responsibility to
23 preside over the trial and make legal rulings, and it
24 has been your duty to be the judges of the facts. Your
25 responsibilities in that regard are really just

1 beginning.

2 You are to consider the competent evidence
3 that has been introduced. If during the course of the
4 trial I have ordered you to disregard any testimony or
5 to disregard a statement of counsel, then under your
6 oath you are required to disregard what I have told you
7 to disregard completely.

8 You can take into account, as far as the
9 evidence is concerned, testimony, the exhibits, and any
10 stipulations on the part of counsel. Now, again I have
11 the duty to charge you the law. That's part of my
12 responsibilities as the judge of the law.

13 If you have any type of idea of what the law
14 is or what you think it ought to be, again, please put
15 that out of your mind. I am the sole and exclusive
16 judge of the law.

17 If I make any type of mistake in that regard,
18 there is a different time and a different place for
19 those errors to be corrected. So please accept the law
20 as I give it to you.

21 Do not under any circumstance take from
22 anything that I have said or anything that I have done,
23 that I favor one particular result over another in this
24 case because I don't. I certainly do respect your
25 position as the jury, specifically the judges of the

1 facts.

2 It's your duty and your duty alone to analyze
3 the evidence. Give it your common sense view. Take the
4 law as I give it to you. Put those things together and
5 reach verdicts which speak the truth.

6 That is your responsibility. It's your duty
7 to determine the effect and the weight and the value and
8 the truth of the evidence presented during the course of
9 this trial.

10 Now, specifically before I forget, there are
11 two exhibits that are represented to be handguns. There
12 are two exhibits that are represented to contain
13 ammunition. Those two will not be in the jury room with
14 you at the same time.

15 In other words, you will have two guns at
16 once. If you want to see the ammunition, the guns will
17 be brought out, and the ammunition will be brought in.
18 So you won't have the guns and ammunition at the same
19 time.

20 Also, if any of the exhibits are encased in a
21 plastic or cellophane container or envelope and that is
22 sealed, you may not open that up without specific
23 permission from me.

24 Now, ladies and gentlemen, I told you the ways
25 that evidence comes in: Testimony, exhibits, and

1 stipulations. There are -- to change gears just a
2 little bit -- there are two types of evidence that are
3 generally presented during a trial. These are called
4 direct evidence and circumstantial evidence.

5 Direct evidence is evidence that immediately
6 establishes the main fact to be proved. So what does
7 that mean? Direct evidence, for example, is the
8 testimony of a person who claims to have actual
9 knowledge of a fact, such as an eyewitness.

10 The example I always give is a witness who
11 says, "I saw the dog cross the road. I saw the light
12 turn red. I smelled smoke. I saw fire." Those are
13 examples of direct evidence.

14 Obviously, as I will get to in a minute, you
15 will have to determine whether or not you believe the
16 witness in that regard, but that is an example of direct
17 evidence.

18 Circumstantial evidence is the other type of
19 evidence that is presented during a trial.

20 Circumstantial evidence is proof of a chain of facts and
21 circumstances that indicate the existence of a fact.

22 So it's evidence that immediately establishes
23 collateral facts from which the main fact may be
24 inferred. Circumstantial evidence is based on
25 inference. It is not based on direct personal knowledge

1 or observation.

2 Now, ladies and gentlemen, the law makes
3 absolutely no distinction at all between the weight or
4 value that you are to give to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence.

8 In other words, you weigh all the evidence in
9 this case, whether direct or circumstantial. After
10 weighing all this evidence, if you are not convinced of
11 the defendant's guilt beyond a reasonable doubt as to
12 the crime you are considering at that time, you must
13 find her not guilty.

14 If you are firmly convinced and you are
15 convinced of her guilt beyond a reasonable doubt as to
16 the crime you are considering at that time, you must
17 find her guilty.

18 Now, ladies and gentlemen, I mentioned to you
19 before, but under the law I am required to charge you
20 again that necessarily as the finders of the facts, you
21 must determine the credibility of witnesses who have
22 testified in this case.

23 As you know, credibility simply means
24 believability. It's your duty to analyze and evaluate
25 the truth -- excuse me -- the evidence for its truth.

1 In that regard you must determine whether or not the
2 witnesses are credible or not.

3 In determining the believability of someone
4 who has testified, you simply use your good common
5 sense. You can believe one witness over many, many over
6 one. Don't simply count up the number of witnesses for
7 a particular proposition and reach your decisions that
8 way.

9 You determine, based on your good common sense
10 view, whether or not aren't you believe the person. You
11 can believe every word, disbelieve every word, or
12 believe parts and reject the rest. You can take into
13 account the demeanor of the witness. Were they hesitant
14 or straightforward in answering questions?

15 You can take into account whether or not that
16 witness has demonstrated any bias or prejudice or motive
17 to give testimony that would help or hurt one side over
18 the other.

19 You can take into account whether or not that
20 witness' testimony is strengthened or weakened by other
21 evidence that is in the record. Also, you can take into
22 account whether or not -- what your view of what the
23 witness' ability to know the facts that he or she claims
24 to have knowledge of.

25 I charge you, ladies and gentlemen, that if a

1 witness has a criminal record, that does not impact the
2 ability of the witness to actually take the stand and
3 testify, but you may take that criminal record into
4 account, if you choose, when determining whether or not
5 you believe what that witness testified to.

6 Now, ladies and gentlemen, as I have indicated
7 to you, the defendant has entered pleas of not guilty to
8 the indictment. Those pleas put the burden on the State
9 to prove her guilt beyond a reasonable doubt.

10 Now, a person who is charged with a criminal
11 offense is never required to prove herself innocent or
12 not guilty. I charge you that it is a very important
13 rule of law that the defendant in a criminal case, no
14 matter what the charge, literally from A. to Z., is
15 always presumed to be innocent of the crime for which
16 the indictment was issued unless guilt is proven by
17 evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 The presumption of innocence does not end and
20 will not end when you stand up in just a few minutes and
21 go to your jury room and begin your deliberations. That
22 presumption remains with the defendant unless and until
23 you reach a verdict of guilt based on evidence
24 satisfying you of that guilt beyond a reasonable doubt.

25 Some people have described the presumption of

1 innocence to be like a robe of righteousness that's
2 around the defendant's shoulders. That robe remains on
3 the defendant's shoulder until it is stripped away by
4 evidence satisfying you of guilt beyond a reasonable
5 doubt.

6 So in the end the presumption of innocence is
7 not a mere legal theory. It's not a catch phrase that
8 we casually toss around. It's a substantial right to
9 which every defendant is entitled unless a jury is
10 satisfied from evidence that the defendant is guilty
11 beyond a reasonable doubt.

12 I will talk to you now about what reasonable
13 doubt is because I have used that term many times so
14 far. A reasonable doubt in the law is the kind of doubt
15 that would cause an honest, sincere, and reasonable
16 person to hesitate to act.

17 Now, with regard to the crimes charged, the
18 State has the burden of proving the elements of those
19 crimes beyond a reasonable doubt. Now, I am going to
20 talk to you in a moment about a different kind of burden
21 of proof in conjunction with the defense of duress.
22 That is by what we call the greater weight or the
23 preponderance of the evidence.

24 In a criminal case the State's proof is beyond
25 a reasonable doubt. Now, ladies and gentlemen, proof

1 beyond a reasonable doubt is proof that leaves you
2 firmly convinced of the defendant's guilt.

3 There are very few things we know on this
4 earth with absolute certainty, and the law does not
5 require the State to present proof that overcomes every
6 possible doubt, but it does require the State to present
7 proof that overcomes every reasonable doubt.

8 Now, ladies and gentlemen, again, if based on
9 your consideration of the evidence if you are firmly
10 convinced that the defendant is guilty of the crime
11 charged, you must find her guilty.

12 If, on the other hand, you believe there is a
13 real possibility that the defendant is not guilty, you
14 must give her the benefit of the doubt and find her not
15 guilty.

16 Now, I will jump ahead and then I will come
17 back to something -- some things that are more specific.
18 On the defense of duress, I will tell you at the end of
19 this charge that the defendant has the burden of proving
20 that defense by the greater weight of the evidence.

21 If you could imagine in your mind's eye a set
22 of scales. If a person -- in this case the defendant --
23 has the burden of proving something by the greater
24 weight of the evidence, that person has to tip those
25 scales ever so slightly in his or her favor.

1 That is an illustration of the burden by the
2 greater weight of the evidence. The State's burden is
3 much more powerful than that with the regard to its
4 burden of proving guilt beyond a reasonable doubt.

5 Now, ladies and gentlemen, I instruct you and
6 I emphasize to you that the fact that the defendant did
7 not testify in this case is not a factor to be
8 considered by you in any way in your deliberation and in
9 your consideration of the question of the guilt or
10 non-guilt of the defendant.

11 The fact that the defendant did not testify is
12 something that you may not talk about. You may not
13 think about it, and it may not enter into your decisions
14 in any way whatsoever in this case.

15 A defendant has the constitutional right to
16 remain silent, and the assertion of that right can under
17 no circumstance be considered by you in your
18 deliberation.

19 So I repeat: Under your oath you are not
20 permitted to give the fact that she did not testify any
21 consideration whatsoever. As I have stated to you, the
22 defendant is not required to prove herself not guilty,
23 and the burden of proof remains on the State to
24 establish the elements of the crimes charged beyond a
25 reasonable doubt.

1 Now, before I get into the two indicted crimes
2 specifically, I am going to talk to you about a legal
3 principle called the hand of one is the hand of all. If
4 a crime is committed by two or more people who are
5 acting together in committing the crime, the act of one
6 is the act of all.

7 A person who joins with another to commit an
8 unlawful act is criminally responsible for everything
9 done by the other person which happens as a probable or
10 natural consequence of the acts done in carrying out the
11 common plan and purpose.

12 Now, ladies and gentlemen, if two or more
13 people are together, acting together, assisting each
14 other in committing the offense, the act of one is the
15 act of all or sometimes it is said the hand of one is
16 the hand of all.

17 I further charge you, ladies and gentlemen,
18 that prior knowledge that a crime is going to be
19 committed without more is not sufficient to make a
20 person guilty of that crime under this legal doctrine.

21 Specifically, mere knowledge that another
22 person is going to commit a crime, even if the defendant
23 is present when the crime is committed, is not
24 sufficient to convict the defendant as a principal.

25 Guilt as a principal is shown by actual or

1 constructive presence at the scene as a result of a
2 prior arrangement. Therefore, a finding of prior
3 arranged plan or common scheme is necessary for a
4 finding of guilt as a principal. The State must prove
5 beyond a reasonable doubt by competent evidence the
6 theory of the hand of one is the hand of all.

7 Now, ladies and gentlemen, a principal, as I
8 have used that term, is one who either actually commits
9 the crime or who is present aiding, abetting, or
10 assisting in the crime.

11 When a person does an act in the presence of
12 and with the assistance of another, the act is done by
13 both. Where two or more are acting with a common plan
14 or intent are present at the commission of a crime, it
15 does not matter who actually commits the crime. All are
16 guilty. The hand of one is the hand of all.

17 To be present at the commission of a crime
18 means to be sufficiently near, to aid and abet and
19 assist in the commission of the crime. However, mere
20 presence at the scene of a crime is not sufficient to
21 convict one as a principal on the theory of aiding and
22 abetting.

23 Intent, as I will tell you in a few minutes,
24 is also a necessary element, for there must have been a
25 common design or intent to commit the crime, and the

1 crime must have been committed pursuant thereto with the
2 defendant aiding and abetting by some overt act.

3 Now, ladies and gentlemen, firstly, I will go
4 over these charges in the indictment. I am going to go
5 ahead and select the one that is on top of my two
6 verdict forms.

7 The defendant has been charged with burglary
8 in the first degree. It's also known as first degree
9 burglary. The State has to prove certain things beyond
10 a reasonable doubt. I have already talked to you about
11 the hand of one, hand of all theory which the State has
12 to prove beyond a reasonable doubt.

13 With regard to burglary in the first degree
14 specifically, the State must first prove beyond a
15 reasonable doubt that the defendant entered a dwelling
16 without consent.

17 A dwelling is defined as any building or
18 portion of a building in which a person ordinarily
19 sleeps. The State must also prove beyond a reasonable
20 doubt that the defendant intended to commit a crime at
21 the time of the entry.

22 The mere entry into a dwelling without consent
23 is not burglary. If the intent to commit a crime is
24 formed after the entry, it is not burglary. On the
25 other hand, if the person intended to commit a crime at

1 the time of entry, it is a burglary even if the intent
2 was abandoned after the entry. It does not matter that
3 the intended crime was not completed.

4 Now, intent in this regard in the context of
5 intent to commit a crime may be shown by acts and
6 conduct of the defendant and other circumstances from
7 which you may naturally and reasonably infer intent.

8 Finally, with regard to burglary in the first
9 degree, the State must prove beyond a reasonable doubt
10 that in entering, while in the dwelling or when fleeing,
11 the defendant or accomplice was armed with a deadly
12 weapon or explosive.

13 Now, a deadly weapon is any article,
14 instrument, or substance which is likely to cause death
15 or great bodily harm. The following are examples of
16 instruments which may be deadly weapons: A pistol,
17 shotgun, rifle, dagger, knife, slingshot, metal
18 knuckles, gasoline, or a firebomb. Now, ladies and
19 gentlemen, a gun may be a deadly weapon even if it is
20 not operating.

21 Secondly, ladies and gentlemen, the defendant
22 is charged with armed robbery. I have already told you
23 with regard to the elements what the State must prove.
24 The State has to prove the hand of one, hand of all.

25 In order to prove this offense of armed

1 robbery, the State must prove beyond a reasonable doubt
2 that the defendant took personal property from the
3 person or presence of another person.

4 Property is in the presence of a person if it
5 is within the person's reach, inspection, or control so
6 that person could, if not overcome with violence or
7 prevented by fear, keep possession of the property.

8 The State must also prove beyond a reasonable
9 doubt that the defendant carried the property away,
10 intending to permanently deprive the owner of that
11 property, and to keep it for the defendant's own use.

12 The slightest removal of the property or the
13 complete possession of the property, even for an instant
14 by the defendant, is sufficient to show a taking and
15 carrying away of the property.

16 Now, ladies and gentlemen, the taking and
17 carrying away of the property must have been done with
18 violence or putting the owner of the property in fear of
19 violence.

20 Finally, with regard to armed robbery, the
21 State must prove beyond a reasonable doubt that the
22 defendant was armed with a deadly weapon during the
23 robbery. The definition of deadly weapon in the context
24 of armed robbery is the same as I gave you in the
25 context of burglary in the first degree.

1 Now, ladies and gentlemen, in order to
2 establish criminal liability, the State has to establish
3 the element of criminal intent beyond a reasonable
4 doubt.

5 Now, ladies and gentlemen, criminal intent is
6 always a matter that must be determined by a jury from
7 the circumstances surrounding the situation. There is
8 no way to prove intent to a mathematical certainty.

9 There is no way that medical science can
10 dissent a person's brain and examine the brain and
11 determine what, if anything, that person intended to do
12 at any given time. So the law says that the criminal
13 intent may be inferred from circumstances shown to have
14 existed.

15 It is not necessary to establish criminal
16 intent by direct evidence, but it may be established by
17 circumstantial evidence in the same way as any other
18 fact, by taking into consideration the actions of the
19 parties and all the facts and circumstances of the
20 case.

21 Criminal intent is a mental state, criminal
22 intent is a conscious wrongdoing, and it's up to you to
23 determine what, if anything, the defendant intended to
24 do based on the circumstances shown to have existed.

25 Ladies and gentlemen, I further charge you

1 that mere presence at the scene of a crime is not
2 sufficient to prove someone guilty of that crime. A
3 defendant's presence where a crime is being committed or
4 mere association with a person who commits a crime does
5 not in and of itself make a defendant an accomplice or
6 aider or abettor of the person committing the crime.
7 The law is that proof of being at the scene of the crime
8 is not sufficient in and of itself to find someone
9 guilty.

10 Now, ladies and gentlemen, the defendant has
11 raised the defense of coercion or duress. Coercion or
12 duress is when a person makes another person commit a
13 crime against someone else by the threat of immediate
14 physical violence.

15 The coercion or duress must be present,
16 imminent, and of the type to create a well-grounded fear
17 of death or serious bodily harm if the act is not done.
18 That fear of injury or of death or serious bodily injury
19 must be a reasonable fear. Coercion or duress is not a
20 defense if there is any reasonable way, other than
21 committing the crime, for the defendant to escape the
22 threat of harm.

23 Ladies and gentlemen, the defendant must prove
24 the defense of duress by the greater weight or the
25 preponderance of the evidence in accordance with the

1 instructions I gave you earlier about that imaginary set
2 of scales.

3 That is, the defendant must tip those scales
4 ever so slightly in her favor in order for her to have
5 satisfied her burden in that regard. If you find that
6 the defendant was coerced into committing the crime, you
7 must find her not guilty.

8 Now, ladies and gentlemen, there are two
9 verdict forms in this case. They both have separate
10 docket numbers. I will come to the one on top first.
11 It has the word verdict on it.

12 Is has this statement: As to the charge of
13 burglary in the first degree, we the jury unanimously
14 find the defendant -- and there are two choices -- not
15 guilty, guilty.

16 First of all, ladies and gentlemen, your
17 verdict in both cases does have to be unanimous. That
18 means all of you have to agree. This is not a seven to
19 five, nine to three, or even eleven to one vote. Every
20 single one of you must agree as to what the verdict will
21 be.

22 Once you have reached a unanimous decision,
23 Madame Forelady, you simply put an X. or a check in the
24 appropriate space beside your verdict, not guilty or
25 guilty. Then you sign it, you date it, and you move to

1 the next one.

2 You don't have to examine these in any
3 particular order. The second verdict form says: As to
4 the charge of the robbery while armed with a deadly
5 weapon, which is also armed robbery, we the jury
6 unanimously find the defendant -- again, the two
7 choices -- are not guilty and guilty.

8 Once you have reached a unanimous conclusion
9 of your verdict in that case, you put a check or an X.
10 in that space, sign the form, and date it. Once you
11 have reached verdicts in both cases, you simply tap on
12 the door and let the bailiff know that you have reached
13 a verdict.

14 During the course of your deliberations if you
15 have any questions, there will be a note pad and a pen
16 in there for you, and you write the question down. I
17 will receive the question from the bailiff after you tap
18 on the door.

19 Let him know you have a question, and then I
20 will address the question with you in accordance with
21 the law. The law dictates, number one, if I can respond
22 and, number two, how I can respond. I will follow the
23 law completely in that regard.

24 Madame Forelady, you don't have any greater
25 power in the jury room over anyone else. It's simply

1 your responsibility to make sure that the deliberations
2 are conducted thoroughly and in an orderly fashion and
3 that everyone who wants a chance to speak his or her
4 mind about the cases has the time to do that.

5 If someone wants to simply make their decision
6 or their verdict known, nobody else on the jury can
7 demand that that person give reasons, but you do have to
8 make sure that your verdict in both cases is absolutely
9 unanimous.

10 I am not concerned about what your verdicts
11 are going to be, but I do want to make sure that you
12 understand that your job is just beginning. You will
13 have a valuable tool in the jury room with you, and
14 that's your good common sense.

15 As I mentioned to you, any time you use that
16 with your view of the evidence and my charge on the law,
17 you reach verdicts which speak the truth. As you may
18 know, the word verdict does comes from two Latin words
19 which mean literally to speak the truth.

20 Ladies and gentlemen, what I am going to do
21 now is have you go to your jury room. By the way, if
22 anybody needs to leave the jury room to use the phone,
23 first of all, you've got to get my permission.

24 If somebody does leave the room, you have got
25 to stop your deliberations. Also, if someone even

1 excuses himself or herself to use the rest room in the
2 immediate jury area, wait until the person comes back
3 before you resume or begin your deliberations.

4 The next order of business is I will ask you
5 to go to your jury room. Don't begin discussing the
6 case yet because the rules that we have require me to
7 ask the lawyers if I let something out or if I charged
8 something improperly. You can go to your jury room. If
9 the alternate juror can just wait in the hall for the
10 time being.

11 (The jury retires to the jury room.)

12 THE COURT: Any exceptions or additions from
13 the State?

14 MR. WEDEKIND: None from the State, sir.

15 THE COURT: Any from the defendant?

16 MR. CASTO: None, from the defense, Your
17 Honor.

18 MR. MADSEN: Judge, we would just simply renew
19 our objections prior, as far as with duress and burden
20 of proof.

21 THE COURT: All right. I don't know if you
22 got with the court reporter to go over the exhibits to
23 make sure everything is in order.

24 Any objections to me releasing the alternate?

25 MR. MADSEN: None from the defense.

1 MR. WEDEKIND: No, sir.

2 THE COURT: Anything else, gentlemen?

3 MR. WEDEKIND: The exhibits are fine and the
4 verdict forms. We both checked, sir.

5 MR. CASTO: We agree on that, Judge.

6 THE COURT: You can take the exhibits on back
7 and the weapons are still incapable of being fired; is
8 that correct?

9 MR. WEDEKIND: Yes, sir, and the magazines and
10 guns are segregated.

11 (The jury commences its deliberation at
12 4:25 P.M.)

13 (The following occurred at 5:05 P.M.)

14 THE COURT: Is the State ready to receive the
15 verdict?

16 MR. WEDEKIND: Yes, sir.

17 THE COURT: The defendant?

18 MR. CASTO: Yes, sir, Your Honor.

19 THE COURT: I know that there is a lot at
20 stake here. I would appreciate it if no one showed any
21 type of reaction, audible or visible, when the jury's
22 verdict is read. You can bring in the jury.

23 (The jury returns to open court to report its
24 verdict.)

25 THE COURT: Madame Forelady, have you reached

1 your verdicts?

2 FOREMAN: Yes, sir.

3 THE COURT: In both cases?

4 FOREMAN: Yes, sir.

5 THE COURT: Are they unanimous?

6 FOREMAN: Yes, sir.

7 THE COURT: You can hand those to the bailiff.

8 Thank you very much.

9 (Hands to Court.)

10 THE COURT: All right. If the defendant would
11 please stand.

12 CLERK: Proceed, Your Honor?

13 THE COURT: Yes, ma'am.

14 (Whereupon the verdicts of the jury are
15 published as follows).

16 CLERK: Indictment 2012-GS-32-1216, the State
17 versus Carrie Denise Callaham, as to the charge of
18 burglary in the first degree, we the jury unanimously
19 find the defendant guilty, and it is so signed.

20 Indictment 2012-GS-32-1218, the State versus
21 Carrie Denise Callaham, as to the charge of robbery
22 while armed with a deadly weapon, we the jury
23 unanimously find the defendant guilty, and it is so
24 signed. Both are signed by the forelady, Robin Derrick,
25 dated May 24, 2012.

1 Madame Forelady, ladies and gentlemen, if
2 these are your verdicts, please indicate each of you by
3 raising your right hand.

4 (All jurors so indicate).

5 CLERK: All hands are raised, Your Honor.

6 THE COURT: Anything from the State before the
7 jury is released?

8 MR. WEDEKIND: No, Your Honor.

9 THE COURT: Thank you. Anything from the
10 defendant?

11 MR. MADSEN: Judge, we would simply move at
12 this point in time for a new trial. We do not believe
13 that the evidence that was presented to the jury was
14 sufficient for them to find those verdicts.
15 Additionally we would, again, renew all of our
16 objections and our motions that we previously made
17 during the trial.

18 THE COURT: I have notes on those, Mr. Madsen.
19 I certainly will allow you any additional time if you
20 would like to frame any additional arguments. The
21 motion for directed verdict, which we, I believe, spent
22 a great deal of time on and you argued very eloquently,
23 I believe my decision was correct on those. I think it
24 was -- all of these were issues for the jury to decide.
25 Anything else from the defendant?

1 MR. MADSEN: No, Your Honor.

2 THE COURT: Anything from the State?

3 MR. WEDEKIND: Sir, just to note that this
4 will be the final trial of the week. So out of concern
5 for the jury, I am informed we don't have anymore
6 business.

7 THE COURT: Is the State prepared, after I
8 release the jury, to proceed to sentencing?

9 MR. WEDEKIND: Yes, sir.

10 THE COURT: Is the defendant prepared?

11 MR. CASTO: Yes, Your Honor.

12 THE COURT: Now, ladies and gentlemen, your
13 service in this case is concluded, and for that matter
14 your service for the week is also concluded. A couple
15 of instructions in that regard. Do any of you need a
16 work excuse?

17 BAILIFF: I have them, sir.

18 THE COURT: He will have those for you. Now,
19 ladies and gentlemen, no one can quarrel with you as to
20 what your verdicts were in these two cases. You can
21 talk about this case now all that you want; however, if
22 this is the last thing you want to talk about, you don't
23 have to talk about it.

24 You can discuss it as much as you would like.
25 If someone is to approach you and wants to talk to you

1 about the case, you can do that. If you don't want to
2 do that, tell them you don't want to talk about it, and
3 they should comply with that request.

4 If they persist in asking you questions or
5 talking to you about the case, simply get the person's
6 name and relay it to the Clerk's Office, and the clerk
7 will relay it to me. I will deal with that. So you
8 don't need to be bothered or otherwise harassed about
9 the case unless you want to be.

10 What we are going to do now is I will release
11 you from your summons. So you are free to go. If you
12 would like to remain behind and watch the sentencing
13 portion, you are certainly free and welcome to do that.

14 If you would like to leave at this time, you
15 may do so. If you would like to be present when the
16 sentencing is passed, you can have a seat out in the
17 area where you were at the time you were selected.
18 Thank you.

19 (The jury is excused).

20 THE COURT: Anything from the State as far as
21 sentencing is concerned?

22 MR. WEDEKIND: Your Honor, I believe you know
23 the extent of her record, which was she did a three-year
24 sentence on forgery. She had some minor fraudulent
25 checks -- well, numerous ones -- but they were all, I

1 believe, less than a hundred dollars. That would be the
2 extent of her criminal record.

3 The victims, of course, are present. I don't
4 know if they would wish to address the Court. I will
5 take them up and inquire.

6 THE COURT: Ms. Herrera and Mr. Perez?

7 MR. WEDEKIND: Yes, sir.

8 THE COURT: You do have the right to say
9 anything to me that you would like to say. So I would
10 be glad to hear from you if you would like to stand
11 where you are and through the interpreter tell me what
12 you would like to tell me. First of all, your name,
13 again, please, ma'am?

14 MS. HERRERA: My name is Mirna Herrera Vilas.

15 THE COURT: Yes, ma'am, I would be glad to
16 hear from you.

17 MS. HERRERA: (Through the interpreter.) I
18 would just like to say that I know that you are the one
19 who is going to decide if this person is in jail or if
20 they are going to go free.

21 I know that this may not seem like a very
22 tragic thing to some people, but I just wanted you to
23 know that for my family it was very difficult and very
24 hard to overcome. That's all.

25 THE COURT: Thank you.

1 MR. WEDEKIND: It looks like Mr. Bargas does
2 not wish to say anything.

3 THE COURT: I want to make sure that he does
4 understand he does have the right to speak. He does not
5 have to, but he may do so.

6 MR. WEDEKIND: Yes, sir. He is fine with
7 that.

8 THE COURT: Anything from law enforcement as
9 far as sentencing is concerned?

10 MR. WEDEKIND: Your Honor, I will say this. I
11 talked to Mr. Madsen. I would note the codefendant, of
12 course, got a 14-year sentence Mr. Ricky Bell did. He
13 cooperated and gave allocution against Mr. Quincy
14 Holley.

15 Quincy Holley was the one who we determined
16 through identification from Ms. Herrera that he was the
17 one who picked her son upside-down and held the gun to
18 his head, and he got a 20-year sentence. I just give
19 that to the Court for edification as to what the other
20 codefendants received.

21 THE COURT: Did they have anything to say
22 about this defendant's involvement?

23 MR. WEDEKIND: It was my fault in not
24 developing -- all that Mr. Bell said is that she was the
25 driver. However, during the interrogation she did of

1 Mr. Bell, he did state to her that they planned it.
2 They knew it was going down. They discussed it in the
3 car.

4 When they presented it to Ms. Callahan, she
5 said, "Blank it. I'm down with it." She knew exactly
6 what they were going to do according to Mr. Ricky Bell.
7 Of course, Mr. Bell is serving that 14-year sentence.

8 Under the new guidelines from the Court or
9 from the legislature, if somebody is incarcerated and
10 comes in and gives testimony, of course, that gives them
11 the ability to petition and request a reduction in their
12 sentence.

13 Under the circumstances I just didn't want to
14 give a day less to them for what they had done, and I
15 just thought we could make this case without them and
16 obviously we could.

17 THE COURT: The range of sentence for armed
18 robbery is 10 to 30?

19 MR. WEDEKIND: Ten to 30, 85 percent, sir.
20 It's violent, most serious. The burglary first is 15 to
21 life in your discretion, sir, and also violent and most
22 serious. I will pass up the sentence sheets to Your
23 Honor.

24 THE COURT: Does the State take any position
25 on any particular sentence?

1 MR. WEDEKIND: No, sir. I just wanted to let
2 you know, in compliance with Mr. Madsen, it's within the
3 range of where the others were, sir.

4 THE COURT: Yes, sir.

5 MR. CASTO: Thank you very much. Would you
6 like us to come to the podium?

7 THE COURT: Yes, sir, if you would, please.

8 (Pause.)

9 MR. CASTO: Thank you, Judge. May it please
10 the Court. The first words that you hear from us, just
11 being -- on behalf of my client, I know that she is
12 disappointed in the verdict herself.

13 What I want the Court to know in the same
14 breath is that at the same time, we very much respect
15 the fact that the jury has spoken, and we know that we
16 must accept what they have spoken to.

17 By way of introduction and other facts about
18 Carrie, Your Honor, she just turned 30. She has a
19 12th grade education from Eau Claire High School. She
20 is a graduate from there.

21 She has done nursing assistant private care.
22 She has worked in restaurants. She has done some retail
23 work as well. She resides in Columbia with her mother,
24 who is present in the courtroom.

25 She is a mother to three young children.

1 Their ages are 12, 8, and 9. She is actually blind in
2 her right eye. That's kind of why she has the --
3 obviously she is self-conscious about it. That's why
4 she has her hair kind of draped over and what have you.

5 We didn't want the Court to think that was any
6 type of act or appearance of any type of disrespect. We
7 didn't want that to be, I guess, discredited against
8 her, Your Honor. She is blind in one eye because she is
9 a cancer survivor.

10 This case is two years old. One thing that I
11 think that speaks volumes is what she has done since
12 then. She has gone back to school and is looking to get
13 a job and move on with life.

14 It doesn't excuse what was alleged in the
15 trial, and we understand that and we know that. As a
16 young lawyer, I say that, and I kind of want to say that
17 as much as possible because there will probably be a
18 season of life where I won't in good conscious be able
19 to say that with a straight face.

20 But as a young lawyer, I have seen trial
21 judges, and the Court is similar to most all judges in
22 the State with regard to disfavoring or out-and-out
23 disapproving any notion and idea of what we would call
24 the trial tactics.

25 In other words, she is not punished for taking

1 the case to trial and executing her constitutional
2 rights -- or exercising her constitutional rights. So
3 when this case started, we saw the other guy get
4 sentenced. We know the Court is very, very clear on
5 that.

6 What we would ask the Court to do in crafting
7 a sentence is to take into account that she does have
8 the one forgery conviction, nothing of violence on her
9 record.

10 The Court's hands are tied with regard to the
11 fact that the Court can't give her any less than 15
12 years, and that 15 is -- for lack of a better term -- a
13 full 15 in the sense she has got to serve 85 percent of
14 it at least.

15 Your Honor, she did approximately two months
16 before she was released -- before her bond was reduced
17 and she was released on bond on this. We would ask the
18 Court to consider that.

19 We think that this case is a case for the
20 minimum with regard to how the other codefendants were
21 sentenced. We would like the Court to also take into
22 account the fact that those two codefendants, Ricky Bell
23 and Quincy Holley, pled to this charge.

24 They also -- there were other robberies and
25 basically home invasion armed robberies of a similar

1 sort that they pled to as well in addition to this
2 incident.

3 We feel just kind of with regard to how they
4 were sentenced, Your Honor, we'd kindly ask the Court to
5 strongly consider feeding Carrie out of the same spoon
6 in light of the fact that if the Court was to give her
7 15, I don't believe there is any way that she comes
8 home -- she goes for much more than ten years.

9 We know and we certainly respect the weight of
10 that which was done and the gravity of that event. We
11 think that even though 15 is the minimum, it is no small
12 amount. Very respectfully we submit that to the Court.

13 I think that we are thankful that
14 Mr. Wedekind, even though he got the words he wanted to
15 hear at the conclusion of the case, a guilty verdict, we
16 are grateful that he is still not up here demanding the
17 maximum or rejoicing in someone going to prison at all.

18 We would ask the Court to take that into
19 account as well. Simply stated, Your Honor,
20 Ms. Callaham is unfortunately going to prison, and we
21 realize it. More importantly so does she. We ask for
22 the 15 very respectfully and urge the Court to strongly
23 consider that figure. Thank you, Judge.

24 THE COURT: Thank you, sir. Mr. Madsen?

25 MR. MADSEN: Your Honor, we just request that

1 Your Honor consider giving her that 15-year minimum
2 sentence.

3 THE COURT: Ms. Callaham, is there anything
4 you would like to tell me?

5 THE DEFENDANT: Yes, sir. First of all, I
6 want to apologize for not knowing who I be around at the
7 time this incident happened. I'm even more sorry that I
8 even gave somebody a ride to hurt a family because I got
9 my own family.

10 When I come home, my kids are going to be
11 grown. In some ways I am just like -- I don't know what
12 to say, but I want to be with my kids before they get
13 too old (crying). When I get home, my youngest will be
14 in her 20s. My oldest will be like 27. I won't even
15 see them graduate or anything.

16 THE COURT: Anything else?

17 THE DEFENDANT: Thank you so much for letting
18 me talk.

19 THE COURT: Ma'am?

20 MR. MADSEN: She said thank you for letting
21 her talk.

22 THE COURT: I would be glad to let her say
23 anything else.

24 MR. MADSEN: I think that's it, Your Honor.

25 THE COURT: Anything else from the State?

1 MR. WEDEKIND: No, Your Honor.

2 THE COURT: Well, as I mention before and I
3 mentioned earlier this week, it's not -- I don't take
4 pleasure in sentencing anybody to any prison time. It
5 is simply the responsibility that I have after a jury
6 speaks.

7 Judges can perhaps have their own view of the
8 facts, but they are certainly not permitted to voice
9 those. This jury has spoken. I have my own questions
10 about why someone is out in the middle of the night with
11 two men with guns who end up in a neighborhood where
12 folks like these good people are not doing anything but
13 watching T.V. and sleeping on the couch.

14 The compelling part of the testimony to me was
15 the vehicle parked down the road with the engine running
16 waiting to go. I suspect that that is what the jury is
17 going to base its decision on or did base its decision
18 on that she was actively involved under the hand of one
19 theory.

20 It's a horrible thing to have your door pushed
21 in and have guns held to your head and to a year and a
22 half year old child's head. I can't imagine anything
23 worse. I think that the primary justice would have been
24 served if they would have met the business end of a
25 weapon possessed by the occupants. That would have been

1 somewhat satisfying to some element of society. There
2 is a lot to be said for that.

3 Mr. Madsen said they were despicable. They
4 were despicable. They were cowardly. There is
5 absolutely no excuse for it, but this jury has stated
6 that you were part of that.

7 I am going to sentence you to two concurrent
8 sentences. That means you will serve them at the same
9 time. I am not going to pass my sentence based on what
10 I think about your culpability because an armed robbery
11 and a burglary of this type is so drastic that some
12 people think that any time is not enough, that life is
13 not enough. People don't deserve this.

14 What is compelling to me is what was -- how
15 the other defendants were handled as far as sentencing
16 was concerned. I don't know the ins and outs of that,
17 but obviously certain things go into making that
18 determination from a judge's standpoint. I assume those
19 were recommended sentence ranges or was it straight-up
20 pleas?

21 MR. WEDEKIND: No, sir. The sentence ranges
22 were -- Mr. Ricky Bell was given an attempted armed
23 robbery for zero to 20, and the judge elected to give
24 him 14. For Mr. Quincy Holley he pled to burglary in
25 the first degree with a cap of 30. He was 15 to 30

1 attention, and the judge elected to give him 20.

2 THE COURT: All right. I think some
3 consistency is required, and I absolutely do not
4 penalize anybody for electing to take a jury trial. I'm
5 not aware of any judge who professes to do that. I
6 think that would be an extreme copout. I would not ever
7 do that.

8 I am going to impose a 15-year sentence on the
9 burglary and concurrently with that 15 years on the
10 armed robbery. I wish you luck. I wish you luck. I
11 certainly don't congratulate you on getting what is the
12 relatively minimum sentence because I think your
13 culpability is quite evident to the jury beyond a
14 reasonable doubt.

15 I think the police department ought to be
16 congratulated on its response. There was one hiccup
17 with those bullets. I don't know what the problem was.
18 Frankly it was kind of a moot point, but I think that
19 the West Columbia Police Department showed to me a
20 great deal of professionalism in the way they handled
21 their job in taking it very seriously. If I had
22 anything to do with it, they would make for money than
23 anybody else.

24 So those are the two 15-year sentences. You
25 will serve them both at the same time. I wish you luck.

1 Ma'am, and sir, I certainly do wish you luck.
2 You can let your housemates know and your child know
3 when the child is old enough to understand that these
4 people are going to be in prison for a long time. Thank
5 you very much. I do also --

6 THE DEFENDANT: Can I talk to my mother?

7 THE COURT: Just a moment. I don't say this
8 lightly, but I do appreciate the way this week that the
9 lawyers on both sides -- Mr. Ross, Mr. Wedekind,
10 Mr. Williams, Mr. Casto, Mr. Madsen -- your performance
11 in trial is always admirable, and I appreciate that.

12 THE DEFENDANT: May I please talk to your mom?

13 THE COURT: You may speak to your mother as
14 long as it meets with the security concerns of these
15 gentleman behind you. Court is in recess.

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 24th day of May, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 12, 2012

L Coconut Pantsari

Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 25 2013
SC Court of Appeals

Appeal from Lexington County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CARRIE CALLAHAM,

APPELLANT

APPELLATE CASE NO. 2012-212210

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State presented insufficient evidence to establish guilt under a theory of accomplice liability when Appellant was merely present near the scene of the crime where two co-defendants forced their way inside of a trailer home and robbed the occupants and the State failed to prove that there was an agreement between Appellant and the co-defendants to assist in the commission of the armed robbery and burglary?
2. Did the trial judge err in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State failed to present sufficient independent evidence to corroborate Appellant's statement that the co-defendants were armed and one of the co-defendants asked her to drive them to West Columbia so they could "deal with something"?

STATEMENT OF THE CASE

In 2011, the Lexington County Grand Jury indicted Carrie Callaham for burglary first degree and armed robbery, indictments #2011-GS-32-1216, 1218. On May 23, 2012, Callaham proceeded to jury trial before the Honorable George C. James, Jr. Attorneys Robert Madsen and Bennett Castro represented Callaham at trial. Attorneys Lawrence Wedekind and Will Whetstone prosecuted the case on behalf of the State. The jury returned verdicts of guilty and Judge James sentenced Callaham to 15 year concurrent sentences. A timely notice of intent to appeal was served on May 25, 2012. This appeal follows.

ARGUMENTS

1. The trial judge erred in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State presented insufficient evidence to establish guilt under a theory of accomplice liability when Appellant was merely present near the scene of the crime where two co-defendants forced their way inside of a trailer home and robbed the occupants and the State failed to prove that there was an agreement between Appellant and the co-defendants to assist in the commission of the armed robbery and burglary.

Just after midnight on June 16, 2010, Ricky Bell and Quincy Holley forced their way into the home of Abdul Bargas and Mirna Herrera. Bargas and Herrera lived in the trailer home with their two children and Herrera's brother, Rigaberto Herrera. R. pp. 71 – 72. Bell and Holley were both armed. R. p. 75, lines 16-18. Once inside they demanded money and took Mirna and Rigaberto's wallets as well as Rigaberto's necklace. R. p. 74, line 1 – p. 75, lines 1-11.

At trial, a neighbor, Marcelo Prado, testified that around midnight on June 16, 2010, he and a friend were coming home from getting something to eat when he saw a woman in a blue S.U.V. parked in the trailer park with the engine running. R. p. 228, lines 15 – p. 229, lines 1-24. Prado testified that he and his friend went in his house and ate their food. R. p. 230, lines 1-4. Prado lived in trailer 1. R. p. 241, lines 20-21. Prado and Ramon ate their food and Ramon left. After Ramon left he called Prado and told him there was a robbery happening at trailer 6 in the trailer park. R. p. 230, lines 2-25. Prado called 911. R. p. 231, lines 6-13. While Prado was on the phone with the police he saw the blue S.U.V. drive away. R. p. 243, lines 1-7; 25 – p. 244, lines 1-11.

Sergeant Robert McIntyre with the West Columbia Police Department testified that based on the 911 call he stopped a dark blue Tahoe he saw close to the trailer park. (R. pp. 95-98. The driver was Appellant, Carrie Callaham. R. p. 99, lines 7-22. Ricky Bell was in

the front passenger seat. R. p. 122, lines 2-4. Quincy Holley was seated behind the driver in the backseat. R. p. 122, lines 7-8. The officer asked the three to step out of the S.U.V. The officer testified that as Bell stepped out of the vehicle, a gold bracelet¹ fell to the floorboard of the S.U.V. R. p. 103, lines 11-20. When the officer recovered the jewelry, he also observed the butt of a pistol in the floorboard. R. p. 103, lines 18-24. Another gun was found in the backseat. R. p. 103, line 23 – p. 104, lines 1-2. Two wallets containing the victims' identification cards were also found in the S.U.V. R. p. 105, line 17 – p. 106, 107, lines 1-9. The officer testified that he found four rounds of ammunition in Appellant's pocket. R. p. 122, lines 15-23.

Appellant provided the following statement to Investigator Page Moore with the West Columbia Police Department:

On June 15, 2010, I, Carrie Callahan, met Black² on Farrow. I only known him for a couple of days. Mr. Black and his friend asked me to drive them to West Columbia so they can deal with something. Mr. Black had a gun and his friend. It was two auto guns. Mr. Black dropped some shells in the car. I picked them up and put the shells in my pocket. At this time I was parked in front of the trade [sic].

Mr. Black and his friend told me if I opened my mouth, I would be hurt. They got out of the car and walked away. When they returned to the car, Mr. Black still had the gun, telling me to drive. When the police came behind us, he told me if I say anything, me and my kids will be hurt. At this time I see two handguns, one little one and one large gun.

Mr. Black put his gun under the seat of the car. At this time I did not know what him or his friend was doing. I asked them where their get the gun. He would not let me know at this time I was contact at 10:00 PM I met Mr. Black friend tonight of this.

R. p. 274, line 24 – p. 275, lines 1-24, R. p. 407.

¹ It appears that the bracelet was actually a necklace. R. p. 107, lines 10-17.

² Appellant refers to Ricky Bell as Black.

Neither Ricky Bell nor Quincy Holley testified against Appellant. Bell pled guilty to attempted armed robbery and received a fourteen year sentence. R. p. 389, lines 10-14; p. 397, lines 21-24. Holley pled guilty to burglary first degree and received a twenty year sentence. R. p. 397, line 24 – p. 398, lines 1).

At the close of the State's case, counsel for Appellant moved for a directed verdict of acquittal for both the burglary first degree and armed robbery charges. R. pp. 303 – 308; 315 - 316. Specifically, counsel argued, "Additionally, Your Honor, we believe that we should be granted a directed verdict on the theory of mere presence." R. p. 305, lines 13-15. Counsel further argued that the State's evidence, at best, only established accessory after the fact. R. p. 307, lines 12-15. Counsel argued:

You have no one testifying as to what happened beforehand, that there was any type of communication, any type of planning, anything that they got together and said, 'Hey, this is what is going to happen,' whether it was by words, whether it was by written, or whether it was by simply a tacit understanding of the parties.

Certainly, I think the State could end up making an argument that in the end she potentially somehow knew what they had done, but the evidence in is that a car is parked at Number 1 and that ultimately what occurs, occurs way down at Number 6.

So we believe if the State quite honestly had anything, it would have been an accessory after the fact and not charged as a principle, considering the distance. So based on that, Your Honor, we would move for a directed verdict. R. p. 307, line 16 – p. 308, lines 1-7).

The judge denied the directed verdict motion writing, "Lastly, while evidence would point to her being an accessory after the fact, I noted that you didn't say it also might point to her being an accessory before the fact. If you are an accessory before the fact and accessory after the fact and you are there, that's what the hand of one, hand of all is all about, at least from my standpoint. So I will deny your motions at this time." The judge erred. There is

no evidence to support accessory before the fact as there is no evidence that appellant agreed to assist in the commission of an armed robbery or burglary. In State v. Gibson, 390 S.C. 347, 354, 701 S.E.2d 766, 769-770 (Ct.App. 2010), the South Carolina Court of Appeals wrote:

Under the "hand of one is the hand of all" theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. A defendant may be convicted on a theory of accomplice liability pursuant to an indictment charging him only with the principal offense. [However, m]ere presence and prior knowledge that a crime was going to be committed, without more, is insufficient to constitute guilt. [Rather,] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal.

State v. Thompson, 374 S.C. 257, 261-62, 647 S.E.2d 702, 704-05 (Ct.App.2007) (internal quotations and citations omitted).

"Under an accomplice liability theory, 'a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act.' " See State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct.App.2002) (quoting State v. Langley, 334 S.C. 643, 648-49, 515 S.E.2d 98, 101 (1999)). In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties. Id. at 193, 562 S.E.2d at 324 (stating that under the hand of one is the hand of all theory, "[a] formally expressed agreement is not necessary to establish the conspiracy" which brings the accomplice to the scene of the crime).

In the present case the State failed to prove that Appellant agreed to assist with the commission of an armed robbery and burglary. Appellant's statement that Black and Holley were armed and asked Appellant to drive them to West Columbia so that they could deal with something is not sufficient to establish the agreement element required for accomplice liability. The judge erred in refusing to direct a verdict of acquittal.

When ruling on a motion for a directed verdict, the trial court is concerned only with the existence of evidence, not the weight. State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct.App.2003). When reviewing the denial of a motion for a directed verdict, an appellate court must review the evidence, and all inferences therefrom, in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). The trial court's denial of a directed verdict will not be reversed if supported by any direct evidence or substantial circumstantial evidence of the defendant's guilt. Id. Viewing the evidence in the light most favorable to the State, the trial judge's denial of the directed verdict motion is not supported by the record. The State failed to prove an agreement between Appellant and the co-defendants to commit an armed robbery and burglary. The judge erred in refusing to direct a verdict of acquittal.

2. The trial judge erred in refusing to direct a verdict of acquittal for armed robbery and burglary first degree when the State failed to present sufficient independent evidence to corroborate Appellant's statement that the co-defendants were armed and one of the co-defendants asked her to drive them to West Columbia so they could "deal with something."

Without conceding the issue presented in argument one, if this Court finds that Appellant's statement is somehow sufficient to show an agreement to commit armed robbery and burglary, the State failed to present independent evidence to corroborate the statement. In addition to arguing that a directed verdict was required because the State failed to present evidence of an agreement, as argued in issue one, Appellant also argued that the State failed to present proof aliunde of the corpus delicti pursuant to State v. Osborne, 335 S.C. 172, 516, S.E.2d 201 (1999). (R. p. 176, line 3 – p. 177, 178, lines 1-20).

In State v. Osborne, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999), the South Carolina Supreme Court wrote:

It is well-settled law that a conviction cannot be had on the extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*. State v. Williams, 321 S.C. 381, 468 S.E.2d 656 (1996). See also State v. Brown, 103 S.C. 437, 442, 88 S.E. 21, 22 (1916) ("Before a defendant can be required to go into his defense, it is necessary that there shall be some proof of the *corpus delicti*"). (footnotes omitted).

As discussed in issue one, the State proceeded on a theory of accomplice liability. In order to prove accomplice liability, the State must prove an agreement between appellant and the co-defendants. If Appellant's statement constitutes proof of an agreement, under the corroboration rule, the State must provide sufficient independent evidence to corroborate the statement. "We clarify the law in this State that, consistently with Opper³ and its progeny, the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred. Cf. Williams, 321 S.C. at 385 n. 2, 468 S.E.2d at 658 n. 2 (emphasizing that '[p]roof of corpus delicti is not a prerequisite to the admission of an extra-judicial confession of a defendant.')." Osborne, 335 S.C. at 179-180, 516 S.E.2d at 204-205.

The State's evidence, apart from Appellant's statement, established that Appellant waited in a car six trailer homes away from where the co-defendants committed the robbery and burglary, she drove the co-defendants away from the trailer park and when stopped by police she had bullets in her pocket. The State's evidence does not provide sufficient independent evidence that appellant agreed to assist the co-defendants in the

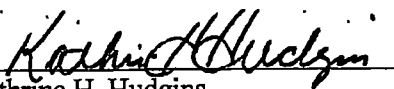
³ Opper v. United States, 348 U.S. 84, 75 S.Ct. 158, 99 L.Ed. 101 (1954).

commission of an armed robbery and burglary. The State had the ability to call Ricky Bell to testify about any agreement that may have existed and the State chose not to call Ricky Bell as a witness. R. p. 389, line 23 – p. 390, lines 1-16. The State presented no evidence of an agreement between Appellant and the co-defendants to assist in the commission of an armed robbery and burglary. The judge erred in refusing to direct a verdict of acquittal for both armed robbery and burglary.

CONCLUSION

Based on the above argument, the convictions and sentences should be reversed and a directed verdict of acquittal entered.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

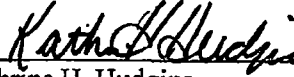
ATTORNEY FOR APPELLANT

This 25th day of June, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 25th, 2013



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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Appeal from Lexington County
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THE STATE,

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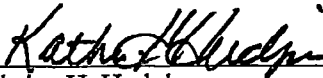
CARRIE CALLAHAM,

APPELLANT

APPELLATE CASE NO. 2012-212210

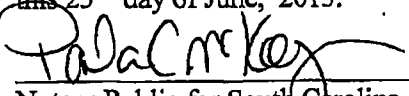
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 25th day of June, 2013.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 25th day of June, 2013.


Notary Public for South Carolina

My Commission Expires: July 24, 2022.

(L.S.)

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No: 2012-212210

THE STATE,

Respondent,

v.

CARRIE CALLAHAM,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly denied Appellant's motion for a directed verdict because the State presented substantial evidence from which the jury could fairly and logically find Appellant guilty under a theory of accomplice liability.

II.

The trial court properly denied Appellant's motion for a directed verdict where the State presented sufficient independent evidence of the *corpus delicti* to corroborate Appellant's extra-judicial statement and, together with such statement, establish a jury question as to whether Appellant was guilty of armed robbery and first-degree burglary under the "hand of one, hand of all" accomplice liability theory.

STATEMENT OF THE CASE

A Lexington County Grand Jury indicted Appellant for first-degree burglary and armed robbery. (R.pp.401-404.) On May 23, 2012, Appellant proceeded to trial before a jury. Attorneys Robert M. Madsen and Bennett E. Casto represented Appellant, and Assistant Solicitors Lawrence G. Wedekind and Will Whetstone represented the State. The jury found Appellant guilty, and the Honorable George C. James, Jr., sentenced her to fifteen years' imprisonment. (R. p.384, 398.)

On May 30, 2012, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

Between midnight and 1:00 a.m. on June 16, 2010, Marcelo Prado Serna (Prado) and a friend returned to Prado's trailer park after getting something to eat. (R. p.229, lines 4-13.) He saw a woman sitting inside an unfamiliar blue SUV with the engine running. (R. p.229, lines 10-24.) After they finished eating, Prado's friend left and shortly thereafter called Prado to tell him he saw a black man committing a robbery outside trailer #6. (R. p.230, lines 1-3.) After talking to his friend, Prado called 911 to report the robbery. (R. p.231, lines 3-13.)

Sergeant Robert McIntyre of the West Columbia Police Department received a call from dispatch to be on the lookout for a dark blue Chevrolet Tahoe. (R. p.95, lines 1-8.) As Sgt. McIntyre drove to the incident location, he saw a vehicle matching the description about a block away. (R. p.95, lines 9-13.) He initiated a traffic stop along with two other officers who were in their own vehicles. (R. p.98, line 21-R. p.99, line 4.) Sgt. McIntyre made contact with Appellant, who was the driver, and the other two officers made contact with the passengers. (R. p.99, lines 7-25.) When Sgt. McIntyre asked Appellant for her license, she said she did not have it and gave the name Myra Nicole. (R. p.100, line 7-R. p.101, line 8.) Sgt. McIntyre attempted to find her driver's license information through the Department of Motor Vehicles, but no driver's license was attached to that name. (R. p.101, lines 13-17.) After contacting dispatch to report he had located the Tahoe, he learned the nature of the 911 call was an armed robbery. (R. p.102, lines 3-20.)

Based on that information, he and the other officers got all three individuals out of the vehicle, handcuffed them, and placed them in three different police cars. (R. p.102, line 21-R. p.103, line 8.) As the front passenger got out, a gold chain fell from his lap

onto the floorboard of the vehicle. (R. p.103, lines 11-18.) When recovering the gold chain, the officers observed the butt of a pistol in plain view and decided to do a probable cause search. (R. p.103, lines 19-25.) The officers found another handgun in the back seat. (R. p.104, lines 1-2.) The officers also located a pink wallet and a blue wallet in the vehicle. (R. p.105, lines 2-24.) The pink wallet contained the identifications of Rigiberto Ramirez and Mirna Herrera. (R. p.107, lines 1-9.) Additionally, the officers found three or four 9-millimeter rounds in Appellant's front pocket when they searched her incident to arrest.¹ (R. p.121, lines 7-12.)

At trial, the State called Abdul Bargas Perez. (R. p.70.) Perez testified that on June 16, 2010, he lived in a trailer in West Columbia with his wife Mirna Herrera, his brother-in-law Rigiberto² Ramirez, and two children. (R. p.71, lines 4-25.) He testified that some time after midnight, Rigiberto went outside to use the phone. (R. p.72, lines 7-14.) Perez fell asleep watching TV in the living room and awoke to find two black men inside the home asking for money and holding Rigiberto at gunpoint. (R. p.72, lines 20-22; R. 82, lines 9-12.) One of the men picked up Perez's one-and-a-half-year-old son by the foot and pointed a pistol at the child's head, demanding money. (R. p.72, line 22-R. p.73, line 5.) Mirna gave the men money, but they demanded more and hit Rigiberto in the head with the pistol. (R. p.73, lines 7-17.) At that point, Rigiberto gave the men a gold chain. (R. p.73, lines 16-17; R. p.74, lines 1-12.) The men also took Mirna's and Rigiberto's wallets. (R. p.75, lines 5-11.)

¹ The evidence bag contained four rounds, but the property report only listed three. (R. p.120, lines 17-25.)

² Rigiberto is also referred to as Roberto and Rigaberto at different times throughout the record. The name is spelled Rigiberto in the indictments, so the State will use that spelling throughout this brief. (R. pp.401-404.)

The State also called Perez's wife, Mirna Herrera, to the stand. (R. p.82, lines 19-20.) She testified she had fallen asleep watching TV and awoke to see two black men with a pistol against Rigiberto's head. (R. p.83, line 22-R. p.84, line 6.) The men asked for money and grabbed Mirna's son and hung him by the leg. (R. p.84, lines 9-11.) Mirna gave them all the money she had in her wallet, but the men demanded more. (R. p.84, lines 15-23.)

The State then called Prado to the stand. (R. p.227, lines 21-22.) He testified he saw a woman sitting inside an unfamiliar blue SUV with the engine running when he and a friend returned to the trailer park after getting something to eat between midnight and 1:00 a.m. on June 16, 2010. (R.p.228, line 25-R. p.229, line 24.) Shortly after he left, Prado's friend called Prado to tell him he saw a black man committing a robbery outside trailer #6. (R. p.230, lines 1-3.) Prado then called 911 to report the robbery. (R. p.231, lines 3-13.) While he was on the phone with 911, he saw the blue SUV drive away and reported to police the direction it went. (R. p.243, lines 4-7.)

Next, the State called Investigator Page Moore. (R. p.256, lines 4-5.) She interviewed the three suspects after they were arrested. (R. p.258, lines 6-9.) Investigator Moore interviewed Appellant, who gave three false names before finally giving her real name. (R. p.260, line 2-R. p.269, line 9.) Investigator Moore read the following statement given by Appellant:

On June 15, 2010, I, Carrie Callaham, met Black on Farrow. I only known him for a couple of days. Mr. Black and his friend asked me to drive them to West Columbia so they can deal with something.

Mr. Black had a gun and his friend. It was two auto guns. Mr. Black dropped some shells in the car. I picked them up and put the shells in my pocket. At this time I was parked in front of some trader (verbatim).

[The State]: Is that trailer or trader?

[Moore]: It says trader but you can assume it's trailer.

[The State]: Okay.

Mr. Black and his friend told me if I opened my mouth, I would be hurt. They got out of the car and walked away. When they returned to the car, Mr. Black still had the gun, telling me to drive.

When the police came behind us, he told me if I say anything, me and my kids will be hurt. At this time I see two handguns, one little one and one large gun.

Mr. Black put his gun under the seat of the car. At this time I did not know what him or his friend was doing. I asked them where their (verbatim) get the gun. He would not let me know at this time. I was contact at 10:00 p.m. I met Mr. Black friend tonight of this (verbatim).

(R. p.274, line 24-R. p.275, line 24.)

On cross-examination, defense counsel inquired into whether Appellant requested assistance or communicated that she was in danger while Investigator Moore was on the scene, and Moore testified Appellant did not. (R. p.280, lines 21-24.) Moore further testified Appellant did not call 911 or offer an explanation as to why she did not drive away when alone in the car at the trailer park. (R. p.281, lines 8-13.)

After the State rested, Appellant moved for a directed verdict based on several grounds. (R. p.303, line 23-R. p.304, line 4.) First, Appellant argued sufficient evidence did not exist to support the indictment's indication that the first-degree burglary occurred at the dwelling home of Rigiberto Ramirez. (R. p.304, lines 5-14.) Second, Appellant argued there was a lack of testimony as to how the individuals who committed the crimes got into the home because both occupants of the home testified the men were there when they woke up. (R. p.304, line 23-R. p.305, line 12.) Third, Appellant argued a directed verdict should be granted on the theory of mere presence. (R. p.305, lines 13-15.)

Fourth, Appellant argued the State did not show sufficient evidence to corroborate Appellant's statement. (R. p.306, line 3-R. p.307, line 11.) Finally, Appellant argued the evidence would at most show Appellant guilty of accessory after the fact because no testimony showed any type of communication or planning. (R. p.307, lines 12-22.)

After listening to both sides' arguments, the trial court found the evidence supported the conclusion that Rigiberto lived at the dwelling. (R. p.316, line 23-R. p.317, line 3.) Further, the trial court found circumstantial evidence sufficient to show entry into a dwelling without consent and with the intent to commit a crime. (R. p.317, lines 4-8.) The trial court also disagreed with Appellant about mere presence and whether there was corroboration of Appellant's statement. (R. p.317, lines 9-18.) Finally, the trial court found the evidence that would point to Appellant's being an accessory after the fact also would support the "hand of one, hand of all" theory. (R. p.317, line 19-R. p.318, line 1.) The trial court denied the motion. (R. p.318, lines 1-2.)

In its jury charges, the trial court instructed the jury on "hand of one, hand of all" accomplice liability, but it did not instruct the jury on accessory. The trial court charged as follows:

If a crime is committed by two or more people who are acting together in committing the crime, the act of one is the act of all. . . . Guilt as a principal is shown by actual or constructive presence at the scene as a result of a prior arrangement. Therefore, a finding of prior arranged plan or common scheme is necessary for a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all. . . . [A] principal, as I have used that term, is one who either actually commits the crime or who is present aiding, abetting, or assisting in the crime. . . . To be present at the commission of a crime means to be sufficiently near, to aid and abet and assist in the commission of the crime. However, mere presence at the

scene of a crime is not sufficient to convict one as a principal on the theory of aiding and abetting.

(R. p.372, lines 3-6, 25; R. p.373, lines 1-10, 17-22.) The trial court also charged the jury on Appellant's defense of coercion or duress. (R. p.348, line 10-R. p.379, line 7.)

Ultimately, the jury found Appellant guilty of both charges, and the trial court sentenced her to fifteen years' imprisonment for each charge, to be served concurrently.

(R. p.384, 398.)

ARGUMENTS

I.

The trial court properly denied Appellant's motion for a directed verdict because the State presented sufficient evidence to establish guilt under a theory of accomplice liability.

Appellant argues the trial court erred in denying her directed verdict motion because the State presented insufficient evidence to establish guilt under a theory of accomplice liability. Specifically, she argues she was merely present near the scene of the crime and the State failed to prove there was an agreement between Appellant and the co-defendants to assist in the commission of the crime. However, the State did present sufficient evidence showing Appellant was seen waiting in the running vehicle a very short distance from the scene of the crime after, in her own words, the two men asked her "to drive them to West Columbia so they can deal with something." Further, Appellant's own statement established she knew the two men had guns when they went to deal with the matter. Additionally, circumstantial evidence showed Appellant knew the guns were loaded because Appellant had rounds of ammunition in her pocket when she was searched. Thus, the trial court correctly denied the directed verdict motion and allowed the case to be submitted to the jury for resolution.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in a light most favorable to the State.

State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). An appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648. An appellate court may reverse a trial court's denial of a motion for a directed verdict if there is no evidence to support the trial court's ruling or if the ruling is based on an error of law. State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

Critically, the appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

"Under an accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." State v. Gibson, 390 S.C. 347, 354-55, 701 S.E.2d 766, 770 (Ct. App. 2010). "A formally expressed agreement is not necessary to establish the conspiracy. It may be shown by circumstantial evidence and the conduct of the parties." State v. Condrey, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App. 2002) (citations and internal quotation marks omitted). In Gibson, this Court found the trial court properly denied Gibson's motion for a directed verdict based on sufficient evidence presented on the "hand of one, hand of all" theory of liability. Gibson, 390 S.C. at 355, 701 S.E.2d at 770. It based its decision on the fact that the State presented sufficient circumstantial evidence that Gibson agreed to

act in concert with his co-defendant by calling him to the scene, pointing out a group of rival men, retrieving a gun from his co-defendant's car, and fleeing the scene together. Id. at 345, 701 S.E.2d at 770. See also State v. Langley, 334 S.C. at 649, 515 S.E.2d at 101 (1999) (indicating evidence that the defendant and co-defendant were seen together, circumstantial evidence placing defendant at the scene of the crime, and eye-witness testimony, was sufficient to warrant submitting the case to the jury on any theory of liability, including the hand of one is the hand of all theory). The Supreme Court has held a defendant who acted as lookout and getaway driver was appropriately exposed to prosecution as a principal. State v. Smith, 357 S.C. 182, 187, 592 S.E.2d 302, 305 (2004); see State v. Gates, 269 S.C. 557, 238 S.E.2d 680 (1977) (getaway driver guilty as principal in armed robbery).

Here, the State presented Appellant's statement to police in which she stated: (1) the co-defendants asked her to drive them to West Columbia so they could deal with something, (2) she knew they had automatic guns with them, and (3) she picked up some rounds one of the co-defendants dropped in the car. Furthermore, she stated to police that she parked in the trailer park and was still there when the men came back from "dealing with something." In addition to presenting Appellant's statement, the State also presented evidence that several rounds of ammunition were found in Appellant's pocket when she was searched. Furthermore, police stopped Appellant and the two co-defendants in her vehicle approximately one block from the scene and recovered two guns, the wallets of the victims, and a gold chain taken from one of the victims during the robbery. As the trial court pointed out, based on the evidence, the jury could find Appellant was at least the transporter of the two men who actually committed the

burglary, and based on the "hand of one, hand of all" theory of accomplice liability, the jury could find Appellant guilty.

Appellant argues the State failed to prove Appellant agreed to assist with the commission of an armed robbery and burglary. However, the State was not required to show a formal agreement between the parties. See Condrey, 349 S.C. at 194, 562 S.E.2d at 325 ("A formally expressed agreement is not necessary to establish the conspiracy. It may be shown by circumstantial evidence and the conduct of the parties."). The State demonstrated Appellant's assistance through circumstantial evidence and by presenting Appellant's conduct of driving the co-defendants to the trailer park with guns and waiting in the running vehicle for them to come back, and then driving away. The overt act Appellant committed was agreeing to drive the co-defendants to the trailer park, with guns, to "deal with something." The jury was entitled to base its decision on whether Appellant assisted in the commission of the crimes by considering her conduct. See id. (noting a conspiracy may be shown by circumstantial evidence and conduct of the parties).

In sum, sufficient evidence existed to support the denial of Appellant's directed verdict motion, and the trial court properly submitted the case to the jury for its resolution. Contrary to what is required before a directed verdict should be granted, Appellant's case did not present a complete failure of evidence of her guilt. See State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury.").

II.

The trial court properly denied Appellant's motion for a directed verdict where the State presented sufficient independent evidence of the *corpus delicti* to corroborate Appellant's extra-judicial statement and, together with such statement, establish a jury question as to whether Appellant was guilty of armed robbery and first-degree burglary under the "hand of one, hand of all" accomplice liability theory.

Appellant argues the trial court erred in refusing to direct a verdict of acquittal for armed robbery and first-degree burglary because the State failed to present sufficient independent evidence to corroborate Appellant's statement that the co-defendants were armed and one of the co-defendants asked her to drive them to West Columbia so they could "deal with something." On the contrary, the State presented sufficient independent evidence to corroborate the statement and, thus, the trial court correctly denied the motion on this basis and properly submitted the case to the jury.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a trial court's denial of a defendant's motion for a directed verdict, an appellate court must view the evidence in a light most favorable to the State. State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272 (1990). An appellate court must find a case is properly submitted to the jury if any direct evidence or any substantial circumstantial evidence reasonably tends to prove the guilt of the accused. Weston, 367 S.C. at 292-93, 625 S.E.2d at 648.

The law in South Carolina is that "the corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief

that the crime occurred.” State v. Osborne, 335 S.C. 172, 179-80, 516 S.E.2d 201, 204-05 (1999). “Proof of the *corpus delicti* does not have to be in the form of direct evidence; it may be established by circumstantial evidence when it is the best evidence obtainable. **If there is any evidence tending to establish the *corpus delicti*, then it is the trial court’s duty to pass that question on to the jury.**” Id. at 180, 516 S.E.2d at 205 (emphasis added).

In Osborne, the Supreme Court found the State provided sufficient independent corroboration evidence to support the defendant’s statements to police. Id. Specifically, the Court looked at the *corpus delicti* of driving under the influence (DUI)—driving a vehicle, within this State, while under the influence—and determined the circumstantial evidence that the car had gone off the road and hit a sign, the fact the hood was still warm when law enforcement arrived, and Osborne’s breathalyzer test results were sufficient, taken together with his statements to police, to allow the jury to reasonably infer a DUI was committed. Id. at 174-80, 516 S.E.2d at 202-05. The Osborne court discussed the fact that the corroboration rule applies to admissions as well as confessions. Id. at 178, 516 S.E.2d at 203-04. In that case, the defendant told police that his car was stolen, he wrecked the car, and he did not have anything to drink after the wreck. Id. at 176, 516 S.E.2d at 203.

“Before a defendant in a criminal case can be required to present a defense, the State must present some proof of the *corpus delicti* of the crime.” State v. Saltz, 346 S.C. 114, 137, 551 S.E.2d 240, 253 (2001). In Saltz, the appellant contended the trial court erred in denying his motion for a directed verdict, arguing there was no evidence the victim was murdered, and the Supreme Court disagreed. Id. at 137, 551 S.E.2d at 252-53. “The trial court ruled there was sufficient circumstantial evidence to establish the

corpus delicti, including [Victim]'s good health, the rule in his house that he must be home by dark or call immediately, testimony the wooded area where [Victim]'s body was found was too thick to ride a bicycle, testimony from [Victim]'s best friend that they never played in that area, and testimony from an officer that it is very unusual for a twelve-year-old boy to be missing for any length of time." Id. at 137, 551 S.E.2d at 253. The appellant argued that evidence was also consistent with death by accident or illness. Id. However, the Court determined that because the trial court is only "concerned with the existence or non-existence of evidence, not its weight" when ruling on a motion for a directed verdict, and because the appellate court must view the evidence in the light most favorable to the State, there was "more than adequate circumstantial evidence" to prove murder. Id. Accordingly, the Court affirmed the trial court's denial of a directed verdict. Id.

Here, Appellant's statement to police does not seem to rise to the level of an admission. While Osborne admitted to wrecking the car, which satisfied the "driving the vehicle" portion of the *corpus delicti* of that crime, Appellant never admitted anything that could implicate an analysis under the rules of *corpus delicti* here. The *corpus delicti* of Appellant's first-degree burglary indictment includes: (1) entering a dwelling without consent, (2) with the intent to commit a crime in the dwelling, and (3) armed with a deadly weapon. The *corpus delicti* of Appellant's armed robbery indictment includes: (1) knowingly and willfully while armed with a handgun or conspiring with others armed with handguns, (2) feloniously taking from the person or presence of victims, (3) by means of force, threats, or intimidation wallets and contents, (4) with the intent to deprive the owners of the use of such property. Appellant did not admit to any parts of the *corpus delicti* of these crimes. In her statement to police, Appellant only admitted she

drove the two men to the trailer park and waited in the car while they went to “deal with something.” Accordingly, Appellant’s statement to police should not be considered an admission and, thus, the corroboration rule does not apply. Instead, a standard directed verdict analysis, as described above, should end the inquiry.

However, to the extent Appellant’s statement can be considered an admission, sufficient evidence exists to corroborate the statement. The circumstantial evidence that corroborated Appellant’s statement to police included Prado’s testimony about seeing a dark blue SUV parked in the trailer park, with the engine running, and a woman driver seated inside; Prado’s testimony about the call from his friend who left Prado’s home and shortly thereafter called Prado to tell him he saw a black man committing a robbery outside trailer #6; and the rounds that were recovered from Appellant’s pocket. When considered in conjunction with Appellant’s statement to police, the evidence corroborated Appellant’s statement and provided a sufficient basis for the jury to reach a reasonable inference that Appellant drove the getaway car in her participation in the crime and could be found guilty under the “hand of one, hand of all” theory of accomplice liability. See State v. Gates, 269 S.C. 557, 238 S.E.2d 680 (1977) (getaway driver guilty as principal in armed robbery).

When applied to a particular offense, *corpus delicti* means that the specific crime has been committed. State v. Dodd, 354 S.C. 13, 17, 579 S.E.2d 331, 333 (Ct. App. 2003). In both Osborne and Saltz, proving *corpus delicti* was extremely important to the trial of each case to determine whether the actual crime had been committed. On the contrary, in the case sub judice, no doubt exists that the crimes of first-degree burglary and armed robbery were committed. The State presented evidence that the crime occurred by eliciting testimony from the victims. Perez testified he awoke to find two

black men inside the home asking for money and holding Rigiberto at gunpoint. (R. p.72, lines 20-22; R. p.82, lines 9-12.) He further testified one of the men picked up Perez's one-and-a-half-year-old son by the foot and pointed a pistol at the child's head, demanding money. (R. p.72, line 22-R. p.73, line 5.) He testified Mirna gave the men money, but they demanded more and hit Rigiberto in the head with the pistol. (R. p.73, lines 7-17.) Additionally, Perez testified Rigiberto gave the men a gold chain. (R. p.73, lines 16-17; R. p.74, lines 1-12.) Finally, he testified the men took Mirna's and Rigiberto's wallets. (R. p.75, lines 5-11.) In addition, Sgt. McIntyre testified that when he and the other officers stopped Appellant and her two co-defendants approximately one block away from the scene in a vehicle that matched Prado's description and searched the vehicle, they recovered a gold chain, two handguns, a pink wallet, and a blue wallet. Sgt. McIntyre testified the pink wallet contained Mirna's and Rigiberto's identification. Additionally, he testified they found rounds of ammunition in Appellant's front pocket when they searched her incident to arrest.

Having shown sufficient independent evidence to satisfy the corroboration rule, if it applies in this situation, the statement itself presented evidence of the agreement between Appellant and her co-defendants when she agreed to transport them to the trailer park between midnight and 1:00 a.m. to "deal with something" with two guns. Moreover, the *corpus delicti* was shown through direct evidence of Perez's and Mirna's testimony about the incident and Sgt. McIntyre's testimony about the evidence found in the vehicle, with all three co-defendants inside. Accordingly, the State submits the trial court properly denied Appellant's motion for a directed verdict.

CONCLUSION

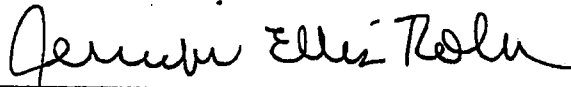
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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June 18, 203

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable George C. James, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

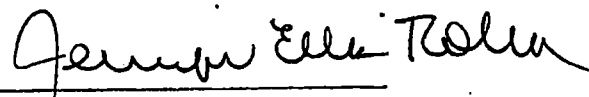
CARRIE CALLAHAM,

Appellant.
_____**CERTIFICATE OF COUNSEL**

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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ATTORNEYS FOR RESPONDENT

June 18, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JUN 18 2013
SC Court of Appeals

Appeal from Lexington County
Honorable George C. James, Jr., Circuit Court Judge

Appellate Case No: 2012-212210

THE STATE,

Respondent,

v.

CARRIE CALLAHAM,

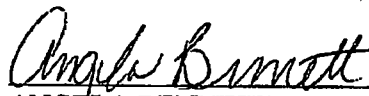
Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 18th day of June, 2013.



ANGELA BENNETT
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**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.

Carrie Callaham, Appellant.

Appellate Case No. 2012-212210

Appeal From Lexington County
George C. James, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-035
Submitted October 1, 2013 – Filed January 29, 2014

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Jennifer Ellis Roberts, both of
Columbia, for Respondent.

PER CURIAM: Carrie Callaham appeals her convictions of first-degree burglary and armed robbery, arguing the trial court erred in denying her motion for a directed verdict on the grounds that the State failed to present sufficient evidence to establish guilt under a theory of accomplice liability and that the State failed

present sufficient independent evidence of the *corpus delicti* to corroborate her statement. We affirm.

1. We hold the trial court properly submitted the case to jury because the State presented sufficient evidence of guilt under a theory of accomplice liability.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Brannon*, 379 S.C. 487, 494, 666 S.E.2d 272, 275 (Ct. App. 2008), (*aff'd in result*, 388 S.C. 498, 697 S.E.2d 593 (2010)). "If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury." *Id.* "When reviewing a denial of a directed verdict, an appellate court views evidence and all reasonable inferences in the light most favorable to the State." *Id.*

"Under the 'hand of one is the hand of all' theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 324 (Ct. App. 2002). "Under an accomplice liability theory, a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act." *Id.* at 194, 562 S.E.2d at 325 (internal quotation marks omitted). "In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties." *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010).

Testimony from the various witnesses gave rise to the inference that Callaham acted as a lookout and getaway driver.

2. We hold the trial court properly submitted the case to the jury because the State presented sufficient independent evidence of the *corpus delicti* to corroborate Callaham's statement. "[A] conviction cannot be based on extra-judicial confessions of a defendant unless they are corroborated by proof *aliunde* of the *corpus delicti*." *State v. Osborne*, 335 S.C. 172, 175, 516 S.E.2d 201, 202 (1999) (footnote omitted). "[T]he corroboration rule is satisfied if the State provides sufficient independent evidence which serves to corroborate the defendant's extra-judicial statements and, together with such statements, permits a reasonable belief that the crime occurred." *Id.* at 180, 516 S.E.2d at 205. Direct evidence is not necessary to prove the *corpus delicti*. *Id.* Rather, proof of the *corpus delicti* can be established by circumstantial evidence, when it is the best evidence obtainable. *Id.* If any evidence establishes the *corpus delicti*, the trial court must submit that

question to the jury. *Id.* Testimony from witnesses gave rise to the inference that Callaham acted as a lookout and getaway driver while armed men forced their way into a couple's home with the intent to rob them, threatened to kill the couple's one-and-half year old son, and attempted to escape with money and a gold chain. Accordingly, the State submitted evidence, independent of Callaham's statement, to show a crime had been committed.

AFFIRMED.¹

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

February 24, 2014

The Honorable Beth Carrigg
205 E Main St Ste 146
Lexington SC 29072-3557

REMITTITUR

Re: The State v. Carrie Callahan
Lower Court Case No. 2012GS3201218, 2012GS3201216
Appellate Case No. 2012-212210

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Kathrine Haggard Hudgins, Esquire
Jennifer Ellis Roberts, Esquire

FORM 5
FILED

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF Lexington 2014 MAR 27 P 4:45

IN THE COURT OF COMMON PLEAS

Full name and prison number (if any) of Applicant Carrie Callahan 3285149 BETH A. CARRIGG
CLERK OF COURT
LEXINGTON

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

2014CP3201177

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (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 Lexington County Detention Center
2. Name and location of Court which imposed sentence a Beth Carrigg 205 E. Main Suite 146 Lexington S.C. 29072-3357
3. Name(s) of co-defendant(s) (if any) Ricky Bell, Quincy Holly
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-32-1216
 - (b) 2011-GS-32-1218
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 15 years Concurrent Sentences
 - (b) 15 years Concurrent Sentences

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty 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. Court of Appeals (South Carolina)
- 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. Submitted October 1, 2013- Filed January 29, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Trial Ineffectiveness
- (b) Defense related
- (c) Failure to move for suppression of evidence

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Appellate brief inadequate
- (b) Failure to move for suppression of evidence
- (c) Failure to do an independent investigation of the facts & circumstances of the case

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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. N/A
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- 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. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- 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) _____
- (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? _____
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. Robert Madsen, Bennett Casto
- ii. Public Defender Office
- iii. 206 E. Main Lexington S.C. 29072
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
- New trial or sentence reduction or parole eligibility
20. Are you now under sentence from any other court that you have not challenged?
- NO

STATE OF SOUTH CAROLINA

FILED

VERIFICATION

County of LexingtonCarrie Callahan

2014 MAR 27 P 4: 45

I, Carrie Callahan, 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.

Carrie Callahan

SWORN to and subscribed before me this 20th
day of March, 2014.

Patty R. Berner

(L.S.)

Notary Public

ORIGINAL

My Commission Expires: My Commission Expires August 12, 2015

ORIGINAL

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Carrie Callahan, 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.

Carrie Callahan
Applicant

SWORN or affirmed to and subscribed before me this
20th day of March, 2014.

Ruth R. Barnes
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, MO

2014 MAR 27 P 4:45

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Carrie Callaham,	)	C.A. No. 2014-CP-32-1177
S.C.D.C. No. 328469,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN ¹
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed March 21, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. Applicant was indicted by the May 2012 term of the Lexington County Grand Jury for burglary, first degree (2012-GS-32-1216) and armed robbery (2012-GS-32-1218). Applicant was represented by Robert Madsen, Esq. On May 29, 2014, the Applicant proceeded to trial before the Honorable George C. James, Jr. and a jury. She was found guilty as indicted. Judge James sentenced Applicant to a term of fifteen (15) years imprisonment for burglary, first degree, and to a term of fifteen (15) years imprisonment for armed robbery. These sentences were to be served concurrently.

A timely notice of appeal was filed and perfected on Applicant's behalf. Kathrine Hudgins, Esq., represented Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's convictions. State v. Callaham, Op. No. 2014-UP-035 (S.C. Ct. App filed January 29, 2014). The Remittitur was issued on February 25, 2014.

¹ By Order of July 2, 2015, Anna Good has been appointed to Applicant's case.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Trial Ineffectiveness"
 - a. "Defense related"
 - b. "Failure to move for suppression of evidence"
2. "Appellate brief inadequate"
 - a. "Failure to move for suppression of evidence"
 - b. "Failure to do an independent investigation of the facts and circumstances of the case"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Respondent interprets Applicant's first allegation of independent trial counsel and submits trial counsel rendered effective assistance of counsel. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant 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, 334 S.E.2d 813.

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. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent interprets Applicant's second claim as an allegation of ineffective assistance of appellate counsel and submits that appellate counsel rendered effective assistance. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v.

Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. *Id.* Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. *Id.* Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

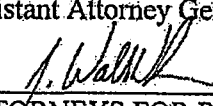
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Aug 18th

, 2015

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

CARRIE CALLAHAM, #328469

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

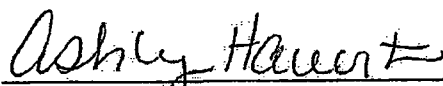
2014-CP-32-1177

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 on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mrs. Anna Rawl Good, Esquire
 Law Office of Anna Good, LLC
 PO Box 7284
 Columbia, SC 29202

DATED this 18TH day of August, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) COURT OF COMMON PLEAS

Carrie Callaham,)
))
Plaintiff,)
v.) Case No. 14-CP-32-1177
))
State of South Carolina,)
))
Defendant.)

TRANSCRIPT OF PCR HEARING

The within Post-Conviction Relief Hearing in the above-captioned matter was held April 19, 2016, before The Honorable Perry H. Gravely in the Court of Common Pleas for Lexington County, South Carolina;; attended by counsel as follows:

APPEARANCES:

Anna R. Good, Attorney
2127 Park Street
Columbia, South Carolina 29201
Appearing for Applicant

Johanna C. Valenzuela, Senior Assistant AG
OFFICE OF ATTORNEY GENERAL
P O Box 11549
Columbia, South Carolina 29211
....Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29615
dgarrison@sccourts.org

Carrie Callaham v State of South Carolina
Case No. 14-CP-32-1177
Hearing of April 19, 2016
Before The Honorable Perry H. Gravely

2

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INDEX OF EXHIBITS

(None Entered)

Carrie Callaham v State of South Carolina

Case No. 14-CP-32-1177

Hearing of April 19, 2016

Before The Honorable Perry H. Gravelly

3

1

2

(APPLICANT PRESENT)

3

THE COURT: Next one is Carrie

4

Callaham.

5

MS. VALENZUELA: Yes, sir. Carrie

6

Callaham versus the State of South Carolina,

7

case number 2014-CP-32-1177. Ms. Callaham

8

filed this PCR application on March 21st,

9

2014.

10

This was after she was indicted in

11

the May 2012 term of the Lexington County

12

Grand Jury for burglary first degree and

13

armed robbery. At the time, the applicant

14

was represented by Rob Madsen and that's what

15

it says on the -- I'm sorry. That's what it

16

says on our return, Your Honor. But she was

17

also represented by Ben Casto, Bennett Casto,

18

both of them with the public defender's

19

office. And I'm just giving you that for

20

context when you see the witnesses later.

21

THE COURT: Okay.

22

MS. VALENZUELA: On May 29th, 2014

23

the applicant went to trial before Judge

24

James and a jury and she was found guilty as

25

indicted. Judge James sentenced the

Carrie Callaham v State of South Carolina

4

Case No. 14-CP-32-1177

Hearing of April 19, 2016

Before The Honorable Perry H. Gravely

1 applicant to a term of fifteen (15) years for
2 burglary first and additionally fifteen (15)
3 years for armed robbery. And both of those
4 sentences were to be served concurrently.

5 Kathrine Hudgens filed an appeal on
6 behalf of the Applicant and the South
7 Carolina Court of Appeals affirmed the
8 Applicant's convictions and a remittitur was
9 issued on that case on February 25th, 2014.

10 The allegations in the current PCR
11 application before the Court are -- as listed
12 in the original application are trial
13 ineffectiveness, defense related, failure to
14 move to suppress evidence and appellate brief
15 inadequate. Failure to move to suppress
16 evidence and failure to do an independent
17 investigation of the facts and circumstances.

18 The Applicant is represented by
19 Attorney Anna Good. Ms. Good filed an
20 amended application on behalf of Carrie
21 Callaham. And those allegations are
22 ineffective assistance of counsel based on
23 trial counsel's alleged failure to prepare
24 for trial and not reviewing discovery with
25 the Applicant. The second claim is that

Carrie Callaham v State of South Carolina

5

Case No. 14-CP-32-1177

Hearing of April 19, 2016

Before The Honorable Perry H. Gravely

1 trial counsel failed to properly advise
2 client as to testifying in the *Jackson v.*
3 *Denno* hearing. And failed to call her to
4 testify as to the voluntariness aspect.
5 The third is that trial counsel failed to
6 properly object to the witness testifying to
7 hearsay, specifically looking at Abdul Bargas
8 and Sergeant Robert McIntyre. The next
9 allegation is that the trial counsel failed
10 to poll the jury. And then finally that
11 appellate counsel failed to properly appeal
12 the issue of the witness Marcello. Or it
13 might be Marchelo, Marcelo with a "C",
14 Prado's testimony admissibility.

15 And Ms. Good was kind enough to
16 alert us to the fact that appellate counsel
17 should come and she is here today, as well.

18 We filed the return in this case,
19 Your Honor in August 2015. Both Anna Good
20 and Ms. Callaham are present before the Court
21 today.

22 THE COURT: All right. Ms. Good,
23 looking at the application and the amended
24 application, it appears, and correct me if
25 I'm wrong, that really all of the issues that

Carrie Callaham v State of South Carolina

6

Case No. 14-CP-32-1177

Hearing of April 19, 2016

Testimony of Carrie Callaham - Direct Examination

1 you plan to raise are contained in the
2 amended application?

3 MS. GOOD: Yes, sir.

4 THE COURT: All right. I'll be
5 glad to hear from you.

6 MS. GOOD: Thank you, Your Honor.
7 At this time we call Carrie Callaham.

8 THE COURT: All right.

9 (WITNESS TAKE STAND)

10 CARRIE CALLAHAM, having been duly sworn
11 to tell the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GOOD:

15 Q. Ms. Callaham, how old are you?

16 A. I'm thirty-four years old.

17 Q. Okay. And as you heard previously
18 you were charged with burglary first degree
19 and armed robbery and you went to trial on
20 that; correct?

21 A. Yes, ma'am, that's correct.

22 Q. Let me pull that (microphone) down
23 for you so you don't have to reach for it.

24 A. Thank you.

25 Q. And who was your attorney during

Carrie Callaham v State of South Carolina
Case No. 14-CP-32-1177
Hearing of April 19, 2016
Testimony of Carrie Callaham - Direct Examination

7

1 that trial?

2 A. At first it was Casey Caldwell, but
3 he had another big case so they gave me
4 Castro [sic], Benny Castro [sic].

5 Q. Bennett Casto?

6 A. Yeah. Casto. I apologize.

7 Q. And you were originally arrested
8 June of 2010; correct?

9 A. That's correct.

10 Q. And your trial was May 23rd of 2012?

11 A. That is correct, ma'am.

12 Q. And were you on bond or incarcerated
13 during this time?

14 A. I was on bond.

15 Q. And during the time that you were on
16 bond, between June of 2010 and May of 2012,
17 about how many times did you meet with Mr.
18 Casto?

19 A. I only met him twice.

20 Q. Do you remember the first time you
21 met with him?

22 A. I met him once at the public
23 defender's office and the next time I met him
24 I was talking to him and he was telling me,
25 'Ms. Callaham, you have two choices. You

Carrie Callaham v State of South Carolina
Case No. 14-CP-32-1177
Hearing of April 19, 2016
Testimony of Carrie Callaham - Direct Examination

8

1 either can plead or take it to trial. If you
2 take to trial, you're looking at fifteen
3 years to life. If you plead, then you'll
4 probably come out better.'

5 First, they try to give forty to
6 thirty. Then they dropped it down from
7 thirty to twenty, then he said twenty to
8 zero. So, I was like, 'well, why they keep
9 going down when they know they didn't have
10 nothing against me?'

11 Q. Okay. Let me take you back to the
12 first meeting. Do you remember when that
13 was?

14 A. The first meeting was like right
15 after I got out of -- matter of fact, right
16 after I got out my bond placed because I had
17 to meet Ms. Robin over there by Richland
18 County Department of Corrections thing -- I
19 mean, the detention center. Her bonds place
20 is right there. And that's the first time I
21 seen him after I got my bond. After I seen
22 my bondsman.

23 Q. Okay. And about how long was that
24 meeting with him?

25 A. Less than five minutes.

Carrie Callaham v State of South Carolina
Case No. 14-CP-32-1177
Hearing of April 19, 2016
Testimony of Carrie Callaham - Direct Examination

9

1 Q. Okay. And what did you discuss with
2 him during that meeting?

3 A. He was telling me that -- basically
4 he was telling me that he's my appointed
5 attorney. And he's going to be looking over
6 my case and that was it.

7 Q. Okay. So it was basically an
8 introductory meeting?

9 A. Yes, ma'am.

10 Q. Okay. Do you remember the second
11 time that you met with him, when you
12 discussed trial versus plea with him?

13 A. We was in the courtroom. That's
14 when me and my family started coming to it,
15 getting me prepared to go to court. I was
16 doing roll call and stuff like that.

17 Q. Okay. So it was a roll call that
18 you met him?

19 A. Yes.

20 Q. Okay. And about how long did you
21 meet with him that time?

22 A. Probably no more than five minutes
23 because I had talked to the prosecutor. And
24 the prosecutor was telling me I had to come
25 to roll call until it was time for me to go

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1 to trial or plead.

2 Q. Okay. And that was when; do you
3 remember?

4 A. Not really. But I know it was
5 during the time of 2011.

6 Q. Okay. 2011'ish?

7 A. Uh-huh.

8 Q. Okay. And at any time did you go
9 over discovery with Mr. Casto or the facts
10 surrounding this case?

11 A. No.

12 Q. Okay. And when you showed up, how
13 did you know to come to trial on May 23rd?

14 A. My mom was with me. And he sat in
15 the room with me and he was like, 'you sure
16 you don't want to plea out?' Because he kept
17 saying -- I was like, 'sir, if I don't know
18 what's going on, why is I'm going to plea to
19 something I didn't do?'

20 Q. Oaky. And is this the day of the
21 trial?

22 A. Yeah. A few days before the trial.

23 Q. Before the trial?

24 A. Uh-huh.

25 Q. Okay. And how did you know that the

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1 trial was coming up? Did he contact you or
2 did you get a notice? How did you know it
3 was happening?

4 A. He told me come back. And then
5 that's when he started pulling my jury. I
6 seen him pull one jury for one. And I was
7 sitting in there. And that's when he started
8 pulling my jury.

9 Q. Okay. And so at that point, had you
10 been over any incident reports or statements
11 or anything with Mr. Casto about your case?

12 A. No.

13 Q. Had you discussed with him at all
14 anything concerning your statement to police?

15 A. I kept asking him that can I let
16 them know that I was intoxicated at that
17 time.

18 Q. Okay. And I'll come to that in a
19 minute. And you had another attorney on the
20 case. Do you remember who that was?

21 A. Mr. --- oh, god.

22 Q. Mr. Madsen?

23 A. Yes. Yes, ma'am.

24 Q. And he was helping Mr. Casto?

25 A. Yes, ma'am.