

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Honorable Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN A. DARRIEUX,

APPELLANT

APPELLATE CASE NO. 2016-000624

RECORD ON APPEAL

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SC Court of Appeals

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**THE FOLLOWING EXHIBIT’S ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 123 (CD JAIL CALL DUPLICATE) AND
STATE’S EXHIBIT NO. 123A (ORIGINAL CD JAIL CALL)**

The State,)
)
 Plaintiff,) Transcript of Record
)
 vs.) January 26-29, 2016
)
 John Darrieux,)
)
 Defendant.)

Honorable Benjamin H. Culbertson
Berkeley County Courthouse
Moncks Corner, South Carolina

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Motions

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1 (On the record, January 26, 2016, State v. John Darrieux.
2 The following takes place outside the presence of the jury
3 panel.)

4 THE COURT: All right. We'll go forward. All right.
5 Ladies and gentlemen, I've got -- this is the case of the
6 State of South Carolina versus John Alexander -- do you
7 pronounce it Darrieux?

8 MR. DAVIS: Darrieux.

9 THE COURT: Darrieux. These are indictments 2015-GS-08
10 -- what's been put on the desk is 1024, 1026, 1027, 1028,
11 1029, 1030, 1031, 1032 and 1034; is that correct?

12 MR. WEST: I believe it is, Your Honor.

13 THE COURT: Okay. Because I know -- notes on the roster
14 you all gave me and on the website there is a 1023 for
15 unlawful carrying of a pistol.

16 MR. WEST: That's correct, Your Honor, and the State has
17 decided to forego proceeding forward on that indictment --

18 THE COURT: All right.

19 MR. WEST: -- as well as the two contributing to the
20 delinquency of a minor charges.

21 THE COURT: Okay.

22 MR. DAVIS: So that I'll understand, nolle prossed with
23 prejudice, Your Honor?

24 THE COURT: Is that correct?

25 MR. WEST: I guess that'll be dependent on your motion,

1 also have, that she was aware of before the conference call.
2 The, the memo in support lists -- explains in a little more
3 detail than my one-page motion, simply a notice of motion, on
4 why this case ought to be continued. I would like to verbally
5 add to that a couple of things we had mentioned in chambers.
6 Again, I filed that on Thursday, and after filing it and
7 handing it to the Solicitor, we went to his office to discuss
8 the case and to ensure that discovery was complete. It was at
9 that time I was informed, and again, Mr. Darrieux was arrested
10 October 21st of 2014. I was informed last Thursday afternoon
11 that perhaps the occupants of the four a.m. incident may be
12 able to identify him, and that is the first I had heard of
13 that. It's my understanding there's been no photo arrays
14 done, no, no other attempts to identify any of the
15 perpetrators until the Solicitor met with them in preparations
16 for trial, and I was informed of that verbally on Thursday.
17 You know, obviously, I had the weekend, but in doing what I
18 can to, to deal with that and prepare for that. Additionally,
19 Your Honor, on that day, and this is something we had
20 mentioned in chambers, and I -- my recollection of the
21 conversation was that when we were discussing all the evidence
22 that I had or didn't have, there was a, a discussion about two
23 CDs, which have cell phone calls. The two individuals, two
24 Defendants that were in jail, where my client who remains at
25 jail, cannot make bond, and Ms. Chisolm, and I do have those

Motions

23

1 two CDs. There is -- it's item 238 and 239, and I, I, I would
2 have to check exactly, Judge, on the date that I received
3 them. There's a letter accompanying them dated the 23rd of
4 December. I was out of state through the holidays. So it
5 would have been I, I believe a couple of weeks ago. I can
6 look for an exact date, Your Honor, at the appropriate time,
7 but when I was in Mr. West's office on Thursday I had asked --
8 I had a litany of things that I had asked him for, specific
9 Brady that I had asked him for and he was quick to respond to
10 about six or seven items on specific Brady. In fact, that day
11 we talked about rap sheets for witnesses, which they e-mailed
12 to me that I received that day. I have no problem. They were
13 very helpful on that, received the juvenile rap sheet today.
14 During that conversation he referenced the jail calls, and
15 says, "There's about 94 of them," my recollection is, "but I
16 don't intend to get into that." I commented that if he did,
17 let me know what ones because the issue is always, been doing
18 this 20 years, if jail calls are used, the issue is always,
19 one of the issues is always what's being said?

20 THE COURT: Right.

21 MR. DAVIS: And I said great, great. It wasn't until
22 Sunday and you have a trial memo from him that he e-mailed to
23 you and me on Sunday, and I'll be honest, I did not review it
24 until Monday. I was at the jail on Monday visiting my client
25 and that afternoon I read it. That's the first I was told

1 that there are recordings that the State intended to use. I
2 have attempted -- there are at least eight CDs in this case.
3 I have put every single one of them in my computer, my desktop
4 or my laptop or McIntosh. I've got them with -- got the
5 laptop with me. I actually have an old PC for certain files
6 that won't play. I tried it in both systems. They would not
7 open. They're files that, that I don't recognize, could not
8 find a player to open them, and I went through that I believe
9 we get Saturday, Sunday, Sunday or Monday. Again, not
10 thinking an issue, but I just wanted to look at everything
11 because my understanding is the State didn't intend to use
12 anything until I read the memo on Monday afternoon.

13 THE COURT: So you were thinking he was giving you the,
14 the CDs to just show the number of contacts?

15 MR. DAVIS: Well, I, I got -- Judge, there are, there are
16 photo CDs that --

17 THE COURT: Okay.

18 MR. DAVIS: -- that I think a number of them will be
19 irrelevant.

20 THE COURT: Okay.

21 MR. DAVIS: Of course, the law enforcement was very
22 thorough and they would be relevant. Yes. They, they had
23 them. So they have an obligation to turn them over.

24 THE COURT: Right.

25 MR. DAVIS: But many times they aren't used.

Motions

25

1 THE COURT: Right.

2 MR. DAVIS: If there is something that's inculpatory
3 certainly the State has it, but I had not been aware, and I, I
4 got appointed very early on after -- well, no, I apologize
5 about that, Judge. I can find the exact date, but 2014, I got
6 appointed in 2014.

7 THE COURT: Okay.

8 MR. DAVIS: And Sunday reading that memo was the first
9 time anybody on behalf of the State indicated that there were
10 jail calls that were going to be used. They do not play in my
11 system.

12 THE COURT: Okay.

13 MR. DAVIS: And to dovetail back into this is a motion
14 for severance or a motion for a continuance. Judge, I've been
15 on both sides of the courtroom. There are some benefits for
16 Mr. Darrieux in going forward alone. He will not be lumped in
17 with the other folks, and we do understand that, but for
18 judicial economy, and that's something the State is talking --
19 talks about all the time. In the State's position they think
20 they have about 15 witnesses. I counted up a potential of 26,
21 and even on the memo that you received from the State there
22 are 20. Depending on how this trial goes, there's two
23 remaining Co-Defendants they intend to prosecute, and I don't
24 represent them, I understand that, but the State at the
25 appropriate time I guess when both -- when the one attorney is

1 back from maternity leave and the other one's healthy enough
2 they can wait on them and try them together. They could just
3 as soon do that right now, Judge. We could wait and try all
4 three of them together. On the other hand, the State might
5 have to have three separate trials with 15 to 20 witnesses,
6 the same 15 to 20 witnesses. We don't believe we are
7 prejudiced by delaying, he remains in jail, and being tried
8 with the Co-Defendants. It gives a much fuller picture of
9 what the evidence shows, who did what, who was where, who knew
10 what was going on, but for him to be here alone in the
11 spotlight and us have no mechanism to explain to the jury why
12 the other two Defendants aren't here, we can't talk about
13 that, and I do understand that, but we think that would be a
14 prejudice to him both being tried by, by, by himself where the
15 State has the ability to simply wait and try all three at the
16 same time, they're waiting on the other two, and for the
17 evidentiary reasons that, that I've mentioned and made a
18 record of. I understand Judge Jefferson's rulings. There's a
19 few things that have come up since she ruled on Friday I want
20 to make the Court aware of. So we would respectfully ask that
21 this case be continued, trial on any of these cases, and the
22 State could decide what ones to nolle prosequere or go forward on
23 because primarily, Your Honor, for judicial economy and not to
24 prejudice my client because he will be here in the spotlight
25 alone even though everyone knows there are two other

Motions

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1 Defendants with pending charges.

2 THE COURT: Okay.

3 MR. DAVIS: For all those reasons we would respectfully
4 ask you to grant a continuance of this trial to a different
5 week or, and to the one specific thing, if you're not inclined
6 to grant a continuance for the -- for all the charges, then
7 we'd ask to be heard on how we would deal with the, the jail
8 recordings themselves.

9 THE COURT: Okay. All right. Well, let me, and I can
10 tell you, I'm assuming Judge Jefferson had already as
11 administrative judge took into consideration judicial economy
12 and your client going forward without the Co-Defendants. So
13 I'm not going to grant your motion on that ground, but let me
14 hear from the State regarding the use of the phone
15 conversations.

16 MR. WEST: Thank you, Your Honor. As Mr. Davis
17 indicated, those records were made available December 23rd of
18 2015. So he's had over a month to review those records.

19 THE COURT: Well, he said he was out of town. That was
20 -- that's two days before Christmas and he said he was out of
21 town.

22 MR. WEST: I understand.

23 THE COURT: So.

24 MR. WEST: I understand. Okay. Well, absent that, the
25 day he picked them up he still had over two weeks, if not

1 close to three weeks to review them before coming to us. The
2 conversation, to be clear with the record, last Thursday after
3 we had what I call the final discovery meeting before my
4 trials, was that, "If I intend to introduce any jail calls
5 I'll tell you which ones they are," wasn't that, "I don't
6 intend to use any jail calls." I did say there's a plethora
7 of them. I wasn't -- I didn't intend on listening to all of
8 them, but I had my investigator, Mr. Kevin McGowan, listen to
9 them and his instructions were, "Find the top five and we'll
10 figure out which the -- which five of those will intend to
11 introduce at trial." So that's what I intended to do. We
12 have narrowed that list down, and this morning is the first I
13 have ever heard that he couldn't play them on his own personal
14 computer. The easy remedy for that is, "Come to my office.
15 Let's listen to them together or you can borrow a county
16 laptop."

17 THE COURT: But I mean, have you already told him the
18 ones you're going to use?

19 MR. WEST: I have not, but that is something we can go
20 over right now, Your Honor.

21 THE COURT: Okay.

22 MR. WEST: The, the witnesses that would be required to
23 introduce those records wouldn't be available till near the
24 end of the trial anyway. So we still have today and tomorrow
25 to review less than five jail calls that take 10 to 15 minutes

Motions

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1 each. It's really no prejudice to the Defendant. They,
2 they've been made available. The obligation of the State is
3 to turn them over, which we did, and again, Mr. Davis never
4 indicated to me when we met on Thursday that he didn't have
5 the ability to listen to them, and had he indicated to me --

6 THE COURT: Yeah, but I mean, his argument was that he
7 never got an indication that you were going to actually play
8 the content of the phone conversation.

9 MR. WEST: Okay.

10 THE COURT: That it was to show a numbers, that, "Here's
11 everything we've got," and listed on that was, you know, this
12 many phone conversations between the Defendant and the Co-
13 Defendant and that you weren't going to play the contents of
14 it is his argument.

15 MR. WEST: Okay. Well, obviously there's some lines
16 crossed in that communication there, but just because lines
17 were crossed doesn't mean we hadn't met our obligations of
18 discovery and that there isn't a potential remedy now before
19 any of those witnesses would be called. That's a simple fix.
20 We can provide Mr. Davis with a county laptop to go listen
21 with his client anywhere in this courthouse, anywhere at the
22 jail, assuming that the jailers are -- have that capability.
23 So if, if that's the concern of Your Honor, that, that is
24 easily fixed. That's easily remedied, and if we need to even
25 narrow it down less than five that's possible, but I'd like to

1 have the opportunity to introduce all evidence against the
2 Defendant that inculcates him and proves him guilty of these
3 crimes, and the restriction of such is, is certainly a
4 prejudice to the State given the fact that we've met our
5 obligations here.

6 So that's where I'd leave that, Your Honor. I believe
7 we've, we've done our duty here, and if there was some lines
8 crossed that's not necessarily uncommon. We just need better
9 communication. It's no fault of anybody's in particular. We
10 just need to, you know, use common sense and figure it out
11 right now. That's not going to take much time, and, and
12 certainly my office doors have been open the entire time that
13 I've had the case and that's been, been noticed by the
14 meetings with Mr. Davis and numerous e-mails indicating that I
15 had an open file for him to review.

16 THE COURT: All right. Anything in reply?

17 MR. DAVIS: Yes, Judge, just a couple of things. I have
18 notes here the day I picked up the five CDs, these being two
19 of them, I picked up the five CDs on January the 14th around
20 three in the afternoon. I met with my client at 2:50. It was
21 not a lengthy meeting, but I picked, I picked them up before I
22 met with him. So the January 14th is when I got these, and
23 Judge, I'll just -- if it had been an issue I would have
24 raised it as soon as I knew it was an issue. There, there's
25 an eight item specific Brady motion I filed January 15th. If,

Motions

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1 if I had known it was an issue I would have dealt with it
2 before this morning. I wouldn't ask the Court to rule on
3 something this morning, it would have been in my motion for a
4 continuance. If you're not inclined to grant the continuance,
5 I would ask for two things, Your Honor. On other -- on, on
6 the video-recorded statement of the testifying Co-Defendant,
7 the CD I got had a player on there. I was able to play it on
8 there. I would obviously like to have access to it whenever I
9 can at home, to meet with my client. Appreciate the offer of
10 coming to his office, but I, I need it. So the application to
11 play it I would, I would ask for that, and Judge, if I'm
12 overlooking it, I'm sure the State will correct me, but I
13 don't see the chain which lists the records custodians that
14 would testify to get it in. They're on the State's witness
15 list, if I'm overlooking it, but I don't -- I just got the CDs
16 and a letter on front saying, "Here's additional discovery."
17 If I'm overlooking the chain on that, that I already have it,
18 great. If not, that is something I would need if the State
19 intends to introduce it.

20 THE COURT: Okay. All right. I'm going to deny the
21 motion to continue, but I am going to order that either you
22 play the recordings for them where they can listen to them or
23 provide them with the app where he can listen to them. Okay?
24 After you hear them, after you listen to the phone
25 conversations, if there is any prejudice to the Defendant that

1 you have not argued we can readdress the issue, but as far as
2 right now I'm not going to continue the case, but I am going
3 to order the State to go either, either provide them with the
4 app so they can play it or play it for them and let them
5 listen to it. Okay?

6 MR. WEST: I understand, Your Honor.

7 THE COURT: And we'll need to do that today --

8 MR. WEST: I understand.

9 THE COURT: -- as soon as we finish these motions
10 hearings. Okay?

11 MR. DAVIS: And, and the chain documents, Your Honor, if
12 I don't already have them.

13 THE COURT: The chain?

14 MR. DAVIS: Chain of custody documents for the CDs, who
15 obtained them, who -- because I've got search warrants for all
16 the other evidence.

17 THE COURT: Okay.

18 MR. DAVIS: And I've got an inventory.

19 THE COURT: Can you provide that?

20 MR. WEST: Your Honor, there's not a chain of custody.
21 Simply what our office does is goes to the jail and says, "We
22 need recordings for this Defendant." We put the custodian on
23 the witness list that produces that CD.

24 THE COURT: I mean, are these, educate me here. Is this
25 just something that is routinely done?

Motions

33

1 MR. WEST: Absolutely, Your Honor.

2 THE COURT: Okay.

3 MR. WEST: Absolutely.

4 THE COURT: So it's under, I guess, what the business
5 records exception?

6 MR. WEST: It, it is, Your Honor.

7 THE COURT: Okay.

8 MR. WEST: And that's why we call the records custodian
9 to introduce --

10 THE COURT: All right.

11 MR. WEST: -- those particular calls.

12 THE COURT: All right. Just identify the records
13 custodian and we'll go forward with that.

14 MR. WEST: She is, Your Honor.

15 MR. DAVIS: That's sufficient. Thank you.

16 THE COURT: All right.

17 MR. WEST: And Your Honor, just clarification on the
18 record, it is the normal practice of that custodian to put
19 that application on the CD. I'm, I'm, I'm not sure if he's
20 not able to do it because he doesn't necessarily, his computer
21 doesn't necessarily install it. All I know is what we
22 normally do is put it in the computer and it pops right up.

23 THE COURT: Okay.

24 MR. WEST: Okay.

25 MR. DAVIS: If they could provide it.

1 MR. WEST: But we will, we'll fix that. That's remedied.
2 We're -- we've had a good working relationship till now. So
3 we're going to work, work through it together.

4 THE COURT: All right. Well, as I understand that's
5 worked in the past, but it's not working this time. If it was
6 -- it either wasn't done or it's not working this time. So
7 either play it for him or provide him with an app.

8 MR. WEST: Will do, Your Honor.

9 THE COURT: And then we'll readdress it.

10 MR. DAVIS: Thank you, Your Honor. Thank you.

11 THE COURT: All right. What else have we got?

12 MR. DAVIS: Just a moment. Let me shift gears, Judge.
13 May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. DAVIS: This is my motion for severance.

16 THE COURT: All right. Thank you.

17 MR. DAVIS: Judge, again, I tried to make it brief, but
18 just to kind of give you a guide, these incidents are alleged
19 to have occurred on October 21st, 2014. There are two
20 different -- the undisputed facts are there are two different
21 incidents, one at four, 4:30 in the morning at a, at a
22 residence in Moncks Corner, then another incident at
23 approximately four in the afternoon at a residence in
24 Summerville, and then the -- a vehicle and the four Defendants
25 were arrested nearby a little time later after 4:00 o'clock

1 (On the record, January 27, 2016, State v. John Darrieux.
2 The following takes place outside the presence of the jury
3 panel.)

4 THE COURT: All right. Anything we need to take up
5 before we bring the jury in and select a jury?

6 MR. WEST: Yes, Your Honor. I'd like to address a few
7 things. We worked with Defense counsel last night to ensure
8 that the CD that was originally provided to him in discovery
9 was operable. It was operable. We didn't have to change
10 discs. The disc that was provided to him eventually worked.
11 He worked with our IT guru in Charleston to figure out how to
12 play those tapes, and to my knowledge, those were listened to.
13 That objective has been accomplished. So the record should be
14 clear that Defense counsel has had the opportunity to listen
15 to calls that we discussed. I identified the calls that we
16 intended to introduce, and that has been prepared properly
17 according to your order.

18 THE COURT: All right. All right. Mr. Davis, anything
19 further from the Defendant regarding the phone conversations?

20 MR. DAVIS: Judge, that is accurate. We -- after we
21 reported back to you we, we got a gentleman on line. He
22 showed me how to open the things up on a PC. I went back to
23 my house, opened them up on a PC and was able to listen to the
24 five the State indicated they might be introducing. It's my
25 understanding when we departed yesterday there'll be no more

1 than those five, it might be less than those five, and I guess
2 we'll deal with that at the appropriate time. Judge, I do
3 need to record this only that the bind here being that, and
4 just to be clear, there's a letter sent to my office on
5 December 23rd saying they were available. I'm a West Virginia
6 native, out-of-state with my family over Christmas. I had an
7 order of protection the first week of January, which I think
8 was the 4th through the 7th. So I was protected up until
9 January 7th. I picked them up on the 14th. As we talked
10 yesterday, even after the meeting on the 21st, I understood the
11 State was not intending to, and I understand there may have
12 been miscommunication, but I was unaware of that. So my first
13 opportunity to listen to five of 94 calls was last night.
14 Before departing and talking with Mr. West, and I greatly
15 appreciate he, he and his staff and, and whoever the, the
16 Jeff, the IT guy is, in helping us get access to this, but the
17 issue becomes, you know, there was no, there's no discovery to
18 deal with any admission issues, any evidentiary issues. As we
19 discussed in his lot before I was leaving, you know, the
20 State, if they intend to introduce either one of them, would
21 need to show that it is actually my client making the phone
22 call because I will tell you of the five that I listened to
23 one of them is not from his account. Now, it's my
24 understanding that the testimony would be someone from the
25 jail goes and pulls his jail account number and then just

1 dumps any calls from that account onto a disc. That's why we
2 have so many. I will tell you though one I listened -- one of
3 the five that I listened to is not from his account. It's the
4 State's allegation that it's him talking to his father. Now,
5 it does give the number that is called, but as of last night
6 was the first that, that we had a chance to discuss that
7 issue. The State gives me updated witness list today with his
8 father's name on it. He's not under subpoena. There's been
9 no notice to him of that, and we're now technically the second
10 day of trial, we did pre-trials yesterday. This, this, this
11 rush to get to court when the State clearly wasn't fully
12 prepared on what calls they were going to make, they did not
13 have a full witness list, I still don't know if they know the
14 calls they're going to try to introduce, puts us in a bind,
15 Judge, it just does, and this is something I was not able to
16 flesh out fully on, on, on the motion for continuance.

17 THE COURT: Excuse me for interrupting, but what are you
18 asking me to do?

19 MR. DAVIS: Judge, again, I would renew, I would add this
20 to my reason for a, for a continuance on this.

21 THE COURT: All right. Well, let me ask you this, what
22 has this delay, what is the prejudice to your client?

23 MR. DAVIS: Good question, Your Honor. Two things I
24 would, I would argue. One, I appreciate they're not -- they,
25 they indicate they're not going to attempt to use any of the

1 others beyond the five, but the whole issue becomes, and this
2 is what I told Mr. West in his office, if they're to be used
3 the issue becomes what's being said, what, what did the person
4 say, can you audibly hear it, and what does it mean because in
5 context means a great deal. Well, to any phone call there are
6 two folks, and so if they're allowed to be introduced, if they
7 have the proper foundation, which again, they have not
8 subpoenaed my client's father, nor is the, the mother of his
9 child who is on some -- the other calls, she's not even on the
10 witness list. I think there is an issue identifying the
11 caller. Now, if, if the, if the records custodian from the
12 jail wants to say, "Well, that's from his account," and then
13 the jury can listen to it, but then, still, we don't have --
14 they can say it's from his account, we clearly have evidence
15 being -- that has been provided to me that inmates can use
16 other people's accounts.

17 THE COURT: Well, I mean, I guess my point is let's say I
18 continue the case, we come to trial 90 days down the road,
19 they still haven't subpoenaed your client's father, they still
20 haven't subpoenaed the other person to the conversation,
21 they're still relying on the custodian from the detention
22 center to get them in, what is the prejudice to your client?

23 MR. DAVIS: So, so, the second part is, I, I don't -- two
24 things, one, still, we have the, the, the, the, the issue as
25 to the calls and we have the issue of identity, admissibility,

1 Crawford potential issues because we don't have another person.
2 speaking on the phone, if they're unavailable as a witness,
3 then we have Crawford issues. The second thing, Judge, is
4 the, do my math right, 89 other calls. Now, the State's going
5 to pick out the bad ones. I understand that, that's their,
6 their job. They're, they're our adversary. I don't know if
7 there's other calls in -- that would provide context to these
8 bad ones that, that would explain that better, but my first
9 access to it was last night. Now, I, I, I, I don't mind
10 telling the Court this, you know, again, 20 years doing this
11 I, I told John when I met with him on Monday not thinking they
12 were going to be used, "John, I've not had access, generally
13 speaking they either don't amount to much of anything, how's
14 mom, how's the weather, how or they're bad in my experience."
15 So rarely has, rarely has Defense had a situation where those
16 calls provide positive evidence, but I have, Judge. I've been
17 second chair in a murder trial where the calls did help the
18 Defense, and so, again, for that reason it -- one thing for
19 the State to simply just prepare and give notice the proper
20 way. There's a proper way to provide discovery and prepare
21 and allow the Defense to have the material evidence prior to
22 starting trial. Secondly, Defense should have sufficient
23 time, whether it's bad news, to find out all the bad news or
24 whether it's good news, to be able to have that before trial,
25 and the final thing is this, Judge, I'll also be candid with

1 the Court, John and I were talking this morning about, you
2 know, what, what these charges carry and what they face. Had
3 we had notice of the intent to use these calls and the content
4 of these calls and access to these calls, then it would have
5 been a much more -- could have been and may still be a much
6 more fruitful negotiation between the State and my client.
7 Here we are getting ready to pick a jury, and I have, I have
8 not yet, Judge, I was able to review one because they're --
9 four of the five are 15 minutes long, the last one was 10
10 minutes and, and some seconds, and I understand for court to
11 get started, and I apologize, reckon, I, I don't know if I
12 have a stomach bug, a little under the weather, but I've had
13 only time to go over the shortest of the five calls with John.
14 I took notes. Tried -- I didn't transcribe it. I took notes
15 the best I could. I've only had time to tell him about one
16 and generally about the rest of them. For him to make a
17 informed decision about whether he ought to ask his fellow man
18 to, to judge him or whether he ought to enter into more
19 negotiations, we haven't even had time to discuss this new
20 evidence that the State intend to introduce against him.

21 THE COURT: All right. Thank you. All right. Mr. West,
22 let me hear from you.

23 MR. WEST: Your Honor, first I'd, I'd like to be clear,
24 there's not going to be any more negotiations on this case.
25 So that part of the argument can go ahead and be nipped in the

1 bud. There's not going to be anymore negotiations. We're at
2 trial. We're ready to proceed on all the charges that we have
3 indicated to you earlier.

4 Secondly, when the Defense picked up the discovery is
5 when he had his first ability to review the records. It's not
6 my job to make sure he listens to everything we gave him. We
7 gave it to him. If he would have come to me the day of, the
8 day that he received it, as our actions have demonstrated as
9 soon as he told me, we would have bent over backwards to make
10 sure he could listen to them. The fact that he didn't review
11 it should not prejudice the State and our ability to present
12 testimony. Secondly, on that issue, the admissibility of the
13 jail calls is not in question here. There's an exception
14 under the hearsay exceptions of the business records that
15 allows us to introduce these jail calls. Whether the jury
16 believes it's the Defendant or not is for them to determine.
17 Okay. As long as we are properly admitting the testimony
18 that's the threshold that we need to meet in order for the
19 admission of the evidence in terms of whether --

20 THE COURT: Well, let me ask you this. How is the State
21 identifying the Defendant as one of the callers?

22 MR. WEST: He identifies himself --

23 THE COURT: Okay.

24 MR. WEST: -- on the tapes. At the beginning of each
25 tape they make them say their name and then throughout the

1 calls he identifies himself as John or somebody calls him John
2 throughout the calls. The subjects that they talk about
3 corroborate the case itself, and there's plenty of evidence
4 that it's this Defendant's phone calls coming from the jail.
5 If the jury believes it is not him making the calls, that's
6 the jury's determination and they can choose to discard that
7 piece of evidence, and I think that's the way that this should
8 be treated. I think we have met all of our discovery
9 obligations under the rules, and we've provided sufficient
10 time for Mr. Davis to review and right now what it just seems
11 like he's trying to dictate how I try our case.

12 THE COURT: All right. I understand. Anything in reply,
13 Mr. Davis?

14 MR. DAVIS: Judge, this isn't the first discovery issue
15 obviously and that's what I would point out. This is being
16 forced into court on my client. We have a right to have the
17 discovery, have time to deal with discovery. Fortunately,
18 when there's been an issue they've remedied it quickly, but
19 even as to testimony that Mr. Brower was shown photos, we
20 found that on the record yesterday, Your Honor. They provided
21 me those yesterday evening, but -- and I understand that Mr.
22 West received this file from, from another assistant solicitor
23 who had been working on it for quite some time. I think there
24 was a even a third one that began this, this case, but the
25 fact that we are complaining it's our, it's our right to

1 complain, we have to complain it because we have to be given a
2 fair shot at the apple. This is our one shot at -- one bite
3 at the apple, and for us to be forced to go forward -- if, if
4 you see fit not to continue beyond this week, I would at least
5 be -- like to be able to, as I said, I've been able to review
6 one of the -- and each one of these is two pages, one is
7 three, I believe my notes on the calls, and I understand the
8 State's, for lack of a better word, ultimatum that there's no
9 more negotiating. Judge, I've never seen the State if, and
10 this is hypothetical at this point, I've never seen -- I, I
11 can't recall a time I've seen the State turn down cooperation.
12 I, I can't recall a time I've seen the State turn down
13 cooperation especially when there are two Co-Defendants with
14 pending charges still untried.

15 THE COURT: All right. I'm going to deny your motion to
16 continue. I don't see the prejudice. I'm going to allow them
17 to go forward. All right. Anything else from the Defense?

18 MR. DAVIS: No, just, Judge, I think we made it clear.
19 I've not reviewed all the discovery with my client because I
20 just reviewed it last night. Other than that, Judge, and I
21 respect your ruling on that. Judge, you had spoken with us
22 briefly yesterday about some research you did on some issues
23 yesterday.

24 THE COURT: Right. Right. All right. For the motions
25 that I had taken under advisement, number one, on the

1 I'm going to grant the State's motion to suppress Mr. Brower's
2 shoplifting conviction because that carried 30 days, less than
3 ten, I mean, less than a year in jail.

4 As to the Plaintiff's motion to suppress Defendant's
5 reference to a third-party guilt, I might have stated this on
6 the record yesterday, I don't recall. I'm going to deny it in
7 limine. If and when they do it, then you can raise your
8 objection at that time and I'll have to judge the context in
9 which it's raised.

10 All right. Does that address all pretrial matters?

11 MR. WEST: No, Your Honor. We had discussed the
12 amendment of indictment for burglary second degree nonviolent,
13 indictment number 2015-GS-08-01024. The State is asking to
14 amend the charge to burglary in the third-degree under S.C.
15 Code 17-19-100. The South Carolina Code of Laws allows for
16 the amendment of indictment. Under case law, State v. Meyers,
17 313 S.C. 391, that jurisprudence allows for the amendment of
18 an indictment, says it is permissible if the charge is a
19 lesser included offense. We're asking to be amending the
20 charge to burglary in the third-degree, which is a lesser
21 included offense of burglary in the second degree, and as
22 such, there is no prejudice to the Defendant as, as it is to
23 this case.

24 THE COURT: All right. Any change as to the content of
25 the allegations in the, in the indictment? Let me see, 1024,

1 it says that the Defendant that in Berkeley County on or about
2 October 21st, 2014, the Defendant John Alexander Darrieux did
3 enter the dwelling of Charles William -- Willard Roberts
4 without consent with the intent to commit a crime therein.

5 MR. WEST: What the State would suggest is changing the
6 dwelling to building belonging to Charles Willard Roberts.

7 THE COURT: Okay. So --

8 MR. WEST: The statutory, the language is different for
9 burglary third degree versus burglary second degree.

10 THE COURT: All right. So I understand you're seeking to
11 amend indictment 2015-GS-08-1024, the, the charge from
12 burglary second degree nonviolent to burglary third degree and
13 amending the content of the indictment to read that the
14 Defendant allegedly entered a building of Charles Willard
15 Roberts rather than a dwelling of Charles Willard Roberts.

16 MR. WEST: Judge, and my -- I apologize, but I don't know
17 if I read the right indictment number on that. Is that the
18 one that's in the caption?

19 THE COURT: Yep. 2015-GS-08-01024, that's the one for
20 burglary second degree. Do you want to see?

21 MR. WEST: The Court's indulgence, Your Honor.

22 THE COURT: All right.

23 MR. WEST: That's correct, Your Honor. 10 -- 1024.

24 THE COURT: All right.

25 MR. WEST: Thank you.

1 THE COURT: All right. Mr. Davis.

2 MR. DAVIS: Judge, I would like to make one comment back
3 on the prior records. If you want me to do that first or if
4 you want me to answer your question about this indictment
5 first, if I could just get one clarification on your ruling on
6 their records.

7 THE COURT: Okay. Let's do the indictment first.

8 MR. DAVIS: Sure. Yes, sir. Thank you. Judge, as to
9 this, we would object because the charge is burg second degree
10 nonviolent, which as the State just indicated requires them to
11 prove that it's a dwelling. Burglary third degree does not
12 deal with a dwelling whatsoever. We understand they're still
13 burglaries requiring entering without permission with the
14 intent to commit a crime, but the thing that classifies our
15 burglaries differently, one of the things, is the type of
16 structure, and for them now to attempt to amend it through the
17 court process we think is inappropriate. This, this
18 indictment was true billed June 23rd of 2015, if I'm reading it
19 right -- yes, June 23rd of 2015, true-billed. They've had
20 seven months to do this, and Judge, again, we -- I, I
21 understand. I've talked to John. I know that if you grant
22 it, it makes it a lesser charge and that very well could be to
23 his benefit, but again, Judge, there's a way to do things, and
24 this again shows this case is being forced forward rather than
25 being fully prepared and discovery given before we come to

1 court. We've been on notice that they would be preparing to
2 state this was a dwelling. They've already indicated to you
3 one of their themes of their trials this was a targeted
4 incident because this is the four, four p.m. one. This is
5 the, the location in Summerville 12 hours before the first
6 one.

7 THE COURT: Wait a minute. You said 4:00 p.m., 12 hours
8 before the first one?

9 MR. DAVIS: Yes, Your Honor.

10 THE COURT: One happened at 4:00 p.m. and one happened at
11 4:00 a.m. the following day.

12 MR. DAVIS: The morning of, 4:00 a.m. happened first and
13 then this one at 4:00 p.m.

14 THE COURT: 12 hours later?

15 MR. DAVIS: Yes, Your Honor. I'm sorry. Did I misspeak?
16 12 hours later. I apologize, 12 hours apart, but yeah, this
17 happened 12 hours later.

18 THE COURT: Okay.

19 MR. DAVIS: You've heard, and I'm not going to renew it,
20 you've ruled, but that's one of the issues on the motion for
21 severance, they were so far apart. The State intends to go
22 forward on both and show that there's a, a motive, a
23 connection. We've been told all along this was a dwelling.
24 It changes the nature of the indictment because it's not a
25 lesser included in the sense of this -- if this was burg

1 second violent, if they'd said building all along, I don't
2 know that I got a leg to stand on, but for them to change the
3 factual allegation from dwelling to now building, you know,
4 not some, some place where someone lived, and I believe there
5 -- I believe, I've not had a chance, again, Judge, there's
6 numerous photos. I've looked at them. I don't know what they
7 intend to introduce, but there's photos of the outside of
8 this. So it certainly looks like a residence, and for now to
9 say, you know, it's not, it's a dwelling, Judge, again,
10 there's an appropriate way to do this. They, they dismiss.
11 They submit a direct indictment to the Grand Jury in the last
12 seven months. They see if the Grand Jury wants to indict it
13 for that. They provide it to me before they call a case for
14 trial. There's a right way and a wrong way to do things. We
15 object to them asking the Court to amend at this late date.

16 THE COURT: All right. Anything in reply?

17 MR. WEST: Nothing, Your Honor, other than the case law
18 is pretty clear that since it's a lesser included offense it's
19 permissible under our, our rules.

20 THE COURT: All right. And as I understand you're not --
21 the photographs, whatever, you're claiming it's the same
22 structure. I understand from our pre -- from our in-chambers
23 conferences that you're just -- the question is whether or not
24 the house was occupied.

25 MR. WEST: That's correct, Your Honor.

1 THE COURT: Okay. So when you say building you're not
2 changing it from a house to a commercial building. You're
3 changing it from a occupied house to an unoccupied house is
4 what you're saying?

5 MR. WEST: That's correct, Your Honor.

6 THE COURT: Okay. All right. I'm going to grant the
7 motion. Amendment -- excuse me. Indictment 2015-GS-08-1024
8 is amended from burglary second degree nonviolent to burglary
9 third degree, and the content is amended from dwelling to
10 either building or unoccupied dwelling. I think we're talking
11 about the same thing. All right. Anything further from the
12 State?

13 MR. WEST: Nothing further at this time, Your Honor.

14 THE COURT: All right. From the Defense?

15 MR. DAVIS: And Judge, just go back, your ruling was as
16 to the shopliftings they were excluded. You're granting the
17 State's motion they were excluded because they only carried 30
18 days. I would ask a ruling to clarify, you're also finding
19 then that regardless of the time punishment they do not come
20 in as honesty dishonesty?

21 THE COURT: Correct. Correct.

22 MR. DAVIS: Thank you very much, Your Honor.

23 THE COURT: And I'm going to be honest with you, I'm
24 relying totally on the Broadnax decision. If armed robbery is
25 not a crime of dishonesty, then I don't see how shoplifting

1 All right. Is there any challenges to the opening
2 charges by the State?

3 MR. WEST: None from the State, Your Honor.

4 THE COURT: Any by the Defense?

5 MR. DAVIS: No, Your Honor.

6 THE COURT: All right. Ladies and gentlemen, at this
7 time we're going to begin the trial of the case with the
8 opening statements by the attorneys, and as I told you, these
9 opening statements are not evidence. It's just the attorneys'
10 contention as to what they feel the evidence in this case are.
11 All right, Mr. West.

12 MR. WEST: Thank you, Your Honor. May it please the
13 Court?

14 THE COURT: Yes, sir.

15 MR. WEST: Counsel. Charlie, Stephen and Rose were
16 sleeping in their house at Bryan Drive on October 21st,
17 2014. By all accounts it was quiet inside, but outside it was
18 a little different. Outside there were four people intent on
19 terror, intent on robbing the three of them. This case is the
20 trial of one of those four. John Darrieux is the Defendant,
21 and this case is going to be the trial against him for the
22 charges of burglary first, burglary third, armed robbery,
23 kidnapping and possession of a weapon during the commission of
24 a violent crime. During this trial you're going to see a lot
25 of evidence, hear a lot of witnesses, see pictures, physical

Opening Statement by Mr. West

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1 evidence. A lot of things that are going to go into this
2 trial is just procedure. So at the outset I want to give you
3 sort of an outline of some of the things you can come to
4 expect, some of the people you're going to come to hear from
5 and how you're going to hear from them. The first three
6 people that's important for you to take note of are the three
7 victims in this case, Charles Roberts, Stephen Jones, and Rose
8 Simpson, all sitting on the second row. Charles Roberts was
9 the owner of Bryan Drive, and it was his house that was
10 broken into, and he is one of the people who was robbed.
11 Stephen lived there with him. He was a worker for Charles
12 Roberts and he rented a room. Rose Simpson was Charles'
13 girlfriend. She also lived there. All three of them lived in
14 that house. All three of them were robbed and kidnapped on
15 October the 21st, 2014. The other four people that are
16 important to see or know about during this trial are the four
17 people that were arrested and charged. The first is John
18 Darrieux, Natalia Chisolm, Joseph Arsenault and Tristen
19 Brower. Joseph or John Darrieux is on trial this week. It is
20 not your job or your worry to worry about what has or will
21 happen to Natalia Chisolm or Joseph Arsenault. You're going
22 to hear from Tristen Brower himself. He was Natalia Chisolm's
23 nephew. He was 16 years old when this happened. You're going
24 to see as soon as he testifies that he is an interesting young
25 man. He's going to be very nervous, but he's going to tell

1 you exactly what happened. He's going to tell you who he was
2 with. He is going to tell you why they did it. He's going to
3 tell you when they got there. He's going to tell you what
4 happened inside, and he's going to describe some of the looks
5 that Rose, Charlie and Stephen gave him as he held a gun to
6 their heads while he was wearing a mask. Now, that's some of
7 the people involved directly with the actual home invasion,
8 but some of the other people you're going to hear from are
9 going to be from law enforcement and some other people are
10 going to be lay witnesses. The best way to describe how
11 they're going to be presented to you is to sort of go in a
12 chronology of the events that happened.

13 So the home invasion happens at Bryan Drive here in
14 Moncks Corner around four a.m. October the 21st. After the
15 hour of terror inside Charles' home, he ran to his neighbor's
16 house and he had his neighbor call 911. Officer Batson with
17 the Berkeley County Sheriff's Office responded. Other
18 officers did as well. They took pictures of the home, and
19 you're going to see the pictures of how that home was
20 ransacked by John Darrieux.

21 After that you're going to hear how Tristen Brower and
22 his Co-Defendants went back to Natalia Chisolm's house and
23 dumped the belongings that they got from Charles, Stephen and
24 Rose. You're going to hear how later that day about four p.m.
25 in the afternoon they committed a second burglary. That

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1 burglary occurred at Cindy Drive in the Summerville area of
2 Berkeley County. You're going to hear how a neighbor saw them
3 go into that home, and you're going to see and hear how that
4 neighbor saw them load the mattresses from the house on top of
5 the silver Dodge Durango. That neighbor called the police.
6 The police responded quickly. They found this Defendant,
7 along with Tristen Brower, Natalia Chisolm and Joseph
8 Arsenault in the Durango and around the Durango at that time,
9 still with the mattresses on top of the Durango. They were
10 arrested on the scene. Tristen Brower decided to give an
11 interview to law enforcement and implicated himself, Natalia
12 Chisolm, Joseph Arsenault, and for this week in particular,
13 importantly, John Darrieux. That's the facts of the case. In
14 a nutshell, that's why we're here, but your job as jurors is
15 to not just listen to that, but at the end apply the law to
16 the facts of the case.

17 Now the Judge is going to explain to you the law at the
18 end of the case, but it's important for you right now to
19 understand what the law is so that you can listen intently
20 when the witnesses are testifying what to exactly it is you're
21 trying to fit. So the first charge that I want to go over is
22 burglary in the first degree. Burglary in the first degree is
23 a long statute in our codebooks, but it's really not a
24 complicated one. In order to get to burglary in the first
25 degree you have to understand essentially what a burglary is.

1 Our laws define burglaries in three different degrees,
2 burglary first degree being the highest and what John Darrieux
3 is charged with here. A burglary is the unlawful entry into
4 the dwelling house of another with the intent to commit a
5 crime therein. Basically, John Darrieux went into somebody
6 else's house that he wasn't supposed to be in and he took
7 something. That's the basic elements of the burglary, but to
8 make it a burglary in the first degree you have to have an
9 aggravating factor. That's what it's called under our laws.
10 It's an aggravating factor, and here you're going to hear
11 evidence of two separate aggravating factors. The most easy
12 one to prove in the State's opinion is going to be the fact
13 that this occurred during the nighttime. This happened a
14 little before four a.m. All the testimony is going to be that
15 it was dark outside, and if a burglary happens at nighttime
16 it's called a burglary first. The other thing that can make
17 this a burglary in the first degree is that the burglary
18 occurred while the people committing the burglary were armed
19 with a deadly weapon. You're going to hear how guns were held
20 to Charlie, Stephen, and Rose's heads while the people were
21 wearing the masks inside their home. That's a burglary in the
22 first degree.

23 Now, the second burglary that I referenced off of Cindy
24 Drive that's not a burglary in the first degree. That's
25 charges of burglary in the third degree, and the difference is

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1 that nobody was living at that trailer at that particular
2 time. So since nobody was inside, it's not considered a
3 dwelling. It's considered a building. So since it's a
4 building, they broke inside, they stole the mattress, they
5 went outside, they put the mattress on the Durango, that's a
6 burglary in the third degree because there's not the
7 aggravating factors of nighttime or weapons used. That's the
8 distinguishment between the two charges.

9 The next charge is going to be armed robbery. Armed
10 robbery is another one of these long statutes. It's really
11 not that complicated and not that hard to describe. It is the
12 taking of money or property by force or intimidation while the
13 assailant is armed with a deadly weapon. Joseph Arsenault
14 took property from Charlie, Stephen and Rose while he had a
15 gun. It's as simple as that. That's an armed robbery. Now,
16 the thing that you need to be aware of and you obviously
17 noticed by the number of indictments against this Defendant is
18 there's three counts of armed robbery. Each armed robbery is
19 because of each victim. Charlie gets an armed robbery charge.
20 Stephen gets an armed robbery charge and Rose gets an armed
21 robbery charge. So there's going to be three counts of armed
22 robbery because all three of them had property taken from them
23 at gunpoint.

24 The next charge is going to be kidnapping. Kidnapping is
25 another statute, again, some reason our legislature likes to

1 put big words in statutes. It's really not a complicated
2 concept. It is the restriction of someone's freedom, a
3 constraining of somebody's movements. You don't have to be
4 tied up and thrown in the trunk of a car to be kidnapped.
5 Rose, Charlie and Stephen were held at gunpoint, and they
6 weren't able to leave the house. They couldn't call 911.
7 That's a kidnapping, again, three counts of kidnapping because
8 there's three different people. So you're going to have a
9 charge for each victim.

10 The last charge is going to be possession of a weapon
11 during the commission of a violent crime. This is a very
12 self-explanatory statute unlike the others because all that's
13 needed to be proved by the State in this case is that a
14 violent crime occurred while John Darrieux or one of his Co-
15 Defendants was in possession of a firearm. The statute
16 itself, you'll hear from the Judge, you'll hear that
17 kidnapping, armed robbery and burglary in the first degree are
18 statutorily classified as violent crimes. That element is
19 going to be satisfied through the testimony that's going to be
20 presented through the witnesses this week, and as you've
21 already heard, weapons were used during the commission of the
22 kidnapping, armed robbery and burglary in the first-degree,
23 thus this Defendant is charged with possession of a weapon
24 during the commission of a violent crime.

25 That's all the charges that John Darrieux faces for this

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1 week, and that is what the testimony is going to be presented
2 will prove at the end of this trial. Again, this trial is
3 going to be methodical. You can see by the amount of evidence
4 on the table in front of you that there's a lot of physical
5 evidence. There's going to be close to a hundred photographs
6 presented about the home that was ransacked, the home that all
7 the property was found in, lots of evidence presented.
8 Sometimes that presentation of evidence can be mundane. I
9 don't want to call it boring because it's absolutely critical
10 to the seeking of justice, but there are questions that have
11 to be repetitive. There are questions that aren't going to be
12 TV drama. You can come to expect that, but at the end of this
13 all we're after is the truth. Just like Judge Culberson told
14 you, we're seeking the truth in this case, and at the end of
15 the trial we're going to ask you to return a verdict.
16 Veredicto is the Latin for speaking of the truth. That's what
17 the word verdict actually means. The truth is not going to
18 change. The truth does not change, and the truth is that John
19 Darrieux is guilty of burglary first, burglary third,
20 kidnapping, armed robbery and possession of a weapon during
21 the commission of a violent crime. Thank you.

22 THE COURT: Mr. Davis.

23 MR. DAVIS: Thank you, Your Honor. May it please the
24 Court?

25 THE COURT: Yes, sir.

1 MR. DAVIS: I'm going to start by saying something
2 probably surprising. There's going to be some things that we
3 don't have dispute over. I represent John Darrieux, and
4 there's going to be some things I have no dispute with the
5 State on. Here's another striking thing. It's not about
6 having evidence. It's about evidence that convinces you
7 beyond a reasonable doubt that John is guilty of these
8 charges. That's why we have trials. It's not what the State
9 thinks it proves. It's not what the State thinks the truth
10 is. It's not what I or even the Judge thinks. It's what you
11 all think. The truth is what has been proven by the evidence,
12 not just that evidence exists, but what's been proven.

13 You were picked because the adversaries thought you all
14 would be fair. That's why you were picked. Much to your
15 chagrin, I know you'd rather be home, that's why you were
16 picked because the adversaries thought you'd be fair. If
17 you'll remember on Tuesday Judge Buckner was in here, and he
18 talked about make sure justice is done, a search for the
19 truth. Here's the truth that's undisputed, the State's going
20 to say, don't, don't worry about Natalia Chisolm and Joseph
21 Arsenault because it's true, Mr. Darrieux is the only person
22 they called to trial this week. This table full of evidence,
23 it's undisputed that the State's going to have not one single
24 item from this table was taken from John or his house, there's
25 not one single item of evidence on this table that has John's

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1 prints on them, all of this, Ms. Chisolm. She's not here
2 today. The State is prosecuting John because one of those
3 four people, the teenager, the kid, gave a story. That's why.
4 That's why they're prosecuting John. The police never showed
5 photographs to anybody say, "Is this is the vehicle?" The
6 police didn't show photographs to anybody saying, "Is John one
7 of the guys?" When the 16-year-old was arrested, the police
8 talked to him. He gave a statement. The State wants you to
9 believe that that was voluntary and that was truthful. You'll
10 hear from him. He'll sit right up here on this witness stand.
11 He's 17 now. He'll sit right up here on this witness stand,
12 and the thing is now police officers in the little room,
13 interrogation room aren't the only people that get to talk to
14 him. Folks that wear badges and guns, they're not the only
15 people that get to talk to him. I get to ask him questions
16 for John. I get to ask questions the police didn't ask, and
17 you get to decide is he honest or not, is he truthful or not.
18 What would you do for freedom? You'll find out if his charges
19 are still pending. You'll find out there's some deal with the
20 State. You'll find out if he has reason to tell them what he
21 did or if he's telling the truth.

22 There's a second thing I told you you might not believe
23 from me. If you believe Tristen, then you're going to convict
24 John. If you believe him you're going to convict him. I want
25 you to keep in mind, please, that number of charges and that

1 the State, this is something we agree on, number of charges,
2 there's one incident four a.m., number of charges because
3 there were three people there. There's a second case at four
4 p.m., one charge. Okay. So when you analyze this we got two
5 different things about 12 hours apart about 13 miles apart.
6 Think about both of them because I don't doubt that, that
7 something happened at Bryan Drive. I don't doubt that. I
8 don't think the evidence'll show that something happened at
9 Bryan Drive. The State has to show that John was involved in
10 that. It's undisputed John's with those people when arrested.
11 That's undisputed, and there's a mattress on the truck. The
12 State has to prove that that was obtained as a result of
13 criminal activity. Those are two most important things I want
14 you to keep in mind during this trial. Something may have
15 happened at four in the morning. Was John involved? John's
16 there with the mattress. Was that obtained through a crime?
17 Please keep that in mind.

18 Now, the Judge has already told you that the indictments
19 are not evidence. They're simply telling you what you got to
20 decide on this week. What I'm telling you is not evidence.
21 The State's theory is not evidence. Now, the Government
22 collected all this evidence. The Government talked to
23 witnesses. The Government got a story from a teenager, and
24 the Government has suggested to you what that means, that's
25 their theory of what happened these 12 hours back in October

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1 of 2014. We as citizens get to be skeptical of that. You
2 took an oath. Mentally ask questions about the evidence and
3 the witnesses. John, like any other citizen, presumed
4 innocent. He said, "Not guilty. Prove this. I want a trial.
5 I want my fellow citizens to hear about this. Give me a
6 trial. I'm not guilty of this stuff. I'm not. I'm not. The
7 evidence isn't there." Be skeptical of the Government. Test
8 them. They've told you what they're going to prove to you.
9 All right. Prove it.

10 Now, I'm going to deal with the third thing you might be
11 surprised Defense attorney is going to talk about. John may
12 or may not testify. I'm going to tell you that right now. He
13 may or may not. John, if you'd come here for a second.

14 (Complies with request.)

15 MR. DAVIS: John's waited 15 months, 15 months we've been
16 working on this case, 15 months to let you all decide it. He
17 doesn't have to say a word, and the Judge is going to tell you
18 he doesn't have to say a word. Let me tell you one of the
19 biggest reasons why. If he doesn't you get to hear from me
20 last. I get to respond to whatever the Government wants to
21 say. That's of value. He may. We'll see. We don't have to
22 decide yet. We get to hear everything like you get to hear
23 it, and then we'll decide if he has anything more to say other
24 than, "Not me, I'm not guilty, didn't do it," if so, you'll
25 hear from him. If not, I get to talk to you last before you

1 decide. Straight up, want to be upfront with you about that.
2 He may or may not. We'll see because it doesn't come from
3 this table, and the Judge is going to tell you that. All this
4 evidence, all the witnesses, the fact that John's here and the
5 other two folks aren't, that's the Government. They call the
6 case. Now it's their chance to prove it and they won't.
7 Thank you.

8 THE COURT: All right. Ladies and gentlemen, we'll now
9 begin the evidentiary portion of the trial with the State's
10 first witness. Mr. West.

11 MR. WEST: Thank you, Your Honor. The State calls Rose
12 Simpson.

13 THE COURT: All right.

14 Whereupon, Rose Marie Simpson is called to the stand,
15 duly sworn by the clerk and testified as follows:

16 THE CLERK: If you'd have a seat, state your full name
17 for the record and spell your last name.

18 MS. SIMPSON: My full name is Rose Marie Simpson, S-I-M-
19 P-S-O-N.

20 DIRECT EXAMINATION

21 BY MR. WEST:

22 Q Good afternoon, Rose. How are you?

23 A Horrible.

24 Q You nervous today?

25 A Uh-huh.

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1 THE COURT: All right. I need you to speak up and give a
2 verbal response.

3 A Oh, I'm sorry. I'm --

4 THE COURT: You need to answer yes or no because the
5 court reporter can't pick up a shaking or a nodding of the
6 head. Okay. All right, sir.

7 Q Are you scared?

8 A Yes.

9 Q Can you tell the jury where you live now?

10 A I live at Woodbine, North Charleston.

11 Q Did you ever live with Charles Roberts?

12 A Before?

13 Q Yes.

14 A Yes. A few years ago.

15 Q Okay. Do you know where that was?

16 A That was, oh goodness, Rich Street in North Charleston.

17 Q Was it in Moncks Corner?

18 A No. Are you --

19 Q Was the house in Moncks Corner?

20 A Where we were robbed or are you talking about --

21 Q Yes.

22 A Yes. Yes.

23 Q Okay. How did you know Charles? Were you ever in a
24 relationship with Charles?

25 A Yes. Yes.

1 Q Okay. How long were you in a relationship?

2 A Well, this was our second time in dating. The first time
3 was a little over a year. This time we were working into a
4 year.

5 Q Were you living with Charles on October the 21st of 2014?

6 A Yes.

7 Q Okay. It's okay, Rose. Do you remember the incident
8 that brings us here today?

9 A Yes.

10 Q Can you tell the jury what you were doing before the
11 incident began?

12 A I was -- I know you want precise answers. I was -- I had
13 a migraine. I was trying to get rid of the migraine. I was
14 asleep.

15 Q Okay.

16 A Partly.

17 Q Where were you sleeping inside the house?

18 A I was sleeping on the couch at that time.

19 Q Okay. Was that in the living room?

20 A Yes.

21 Q How did you get woken up that morning?

22 A Suddenly a big bam. It was just a sudden hit. The whole
23 door came down and all of them come in. Thank you.

24 Q Did people come inside?

25 A Yes.

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1 Q What's the first thing you noticed when they came in?

2 A They -- the first thing I noticed masks.

3 Q How many people were there?

4 A There were three that came in.

5 Q Okay. What was the first thing that was said when they
6 came in?

7 A "Where's the old man?"

8 Q What did you take that to mean?

9 A With all due respect to Charlie, he's a lot older than
10 anybody else in the house.

11 Q Did you think they were referring to Charlie?

12 A Yes.

13 Q Aside from the masks, could you tell the jury what they
14 were wearing?

15 A When they come in, it's the movie Scream. I don't know
16 if you all have ever seen that movie, but it's the gory, you
17 know, they all had that on, like a Halloween outfit.

18 Q Okay.. All right. Did you ever see a gun?

19 A Yes.

20 Q Could you tell the jury about that?

21 A They let me know real quick they had one because he come
22 and put it in my face and told me, "Sit down, be still, don't
23 move."

24 Q How many people had guns?

25 A All three.

1 Q Okay. Did you ever see a fourth person?

2 A No.

3 Q Okay. Was everybody standing in the living room the
4 whole time?

5 A No.

6 Q Was everybody wearing a mask that came in?

7 A At first.

8 Q Okay. Could you describe the types of guns that the
9 people had?

10 A It was gray, a grayish color, gray.

11 Q Were they handguns?

12 A Yes. Yes.

13 Q Okay.

14 A And there -- it seemed to appear to me it was kind of
15 heavy because one of them was shaking so bad with it.

16 Q Could you tell any of them's ages?

17 A No. Not with the masks on at that time. No.

18 Q Could you tell if anybody was younger than the others?

19 A Like the one I said, the one that was shaking so bad I
20 would assume he was young.

21 Q Okay.

22 A Because he was so nervous. I don't know. I don't. I
23 never seen the one I was speaking of at the moment without the
24 mask.

25 MR. DAVIS: Your Honor, we'd, we'd ask that testimony

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1 then about age be stricken.

2 THE COURT: Overruled. Go ahead.

3 Q Where did you stay during the incident? Did you ever
4 move from the couch?

5 A Okay. It -- I stayed there for seemed like for eternity,
6 for about an hour or so.

7 Q Was anybody else in the living room there?

8 A When they come in, now, you all have to remember I was in
9 shock. I've never had this happen to me before. One went one
10 way, one went the other way and one stayed with me and they
11 went and got Stephen out of the bedroom and then they moved
12 him on the loveseat, and then --

13 Q How do you know -- excuse me. Go ahead.

14 A And then the other one proceeded to Charlie's room.

15 Q How do you know Stephen?

16 A He's an employer of Charlie's.

17 Q Okay. Did you have a cell phone on you?

18 A No.

19 Q Could you call for help?

20 A If I could, I wouldn't.

21 Q Did you feel like you could leave?

22 A No. No way.

23 Q Why?

24 A Because he told me if I moved he'd kill me.

25 Q Were you ever forced to go into a different room?

1 A Yes. I'll -- yes. Yes.

2 Q Where did you have to go?

3 A They wanted -- they forced Stephen and I into the
4 bedroom.

5 Q What happened when you were in the bedroom?

6 A They made Stephen and I stand up against the vanity and,
7 and the man that's in the courtroom today was over there
8 behind -- by the closet holding a gun on Stephen and I.

9 Q You said the man that was in the courtroom today. Do you
10 recognize the Defendant?

11 A Yes. I didn't know him before.

12 Q But you know that this is the man that came into your
13 house?

14 A With a shadow of a doubt.

15 Q Without a shadow of a doubt?

16 A And I say this because he locked eyes with me. I don't
17 know, you know, to, to -- well, he, he scared the hell out of
18 me. Excuse me. I'm so sorry you all, but yeah.

19 Q Was he wearing a mask?

20 A He had a mask on, but he took it -- too hot. I mean, he
21 said it, it got too hot.

22 Q So he took it off?

23 A Yeah.

24 Q So you got a good look at his face?

25 A Yes.

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1 Q How good of a look would you say you got at his face?

2 A I would say a hundred percent.

3 Q Okay.

4 A Because in the bedroom it was pure light. It was pure
5 light because once they started they turned every light on.

6 Q How close would you say he got to you?

7 A Which room?

8 Q Both, during the whole incident.

9 A In, in, in the den he got from the chair to there for me
10 to see him, but when he first come in he come in like that,
11 well, like this. I'm sorry.

12 Q So he was within arm's reach?

13 A Yes.

14 Q When he's with -- when he was within arm's reach did he
15 have his mask on?

16 A Yes. Then.

17 Q Okay. But later when, when would you say you saw him
18 without?

19 A After they ransacked he come out with a box. Okay. And
20 he had his mask off, and -- but -- and he said, "Don't look at
21 me, put your head down," the same voice, but he didn't have
22 his mask on.

23 Q Did you have anything taken from you?

24 A Personally just my purse.

25 Q Okay.

- 1 A She took just my whole purse.
- 2 Q You said she. Did you notice that there was a female
3 involved?
- 4 A Yes. Yes.
- 5 Q Could you describe the female?
- 6 A The female is about my size. She has a distinct, a
7 distinct accent per se.
- 8 Q Okay. What, what did that sound like?
- 9 A She was like the leader. She was very intimidating.
- 10 Q Okay. Could you tell skin tone?
- 11 A She's olive.
- 12 Q Okay.
- 13 A Not dark olive, but --
- 14 Q What about the other individuals in the house?
- 15 A The other individual, I only seen two without masks. I
16 need to make that clear.
- 17 Q Okay.
- 18 A Other individual, well, you all see what he looks like.
- 19 Q White, black, Hispanic?
- 20 A He's -- I would say he's mostly Caucasian.
- 21 Q Okay. Where were you when items were taken from you?
- 22 A Where was I when items were taken, I was still in the
23 front on the couch.
- 24 Q Okay.
- 25 A And the way I know she took, the way I want everybody to

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1 understand, you know how you get a nice purse, an Aigner
2 purse, females might be able to relate, but it was a very
3 sentimental gift, and she come out, "I got your purse, bitch,"
4 and she also took sentimental things that was in my purse I
5 can describe.

6 Q You say sentimental things. What kind of things?

7 A A very close friend of mine brought a token back from
8 Florida, a keychain with Mickey and Minnie from Disney World,
9 just pictures of my children.

10 Q What are some of the things that were in your purse?

11 A Makeup, pictures, the -- my keys with the sentimental
12 things I was speaking of.

13 Q Bank cards?

14 A Yes. Those, too. They're not sentimental to me, but
15 yeah.

16 MR. WEST: I'm showing the witness State's Exhibit Number
17 117 which has been reviewed by Defense counsel.

18 BY MR. WEST:

19 Q Could you take a look in there?

20 A You want me to stand up? I would prefer.

21 Q However, however you'd like. Would you like gloves?

22 A Yeah. That, too.

23 Q Just take a moment and look and see what's in that bag.

24 A Never mind. I can't even put them on. This is the
25 jewelry box. Yeah. That's my jewelry box Charlie gave me.

1 There's my purse, but not all my stuff is in my purse, but
2 here's the keys I was speaking of. That's Mickey and there's
3 Minnie.

4 Q Could you describe what else is on those keys?

5 A I'm a key -- oh, geez. I'm a key person.

6 Q Have you seen those items since it was taken from you?

7 A No.

8 Q How can you be sure that that's your keys?

9 A How can I make sure these are my keys? One thing, my son
10 gave me this. Okay. As I mentioned, Charlie and I had a
11 mutual friend named Kristin, and she had just gave me these
12 things, the Mickey and the Minnie, I mean, maybe what, a week
13 or two prior.

14 Q How do you recognize the jewelry box?

15 A He had given it to me, not brand new but he had given it
16 to me and there was jewelry in it. I don't know where the
17 jewelry is.

18 Q Okay. How do you recognize the purse?

19 A The purse, Charlie bought it for me. It's --

20 Q Anything inside the purse?

21 A Huh?

22 Q Is there anything inside the purse?

23 A These are my cards.

24 Q How do you recognize them as your cards?

25 A Because they got my name on it. At one time I did

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1 receive food stamps, but that's my EBT card, Q-tips, my used
2 to be phone.

3 Q Is there anything else in the purse?

4 A My pictures are gone. I had a prescription in here. I
5 see it's gone. I guess I tore -- I don't know what's down in
6 there.

7 Q It's okay. You recognize all of those items as --

8 A Yes. Absolutely.

9 Q -- as belonging to you? This may seem like a silly
10 question, did you ever give anybody permission to take those
11 things?

12 A No.

13 Q Okay.

14 A Now if she came up to me and said, "Now, Ms. Rose, can I
15 please have your purse," with the gun to my head. "Sure, have
16 it."

17 Q Again, I, I told you it may seem like a silly question.

18 A I know. I'm sorry. I'm nervous. I'm sorry.

19 Q How long would you say the people were inside of the
20 house?

21 A I did not have a watch on. I would say an hour, maybe
22 just a little over an hour.

23 Q Do you remember specifically what this Defendant did when
24 he was inside of the home?

25 A He was like very trigger-happy, went around pointing to

1 make sure that Stephen and I knew he was the boss over the
2 gun.

3 Q Okay. Did you ever get a look at the vehicle they were
4 in?

5 A They had the front door open, and where I was on the
6 couch Charles has lights in the yard. Okay. They had the
7 vehicle, it's like an SUV, like a tan, copper. Now, you've
8 got to remember it's night, but they parked in the middle of
9 the road, not the driveway. So I seen the backend of it.

10 Q Okay. Did you see this Defendant take anything out of
11 the house?

12 A Defendant, the driving.

13 Q This Defendant?

14 A Yes.

15 Q Do you remember specifically what he took out of the
16 house?

17 A Just about anything he could get his hands on, him and
18 his buddy had trouble getting the TV in the vehicle but he --
19 when she would say, "Get this, get that," he would get, you
20 know.

21 Q Did you notice anything else specific about the female
22 other than her voice and her skin tone?

23 A She was very, like she was the head honcho.

24 Q Okay. How about hair color?

25 A Brown.

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1 Q Okay. When they left, did you see what direction they
2 traveled?

3 A They went left.

4 Q Left out of the house?

5 A When they got in the vehicle, they were already headed
6 out of Bryan Drive. They were headed to go out just like
7 this.

8 Q Do you know the road that they were headed towards?

9 A No.

10 Q Okay.

11 A I -- we don't -- we can't see the main road from where we
12 live.

13 Q Okay. The person that you said came in the home that you
14 identified as this is Defendant, could you tell the Court what
15 he's wearing today?

16 A You want me to look at him?

17 Q Yes.

18 A He's wearing a suit, which I don't think he deserves.

19 Q Can you see what color tie he has on?

20 A What kind of tie?

21 Q Yeah.

22 A It's a -- has multi colors actually. It's got white
23 stripes. It's got maybe some burgundy, a little black, a
24 little brown.

25 Q And this is the person --

1 A He has a gray shirt on.

2 Q And this is the person you saw in your house on October
3 21st?

4 A Yes.

5 MR. WEST: Let the court record reflect that the victim
6 has identified the Defendant.

7 A Except at that time he had some hair on his head.

8 Q Okay. Any other differences between now and then
9 appearances-wise?

10 A He's acting real brave and laid-back.

11 MR. DAVIS: Your Honor, I would --

12 A How could you do what you did?

13 THE COURT: All right. Answer questions.

14 MR. DAVIS: Your Honor, if I may for the record, I would
15 object to the ID and renew objections.

16 THE COURT: All right. Overruled.

17 A I'm sorry. I'm sorry, Your Honor. I'm sorry. I'm
18 sorry. I'm sorry. I'm sorry.

19 MR. DAVIS: Thank you, Your Honor.

20 Q Was it light or dark outside when the people came in?

21 A It was dark.

22 Q Thank you.

23 MR. WEST: No further questions for this witness at this
24 time.

25 THE COURT: All right. Mr. Davis, cross examination.

Rose Simpson - Cross by Mr. Davis

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1 MR. DAVIS: Thank you, Your Honor.

2 A Your Honor, can I say something?

3 THE COURT: No, ma'am.

4 CROSS EXAMINATION

5 BY MR. DAVIS:

6 Q Ms. Simpson, are you taking your medication today?

7 A Yes.

8 Q Okay. And what's that for?

9 A I am bipolar. I have PTSD. I go to mental health.

10 Q And that's -- you were looking for some medication
11 earlier. That's what you were taking back then, too?

12 A What -- he -- if I recognized anything in my purse.

13 Q I'm, I'm sorry. That was the same medication you were
14 taking back then, too?

15 A They have changed my medication since I've gone back over
16 this incident because it devastated me.

17 Q Okay. I'm sorry. I'll try to make it clear again. Was
18 that the same medication you were taking back then?

19 A Was it the same medication?

20 Q Yes, ma'am.

21 A No.

22 Q Okay. What were you taking back then?

23 A I was taking -- I have Ehlers-Danlos Syndrome. I was
24 taking pain medication. I was taking -- you talking about
25 that night or just in general?

1 Q Yes. In, in October of 2014. Yes, ma'am.

2 A Okay. I was on Lamictal. That's my antidepressant.

3 Trazodone and I believe at that time they were -- I forget the
4 -- it's a sedative, but it's a very small sedative. I don't
5 know the generic.

6 Q Okay. So a sedative, antidepressant and what was the
7 third one for that you were taking?

8 A Trazodone.

9 Q What was that for?

10 A That's for sleep.

11 Q Okay. And you were taking those by prescription back
12 then; right?

13 A Yes.

14 Q And what, what is it you're taking now for bipolar?

15 A Like I said, they've changed it.

16 MR. WEST: Objection, Your Honor, relevance.

17 THE COURT: Overruled. Go ahead.

18 A They've changed it because of the incident. I can't
19 pronounce the first one, but it worked for me back then. So
20 if you want to call CVS Pharmacy you're more than welcome. I
21 can't pronounce it. They had me -- had it on me for about two
22 and a half, almost --

23 Q So you're, you're just taking one medication now?

24 A No.

25 Q Okay. Well, ma'am, I'm, I'm just I'm trying to

Rose Simpson - Cross by Mr. Davis

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1 understand because this jury needs to listen to your
2 testimony. So what, what you're currently taking the
3 medication you're supposed to; right?

4 A Yes.

5 Q Okay. And can you tell us, and if you can't give us the
6 names that's fine. Can you just tell us what you're taking
7 medication for right now?

8 A Bipolar.

9 Q Uh-huh.

10 A PTSD.

11 Q Uh-huh.

12 A High anxiety, eating disorder and Ehlers-Danlos Syndrome.

13 Q Okay. Thank you. And so when you heard the bam on the
14 door you were asleep; right?

15 A I was -- can I -- I had a migraine headache.

16 Q Okay. Ma'am, I'm going to try to ask them so you can
17 answer yes or no. Okay. I'll try to do that.

18 A I was not sound asleep, but --

19 Q Okay. Well, were you awake or were you asleep?

20 A If there's a middle in there, I was asleep.

21 Q Okay. And they knocked the whole -- the whole door came
22 down. That woke you up?

23 A Yes.

24 Q I just -- I'm wanting to try to understand some things
25 here. Okay. You said -- at one point you said she came out

1 and said, "I've got your purse, bitch." Right?

2 A Right.

3 Q Then another time you said she said, "Now, Ms. Rose, may
4 I please have your purse?"

5 A No. He asked -- I said, I said would you -- he said
6 something -- the one -- the person just talked to me, would I
7 have given it to her or something to that, something like
8 that, and I said if she would have asked me I would have given
9 it to her.

10 Q Okay. So you were sleeping with your purse?

11 A No. I was not sleeping with my purse. My purse was in
12 the bedroom.

13 Q Okay. Okay. This night you were half awake, half asleep
14 on the couch; right?

15 A Correct.

16 Q Real quickly. Real quickly. At one point you said they
17 were taking anything they could, but they had a little trouble
18 with the TV?

19 A Right.

20 Q What size TV are we talking?

21 A Huge.

22 Q Okay. Hung on the wall?

23 A Hung on the wall.

24 Q Okay.

25 A Where I was at they took chess games, they took pictures,

Rose Simpson - Cross by Mr. Davis

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1 they took --

2 Q Okay. Well, I'll, I'll, I'll ask you real quick
3 questions.

4 A Okay. All right. All right.

5 Q I appreciate it.

6 A Okay. Okay. I don't mean to be angry. This is just
7 very hard on me. I'm very pissed.

8 Q Now, and again, I want to be clear about this --

9 A Uh-huh.

10 Q -- you saw three people; right?

11 A Correct.

12 Q Okay. Knock the door in, come in, they all three have
13 masks on at first; right?

14 A Correct.

15 Q And then at some point later during this, during this
16 hour or so they're in there --

17 A Uh-huh.

18 Q -- you see two of them without masks; right?

19 A Correct.

20 Q Two white males; right?

21 A No.

22 Q Okay.

23 A A female and the male.

24 Q I apologize. Okay. Okay so one female took her mask off
25 and one male did; right?

- 1 A Correct. And they were sweating terribly.
- 2 Q I'm sorry, ma'am?
- 3 A They were sweating.
- 4 Q Okay.
- 5 A Horribly.
- 6 Q You said they took it off because they were getting hot;
- 7 right?
- 8 A Well, that's what I would assume, yeah.
- 9 Q Okay. Well, they didn't say that. You're just assuming
- 10 that?
- 11 A Well, she said, "It's hot as hell in here."
- 12 Q Okay. So they said it. Okay. Thank you. Now, do you
- 13 remember the police showing up a little later that morning,
- 14 still dark, a little later that morning?
- 15 A Yes.
- 16 Q Several police officers came by; right?
- 17 A Not at one time, but yes.
- 18 Q Okay. And you spoke with them; right?
- 19 A As least as I possibly could. Yes.
- 20 Q I'm sorry, ma'am?
- 21 A As least as I possibly could. Yes. As least as I
- 22 possibly could. Yes.
- 23 Q Okay. Well, now, you knew the police were there to
- 24 investigate this crime; right?
- 25 A Correct.

Rose Simpson - Cross by Mr. Davis

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1 Q And you knew it was important to get to the police as
2 much information as you could; right?

3 A Correct.

4 Q Because they're going to go try to catch these folks;
5 right?

6 A Correct.

7 Q So if you can describe these folks that'd be really
8 important to the police at whatever time in the morning;
9 right?

10 A Correct.

11 Q And if you could describe their clothing that'd be
12 important?

13 A I did.

14 Q And if you describe what their faces looked like that'd
15 be important?

16 A I did.

17 Q And if could you describe what the vehicle looked like
18 that'd be important; right?

19 A I did.

20 Q Because you want the police to go get them; right?

21 A Excuse me?

22 Q You want the police to go get them; right?

23 A Right. But when they got there they said they could not
24 --

25 Q Ma'am, if you'll answer my questions I'd appreciate it.

1 You wanted the police to go catch these folks; right?

2 A Not really because I was scared because they said they'd
3 kill us.

4 Q Ma'am, if you'll, if you'll answer --

5 A Well, it's true.

6 Q It's true? What you're saying is true; right?

7 A He said --

8 Q Ma'am, ma'am, I have a question for you. What you're
9 saying is true; right?

10 A Yes.

11 Q Okay. In 2015 were you not convicted of two counts of
12 fraud?

13 A '15?

14 Q Fraudulent checks?

15 A Yes. But that is not --

16 Q Thank you, ma'am.

17 A Okay.

18 Q Whether you wanted these folks caught or not, the police
19 talked to you to gather information; did they not?

20 A Yes.

21 Q The police asked you to provide a statement to them; did
22 they not?

23 A I did it, too, but yes.

24 Q The police asked you to provide a statement; did they
25 not?

Rose Simpson - Cross by Mr. Davis

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1 A Yes.

2 Q And you provided one; correct?

3 A As much as I possibly could.

4 Q And you provided one; correct?

5 A Yes. I did, as much as I possibly could. Mind you, I
6 was in shock. So to the point I left the residency, I left
7 after the police left.

8 MR. DAVIS: May I approach, Your Honor, have this marked?

9 THE COURT: All right.

10 MR. DAVIS: May I approach the witness, Your Honor?

11 THE COURT: Yes.

12 BY MR. DAVIS:

13 Q Ma'am, I'm going to show you what's been marked as --

14 A I don't have my glasses.

15 Q Okay. Who, who has them? We can get them for you.

16 A All I got is my sunglasses with me. The other -- my
17 glasses are in the vehicle. They're in the vehicle.

18 Q I'm going to let you look at this. If you can't read it
19 you're going to tell me because what I was going to tell you
20 is I'm going to show you what's been marked as Defense Exhibit
21 Number Two so the Court can identify it. I want you to take a
22 look before I ask you any questions. I want to see if you
23 recognize it and if you're able to read it or not. Okay?

24 A It's hard for me to read my own handwriting.

25 Q Okay. Do you recognize that as a document with your

1 handwriting though?

2 A As much to my ability, yes.

3 Q Okay. Well, again, I don't want to ask you any questions
4 till you've had a chance. Do you recognize that to be your
5 handwriting?

6 A Yes.

7 Q And is that the, the form, the piece of paper that the --
8 you wrote the statement to the police on?

9 A Yes. That's a voluntary statement.

10 Q Okay. Now, ma'am, I want you to take as long as you need
11 to, take your time, but if you can tell the jury in your
12 statement where you mention they took off their masks or not
13 or if you didn't say that. Can you tell the jury if you
14 mentioned that they took off their masks?

15 A No.

16 Q I'm sorry. No you can't or no you didn't say that?

17 A I don't think I wrote that down.

18 Q Okay. And now, the same thing, in that statement can you
19 tell the jury if at any place in there you describe what the
20 folks were wearing?

21 A I think I said masks.

22 Q Okay. How about clothing, any other clothing, you
23 describe any --

24 A I think I may have said black. I didn't -- gosh. I wish
25 I had my glasses.

Rose Simpson - Cross by Mr. Davis

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1 Q Ma'am, are, are your glasses --

2 A They're just for reading.

3 Q Did you bring, did you bring glasses with you --

4 A Yes. Yes. Yes.

5 Q -- that you just don't have in the courtroom? Are they

6 --

7 MR. DAVIS: Your Honor, I'd ask we have a recess. I
8 don't want to ask her questions.

9 THE COURT: All right. Let's take about a 10-minute
10 break so she can get her -- ma'am, just stay right there. I'm
11 going to excuse the jury. Do not discuss the case even among
12 yourselves at this point in time. We're going to take a short
13 break so this witness can get her glasses and we'll resume.

14 A They're in my purse.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Ms. Simpson, we're in the middle
18 of your testimony. So the law requires that you cannot
19 discuss your testimony with anyone, whether that be what
20 you've testified to thus far or what you anticipate testifying
21 to in the future. You can't discuss it with the State's
22 attorney, the Defense attorney or anyone else. Okay?

23 A Yes.

24 THE COURT: So we're going to take a short break, let's
25 get her glasses and let me know when you've got her glasses

1 and we'll go ahead and resume at that time. All right. All
2 right. Let's take a short break.

3 OFF THE RECORD

4 (On the record. The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Anything from the State before we
7 bring the jury in?

8 MR. WEST: Nothing.

9 THE COURT: Anything from the Defense?

10 MR. DAVIS: No, Judge. I just -- obviously, Ms. Simpson
11 needs to compose herself for a moment. We're, we're ready.

12 A I'm fine.

13 THE COURT: All right. Let's go ahead and bring the jury
14 in.

15 (Whereupon, the following takes place in the presence of
16 the jury.).

17 THE COURT: All right. Ladies and gentlemen, welcome
18 back. We're ready to resume the trial of the case. Mr.
19 Davis, you can continue with your cross-examination.

20 MR. DAVIS: Thank you, Your Honor.

21 BY MR. DAVIS:

22 Q All right. Ms. Simpson, you have your glasses now? All
23 right. And you still have the Exhibit Number Two up there?
24 All right. I'll go back. If you can take a moment and look
25 at that statement, and if there's somewhere in your statement

Rose Simpson - Cross by Mr. Davis

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1 to police that you described the clothing other than masks,
2 can you tell the jury where that's at?

3 A No.

4 Q Okay. Is there anywhere in that statement you told the
5 police what the vehicle looked like?

6 A No. No. No.

7 Q Is there anywhere in that statement that you indicate --
8 I may have already asked you this. Forgive me, Ms. Simpson,
9 that any of them took their masks off?

10 A No.

11 Q Now, I need to go back to something so we can understand
12 this.

13 A Please hurry, sir.

14 Q You testified earlier that, you testified earlier that my
15 client came out with a box without a mask and told you, "Don't
16 look at me. Get your head down." Right? That's what you
17 testified to just a little bit ago; right?

18 A Correct.

19 Q Okay.

20 THE COURT: You're going to need to speak up and into the
21 microphone.

22 A Correct. Correct. I'm sorry, Your Honor.

23 THE COURT: Thank you.

24 Q And can you look at your statement and didn't you say in
25 your statement that, "A masked person told me to look down or

1 he would shoot me"; isn't that what you said in your
2 statement?

3 A Yes. I did, but I was under shock. It don't matter. I
4 know what you're trying to do, but --

5 Q And then finally in your statement to police didn't you
6 say one had a gun, right, in that statement?

7 A The one that threatened to shoot me. Yes.

8 Q Okay. But a little while ago when the Government was
9 asking you questions you said they all had guns; right?

10 A They did.

11 Q Okay.

12 A But I'm talking about the one that said to put my head
13 down. That's the one I was talking about.

14 Q Your statement says, "One had a gun, told not to move,
15 they were looking for the old man"; right?

16 A I said they come in. They bust the door down and they
17 said, "Where is the old man," is what I said.

18 Q Okay. And I'm asking you about the statement that's in
19 front of you. Didn't you write for the police, "One had a
20 gun, told not to move, they were looking for the old man?"
21 That's what you said the morning of this incident; right?

22 A Yes.

23 Q Okay. Now --

24 A But I know what I saw.

25 Q I'm sorry, ma'am?

Rose Simpson - Cross by Mr. Davis

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1 A I know who I saw.

2 Q Okay. In between when you gave that statement and
3 today, have the police ever shown up to show you photographs
4 --

5 A No.

6 Q -- of any vehicles?

7 A No. Oh, showed up to my house?

8 Q Anywhere, either to your house --

9 A I, I, I've come to the Solicitor's Office and looked at
10 pictures. Yes.

11 Q Okay. Okay. How many times did you come and speak with
12 the Government here at the Solicitor's Office?

13 A Once, this week, well, twice, today.

14 Q Okay. So one meeting before today right?

15 A In person.

16 Q Yeah. Now, other than the Solicitor's Office did anybody
17 from law enforcement between when this happened and this week
18 ever come to you and show you any pictures --

19 A No.

20 Q -- of vehicles?

21 A But -- no.

22 Q Okay.

23 A But I have left Charles Roberts to move back home.

24 Q Okay. Well, again, ma'am, I'll try to make it yes, no
25 questions for you.

1 A No.

2 Q Okay.

3 A No.

4 Q Did the police between when this happened and this week
5 ever come to you and show you any photos of people?

6 A No.

7 Q Well, ma'am, if, if you'll let me finish my question.

8 Did the police ever come to you and show you any pictures of
9 people --

10 A No.

11 Q -- to see if you can identify?

12 A No.

13 MR. DAVIS: Your Honor, if I could have just one moment.

14 THE COURT: All right.

15 MR. DAVIS: Thank you, Your Honor. Thank you, Ms.

16 Simpson. No other questions.

17 THE COURT: All right. Redirect?

18 A I can step down.

19 THE COURT: No, ma'am. Redirect.

20 REDIRECT EXAMINATION

21 BY MR. WEST:

22 Q Just a couple of more questions, Ms. Simpson.

23 A Yeah. Yes.

24 Q Mr. Davis asked you if you'd been convicted of fraud.

25 You wrote a bad check; didn't you?

Rose Simpson - Redirect by Mr. West

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1 A Yes.

2 Q Okay. Now, the people that came into the house would you
3 say they stayed in the house the whole time or were they in
4 and out?

5 A They were in and out.

6 Q In and out, and --

7 A There was someone in at all times, but they -- I don't
8 know if there was someone in the vehicle, in the vehicle, but
9 they were constantly moving.

10 Q Okay.

11 A And one of them kept saying, "Hurry up. We got to go, we
12 got to go, we got to go."

13 Q Did they identify each other by name?

14 A They called each other names, but I can't.

15 Q You can't remember them?

16 A I'm so sorry..

17 Q Okay. Does anything that Mr. Davis asked you change the
18 fact that you know this man is the man that shoved a gun in
19 your face and ransacked that house?

20 A Say -- I'm sorry, say that again.

21 Q Does anything that Mr. Davis just asked you change the
22 fact that you know this man as the man that shoved a gun in
23 your face and ransacked the house?

24 MR. DAVIS: Objection, Your Honor, leading. Objection,
25 Your Honor, leading.

1 THE COURT: Overruled.

2 A Do I answer that?

3 Q Yes.

4 A Yes.

5 Q He's the man?

6 A He's the man.

7 Q Thank you.

8 THE COURT: All right. You may step down.

9 MR. DAVIS: Your Honor, if I may?

10 THE COURT: No. No recross.

11 MR. DAVIS: Note my objection, Your Honor?

12 THE COURT: All right. So noted. All right. The State
13 can call your next witness.

14 MR. POULOS: The State calls Stephen Jones.

15 Whereupon, Stephen Jones is called to the stand, duly
16 sworn by the clerk and testified as follows:

17 THE CLERK: Thank you. Have a seat. State your full
18 name for the record and spell your last name.

19 MR. JONES: Stephen Jones, J-O-N-ES.

20 DIRECT EXAMINATION

21 BY MR. POULOS:

22 Q Good afternoon, Mr. Jones. Where do you currently live?

23 A I currently live Orangeburg Road in Summerville.

24 Q What do you do for a living?

25 A I'm a mechanic.

Stephen Jones - Direct by Mr. Poulos

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1 Q Do you know Charles Roberts and Rose Simpson?

2 A I do.

3 Q How do you know them?

4 A I've worked off and on for Charles Roberts doing
5 automotive work for him and I lived with him.

6 Q Were you living with Charles Roberts on Bryan Drive on
7 October 21st, 2014?

8 A I was.

9 Q Okay. What's the exact address of that residence?

10 A Bryan Drive.

11 Q Okay. And that's in Berkeley County?

12 A Yeah.

13 MR. DAVIS: Your Honor, I object, lacks personal
14 knowledge.

15 THE COURT: Overruled.

16 MR. DAVIS: Lack of foundation to that.

17 THE COURT: Overruled.

18 Q Mr. Jones, did you have your own bedroom in the house at
19 that time?

20 A I did.

21 Q Okay. Now, specifically on October 21st, 2014, in the
22 early morning hours, did you hear anything out of the
23 ordinary?

24 A A loud bang and a bunch of yelling.

25 Q When you say a loud bang, describe it for us.

1 A It sounded almost like somebody running a car through the
2 front of the house.

3 Q Okay. What did you do when you heard that noise?

4 A I jumped up and put my clothes on because I was asleep in
5 the bed.

6 Q So at that time you were still in your bedroom?

7 A Yeah.

8 Q Okay. Did anyone come into the room?

9 A When I was putting my boxers on I felt something hit the
10 back of my head and it was two people behind me with a gun to
11 my head telling me to go in the living room.

12 Q Okay. Describe those people for me, male, female?

13 A They were wearing masks. I mean, I was turned away from
14 them. All I heard was the male's voice and then kind of saw
15 the shadow of the second person.

16 Q Were they both wearing masks at that time?

17 A Yes.

18 Q Okay. Tell me about their height, weight, hair color, if
19 you could see it, that sort of thing.

20 A The best I remember they're -- I mean, at that time, I
21 mean, I was turned away from them. So I couldn't really get a
22 look at them. They're about my same build, I mean, about my
23 same height, I guess.

24 Q White, black, Hispanic?

25 A Oh, white.

Stephen Jones - Direct by Mr. Poulos

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1 Q Okay. And I'm sorry you might have already said this,
2 male, male?

3 A Male.

4 Q Both male?

5 A Yes.

6 Q Okay. How long did you stay in the bedroom with them?

7 A It wasn't but a second.

8 Q Okay. And where did you go?

9 A The took me in the living room.

10 Q When you say they took you to the living room, what do
11 you mean?

12 A Well, I mean, they had a gun in the back of my head and
13 demanded that I go in the living room.

14 Q Okay. Once you went into the living room, what happened?

15 A They told me to sit down on the loveseat and they told
16 what seemed to me to be the younger of the three to watch me
17 and don't let me move, and they began basically going all
18 through the house and just taking what they wanted out.

19 Q Now, just to be clear, was the younger one one of the two
20 that was in the bedroom with you?

21 A I, I don't believe so.

22 Q Okay. So you've got the two in the bedroom with you and
23 you described a younger one. Where did you see him?

24 A He was in the living room. When I -- the first time I
25 actually saw him he was in the living room.

1 Q Okay. What was he doing?

2 A Basically the entire time standing there with a gun on
3 me.

4 Q And did you see Rose at that time?

5 A Yes. She was sitting on the couch next to me.

6 Q Okay. So at this point you've seen three males?

7 A Yes.

8 Q And you stated one of them seemed younger?

9 A Yes.

10 Q What about him made you think he was younger?

11 A I just -- his whole demeanor. I mean, he was much
12 smaller than the other two. Whenever he spoke he -- I don't
13 know if this makes sense, but it sounds almost as if he had
14 just hitten [sic] puberty, I mean, just had the youngness to
15 his voice.

16 Q Okay. After they took you to the living room and you saw
17 the third male, what happened? What were they doing?

18 A They were going all through the house taking stuff, going
19 back and forth to Charlie's room. At one point they came out
20 in the living room, the one without the mask, and told me that
21 he don't take a person's tools, a man's tools and then turned
22 around and started taking my tools.

23 Q What kind of tools were they?

24 A Drills, hand tools, just random different tools.

25 Q Do you recall where in the house those tools were?

Stephen Jones - Direct by Mr. Poulos

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1 A Some were in the middle room and then some were in
2 Charlie's room.

3 Q Okay. And you said the man without the mask. Did one of
4 the three men who was wearing the mask at some point take the
5 mask off?

6 A I, I -- one of them I've never seen with a mask.

7 Q Okay.

8 A If he was wearing a mask I don't remember it.

9 Q Okay. And how good of a look did you get at that
10 person's face?

11 A Pretty good.

12 Q How close did he get to your face during this incident?

13 A At one -- at one or two times there's a couple of times I
14 could recall that he got right up in my face.

15 Q Okay. And do you see that person in court today?

16 A I do.

17 Q Could you please point to him and identify an article of
18 clothing?

19 A Right there with the suit, gray shirt, dark colored
20 jacket.

21 MR. POULOS: And Your Honor, please let the record
22 reflect the witness has identified the Defendant.

23 MR. DAVIS: Your Honor, no new objection, but I would
24 renew my old objection.

25 THE COURT: Overruled. Yeah.

1 MR. DAVIS: Thank you, Your Honor.

2 BY MR. POULOS:

3 Q Mr. Jones, I want to show you what has been marked as
4 State's Exhibit 99. Tell me if you recognize that, please.

5 A That's the house that we were living in at the time.

6 Q When you say the house, is it a photo of the house or is
7 it a diagram of the layout.

8 A It's a diagram of the house.

9 Q Okay. Is that a fair and accurate representation of the
10 layout of the house you were residing at the time?

11 A It is.

12 Q Okay.

13 MR. POULOS: Your Honor, I'd offer this into evidence and
14 ask permission to publish for demonstrative purposes.

15 THE COURT: Any objection?

16 MR. DAVIS: No objection, Your Honor.

17 THE COURT: All right. State's Exhibit 99 admitted into
18 evidence without objection.

19 (State's Exhibit Number 99 [Sketch] admitted into
20 evidence and appropriately marked.)

21 BY MR. POULOS:

22 Q Mr. Jones, this is a laser pointer, hit that button there
23 and it will point at that.

24 A Okay.

25 Q Okay. When you, when you speak, please speak into the

Stephen Jones - Direct by Mr. Poulos

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1 microphone.

2 A Okay.

3 Q Okay. Now, this is a layout of the house at Bryan Drive;
4 is that correct?

5 A Yes.

6 Q Okay. Please show the jury where your bedroom is in that
7 layout?

8 A My bedroom would be that one right there.

9 Q Okay. And the room next to that what, what is that room
10 used for?

11 A That room is supposed to be like storage and just there's
12 a refrigerator in there for food and just whatever we needed
13 out the way.

14 Q Okay. Where is the living room that you said you were
15 taken to?

16 A Right there.

17 Q Okay. And where is Charles Roberts' room?

18 A Right there.

19 Q Okay. All right. You can put the laser pointer down.
20 Now, you stated during this incident they were running through
21 the house taking things, looking through things?

22 A Yes.

23 Q Okay. Did they go back to your bedroom to take items?

24 A Yes.

25 Q Okay. What condition did they leave your bedroom in?

1 A For a lack of better words, it looked like a tornado came
2 through it.

3 Q Mr. Jones, I'd like to show you three photographs marked
4 as State's 19, 20 and 21. If you could look through those and
5 just look up when you're done. Do you recognize these
6 photographs?

7 A Yes, my bedroom.

8 Q These photographs fairly and accurately represent how
9 your bedroom appeared after the incident?

10 A Yes.

11 Q Okay.

12 MR. POULOS: Your Honor, if I may, if I may publish these
13 on the projector. I'm sorry. Offer these into evidence as
14 State's 19, 20, 21.

15 THE COURT: Any objection?

16 MR. DAVIS: No objection, Your Honor.

17 THE COURT: All right.

18 MR. POULOS: If I may publish?

19 THE COURT: State's Exhibits 19, 20 and 21 are admitted
20 into evidence without objection.

21 (State's Exhibit Numbers 19, 20 and 21 [Photographs]
22 admitted into evidence and appropriately marked.)

23 THE COURT: You can go ahead and publish them.

24 BY MR. POULOS:

25 Q This is a photo of your bed?

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1 A Yes.

2 Q Okay. And this is your room as well?

3 A Yeah. That's the area between my bed and the wall.

4 Q Okay. And 21. And again, this is a photo of your bed?

5 A Yes.

6 Q Okay. Now, I'm going to show you a couple of more
7 photographs. I'm going to show you now photographs marked as
8 State's Exhibits Three and Four. Take a look at these for me,
9 please. Do you recognize those photographs?

10 A Yes. The living room and part of the kitchen in one of
11 them.

12 Q Okay. Do those photographs fairly and accurately
13 represent how the living room and kitchen area appeared on the
14 date of the incident?

15 A Yeah.

16 Q Okay.

17 MR. POULOS: I'd offer those into evidence, Your Honor.

18 THE COURT: Any objection?

19 MR. DAVIS: Three and Four no objection, Your Honor.

20 THE COURT: State's Exhibit Three and State's Exhibit
21 Four admitted into evidence without objection.

22 (State's Exhibit Number Three and Four [Photographs]
23 admitted into evidence and appropriately marked.)

24 BY MR. POULOS:

25 Q Okay. Now, directing your attention there, where were

1 you sitting exactly?

2 A On the loveseat. The couch is kind of cut off. There's
3 the loveseat. I'm sorry. I was sitting right there.

4 Q Okay. And where was Rose sitting?

5 A On the couch right there.

6 Q Okay. The younger male who was holding the gun on you,
7 where was he standing?

8 A Well, you can't really see the spot on here, but I guess
9 if I were to point at it it'd be right here.

10 Q Okay. And at this point in time, what were the other two
11 males doing?

12 A They were basically going all through the house --

13 Q Okay.

14 A -- and just taking stuff out.

15 Q How many times did the Defendant walk by you?

16 A I mean, honestly, it was quite a few he had just walked
17 by. I'm not -- don't know how many. It was quite a few.

18 Q How many times did he get in your face?

19 A He had gotten in my face at least two or three times.

20 Q Okay. How many times did he address you, did he say
21 something to you?

22 A At least two or three times.

23 Q Okay. Did you see a fourth person in the house as well?

24 A Yeah. A female. I saw her a couple of times, but she
25 was in the back bedroom most of the time.

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1 Q Okay. How do you know it was a female?

2 A You could hear it in her voice when she talked, that and
3 they kept calling her mom.

4 Q What about her -- kept calling her mom?

5 A Yeah.

6 Q Okay. What about her hair or her body type?

7 A It was long brown hair.

8 Q Okay.

9 A And I mean, you could see a female figure under her
10 clothes.

11 Q So that's a total of four individuals who broke into the
12 house that night?

13 A Yes.

14 Q Okay. Now, just to be clear, this is early morning. Is
15 it dark outside?

16 A Yes.

17 Q Okay. Did you see the Defendant with a gun?

18 A Yes.

19 Q Okay. And you said you saw the younger man with a gun?

20 A Yes.

21 Q Did you see any other guns?

22 A I mean, they all had guns as, as to -- they all had, I
23 believe it was semiautomatics, but I mean, I don't remember
24 exactly what every gun looked like. I just remember there
25 were guns and they all had one.

1 Q Okay. When you say semiautomatic are you referring to
2 handguns?

3 A Yes.

4 Q Okay. Mr. Jones, what were they doing with the property?

5 A Taking it out the house.

6 Q Did they move it around the house at any point?

7 A There was a couple of times where they would take it out
8 the bedrooms and set it down in front of the door and go back
9 for more and then come back and take it out the front door
10 outside somewhere, I assume to their car because it wasn't
11 there when they left.

12 Q Mr. Jones, I want to show you what's marked as State's
13 Exhibit 15 and see if you recognize this photograph.

14 A Yeah.

15 Q And what is that a photograph of?

16 A That would be photograph of my or what was parts of my
17 computer it looks like.

18 Q Okay. Does that photograph depict how the property was
19 being corralled by the Defendants in the house?

20 A Yeah.

21 Q Okay.

22 MR. POULOS: I'd offer this into evidence, Your Honor, as
23 State's 15.

24 THE COURT: Any objection?

25 MR. DAVIS: No objection, Your Honor.

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1 THE COURT: All right. State's Exhibit 15 admitted into
2 evidence without objection.

3 (State's Exhibit Number 15 [Photograph] admitted into
4 evidence and appropriately marked.)

5 BY MR. POULOS:

6 Q Now, is -- what part of the house is this?

7 A That's the hallway leading back to my bedroom.

8 Q Okay. And there's a pile of property there. Who was
9 piling the property up like that, do you recall?

10 A I mean, all of them for the most part. Yeah.

11 Q All of them. Okay. Including the Defendant?

12 A Yes.

13 Q Okay. In total, Mr. Jones, what would you say, as far as
14 your property, what was taken from the house?

15 A Well, there's a TV in my room that was taken out, my
16 wallet, and a lot of personal belongings, I mean, I couldn't
17 even begin to tell you now it's been so long, a couple of car
18 radios that were put up in my room, all my -- everything that
19 was in my wallet such as my debit cards and personal cards
20 like that. Just my belongings or --

21 Q For now, yes. Just your belongings.

22 A Okay, yeah. I mean, there's -- I know they took my
23 pillowcase because they had put everything that -- in my room
24 in that pillowcase.

25 Q Mr. Jones, I'm going to show you an envelope marked

1 State's Exhibit 115 and I'd ask you to remove the contents and
2 tell me if you recognize those items.

3 A Yes. That's my driver's license, EBT card, Social
4 Security card and debit card.

5 Q Okay. Put those back in the bag for me.

6 A (Complies with request.)

7 Q Mr. Jones, at any point anybody have permission to take
8 any of this stuff from you?

9 A No.

10 Q Okay. Now, let's get back to the living room. How long
11 would you say you sat on the couch?

12 A At least an hour if not more.

13 Q Okay. Did there come a time when you went somewhere else
14 in the house?

15 A Whenever they were leaving they told me get to go back
16 into Charlie's room in the bathroom.

17 Q If you'd point out for us where exactly that is.

18 A I was right here when they left.

19 Q Okay. What did they say to you once they took you to the
20 bathroom?

21 A They said that if we were to call the cops they'd come
22 back and kill us.

23 Q Okay. Who specifically said that if you recall?

24 A I believe it was the female.

25 Q Okay. And how long did you stay in the bathroom after

Stephen Jones - Direct by Mr. Poulos

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1 they left?

2 A I'm really not sure. It wasn't long. I -- we heard them
3 go out the door. We heard a car door shut, and then I
4 immediately ran back into my room to finish putting on my
5 clothes.

6 Q What'd you do after, after they left?

7 A Immediately after they left I found my keys to the truck
8 I was driving at the time, and I went outside to kind of
9 follow them down to hopefully at least get a license plate off
10 their car, but they were long gone.

11 Q Okay. So you weren't able to find them?

12 A No.

13 Q Okay. At what point did you go back to the house?

14 A It was a little while after it because I -- after that, I
15 mean, I was shaken up. So I had stopped at my girlfriend's
16 house and kind of sat with her for a little bit to try and
17 calm down and get myself collected back together.

18 Q Okay. When you eventually went back to the house were
19 the police there?

20 A Yes.

21 Q And did you speak with them?

22 A Yes.

23 MR. POULOS: If I may just have a moment, Your Honor.

24 THE COURT: All right.

25 MR. POULOS: Thank you. No further questions, Your

1 Honor. Thank you.

2 THE COURT: All right. Cross examination.

3 CROSS EXAMINATION

4 BY MR. DAVIS:

5 Q All right. Mr. Jones, just to tie up a few loose ends,
6 if we can, or to make things clear, if we can, pretty quickly
7 after you responded to the noise there were two people in your
8 bedroom; right?

9 A Yes.

10 Q You'd been asleep?

11 A Yeah.

12 Q Lights were out in your room?

13 A Correct.

14 Q And I think what you're saying is the way you were
15 standing to your doorway, they came up behind you?

16 A Correct.

17 Q Okay. So you had your back to your bedroom door to the
18 hallway?

19 A Correct.

20 Q Okay. You were trying to put clothing on?

21 A Yeah.

22 Q Okay. And then you got hit on the head with a gun from
23 behind, hit you in the back of the head somewhere?

24 A Yeah.

25 Q Okay. Pretty quickly after that they're hustling you out

Stephen Jones - Cross by Mr. Davis

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- 1 into the living room?
- 2 A Correct.
- 3 Q Sit on the sofa?
- 4 A Yeah.
- 5 Q Okay. Didn't knock you out, just hurt real bad, the hit
- 6 on the head?
- 7 A I mean, it didn't really hurt that bad. They just hit me
- 8 hard enough to let me know they were there basically.
- 9 Q Okay. You never went to the hospital, got any treatment
- 10 for that?
- 11 A No. No.
- 12 Q Okay. And once you got in the living room is kind of dim
- 13 lighting in there because this was mid hours of the morning?
- 14 A Yeah.
- 15 Q Right? You were scared?
- 16 A Yeah. I mean, guns at me.
- 17 A Right. You had guns and you, you were able to see that I
- 18 think you testified that all, all four had guns?
- 19 A Yes.
- 20 Q Okay. That got your attention?
- 21 A Yes.
- 22 Q You, you were able to focus on the guns enough to know
- 23 that they are all handguns?
- 24 A Yes.
- 25 Q Right. Semiautomatic handgun; right?

- 1 A I believe they were all. Yes.
- 2 Q Didn't look like revolvers with the cylinder; right?
- 3 A No. Didn't look like it. No.
- 4 Q You, you know what guns look like?
- 5 A Yeah.
- 6 Q Automatic versus a revolver?
- 7 A Yeah.
- 8 Q Okay. One young person, male, stood near you by the
- 9 couch; right?
- 10 A No. He stood across from me.
- 11 Q Across from. I'm sorry. I'm so sorry. You're on the
- 12 loveseat. He's over by the couch; right?
- 13 A No. He's across from the couch in front of me.
- 14 Q Okay. Okay. Okay. You can tell that by his voice and
- 15 his demeanor --
- 16 A Yes.
- 17 Q -- he was young, and he was a male; right?
- 18 A Yes.
- 19 Q Two other males running, screaming around; right?
- 20 A Yes.
- 21 Q And then I think you testified about in the back bedroom
- 22 was where you could tell by voice and figure it was a female
- 23 back there; is that correct?
- 24 A Yeah. When I -- yeah.
- 25 Q That's Mr. Roberts' room; right?

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1 A Yes.

2 Q When -- and I'm sorry. I'm going back just a little bit.
3 When you were getting taken out of your bedroom I think you
4 said you were kind of turned away. You didn't get a good
5 look, right, of, of the two people; right?

6 A When I was being taken out of the room, no, I never
7 really saw them. I just -- I knew it was two people.

8 Q Both had masks on?

9 A Yeah.

10 Q Okay. You're telling the jury today that John is one of
11 the folks that was running around the house?

12 A Yes.

13 Q Now, do you remember when you finally went back to the
14 house after being at your girlfriend's the police were there;
15 right?

16 A Yes.

17 Q And you talked to the police?

18 A Yes.

19 Q And you knew they were trying to investigate this crime;
20 right?

21 A Yes.

22 Q Trying to figure out who did it; right?

23 A Yeah.

24 Q And go get the people who did it; right?

25 A Uh-huh.

1 Q And they asked you --

2 THE COURT: Excuse me. Is that a yes?

3 A Yes, sir.

4 Q I'm sorry. And they asked -- you talked to them and you
5 said you would?

6 A Yes, sir.

7 Q And they asked you if you'd give a statement and you did?

8 A Yes.

9 Q And you handwrote your own statement; right?

10 A Yes.

11 MR. DAVIS: Your Honor, may I approach?

12 THE COURT: All right.

13 MR. DAVIS: Your Honor, may I approach the witness?

14 THE COURT: All right.

15 BY MR. DAVIS:

16 Q Mr. Jones, I'm going to show you what's been pre-marked
17 as Defense Exhibit Number One for identification purposes.

18 I'm not going to ask you any questions right up front. Just
19 take a second. Look over that. See if you recognize it and
20 then I may have some questions for you. Okay?

21 A Yes. This is my statement.

22 Q Okay. Fair enough. And that would've been given the
23 morning after this happened, the same, same morning?

24 A Correct.

25 Q And your testimony today that you recognize John because

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1 he had his mask off; right, at some point?

2 A Correct.

3 Q And he got in your face at some point; right?

4 A Correct.

5 Q Okay. In your statement can you tell the jury anywhere
6 in there if you mention about any of the people getting in
7 your face?

8 A No. Not in my statement I didn't.

9 Q Okay. Do recall in your statement talking about the only
10 one not wearing a mask, you referenced that person in your
11 statement; didn't you?

12 A I don't know. Hold on. Yeah. There is something about
13 that in here. Yes.

14 Q And in the statement you talk about only one of them not
15 having a mask on; right?

16 A Yes.

17 Q And that one that didn't have a mask you couldn't see him
18 because he stayed in the shadows or out of sight, that's what
19 you told the police in your statement; right?

20 A Yeah. That is what I put in the statement. Yes.

21 MR. DAVIS: Your Honor, if I could have just a moment.

22 THE COURT: All right.

23 MR. DAVIS: Thank you, Your Honor. Thank you, Mr. Jones.

24 No other questions.

25 THE COURT: Redirect?

1 MR. POULOS: Yes, Your Honor, briefly.

2 REDIRECT EXAMINATION

3 BY MR. POULOS:

4 Q Mr. Jones, to be clear, when you were in your bedroom
5 could you see his face?

6 A No.

7 Q Okay. When you were taken to the living room and you
8 sat there for an hour, at that point could you see his
9 face?

10 A When he got up in my face, yes.

11 Q Okay. You could see this Defendant's face?

12 A Yes.

13 Q Okay.

14 MR. POULOS: No further questions.

15 THE COURT: All right. You may step down.

16 A I leave all that there; right?

17 THE COURT: Just leave that there. Thank you.

18 All right. The State can call your next witness.

19 MR. WEST: The State calls Charles Roberts.

20 Whereupon, Charles Roberts is called to the stand, duly
21 sworn by the clerk and testified as follows:

22 THE CLERK: If you'll have a seat, state your full name
23 for the record and spell your last name.

24 MR. ROBERTS: My name is Charles W. Roberts, and Roberts
25 is spelled R-O-B-E-R-T-S.

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1 MR. ROBERTS: My name is Charles W. Roberts and Roberts
2 is spelled R-O-B-E-R-T-S.

3 DIRECT EXAMINATION

4 BY MR. WEST:

5 Q Good afternoon, Mr. Roberts. Tell the jury what you do
6 for a living?

7 A I'm pretty much retired right now. I have some rental
8 properties that I get income from, and I fix up cars and sell
9 them.

10 Q Okay.

11 A I used to have a towing and auto repair business, and I
12 still enjoy, you know, getting cars and fixing them up.

13 Q Do you have any children?

14 A Yes, ma'am. Yes, sir.

15 Q Do you have any grandchildren?

16 A Yes, sir.

17 Q Okay. Does anybody live with you now?

18 A Not right this second. No. My youngest grandchild was
19 living with me for a while.

20 Q All right. Where do you live?

21 A I live at Bryan Drive in Moncks Corner.

22 Q Do you know if that's in Berkeley County?

23 A Yes, sir.

24 Q Do you know this Defendant?

25 A Do I know the Defendant?

1 Q Yeah. Do you?

2 A Yes.

3 Q Okay. Well --

4 A I know him from what happened.

5 Q Do you recall the incident that brings us here today?

6 A I beg your pardon?

7 Q Do you recall the incident that brings us here today?

8 MR. DAVIS: Your Honor, forgive me. I'm sorry. With,
9 with that prior testimony I would renew my objection. He
10 evidently -- any --

11 THE COURT: Overruled.

12 MR. DAVIS: Thank you, Your Honor.

13 THE COURT: Oh.

14 MR. DAVIS: As to the --

15 THE COURT: Let me see the attorneys.

16 (Whereupon, a bench conference is held in the presence,
17 but out of the hearing of the jury.)

18 BY MR. WEST:

19 Q Do you recall the incident that brings us here today?

20 A Do I recall the incidents that brought us here today?

21 Q That's right.

22 A Yes. I do.

23 Q Okay. Were you living at Bryan Drive on October 21st,
24 2014?

25 A Yes. I was.

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1 Q Who was living with you on that date?

2 A My friend Stephen Jones and my girlfriend at the time
3 Rose Simpson.

4 Q Okay. The night before the incident was everything
5 normal?

6 A Pretty much normal, yes. Rose got a headache, and she
7 left my bedroom to lay on the couch.

8 Q What time would you say you went to sleep?

9 A I stay up late. So it was probably around 2:00 o'clock
10 before I fell asleep.

11 Q Okay. Were you asleep when this incident first happened?

12 A When it happened, yes. I was.

13 Q Okay. That night where did Rose sleep?

14 A Originally she was sleeping with me, and then she went to
15 her -- to the living room and slept on the couch.

16 Q Okay. Tell the jury how you woke up that day.

17 A I woke up when a gentleman opened up my door and shoved a
18 gun at me.

19 Q What time of day was it?

20 A It was after 4:00 o'clock in the morning.

21 Q Was it still dark outside?

22 A Yes, sir. It was.

23 Q How did the people that came in your house get inside?

24 A They busted my door open and I, and I had to repair it
25 because they tore -- the frame and everything came loose when

1 they kicked the door in.

2 MR. WEST: I'm showing the witness what's been marked as
3 State's Exhibits One through 22 and State's Three, Four, 15,
4 19, 20 and 21 having been previously admitted. Let the record
5 reflect that the State has shown these to Defense counsel.

6 BY MR. WEST:

7 Q Mr. Roberts, can you look through those and tell us if
8 you recognize those items?

9 A This is a picture of my front yard, and this is a picture
10 -- let's see how that goes -- yeah, this is a picture of where
11 they kicked my door in and it shows the --

12 Q Okay. We'll individually go through them in just a
13 second. Why don't you just flip through them right now --

14 A Okay.

15 Q -- and tell me whether you recognize them.

16 A Yes, sir. I recognize them.

17 Q All right. And those items, are they accurate
18 reflections of your home on the date of this incident?

19 A Those pictures are accurate. Yes.

20 Q Okay.

21 A They are accurate.

22 MR. WEST: The State would ask, ask these items be moved
23 into evidence.

24 THE COURT: Any objection?

25 MR. DAVIS: No, Judge, just be clear Three, Four, 15 and

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1 19 to 21 have already been admitted. So the remaining numbers
2 One through 22 we have no objection.

3 THE COURT: All right. So that would be State's Exhibits
4 One, Two, Five, Six, Seven, Eight, Nine, 10, 11, 12, 13, 14,
5 16, 17, 18, 22 are admitted into evidence without objection.

6 MR. DAVIS: That's correct, Your Honor.

7 (State's Exhibits One, Two, Five, Six, Seven, Eight,
8 Nine, 10, 11, 12, 13, 14, 16, 17, 18 and 22 [Photographs]
9 admitted into evidence and appropriately marked.)

10 MR. WEST: Permission to publish, Your Honor?

11 THE COURT: All right.

12 MR. WEST: Please publish State's Number Two.

13 BY MR. WEST:

14 Q Mr. Roberts, if you look behind you, I have a picture,
15 and if you could, when you talk, please still talk into the
16 microphone.

17 A Yes.

18 Q The microphone behind your head.

19 A Okay.

20 Q Sorry. I apologize.

21 A Go ahead?

22 Q Yeah. Tell the jury what that's a picture of.

23 A Well if it's turned sideways it's a picture where they
24 kicked in my door.

25 Q Okay.

1 A If it's like this, if it's like the door upright instead
2 it wasn't side, back, up, you know, sideways.

3 MR. WEST: Please publish State's Number Eight.

4 BY MR. WEST:

5 Q Tell the jury what that's a picture of.

6 A That's a picture of my bedroom.

7 Q Okay.

8 MR. WEST: Publish State's Number Nine.

9 BY MR. WEST: '

10 A That's another picture of my bedroom.

11 Q Okay. Now, in the center of that picture could you tell
12 the jury what that drapery leads to?

13 A That's my master bathroom.

14 Q The bathroom. Okay. How about State's Number 17,
15 please. What's this a picture of?

16 A That looks like the storage room to me. Yeah. I'm, I'm
17 sure it is.

18 Q And Number 19, what's this a picture of?

19 A That looks like Stephen's room.

20 Q Stephen's room. Okay. Now, did your house look like
21 this before the incident?

22 A No, sir. It didn't.

23 Q Do you normally keep your house pretty clean?

24 A It was -- well, it wasn't nowhere close to that, I mean,
25 it wasn't immaculate but it was -- I keep it fairly clean.

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1 Q Would you say it's been turned upside down?

2 A Say it again, sir.

3 Q Would you say that, that looks like it's been turned
4 upside down?

5 A That looks like it's been thrown around. Yes.

6 Q Okay.

7 MR. WEST: If I could have the lights again, please.

8 BY MR. WEST:

9 Q When you were first awoken, how many people were in your
10 bedroom?

11 A Only him.

12 MR. WEST: Your Honor, could we approach?

13 THE COURT: All right.

14 (Whereupon, a bench conference is held in the presence,
15 but out of the hearing of the jury.)

16 THE COURT: All right. Ladies and gentlemen, I'm going
17 to excuse you back to the jury room for just a few minutes
18 while I need to take up a matter of law with the attorneys,
19 and I tell you why we excuse you back to the jury room. It's
20 not that I'm trying to hide anything from you or keep anything
21 from you, but as I told you during the opening charges, you
22 and you alone decide the facts of the case. I decide the law
23 to be applied to the case. Well, oftentimes when I discuss
24 the law with the attorneys it requires me as the Judge and the
25 attorneys to reference factual issues. Well, what we say is

1 not evidence. So we do not want you to be influenced by
2 anything that I might say or that the attorneys might say to
3 influence your decision on what the facts of the case are
4 because you're to make your determination based upon the
5 witness's testimony, and so that's why we excuse you back to
6 the jury room. So I'm going to excuse you back to the jury
7 room for just a few minutes and we'll bring you back out
8 shortly. All right?

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Mr. West.

12 MR. WEST: Your Honor, the reason we took a brief recess
13 is I wanted to ensure the Court that I had instructed the
14 witness not to identify the Defendant in court as per your
15 instructions. So I would like the Court to remind the witness
16 in your own way that he is not supposed to identify the
17 Defendant in front of the jury.

18 THE COURT: All right. All right. Mr. Roberts, in my
19 pretrial ruling I have stated that you cannot identify this
20 Defendant as the perpetrator of the crime. You can listen to
21 the questions proposed to you, answer those questions, but my
22 ruling was that your identification of Mr. Darrieux sitting
23 here in the courtroom today at trial is not sufficient and you
24 can't reference him as the perpetrator of the crime. You can
25 tell what happened, but you can't say he's the one that did

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1 it. Do you understand that?

2 A I understand what you're saying. Yes, sir.

3 THE COURT: Okay. All right. Is that sufficient from
4 the State?

5 MR. WEST: Yes, Your Honor.

6 THE COURT: All right. Is that sufficient from the
7 Defense?

8 MR. DAVIS: As to that issue, yes, Your Honor.

9 THE COURT: All right.

10 MR. WEST: Thank you, Judge.

11 THE COURT: Anything further?

12 MR. WEST: I think we just need the, the record to be
13 clear as to how, if he's not going to identify the Defendant,
14 how he's going to reference the person that he's talking
15 about.

16 THE COURT: He can just say that the, the person came
17 into the house, the person was the male --

18 MR. WEST: The man, any, any physical descriptors.

19 THE COURT: -- the man that came -- yeah, the man who
20 came in the house or whatever, but as I understand from our
21 pretrial motions and everything, the mask was on him the whole
22 time. He never saw the Defendant or could identify the
23 Defendant until he was at the bond hearing when he showed up
24 at the bond hearing, which is so tainted I ruled that he could
25 not give an in-court identification because the first time he

1 said he ever saw Mr. Darrieux was at the bond hearing when he
2 showed up and they said, "This is the guy that broke into your
3 house," and so that was the basis for my ruling. So you can
4 --

5 A Well, that, that wasn't true, sir.

6 THE COURT: Well, the fact of the matter is I've already
7 made a ruling. You can refer to the person who broke into the
8 house, the man who broke into the house, whoever, but you
9 can't say when the Defendant came into the room or when the
10 Defendant did whatever. Okay?

11 A All right. Whatever you say, Your Honor.

12 THE COURT: All right. Is that sufficient?

13 MR. WEST: I think that's sufficient, Your Honor --

14 THE COURT: All right.

15 MR. WEST: -- for the, the purposes of this break.

16 THE COURT: All right.

17 MR. DAVIS: And Judge, I agree. Certainly, physical
18 descriptions, gender, race, height, weight, we understand
19 that, but just that it -- of all the people in the world it
20 was my client that he could not reference that. So we
21 understand your instruction, and we have nothing in addition
22 to it. Judge, because of the unique way, and I do understand
23 the State didn't get it -- intend to get into this, I think
24 the State was focused on whether my client, anyone had
25 permission, and but the, the offhanded comment that Mr.

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1 Roberts made on the record was he knows my client, knows John
2 from that night. Within seconds I realized that might be an
3 ID thing. I objected. You sustained my objection, but the
4 more we're dwelling with this now I feel compelled to ask you
5 to strike that and give an instruction that the jury to
6 disregard that because that was said out loud, "I know him
7 from that night," and that is contrast to your ruling.

8 THE COURT: Okay. I'm going to let it just go forward.
9 We'll just carry it from this point forward. Okay. I'm not
10 going to give any, any additional curative instructions.

11 MR. WEST: Thank you, Judge. We're ready to proceed.

12 THE COURT: All right. Let's go ahead and bring the jury
13 back in.

14 MR. DAVIS: May we approach while they're filing in, Your
15 Honor?

16 (Whereupon, a bench conference is held in the presence,
17 but out of the hearing of the jury.)

18 (Whereupon, the following takes place in the presence of
19 the jury.)

20 THE COURT: All right. Mr. West, you can continue with
21 your questioning.

22 MR. WEST: Thank you, Your Honor.

23 BY MR. WEST:

24 Q How many people came into the house?

25 A As I understand four people came in.

1 A Okay. How many people did you physically see?

2 A Two people.

3 Q Okay. Did you stay in your bedroom the whole time?

4 A I stood in my bedroom the whole time.

5 Q Okay. The people that were in your bedroom, what were
6 they wearing?

7 A Dark clothes as far, as far as I know. It was, it was
8 dimly lit when they first walked in. Then they turned the
9 light on, and that's when -- one of them didn't have a mask on
10 at all. One of them dropped their mask and I seen her, and
11 then she told me to cover my head.

12 Q Okay. And you said she, there was a female involved?

13 A Yes.

14 Q Could you describe the female?

15 A She was a petite lady with long dark hair.

16 Q Okay. Skin tone?

17 A She wasn't black. She was like, I don't know, tanned.

18 Q Okay. Could you tell anything specific about her voice?

19 A She was like, I don't know how to tell you, except
20 foreign like she spoke English but, you know, accent.

21 Q She had an accent. Could you tell any of their ages?

22 A I just would guess that they were in their thirties,
23 maybe early thirties.

24 Q Okay. Specifically, the female, could you tell her age?

25 A Again, I'd say in, in her thirties.

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- 1 Q In her thirties. And the male was he in his thirties?
- 2 A In his thirties.
- 3 Q Was the male white, black, Hispanic?
- 4 A The male was white.
- 5 Q White male, could you describe whether he had any facial
- 6 hair on his face?
- 7 A Yes. I mean, he had -- he didn't have facial hair at the
- 8 time that I recall, that he had hair, hair like mine.
- 9 Q Okay. What color was his hair?
- 10 A Dark.
- 11 Q How tall would you say he was?
- 12 A I, I imagine he was about five eight like I am, five
- 13 nine.
- 14 Q Okay. Skinny, fat, muscular, how would you describe his
- 15 build?
- 16 A He's average, I guess, not, not fat or skinny.
- 17 Q Okay. When they were inside your bedroom could you
- 18 leave?
- 19 A Did I leave?
- 20 Q Could you leave?
- 21 A Could I, no.
- 22 Q If you wanted to leave, could you have left?
- 23 A I was, I was told to stay where I was.
- 24 Q Okay. What did they do while they were inside of the
- 25 bedroom?

1 A They, as you see through the pictures, they took -- they
2 went through everything and took out of my bedroom what they
3 wanted to carry out.

4 Q Okay. Do you know what types of items those would have
5 been?

6 A Yes. They took anything they thought was of value, tools
7 and I had satchels of tools and, and radios and, and I had
8 electronic equipment and they took my wallet and what money
9 they could find and I had my medicine.

10 Q Your medicine. How was your medicine stored?

11 A Part of it was in my dresser nightstand drawer, some of
12 it was in a yellow toolbox.

13 Q Okay. What kind of containers were they in?

14 A They were in containers, prescription containers.

15 Q Okay. Would those containers have had your name on them?

16 A Yes.

17 Q I'm showing the witness what's been marked as State's 113
18 previously shown to Defense counsel. Do you recognize this
19 item?

20 A A piece of cardboard. Let's see. This must've been the
21 box where some of my meds were.

22 Q How do you recognize that?

23 A Because it has my name and the barcode on it and, and the
24 address, it has the address where I used to live.

25 Q Okay.

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1 A On Ponderosa.

2 Q You recognize that item as having previously belonged to
3 you?

4 A Yes, sir. As it belonged to me?

5 Q Yes. Has it ever belonged to you?

6 A Had -- did this ever belong to me? Yes. Yes. It did.

7 Q Okay.

8 MR. WEST: I'm showing the witness what's been marked as
9 State's 122 and been previously shown to Defense counsel.

10 BY MR. WEST:

11 Q Do you recognize these items?

12 A I do.

13 Q And how do you recognize them?

14 A This is a Civil War chess set that belonged to me. This
15 is another one. I collect chess sets and it was more than
16 that that was taken.

17 Q Okay. But you recognize as these -- these chess sets as
18 belonging to you?

19 A Yes, sir. I do. I bought them from Franklin Mint.

20 Q Could you state that one more time for the record?

21 A I bought them from Franklin Mint.

22 Q Okay.

23 MR. WEST: Showing the witness what's been marked as
24 State's Exhibit 121, previously shown to Defense counsel.

25 BY MR. WEST:

1 Q Could you look inside this and tell me whether you
2 recognize these items?

3 A These are some coins that I had that I, I used to be a
4 coin collector, and a lot of them was stolen from me before
5 now, and this is patches where I got them from different
6 states. I was in the Air Force and the Navy.

7 Q You recognize all of the items in that?

8 A It seems like all of them were mine. Yes, sir.

9 Q And you recognize all of those items as having previously
10 belonged to you?

11 A Yes, sir.

12 MR. WEST: Showing the witness what's been marked as
13 State's Number 119, previously shown to Defense Counsel.

14 BY MR. WEST:

15 Q If you'd please tell the jury whether you recognize
16 what's in that envelope.

17 A These look like the credit cards and, and driver's
18 license, and my where I have Medicare, and I don't see all of
19 them there. I have a Master -- I mean, a Visa card here and
20 these are mine. That's where I got VIP from the garage.

21 Q Okay.

22 A And --

23 Q How do you recognize those items?

24 A They're -- they have my names on them, and --

25 Q And you recognize those items as previously belonging to

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1 you?

2 A Yes, sir. I do.

3 MR. WEST: I'm showing the witness what's been previously
4 marked as State's 120, previously shown to Defense counsel.

5 BY MR. WEST:

6 Q Could you tell the jury whether you recognize those
7 items?

8 A And here's my Social Security number with my name on it
9 and one -- my drug prescription cards and these are baseball
10 cards and belt buckles that belong to me, and that looks like
11 a hearing aid apparatus I got from the VA.

12 Q Okay. Do you recognize all those items as having
13 previously belonged to you?

14 A Yes, sir. Uh-huh.

15 Q I know that seemed tedious, Mr. Roberts, but thank you.
16 When's the last time you saw the items that you just
17 identified in State's 113, 119, 120, 121 and 122?

18 A Well, some of them I've seen like the day it happened and
19 shortly before that happened.

20 Q Did you recognize those items as having been missing
21 after this incident?

22 A Would I do what, sir? Would I recognize what?

23 Q Do you recognize those items as having been missing after
24 this incident?

25 A Well, I didn't look for them to be missing, but I knew

1 where they were.

2 Q Okay.

3 A They were in my -- that armoire.

4 Q Okay. Now, the people that came into your bedroom, were
5 they armed?

6 A Absolutely. Yes.

7 Q Okay. Do you know what type of guns they had?

8 A Automatics.

9 Q Okay. Handguns, long guns?

10 A Handguns.

11 Q They were handguns.

12 A They -- he stuck his gun right this close to me.

13 MR. DAVIS: Objection, Your Honor.

14 THE COURT: Hold.

15 A And --

16 THE COURT: Hold for a second. We've got an objection.

17 What's the objection?

18 MR. DAVIS: May we approach?

19 THE COURT: Yeah. Yeah.

20 (Whereupon, a bench conference is held in the presence
21 but out of the hearing of the jury.)

22 MR. WEST: Thank you, Judge.

23 THE COURT: All right.

24 MR. WEST: Okay.

25 THE COURT: Go ahead.

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1 BY MR. WEST:

2 Q Mr. Roberts, you had a gun to your head?

3 A He -- it made -- it showed me where the safety was off on
4 it and made a point to tell me that.

5 Q Okay. Do you remember anything else that was said inside
6 the house that night?

7 A They -- I've heard that somebody from -- in the other
8 room hollering, "Mom, come on, let's go," and she hollered,
9 "Don't call me mom," or something like that.

10 Q Okay.

11 A Talking amongst themselves.

12 Q Where was Stephen and Rose while you were in your
13 bedroom?

14 A Originally they weren't where I could see them, but they
15 escorted them into my bathroom.

16 Q When you say escorted, what do you mean?

17 A I meant they made them come in my bed -- bathroom.

18 Q Okay. How long were you stuck in the bathroom?

19 A I wasn't in the bathroom.

20 Q Okay. You were in the bedroom and Stephen and Rose were
21 in the bathroom?

22 A That's correct.

23 Q Okay. How long were you, you stuck in the room?

24 A Well, I would -- I'd have to guess -- I -- maybe an hour
25 or but they were there for longer than that.

1 Q Okay. You couldn't see anything going on in the rest of
2 the house?

3 A No, sir.

4 Q Okay. When they finally left what did you do?

5 A As soon as I knew they left I, I went next door and woke
6 up my neighbor and asked them to call 911 because they stole
7 all our cell phones.

8 Q Okay. And did the police ever arrive?

9 A Yes, sir. They arrived.

10 Q How long did that take?

11 A It didn't seem to be too long, maybe 20 minutes,
12 something like that.

13 Q Now, earlier in your testimony you indicated you owned
14 some other properties.

15 A I do.

16 Q You own any properties on Cindy Drive?

17 A I did.

18 Q You did. What do you mean by that?

19 A I don't no longer own property on Cindy, Cindy Lane.

20 Q Okay. Do you know the address of that property?

21 A To tell you the truth I don't remember the address. It
22 was Cindy Lane. As soon as you go into the, the trailer park
23 it's like three speed bumps and it's on the left-hand side.

24 Q Would it be Cindy Drive?

25 A It was .

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1 MR. DAVIS: Objection, Your Honor, leading.

2 THE COURT: Sustained.

3 A I remember that now.

4 Q Okay.

5 MR. DAVIS: Objection, Your Honor. We'd move to strike
6 that testimony.

7 THE COURT: Okay. No. I'm going, I'm going to allow it.
8 Go ahead.

9 Q You owned that property back August 21st, 2014?

10 A I did.

11 Q Okay. Now, who was living there at the time?

12 A Amy and Brad, and I believe Eddie and Cee Cee were living
13 there, too. They wasn't supposed to be, but I went in there
14 one day and they were there.

15 Q Now, the tenants that you had, had they ever been
16 evicted?

17 A Eddie and Cee Cee for sure had been. They wasn't
18 supposed to be in that trailer park and I told them that.

19 Q Okay. Was anybody particularly living there at the time
20 of October the 21st, 2014?

21 A They were in the process of moving as far as I know.

22 They -- I'm not -- I don't believe they were living there at
23 the time. No.

24 Q Okay. Had you had any new tenants?

25 A No, sir.

1 Q Okay.

2 A I've had several people wanting to rent the place, but no
3 one.

4 Q Had you ever given this Defendant consent to go into that
5 address?

6 A No, sir. Absolutely not.

7 Q Okay. After that tenant had vacated the property, had
8 you given anybody permission to go back into that house?

9 A Are you talking about on Cindy Lane?

10 Q That's right.

11 A Have I given anybody permission? I gave --

12 Q On October the 21st of 2014 after you said that the
13 property had been vacated, did you give anyone as the owner of
14 that property permission to go inside?

15 A No, sir. No.

16 Q Thank you. No further questions at this time.

17 THE COURT: All right. Cross examination.

18 MR. DAVIS: May I have just a moment, Your Honor?

19 THE COURT: All right.

20 MR. DAVIS: Thank you. Your Honor, we have no questions.

21 Thank you.

22 THE COURT: All right. You may step down.

23 MR. WEST: Your Honor, may we approach about scheduling?

24 THE COURT: Yes. Come on up.

25 (Whereupon, a bench conference is held in the presence,

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1 but out of the hearing of the jury.)

2 MR. WEST: Okay. Thank you.

3 THE COURT: All right. Ladies and gentlemen, we all
4 agree, it's probably a good time for us to go ahead and break
5 for the day. It's, it's about 4:35. So I'm going to go ahead
6 and send you home for the evening. I caution you, again, do
7 not discuss the case with anyone, do not even discuss it among
8 yourselves. It's too early for deliberations. Don't conduct
9 any independent investigations into the case. I'm going to
10 ask that you be back in the jury room at 9:15 tomorrow
11 morning. We'll try to get started right at 9:30 or as soon
12 after 9:30 as we can. So please be back 9:15 tomorrow
13 morning.

14 Now, I'm not going to test your patience or your stamina
15 or anything of that nature. However, given the length of this
16 trial, I want to do everything we can to get it in this week.
17 I don't know that we're going to be able to, but we're going
18 to certainly try to. Having said that, if you have any
19 arrangements you need to make for tomorrow evening you might
20 need to go do it because we might work a little bit later than
21 usual. We might work a little bit after five. As I said,
22 we're not going to go extremely late because I know you can
23 only take in so much at a time. So I'm not going to tax your
24 attention span or anything of that nature, but if you have to
25 be somewhere at 5:30, you have to be somewhere at six, you

1 might want to go ahead and make arrangements so -- because we
2 might go a little bit later tomorrow evening. So having said
3 that, I hope everybody has a good evening and we'll see you
4 back at 9:15 tomorrow morning. Thank you very much.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Having said that, I don't mind
8 going a little bit later tomorrow evening, but I certainly
9 acknowledge that there's only so much that attorneys and
10 jurors can take in in one day. So I don't want to do that.
11 Having -- I mean, I don't want to tax them too much. Having
12 said that, I don't want -- I want everybody to have sufficient
13 time to present their case. So if this spills over into next
14 week that ain't a problem. I've just got to call Court
15 Administration and let them know that to make some
16 arrangements. Okay? I don't know what that's going to do to
17 the jury. I don't know, but we do have two alternates, but
18 please give me some heads up if it does look like we're going
19 over because I do have to contact Columbia and Court
20 Administration to let them know, number one. Number two, I
21 can tell you right now my general practice, I've heard it was
22 an administrative order, I've never seen it, but my general
23 practice is I will not charge a jury and begin deliberations
24 after four p.m. on an afternoon because I think the jury if I
25 charge them with the law and they start deliberations after

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1 four p.m., rather than deliberations they're probably just
2 looking at their watches to see what time it is and trying to
3 get out. So if we start getting later and it starts getting
4 close to 4:00 o'clock, whether that be tomorrow or Friday, I'm
5 probably not going to charge them and have deliberations after
6 four p.m. Okay?

7 MR. WEST: Okay. Thank you, Judge.

8 THE COURT: All right. Anything from the State before we
9 recess for the evening?

10 MR. WEST: Nothing from the State, Your Honor.

11 THE COURT: All right. Anything from the Defense before
12 we recess for the evening?

13 MR. DAVIS: No, sir, Your Honor. Thank you.

14 THE COURT: All right. We'll be in recess. I'll be here
15 early tomorrow morning. The jury's coming back at 9:15. I'll
16 try to take the bench right at 9:30. Okay?

17 MR. WEST: Thank you, Judge.

18 THE COURT: All right. Sounds good.

19 (Adjourned for day.)

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1 (On the record, January 28, 2016, State v. John Darrieux.)

2 The following takes place outside the presence of the jury.)

3 THE COURT: All right. Anything from the State before we
4 bring the jury in?

5 MR. WEST: Your Honor, it's my understanding from the
6 Defense counsel that he wants to have an in-camera hearing
7 about any potential offers made to the next witness, Tristen
8 Brower.

9 THE COURT: Okay. Well, I mean, I've never done an in-
10 camera hearing about offers made.

11 MR. DAVIS: I don't know that I have either, Judge.
12 Here's the situation. This is one of the Co-Defendants, the
13 youngest of the Co-Defendants. I have had a copy of a four-
14 page proffer agreement that was signed on September 1st, 2015,
15 between the prior Assistant Solicitor handling the case, Mr.
16 Brower and his attorney, Leslie Sarji, S-A-R-J-I, who's in the
17 courtroom with us today. I've had that all along, and I knew
18 he was going to be a testifying Co-Defendant. I know he gave
19 a recorded statement to the police. I have had, have had a
20 copy of that. I've reviewed that. I know he came in and met
21 with the Solicitor's Office to do that proffer and gave a
22 statement then, and I have the -- I got an e-mail from Ms.
23 Sigal summarizing the information from that meeting.

24 Yesterday at some point in a break in the trial, Ms.
25 Sarji was here. Mr. West was here. I was here. We were

1 talking planning for today, and there was a discussion about
2 no, no offer was ever made from the State or that there was
3 not an offer as part of this proffer from the State. Ms.
4 Sarji kind of reacted, and well, there was an offer discussed.
5 So that becomes a new issue now because obviously for
6 impeachment purposes or bias purposes any hope or actual
7 benefit to Mr. Brower for testifying, of course, is, is fair
8 game to the Defense when he testifies. He was 16 at the time
9 and maybe at the time of the proffer. I'm not sure exactly
10 his birthday, but he's 17 now so that the, the real issue is
11 what was he aware of -- there were discussions. There were --
12 we have their -- we have the e-mail trail.

13 THE COURT: I guess my question is, excuse me for cutting
14 you off.

15 MR. DAVIS: Sure.

16 THE COURT: Why does all this have to happen in-camera?
17 Why don't you just ask him this on cross examination?

18 MR. DAVIS: Because I don't know what he's going to say.

19 THE COURT: Well, and --

20 MR. DAVIS: And I have a right to know before he takes
21 the stand because the State knows.

22 THE COURT: The State says there's no offer?

23 MR. DAVIS: There was an e-mail offer. There was an e-
24 mail offer.

25 THE COURT: Okay.

1 MR. DAVIS: And so, and I -- you know, I saw that today
2 for the first time, and again, Judge, this -- for just a
3 moment, this continues this issue of discovery issues which is
4 this is the second one to this witness alone, and so --

5 THE COURT: Well, let me -- wait -- excuse me. So all
6 along they said there was no offer?

7 MR. DAVIS: Correct.

8 THE COURT: And then today you see that there was an
9 offer?

10 MR. DAVIS: Correct.

11 THE COURT: All right. Let me hear from you on that.

12 MR. WEST: I'll respond to that, Your Honor. When I met
13 with Tristen Brower, I directly asked him if any offer had
14 ever been discussed with his attorney, and his answer was no.
15 He had never talked with his attorney about an offer, and
16 that's where I left it at that is that, "Okay. So you're not
17 telling me anything today based on any promises to your
18 attorney."

19 THE COURT: Okay.

20 MR. WEST: Okay.

21 THE COURT: So now you're saying there was an offer?

22 MR. WEST: I'm saying that there was negotiations between
23 the prior Solicitor, Ms. Sarji, that were never conveyed to
24 the client at the time that I spoke with him as the Solicitor
25 over this case.

1 THE COURT: Okay. Now, there's a difference between
2 negotiations and an offer that says, "You testify this, we'll
3 drop this charges and enter a negotiated sentence for this
4 many things," but this is a case where it's just negotiations,
5 but there was never any obligation from one side to the other,
6 then that's a different story.

7 MR. WEST: That's my understanding what has happened.

8 THE COURT: That there were negotiations, but there was
9 never a firm deal in place.

10 MR. WEST: That's correct.

11 THE COURT: All right.

12 MR. WEST: And if Ms. Sarji could, could elaborate on
13 that she's present in the courtroom as well.

14 THE COURT: All right. Ms. Sarji.

15 MS. SARJI: Your Honor, there was initially -- I mean,
16 Price Sigal had conveyed to me what she would be willing to do
17 in the case. I e-mailed her back and said, "He's so young.
18 How about an active Y, suspended and probation." She said she
19 would take another look at the file and consider it, and then
20 that was the last that I've heard from her until August. That
21 was April of 2015, and I, I forwarded it to his mom because he
22 had given me permission to talk to his mom, hers is the e-mail
23 address that I have. He was 16. So his mom was very actively
24 involved in the case. So I did forward the e-mil to his mom,
25 who now tells me she really doesn't understand the whole

1 process and, you know, what it really meant. At any rate,
2 Price never got back to me until August when she says,
3 "Tristen doesn't ever identify the Co-Defendants by name.
4 Would, you know, would his testimony be X, Y and Z," and then
5 we were in for a proffer last September 1st.

6 THE COURT: Okay. So there was never -- she made an offer.

7 MS. SARJI: And I --

8 THE COURT: You made a counteroffer and that was the end
9 of it?

10 MS. SARJI: Yes, sir.

11 THE COURT: Okay.

12 MR. DAVIS: Judge, two things I'd say, the State is
13 saying they asked Mr. Brower, who's 17, why they didn't ask
14 the prior Assistant Solicitor, Ms. Sigal, who still is
15 employed there, what she -- what discussions she had or not is
16 beyond me, but they didn't. They trusted Mr. Brower, who if
17 you'll remember at the prior hearing, he's a young kid. He
18 couldn't have -- didn't remember a whole lot. My whole issue
19 being this, clearly that offer was, and Ms. Sarji will correct
20 me if I'm wrong, but in April 2015, the State sent an e-mail
21 offering burglary second non-violent, strong arm robbery. He,
22 he was charged with, I believe, the State'll correct me, the
23 State charges my client was except for contributing to the
24 delinquency and a YOA, offered him a YOA. Ms. Sarji's
25 indicated she forwarded that to his mother, of course he's 16

1 years old. We understand that, forwarded to his mother. I
2 understand his mother and he may not understand the nuances of
3 the law, and I understand the State has represented as an
4 officer of the court when they asked him was there any deal in
5 their meeting he said no. My question and the reason I'm
6 asking this unusual thing for it to be in-camera, let me ask
7 him if he has any recollection of this, any memory of this, if
8 it affects him in any way because it's not about what we
9 think. It's about what he -- on his mind when he's
10 testifying, does he think he's going to get something like
11 that. Let me ask him. If he says yes, fine. If he says no,
12 fine, but to wait until the jury's out here I think would be
13 improper. Well, let's get an answer.

14 THE COURT: Why, why is it improper? What difference
15 does it make if he says yes? Okay. You just said if he says
16 yes that's fine. If he says no that's fine. What difference
17 does it make?

18 MR. DAVIS: Because it's a discovery issue, and we have a
19 right to prepare for this on, on all these issues for trial.

20 THE COURT: So how is your preparation going to change?

21 MR. DAVIS: Give me a second. That's the whole point.
22 I'm having to think right now if he says, if he says, yes,
23 that's on my mind when testifying then, then, great, that
24 shows me one other level of bias and/or, you know, impeachment
25 evidence. If it's -- if he said, no, he -- if he said no, he

1 didn't, I would be concerned because Ms. Sarji conveyed it to
2 his mother and I'd be concerned on a credibility --

3 THE COURT: But there would --

4 MR. DAVIS: -- issue there on whether --

5 THE COURT: But as I understand as we stand right now,
6 there is no offer being made in exchange for his testimony.

7 MR. DAVIS: Correct, but the issue would be does he --
8 because I'll always ask, do you hope, if, if we had just the
9 proffer I'm going, and of course, dealt with these in the
10 Ninth Circuit for years now, the discoverables run from the
11 federal system, I'm familiar with them. In there there, there
12 isn't any offer other than to not -- it's a use -- not use
13 their words, but I guess, and that's the only benefit of that
14 proffer, but I'll ask him. So if, if that's all we had, "They
15 haven't offered anything have they?" "No." "But you hope
16 they're going to at the end of this?" I would go that line of
17 attack of course. If he already, "Well, they haven't
18 promised, but you know, they mentioned this one thing way back
19 and that" -- then that's some details that I think the jury
20 should be entitled to hear that he remembers, you know,
21 "There's this talk about me going to the Youthful thing or
22 whatever," I think that's important for the jury to hear if he
23 remembers.

24 THE COURT: All right. Well, let's do this. We're going
25 to need -- is he going to be your next witness?

1 MR. WEST: He is.

2 THE COURT: All right.

3 MR. WEST: He's, he's just outside the courtroom.

4 THE COURT: All right. We're going to have to bring him
5 in because I'm going to have to advise him of his, his right
6 to assert his Fifth Amendment Rights to remain silent and
7 stuff like that. At that point in time, what is the question
8 you're going to ask?

9 MR. DAVIS: To the effect of --

10 THE COURT: No. Give me the question you want asked.

11 MR. DAVIS: Well, I would, I would ask, I would ask if he
12 was aware at any time that the State had offered him -- there
13 was an offer from the State for burglary second non-violent
14 and strong arm robbery with a YOA sentence, which --

15 THE COURT: All right. Here. Let's do this. Sit down.
16 Write out your question.

17 MR. DAVIS: Yes, sir.

18 MR. WEST: Your Honor, if I may, I think there should be
19 some concern -- I think the general question just needs to be,
20 "Are you aware of any offers?" If he is tainted with what
21 potential offers could be, that might confuse his testimony in
22 front of the jury.

23 THE COURT: Well, let me see what he wants to ask him
24 first and then I'll make a decision.

25 MR. WEST: Okay. Thank you, Judge.

1 MR. DAVIS: All right, Judge. Thank you.

2 THE COURT: Just, just tear it out and let me see it.

3 MR. DAVIS: Okay. If I may approach?

4 THE COURT: All right. You want to ask, "Did your mom
5 tell you about an offer from the Solicitor's Office asking you
6 to plead guilty to burglary second, a lower charge, and strong
7 arm robbery, a lower charge, in return for your -- in return
8 for a Youthful Offender Act sentence?" Okay. Now, is this --
9 are you saying that these are offers from the State in
10 exchange for his testimony or these were offers for him to
11 plead guilty to these charges but were not conditioned upon
12 his testimony?

13 MR. DAVIS: That's the whole issue, Judge, because a
14 prior Solicitor -- my understanding the prior Solicitor, I've
15 seen the e-mail, prior Solicitor sent an e-mail offering that.
16 Ms. Sarji --

17 THE COURT: In exchange for his testimony against your
18 client at trial?

19 MR. DAVIS: There was no, there was no discussion of that
20 in the e-mail.

21 THE COURT: Okay. Well, then, no, there's no offer.
22 This -- the sole question then is has anything been offered in
23 exchange for his testimony. Certainly, I'm sure the Solicitor
24 said, you know, "We'll let you plead guilty to this and this
25 and this and we'll recommend this as a sentence. We'll lower

1 these charges if you plead guilty," without any reference to a
2 testimony at trial against your client. Those are two
3 separate issues. The question is -- as I understand there was
4 an offer made to your client that if he pled guilty to this
5 and this they would recommend a sentence of something.
6 That's, that's not unusual and that happens in virtually every
7 criminal case. So the question is was there an offer made to
8 your client in exchange for his testimony here today against
9 your client?

10 MR. DAVIS: And, and, and that's the same question I
11 have, Judge, and all I can tell you is until yesterday, this
12 morning, my understanding there was a proffer only period.

13 THE COURT: And that's what I understand, there's only a
14 proffer only.

15 MR. DAVIS: But there's clearly been discussions, and let
16 me add one more factor, after the exchange of e-mails about,
17 simply about pleading, you're right, Judge, simply about
18 pleading after the -- that exchange of e-mails, when my client
19 had a -- an original offer, the major focus of -- for me on
20 that original offer was this witness, Mr. Brower, does not
21 identify my client. Nobody identifies my client, and so we
22 did not accept a first offer from the State to my client.
23 There's a follow-up e-mail following that from, again, the
24 original Solicitor to Ms. Sarji. All right. "One of the Co-
25 Defendants isn't interested in pleading because your guy

1 doesn't identify him, bring him on in." Okay. That was in
2 August, which I saw for the first time today, and then in
3 September is when the proffer's done, and that was done,
4 again, by the prior Solicitor. The prior Solicitor at that
5 date showed these two photos, which we didn't know about until
6 Tuesday.

7 THE COURT: Okay.

8 MR. DAVIS: This Solicitor I'm not sure knows all the
9 discussions.

10 THE COURT: Well, what I'm --

11 MR. DAVIS: And I appreciate Ms. Sarji being here and
12 that's why we're getting into this stuff.

13 THE COURT: Okay. What we're going to do, I'm going to
14 bring him in. I'm going to give him his, his right to exert
15 his Fifth Amendment or assert his Fifth Amendment Right
16 against self incrimination. Then you can ask this, you can
17 just ask him, "Are you aware of any offers from the State in
18 exchange for your testimony today?" If he says no, that's it,
19 and if he says yes, then you can say, "What was it," because
20 the questions that you want to ask him, as I understand it,
21 was an offer if he pled guilty and was not an offer in
22 exchange of testimony. Is that correct?

23 MR. WEST: Your Honor, Ms., Ms. Sarji has shown me the e-
24 mail and I can tell you that it says, "I want to touch base
25 with you and let you know that the offer for him to plead

1 guilty to burg second non-violent, strong arm robbery as a
2 lesser included of armed robbery, recommendation of the State
3 would be for an active Youthful Offender Act. The remainder
4 of the charges will be dismissed per plea," and it does go
5 into, "This plea is conditioned upon the cooperation with the
6 State for the prosecution of Joseph -- Jason", it says, "Jason
7 Arsenault, John Darrieux, Natalia Chisolm, to include, but not
8 limited to, testifying for the State in the trial for each Co-
9 Defendant for the burglary second non-violent, burg first,
10 armed robbery, kidnapping, possession of a weapon during the
11 commission of a violent crime, do not have an expiration date
12 for this plea at this time as this plea would not be ripe
13 until we've resolved the Co-Defendants' cases," but I don't
14 think that changes if this was never conveyed to the client.

15 THE COURT: Yeah.

16 MR. WEST: In, in my talkings with Mr. Brower, I directly
17 ask him, "Have you -- are you aware of anything that the State
18 has offered you?" His answer was no.

19 THE COURT: Okay. Well, when he comes in I'm going to
20 allow you to ask him, "Are you aware of any offers from the
21 State in exchange for your testimony today," and if he says
22 no, that's it. If he says yes, then you can say what is the
23 offer. Okay. Or do you want the Court to ask him?

24 MR. DAVIS: Two things, Judge. First of all, I
25 understand your ruling. I would take exception, if you'll

1 note it for the record because of this very issue that e-mail
2 that was just read, which Ms. Sarji showed me on her phone
3 some e-mails this morning for the first time. I don't recall
4 seeing that language conditioned or I would have told you
5 before now, I've never seen some of those conditions. He was
6 16 years old. Relying on him to remember the nuances of the
7 law at that -- that concerns me.

8 THE COURT: But I mean, the fact of the matter is if he
9 doesn't -- if he does not -- is not aware of an offer, I mean,
10 I don't understand what you're going to do. I mean, are you
11 going to try to attack his credibility by saying, "There was
12 an offer and now you're lying on the stand by saying there's
13 not," because if he genuinely does not know about an offer
14 then that's misleading the jury by using it to attack his
15 credibility.

16 MR. DAVIS: Judge --

17 THE COURT: Now, if you want to use it to show, attack
18 his credibility by saying he knows he's going to get
19 preferential treatment, then that's something else, and I
20 think it's covered by when I allow you to ask him, "Are you
21 aware of any offers that have been made in exchange for your
22 testimony?"

23 MR. DAVIS: I understand. First of all, Judge, the
24 reason I am asking for this in-camera is because I do not want
25 to misrepresent evidence in front of the jury. That's exactly

1 why I'm asking for this. So I would not -- I want to get it
2 cleared up. I, I just want to be able to properly attack his
3 credibility by what the rules allow, and if there were
4 discussions and negotiations that he believes and, and, and I
5 understand and ultimately let me get to it, Judge, I would ask
6 that you ask it, that, that there -- if there were discussions
7 that he believes offers hope to him for this testimony, then,
8 yes, that's relevant under the rules.

9 THE COURT: Okay. All right. Well, we'll bring him in
10 and I'll just ask him, "Are you aware of any offers from the
11 State in exchange for your testimony today?" Okay?

12 MR. WEST: Thank you, Judge. The State calls Tristen
13 Brower.

14 (Clerk and Court confer.)

15 THE COURT: All right, sir. He can -- you can just stand
16 right there. Is that sufficient for you?

17 REPORTER: He -- he's so soft spoken I need him at a mic
18 somewhere.

19 THE COURT: All right. Come up here to this microphone
20 at this podium, please, sir.

21 REPORTER: Right there at that podium's fine. Thank you.

22 THE COURT: And I'll need you to speak up loud and
23 clearly into the microphone. Okay?

24 MR. BROWER: All right.

25 Whereupon, Tristen Brower is sworn by the clerk.

1 THE COURT: All right. You're going to have to speak
2 louder than that. Okay?

3 MR. BROWER: Yes, sir.

4 THE COURT: All right. Sir, what's your name?

5 MR. BROWER: Tristen Brower.

6 THE COURT: All right. Mr. Brower, as I understand,
7 you're going to be called as a witness in the trial of this
8 case; is that correct?

9 MR. BROWER: Yes, sir. Yes, sir.

10 THE COURT: All right. I now advise you that as a
11 witness you have the right to invoke the protections given to
12 you by the Fifth Amendment to the United States Constitution.
13 This amendment provides in part that no person shall be
14 compelled in any criminal case to be a witness against
15 himself. This provision means that you cannot be required to
16 testify against yourself in this case. This is a personal
17 right which can only be claimed by you. You have the right to
18 refuse to answer any question asked of you which you think
19 gives you reasonable cause to believe that the answer to the
20 question, if given, might tend to incriminate you. If you
21 wish to exercise this right when a question is asked you will
22 state to the Court that you refuse to answer the question
23 because the answer may tend to incriminate you. Do you
24 understand that?

25 MR. BROWER: Yes, sir.

1 THE COURT: All right. Now, I also advise you that you
2 are not the final decision-maker on this issue of whether to
3 answer a question that you claim will violate your protections
4 afforded to you by the Fifth Amendment to the United States
5 Constitution. It's for the Court to determine whether or not
6 you have to answer the question or not, but if you choose not
7 to answer a question you need to let me know, "I refuse to
8 answer that question because I feel like it violates my
9 constitutional rights." Do you understand what I've explained
10 to you?

11 MR. BROWER: Yes, sir.

12 THE COURT: All right. Do you have any questions about
13 what I've explained to you?

14 MR. BROWER: I don't.

15 THE COURT: Okay. Do you have any questions that -- I
16 understand Ms. Sarji is your attorney?

17 MR. BROWER: Yes, sir.

18 THE COURT: Is there anything you want to ask her at this
19 time in private?

20 MR. BROWER: No, sir.

21 THE COURT: All right. Now, are you aware of any offers
22 from the State?

23 MR. BROWER: I am not.

24 THE COURT: Okay. Has any offers been made by the State
25 in exchange of your testimony today?

1 MR. BROWER: Not that I know of.

2 THE COURT: Okay. All right. Thank you very much. I'm
3 going to ask that you step back outside because I -- well,
4 first, is there anything further that the State wants on the
5 record?

6 MR. WEST: Nothing from the State, Your Honor.

7 THE COURT: Anything further the Defense wants on the
8 record?

9 MR. DAVIS: Not against your ruling, Your Honor.

10 THE COURT: Okay. All right. We're -- they're going to
11 call you in whenever they get ready for you, but I had to go
12 over that. Now, if at any time you have any questions and
13 need to talk to your lawyer you let me know. Okay?

14 MR. BROWER: Okay.

15 THE COURT: All right. Thank you very much.

16 (Mr. Brower exits courtroom.)

17 THE COURT: All right. Anything further from the State
18 before we bring in the jury?

19 MR. WEST: The State's prepared to proceed, Your Honor.

20 THE COURT: Anything further from the Defense?

21 MR. DAVIS: Judge, I'll bring this now while we're still
22 in-camera. My understanding the State's going to call Mr.
23 Brower next. That'll be -- that'll take some time, probably a
24 little longer than any of the three that testified yesterday,
25 not substantially, but probably a little longer. They have

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1 two neighbors to the 4:00 o'clock in the afternoon incident.
2 I don't think those will take very long at all, and then we've
3 got all the chain witnesses and all that, and I appreciate
4 Your Honor had mentioned to the jury and to us yesterday about
5 potentially going later, you know, if it's going to run into
6 the weekend or whatever, Judge, I, I'd be willing under the
7 appropriate wording, to stipulate to the admission of most of
8 the -- most of the State's exhibits from Number 37 through 98
9 first of all, all come from a Co-Defendant's residence.
10 Search warrant was executed, all that stuff is found there,
11 and then even some more from 100 on up to 123, anything found
12 at the Hallmark Drive address I'd stipulate to, Judge, and
13 that would certainly speed along the process. I had mentioned
14 to Mr. West yesterday, I have not gotten a response back, but
15 I just want to make that offer on the record.

16 THE COURT: All right. Mr. West?

17 MR. WEST: Your Honor, if the stipulation simply is that
18 the evidence is admissible, we would be in agreement. We
19 still want to go into the investigation of the case. So it's
20 not going to prevent us from calling the officers that were
21 involved, but certainly if the Defense is willing to forego
22 the procedural requirements of admission of evidence we'd be
23 willing to agree to that.

24 THE COURT: All right.

25 MR. WEST: I just need to know which specifically. I

1 heard 37 through 98 is pre-admitted.

2 MR. DAVIS: Well, Judge, we're, we're discussing the
3 stipulation now. I've not said --

4 THE COURT: All right. So whenever we take a break I
5 want you to get with Mr. West, you all discuss what you can
6 stipulate to and we'll address it at that time.

7 MR. WEST: All right. Thank you.

8 THE COURT: Okay. All right. Anything further from the
9 Defense before we bring in the jury?

10 MR. DAVIS: No, sir. Thank you, Your Honor.

11 THE COURT: All right. Let's go ahead and bring in the
12 jury.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: All right. Ladies and gentlemen, welcome
16 back. We're ready to go forward with the trial of this case.
17 I hope everybody had a restful evening. I haven't gone over
18 this with you yet, most courtrooms don't allow cell phones or
19 pagers. If you have any cell phones or pagers or other
20 communication devices with you make sure they're turned off so
21 that you're not interrupted.

22 We're ready to proceed with the State's case. Mr. West,
23 the State can call your next witness.

24 MR. WEST: Thank you, Your Honor. May it please the
25 Court? The State calls Tristen Brower.

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1 Whereupon, Tristen Brower is called to the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: Okay. If you'd have a seat, make sure you
4 speak into the microphone, state your full name and spell your
5 last name.

6 MR. BROWER: Tristen Alexander Brower, B-R-O-W-E-R.

7 DIRECT EXAMINATION

8 BY MR. WEST:

9 Q Good morning, Tristen. Could you tell the jury how old
10 you are?

11 A I am 17 years old.

12 Q And where do you live?

13 A

14 Q In what area of Berkeley County is that?

15 A I don't live in Berkeley County. I live in Summerville.

16 Q In Summerville?

17 A Yes, sir.

18 Q Okay. Do you remember the incident that brings us here
19 today?

20 A I do.

21 Q How old were you when that happened?

22 A I was 16.

23 Q Do you remember what you were doing the day before the
24 incident?

25 A I do.

- 1 Q Okay. How are you related to Natalia Chisolm?
- 2 A The guy who raised me, I call dad and it's his sister.
- 3 Q Okay. Are you close with Natalia?
- 4 A I was.
- 5 Q Was. Does Natalia have any kids?
- 6 A She has four.
- 7 Q Okay. Are they about near your age?
- 8 A Thirteen and below.
- 9 Q Okay. Did you play with them when you were growing up?
- 10 A Yes, sir.
- 11 Q Okay. Did you go to Natalie's -- Natalia's house
- 12 frequently?
- 13 A Yes, sir.
- 14 Q Okay. Around this incident were you staying at Natalia's
- 15 house?
- 16 A Over the weekend I was.
- 17 Q Okay. Do you remember what day or time you, you got to
- 18 Natalia's house?
- 19 A I had gotten there Friday, and I stayed there over the
- 20 weekend.
- 21 Q Okay. Was anybody else staying there with you?
- 22 A What do you mean?
- 23 Q Was anybody else staying in the apartment --
- 24 A Oh, yes, sir.
- 25 Q -- that, that weekend? Could you tell the jury who was

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1 staying at the apartment?

2 A John Darrieux, Joseph Arsenault and Natalia Chisolm, her
3 four kids and Natalia and I.

4 Q Okay.

5 A That's it.

6 Q You've met this Defendant before?

7 A I have.

8 Q Okay. Tell the jury how you met him.

9 A I met him through Natalia.

10 Q And was that weekend the first time you had ever met him?

11 A Yes, sir.

12 Q Okay. Are you aware if he knew Natalia before then?

13 MR. DAVIS: Objection, Your Honor, calls for speculation.

14 THE COURT: Overruled. I'll allow it.

15 A Excuse me?

16 Q How did you all all come together?

17 A I -- she picked him up.

18 Q Okay.

19 A I guess.

20 Q Were the, the -- you said Joseph Arsenalt and John
21 Darrieux. Were they friends with Natalia?

22 A I don't know that.

23 Q Okay. But they stayed at her house?

24 A Yes, sir.

25 Q Okay. Now, the person you called John Darrieux, the

1 person that was staying at the apartment with you, is he in
2 the courtroom today?

3 A Yes, sir.

4 Q Okay. Could you tell the jury what he's wearing?

5 A He is wearing a gray shirt.

6 MR. WEST: Let the record reflect that the witness has
7 identified the Defendant.

8 BY MR. WEST:

9 Q Now --

10 MR. DAVIS: Your Honor, no new objections, but I renew my
11 old objections.

12 THE COURT: All right. Overruled. Go ahead.

13 Q Did you call him John Darrieux or was he called by
14 something else?

15 A He was called Chopper.

16 Q Chopper?

17 A Yes, sir.

18 Q Okay. That weekend do you remember when you first
19 learned that there was to be an incident?

20 A What are you asking?

21 Q Do you remember driving to a house in Moncks Corner on
22 October 21st, 2014?

23 A At the last moment. Yes. I, I was on my way home.

24 Q Okay. All right. Who'd you get in the car with?

25 A Natalia.

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- 1 Q And who else?
- 2 A And John and Joe.
- 3 Q Okay. What kind of car was that?
- 4 A A Durango.
- 5 Q Do you know what color it was?
- 6 A Gray.
- 7 Q Who was driving?
- 8 A Natalia.
- 9 Q How were people sitting in the car?
- 10 A Like the back seat.
- 11 Q Okay. Was everybody in the back seat besides Natalia?
- 12 A Yes.
- 13 Q Why?
- 14 A Because there was no passenger seat.
- 15 Q No passenger seat to the Durango?
- 16 A Yes, sir.
- 17 Q And this Defendant was in the car with you?
- 18 THE COURT: Excuse me. You've got to give a verbal
- 19 response. The court reporter cannot pick up if you shake your
- 20 head or nod your head. So when he asks a question you need to
- 21 give a verbal response. Okay?
- 22 A Yes, sir.
- 23 THE COURT: All right.
- 24 Q Thank you, Tristen. When you were riding in the car, did
- 25 you know where you were going?

1 A I did not.

2 Q Did you learn eventually where you were going?

3 A At the last moment I did.

4 Q Okay. Did this Defendant say anything in particular in
5 the car that would lead you to know where you were going?

6 A Not him in particular.

7 Q Okay. What sort of discussions were had in the car?

8 A Joseph was -- he said that people that he was going to
9 he, he had recently stayed with them, and that they, they
10 kicked him out over some stuff.

11 Q Okay. So it's your understanding that Joseph knew the
12 people where you were going?

13 A Yes, sir.

14 Q Okay. And anything -- was anything said about what was
15 about to go down?

16 A I can't remember.

17 Q Okay. Now, when you arrived near Bryan Drive, the
18 residence of the incident --

19 A Yes, sir.

20 Q -- tell the jury about how you approached or how the
21 driver approached the house, how the car approached the house.

22 A We, we passed the house once, and we pulled into a, a
23 little grass field about like 20 feet from the house and does
24 that answer your question?

25 Q Sure. Okay. When you pulled into the field what

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1 happened next?

2 A They -- Natalia was talking to them about like how --
3 what -- how things were going to go and that's all I really
4 remember.

5 Q When you say Natalia was talking about how things were
6 going to go, what things were going?

7 A Like who was doing what and that's pretty much it.

8 Q At this time did you understand that a robbery was about
9 to happen?

10 MR. DAVIS: Objection, Your Honor, leading.

11 THE COURT: Overruled. Go ahead.

12 A Can you repeat that?

13 Q Did you understand the reason as to why you were at the
14 residence at that point?

15 A Not really.

16 Q When did you realize that a robbery was about to happen?

17 A When they were getting out the -- well, when Natalia
18 handed me a gun.

19 Q Okay.

20 A That's when I understood.

21 Q Could you tell the jury what you were wearing?

22 A I don't remember.

23 Q You don't remember. Do you remember what Natalia was
24 wearing?

25 A I don't.

1 Q Do you remember what the Defendant was wearing?

2 A I don't.

3 Q Okay. Now, after the car was parked, everyone got out of
4 the car. Okay.

5 A Yes.

6 Q Right? Was anybody wearing anything over their face or
7 head?

8 A I'm, I'm trying to remember. I'm sorry. Like masks-
9 wise?

10 Q Yes.

11 A Yes.

12 Q Okay. Could you describe those masks?

13 A I don't remember.

14 Q Okay. Do you remember who was wearing masks?

15 A Natalia was wearing one. Joe or Joseph was wearing one.
16 John was not, and I did.

17 Q Okay. Now, you said Natalia gave you a gun. Did anybody
18 else have a gun?

19 A Yes.

20 Q As you were walking up to the house do you remember the
21 order of people as they walked towards the house?

22 A It was, it was Natalia and then like I was kind of
23 distant from her, and Chopper went like he came in a little
24 after and then, then Joe.

25 Q Okay. When you approached the door to that residence --

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- 1 A Yes, sir.
- 2 Q -- on Bryan Drive was the door shut?
- 3 A Yes.
- 4 Q Was it locked?
- 5 A Yes.
- 6 Q How was entry into the house made?
- 7 A Chopper, John Darrieux shouldered it in.
- 8 Q Okay. He knocked in the door?
- 9 A Yes.
- 10 Q When John went into the house, when did you go into the
- 11 house?
- 12 A I went in third.
- 13 Q Third?
- 14 A Yes, sir.
- 15 Q Who was, who was second?
- 16 A Natalia.
- 17 Q Okay. Immediately upon entry what did you notice?
- 18 A Like furniture.
- 19 Q Furniture.
- 20 A Uh-huh.
- 21 Q Do you remember seeing anybody inside the house?
- 22 A Not at first.
- 23 Q Not at first. Do you remember seeing anybody in the
- 24 house at all?
- 25 A Yes.

1 Q Do you -- can you describe for the jury those people that
2 you saw?

3 A One male and -- two males and one female is what I
4 remember.

5 Q Okay. Do you remember approximate ages?

6 A One male was kind of old and the other one was middle-
7 aged.

8 Q And how about the female?

9 A She's -- she was old. I don't know how to explain that.

10 Q Do you remember where the people in the house were when
11 you first saw them?

12 A When I first saw them the middle-aged man was to the
13 right and down the hallway in his room, and the old man was in
14 his room to the left, and I don't know where the -- or the old
15 lady was.

16 Q Okay. Did you ever go into the old man's room?

17 A I did once.

18 Q Okay. Did you ever go into the younger man's room?

19 A I did once.

20 Q Describe the younger man for the jury. Was he clothed,
21 unclothed?

22 A He didn't have his shirt on. He just had boxers on.

23 Q Okay. Did it appear as if he was sleeping?

24 A Yes, sir.

25 Q How was he brought into the living room?

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1 A I don't remember.

2 Q Did he come on his own free will?

3 A No.

4 Q Was he forced?

5 A I think so.

6 Q Who forced him?

7 A If it had been anybody it was John Darrieux.

8 MR.. DAVIS: Objection, Your Honor, move to strike,
9 speculation.

10 THE COURT: Overruled. Go ahead.

11 Q Was John alone when he went into that room of the younger
12 man?

13 A Yes.

14 Q Okay. When he was brought into the hallway was he alone?

15 A Who?

16 Q Was it just John and the younger man that was sleeping?

17 A Yes.

18 Q And they walked them into the living room?

19 A On the couch.

20 Q Did the younger man ever sit down on the couch?

21 A He did.

22 Q Okay. How about the female in the house?

23 A He did or she did.

24 Q Tell the jury what you remember about the female sitting
25 on the couch.

- 1 A She --
- 2 Q How was she acting?
- 3 A She was crying.
- 4 Q She was crying. Do you know what hysterically means?
- 5 A Yes.
- 6 Q Would you categorize it as crying hysterically?
- 7 A Yes, sir.
- 8 Q How about the younger male, what was he doing?
- 9 A He was just sitting down.
- 10 Q Okay. Now, where did you stay during the incident?
- 11 A In the house.
- 12 Q Where in the house?
- 13 A I was walking back and forth.
- 14 Q Okay. Did you have a gun the whole time?
- 15 A Yes.
- 16 Q Okay. When you were in the house with John, Natalia and
- 17 Joseph, what were they doing inside the house?
- 18 A I don't really remember. They, they were doing what they
- 19 were doing.
- 20 Q Were they taking things out of the house?
- 21 A Yes, sir.
- 22 MR. DAVIS: Objection, Your Honor, leading again.
- 23 THE COURT: Overruled. Go ahead.
- 24 Q What kind of stuff were they taking out of the house?
- 25 A Electronics, tools and jewelry.

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1 Q Okay. Did you ever take anything out of the house?

2 A I did.

3 Q When stuff was being -- what, what did you take?

4 A I took like a computer screen and that's all I really
5 remember.

6 Q Okay. Now, when stuff was being taken out of the house
7 was stuff being taken directly to the car, was it piled up in
8 the house? How, how was it being taken out?

9 A It was brought straight to the car.

10 Q Okay. Was anything ever piled in the hallways?

11 A Yes.

12 Q What was piled in the hallways?

13 A Computer monitor and keyboard.

14 MR. WEST: Would you publish State's Number 15?

15 BY MR. WEST:

16 Q Is this how it was piled in the hallway?

17 A Yes, sir.

18 Q Thank you. How long would you say you were in the house?

19 A For a very long time.

20 Q Who would you say was in charge?

21 A Natalia.

22 Q When you -- I'm going to back up a little bit. Before
23 you went into the house for the first time --

24 A Yes, sir.

25 Q -- do you remember this Defendant saying anything about

1 what he'd do inside the house?

2 A He said if there was kids in the house that fingers would
3 be broken.

4 Q If there were kids in the house that fingers would be
5 broken?

6 A Yes, sir.

7 Q How would you describe how the Defendant was acting while
8 inside?

9 A Just very like, just very up I would say.

10 Q What do you mean by up?

11 A Like energetic.

12 Q Okay. Do you remember the types of guns that were --

13 A I don't.

14 Q -- possessed?

15 A I don't.

16 Q Do you know the difference between a revolver and a
17 semiautomatic?

18 A Yes.

19 Q Okay. Were they revolvers or semiautomatic?

20 A They semis, semiautomatic.

21 Q Okay. What color of gun did you have?

22 A It was gray.

23 Q A grayish silver?

24 A Yes.

25 Q Did any of the people that were sleeping in the house

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1 ever say anything directly to you?

2 A No, sir.

3 Q Did Natalia's mask ever come off?

4 A Yes, sir.

5 Q How would you describe the way Natalia talks? Does she
6 have an accent?

7 A Slightly.

8 Q Okay. Where is she from?

9 A Puerto Rico.

10 Q How would you describe her skin color?

11 A Tannish.

12 Q What, what about her hair color?

13 A Light brown.

14 Q Would you say that the people in the house were able to
15 leave if they wanted to?

16 A I don't think so.

17 THE COURT: Excuse me for one second.

18 (Whereupon, a bench conference is held in the presence
19 but out of the hearing of the jury.)

20 THE COURT: All right. You're going to need to speak up.
21 Some of the jurors are having trouble understanding you.
22 You're going to need to speak up louder and you're going to
23 need to enunciate a little bit more. Okay? Because they're
24 having trouble understanding you. As I understand one of the
25 jurors did not understand your answer when he asked where was

1 Natalia from.

2 A I apologize.

3 THE COURT: Okay. And answer that question again. Where
4 was Natalia from?

5 A Puerto Rico.

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

7 Q Were the people in the house ever directed to go anywhere
8 inside the house?

9 A Um.

10 Q Did the, did the woman in the house and the young man did
11 they always stay on the couch or did they go anywhere else?

12 A I seen them on the couch, but I heard that they were put
13 into a bathroom.

14 MR. DAVIS: Objection, Your Honor.

15 THE COURT: Sustained.

16 Q When you left how did you get into the car?

17 A I opened up the door.

18 Q How were things stacked inside of the car?

19 A Just thrown.

20 Q Could you say that one more time? I'm sorry.

21 A Thrown, like just thrown all in the back seat.

22 Q Okay. Would you say the car was pretty full?

23 A Yes, sir.

24 MR. WEST: I'm showing the witness what has been marked
25 as State's Exhibit Number 116, has previously been shown to

Tristen Brower - Direct by Mr. West

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1 Defense counsel.

2 BY MR. WEST:

3 Q Would you look in there and tell me if you recognize any
4 of those items. You can pull them out.

5 A I do. I do.

6 Q Do you recognize this item?

7 A I do.

8 Q And what is that?

9 A A Scream mask.

10 Q And who was wearing that?

11 A Natalia.

12 Q Do you recognize this item?

13 A I do.

14 Q And what is that?

15 A I don't know his name.

16 Q How would you categorize that?

17 A Jason mask.

18 Q A Jason mask?

19 A Yeah.

20 Q And who, if anybody, was wearing that?

21 A Joe, Joseph.

22 Q After you left the house and everybody started getting
23 into the car, did anything ever fall out of the car?

24 A Pulling off tools I would --

25 Q Tools fell out of the car?

- 1 A Yes, sir.
- 2 Q Did they fall out of the door, a window, back hatch?
- 3 A They fell out the door.
- 4 Q Okay. How did everybody sit with all of this stuff in
- 5 the car?
- 6 A We just kind of sat on top of it.
- 7 Q Okay. Where did you go after you left?
- 8 A We, we went back to Natalia's house.
- 9 Q Where is that?
- 10 A In Goose Creek.
- 11 Q Do you remember the name of that apartment complex?
- 12 A Hallmark.
- 13 Q Okay. When you got back to that apartment what did you
- 14 do?
- 15 A I, I got out the car and we started bringing some of the
- 16 stuff out.
- 17 Q Okay. Was everything taken inside Natalia's apartment?
- 18 A Yes, sir.
- 19 Q How long did that take?
- 20 A Like ten minutes, I would say.
- 21 Q Okay. Not, not an exact time, but --
- 22 A Yeah.
- 23 Q -- it took a while to unload?
- 24 A Yes, sir.
- 25 Q Do you know where things were put inside of the

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1 apartment?

2 A We put everything in the living room.

3 Q Okay. Do you know if anything was ever moved out of the
4 living room?

5 A No, sir.

6 Q You don't know or it wasn't moved?

7 A I don't know.

8 Q Okay. What'd you do when you got back to the house other
9 than unload the stuff?

10 A I went back to sleep.

11 Q Okay. Now, what time did you wake up after you went to
12 sleep?

13 A Around like two, two in the afternoon.

14 Q Was the Defendant still there?

15 A Yes, sir.

16 Q Okay. Did you ever leave the house again with this
17 Defendant that day?

18 A Yes, sir.

19 Q Okay. Where did you go?

20 A I don't know where we went.

21 Q Okay. What did you do when you went there?

22 A Pulled up to a trailer park.

23 Q Okay. What did you get -- do when you went inside the
24 trailer park?

25 A We drove to this -- a house that Natalia said she knew.

- 1 Q Okay. And what happened at that house?
- 2 A I sat in the car.
- 3 Q Okay.
- 4 A So I really don't know what happened.
- 5 Q What did you see the Defendant do?
- 6 A Walked to the back of the trailer.
- 7 Q Okay. Did he ever go inside the trailer?
- 8 A Yes.
- 9 Q How did he get inside of the trailer?
- 10 A I don't know for sure, but I would assume the back.
- 11 Q Okay. When he went inside the trailer did he ever come
- 12 back out?
- 13 A Yes.
- 14 Q Who did he go inside the trailer with?
- 15 A Natalia and that's, that's all I remember.
- 16 Q Was Joe with you then, too?
- 17 A Yes.
- 18 Q Okay. Was anything taken out of that trailer?
- 19 A I believe two mattresses.
- 20 Q Okay. What did they do with the mattresses?
- 21 A They put them on top of the Durango.
- 22 Q Okay. When you -- when you all were at that house, that
- 23 trailer, did you see anybody else approach Natalia?
- 24 A I did.
- 25 Q You did?

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- 1 A Yes, sir.
- 2 Q Do you know who that was?
- 3 A I don't.
- 4 Q Did Natalia know who that was?
- 5 A I think she --
- 6 MR. DAVIS: Objection, Your Honor, calls for speculation.
- 7 THE COURT: Overruled. Go ahead.
- 8 A I think she did.
- 9 Q Okay. Did she talk to that individual?
- 10 A Yes. She had said that she knew her from --
- 11 MR. DAVIS: Objection, Your Honor, hearsay.
- 12 THE COURT: Sustained.
- 13 A -- the past. She had recently knew them.
- 14 MR. DAVIS: Objection, Your Honor.
- 15 THE COURT: Sustained. Don't -- strike the last answer.
- 16 Q After -- did the Defendant ever talk to that lady that
- 17 approached? Are you aware?
- 18 A No, sir.
- 19 Q Okay. After the mattresses were put on the top of the
- 20 house or not the house, excuse me, the Durango, what happened
- 21 next?
- 22 A I went back to sleep.
- 23 Q You went back to sleep?
- 24 A Yes, sir.
- 25 Q Did you leave that location?

- 1 A Yes, sir.
- 2 Q Okay. Where did you go after that?
- 3 A I don't know, but when I woke up I was in a cul-de-sac.
- 4 Q Okay. What was happening at that cul-de-sac?
- 5 A Natalia and John were picking up a TV.
- 6 Q Okay. What, what kind of TV was that?
- 7 A It was -- I don't know what it was called.
- 8 Q Was it big, small?
- 9 A It was big.
- 10 Q Okay. And what were they doing with that TV?
- 11 A Trying to fit it into the back of the Durango.
- 12 Q Okay. Did you ever encounter law enforcement?
- 13 A Yes.
- 14 Q Okay. Would it have been in that cul-de-sac?
- 15 A Yes.
- 16 Q Tell the jury about that encounter.
- 17 A After the TV was put into the Durango a, a, a car pulled
- 18 behind us, and the lady approached us asking us what we were
- 19 doing and then one after another cop, the cops came.
- 20 Q Was the first lady that approached you a police officer?
- 21 A I don't know.
- 22 Q Okay. Did she have a gun and a badge?
- 23 A I didn't see that.
- 24 Q Okay. Now, other police officers arrived?
- 25 A Yes, sir.

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- 1 Q What happened when the other police officers arrived?
- 2 A I, I got out and they just started questioning us what we
3 were doing.
- 4 Q Okay. Was anyone arrested at that point?
- 5 A Yes.
- 6 Q Okay. What happened then?
- 7 A I don't remember.
- 8 Q Were you put into the -- all the same car, separate cars?
- 9 A Separate cars.
- 10 Q Okay. Was -- are you aware if the Durango was searched
11 by the police there?
- 12 A Yes.
- 13 Q Okay. The people that you were arrested with at the cul-
14 de-sac --
- 15 A Yes, sir.
- 16 Q -- that same day, are those the same people that went
17 into the house in Bryan Drive?
- 18 A Yes, sir.
- 19 Q Is there any doubt in your mind that this Defendant
20 helped go into the house on Bryan Drive?
- 21 A There is none.
- 22 Q How about the second house?
- 23 A No doubt.
- 24 Q Thank you.
- 25 MR. WEST: No further questions at this time.

1 THE COURT: All right. Cross examination.

2 CROSS EXAMINATION

3 BY MR. DAVIS:

4 Q Right now you have a pending burglary in the first degree
5 pending against you; correct?

6 A Yes, sir.

7 Q Okay. Right now you have a burglary in the second degree
8 pending against you; correct?

9 A Yes, sir.

10 Q Okay. Right now you have three armed robberies pending
11 against you; correct?

12 A Yes, sir.

13 Q Right now you have three kidnappings pending against you;
14 right?

15 A Yes, sir.

16 Q Okay. This office is prosecuting you; right?

17 A Yes, sir.

18 Q The Solicitor's Office. Okay. Now, and you have an
19 attorney; right?

20 A I do.

21 Q Ms. Sarji who's here in the courtroom with you?

22 A Yes, sir.

23 Q Okay. You're aware on a burglary in the first degree if
24 convicted it carries a mandatory minimum of 15 years up to
25 life possibly? You've been told that?

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1 A Yes, sir. Yes, sir.

2 Q And if convicted and if sentenced, you have to serve 85
3 percent of whatever sentence you get. You've been told that?

4 A I have not.

5 Q Okay. As to each armed robbery you're aware that it
6 carries a mandatory minimum sentence of 10 years up to 30
7 years; right?

8 A Yes.

9 Q And any sentence you get on that you have to serve at
10 least 85 percent of it. Have you been told that?

11 A No.

12 Q Okay. And then on each of the three kidnappings there's
13 no minimum sentence, but it carries a possible punishment up
14 to 30 years? You been told that?

15 A No, sir.

16 Q Okay. Have you been told if you're sentenced on a
17 kidnapping how much percentage you have to serve?

18 A No, sir.

19 Q Okay. Natalia is your aunt by -- not by blood
20 relationship; right?

21 A Yes, sir.

22 Q But you've grown up thinking of her that way; right?

23 A Yes, sir.

24 Q Okay. And that's whose house you were staying with --

25 A Yes, sir.

- 1 Q -- over the weekend; right?
- 2 A Yes, sir. Yes, sir.
- 3 Q You'd rather not be here today; right?
- 4 A Excuse me?
- 5 Q You'd rather not be here today?
- 6 A Yes, sir.
- 7 Q The State's the ones that gave you a subpoena and told
8 you and your attorney to be here today; right?
- 9 A Yes, sir.
- 10 Q Prior to coming here today you've met with the
11 Solicitor's Office before; right?
- 12 A Yes, sir.
- 13 Q Talked with them to prepare you for your testimony;
14 right?
- 15 A Yes, sir.
- 16 Q How many times did you meet with them preparing for your
17 testimony?
- 18 A Once.
- 19 Q Once? Now, you met with the -- someone from the
20 Solicitor's Office another time to enter into an agreement;
21 right?
- 22 A No, sir.
- 23 Q So during the meeting on the agreement is when you talked
24 about your testimony?
- 25 A What, what agreement?

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1 Q Okay.

2 MR. DAVIS: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. DAVIS: May I approach the witness, Your Honor?

5 THE COURT: Yes.

6 BY MR. DAVIS:

7 Q Can I call you Tristen?

8 A You can.

9 Q Thank you. Tristen, I'm going to show you what's been
10 marked as Defense Exhibit Number Three for identification
11 purposes only. It's a few pages. I'm going to wait. I want
12 you to have time to look at it. When you have enough time to
13 look at it let me know. Okay?

14 A Okay.

15 THE COURT: Are you through looking at it?

16 A I did not. No. I didn't understand what he said. I'm
17 sorry.

18 MR. DAVIS: Thank you, Your Honor.

19 A I'm done.

20 Q Okay. Do you remember entering in that -- into that
21 agreement with your attorney and the Solicitor's Office?

22 A I don't remember.

23 MR. DAVIS: May I approach the witness again, Your Honor?

24 THE COURT: All right.

25 BY MR. DAVIS:

1 Q On the fourth page of Defense Exhibit Number Three is
2 that your signature?

3 A It is.

4 Q Okay. Well, by testifying today you're hoping that the
5 State's not going to go after you on all those charges; aren't
6 you?

7 A Yes, sir.

8 Q You're hoping you don't have to do anywhere near life in
9 prison; right?

10 A Yes, sir.

11 Q Or 15 years?

12 A Yes, sir.

13 Q Or 10 years?

14 A Yes, sir.

15 Q You hope they get rid of these charges?

16 A It would be nice.

17 Q Now, when you -- after you were first arrested and taken
18 into custody, the police took you to the police station;
19 right?

20 A Yes, sir.

21 Q Put you in cuffs; right?

22 A Yes, sir.

23 Q And they talked to you a little bit at the police station
24 at first and kind of chatted with you about whether you knew
25 anything or not, right?

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1 A Yes, sir.

2 Q Then you gave them some information then; right?

3 A I did.

4 Q And then based on that they take you to this little room
5 with three chairs in it; right?

6 A Yes, sir.

7 Q And do you remember two officers coming in that room with
8 you?

9 A I remember one.

10 Q Okay. You remember one.

11 A Yes, sir.

12 Q Okay. Okay. You don't, you don't remember two
13 plainclothes, meaning they weren't wearing a uniform, white
14 male officers being in the room with you?

15 A I just remembered one.

16 Q Okay.

17 A Cop with me.

18 Q Is that officer in the courtroom here today?

19 A I don't remember. I don't know what he looks like.

20 Q Okay. And in that little room you were sitting in a
21 chair kind of in the corner; right?

22 A Yes, sir.

23 Q You had on a dark shirt, pants, you had flip flops on;
24 right?

25 A I don't remember.

1 Q Baseball cap?

2 A I don't remember.

3 Q They asked you to take the cap off so they could see you
4 on the camera that was recording it; right?

5 A I don't remember.

6 Q You don't recall during that interview them telling you,
7 "Hey, we're recording this on audio and video?"

8 A I do.

9 Q You do remember that?

10 A I do.

11 Q Okay. Do you remember the -- one of the officers going
12 through your rights with you, your right to remain silent,
13 right to have an attorney? Do you remember one of the
14 officers going through that with you?

15 A Yes, sir.

16 Q Okay. And got, got up beside you, had an -- had a
17 notepad and had you initial on, on your leg that you
18 understood those; right?

19 A Yes, sir.

20 Q You were still handcuffed though; right?

21 A Excuse me?

22 Q You were still handcuffed when you signed?

23 A I don't remember.

24 Q You don't remember, but you do remember signing that
25 sheet?

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1 A I do.

2 Q Okay. And then they asked -- the officer asked if you
3 wanted to talk to them about what happened; right?

4 A Yes.

5 Q You hesitated for a second, and then he went over those
6 rights again with you. Do you remember that?

7 A Yes. Yes.

8 Q Okay. So after he asked you again you decided you would
9 talk to him; is that right?

10 A Yes.

11 Q Now, when you talked to that officer, didn't you tell
12 that officer that Natalia needed her money back because she
13 had got robbed of \$500 recently?

14 A Yes.

15 Q And then when they started talking about when the car
16 parked in the field beside the house, when they started
17 talking about that didn't you tell the police that you stayed
18 in the car for a little while?

19 A I don't remember.

20 Q Well, when they started getting real specific about what
21 happened at that, and we're talking Bryan Drive, okay, the
22 middle of the night, all right, when the police started asking
23 about that, some details about that, didn't you say, "I don't
24 really want to talk about that." Didn't you tell the officer
25 that?

- 1 A I don't remember.
- 2 Q So do you remember the officer pushing a little bit more
3 and then you did start talking?
- 4 A I do remember that.
- 5 Q Do you recall that? I'm sorry?
- 6 A I do remember that.
- 7 Q Do you remember telling that officer that one of the guys
8 was involved with you had his shirt off?
- 9 A I don't remember.
- 10 Q Do you remember first telling the officer that Natalia
11 was not wearing a mask and then later saying that she was? Do
12 you remember that?
- 13 A I don't.
- 14 Q Do you remember telling that officer that you were in
15 that house about 10 or 15 minutes?
- 16 A I don't.
- 17 Q Do you remember talking to that officer for over a half
18 hour?
- 19 A Yes.
- 20 Q You don't remember a whole lot about it, though?
- 21 A I don't.
- 22 Q Other than Natalia you didn't give that officer names of
23 anybody else that was involved; did you?
- 24 A I don't remember.
- 25 Q That would have been the -- in the evening-time after the

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1 arrest; right?

2 A Yes.

3 Q Same day?

4 A Yes.

5 Q Right after all this stuff happened?

6 A Yes.

7 Q Now, Defense Exhibit Number Three, you don't remember it,
8 but that is your signature on it; right?

9 A Yes, sir.

10 Q Do you remember talking with a female Assistant Solicitor
11 about this case, coming down to their office and talking to
12 her?

13 A Can you explain your question?

14 Q Do you remember coming down and talking to a female
15 Assistant Solicitor with your attorney, Ms. Sarji?

16 A When?

17 Q I'm sorry?

18 A When?

19 Q September 1st, 2015.

20 A I don't remember.

21 Q Do you remember at that meeting being shown a couple of
22 photos of two white males?

23 A I don't remember what meeting you were talking about.

24 Q Just get this simple question out of the way, Tristen,
25 where you were arrested there were multiple police cars that

1 showed up; right?

2 A Yes, sir.

3 Q I'm sorry?

4 A Yes, sir. I don't, I don't know where I was at. I was
5 just in a cul-de-sac.

6 Q Right. But multiple police cars showed up lights
7 flashing or do you recall?

8 A I don't recall.

9 Q Okay. But you knew they were police cars?

10 A Yes, sir.

11 Q Okay. And at that location a big old TV was being loaded
12 up into the vehicle; right?

13 A Yes, sir.

14 Q One of those big tall really wide, not a flat screen;
15 right?

16 A No, sir. Just a big TV.

17 Q Okay. And you understood, I mean, it was coming from the
18 side of the road. It was on the grass there?

19 A Yes, sir.

20 Q Abandoned?

21 A Yes, sir.

22 MR. DAVIS: Your Honor, if I could have a moment?

23 THE COURT: All right.

24 MR. DAVIS: Your Honor, could we approach for a moment?

25 THE COURT: All right.

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1 (Whereupon, a bench conference is held in the presence,
2 but out of the hearing of the jury.)

3 BY MR. DAVIS:

4 Q Tristen, I want to make sure I'm clear about something, I
5 know details of the meeting with the police you're not
6 remembering a whole lot; right?

7 A Yes, sir. Yes, sir.

8 Q But you do recall them telling you that there was a
9 camera in the room that was video and audio-recording that
10 statement; right?

11 A Yes, sir.

12 Q Okay. If you're able to see that would that help you
13 remember what you did or didn't say?

14 A It would.

15 Q Okay.

16 MR. DAVIS: Your Honor, we'd ask for a brief recess.

17 THE COURT: All right. What's the State's position?

18 MR. WEST: The State allows it, Your Honor.

19 THE COURT: All right. All right. Ladies and gentlemen,
20 we're going to take -- it's a good time for us to take a brief
21 recess anyway. I'm going to let you -- excuse you back to the
22 jury room, give you an opportunity to stretch your legs, get
23 something to drink, use the restroom, whatever the case may
24 be, but do not discuss the case even among yourselves. Don't
25 conduct any independent investigation. We'll take our morning

1 break and we'll bring you back out shortly. All right. Thank
2 you very much.

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right. Do we want to take a recess while
6 he reviews this or how do we want to --

7 MR. DAVIS: Your Honor, yeah, if I could, if I could have
8 a little just quick bathroom break. I was, I was hoping you'd
9 obviously instruct the witness, but yeah, if I -- we'd take a
10 little break, and then I've got the disc right here and we'll
11 start.

12 THE COURT: Okay. But what I'm saying is do we need a
13 court reporter? I mean, can we take a break while he reviews
14 it to refresh his memory and then we'll come back and you can
15 question him on it?

16 MR. DAVIS: Judge, that would actually be the quickest
17 rather than trying to start and stop and play it awkwardly in
18 front of the jury. By seeing it, it'll refresh his memory.
19 It speeds the process up.

20 THE COURT: Okay. Well, what I'm saying is I'm just
21 allowing a break so he could review it to refresh his memory.
22 As this point in time I'm not aware of any prior inconsistent
23 statements that would make it admissible or, or viewable by
24 the jury, but I'm going to allow him to review it to refresh
25 his memory. Okay?

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1 MR. DAVIS: I understand. Yes, sir. Yes, sir.

2 THE COURT: All right. Let's go ahead and take a break.

3 Mr. Brower, I need to tell you, we're still in the middle of
4 your testimony. So you cannot discuss your testimony with
5 anyone. You can't discuss it with your attorney, your mother
6 or anyone else, either what you've testified to thus far or
7 what you anticipate testifying to in the future. Okay.

8 A Okay.

9 THE COURT: All right. So all we're going to do is
10 you're going to play that. He's going to review it with no
11 questions involved.

12 MR. DAVIS: Yes, sir.

13 THE COURT: Is that correct?

14 MR. WEST: That's correct, Your Honor.

15 THE COURT: All right.

16 MR. WEST: Thank you.

17 THE COURT: Let's take a break, let me know when he
18 finishes reviewing it. Okay?

19 MR. DAVIS: Again, Judge, just for the record, it's
20 almost 40 minutes, but I intend to go to the specific
21 questions I asked.

22 THE COURT: All right.

23 MR. DAVIS: And only play those.

24 THE COURT: That'll be good.

25 MR. DAVIS: Thank you, Judge.

1 OFF THE RECORD

2 (On the record. The following takes place outside the
3 presence of the jury.)

4 THE COURT: Anything further from the State before we
5 bring the jury in?

6 MR. WEST: Nothing from the State, Judge.

7 THE COURT: Anything from the Defense?

8 MR. DAVIS: Judge, just, just to be clear, we've played
9 the portions that I intend to ask questions about. I just
10 realized, and I want to be, you know, transparent on this. We
11 played however long we've been about. It's been a few
12 minutes, but I realized one of the things I am going to ask
13 him about, don't mind him being right here for this is we did
14 not play the full 40 minutes for the absence of something.
15 For example, no names were made or he didn't name any names on
16 that video. I did not play the entirety for that. Again, I'm
17 just letting the Court and the State be aware, nor was this
18 issue about the allegations John would snap the fingers off
19 their children in the room nor that he said they were an hour.
20 All of those things are not on that and that's why we didn't
21 play it. Now, in an abundance of caution, if he or you need
22 the whole thing played before I ask him that, that's fine, but
23 that's 40 minutes so.

24 THE COURT: I don't know.

25 MR. DAVIS: I, I -- the direct questions that that would

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1 refresh his memory on, the direct questions we played those
2 parts, and as I'll not ask anything beyond that, but the
3 absence, of course, it's, it's not there.

4 THE COURT: But I mean, so what, what are you telling me,
5 what are you asking me?

6 MR. DAVIS: I'm, I'm ready to move forward. I just want
7 to make sure that there's no objections from, from anyone.
8 I'm ready to move forward. It's a 40 minute video. We've
9 played however long we've been out on the specific questions I
10 intend to ask that that would have reminded him of the
11 affirmative answers.

12 THE COURT: Okay. And that's all you're asking?

13 MR. DAVIS: That's all I'm putting on the record. Yeah.
14 I mean, it's not really asking him, just putting that on the
15 record.

16 THE COURT: All right. Anything further? All right.
17 Let's bring the jury in.

18 (Whereupon, the following takes place in the presence of
19 the jury.)

20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. Mr. Davis, you can resume your cross examination.

22 MR. DAVIS: Thank you, Your Honor.

23 BY MR. DAVIS:

24 Q Tristen, during the break have you had a chance to watch
25 portions of the recorded interview with law enforcement?

1 A Yes. Yes.

2 Q Okay. Do you recall now having viewed that that, in
3 fact, there were two white male officers in the room with you?

4 A I now know.

5 Q And there were two white male officers in that room with
6 you?

7 A Yes. Yes.

8 Q Do you recall now that you were, in fact, cuffed,
9 handcuffed at the wrist the entire time?

10 A Yes, sir.

11 Q Okay. Do you recall now after Miranda being read to you
12 that you hesitated to talk to them at first? Do you recall
13 that now?

14 A Yes, sir.

15 Q Then after some prodding by Captain Shuler you went ahead
16 and spoke; correct?

17 A Yes, sir.

18 Q And do you recall that he had wheeled his chair over and
19 he was right knee to knee with you when he asked that; right?

20 A Yes, sir.

21 Q Do you recall now telling those officers that you at the
22 4 a.m. incident that you had stayed in the car for a while?
23 Do you recall that now?

24 A I mean, I said it, but I, I don't know why I would say
25 that.

Tristen Brower - Cross by Mr. Davis

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1 Q But you did tell them that then.

2 A Yes.

3 Q And soon after that when they started getting details you
4 told the officers you didn't really want to talk about that.
5 Do you recall that now?

6 A Yes, sir.

7 Q Again, with some, as Officer Shuler moved his chair
8 closer to you, do you recall that, and he asked you to talk
9 and then you changed your mind and decided to. Do you recall
10 that now?

11 A Yes.

12 Q Do you recall now telling the officers at that interview
13 the one guy during the incident had his shirt off?

14 A I, I, I said it, but I don't know why.

15 Q Okay. And do you recall telling the officers that day
16 that you were not wearing a mask, but then a few seconds
17 later, "No. No. I was wearing a mask," correcting them and
18 saying you were wearing a mask? Do you recall that?

19 A Yes.

20 Q Do you recall telling the officers that day that people
21 were in the house for about 10 or 15 minutes?

22 A Yes.

23 Q You did not tell the officers that day that you were in
24 the house about an hour?

25 A I didn't.

1 Q You told the Solicitors that later?

2 A Yes.

3 Q You didn't give names of the two men you say were with
4 you to the police that day, you gave those names to the
5 Solicitor's Office later?

6 A I, I don't know.

7 MR. DAVIS: Your Honor, just a moment. That may be all,
8 if you'd give me just a moment, please.

9 THE COURT: All right.

10 BY MR. DAVIS:

11 Q When you were arrested you had \$200 in cash on you;
12 right?

13 A Yes, sir.

14 Q You got that from Natalia some time during the day of the
15 21st; right?

16 A Yes, sir.

17 Q The police took that from you when you were arrested;
18 right?

19 A Yes, sir.

20 Q You wanted them to take it?

21 A Yes, sir.

22 Q Because it came from Natalia?

23 A Yes, sir.

24 Q And you understood it came from the four a.m. burglary;
25 right?

Tristen Brower - Cross by Mr. Davis

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- 1 A Yes, sir.
- 2 Q Did you meet with either one of these Solicitors recently?
- 3 A Yes, sir.
- 4 Q How recently?
- 5 A Like two weeks or about a week ago.
- 6 Q About a week ago, came to their office?
- 7 A Yes, sir.
- 8 Q With your attorney?
- 9 A Yes, sir.
- 10 Q Okay. And talked to them about your testimony here this
- 11 week; right?
- 12 A Yes, sir.
- 13 Q And your case hasn't been resolved yet, your charges?
- 14 A Is that a question?
- 15 Q Yeah. Your charges have not been resolved yet; right?
- 16 A No, sir.
- 17 Q And you know this office decides what happens about your
- 18 charges; right?
- 19 A I did not know that, but, but I do now.
- 20 MR. DAVIS: May I approach, Your Honor?
- 21 THE COURT: All right.
- 22 BY MR. DAVIS:
- 23 Q You signed an agreement with them; right?
- 24 A I did.
- 25 Q And you sure hope that after your testimony today when

1 they decide what they're going to do with the charges they
2 help you out; right?

3 A Can you explain that question?

4 Q You hope that when they decide what do with your charges
5 after today, after your testimony against my client, they're
6 going to help you out on your charges? You hope for that;
7 right?

8 A I do.

9 Q Thank you, Tristen. No other questions.

10 MR. DAVIS: Thank you, Your Honor.

11 THE COURT: All right. Redirect?

12 REDIRECT EXAMINATION

13 BY MR. WEST:

14 Q Tristen, how far did you get in school?

15 A Tenth grade.

16 Q Okay. When you were arrested were you scared?

17 A I was.

18 Q How close in time to the arrest was the prior home
19 invasion, the same day?

20 A Yes, sir.

21 Q Okay. Does anything that Mr. Davis has asked you has
22 that changed the truth about you being --

23 MR. DAVIS: Objection, Your Honor, vouching.

24 THE COURT: All right. Also, it -- redirect is only as
25 to issues he brought up in his examination. So I sustain the,

Tristen Brower - Redirect by Mr. West

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1 sustain the objection.

2 Q Has anything Mr. Davis asked you changed your mind about
3 your previous testimony?

4 A No.

5 Q This Defendant went in the home with you on Bryan Drive?

6 A Yes, sir.

7 Q This Defendant went into a home, a trailer and brought
8 out a mattress?

9 A Yes, sir.

10 Q This Defendant was arrested, with you, along with the
11 other Co-Defendants?

12 A Yes, sir.

13 MR. WEST: No further questions at this time.

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

15 All right. The State can call their next witness.

16 MR. POULOS: The State calls Courtney Pringle.

17 MR. WEST: Your Honor, may the previous witness be
18 excused?

19 THE COURT: Any objection? Well, let's hold him for
20 right now.

21 MR. DAVIS: Subject to recall, but I'm fine for him to
22 not have to remain here, Your Honor, and I can't imagine he
23 would; but subject to recall, if we can do it that way.

24 THE COURT: All right. That'll be fine.

25 MR. DAVIS: I can see him, Judge.

1 THE COURT: I'll allow him to go, but he's still under
2 subpoena and they can call him back.

3 MR. WEST: Thank you, Your Honor.

4 THE COURT: All right.

5 Whereupon, Courtney Pringle was called to the stand, duly
6 sworn by the clerk and testified as follows:

7 THE CLERK: Okay. If you'll have a seat, state your full
8 name for the record and spell your last name.

9 MS. PRINGLE: Courtney Pringle, P-R-I-N-G-L-E.

10 DIRECT EXAMINATION

11 BY MR. POULOS:

12 Q Thank you, Ms. Pringle. Please tell the jury where you
13 live.

14 A Now?

15 Q Yes.

16 A Goose Creek.

17 Q Okay. Where were you living on October 21st of 2014?

18 A Cindy Drive.

19 Q I'm sorry.

20 THE COURT: You're going to need to speak into the
21 microphone.

22 A Cindy Drive.

23 Q Thank you. And what was your address on Cindy Drive?

24 A I don't remember it. Was it Cindy Drive?

25 Q Okay. Thank you. Who were you living with at that time?

Courtney Pringle - Direct by Mr. Poulos

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1 A Me and my sister, Carlana.

2 Q Okay. On that particular date did you see anything
3 occurring at a nearby house that was out of the ordinary to
4 you?

5 A Yes.

6 Q Please tell us what you saw.

7 A Natalia and a couple of men breaking in a home.

8 Q Okay. Did you see how they broke in?

9 A No.

10 Q Okay. What exactly did you see? Were they in a vehicle?

11 A Yes.

12 Q What did that vehicle look like?

13 A A Dodge Durango.

14 Q Okay. And did you see them go into that house?

15 A No. I didn't see them go in. I saw them walking around
16 it and coming out with things.

17 Q What did they come out with?

18 A A mattress and some other stuff. I don't remember
19 everything.

20 Q Okay. What did they do with the mattress?

21 A Put it in the truck.

22 Q In the trunk?

23 A Uh-huh.

24 Q Okay. Did you -- at what point did you recognize
25 Natalia?

1 A Soon as they pull up.

2 Q Okay. How did -- how do you know her?

3 A From working with her.

4 Q Okay. Did she approach you at any point?

5 A Yes.

6 Q What did she -- when did she approach you and where were
7 you when she approached you?

8 A Whenever they were done.

9 Q Okay. And did she come to your house?

10 A Yes.

11 Q Okay. What did she say to you?

12 A She just told me they -- what they were doing and where
13 they were going.

14 Q Okay. Well, what did she say they were doing?

15 MR. DAVIS: Objection, Your Honor.

16 A Breaking in.

17 THE COURT: Sustained. Sustained.

18 MR. POULOS: May we approach, Your Honor?

19 THE COURT: Strike the last question.

20 MR. POULOS: May we approach, Your Honor?

21 THE COURT: All right. Come on up.

22 (Whereupon, a bench conference is held in the presence
23 but out of the hearing of the jury.)

24 THE COURT: All right. The jury is to disregard the
25 witness' last statement.

Courtney Pringle - Direct by Mr. Poulos

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1 BY MR. POULOS:

2 Q Ms. Pringle, after you spoke with Natalia, did you call
3 the police?

4 A Yes.

5 Q Okay. And how long afterwards did the police arrive?

6 A I don't remember that.

7 Q They did arrive at some point?

8 A Yes.

9 Q Okay. And they spoke with you --

10 A Yes.

11 Q -- about what you saw?

12 A Yes.

13 Q Okay. Do you recall how many people you saw with
14 Natalia?

15 A No.

16 Q Okay. Do you remember giving a statement to police?

17 A Yes.

18 Q A written statement?

19 A Yes.

20 Q Would it refresh your recollection if you could review
21 that statement?

22 A Yes.

23 MR. POULOS: May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 MR. POULOS: Thank you.

1 BY MR. POULOS:

2 Q I'm going to show you what's marked for identification as
3 State's Exhibit 124. Do you recognize that document?

4 A Yes.

5 Q Is that -- what is it? What is the document?

6 A A statement.

7 Q Is it your statement that you gave to police?

8 A Yes.

9 Q Okay. Could you just take a moment to review it and look
10 up when you're finished. Is your memory refreshed by that
11 statement, Ms. Pringle?

12 A Uh-huh.

13 Q So let me ask you, do you recall how many people you saw
14 with Natalia on that date?

15 A Three males.

16 Q Three males. Okay.

17 MR. POULOS: I have no further questions, Your Honor.

18 THE COURT: All right. Cross examination.

19 CROSS EXAMINATION

20 BY MR. DAVIS:

21 Q Ms. Pringle, I think you answered this on direct. You
22 didn't see any of these folks actually go inside the
23 residence?

24 A No.

25 Q Okay. Thank you, ma'am.

Courtney Pringle - Redirect by Mr. Poulos

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1 MR. DAVIS: No other questions, Your Honor.

2 THE COURT: All right. Redirect?

3 REDIRECT EXAMINATION

4 BY MR. POULOS:

5 Q Ms. Pringle, did you see them coming out of the
6 residence?

7 A Yes. When they -- they walked around a couple of times
8 and I guess they went through a window or something. Don't
9 know.

10 Q Okay. And you saw them walk out of the residence with
11 property?

12 A With the items. Yes.

13 Q Thank you.

14 THE COURT: You may step down.

15 The State can call your next witness.

16 MR. POULOS: The State calls Joshua Babson.

17 Whereupon, Joshua Babson was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: If you'll have a seat, state your full name
20 for the record and spell your last name.

21 MR. BABSON: My name is Joshua Babson, B-A-B-S-O-N.

22 THE COURT: Hold for a second. Let me see the attorneys
23 up here for a second.

24 (Whereupon, a bench conference is held in the presence
25 but out of the hearing of the jury.)

1 THE COURT: All right. Ladies and gentlemen, during voir
2 dire I asked you if you had any type of relationship with any
3 of the witnesses, and I misidentified this witness. His name
4 is Joshua Babson, and I think I identified him during voir
5 dire as Justin Babson. So I want to ask everybody on this
6 jury now, is there any member of the jury who has a social
7 relationship, business relationship, related by blood or
8 marriage or have any other type of relationship with this
9 witness, Mr. Joshua Babson, if so, please raise your hand.

10 (No response.)

11 THE COURT: All right. Let the record reflect no one
12 raised their hand. You can resume your examination.

13 MR. POULOS: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. POULOS:

16 Q Officer Babson, where do you work?

17 A I work for the Berkeley County Sheriff's Office.

18 Q And how long have you worked there?

19 A I've worked there for a little over -- about two years
20 now.

21 Q Okay. What's your current position?

22 A I'm a road deputy.

23 Q Okay. What are your responsibilities as a road deputy?

24 A I patrol areas, answer calls for service, and basically.

25 Q Were you working on October 21st of 2014?

Joshua Babson - Direct by Mr. Poulos

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1 A Yes, sir.

2 Q On that date did you and other officers respond to
3 Bryan Drive in Moncks Corner?

4 A Yes, sir.

5 Q Okay. Why did you respond to that location?

6 A A man had called in, said his neighbor came beating on
7 his door saying something about a robbery.

8 Q Approximately what time did you show up?

9 A I got there -- the call came at about 5:51 in the
10 morning. I got there at 5:57.

11 Q What did you do specifically once you arrived at the
12 home?

13 A Parked at the neighbor's house, walked up with my
14 flashlight and could see some stuff laying in the road. Met
15 with Ms., Ms. Simpson, Mr. Roberts and Mr. Jones. They
16 proceeded to tell me that they had just been robbed.

17 Q Okay. Did they provide you with written statements?

18 A Yes, sir. I think Ms. Simpson's I wrote for her.

19 Q Okay. Did you also search the perimeter of the house?

20 A Yes, sir. We searched out by the roadway and we actually
21 came back later on that day to try to speak to neighbors, see
22 if they had seen anything.

23 Q Okay. Did you locate any property in the driveway area
24 of the residence?

25 A Yes, sir. The driveway, driveway into the road we found

1 some, some miscellaneous tools, pliers. I think we found some
2 Allen keys, screws, things of that nature.

3 Q And is -- we said driveway, but that -- it's, it's an
4 area in front of the house where someone would park a car?

5 A Yes, sir.

6 Q Okay.

7 MR. POULOS: May I approach the witness, Judge?

8 THE COURT: Yes.

9 MR. POULOS: Thank you.

10 BY MR. POULOS:

11 Q I'm going to show you what's been marked as State's
12 Exhibits 23, 24, 25, which have been reviewed by Defense
13 counsel. Tell me if you recognize those photographs.

14 A Yes, sir. These are some of the items that were in the
15 roadway.

16 Q Okay. And what are they specifically in those
17 photographs?

18 A I see an Allen key, some screws, some sockets, looks like
19 some nails from a nail gun.

20 Q Okay. And again, those items were recovered from a
21 location where a vehicle would be parked normally?

22 A Yes, sir. In that general area.

23 Q Okay. Did you recover other items as well?

24 A Yes, sir. We recovered some pliers as well that I think
25 was in the, in the yard, and we also, I think we recovered

Cassandra Drew - Direct by Mr. Poulos

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1 like a nerf camera, but I, I believe that was either in their
2 front yard or on the front porch of the residence.

3 Q Okay.

4 MR. POULOS: Your Honor, I'd ask to move 23, 24 and 25
5 into evidence.

6 THE COURT: Any objection?

7 MR. DAVIS: No, Your Honor.

8 THE COURT: State's Exhibits 23, 24 and 25 are admitted
9 into evidence without objection.

10 (State's Exhibit Numbers 23, 24 and 25 [Photographs]
11 admitted into evidence and appropriately marked.)

12 MR. POULOS: I don't have any further questions for
13 Officer Babson at this time. Thank you.

14 THE COURT: All right. Cross examination.

15 MR. DAVIS: No questions, Your Honor. Thank you,
16 Officer.

17 THE COURT: All right. You may step down.

18 The State can call your next witness.

19 MR. POULOS: The State calls Sergeant Cassandra Drew.

20 Whereupon, Cassandra Drew was called to the stand, duly
21 sworn by the clerk and testified as follows:

22 THE CLERK: Okay. If you'll have a seat, state your full
23 name for the record and spell your last name.

24 MS. DREW: Cassandra Drew, D-R-E-W.

25 DIRECT EXAMINATION

1 BY MR. POULOS:
2 Q Good morning, Officer.
3 A Good morning.
4 Q Where do you work?
5 A Berkeley County Sheriff's Office.
6 Q And how long have you been with the Sheriff's Office?
7 A Since 1987.
8 Q Okay. What's your position there?
9 A Civil process division.
10 Q And what does that entail?
11 A I work serving papers, divorce papers, subpoenas, child
12 support papers, stuff like that.
13 Q Do you also assist in other routine patrol duties when
14 necessary?
15 A Yes.
16 Q Okay. Were you working on October 21st of 2014?
17 A Yes.
18 Q Was there a dispatch put over the radio sometime that day
19 about -- regarding a potential robbery?
20 A Yes, sir.
21 Q And what do you recall about that?
22 A They dispatched to, to be on the lookout for a silver
23 Durango with mattresses on top. So I was in the area. So I
24 was riding around. I went into a trailer park, College
25 Park Road, just to see if they might have went in there and

Cassandra Drew - Direct by Mr. Poulos

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1 located them inside the trailer park.

2 Q Okay. You said you located them. Where were they, what
3 were they doing?

4 A It was -- they were at the -- in a cul-de-sac, and two of
5 the people of the vehicle were loading a large TV, appeared to
6 be trash, so they were loading it inside their, their vehicle.

7 Q Okay. How many people were there with the Durango in
8 total?

9 A Four.

10 Q How many males, how many females?

11 A Three males, one female.

12 Q When you came upon them at that time you were aware of
13 the prior incident on Bryan Drive?

14 A No, sir.

15 Q No. Okay. At the time you came upon them did you know
16 to be on the lookout for a vehicle of this description?

17 A Right.

18 Q Okay. When you saw them what'd you do?

19 A I got out of my vehicle and I went up, I approached them
20 and asked them what they were doing and they advised me they
21 were loading a TV that a friend had said they can have for
22 trash and their -- I just talked to them for a minute. I
23 asked for all of them to come out and stand behind their
24 vehicle so I can see them and I just talked with them until
25 other, other officers got there.

1 Q Did you observe anything else about the vehicle or inside
2 the vehicle?

3 A No, sir.

4 Q Okay. Did you relay to dispatch that you had come upon
5 this vehicle matching the description of one they were looking
6 for?

7 A Yes.

8 Q Okay. Did other officers arrive at that point?

9 A Yes.

10 Q How much time had passed by the time they showed up?

11 A Probably three, four minutes.

12 Q Okay. How many officers would you say arrived at that
13 location in total?

14 A I remember when I left there was four.

15 Q Okay. Once the other deputies arrived how long did you
16 stay on scene?

17 A Probably about another 10 minutes.

18 Q And were the suspects still at that location when you
19 left?

20 A Yes.

21 Q Do you recall what -- who specifically arrived from your
22 department?

23 A Officer Graff and I don't remember the rest.

24 Q Okay.

25 MR. POULOS: I don't have any further questions, Your

Cody Graff - Direct by Mr. Poulos

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1 Honor. Thank you.

2 THE COURT: All right. Cross examination.

3 MR. DAVIS: No, sir. Thank you, Officer, no questions.

4 THE COURT: All right. You may step down.

5 A Thank you, sir.

6 THE COURT: The State can call your next witness.

7 MR. POULOS: The State calls Officer Cody Graff.

8 Whereupon, Cody Graff is called to the stand, duly sworn
9 by the clerk and testified as follows:

10 THE CLERK: Okay. If you'll have a seat, state your full
11 name for the record and spell your last name.

12 MR. GRAFF: Cody Graff, G-R-A-F-F.

13 DIRECT EXAMINATION

14 BY MR. POULOS:

15 Q Good morning, Mr. Graff. Where do you work?

16 A Berkeley County Sheriff's Office.

17 Q How long have you been there?

18 A Seven years.

19 Q Okay. What's your current position?

20 A I am corporal on the road.

21 Q Okay. What was your position on October 21st of 2014?

22 A I was a corporal on the road.

23 Q Okay. What are your responsibilities in that role?

24 A I do traffic, answer calls.

25 Q On October 21st of 2014, did you respond to the area of

1 College Park Road?

2 A Yes, sir.

3 Q Why?

4 A We had a call that there was a possible burglary on Cindy
5 Drive, I believe it was , and we were informed that it was
6 a silver Dodge Durango missing a headlight and it was possibly
7 headed towards College Park Road.

8 Q Okay. What did you observe once you arrived at that
9 location?

10 A When I arrived on scene Sergeant Drew was there, and the
11 vehicle was parked in a cul-de-sac at the back of College
12 Park Road, which is a trailer park, and when I got there there
13 was the Dodge Durango parked and all the subjects were out
14 towards the rear of the Dodge Durango.

15 Q Okay. What color do you recall the Durango being?

16 A Silver.

17 Q Okay. Was there anything out of the ordinary about that
18 Durango?

19 A It had two mattresses tied to the top of it.

20 Q Okay. When you arrived were there any subjects around
21 that Durango?

22 A Yes, sir.

23 Q How many?

24 A There were four.

25 Q Okay. How many males, how many females?

Cody Graff - Direct by Mr. Poulos

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- 1 A Three males, one female.
- 2 Q Okay. And what did you do once you arrived?
- 3 A I arrived and I began speaking with the subjects. I
- 4 walked around the vehicle and I got a phone call from Deputy
- 5 Babson.
- 6 Q Okay. Did you at some point begin to speak to them and
- 7 question them?
- 8 A I did speak to them.
- 9 Q Okay. Did you take a look inside that vehicle at some
- 10 point?
- 11 A I did.
- 12 Q What was the first thing you noticed?
- 13 A I noticed that there was an open container of a Raz-Ber-
- 14 Rita Bud Light in the console.
- 15 Q Okay. Is that an alcoholic beverage?
- 16 A Yes, sir.
- 17 Q Okay. Did you recover that beverage from the vehicle?
- 18 A I did.
- 19 Q Okay. I'm going to show you what's been marked as
- 20 State's 101. Tell me if you recognize that item.
- 21 A May I pull it out?
- 22 Q Yes.
- 23 A Yes, sir.
- 24 Q What is it?
- 25 A That is a Bud Light Raz-Ber-Rita alcoholic drink.

1 Q That's, that's the beverage you recovered from the
2 vehicle?

3 A Yes, sir.

4 Q Okay.

5 MR. POULOS: I'd offer that into evidence, Your Honor, as
6 State's 101.

7 THE COURT: Any objection?

8 MR. DAVIS: To 101 no objection, Your Honor.

9 THE COURT: All right. State's Exhibit 101 admitted into
10 evidence without objection.

11 (State's Exhibit Number 101 [Bud Light Raz-Ber-Rita can]
12 admitted into evidence and appropriately marked.)

13 BY MR. POULOS:

14 Q Officer, at that time were you aware of the incident at
15 Bryan Drive?

16 A I was after I received a phone call from Deputy Babson.

17 Q Okay. And you received that phone call prior to looking
18 in the vehicle?

19 A Yes.

20 Q Okay. After recovering that beverage where -- first of
21 all, where in the vehicle was it?

22 A In the center console in the front.

23 Q Okay. Did you continue to search through the vehicle at
24 that time?

25 A When I observed the Bud Light I grabbed it and all

Cody Graff - Direct by Mr. Poulos

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1 parties were detained.

2 Q Okay. After detaining the four suspects did you at that
3 point search the vehicle?

4 A Yes.

5 Q And did you recover some items?

6 A I did.

7 Q Okay. First of all, what did you see inside the vehicle?

8 A There was a lot of things. There were TVs, car radios,
9 tool boxes.

10 MR. DAVIS: May we approach, Your Honor?

11 THE COURT: Excuse me?

12 MR. DAVIS: May we approach, Judge?

13 THE COURT: All right.

14 (Whereupon, a bench conference is held in the presence
15 but out of the hearing of the jury.)

16 BY MR. POULOS:

17 Q What did you observe in the vehicle?

18 A There were car radios, tool boxes, a lot of miscellaneous
19 items.

20 Q Okay. I'm going to show you some photographs here,
21 State's 26 through 36. Items 26 through 36 have been shown to
22 Defense counsel. Officer, before I show you these, let me
23 ask, was the Defendant one of the suspects at that location?

24 A Yes, sir.

25 Q Okay. I'm going to show you State's 26 through 36, flip

1 through those and look up when you're done, please.

2 A Okay.

3 Q Those ten photographs, do you recognize them?

4 A Yes, sir.

5 Q And what are they?

6 A They're items that were inside the Dodge Durango.

7 Q Are they photos of the Durango and its contents?

8 A I'm sorry?

9 Q Are they photos of the Durango and its contents?

10 A Yes, sir.

11 Q Okay.

12 MR. POULOS: Your Honor, I'd offer these into evidence as
13 State's 26 through 36.

14 THE COURT: All right. Any objections?

15 MR. DAVIS: Only as to 30, 31 and 32 as previously
16 mentioned at the bench.

17 THE COURT: All right. State's Exhibits 26, 27, 28, 29
18 -- wait a minute, your objections are what, to which ones?

19 MR. DAVIS: Relevance and the prejudice, Your Honor.

20 THE COURT: But I mean, which exhibits?

21 MR. DAVIS: Oh, I'm sorry, 30, 31 and 32.

22 THE COURT: All right. State's Exhibits 26, 27, 28, 29,
23 33, 34, 35 and 36 are admitted into evidence without
24 objection. State's Exhibits 30, 31 and 32 are admitted into
25 evidence over Defendant's objection.

Cody Graff - Direct by Mr. Poulos

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1 (State's Exhibits 26 through 36 [Photographs] admitted
2 into evidence and appropriately marked.)

3 MR. POULOS: Permission to publish, Your Honor.

4 THE COURT: All right.

5 MR. POULOS: 33.

6 BY MR. POULOS:

7 Q Officer, directing your attention behind you on the
8 screen here, is that the Durango we're talking about?

9 A Yes, sir.

10 Q Okay.

11 MR. POULOS: 26.

12 BY MR. POULOS:

13 Q Is that just another view of that same vehicle?

14 A Yes, sir.

15 Q Okay.

16 MR. POULOS: 29.

17 BY MR. POULOS:

18 Q And what is that?

19 A That is the inside back seat area.

20 Q Okay.

21 A Of the Durango.

22 MR. POULOS: Number 30.

23 BY MR. POULOS:

24 Q Okay. What are we looking at here, Officer?

25 A That is the front seat what it looks like a car speaker

1 and a bag and stuff in the front.

2 Q All right. Thank you. Officer, did you recover any
3 firearms from the vehicle?

4 A Yes. I did.

5 Q I'm showing Defense counsel State's Exhibit 102. Where
6 from within the vehicle did you find a firearm?

7 A I found it under the back seat in the middle.

8 Q Okay. Was it inside of anything?

9 A It was inside of a black glove.

10 Q Okay. I'm going to show you what's been marked as
11 State's Exhibit 102. Just remove that from the bag and hold
12 it up, please. Do you recognize that firearm?

13 A Yes, sir. That's the weapon I retrieved from the
14 vehicle.

15 Q Okay. What type of weapon is that?

16 A It's a Beretta 22 caliber.

17 Q Okay.

18 MR. POULOS: Your Honor, I'd offer that into evidence as
19 State's 102.

20 THE COURT: Any objection?

21 MR. DAVIS: No, Your Honor.

22 THE COURT: State's Exhibit 102 admitted into evidence
23 without objection.

24 (State's Exhibit 102 [Beretta 22 caliber firearm]
25 admitted into evidence and appropriately marked.)

Cody Graff - Direct by Mr. Poulos

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1 BY MR. POULOS:

2 Q At what point did other deputies arrive to assist?

3 A I really don't know, probably ten minutes after I was
4 there, five, ten minutes.

5 Q Okay. How long did you stay on scene?

6 A I really don't know.

7 Q Okay. Were the suspects still present and in custody
8 when you left?

9 A I, I transported I think two of them, two to the jail.

10 Q Okay. Okay. Officer, did you complete a booking report
11 for this Defendant, John Darrieux?

12 A Yes, sir.

13 Q Okay. And in that booking report did, did you write down
14 a phone number?

15 A Yes, sir.

16 Q Okay. Do you recall that phone number off the top of
17 your head?

18 A Not off the top of my head I don't.

19 Q Okay. Would seeing that booking report refresh your
20 recollection?

21 A Yes, sir.

22 Q Officer, the information you put on the booking report,
23 is that information you would have gotten from the Defendant
24 himself?

25 A From the Defendant and his driver's license.

1 Q Okay. Now, back to the question of the phone number, I'm
2 going to show you your booking report. Just review it and
3 look up when you're done, please.

4 A Okay.

5 Q What was the phone number he gave you?

6 A it's either or .

7 Q Okay. It's a little smudged?

8 A Yes, sir.

9 Q Okay.

10 MR. POULOS: I have no further questions, Your Honor.

11 THE COURT: All right. Cross examination.

12 CROSS EXAMINATION

13 BY MR. DAVIS:

14 Q Is it Graff or Graff?

15 A Graff.

16 Q Graff, okay.

17 A Yes, sir.

18 Q Officer Graff, three males, one female at this the
19 location on College Park Drive; right?

20 A Yes, sir. College Park Road.

21 Q College Park Road. I'm sorry.

22 A Yes, sir.

23 Q Everybody is arrested by you?

24 A Yes, sir.

25 Q For the open container?

Cody Graff - Cross by Mr. Davis

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1 A Yes, sir.

2 Q That was found in the front center console?

3 A Yes, sir.

4 Q There's a big old console TV in the back of this vehicle;
5 right?

6 A Yes, sir.

7 Q Okay. Messy car everywhere else?

8 A Yes, sir.

9 Q In your investigation are you aware the female was the
10 driver of the vehicle?

11 A I was.

12 Q Are you aware the female owned the vehicle?

13 A Yes.

14 Q It was her SUV. Okay.

15 MR. DAVIS: May I approach, Your Honor, just for a
16 moment, the court reporter.

17 THE COURT: Yes.

18 MR. DAVIS: Your Honor, if I could have just a moment?

19 THE COURT: All right.

20 MR. DAVIS: Thank you, Your Honor. Thank you, Officer.

21 No other questions.

22 THE COURT: Redirect?

23 MR. POULOS: Nothing from the State, Your Honor.

24 THE COURT: All right. You may step down.

25 A Thank you..

1 THE COURT: The State can call their next witness.

2 MR. WEST: Your Honor, may we approach about schedule?

3 THE COURT: All right.

4 (Whereupon, a bench conference is held in the presence,
5 but out of the hearing of the jury.)

6 THE COURT: All right. Ladies and gentlemen, speaking
7 with the attorneys trying to schedule witnesses and things of
8 that nature, we've agreed that it's a good time for us to go
9 ahead and break for lunch. We're going to go ahead and break
10 for lunch. However, we've got lunch coming for you today.
11 Okay. So we're going to take a shorter lunch break today, and
12 that's simply to ensure that we get this trial in this week
13 and we don't go over. So it's on its way. It has not arrived
14 yet, but it should be here shortly. I'm going to give you
15 plenty of time to eat. Don't worry about that. I anticipate
16 breaking for about 45 minutes. I'd like to resume at one, but
17 certainly depending on when lunch gets here'll dictate when we
18 resume. So take your time eating. Don't worry about it. I'm
19 not going to rush anybody if we go a little past one before we
20 resume. I caution you again, do not discuss the case even
21 among yourselves at this point in time, don't conduct any
22 independent investigations. Hope you have a good lunch, and
23 we'll bring you back as soon as lunch is over. All right.
24 Thank you very much.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. Anything from the State before we
3 recess?

4 MR. WEST: Nothing for the record, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: All right. Let's go ahead -- I don't know
8 when lunch is going to get here. They said it's on the way
9 and I'm going to give them plenty of opportunity. I'd like
10 for -- to resume as close to one as we can. Okay? But
11 certainly if you all are working things out that'll shorten
12 the trial, I'll give you whatever time you need. Okay?

13 MR. DAVIS: Thank you.

14 MR. WEST: What's the, what's the latest we would close
15 and charge? I think there's a possibility we can do it today.
16 It'd be my preference to do it in the morning.

17 THE COURT: Yeah. And I don't -- to be quite honest with
18 you, I don't know that I can get the charges together today.

19 MR. WEST: Okay.

20 THE COURT: Because we've got --

21 MR. WEST: Quite a few.

22 THE COURT: -- quite a few charges to --

23 MR. WEST: I understand.

24 THE COURT: -- go over. So and then with multiple
25 indictments and you've got certain charges on that.

1 MR. WEST: We've still got to do directed verdicts and --

2 THE COURT: And stuff like that. So with you still
3 having witnesses, I don't anticipate being able to charge
4 today, but we'll see, but you know, if we came back at one --

5 MR. WEST: At least one of our witnesses --

6 THE COURT: -- if you're talking about just another
7 hour's testimony that's two, and for me being able to get
8 everything together, closing arguments, jury charges,
9 deliberations before four is going to be pushing it.

10 MR. WEST: That's pushing it. Okay. I would agree, Your
11 Honor, and at least one of our witnesses could be potentially
12 45 minutes to an hour.

13 THE COURT: Okay. All right. Well, it looks like then
14 that we'll probably be charging and deliberations tomorrow at
15 some point in time. I'd like to get in, but you know, we
16 still -- I still don't know what kind of defense or if they're
17 going to put up a defense --

18 MR. WEST: I understand.

19 THE COURT: -- or how many witnesses they're going to
20 have. So we still have that to deal with, too, and that's why
21 I'm telling you I don't want to rush anybody. I want you --
22 to give you plenty of opportunity to present your case,
23 whether it be from the Prosecution or Defense side. If it
24 runs over that's not a problem. If I need to come back next
25 week that's not a problem, but I do have to have enough

1 opportunity to contact Court Administration and let them know
2 that we're in a trial that was not completed and then we'll
3 see.

4 MR. WEST: Thank you, Judge.

5 THE COURT: All right.

6 MR. DAVIS: Two, two things, Judge, one, I think we'll
7 know a whole lot more about all that after we, we have this
8 lunch break. Second of all, if I understood and recall
9 correctly about how you prefer to charge or not during at the
10 time to where even if we were able to work out a stipulation
11 and finish early today, but it was close to that 4:00 o'clock
12 we just break early.

13 THE COURT: Right.

14 MR. DAVIS: And then do things in the morning; is that
15 correct?

16 THE COURT: That's right. That's right.

17 MR. DAVIS: Okay. Okay. Thank you, Judge.

18 THE COURT: It's generally been my standard practice,
19 unless it was on a Friday and we're trying to wrap it up
20 before the end of the week, you know, Monday through a
21 Thursday I generally do not charge and begin deliberations
22 after four p.m. because then I think you've got a jury looking
23 at their watches, and not really deliberating. All right?

24 MR. DAVIS: Thank you, Your Honor.

25 THE COURT: All right. Thank you. All right. We'll be

1 in recess at least until one depending on when the food gets
2 here for the jury.

3 MR. WEST: Thank you, Judge.

4 THE COURT: All right.

5 OFF THE RECORD

6 (On the record. The following takes place outside the
7 presence of the jury.)

8 THE COURT: Please be seated. All right. Gentlemen, my
9 law clerk has brought back an evidentiary stipulation that
10 says -- now, these are Plaintiff's, I mean, excuse me, State's
11 Exhibits?

12 MR. WEST: That's correct, Your Honor.

13 THE COURT: It just says exhibits.

14 MR. POULOS: Yes, Your Honor.

15 THE COURT: Okay. So I understand that you're
16 stipulating to the introduction of State's Exhibits 37 through
17 98 and State's Exhibits 107 through 122. Correct?

18 MR. POULOS: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. POULOS: And Your Honor, we can provide an exhibit
21 list to make a Court's Exhibit for the record if necessary.
22 If there, if there's any need --

23 THE COURT: Well, I mean, they're already pre-marked;
24 right?

25 MR. POULOS: Yes, Your Honor.

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1 THE COURT: Okay. Now, we can, we can just stipulate and
2 I can go ahead and rule that they are introduced into evidence
3 or when the jury comes in the State can say, "Before we go
4 forward we'd move for the introduction of these exhibits," and
5 the Defense can say without objection and I'll go ahead and
6 I'll admit them into evidence. Now, the evidentiary
7 stipulation that you all have signed and handed up, it says
8 the State and Defense hereby agree that the following exhibits
9 are items seized from Hallmark Drive, Goose
10 Creek, South Carolina, 29445, pursuant to a lawfully executed
11 search warrant on October 22nd, 2014, and/or photographs of
12 that search warrant execution. Is the Defense stipulating to
13 all of that or are you just stipulating to the introduction of
14 the evidence? In other words, I've got -- put it this way,
15 I've got a charge on stipulations. If all you're doing is
16 stipulating to the introduction of the exhibits then when they
17 come in, you move to -- the State moves to introduce the
18 exhibits, the Defense says without objection, I'll enter them
19 without objection. If you're stipulating to these others then
20 when -- I'll give the jury a brief instruction that says the
21 parties have stipulated as a fact and that they must accept as
22 a fact that Exhibits 37 to 98 and Exhibits 107 to 122 are
23 properties seized from Hallmark Drive,
24 Goose Creek, 29445, pursuant to a lawfully executed search
25 warrant on October 22nd, 2014, and/or are photographs of that

1 search warrant execution, those issues are not in dispute and
2 they have to accept those as true.

3 MR. POULOS: I'd prefer that, Your Honor.

4 THE COURT: Well, I mean, what is the Defense stipulating
5 to?

6 MR. DAVIS: That's what we're stipulating to, that second
7 one, Your Honor, to again --

8 THE COURT: Okay.

9 MR. DAVIS: -- to save time, economy, it's not of issue
10 to my client. This is a Co-Defendant's residence. So we
11 stipulate, we concur with the State that that's an accurate
12 factual statement.

13 THE COURT: Okay. So when they come in I'm going to go
14 ahead and tell them the stipulation, put the exhibits into
15 evidence and tell them what they must accept as fact. Okay?

16 MR. WEST: Thank you, Judge.

17 THE COURT: All right. Let me go ahead before we go
18 further mark this as -- what is that Court's Exhibit Two?
19 All right. That's Court's Exhibit Two, and if I could have
20 that back.

21 (Court's Exhibit Number Two [Stipulation] appropriately
22 marked.)

23 THE COURT: Thank you, ma'am. All right. Anything from
24 the State before we bring the jury in?

25 MR. WEST: Nothing from the State, Your Honor.

1 THE COURT: Anything from the Defense?

2 MR. DAVIS: So, Judge, you will read the stipulation and
3 instruct them and that'll be a Court Exhibit, won't go back
4 with evidence?

5 THE COURT: That's correct.

6 MR. DAVIS: Okay. Thank you, Judge. No, nothing
7 further.

8 THE COURT: All right. Let's go ahead and bring the jury
9 in.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: All right. Ladies and gentlemen, welcome
13 back. Hope everybody had a good lunch. We're now ready to
14 proceed with the trial of the case, and I apologize for
15 keeping you back in the jury room for so long, but we have
16 been able to shorten things to the following extent. The
17 parties have reached a stipulation. Okay. Now, the
18 stipulation is that State's Exhibits 37 through 98 and State's
19 Exhibits 107 through 122 are admitted into evidence without
20 objection. Those are coming into evidence.

21 (State's Exhibit Numbers 38 through 98 [Photographs] and
22 107 through 122 [See index for description] admitted into
23 evidence and appropriately marked.)

24 THE COURT: The parties also stipulate that State's
25 Exhibits 37 to 98 and State's Exhibits 107 to 122 are

1 properties, are items seized from Hallmark Drive,
2 in Goose Creek, South Carolina, 29445, pursuant
3 to a lawfully executed search warrant on October 22nd, 2014, or
4 are photographs of that search warrant execution. So because
5 the parties stipulate to those facts, those are facts that you
6 must accept, and you cannot dispute. They're agreeing that
7 those are the facts in this case, those facts being that
8 State's Exhibits 37 to 98 and 107 to 122 are items or
9 photographs -- are items seized pursuant to a lawfully
10 executed search warrant on October 22nd, 2014, from
11 Hallmark Drive, , in Goose Creek, South Carolina,
12 29445, or are photographs of that search warrant execution.
13 Is that the State's stipulation?

14 MR. WEST: That's correct, Your Honor. Thank you.

15 THE COURT: Is that the Defendant's stipulation?

16 MR. DAVIS: It is, Your Honor.

17 THE COURT: All right. Anything further to add from the
18 State?

19 MR. WEST: Nothing from the State.

20 THE COURT: Anything further from the Defense?

21 MR. DAVIS: No, Your Honor.

22 THE COURT: All right. We'll go ahead and proceed with
23 the trial of the case. The State can call their next witness.

24 MR. WEST: Thank you, Your Honor. The State calls
25 Detective Dan Wilson.

22 A I actively investigate reported complaints of crimes and
23 also supervise the detectives under my supervision as far as
24 making sure that they comply, follow, you know, guide them and
25 give them advice, whatever needs to be done.

1 Q Were you working for the Berkeley County Sheriff's Office
2 in that capacity on October 21st, 2014?

3 A I was a corporal, but I was in the detective division at
4 that time, yes.

5 Q Did you have a role in the investigation in the matter
6 that brings us here today?

7 A I did.

8 Q Could you tell the jury what that role was?

9 A On the -- basically, I collected in the incident on the
10 -- some of the -- I interviewed one of the Defendants,
11 conducted an interview and I also collected some of the
12 evidence that was placed into evidence.

13 MR. WEST: I'm showing the witness what has been pre-
14 admitted as State's Number 106.

15 BY MR. WEST:

16 Q Could you please tell me whether you recognize that item?

17 A Yes. This, this is \$205 cash. We interviewed one of the
18 Defendants and on his possession he had this cash and we took
19 it and placed it into evidence.

20 Q Okay. Who did you interview?

21 A Tristen -- I'm not familiar with his last name.

22 Q Okay. After you interviewed Tristen, did you have any
23 other further role in the investigation of this matter?

24 A I also participated in the execution of a search warrant
25 at one of the Co-Defendant's residences.

Daniel Wilson - Direct by Mr. West

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1 Q Okay. Do you know which Co-Defendant that was?

2 A Natalia Chisolm.

3 Q Okay. Did you ever respond to the scene of arrest or
4 were involved in any search of a car?

5 A I responded to the scene. The patrol division had -- I
6 heard on the radio that they had stopped a vehicle suspected
7 in the burglary -- in the couple of burglaries, a earlier home
8 invasion and in a burglary that had just occurred on, on
9 College Park Road. So I responded to that scene where they --
10 the patrol division, patrol deputies had stopped that vehicle.
11 I -- at that point I transported the younger juvenile,
12 Tristen, up to the detective division to be interviewed, and
13 subsequently I also participated in the search of the vehicle
14 that was brought up later.

15 Q Okay. I'm showing you Exhibit Number 104 which has been
16 pre-admitted. Could you tell the jury --

17 THE COURT: Excuse me. 104 and 106, neither one of those
18 are in evidence.

19 MR. WEST: Oh, that is not.

20 THE COURT: You've said they were pre-admitted into
21 evidence and neither one.

22 MR. WEST: Okay. I apologize, Your Honor.

23 THE COURT: Okay.

24 MR. WEST: We would ask after the recognition of 106,
25 Number 106 be admitted into evidence.

1 THE COURT: Any objection?

2 MR. DAVIS: No objection on 106.

3 THE COURT: All right. State's Exhibit 106 admitted into
4 evidence without objection.

5 MR. WEST: Okay.

6 (State's Exhibit Number 106 [Cash] admitted into evidence
7 and appropriately marked.)

8 BY MR. WEST:

9 Q And Item Number 104, do you recognize that?

10 A Yes. This is my chain of custody. It was filled out and
11 signed by me to place the items into evidence.

12 Q Okay. Would you open that up?

13 A This is the -- a knit hat, some rubber latex gloves and
14 some black gloves that I placed into evidence.

15 Q Do you recognize those items as items that you collected
16 during your involvement in this investigation?

17 A Yes, sir. During the search of the vehicle.

18 Q Okay.

19 MR. WEST: The State would ask State's 104 be admitted
20 into evidence.

21 THE COURT: Any objection?

22 MR. DAVIS: Yes, Your Honor, relevance. There's been no
23 testimony of any gloves or a knit hat.

24 THE COURT: All right. What's the relevance?

25 MR. WEST: Your Honor, we'd -- do believe there has been

Daniel Wilson - Cross by Mr. Davis

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1 some testimony about the clothing of the Defendants in this
2 case.

3 THE COURT: All right. Let me see the attorneys for a
4 second.

5 (Whereupon, a bench conference is held in the presence,
6 but out of the hearing of the jury.)

7 THE COURT: All right. Defendant's objection's
8 sustained.

9 BY MR. WEST:

10 Q Detective Wilson, did you have any further involvement in
11 the investigation of this case?

12 A I participated in the execution of the search warrant at
13 Natalia Chisolm's residence, a Co-Defendant in this case.

14 Q Okay. Who helped participate in that search warrant?

15 A I believe Detective Fenton obtained the -- helped obtain
16 the warrant, myself, Captain Shuler. Detective Shane Cook was
17 also there, also.

18 Q Okay. Thank you.

19 MR. WEST: No further questions at this time.

20 THE COURT: Cross examination.

21 MR. DAVIS: Just one moment, Your Honor. Thank you,
22 please.

23 CROSS EXAMINATION

24 BY MR. DAVIS:

25 Q Sergeant Wilson.

- 1 A Yes, sir.
- 2 Q And you're a detective with the sheriff's office; right?
- 3 A That is correct.
- 4 Q Okay. So you were involved in the investigation of the
- 5 incident we're on trial for; correct?
- 6 A I assisted. Yes, sir.
- 7 Q Okay. You mentioned a while ago that one of the things
- 8 you searched was not only we just -- not only the, the vehicle
- 9 at the arrest site; correct?
- 10 A Correct.
- 11 Q But also --
- 12 A Well, I didn't search the vehicle at the arrest site. I
- 13 transported Tristen from the arrest site --
- 14 Q Okay.
- 15 A -- to the, to the sheriff's office.
- 16 Q At some point that vehicle was brought back to an impound
- 17 building?
- 18 A That is, that is correct.
- 19 Q And it was searched and processed there?
- 20 A That is correct.
- 21 Q And for the jury to understand, process means it was
- 22 dusted with that black print [sic] to see if any fingerprints
- 23 on the outside of the vehicle, all over; right?
- 24 A That is correct.
- 25 Q You took photos of that?

Daniel Wilson - Cross by Mr. Davis

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1 A That is correct.

2 Q Okay. Some evidence that was found at the execution of
3 the search warrant at Natalia Chisolm's house, you seized some
4 identification cards; is that correct?

5 A I, I recall some identification cards.

6 Q And those also were dusted and printed, they were
7 processed as well?

8 A I'm, I'm not a forensics technician. So I don't know
9 what. Once we collected and placed them into evidence I'm not
10 sure what process they did from that.

11 Q And even on the vehicle you didn't personally do that?

12 A I did not personally do that. That is correct.

13 Q Other officers that that's what they're tasked to do.

14 A That is correct.

15 Q Crime scene investigators?

16 A That is correct.

17 Q They're the ones that apply the, the powder to anything,
18 they're going to try to lift fingerprints; right?

19 A That is correct.

20 Q Okay. As a detective you kind of would have been a
21 supervisor, but you wouldn't have been hands on on that part?

22 A That is correct.

23 Q Fair enough. Okay. You're one of the two officers
24 involved in the interview with Tristen Brower, the young man
25 that was arrested; correct?

1 A I was.

2 Q Okay. That was audio and video recorded; right?

3 A It was.

4 Q Okay. That's at a Charleston County Sheriff's Office
5 interview room?

6 A That is -- that's in the Berkeley County Sheriff's
7 interview.

8 Q I'm sorry. Forgive me, sir. I apologize.

9 A Yes, sir.

10 Q Berkeley County Sheriff's Office interview room. You
11 also talked about patrol cars or police cars arriving at the
12 arrest location.

13 A They were already there when I arrived there.

14 Q Okay. Did the vehicle you were in have a video camera
15 recording camera?

16 A It does not.

17 Q Do you know if any of the other responding cars did?

18 A I do not know.

19 Q Okay. All right.

20 MR. DAVIS: Your Honor, if I can have a moment.

21 THE COURT: All right.

22 MR. DAVIS: Thank you, Your Honor. Thank you, Sergeant
23 Wilson. No other questions.

24 THE COURT: All right. Redirect?

25 MR. WEST: Your Honor, may we approach?

Daniel Wilson - Redirect by Mr. West

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1 THE COURT: All right.

2 (Whereupon, a bench conference is held in the presence,
3 but out of the hearing of the jury.)

4 MR. WEST: Madam Court Reporter, may I mark these as
5 State's Exhibit 126?

6 THE COURT: Will that mark it on it? Okay.

7 REDIRECT EXAMINATION

8 BY MR. WEST:

9 Q Again, Detective Wilson, are these the gloves that you
10 collected during your involvement in the investigation?

11 A They are.

12 MR. WEST: The State would ask State's 126 be admitted
13 into evidence.

14 THE COURT: All right. State's Exhibit 126 admitted into
15 evidence over Defendant's objection.

16 (State's Exhibit Number 126 [Gloves] admitted into
17 evidence and appropriately marked.)

18 MR. WEST: Thank you. No further questions for this
19 witness at this time.

20 THE COURT: All right. You may step down.

21 A Thank you, sir.

22 THE COURT: The State can call their next witness.

23 MR. POULOS: The State calls Detective Shane Cook.

24 Whereupon, Shane Cook was called to the stand, duly sworn
25 by the clerk and testified as follows:

1 THE CLERK: Thank you. If you'll have a seat. State
2 your full name for the record and spell your last name.

3 MR. COOK: Detective Shane Cook, C-O-O-K.

4 DIRECT EXAMINATION

5 BY MR. POULOS:

6 Q Good afternoon, Detective. Where do you work?

7 A Berkeley County Sheriff's Office.

8 Q How long have you been with the Sheriff's Office?

9 A Approximately two years, and prior to that Greenville
10 County for five.

11 Q Okay. What is your position at the Sheriff's Office?

12 A Currently assigned to criminal investigations division.

13 Q And what does that entail? What are your
14 responsibilities?

15 A We deal with a multitude of different issues, but
16 property crimes, violent crimes, burglaries, things of that
17 nature.

18 Q Detective, were you working on October 21st, 2014?

19 A I was.

20 Q Did you assist in the investigation of the incident that
21 occurred at Bryan Drive in Moncks Corner?

22 A Yes. I did.

23 Q Okay. How did you assist in that investigation?

24 A It was my responsibility to execute the search warrant on
25 a Co-Defendant's residence on Hallmark Drive in Goose Creek.

Shane Cook - Direct by Mr. Poulos

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1 Q What residence was that, Detective?

2 A I -- may I see the search warrant, please, for the exact
3 apartment number?

4 Q Detective, I'm going to show you what's been marked for
5 identification purposes as State's 100. Do you recognize
6 that? Do you recognize that document?

7 A Yes. I do.

8 Q Is that the search warrant?

9 A Yes. It is. Hallmark Drive, in Goose
10 Creek, within Berkeley County.

11 Q Okay. And during the course of the Sheriff's Office
12 investigation whose residence was that determined to be?

13 A Natalia Chisolm's residence.

14 Q Now, pursuant to that search warrant did you recover
15 items from that residence?

16 A Yes. We did.

17 Q Okay. Do you recall what items you recovered?

18 A Not all of them offhand.

19 Q Okay. Would reviewing the search warrant help you to
20 recall which items you recovered?

21 A Yes. It would.

22 Q All right. If you could at this time tell the jury what
23 items you recovered from that execution.

24 MR. DAVIS: Your Honor, if we could -- could we have just
25 a moment if I can talk with opposing counsel on one issue.

1 THE COURT: All right.

2 MR. WEST: May we approach, Your Honor?

3 THE COURT: All right.

4 (Whereupon, a bench conference is held in the presence,
5 but out of the hearing of the jury.)

6 BY MR. POULOS:

7 Q Detective, if you could just relay to the jury what items
8 you recovered, please?

9 A Sure.

10 Q One First Union credit card bearing account number
11 ; one Sam's Club card; one South Carolina
12 driver's license issued to Charles Willard Roberts; one Social
13 Security card bearing the name Charles Willard Roberts; one
14 AutoZone card; one South Carolina driver's license issued to
15 Shawn Marie Scissile [spelled phonetically]; one South
16 Carolina driver's license issued to Charles Willard Roberts;
17 one BP Driver Rewards card; one Care Improvement Plus card
18 from the master bedroom; four chess game sets; one poker game
19 set; one game card box; miscellaneous sports cards; one set of
20 keys; one black pouch containing hearing aids; miscellaneous
21 belt buckles, miscellaneous military patches; two bowie
22 knives; one Garmin GPS; one black BB gun; miscellaneous
23 collector coin sets; 11 cell phones; empty box of 25 auto
24 ammunition; one round of 45 ACP ammunition; one T-Mobile one-
25 touch cell phone from the living room; silver DVD player from

Shane Cook - Direct by Mr. Poulos

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1 the first bedroom; two chess sets from bedroom number two; one
2 cell phone from the dining room; one LG flip phone; one Lorcin
3 25 semiautomatic handgun, serial number L, Lima, T, Tango,
4 040594; one round of 25 auto, automatic ammunition; two rounds
5 of nine millimeter ammo; nine millimeter handgun magazine; 20
6 rounds of 45 ACP ammunition; one used nine millimeter casing;
7 one decorative pipe; one Ryobi 18-volt battery; from the
8 kitchen, tool bag with miscellaneous tools and prescription
9 bottles issued to Charles Roberts; from the pantry closet, one
10 central pneumatic framing nailer in a blue case; one green
11 Ryobi bag; one DeWalt cordless reciprocating saw; one Black
12 and Decker drill; one Ryobi cordless screwdriver; one Ryobi
13 cordless reciprocating saw; one Ryobi cordless circular saw;
14 one Porter-Cable cordless drill; one Ryobi cordless band saw;
15 one Ryobi cordless drill; one Ryobi cordless flashlight; two
16 charging bases; one Ryobi battery; miscellaneous hand tools;
17 one jewelry box from the hallway closet; one gray briefcase
18 from the pantry closet; one piece of cardboard box bearing
19 Charles Roberts' name, and nothing further.

20 Q Okay. Thank you, Detective. Were photographs taken of
21 the residence?

22 A Yes. They were.

23 Q Okay. I want to show you what's already in evidence as
24 State's 37. Take a look behind you. It's tilted the other
25 way, but what part of the residence is that?

1 A That is the kitchen where the Styrofoam cups are. To the
2 left is the living room and the hallway where bedroom number
3 one and number two are.

4 Q Okay. Number 39, what do we have here?

5 A That is the dining room which was to the left of the
6 kitchen.

7 Q Okay. 45, what do we have here?

8 A That is the master bedroom which was to the left of the
9 living room.

10 Q Okay. What are we looking at in that photo?

11 A On the left-hand side is an inflatable mattress, also we
12 have several chess games, game boards and then a flat screen
13 TV on top of a larger tube TV.

14 Q Okay. Number 52, what is this?

15 A And this is another picture of the master bedroom, more
16 specifically the inflatable mattress and the TV on top of it.

17 Q 54, what are these items?

18 A Cards with the name Charles Roberts located within the
19 residence and also a Wal-Mart money card.

20 Q What are we looking at here?

21 A These are various IDs and bank cards bearing the name
22 Charles Roberts.

23 Q What is this, Detective?

24 A Prescription bottles located within the kitchen and
25 pantry areas bearing the name Charles Roberts.

Shane Cook - Direct by Mr. Poulos

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1 Q Okay. 82, what is this, Detective?

2 A This is one of the framing nailers located within that
3 residence as well.

4 Q 88, what are we looking at here, Detective?

5 A Several other ID cards and bank cards bearing the name
6 Charles Willard Roberts.

7 Q Thank you. Detective, did you also recover masks from
8 that residence?

9 A Yes. We did.

10 Q Okay. I'll show you what's been admitted into evidence
11 as State's 116. I'm going to ask you to take a look at this
12 bag, pull out the contents and tell me if those are masks you
13 recovered?

14 A Yes. Those are the masks recovered from the master
15 bedroom closet.

16 Q Thank you, Detective, and you indicated you recovered
17 some firearms as well; correct?

18 A That is correct.

19 Q I'm going to first show you State's 107 already entered
20 into evidence. What is that, Detective?

21 A That is the BB gun located within the master bedroom.

22 Q Okay. State's 108 already into evidence, please tell us
23 what that is.

24 A This is the Ruger SR-9C or, excuse me, the SR-9, which
25 was also recovered within the residence.

1 Q Okay. And State's 109, also already into evidence.

2 A And this is the Lorcin 25 caliber which was recovered at
3 the residence as well.

4 Q And lastly, Detective, I'm going to show you State's 110.
5 State's 110, which is already in evidence, if you'd please
6 remove that and tell us what it is.

7 A This is the backpack that was located within the
8 residence containing ammunition.

9 Q Detective, how was that backpack collected, if you
10 recall?

11 A To my understanding it was actually collected off of one
12 of the juveniles from within the residence.

13 MR. POULOS: No further questions, Your Honor.

14 THE COURT: All right. Cross examination.

15 MR. DAVIS: No, Your Honor. Thank you very much. No
16 questions, Officer.

17 THE COURT: All right. You may step down.

18 A Thank you, Your Honor.

19 THE COURT: The State can call their next witness.

20 MR. WEST: Thank you, Your Honor. The State calls Zach
21 Wright.

22 Whereupon, Zachary Wright was called to the stand, duly
23 sworn by the clerk and testified as follows:

24 THE CLERK: Okay. If you'll have a seat. State your
25 full name for the record and spell your last name.

Zachary Wright - Direct by Mr. West

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1 MR. WRIGHT: My name is Zachary Wright, W-R-I-G-H-T.

2 DIRECT EXAMINATION

3 By MR. WEST:

4 Q Mr. Wright, would you please tell the jury where you
5 work?

6 A For the Berkeley County Sheriff's Office.

7 Q And how long have you worked there?

8 A Approximately two years.

9 Q What'd you do before you worked at the Sheriff's Office?

10 A I was actually active-duty marine.

11 Q What is your rank and title at the Sheriff's Office now?

12 A I'm currently a corporal and I'm a patrol deputy.

13 Q What are those -- what does that title give you
14 responsibilities?

15 A We answer calls. People dial 911, we show up on scene,
16 assess the situation and take appropriate action.

17 Q Did you have an opportunity to respond to a call out at
18 Cindy Drive on October the 21st of 2014?

19 A I did.

20 Q Is that in Berkeley County?

21 A It is.

22 Q Tell your -- the jury your involvement with that call.

23 A I responded in reference to a burglary. Upon arriving on
24 scene I met with a Courtney Pringle, a female. She advised me
25 that the, the residence across the street was being

1 burglarized and that she, she witnessed it.

2 Q Okay. And did you take a statement from her?

3 A I did.

4 Q Okay. Did you have any role in the investigation of a
5 home invasion that occurred on Bryan Drive on that same date?

6 A I did not.

7 Q Did you have any other role in the investigation of the
8 burglary on Cindy Drive?

9 A I did not.

10 Q Did you ever advise dispatch as to what, what to look for
11 in the, in the area?

12 A I did.

13 Q Okay. Would you tell the jury about that?

14 A Upon meeting with Ms. Pringle she was able to give me a
15 vehicle description and a suspect description at which time I
16 passed it on the radio, advised dispatch to issue it out as a
17 BOLO at which time they did.

18 Q Okay. Did you ever make contact with this Defendant?

19 A I did not.

20 MR. WEST: Nothing further for this witness at this
21 time.

22 THE COURT: All right. Cross examination.

23 CROSS EXAMINATION

24 By MR. DAVIS:

25 Q That was your only involvement with this, this case?

Zachary Wright - Cross by Mr. Davis

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1 A It was.

2 Q So you've forgotten talking to Carlana Pringle, who is
3 related to Courtney Pringle? You forgot about that?

4 A There was two ladies present at that residence when I
5 responded. Yes.

6 Q Okay. So that wasn't all your involvement? You spoke
7 with two folks; right?

8 A Yes, sir.

9 Q Okay. And the second lady, the second Ms. Pringle, told
10 you she'd observed things as well; correct?

11 A I, I'd have to have her statement in front of me to
12 recall what she said.

13 MR. DAVIS: May I approach, Your Honor?

14 THE COURT: Yes.

15 MR. DAVIS: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 BY MR. DAVIS:

18 Q Officer, I'm going to show you what's been marked as
19 Defense Exhibit Number Four for identification purposes only.
20 If you'll take a second, unfortunately it's my only copy, I'm
21 going to loiter here, but take as long as you need to look at
22 it, and I won't ask you any questions until you've had a
23 chance to review it.

24 A All right. All right. I've completed reading it, sir.

25 Q All right.

1 MR. DAVIS: I'm going to approach again, Your Honor.

2 THE COURT: All right.

3 BY MR. DAVIS:

4 Q Do you recall now speaking with Ms. Pringle, taking a
5 statement from her?

6 A I do remember speaking with two ladies. Yes, sir.

7 Q Okay. Do you recall Carlena Pringle indicating that --
8 forgive me just a second. I apologize.

9 MR. WEST: Objection to hearsay, Your Honor.

10 THE COURT: I --

11 MR. DAVIS: I don't think I've completed my, my question
12 yet.

13 BY MR. DAVIS:

14 Q During your conversation with both of the Pringle ladies
15 did your investigation reveal that one of them had recorded
16 these --

17 MR. WEST: Objection, Your Honor, hearsay.

18 THE COURT: Sustained.

19 MR. DAVIS: Goes to the -- further into the
20 investigation, Your Honor. It's not the truth of the matter
21 asserted. It's what the law enforcement did with the
22 information.

23 THE COURT: Okay. You all come on up.

24 (Whereupon, a bench conference is held in the presence,
25 but out of the hearing of the jury.)

Zachary Wright - Redirect by Mr. West

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1 THE COURT: All right. Overruled. Go ahead.

2 BY MR. DAVIS:

3 Q In speaking with the two Pringle ladies, were you aware
4 that one of them videotaped this incident?

5 A I was.

6 Q Did you collect that videotape?

7 A I did not.

8 Q Thank you.

9 MR. DAVIS: No other questions, Your Honor.

10 THE COURT: All right. Redirect.

11 REDIRECT EXAMINATION

12 BY MR. WEST:

13 Q Why didn't you collect that video?

14 A I gave one of the Pringle ladies the opportunity to
15 transfer that video to a storage device, whether a thumb drive
16 or disc, and then turn into the Sheriff's Office.

17 Q And you didn't follow up on that?

18 A I did not. No.

19 Q Okay. As a routine patrol deputy that's not within your
20 normal gamut of responsibilities?

21 MR. DAVIS: Objection, Your Honor, leading.

22 THE COURT: Overruled. Go ahead.

23 A I'm sorry. Can you repeat the question?

24 Q As a, as a, as a routine patrol officer is that within
25 your normal gamut of responsibilities?

1 A Depending on time restraints, but typically speaking,
2 that's something that was usually passed off to a detective.

3 Q Thank you. No further questions of this witness.

4 THE COURT: All right. You may step down.

5 A Thank you, Your Honor.

6 MR. WEST: Your Honor, I believe there's a matter of law
7 that needs to be addressed with the Court.

8 THE COURT: All right.

9 Ladies and gentlemen, the attorneys have advised me that
10 I need to discuss a legal matter with them. So I'm going to
11 excuse you back to the jury room for just a minute while we
12 discuss this legal matter. Again, I caution you, don't
13 discuss the case even among yourselves. It's too early for
14 deliberations. We'll take a short break and we'll bring you
15 back in just a minute. Thank you very much.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. What have we got?

19 MR. WEST: At this time, Your Honor, the State would be
20 calling the records custodian from the Hill-Finklea Detention
21 Center. We intend on introducing State's Exhibit Number 123,
22 jail calls elicited from this Defendant while incarcerated.
23 Mr. Davis has indicated to me he has some objections to that.

24 THE COURT: All right. What's the basis for your
25 objection?

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1 MR. DAVIS: Several, Your Honor, and first of all, I'm
2 still not aware, the State has indicated five potentially they
3 may use, and I'm still not aware of those five, which I've
4 listened to and yesterday at lunch reviewed with my client
5 because didn't have access until Tuesday night. I'm still not
6 aware of those five which they intend to use. First of all
7 I'd ask that.

8 THE COURT: All right. But you're heard all five?

9 MR. DAVIS: I've heard all five. Yes, Your Honor.

10 THE COURT: All right. Overruled. I'm, I'm not going to
11 suppress it because of that.

12 MR. DAVIS: No. This is not my motion to suppress. I'd
13 simply like to be told of, of the five which ones they intend
14 to use and then I'll -- because depending on what it is I'll,
15 I'll address my specific --

16 THE COURT: All right. Let's say for the purposes of
17 your argument they're going to introduce all five.

18 MR. DAVIS: Fair enough. Fair enough, Your Honor.

19 THE COURT: All right.

20 MR. DAVIS: Judge, I would argue, I would argue there's
21 four hurdles for these to be admitted, and I would argue that
22 there is an issue as to the fact that they are hearsay. I
23 expect the State would suggest that under 803(6) they're
24 admissible.

25 THE COURT: These are phone conversations between the

1 Defendant?

2 MR. WEST: The Defendant is the caller, Your Honor.

3 THE COURT: Okay. So how are they hearsay if the
4 Defendant is --

5 MR. DAVIS: Because it's not a live person who heard him
6 say it.

7 THE COURT: Okay.

8 MR. DAVIS: It's not a written statement of him. It's a
9 phone call recorded by a third party.

10 THE COURT: All right.

11 MR. DAVIS: Third party, not either person on the phone.
12 So that goes to my second thing is to authenticate it. I
13 think not only must the, the State show that it comes in over
14 top of any hearsay objection, they have to be -- able to
15 authenticate it. My understanding, Your Honor, is that this
16 is a records custodian that works at the jail who will put in
17 some identifying number, inmate number or something to that
18 effect, identifying number, and that pulls all the calls from
19 that account that go out of the jail. I, I expect that
20 custodian to say that account number corresponds to my client,
21 John, but I don't expect this records custodian to be able to
22 tell us if one of the two people talking on the phone is John.
23 I, and I also have higher concerns because one of the ones
24 they may attempt to introduce they allege is John talking on
25 the phone from a different number, another inmate's number.

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1 So clearly the number identifying who the caller is is not
2 foolproof. So the State not only has hearsay issue, they have
3 authentication issue, and then finally, Your Honor, again,
4 this is a conversation between two people, of the four -- five
5 calls, four of them are with a female, one is with a male.
6 The State has issues on that because it's recorded by a third
7 party. We have Crawford issues, confrontation issues because
8 that other person is on the phone, it's a conversation, and
9 for that to be understood then that person receiving the call,
10 certainly John can choose to testify or not, but if they're
11 going to introduce evidence that has contents from another
12 person, we're talking two other people, a male is on one call,
13 female on three, on four, then we are in a bind for
14 confrontational, constitutional issues. So unless, unless the
15 State can overcome those series of hurdles I would argue
16 they're inadmissible.

17 THE COURT: All right. What's the State's position?

18 MR. WEST: Thank you, Your Honor. First of all, the
19 hearsay objection is unfounded as under 801(D)(2) these
20 statements are stated by the Defendant and admission by a
21 party opponent admission against interest.

22 THE COURT: Well, now, but not all of the statements are
23 by the Defendant. Some of them is by someone he is talking
24 to.

25 MR. WEST: That's correct, but at that point, those

1 statements aren't going to be inserted, introduced for the
2 truth of the matter asserted, and therefore, are not hearsay,
3 but the State --

4 THE COURT: So what -- so you're not --

5 MR. WEST: -- what the State intends to introduce is the
6 phone conversation, Your Honor, but during the phone
7 conversation it is the elicitations by the Defendant about the
8 actual incident that we intend to use as proof against him as
9 guilt in this instance.

10 THE COURT: Okay. So anything that is inculpatory -- is
11 there any inculpatory statements made by the other party to
12 the phone conversation or are all of the -- is all of the
13 inculpatory evidence against the Defendant statements made by
14 the Defendant?

15 MR. WEST: Could you please rephrase the question?

16 THE COURT: Okay. I guess my question is is there
17 anything said by the other party to the phone conversation?

18 MR. WEST: About the incident itself?

19 THE COURT: That, that implicates the Defendant?

20 MR. WEST: I mean, it's -- it is a dialogue, Your Honor.

21 THE COURT: Okay. But if -- it's one thing if the
22 Defendant says, "Yeah. We broke into the house last week."
23 It's a completely different issue if the Defendant says, "Why
24 are you calling," and the other party says, "I want to talk to
25 you about us breaking into the house last week."

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1 MR. WEST: Okay. It is not at all like that second
2 scenario. The phone calls are between the Defendant and his
3 father and the Defendant and his child's mother, and so
4 they're not participants in the crime. Most of it is
5 reactionary phone calls after he's arrested telling what has
6 occurred.

7 THE COURT: Him telling them what has occurred?

8 MR. WEST: That's correct.

9 THE COURT: All right. So they don't say anything --

10 MR. WEST: Would you like to listen to them in-camera?

11 THE COURT: -- out of a personal knowledge or anything of
12 that nature?

13 MR. WEST: What I don't want to do is misquote a 15-
14 minute phone call, Your Honor, and be in a position where
15 you're not fully informed.

16 THE COURT: And that's why I'm wondering. I might need
17 to listen to it anyway because if the other party to the
18 conversation says anything to implicate the Defendant then he
19 has a right to cross examine that. He can't cross examine a
20 phone conversation.

21 MR. WEST: I understand that.

22 THE COURT: He has the right to put them on the stand and
23 cross examine them.

24 MR. WEST: And I would argue that they are readily
25 available as it's his child's mother. So he knows who it is

1 and it's his father, he knows who it is, and earlier this week
2 --

3 THE COURT: Yeah. But he can't, I mean, but that's
4 forcing him to prove his innocence. The question is does
5 the State have to get his father in and does the State have to
6 get the other party to the conversation in? Now, if it is
7 true that it is not hearsay, it's not being offered for the
8 truth of the matter asserted, then it may very well be
9 admissible. However, it's one thing for the State to say,
10 "We're not offering it for the truth of the matter asserted,"
11 but if they are making a statement that implicates the
12 Defendant you've got a confrontation problem.

13 MR. WEST: Okay.

14 THE COURT: And I don't know because I don't know what
15 the conversations say. I don't know what the other party to
16 the phone conversation says.

17 MR. WEST: Sure. Well, let's have a hearing on -- let's
18 just play the calls. I think that's the best way.

19 THE COURT: I think that's the best thing to do. Mr.
20 Davis?

21 MR. DAVIS: Certainly, Judge, and this will help
22 understand which ones are -- I will tell you four of the five
23 are 15 minutes each and some seconds, like it cuts off at an
24 automated time. So it's just over 15 minutes, four, four of
25 the five and the last one's at about a 10-minute call. So as

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1 you see fit, it took me two and a half hours the other night
2 to get through five of them.

3 THE COURT: Well, and I think we're going to have to do
4 that because I don't know whether -- I don't know what's said.

5 MR. WEST: I can help you.

6 THE COURT: And put it this way, hearsay is inadmissible
7 unless it falls under one of the exceptions, and I don't know
8 that this fits within one of those exceptions.

9 MR. WEST: Okay.

10 THE COURT: You're offering an out-of-court statement by
11 someone other than the Defendant, and if it implicates the
12 Defendant then you're going to have to call that person and
13 put them on the stand and subject them to cross examination by
14 the Defendant. If it's not incriminating and all of the
15 incriminating testimony is spoken by the Defendant, then
16 that's another, another issue, but without knowing what is
17 said -- now, the thing is is we're going to have to get that
18 marked for -- is it already marked for identification?
19 Okay. And what -- what's the identification?

20 MR. WEST: 123, Your Honor.

21 THE COURT: All right. This is State's Exhibit 123.

22 MR. WEST: I believe I need to call the witness to get it
23 authenticated.

24 THE COURT: No.. This is just for identification at this
25 point in time. You're still going to have to authenticate it

1 before it comes into evidence. I just want to review it to
2 find out if it's -- if I should grant the Defendant's motion
3 to suppress because of hearsay.

4 MR. DAVIS: And one housekeeping matter at this point,
5 Judge, does that one disc have all 94 calls on it?

6 THE COURT: I don't know.

7 MR. WEST: It does.

8 MR. DAVIS: Then at -- in a future time if the two or
9 three or five are admitted we're going to have to redact that
10 to another disc because they all can't go back. Just I know
11 I'm getting ahead of myself, but --

12 THE COURT: Yeah. Well, and the thing is is how we're
13 going to identify which -- what conversations they are?

14 MR. WEST: Well, they're indexed on the, on the call.

15 THE COURT: Okay.

16 MR. DAVIS: They're numbered. It's, it's --

17 THE COURT: Okay.

18 MR. DAVIS: -- a list of them almost like a spread sheet.

19 THE COURT: All right. So as you get ready to play them
20 let's identify what number they are.

21 MR. WEST: Correct. And for purposes of redaction the
22 software that's used, our office, once it has been downloaded,
23 cannot redact the contents of the call or what's on that CD.
24 So we'll just have to get a new CD from the jail with the
25 calls that are introduced.

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1 THE COURT: Well, what we'll do is we'll just have the CD
2 and if the jury wants to listen to it we'll just bring them
3 back into the courtroom and replay it.

4 MR. WEST: That's what we've done in the past, Your
5 Honor.

6 THE COURT: We'll do it that way.

7 MR. WEST: All right.

8 THE COURT: All right. So which conversation is this?
9 What number?

10 MR. WEST: We'll be listening to number five, indexed as
11 number five, first, Your Honor, and that is a phone call from
12 November the 1st of 2014 at 13:47:18 to phone number
13 .

14 MR. DAVIS: And Judge, whatever securities we can have to
15 not have it too loud for the -- and have the door shut so the
16 jury's not hearing this.

17 THE COURT: I'm assuming the jury can't hear any. If the
18 jury can hear us in here then --

19 MR. DAVIS: Well, I just -- I want to make sure it's not
20 played very loudly. You know, certainly you need to hear it,
21 Judge, but that -- thank you.

22 THE COURT: All right.

23 (State's Exhibit Number 123 played in open court.)

24 MR. DAVIS: Judge, we'd ask that --

25 THE COURT: Hold for a minute. Just stop it for a second

1 because I'm talking louder than that, and if you're saying the
2 jury can hear that then they've heard everything that's going
3 on. Can they hear that back there?

4 (Officer and Court confer.)

5 MR. POULOS: Judge, the room with the speaker is the
6 court officer room. It's not the jury room. It's a separate
7 thing.

8 THE COURT: What is it for?

9 MR. POULOS: It's so the bailiffs can monitor what's
10 happening in the room. The jury's in a completely separate
11 room on the other end of the hallway.

12 THE COURT: Okay. Well, then go and make sure that
13 door's shut and the jury can't hear what's going on. Okay.
14 All right. All right. Go ahead and play it.

15 (State's Exhibit Number 123 played in open court.)

16 MR. WEST: Your Honor, that's all we really intended to
17 introduce from that phone call.

18 THE COURT: All right.

19 All right. Let me hear from you, Mr. Davis. Any --
20 what's the objection to that?

21 MR. DAVIS: Again, Your Honor, as it comes on, there's an
22 automated indication of what, and again, if you need the
23 testimony, but I expect the testimony to be, the records
24 custodian say that that name here, John Darrieux called it
25 because it corresponds to his PIN number, to his inmate

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1 number, to some number at the, at the jail, and then, then we
2 hear the recording. I'm -- I still don't believe the State --
3 now you've heard it, but I would just renew my objections.
4 They have to show -- they have to authenticate it. They have
5 to get it by hearsay as to John and the other speaker if they
6 intend to introduce the conversation, and if they intend to do
7 that then we have a confrontational clause issue. It's, as
8 you said earlier, it's the State's burden to lay the
9 foundation and get through the evidentiary requirements.

10 THE COURT: Well, what part of what the other party to
11 the conversation was said that is being offered for the truth
12 of the matter asserted that, that implicates your client?

13 MR. DAVIS: Give me just a second, Your Honor. I don't
14 believe there's anything said by the female that implicates my
15 client. I would argue there's some things said by my -- by
16 the female that would be prejudicial if played. I'll address
17 that now or at the appropriate time.

18 THE COURT: Okay.

19 MR. DAVIS: But it's -- as to your question you're right.

20 THE COURT: Go ahead and address it now. What is --

21 MR. DAVIS: Okay. She references being in prison
22 herself. She references that she, she has dealt with this
23 stuff before. Obviously, it's someone close, if it's
24 introduced, if the jury hears it, saying that you determined
25 that the State's authenticated it and that it's, as a matter

1 of evidence it's, it's admitted, that the fear is there it
2 would be prejudicial to John to have talked about prior
3 knowledge of serving time in prison because there's also a
4 reference here in response or in close proximity to her saying
5 she was in prison, they're talking about how much time could
6 be served, whether it's 85 percent or 35 percent. I -- he had
7 already said, "I hadn't been advised of this." So where's
8 that knowledge come from on how long you serve, how long you
9 don't serve. That conversation between the two of them can't
10 be -- it is intertwined and it would be prejudicial if that's
11 presented to the jury. It's similar to, you know, 404(B)
12 prior bad act. The, the, the caller says, "I have not been
13 advised of this." So the only other way that person has that
14 knowledge is from prior convictions.

15 THE COURT: All right.

16 MR. DAVIS: So that would be of concern.

17 THE COURT: All right. They're still going to have to
18 authenticate it and meet all the hurdles to get it in, but I
19 don't see anything that the female to that conversation said
20 that implicates the Defendant, it's not being offered for the
21 truth of the matter asserted on her part. So I think that
22 conversation, number five, assuming you authenticate it and
23 get it in -- I'm not going to suppress it on grounds of
24 hearsay. All right?

25 MR. WEST: All right.

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1 THE COURT: All right.

2 MR. DAVIS: And if I may just to communicate that
3 further, Judge, since there's no implicating statements, it's
4 not a confrontation clause issue either; correct?

5 THE COURT: Correct.

6 MR. DAVIS: Is that your ruling?

7 THE COURT: That's right.

8 MR. DAVIS: And Judge, I would again ask that -- I know
9 and I appreciate the State shortening it a little bit, but
10 there, there are some conversations in there about, you know,
11 him seeing the, the, the person receiving the call or a child,
12 that's stuff I would argue is irrelevant. If they, if they
13 want to play some of it, that's fine. I, I just -- there's,
14 there's some chitter chatter that I would argue is irrelevant
15 and I'd ask be redacted even further.

16 THE COURT: Okay. No. I think it's going to further
17 complicate it if you're stopping, starting, stopping,
18 starting. So I'm going to allow him to go forward with that
19 one. All right. What's the next number?

20 MR. WEST: State's Number or we would play index number
21 59 from December the 15th of 2014 starting at 17:10 to number
22 -9558.

23 (State's Exhibit Number 123 played in open court.)

24 MR. WEST: And that's all we would introduce from that
25 call, Your Honor.

1 THE COURT: All right. I'm going to sustain his
2 objection on that one. I mean, she said, "I can't take this
3 anymore. You did this to yourself. You'll get 15 years
4 reduced to five," then talks about the people he's hanging
5 around she doesn't like him, I think, I think you've got a
6 confrontation problem on that. So I'm going to sustain the
7 Defendant's objection to call number 59.

8 MR. WEST: Your Honor, given the light of that ruling I
9 believe we would only try to introduce number five.

10 THE COURT: All right.

11 All right. Anything further from the Defense?

12 MR. DAVIS: Not at this time, no, Your Honor.

13 THE COURT: All right. All right. Has that got it?

14 MR. WEST: That's it, Your Honor, and our records
15 custodian witness is present --

16 THE COURT: Okay.

17 MR. WEST: -- or in the lobby and --

18 THE COURT: Let's take about a 10-minute break.

19 MR. WEST: Okay.

20 THE COURT: And then we'll come back in, bring the jury
21 back in and go forward.

22 MR. DAVIS: I'd ask Your Honor, consider allowing them to
23 proffer it and see if they can authenticate it outside the
24 presence of the jury because if they cannot then I wouldn't
25 want the jury to hear the beginning of this and then -- she

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1 has nothing else to provide than this.

2 THE COURT: Well, they can't -- none of it's going to be
3 played until she authenticates it.

4 MR. DAVIS: Correct, not the recordings, but just to not
5 even have a witness called, what was that witness for, if we
6 get a little bit into it they'll hear that it was -- she works
7 at the jail, she is -- has access to phone calls and it would
8 shut down. I just ask out of an abundance of caution the few
9 foundational questions be asked in camera.

10 THE COURT: No. I'm going to, I'm going to let them try
11 the case they want to. Either they can authenticate it and it
12 comes in or they run the risk of me ruling as a matter of law
13 that the witness is not a proper witness to get this in and
14 it's suppressed. So --

15 MR. DAVIS: Yes, sir.

16 THE COURT: I'm going to let them do it that way. All
17 right. Anything before we take a break?

18 MR. DAVIS: Nothing else, Your Honor.

19 THE COURT: All right. Let's take about a 10-minute
20 break.

21 MR. DAVIS: Thank you, Your Honor.

22 OFF THE RECORD

23 (On the record. The following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Anything further from the State

1 before we bring the jury in?

2 MR. WEST: The State's ready to proceed, Your Honor.

3 THE COURT: Anything from the Defense?

4 MR. DAVIS: The Defense is ready, Your Honor.

5 THE COURT: All right. Let's go ahead and bring the jury
6 in.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: All right. Ladies and gentlemen, welcome
10 back. Mr. West, the State can call your next witness.

11 MR. WEST: Thank you, Your Honor. The State calls
12 Sergeant Katie Shuler.

13 THE COURT: All right.

14 Whereupon, Katie Shuler was called to the stand, duly
15 sworn by the clerk and testified as follows:

16 THE CLERK: Okay. If you'll have a seat, state your full
17 name for the record and spell your last name.

18 MS. SHULER: Okay. My full name is Katie Shuler, K-A-T-
19 I-E, S-H-U-L-E-R.

20 DIRECT EXAMINATION

21 BY MR. WEST:

22 Q Good afternoon. Could you tell the jury where you work?

23 A I work at Hill-Finklea Detention Center.

24 Q And what is your responsibilities at the Hill-Finklea
25 Detention Center?

Katie Shuler - Direct by Mr. West

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1 A I am over all the inmates, canteen, mail, phone,
2 basically all their money that comes in and out of, you know,
3 the detention center.

4 Q Okay. And when you say phone, what does that mean?

5 A I'm over all of making sure that they're -- that they
6 have a PIN number and all that so they can access and use the
7 phone once they are in our facility.

8 Q Okay. Does the jail record outgoing phone calls for the
9 inmates, from the inmates?

10 A Yes.

11 Q Okay. How are those recorded?

12 A We go through a company called Securus and they have
13 those stored and recorded.

14 Q Okay. Describe how that system works.

15 A Once an inmate is booked in they have their information
16 in the computer and then they will have an actual PIN number
17 that is connected to their information to their name. So
18 every time they make a phone call they have to punch in that
19 PIN number. Then they have to record or they record their
20 voice so they have to say their name and if it doesn't
21 recognize it then they can't make a phone call. It helps with
22 people stealing their PIN numbers, and you know, other people
23 using their phone account when they're not allowed to.

24 Q Okay. Are you familiar with how the actual voice
25 identification technology works?

1 A It's all -- it's computerized, and what it does is they
2 have to repeat their name three times with the computer system
3 and it, it, it makes sure that like when they -- how they
4 pronounce their name because they have to say their first and
5 last name, how they pronounce things that, you know, that's
6 how it indicates if that's that person or not.

7 Q Okay. Is there any way to alter or modify those calls
8 once they are recorded?

9 A No, sir.

10 Q Did you ever receive a request to pull records of phone
11 calls related to this Defendant?

12 A Yes, sir.

13 Q Did you provide those to the Solicitor's Office?

14 A Yes, sir.

15 MR. WEST: I'm showing the witness what's been marked as
16 State's Exhibit Number 123.

17 BY MR. WEST:

18 Q Do you recognize that?

19 A Yes, sir.

20 Q And --

21 A This is the CD that -- now, this one here.

22 Q Yeah. Does it have your initials on it?

23 A It does, but I -- that ain't my handwriting.

24 Q I understand that, but is that, is that a CD you provided
25 to our office?

Katie Shuler - Direct by Mr. West

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1 A Yes. That's my initials, but I didn't do the writing on
2 here.

3 Q- The writing on top?

4 A Yes.

5 Q But the initials you provided on it would indicate that
6 those are the calls that you provided to our office?

7 A Yes. Every CD that I burn I make sure that my initials
8 are on the CD.

9 Q And that's how you were able to identify State's 123 as
10 the recordings that you provided in relation to this
11 Defendant?

12 A Yes.

13 MR. WEST: At this time the State would ask State's 123
14 be moved into evidence.

15 THE COURT: Any objection?

16 MR. DAVIS: My prior objections, Your Honor, and
17 specifically, now I would focus on authentication.

18 THE COURT: All right. All right. Plaintiff's Exhibit
19 Number 123 is admitted into evidence over Defendant's
20 objection.

21 (State's Exhibit Number 123 [CD - Jail Calls] admitted
22 into evidence and appropriately marked.)

23 MR. WEST: Permission to publish, Your Honor?

24 THE COURT: All right.

25 MR. WEST: The Court's indulgence as it's being cued.

1 THE COURT: All right.

2 MR. WEST: At this time, Your Honor, we would ask to
3 publish the phone call from November the 1st, 2014, at 13:47
4 and 18 seconds to the called party 843 --

5 MR. DAVIS: Objection, Your Honor.

6 THE COURT: It's, it's in. You just go ahead and play
7 the conversation.

8 MR. WEST: Thank you, Judge.

9 THE COURT: Okay. Without any additional information.
10 (State's Exhibit Number 123 played in open court.)

11 MR. WEST: Your Honor, for purposes of the record we're
12 stopping it at 10 minutes and 46 seconds.

13 THE COURT: All right.

14 MR. WEST: May I approach briefly, Your Honor?

15 THE COURT: All right.

16 (Whereupon, a bench conference is held in the presence
17 but out of the hearing of the jury.)

18 BY MR. WEST:

19 Q I'm going to ask you to step off of the stand for a
20 minute. If you could walk over to the computer.

21 MR. WEST: Would you like them --

22 THE COURT: All right. You're going to need to speak up
23 loud and clearly so the court reporter can hear and take
24 everything down.

25 BY MR. WEST:

Katie Shuler - Direct by Mr. West

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1 Q Could you identify for the jury how the calls are labeled
2 on Exhibit 123?

3 A When you pull it up the Securus system comes up and it
4 states exactly each call. It tells you the time and the day
5 it was done on. It gives you the number that was called, how
6 much -- how many seconds the call was, where, where the inmate
7 was at in our facility, where he made that phone call and then
8 it has the inmate's name with their account number, which
9 would be their PIN number that they would have to put in and
10 then it tells on the other side like once it's end if the
11 caller, you know, caller hung up due to they're allowed 15
12 minute phone call.

13 Q Okay. Now, we listened to State's Exhibit Number Five
14 [sic]. Could you identify the call date and time to that
15 indexed as call number five?

16 A Call number five was made on 11-1-14 at 13:47 and -- do
17 you need me to say, say the number or --

18 Q Yeah. If you could, who -- what phone number was that
19 call made to?

20 A

21 Q Okay. And what is the inmate's name that made that call?

22 A John Darrieux -- okay.

23 Q And how about the PIN number?

24 A The PIN number is 5486 and then it should be
25 his birthdate behind that, too.

1 Q Okay.

2 A I just think that it's not showing because it's not long
3 enough in that bracket.

4 Q Okay. All right. You can please take the stand again.

5 A (Complies with request.)

6 MR. WEST: No further questions for this witness at this
7 time.

8 THE COURT: All right. Cross examination.

9 MR. DAVIS: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. DAVIS:

12 Q Ms. Shuler.

13 A Yes.

14 Q Okay. Exhibit 123, you identified that how? What do you
15 call that?

16 A That's -- it's our computer system and that's -- it is
17 called Securus. It's the company that we go through. It's
18 their personal --

19 Q Software.

20 A -- program.

21 Q Yeah.

22 A Yeah, that we use.

23 Q But what's on disc 123?

24 A That would be the phone calls for Mr. John Darrieux.

25 Q Okay.

Katie Shuler - Cross by Mr. Davis

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1 A And how I pull that up is through the Securus system and
2 either by one, his name, or his PIN number and then those
3 calls are burnt by me on the computer system that cannot be,
4 you know, manipulated in any way.

5 Q Okay. The State asked you to do that? The Government
6 asked you to pull those calls; right?

7 A Uh-huh.

8 Q I need you to say yes or no.

9 THE COURT: I'm sorry.

10 Q I'm sorry.

11 A Oh, I'm sorry. Yes.

12 Q And they give you a date range to do that; right?

13 A Yes.

14 Q And they give you a name; correct?

15 A Yes.

16 Q And then you go as you just have that name or the
17 inmate's number and you pull the calls for that, you dumped
18 them on that disc and you turn it over to the Government;
19 right?

20 A Yes.

21 Q Okay. How long you been working at Hill-Finklea?

22 A Ten years.

23 Q You know inmates use other inmates' PIN numbers to make
24 calls. That happens?

25 A The only way that could happen is if the inmate puts his

1 PIN number and verifies his voice, and then if he hands it
2 over to another inmate we can't stop that.

3 Q That happens from time to time?

4 A Yes.

5 Q Okay. Ms. Shuler --

6 MR. DAVIS: I'm sorry, Your Honor.

7 BY MR. DAVIS:

8 Q Ms. Shuler, thank you. That's all the questions I have.
9 Thank you.

10 THE COURT: All right. Redirect?

11 MR. WEST: No redirect, Your Honor.

12 THE COURT: All right. You may step down.

13 A Thank you.

14 THE COURT: Thank you.

15 MR. WEST: Your Honor, at this time the State rests its
16 case.

17 THE COURT: All right. Ladies and gentlemen, the State
18 has rested their case, and so the law provides that now is the
19 time where I have to address some matters of law with the
20 attorneys. It's a procedural requirement that we do at this
21 time. So I'm going to excuse you back to the jury room for
22 just a few minutes while I discuss these legal matters with
23 the attorneys and we'll bring you back out in just a second.
24 All right. Thank you very much. I caution you again, don't
25 discuss the case even among yourselves.

Motions

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1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Any motions?

4 MR. DAVIS: Yes, Your Honor.

5 THE COURT: All right.

6 MR. DAVIS: Your Honor, at this time the Defense would
7 ask for a directed verdict as to all charges. We would argue
8 that any testimony or evidence at this point presented to Your
9 Honor is mere suspicion, it doesn't rise to the level that
10 would allow you to allow the jury to deliberate on it. I make
11 that general motion, but now I want to shift to a couple of
12 specific, four specific indictments, Judge. As to the --
13 forgive me, I won't have the number -- the amended burglary,
14 Your Honor, I think it's 1024.

15 THE COURT: Correct.

16 MR. DAVIS: Okay. Judge, as to that burglary third we
17 would ask for a directed indictment for two reasons. The
18 evidence on the record before you today is insufficient for a
19 burglary in the third degree. The evidence before you today
20 indicates that in the light most favorable to the State two
21 mattresses may or may not have been taken from the interior of
22 that structure. The evidence before you today in the light
23 most favorable to the State does not say it was taken without
24 permission because the alleged owner of that property could
25 not give you the address of that property. "I used to own

1 some property on Cindy Lane," the State tried to rehab him
2 with the actual number. I objected. You sustained. He
3 didn't give you an address. Some property on that address he
4 testified he owned. Some property on that address he said, "I
5 didn't give permission for anybody to go into." There is no
6 evidence before you that the owner of that property has come
7 before you during this trial. Burglary, while it's an offense
8 against property, there has to be a property ownership in
9 that, and so we don't have before you on the record anyone to
10 testify the, the incident at Cindy Drive, we have no
11 evidence before you that that property was owned by anyone.
12 It's simply not on the record, Judge, and so for the State to
13 be able to go forward on that there has to be an ownership
14 interest established from which something was taken without
15 permission unlawfully. Furthermore, they have to show an
16 entry was actually made. So as to that one, and if you want
17 to take them in order, it -- it's a cumulative argument as to
18 the armed robberies next, but as to that one we'd ask for a
19 directed verdict. We think that the State has failed to
20 present sufficient evidence as to the elements of burglary.

21 THE COURT: All right. Your motion is noted. I'm going
22 to deny it. I think they've got enough to get to the jury on
23 that.

24 MR. DAVIS: Okay. Judge, we next specifically focus on
25 the armed robbery charges.

Motions

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1 THE COURT: All right.

2 MR. DAVIS: Judge, you're well aware of the statute. I
3 won't belabor the point on that, but the case law further
4 defining robbery, and I'm citing here from State v. Moore,
5 which is 649 S.E.2d 84, 2007 Court of Appeals case. Judge,
6 I'll summarize. There's a couple of long quotes here, but
7 ultimately the gravamen of a robbery charge is taking from a
8 person or immediate presence of another by violence or
9 intimidation, Moore quoting State v. Rosemond, R-O-S-E-M-O-N-
10 D, which is 589 S.E.2d 757. Coincidentally Rosemond was a
11 directed verdict case. In that case they did not direct a
12 verdict, but the facts of that case dealt with an armed
13 robbery at a convenience store. The Defendant went behind the
14 counter to the register. The employee came back from, I
15 believe, the restroom or the freezer or something, but came
16 back to the counter and the facts are that they were in with
17 -- within feet, I'll find this in a second, Your Honor, but in
18 feet of each other when the Defendant flipped the register
19 over, causing it to open and took the property from the
20 register, took the money from the register within feet of the
21 employee.

22 Judge, in this case, the evidence in the light most
23 favorable to the State, Ms. Simpson was asleep on the couch.
24 She testified about her purse, her jewelry box, her jewelry
25 being taken. I asked her, "Were you asleep on the couch with

1 your purse?" "No. I was not." That did not come from the
2 living room. She remained in the living room until the end of
3 this incident once the property had already been taken. They
4 -- the allegations are they put them in the back bedroom or
5 bathroom, but the property was not taken from her person or
6 from the immediate presence, immediate presence. Now, I will
7 be honest, I could not find a case law definition of immediate
8 presence. I think that's not incredibly precise, but I would
9 argue immediate presence would be within arm's reach. Her
10 property, the only property that is testified to have been
11 taken that belonged to her, purse, the jewelry box, jewelry.
12 If I'm misstating I'm sure the State will correct with me, but
13 that -- my recollection, Judge, of the, of the evidence, not
14 from her person. She's asleep on the couch. She was only
15 moved during the time of getaway. So it was not taken from
16 her person or in her immediate presence.

17 Mr. -- forgive me, Your Honor, have a moment, Jones,
18 Stephen Jones, he's the gentleman who's boarding there,
19 roommate there, staying in the bedroom to the right, gets hit
20 on the back of the head, brought into the living room. He
21 testified he was trying to put on his boxers. He'd been
22 asleep. He comes out in boxers -- trying to put on pants,
23 sorry. He'd been asleep. He was in boxers only, gets brought
24 to the couch or the chair, one or the other, in the living
25 room. What -- he testified that what they took from him, his

Motions

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1 belongings were from his bedroom from the pillowcase,
2 everything was stuffed in a pillowcase, taken out, from his
3 bedroom. You've seen the diagram of this. Bedroom is at
4 least feet, meaning several feet, I would argue more than ten
5 feet, but certainly not within arm's reach. He was then, the
6 testimony is, moved to the other bedroom and bathroom. So all
7 the property that was taken was not from his person. He had
8 his clothes off, boxers, he was asleep or his immediate
9 presence from another room through a door down the hallway,
10 another room.

11 Finally, Mr. Roberts, he testified about cards, and oh,
12 and let me deal with, any identification, wallets, that kind
13 of stuff, but again they're, they're asleep. They're not
14 wearing clothing. It's not in their pockets. There has been
15 no testimony that even their cell phones were under their
16 pillow or under the mattress or some cell phones being taken,
17 chess sets, wallets, purse, none of this, none of this at any
18 time did any witness say, "It was taken from my person or from
19 the immediate presence." So as to the armed robberies, we
20 would argue the State has failed on that element. They could
21 have charged it something else. They could have gotten
22 testimony that it really did come from their person or from
23 their immediate presence. That's not the evidence before you.
24 So I understand your position is not to weigh the evidence,
25 but I'm arguing that that evidence is lacking as to the armed

1 robberies and we'd ask for a directed verdict on those
2 charges.

3 THE COURT: All right. I'm going to deny your motion. I
4 think there's enough to go to the jury.

5 MR. DAVIS: Thank you.

6 THE COURT: Anything else?

7 MR. DAVIS: Not, not for -- not that type of motion, Your
8 Honor, and I told your law clerk I'd already spoken with my
9 client --

10 THE COURT: All right.

11 MR. DAVIS: -- if you'd like to take it up now about
12 whether he will testify or not.

13 THE COURT: We can go ahead and do that.

14 All right, sir. If you'd please stand and raise your
15 right hand.

16 (Defendant sworn by Court.)

17 THE COURT: All right. Thank you very much. You can put
18 your hand down now. Your name is John Alexander Darrieux?

19 MR. DARRIEUX: Yes, sir.

20 THE COURT: All right. Mr. Darrieux, at this time I'm
21 going to explain to you certain rights that you have. If you
22 do not understand anything I say please let me know. If you
23 want me to explain anything in more detail please let me know.
24 Do you understand that?

25 MR. DARRIEUX: Yes, sir.

Questioning Re: Rights

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1 THE COURT: All right. We've now reached the stage of
2 the trial where you may present your defense. You have the
3 right to claim the protections given to you by the Fifth
4 Amendment to the United States Constitution, which states in
5 part that no person shall be compelled in any criminal case to
6 be a witness against himself. This means that you cannot be
7 required to testify in this case. You have the right to
8 testify on your own behalf. However, no one can make you
9 testify. This is a personal right and no one can waive this
10 right except for you. If you decide to testify you will be
11 subject to the same rules that govern other witnesses, and you
12 may be examined and cross examined on any relevant issue in
13 this case. In addition, if you have any convictions involving
14 dishonesty or false statement or for crimes punishable by
15 imprisonment for more than one year and this Court determines
16 that the probative value of admitting this evidence outweighs
17 its prejudicial effect to you, the Solicitor will be able to
18 introduce your record to attack your credibility.

19 Now, does the State have any prior convictions of this
20 Defendant that they would be seeking to introduce if he takes
21 the stand?

22 MR. WEST: We do, Your Honor.

23 THE COURT: All right. What have you got?

24 MR. WEST: The Defendant has a criminal record of a 2014
25 open container, 2013 financial transaction card theft,

1 possession of methamphetamines, 2011 burglary in the second
2 degree and driving under suspension, 2010 breach of trust.

3 THE COURT: Hold for a second. I'm, I'm trying to write
4 these down.

5 MR. WEST: I'm sorry. I'll slow down.

6 THE COURT: 2014 open container.

7 MR. WEST: That's correct. 2013 financial transaction
8 card theft.

9 THE COURT: Okay.

10 MR. WEST: Possession of methamphetamine.

11 THE COURT: Okay.

12 MR. WEST: 2011 burglary in the second degree.

13 THE COURT: All right.

14 MR. WEST: Driving under suspension, 2010 breach of trust
15 and possession of a stolen motor vehicle, 2009 trespassing,
16 2006 possession of a Schedule II controlled substance, a 1998
17 possession of a controlled substance.

18 THE COURT: All right. Possession of a stolen vehicle
19 was when?

20 MR. WEST: 2010.

21 THE COURT: And trespassing was?

22 MR. WEST: 2009.

23 THE COURT: And possession of -- the last two drug
24 possession charges were when?

25 MR. WEST: 2006 and 1998.

Questioning Re: Rights

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1 THE COURT: All right. What would be the probative value
2 of possession of a stolen vehicle, trespassing and the last
3 two drug possession charges?

4 MR. WEST: I believe --

5 THE COURT: Or any of the drug charges?

6 MR. WEST: Well, Your Honor, we've hashed this out a
7 little earlier this week about the victims' prior records, and
8 I believe the same arguments could be said for this Defendant
9 in regards to possession of methamphetamine, controlled
10 substance. The 1998 one I realize is, is quite a time ago,
11 but 2006 is obviously still within the ten-year period.

12 THE COURT: All right. I'm going to allow you --

13 MR. DAVIS: Judge, if, if I may -- may I?

14 THE COURT: Now, I -- well, let me hear from you -- I'm
15 not going to allow the open container, the possession of
16 methamphetamine from 2013, the burglary second, the DUS or the
17 trespass or the last two possession of drugs. Let me hear
18 from you, Mr. Davis, on the financial transaction card theft,
19 the breach of trust, the possession of a stolen vehicle, yeah,
20 those three. Let me hear from you on those.

21 MR. DAVIS: And Judge, if you will help me, I've got his
22 actual rap here. The breach of trust was --

23 THE COURT: He said 2010.

24 MR. DAVIS: Okay. And I would simply ask whether the
25 State's trying to introduce that under 609(A)(1) because it

1 carries potentially more than a year or under the honesty
2 dishonesty.

3 THE COURT: Okay. I would -- I think it's admissible as
4 a crime tending to show dishonesty.

5 MR. DAVIS: Then, then, Judge, based on that, we, we
6 don't have any defense to that, is in -- is within ten years
7 and we understand your ruling on that. What was the other
8 two?

9 THE COURT: Financial transaction card theft in 2013.

10 MR. DAVIS: What year, Your Honor? '13? And Your Honor,
11 again, if you would be inclined to allow it to come in because
12 of the honesty dishonesty then we don't have a response.

13 THE COURT: Okay. And the possession of a stolen vehicle
14 2010.

15 MR. DAVIS: Well, on that I know Broadnax, and I printed
16 it, Judge, but I skimmed it. I was more looking for my
17 directed verdict argument, but I do have it, but I would, I
18 would make it akin to on the one hand I was -- the Defense was
19 not allowed to get into shoplifting partially because it's a
20 30-day offense, arguably more because similar to Mullinax
21 [sic], which was a robbery charge; is that right, Judge?

22 THE COURT: Broadnax?

23 MR. DAVIS: Broadnax.

24 THE COURT: Armed robbery.

25 MR. DAVIS: Correct.

Questioning Re: Rights

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1 THE COURT: Armed robbery.

2 MR. DAVIS: So I would, I would analogize possession of a
3 stolen motor vehicle to that. There's no inherent in this
4 like fraud. The fact that it was stolen and he possessed it
5 doesn't mean he got by fraud. There's many different ways
6 that could come in to someone's possession. So I would argue
7 it's more under the umbrella of a robbery and not to honesty
8 dishonesty and/or if you're inclined to let it in under the
9 first part of the rule then I'll argue that as well.

10 THE COURT: All right. What would be the probative value
11 of the possession of a stolen vehicle?

12 MR. WEST: Your Honor, I believe it goes to credibility
13 of the Defendant. Here we have a stolen item that's worth --

14 THE COURT: Okay.

15 MR. WEST: -- more than \$2,000, Your Honor, and that's,
16 that's a substantial amount for this Defendant.

17 THE COURT: All right. That's good enough. So I would
18 allow you to impeach his testimony by bringing out the 2013
19 financial transaction card theft, the 2010 breach of trust,
20 and the 2010 possession of a stolen vehicle.

21 MR. DAVIS: And Judge, just one final thing on that. I,
22 I would argue that, one, 609(A)(1) flips the requirement.
23 Normally 403 is a rule of admission. It comes in unless the
24 prejudicial effect substantially outweighs the probative
25 value. As to the accused, 609 says it's the opposite. It's a

1 rule of exclusion. It's out unless they can show it's so
2 probative that the prejudicial --

3 THE COURT: Not so probative. It's just an equal
4 balance. The probative value -- 403 says that it has to be a
5 substantial probative value over the prejudicial effect. The
6 rest I don't think it says substantial. It just says
7 probative value versus prejudicial effect.

8 THE COURT: It, it, it, it -- but it flips it, Judge,
9 that's what I'm saying. It flips it to a rule of exclusion.
10 403 is inclusion. 40 -- 609(A)(1) is a rule of exclusion.

11 THE COURT: Yeah. I understand.

12 MR. DAVIS: Okay. Thank you, Judge.

13 THE COURT: All right. So I'm going to allow them to
14 bring in the 2013, in other words, Mr. Darrieux, if you
15 testify they will be able to cross examine you as to your 2013
16 conviction for financial transaction card theft, your 2010
17 conviction for breach of trust and your 2010 conviction for
18 possession of a stolen vehicle. Okay?

19 MR. DARRIEUX: Okay.

20 THE COURT: All right. If you decide to testify this
21 decision on your part must be freely, voluntarily and
22 intelligently made, with knowledge of the protections given to
23 you by the Fifth Amendment to the United States Constitution
24 and the consequences of your decision to testify. If you
25 decide not to testify I will instruct the jurors that they

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1 cannot give the fact that you did not testify any
2 consideration whatsoever and that there is to be absolutely no
3 prejudice to you because you did not testify. It is left
4 entirely up to you whether or not you testify. You may talk
5 with your attorney, your family and friends or anyone else,
6 but the final decision will be left entirely up to you. Now,
7 do you understand what I've explained to you?

8 MR. DARRIEUX: I do, sir.

9 THE COURT: All right. Do you have any questions about
10 what I've explained to you?

11 MR. DARRIEUX: No. I do not.

12 THE COURT: All right. Have you discussed with your
13 lawyer whether or not you wish to testify in this case?

14 MR. DARRIEUX: We've discussed it.

15 THE COURT: All right. Is there anybody else you want to
16 talk to about this?

17 MR. DARRIEUX: No, sir.

18 THE COURT: All right. Do you want to talk to your
19 attorney further about this?

20 MR. DARRIEUX: No, sir, I don't.

21 THE COURT: Have you decided whether or not you wish to
22 testify in this case?

23 MR. DARRIEUX: I've decided I will not testify against --
24 in this case.

25 THE COURT: All right. Mr. Davis, anything further you

1 want put on the record?

2 MR. DAVIS: No, sir, Your Honor.

3 THE COURT: All right. Anything further the State wants
4 put on the record in that regard?

5 MR. WEST: No, Your Honor.

6 THE COURT: All right. Does the Defendant intend to
7 introduce or to put up any defense?

8 MR. DAVIS: No, Your Honor.

9 THE COURT: I know he's not going to testify. Does he
10 want to put up any defense at all?

11 MR. DAVIS: No, Your Honor.

12 THE COURT: All right. Then I suggest we bring the jury
13 in. The Defense can go ahead, rest on the record. I'll send
14 them home. We'll come back tomorrow morning for closing
15 arguments, charges and deliberations. Does that sound all
16 right?

17 MR. WEST: Thank you, Your Honor.

18 MR. DAVIS: Yes, Your Honor.

19 THE COURT: All right. Anything from the State before we
20 bring the jury in?

21 MR. WEST: Nothing from the State.

22 THE COURT: Anything from the Defense?

23 MR. DAVIS: No, Your Honor.

24 THE COURT: All right. Let's go ahead and bring the jury
25 in.

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1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: All right. Ladies and gentlemen, welcome
4 back. The State has rested their case and now is the time of
5 the trial where the Defendant can present a defense if he
6 chooses to do so. Mr. Davis, does the Defendant intend to
7 present a defense in this case?

8 MR. DAVIS: The Defense rests, Your Honor.

9 THE COURT: All right. Ladies and gentlemen, the Defense
10 has rested in this case, and so the only thing left in this
11 trial is for the attorneys to make their closing arguments,
12 for me to charge you on the law to be applied in this case and
13 then for you to deliberate on your verdict, but given the time
14 of day I think we're going to go ahead and break for the day.
15 We're breaking a little bit earlier than I thought we would.
16 So I'm going to ask that you please be back in the jury room
17 tomorrow morning again at 9:15, and we'll resume the trial of
18 this case. I caution you again, do not discuss the case even
19 among yourselves. It's too early for deliberations. You
20 cannot deliberate on this case until the attorneys have made
21 their closing arguments and I've charged you on the law to be
22 applied. Don't conduct any independent investigations into
23 the case. I hope everybody has a good evening, and we'll see
24 you back at 9:15 tomorrow morning. Thank you very much.

25 (Whereupon, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. Anything from the State before we
3 recess?

4 MR. WEST: Judge, I'm not sure if you do your charge
5 conference on the record or --

6 THE COURT: Well, what I generally do is I will prepare
7 some closing charges. I'll print them out and I'll let both
8 sides read them. I'll give you an opportunity to raise any
9 objections or challenges -- well, first of all, if you have
10 anything special you want me to consider go ahead and submit
11 it to me. I'll let you read my closing charges before I
12 charge the jury. You can raise any objections, then after I
13 charge the jury I'll give you another opportunity because
14 sometimes it sounds differently when you hear it read versus
15 when you read it on written paper. So I'll give you two
16 opportunities to raise any objections or challenges, and
17 that's generally how I do it. Before we break, let me ask,
18 any lesser included offenses that the Defense and/or the State
19 is requesting that I charge from those that are on the
20 indictments?

21 MR. DAVIS: If I may, Judge, before I answer that, in an
22 overabundance of caution we rested right after you ruled, but
23 without argument I would renew all my directed verdict motions
24 just as a -- out of an abundance of caution.

25 THE COURT: Okay. Motions are noted, but they're going

1 to be denied. I don't know if you have to raise them again,
2 but --

3 MR. DAVIS: Exactly, Judge.

4 THE COURT: -- so noted. All right.

5 MR. DAVIS: Being over careful.

6 THE COURT: All right.

7 MR. DAVIS: Judge, I don't believe I have any special
8 requests, and if you'll -- while the State's thinking, if
9 you'll give me a moment to think. I don't believe we're
10 asking for any lesser includeds, but if we can have a seat and
11 I'll, I'll let you know momentarily.

12 THE COURT: All right. And if you have any just let me,
13 just let me know as soon as you decide. Is there any that the
14 State knows right now that they want charged, any lesser
15 offenses?

16 MR. WEST: No, Your Honor.

17 THE COURT: Okay.

18 MR. DAVIS: Judge, I don't anticipate any lesser
19 includes. The only one I'd ask a little time to think about
20 coincidentally is the burglary in third. What I would ask is
21 this, I believe I have either you or your law clerk's e-mail,
22 I would send it to you tonight if we'd ask for it be -- that
23 would be the only one I think we'd ask for a lesser included
24 possibly.

25 THE COURT: One the -- what would be a lesser included of

1 burglary third?

2 MR. DAVIS: Trespass or -- trespass or housebreaking, and
3 again, I'd need to check that.

4 THE COURT: Okay.

5 MR. DAVIS: I don't -- but it's doubtful, Judge.

6 THE COURT: Okay.

7 MR. DAVIS: If so I'll make sure you all get an e-mail
8 tonight so you can see first thing in the morning.

9 THE COURT: That sounds good. All right. Sounds good.

10 MR. DAVIS: Thank you, Judge.

11 THE COURT: Anything from the State before we recess for
12 the evening?

13 MR. WEST: Instructions on what time to be here.

14 THE COURT: I've got the jury coming back at 9:15. So I
15 can take the bench hopefully at 9:30 or soon thereafter. I'm
16 going to work on these charges. Hopefully I'll have them
17 ready for you by nine or 9:15. I'm going, I'm going to be
18 working on them tonight, and I don't know that I can get them
19 to you, but I'll try to print them out and get them to you
20 first thing in the morning by 9 or 9:15. Okay?

21 MR. WEST: Thank you, Judge.

22 THE COURT: All right.

23 MR. DAVIS: Thank you, Your Honor.

24 (Adjourned for day.)

25

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1 (On the record, January 29, 2016, State v. John Darrieux.
2 The following takes place outside the presence of the jury.)

3 THE COURT: All right. Good morning, everyone. You
4 should have been given a copy of my proposed instructions and
5 a proposed verdict form. Any objections or challenges from
6 the State at this time? As I told you yesterday I'll give you
7 an opportunity to raise any objections or challenges now, and
8 then after I charge the jury you can raise any objections
9 again because it does sound differently sometimes when you
10 hear it read versus when you read it. Any from the State?

11 MR. WEST: Nothing from the State, Your Honor.

12 THE COURT: Anything from the Defense?

13 MR. DAVIS: Judge, two things. I would ask on page 24,
14 which is dealing with the armed robbery, at the top the first
15 paragraph there the last, next to the last line, from the
16 person or presence of another persons, I would ask you to add
17 immediate presence. The case law I argued on directed verdict
18 I would just ask you to add the word immediate in front of
19 presence, and I believe that was Rosewood, I can -- Rosemond,
20 Rosemond was the case yesterday I argued on directed verdict
21 that talked about.

22 THE COURT: Let me see that case if you've got it.

23 MR. DAVIS: Yes, sir. Yeah. Can you give me a moment?

24 THE COURT: And it says -- because this came straight out
25 of the charge book.

1 MR. DAVIS: May I approach, Your Honor?

2 THE COURT: Yes.

3 MR. DAVIS: And I will bring Rosemond and Moore. Moore
4 cites Rosemond and gives the exact page number and the quote
5 but here are both cases. So there's Moore with the tab where
6 it cites Rosemond and there's the entitled case. Rosemond was
7 a directed verdict motion.

8 THE COURT: Now, but these deal with jury charges?

9 MR. DAVIS: No, Judge. They were not a -- the, the issue
10 on appeal was not jury charges. No, Judge.

11 THE COURT: Okay.

12 MR. DAVIS: But I would argue obviously it's helping
13 define the elements, and the case law finds defines the
14 elements as the person or the immediate presence.

15 THE COURT: All right. If I add immediate presence, then
16 in the next paragraph I'm going to have to say property is in
17 the immediate presence where I explain it, and --

18 MR. DAVIS: Right.

19 THE COURT: -- and you're not going to be able to argue
20 that because, you know, you're going to have to stick to that
21 argument.

22 MR. DAVIS: Well, Judge, I, I --

23 THE COURT: That if it's within the person's reach,
24 inspection, observation or control.

25 MR. DAVIS: And as I argued on directed verdict yesterday

1 before seeing the instructions I argued it should be within
2 reach, but I didn't have the instructions, I appreciate that.
3 I was arguing another room or further away than reach wouldn't
4 be appropriate. I'm -- and so on line three before presence,
5 line five before presence I would ask immediately or immediate
6 be inserted.

7 THE COURT: Okay. But I mean, it doesn't have to be just
8 within the person's reach.

9 MR. DAVIS: I understand.

10 THE COURT: If it's within their control then it's within
11 immediate presence.

12 MR. DAVIS: I understand.

13 THE COURT: Okay. What's the State's position?

14 MR. WEST: Your Honor, at this point I think we're going
15 too far into semantics. I think your charge is perfectly
16 acceptable as within, within the law. It does say within a
17 person's reach, inspection, observation or control, and we
18 would ask the charge remain as is.

19 THE COURT: Okay. Well, let me ask you this, Mr. Davis,
20 if you have a situation where a person enters a dwelling in
21 the nighttime with a firearm, takes property that is not
22 within the immediate presence, following your argument,
23 because it's in another room, what is the crime?

24 MR. DAVIS: Depending on the value of the property, petit
25 larceny, grand larceny.

1 THE COURT: And the fact that they have a firearm.

2 MR. DAVIS: That's the burglary, that's possession of a
3 weapon in that violent crime.

4 THE COURT: So you're saying it would just --

5 MR. DAVIS: That's right.

6 THE COURT: -- it would not be armed robbery. It would
7 just be grand larceny even though they have a firearm and they
8 took it by violence, intimidation, everything of that nature,
9 but because the property was not in the room with the person
10 it is not an armed robbery, it's a grand larceny?

11 MR. DAVIS: Yes. Because the violence and intimidation
12 has to be towards the person that controls the object that's
13 being taken.

14 THE COURT: Well, let's say that's it. It's -- it is
15 towards the person against whom you're taking the property.

16 MR. DAVIS: If they're in the other room I can't be --

17 THE COURT: Well, I think, but you're arguing that
18 because the violence, the intimidation and the alleged victims
19 are in the living room and because the property was taken out
20 of the bedroom that it is not an armed robbery.

21 MR. DAVIS: Correct.

22 THE COURT: That it's a grand larceny.

23 MR. DAVIS: Or, or, you know, the State has other theft
24 offenses to charge. We have some other theft perhaps --

25 THE COURT: Okay.

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1 MR. DAVIS: -- but would not be an armed robbery.

2 THE COURT: No. I'm going to, I'm going to disagree. I
3 don't think that's right. I'm going to deny your motion. I'm
4 going to leave it as it is. It's straight out of the charge
5 book, and I'm not going to let you argue to the jury that
6 simply because these properties were in a separate room while
7 the armed intimidation was in the living room and the
8 properties were in the bedroom that it's a grand larceny but
9 rather than armed robbery. That's, as a matter of law, I just
10 don't think that's right. So I'm going to deny your motion.
11 All right.

12 MR. DAVIS: And then, Judge, the other thing we would
13 ask, I have no issue with the verdict form.

14 THE COURT: Right.

15 MR. DAVIS: It puts the burglary third up top and then
16 everything else together. In your charge it's burg first,
17 burg third and then the rest, and since we've got two
18 incidents that are 12 hours apart and I kind of talked about
19 in the opening I would ask that you move the burglary third
20 charge to the bottom, just put all the charges that deal with
21 the one incident together. I know it's you went burg first,
22 burg third because they're both burglaries, I guess.

23 THE COURT: Well, and I just, to be honest with you, I
24 put on the verdict sheet, I just went according to the
25 numerical order of the indictments.

1 MR. DAVIS: And I'm fine with the verdict form. I'm
2 talking about in your charge, the sequence in which you
3 describe the different offenses and the elements of the
4 offenses, you go burg first then burg third and then it's the
5 other activity at the first incident. I would ask that they
6 not be mixed like that. I would just ask you to move burg
7 third to the bottom of your specific offense on the charges so
8 it's not second and then mixed with all the others. You put
9 the four p.m. in the middle of the four a.m. charges, and I
10 would just ask that be at the bottom.

11 THE COURT: You're talking about in the charges?

12 MR. DAVIS: Yes, sir. Yes, sir. Just the sequence in
13 which you --

14 THE COURT: Okay. No. I think it just reads better if I
15 say burglary, this is burglary you got the first, you got the
16 third.

17 MR. DAVIS: Thank you, Your Honor.

18 THE COURT: Then you got the armed robbery. So --

19 MR. DAVIS: No, no, no other objections to the, to the
20 charge or the verdict form.

21 THE COURT: Okay. All right. Anything else?

22 MR. WEST: I just wanted some clarification on the first
23 thing. Are, are you precluding him from arguing that
24 immediate presence part during his closing?

25 THE COURT: Well, no. He can argue it now since I'm not

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1 changing -- what I didn't want to do is change the charge --

2 MR. WEST: Thank you, Judge.

3 THE COURT: -- and let him say, "All right. The Judge
4 told you it has to be in the immediate presence, and so
5 because they were in the living room and the property was in
6 the bedroom" --

7 MR. WEST: All right.

8 THE COURT: -- by his own definition, but I'm going to
9 let him make that argument but you -- your counter-argument is
10 if it's within the reach or the inspection or the observation
11 or the control, then it -- it's within the presence as defined
12 under the, under the law.

13 MR. WEST: Thank you, Judge.

14 THE COURT: All right. Now, we'll bring the jury in.
15 Since there was no defense presented, the State will close
16 first, then the Defense will close, then I'll charge on the
17 law and then, then we'll start deliberations; correct?

18 MR. WEST: Yes, Your Honor. Mr. Poulos has brought one
19 more thing to my attention. The evidence did not include
20 anything about Charles Roberts or Stephen Jones' prior
21 convictions despite the pretrial motions. I want to make sure
22 that's precluded during closing arguments.

23 THE COURT: Right. The only thing that came out was Ms.
24 Simpson's prior convictions.

25 MR. DAVIS: In your charge you say one witness.

1 THE COURT: Yeah. Yeah.

2 MR. WEST: Thank you, Judge.

3 THE COURT: That's right. That's why I said that. All
4 right. Anything else?

5 MR. DAVIS: Your Honor, if I can just -- I've not closed
6 in this courtroom.

7 THE COURT: Okay.

8 MR. DAVIS: If I can just check the podium here real
9 quick. Is this -- do we prefer this remains here? Would I be
10 able to move this slightly forward? It's just kind of close
11 to this table here.

12 THE COURT: Well, I mean, I don't --

13 MR. WEST: Well, I mean, I'm, I'm going first so --

14 THE COURT: Yeah. When it comes your time you can put it
15 wherever you want to.

16 MR. DAVIS: Well, yeah, I know. Before we get into, I
17 stand up and I came over, I just wanted to make sure that it's
18 on wheels and it's all right for everybody if I, if I'm able
19 to most it just forward slightly.

20 THE COURT: Oh, this podium, is it mobile? Okay. It's
21 mobile. That's fine.

22 MR. DAVIS: Okay. Thank you all.

23 THE COURT: All right. Anything else?

24 MR. WEST: We're ready to proceed, Your Honor.

25 THE COURT: All right. Let's bring the jury in.

1 (Whereupon, the following takes place in the presence of
2 the jury.)

3 THE COURT: All right. Ladies and gentlemen, welcome
4 back. I hope everybody had a good evening. We're now ready
5 to resume the trial of the case. As I told you at the close
6 of yesterday's events, all of the evidence has been presented
7 to you that's going to be presented to you in this case. Now
8 is the time of the trial where the attorneys will make their
9 closing arguments and then I will charge you on the law to be
10 applied in this case. Now, just like their opening statements
11 these closing arguments are not evidence in the case. It is
12 simply the attorneys' contentions as to what they feel the
13 evidence has shown and the law to be applied in the case. If
14 at any time an attorney makes reference to a factual issue
15 that is different from the facts as you find them to be or
16 references the law that is different from the law as I will
17 charge you at the close of their arguments, then you're to
18 disregard that portion of their closing arguments because
19 their arguments is not evidence and it is not a charge on the
20 law. It's their opinion and their contention as to what the
21 facts are and the law to be applied.

22 All right. Mr. West.

23 MR. WEST: Thank you, Judge. Counselor.

24 Good morning, ladies and gentlemen of the jury. Thank
25 you for your patience this week. We've had a long week and I

1 want to thank you for your attention to this trial.

2 I want to start by, again, going over some of the
3 procedural aspects of what -- where we are right now. This is
4 the closing arguments. This is the State's opportunity to
5 convince you that the Defendant, the Defendant is actually
6 guilty of the charges we've brought before you today. After I
7 speak Mr. Davis gets the last word. So I'm going to be very
8 thorough in the way I go over things. Some of it may seem
9 repetitive, but mind you, there's been a lot of witnesses, a
10 lot of testimony, a lot of things presented to you this week.
11 After we both get to argue to you, the Judge is going to read
12 you the law. The law is as the Judge reads it that's how you
13 have to take it because that's the law of the state. I'm
14 going to go over some portions of the law and explain how they
15 fit into the facts that have been presented, similar to how I
16 did in opening statements, but a little more thorough with a
17 little more discussion now that the evidence has been
18 presented.

19 Again, I started with the burglary in the first degree
20 charge. Burglary in the first degree, again, is the unlawful
21 entering of a dwelling with some aggravating factors. Here
22 the testimony has been that this occurred during the
23 nighttime. There was an entry into Charles Roberts' home
24 during the nighttime. The evidence suggested it was dark
25 outside. Therefore, it's a burglary in the first degree. One

Closing Argument by Mr. West

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1 of the first exhibits you're going to see is a picture of the
2 outside of Charles Roberts' house while it's still dark. That
3 is physical proof that it was still dark, in addition to the
4 testimony from the witnesses that provided evidence that this
5 happened in the nighttime making it a burglary in the first
6 degree. The other testimony that makes this a burglary in the
7 first degree came from the witnesses themselves. Rose,
8 Charles and Stephen all said that the assailant was armed, all
9 of the assailants had guns and Tristen said that as well. The
10 guns are sitting before you in evidence. These are the guns
11 that were taken into the house. This makes this a burglary in
12 the first degree as well.

13 The other burglary is a burglary in the third degree
14 because no one was living in the house, that's the only -- one
15 of the main differences that distinguishes the level of
16 burglary that this Defendant is charged with. You heard
17 evidence from Tristen, Courtney Pringle, Zach Wright about a
18 second burglary that happened off of Cindy Drive in the
19 Summerville area of Berkeley County. You heard that there was
20 a trailer where people went into. They came out with a
21 mattress, the physical evidence, and they were caught with the
22 mattress still on top of the car. Okay. So you heard from
23 Courtney, Tristen. Tristen described how John Darrieux went
24 in the house, how they came out with the mattress with
25 Natalia, and how they were eventually caught with the physical

1 evidence from the burglary. So that's a burglary in the third
2 degree. It happened later in the day, but it's one big chain
3 of events. One thing to note here, again, is Charles Roberts
4 owned that house. This was obviously a targeted individual
5 here. What we have here is a victim of a similar crime from
6 the same Defendant in the same day. This isn't a mistake.
7 These people went after Charles Roberts. That was clear from
8 the testimony. That's clear from the charges here.

9 Armed robbery, I think there's going to be some
10 nitpicking in the language of the statute for armed robbery.
11 What we have here, armed robbery, can generalized be stated as
12 the taking of property by force or intimidation while armed
13 with a deadly weapon. Okay? Now, there's going to be some
14 semantics about where the property was, how it was taken. I
15 believe the Defense is going to argue that if it's -- the
16 property's in one room and the man with the gun is in the next
17 it's not an armed robbery, that's not the case. Okay. An
18 armed robbery is the taking of property within somebody's
19 control. Charles' house had property in it. It was taken
20 from him while people were threatening him with a gun. That's
21 an armed robbery. Okay. An armed robbery is not a difficult
22 concept to comprehend. Don't let the semantics of how the
23 statute's written confuse you during your deliberations. It's
24 as simple as gun pointed at somebody, property taken from
25 them. That's an armed robbery.

1 Kidnapping, again, a lot of semantics in this charge.
2 These three individuals were held in their own home against
3 their will. They couldn't leave when they wanted to. They
4 couldn't call 911. They were helpless. They were held on the
5 couch. They were moved from room to room. They were
6 threatened. They were told that they were going to get killed
7 if they called the cops. This is a kidnapping. Kidnapping is
8 the restriction of freedom, a constraining of movements. That
9 is the definition of kidnapping, and that is exactly what
10 happened during the burglary, during the armed robbery, which
11 causes the kidnapping.

12 The last charge is one of the easier charges to describe
13 legally. It's the possession of a weapon during the
14 commission of a violent crime. Again, you're going to hear
15 the Judge describe kidnapping, burg first and armed robbery as
16 all statutorily defined violent crimes. The other element of
17 that is you have to prove possession of a weapon. This is
18 where some, again, some semantics in the law may come in.
19 Possession can be this Defendant holding a gun directly in his
20 hand or it can be constructive possession. You'll hear a
21 little about that during the Judge's explanation of the law,
22 but what we know here is that all of the assailants had guns.
23 That can be proved by four people going into the house, four
24 guns in evidence. Okay. So that's possession of a weapon
25 during the commission of a violent crime.

1 Next I want to get into the witnesses themselves. The
2 witnesses themselves are going to be how the case is proved.
3 Okay. So testimony from witnesses is considered evidence.
4 Evidence is not necessarily just the physical things that you
5 see on the tables. It's not necessarily just the pictures.
6 Everything they say is considered evidence. So what is the
7 evidence of this crime or these crimes that John Darrieux is
8 charged with?

9 What do we know from Rose Simpson? The first thing
10 anybody noticed about Rose Simpson was she is an emotional
11 wreck. There's no getting around that. She was robbed at
12 gunpoint and everything was taken from her. Her life has been
13 changed since then and that's understandable. Okay. These
14 people wore Scream masks, Halloween masks, woke them up in the
15 middle of the night and now she's distraught. If the Defense
16 wants to use that against Rose Simpson to explain that she's
17 not telling the truth, then I just ask you to use your common
18 sense that this has affected her in a way where she's still
19 telling the truth.

20 MR. DAVIS: Your Honor, I'm going to object. May I, may
21 I approach?

22 THE COURT: All right.

23 (Whereupon, a bench conference is held in the presence,
24 but out of the hearing of the jury.)

25 THE COURT: Overruled.

1 MR. WEST: So what was Rose doing when she was robbed?
2 She was sleeping on the couch. She said she had a migraine
3 that night, that things were a little out of the ordinary.
4 She was in and out, that she was sleeping on the couch. She
5 heard a loud bang. People came into the house. She
6 immediately noticed weapons and masks. People were in and out
7 of the house. They were taking things. They loaded it up in
8 the Durango. She described seeing the car as they were
9 loading it and driving it away. What was taken from Rose
10 specifically you'll see that there's purses, keys, jewelry box
11 and cards. One thing that I want to point out is Rose hadn't
12 seen some of those items since it was taken from her that
13 night. One of the big things that I picked up on when I was
14 questioning her about that is the genuine raw emotion that
15 came out from those sentimental things that were introduced
16 into evidence, those key chains given to her by her kids and
17 friends, that purse she hadn't seen this happened. That's raw
18 emotion. That's, that's the ability to judge the credibility
19 of a witness. She remembers the Scream mask specifically.
20 It's in evidence here. You heard Tristen describe this as the
21 mask that Natalia was wearing. This is the mask that Natalia,
22 the person in charge according to all of the victims, wore as
23 she robbed them blind. She remembers that specifically.
24 She also remembers the Defendant didn't have a mask on.
25 She got a good look at this Defendant. He was very close to

1 her. He held a gun to her face. That's something that's
2 etched into her memory forever. She identified this Defendant
3 as being one of the assailants right here in front of you
4 during this week.

5 Stephen Jones, he worked for Charles. He lived with
6 Charles. He was sleeping in his room when this happened, and
7 he had to come out in the hallway, put some pants on. Tristen
8 said that as well, said the younger man in the house sleeping
9 in his room, they brought him out, then they forced him onto
10 the couch. Some of the things that Stephen described can most
11 certainly be corroborated by what Tristen says. He was moved
12 from the living room into the bathroom. All of the victims in
13 the house say that at one point Rose and Stephen were forced
14 into the bathroom. Tristen says that as well. That's
15 corroboration, and that can go to your judging of the
16 credibility of the witnesses. He also said tools were taken,
17 IDs were taken, TV, electronics, things of that nature were
18 taken. You're going to see the pictures from the search
19 warrant of Natalia's house, and you're going to see how
20 Stephen Jones' belongings were in there. Specifically you're
21 going to see his driver's license and some things of that sort
22 that specifically identify him as being the owner of that
23 property found in this Co-Defendant's house. Another thing
24 that he did specifically he said this Defendant got in his
25 face. He got a good look at this Defendant. He identified

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1 the Defendant as being the unmasked man during the robbery.

2 Charles Roberts, again, he was the elderly man that was
3 testifying this week. He was asleep in his bedroom. He was
4 held in his bedroom during the entirety of this robbery. So
5 he didn't get to see exactly what was going on in the rest of
6 the house, so he couldn't describe the number of people, those
7 sorts of things. He was forced onto his bed. He specifically
8 had jewelry taken off of him. That was one of the things that
9 he testified to. A lot of the things in Natalia's house that
10 were found you're going to see have Charles Roberts' names on
11 it, ID cards, pill bottles, things of that sort. Everything
12 that was found during that search warrant you're going to see
13 had these victims' names on them. It didn't get there by
14 accident. It was taken there after a deliberate plan to
15 burglarize, rob and kidnap these victims.

16 Next we got into the law enforcement witnesses. Officer
17 Babson was one of the first officers to respond to the home
18 invasion on Bryan Drive. He told you that he responded, took
19 statements. He, again, corroborates that it was dark outside,
20 which goes to the burglary in the first degree charge. One of
21 the other things that he told you, and you'll see the pictures
22 of, is he found tools in the driveway. Why is that important?
23 Because the more that can be corroborated of what Tristen says
24 the more you have the ability to judge the credibility of a
25 witness. Office Babson, who's not a part of any of this,

1 comes up on later says, "I found tools in the driveway."
2 Tristen sits on the stand and says, "We dropped tools out of
3 the car as we were driving out," that's something you all can
4 mesh together to make one full picture story. Okay. So that
5 was one of the important things that Officer Babson did along
6 with his general response to the scene.

7 Courtney Pringle, again, we had to take her a little out
8 of order. Again, she was the neighbor of the second burglary.
9 She came in and told you that she witnessed -- she couldn't
10 see the entry of the, the trailer because they went behind the
11 trailer, but common sense tells you they come out of the
12 trailer with a mattress, they were not invited there, that's a
13 burglary. Charles Roberts owned the property. He told you
14 that he never gave permission to this Defendant or anybody
15 with them to go into that property, and they were caught with
16 the mattress on top of the Durango. That's a burglary in the
17 third degree, and that's what's the important, importance of
18 her as well as specifically identifying Natalia. She knew
19 Natalia, and then she called the police. After she called the
20 police she's the reason they actually even caught all of these
21 people. They caught them a short time after she called. They
22 sent out the BOLO. They eventually caught them with the
23 property on top of the van or on top of the Durango.

24 Officer Zach Wright, he was a quick witness. He
25 responded to the burglary on Cindy Drive. He took the

1 statements from Courtney Pringle. His importance was mainly
2 the fact that Courtney Pringle couldn't call out the, the be
3 on the lookout for the rest of the cops. He had to do it. So
4 he, he told the rest of law enforcement to be on the lookout
5 for a silver Dodge Durango with a mattress on top and that's
6 what he did in this case.

7 So when he did that then Officer Drew and Officer Graff
8 were on the lookout for the silver Dodge Durango. They found
9 it a very short distance away from the burglary in the third
10 degree, and they found it with the mattress still on top.
11 Some of the things they pointed out was that this happened in
12 a cul-de-sac. Tristen said it happened in a cul-de-sac.
13 Tristen described the entry, the taking of the mattress. They
14 go into the cul-de-sac, they load up the TV. Those sorts of
15 things were all corroborated by Officer Drew and Officer
16 Graff. The other things they corroborated is they were all
17 together. All four of them were together that morning at
18 Bryan Drive. All four of them were still together that
19 afternoon on Cindy Drive. They were arrested there together.
20 Officer Graff was the officer that actually arrested all four
21 of the Defendants. They searched the car and found one of
22 these guns that you see here before you today. It's in
23 evidence.

24 Again, I want to point out some of the details the State
25 has presented to you to prove this Defendant's guilt. You all

1 heard a jail call later in the testimony from the State. We
2 specifically asked Officer Graff when he booked the Defendant
3 in what phone number he gave as the next-of-kin contact. On
4 the booking report he read off the number. It's the same
5 phone number that the Defendant called from the jail proving
6 his identity of the call.

7 Detectives Dan Wilson and Shane Cook, they were involved
8 in the search warrant of Natalia's house, Hallmark Drive.
9 They recovered all of the property that was taken during the
10 burglary, during the initial burglary on Bryan Drive. One of
11 the things that Dan Wilson told you as well was that Tristen
12 got a cut for being involved in the home invasion. He
13 actually collected the \$200 that he got. That's in evidence.
14 You all will have that back with you during your
15 deliberations, just another piece of corroboration evidence to
16 show you that Tristen's story is actually what happened.

17 Now, you heard during the trial that the State and the
18 Defense agree that there was a proper search warrant. That
19 was some of the things we cut out to eliminate some of the
20 time yesterday. We got you out a little earlier than we
21 anticipated. That's one of the things that we all agreed on.
22 We, we entered all the pictures from the search warrant.
23 You'll be able to flip through those back with you in the, in
24 the jury room and see what Natalia's house looked like.
25 You'll see where the things were found. You'll see all of the

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1 property belonging to the victims that was found in that
2 residence and that was done by these officers.

3 Katie Shuler was the sergeant from the jail. She
4 introduced the jail tape yesterday. This Defendant -- this is
5 an appropriate time to talk about another legal standard that
6 we have here. The State is obligated to prove the Defendant
7 guilty beyond a reasonable doubt. What does that mean? It's
8 not beyond a shadow of a doubt. It's not beyond all doubt.
9 You'll hear that from the Judge. What it is is a reasonable
10 doubt. What is reasonable? It is something that leaves you
11 firmly convinced. So let's take a look at this jail call. I
12 imagine that, again, the Defense gets last time to talk to
13 you, so I'm anticipating some of the things that he's doing to
14 tell you. He doesn't necessarily have to say this, but this
15 is just an example of reasonable doubt. He may argue that
16 this wasn't his client on the jail call. Now, let's look at
17 the call as a, as a whole. Again, Officer Graff already
18 testified that the phone number that was given to him by the
19 Defendant was the same phone number that Katie Shuler read to
20 you. Each inmate is given a PIN number when they get into the
21 jail. That PIN number is entered into the Securus system
22 which can't be modified or altered. There's voice
23 identification technology that will cut off the call if it's
24 not the same voice that was used during that automation.
25 During the call the caller is identified as John several

1 times. The context of the call talks about the context of
2 what we're talking about here in the trial. All of that
3 together is circumstantial evidence, but it's also some direct
4 evidence, and that is in its totality proof that this
5 Defendant was the caller. Is that everything that can be used
6 to prove that that Defendant was the actual caller? Probably
7 not, but is it enough to get over that reasonable doubt
8 standard? I would suggest to you that it is. Everything in
9 conglomeration together proves that it's the Defendant on the
10 jail call. So when you hear about reasonable doubt, keep that
11 in mind. It's you being firmly convinced this Defendant
12 committed the crimes that he's charged with.

13 This is going to take a little while. Tristen Brower, he
14 was -- he's a young guy. You all saw him. You all got to
15 hear him, and you got to hear some of the horrible things that
16 he admitted he did. Think about his testimony. He was
17 related to Natalia. He gave up his aunt, somebody he loved,
18 somebody he played with her kids, and he came here and
19 testified that she committed these crimes. Again, that goes
20 to the credibility of the witness. Does some of the things
21 that he's telling you make sense? Why would he say these
22 things about his aunt and then make something up about
23 somebody he just met that weekend?

24 Tristen described the robbery and burglary at Bryan Drive
25 in specific detail. He identified this Defendant as being

1 with him that weekend. He identified him as being one of the
2 people that went into the house, and specific details of his
3 testimony certainly corroborate the other witnesses which
4 we've already gone through a lot of. So I'm not going to
5 belabor the point, but go back in your memory and, and think
6 about some of the things that Tristen said that was matched up
7 by the other witnesses. He said the Defendant was not wearing
8 a mask. All three victims said that he was not wearing a
9 mask, and two of them specifically identified the Defendant as
10 being in the house. He said all of them had guns. Four guns
11 found, one in the car, three in the house, four Defendants.
12 He described the types of masks and the types of at least two
13 of them that was being worn by some of his Co-Defendants. He
14 said that this was the type of mask and this was found in
15 Natalia's house, a Jason mask. Again, he described Natalia
16 wearing the Scream mask. This was found in Natalia's house.
17 The victims described that as well. Before he was shown any
18 pictures about what was left of the Bryan Drive residence I
19 was asked how -- I asked him how things were being taken out
20 of the house, whether anything was stacked in the hallway.
21 You saw pictures of the electronics being stacked in the
22 hallway. We asked him what types of items were taken. He said
23 electronics, and basically anything they could get their hands
24 on, and that's exactly what was did -- done and you can see
25 through Exhibits One through 25 that house is turned upside

1 down. It was described as if a tornado went through there.

2 All of the victims, since they didn't Natalia, I just
3 asked for physical descriptors of Natalia, hair color, skin
4 tone, what her voice sounded like, things like that. All of
5 them said she had olive, tan skin, an accent, dark brown hair.
6 Well, you heard Tristen, all of those things, and you heard
7 she was from Puerto Rico. So it matches up what Tristen said
8 and all the victims were saying.

9 We gave a description of the Durango. One of the, again,
10 sort of minor details in this is he said there wasn't a front
11 seat in the Durango. Okay. Well, you'll see the pictures of
12 the Durango. There's not a front seat. There's speakers in
13 the front seat and all kind of other junk Natalia and these
14 people stuffed in the front seat of the car.

15 He said that they were there about an hour. That's what
16 all the victims said, maybe a little over an hour. The
17 timeline certainly corroborates all of the victims as well as
18 Tristen Brower's statements.

19 The second burglary he described it just the way that
20 Courtney Pringle did. He said he couldn't see John Darrieux
21 go behind the house, but he said he saw him come out with a
22 mattress, tied it to the top of the Durango. The mattresses
23 were still in the Durango when they were in the cul-de-sac and
24 stopped by Officer Drew and Officer Graff. He said there was
25 a large TV on the side of the road. It was loaded in the back

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1 of the Durango. You'll see pictures of that large TV in the
2 back of the Durango. He said all four were arrested together.
3 All of this is adding up to the same story that the victims
4 told and that lead to the charges that this Defendant faces.

5 One of the shocking things that I heard from Tristen was
6 not necessarily all the details of the robbery. The robbery
7 was scary enough, but this is the train of thought that the
8 Defendant had before he went and burglarized and terrorized
9 these people. He said, "If kids are inside I'm going to break
10 their fingers." That's sadistic. That's terror. That's the
11 way this Defendant was thinking before he changed these
12 people's lives forever.

13 So that's the witnesses. That's the testimony from them.
14 Now let's talk about the big picture here. What's the big
15 story here? What are some of the uncontroverted facts and how
16 do we tie them together? Well, one of the uncontroverted
17 facts is that there was a mattress found on top of a Durango.
18 There's pictures of it. There's no disputing it. I don't
19 think the Defense is going to argue that there wasn't a
20 mattress found on top of the Durango, but that mattress being
21 found on top of the Durango led to everything else. John
22 Darrieux arrested minutes after the Cindy Drive burglary with
23 Natalia Chisolm, Joseph Arsenault and Tristen Brower, they
24 were all arrested together. Again, don't think anybody's
25 going to argue that they weren't arrested together, they were

1 separated or anything like that. They were all found at that
2 cul-de-sac and arrested together. Charles Roberts, Rose
3 Simpson and Stephen Jones' property was found at Natalia
4 Chisolm's house. The State and the Defense agreed on that.
5 We stipulated to the entry of that evidence, the evidence you
6 will see through pictures and the physical evidence that is
7 introduced. Lastly, Charles, Stephen and Rose had property
8 stolen from them at Bryan Drive. Again, there was an event
9 that happened at Bryan Drive. It didn't happen to themselves.
10 Somebody did it to them. Now, let's connect the dots.

11 You've got mattress on top, which led to the BOLO, which
12 led to the arrest. The arrest led to talking to Tristen.
13 Tristen led to the search warrant. The search warrant led to
14 the property belonging to the victims, and that led to the
15 arrest of these Defendants for the armed robbery, burglary
16 first, the kidnapping of the Bryan Drive. The uncontroverted
17 facts in this case are connected, the dots are there, draw the
18 lines in between them when you're deliberating.

19 Now, those were some of the uncontroverted facts. The
20 last thing I want to talk about is what you heard from the
21 jail call of John Darrieux. That jail call is critical
22 evidence in this case as it gives you, again, a picture of
23 what the Defendant thought about all of what was going on.
24 This Defendant said, "I f'd up. I'm sorry. I f'd up big
25 time. Fortunately, no one got hurt real bad with this

1 situation here." He wasn't one of the ones in the house how
2 would he know those details about what happened in the house?
3 He made this call from jail, and what he was telling the
4 person that accepted the call was he kind of asked for this
5 and this is what he got, talking about him having to sit in
6 jail until his trial. That's exactly what the Defendant said,
7 and a person that is not guilty of these crimes doesn't say
8 this to his girlfriend.

9 One of the last things he said that you heard is he
10 thinks he's got a lot of wiggle room, wiggle room, he thinks
11 he has a lot of wiggle room, but I suggest to you the evidence
12 is clear. Four people bust into Charles, Stephen and Rose's
13 house on October the 21st of 2014. Masks covered some of their
14 faces, and the guns they held made them feel invincible for
15 the moment. All four bust into the house waving the guns
16 around as if to say, "Your life doesn't matter now.
17 Everything you've worked for, everything you own, everything
18 you know, your friends and family, none of that matters.
19 Everything I have no right to I'm going to take because laws
20 don't apply to people with guns and masks." Madam Foreperson,
21 ladies and gentlemen of the jury, if the truth is what you
22 seek, that sadistic, twisted way of thinking couldn't be
23 farther from the truth. Our laws don't give John Darrieux
24 wiggle room. Our laws say that John Darrieux is guilty of
25 kidnapping, armed robbery, burg first, burg third and

1 possession of a weapon during the commission of a violent
2 crime. Thank you.

3 THE COURT: Mr. Davis.

4 MR. DAVIS: Thank you, Your Honor.

5 Maybe I'm going to surprise you again. That's a
6 believable theory. It's a believable theory, but it's just
7 that it's a theory and it has faults. Let me start with a
8 couple right off the top. The State wants you to buy that
9 entire theory and to do that you must believe Mr. Roberts was
10 a target. There's no proof of that. There's not. Remember
11 any witness that said that he was a target. Remember any
12 testimony he gave that he knew any of the folks that have been
13 charged. To target someone you have to know them. To target
14 Mr. Roberts you have to believe both of these residences
15 belong to him. If you'll remember his testimony, he didn't
16 remember. He used to own a property on Cindy Lane. "Someone
17 got evicted. I'm not sure what residence it was." Well, you
18 have to be firmly convinced. You have to be firmly convinced.
19 The Judge is going to tell you that. That's the law. To
20 convict someone you have to be firmly convinced. How can you
21 be firmly convinced that Cindy Drive, the residence the
22 mattress was taken from, belonged to Mr. Roberts? He could
23 have testified to it. He didn't. The State could have shown
24 him a picture of it. "Is that it? You can't remember the
25 address. Is that it?" For you to convict John you have to

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1 look here for the Government to bring you evidence to prove
2 this. What do you need to believe that? What do you need to
3 know that's true? You need something. For their theory that
4 John was targeted, both residences were his, what do you need?
5 More than they gave you. That's their theory, but what if
6 there's another theory? There is. There's plenty of other
7 theories. Here's one. At 4, 4:30 in the morning on a random
8 October night John's asleep. Well, if you're asleep, then you
9 don't have an alibi. There's not going to be a witness come
10 in. Even if you have a partner to sleep with you, if they're
11 asleep there's not an alibi, and we don't go around recording
12 where we are and what we're doing all day so long so if we get
13 accused of something we go, "You know what? I know that's
14 where I was. I couldn't have done it." So by him telling the
15 State, "Give me a trial, I didn't do it. I'm not guilty.
16 Prove it," there's no reason for him to take the stand and
17 say, "I was asleep."

18 Then in the afternoon, in the afternoon, collecting items
19 is not a crime. Collecting, for example, this massive TV,
20 you'll see it in the back, from the roadside, that's not a
21 crime, not charged with that. They -- the -- what do you have
22 to be convinced of for the -- for you to convict John of the
23 afternoon burglary? You have to be convinced that he went in
24 or somebody he's with went in, you have to be convinced they
25 didn't have permission to go in and you have to be convinced

1 that it was Mr. Roberts' property, have Mr. Roberts identify
2 the mattresses. "Yeah. Those are my mattresses up there. I
3 didn't give anybody permission to do that." Did they do that?
4 They didn't. Isn't it just as likely that permission was
5 given to take those mattresses, that if entry was made it was
6 allowed? Is there any broken windows? Is there any busted in
7 door? Is there any signs of forced entry? Is there any
8 ransacked rooms? If there was don't you think you would have
9 seen it, and whether or not Natalia had permission to have
10 those mattresses, how in the heck did the State say John knew
11 she didn't have permission to have those mattresses? So the
12 morning the State wants to promote this theory that it's a
13 targeted thing, it's one connected event, it's a theory.
14 There's another theory just as plausible, and I just told you,
15 and when there's two explanations, when there's two competing
16 theories and both of them are plausible, both of them are
17 believable, that's reasonable doubt. You should hesitate to
18 be firmly convinced when there's just as much of belief in
19 that theory as the other theory.

20 Now, when you're trying to decide between theories, when
21 you're trying to determine the credibility and what the truth
22 is here, John has no obligation, as any citizen of this great
23 country, has no obligation to prove anything. The Judge is
24 going to remind you of that. I know you know that. You took
25 an oath. We don't have to prove anything. The State does.

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1 So you look here for all of your questions. Every question
2 you have you look to the Government, and if they've proven it
3 to you, I told you at the beginning, you're going to convict
4 John. So to believe their theory, to believe their witnesses,
5 you've got to trust them. As I go through my closing, I want
6 you to keep this in mind when you filter everything else. You
7 need to trust the Government, the Government who called one of
8 the two Pringles to testify. You remember Ms. Pringle,
9 Courtney Pringle? They called her. Did they call her sister
10 or her relative, Carlana? No. You remember the one that
11 video-recorded what happened? Did they call her? Did they
12 call her to convince you John was involved? Nope. Just trust
13 them. Just trust them. Did they want you to know? Did they
14 want Tristen testifying about this video-recorded interview
15 with the police? We had to take a break. "Tristen, do you
16 remember?" "I don't remember." "Do you remember?" "I don't
17 remember." "Can we take a break, Judge?" "Sure." Come back.
18 "Tristen, do you now remember?" "Yeah." They didn't want you
19 to know about that. When you -- when I remind you of some
20 things that actually happened and things that didn't actually
21 happen and they're asking you to trust them that they got the
22 right guy, please remember that.

23 Now, I've told you in the opening if you believe Tristen
24 you're probably going to convict John, and that's still true.
25 He's the link that the State relies on to connect both

1 incidents. He must be believed to convict. I just want to
2 get back to him in just a bit.

3 What about all this evidence, all this evidence, and if
4 you'll recall when we started this trial there was a whole lot
5 more out here. So there's evidence that, that they don't care
6 to, to have here now. This is the evidence you get to
7 consider. Remember this table full, and I told you at the
8 beginning nothing, nothing at his residence, no search warrant
9 at his residence. All this stuff is from Natalia's, and we
10 agreed to that. I told you there's going to be things I don't
11 dispute with the State. We did that. All this is found at
12 Natalia's. Was there one, one, one item of evidence belonging
13 to John Darrieux at Natalia's house? Is there any proof other
14 than Tristen he was ever there? If they had it they'd show it
15 to you. If they found anything at John's that belonged to Ms.
16 Simpson, Mr. Roberts or Mr. Jones they would have shown it to
17 you. If there's anything that belonged to John at Natalia's
18 house they would have showed it to you. It doesn't exist.

19 Now, I want to talk about the folks there at Bryan Drive.
20 I think I referenced this in the opening, but we don't dispute
21 this happened. We don't dispute what happened to these folks.
22 We don't, and they came in and told you what happened. The
23 evidence is here. Mr. Jones' stuff is found at Natalia's.
24 Mr. Roberts' stuff is found at Natalia's, and Ms. Simpsons'
25 stuff is found at Natalia's. I don't doubt that. The issue

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1 is John. They're saying he was involved.

2 Now, Mr. Roberts took the stand. He testified about what
3 happened. He has no idea John was involved or not, can't
4 identify John. Ms. Simpson, Mr. Jones did in court, and I
5 don't blame them. This is who the State, this is who the
6 Government arrested, charged, incarcerated, brought to trial.
7 They've told them like they're telling you he's the guy.
8 They're telling them just like they told you, "He's the guy."
9 In the 15 months since this happened did they once take a
10 photo of him to them to see is it this guy? How about close
11 in time to when happens so it's, you know, real familiar in
12 their mind? "Is, is this the guy?" No. They didn't, but
13 just trust them. Just trust the Government they got it right.
14 The only time based on their testimony that they saw John was
15 15 months ago and this week. They want to believe the
16 Government got the right guy. They hope the Government got
17 the right guy, and I don't blame them for sitting on that
18 witness stand in the trial that the State says, "Here's one of
19 them," and pointing at John. Who else are they going to point
20 to? Look in the courtroom. Whose else are they going to
21 point to? I don't blame them, but they're trusting the
22 Government, and you don't have to. That's part of your
23 action, be skeptical, question, have the Government prove this
24 to you, and if you'll remember when, when pushed, and I have
25 to do this, it's my job, Ms. Jones or, I'm sorry, Ms. Simpson,

1 admitted that when the police talked to her she didn't give
2 any description whatsoever and I gave her her statement. She
3 had to get her glasses. She wears glasses. So she couldn't
4 see real well, but she can identify him from 30 feet. She
5 didn't give any description to the police. She hopes it's
6 John. She wants to believe it's John, and if you remember Mr.
7 Jones, he identified John in court. He wants to believe it's
8 John. He hopes it's John. He hopes, he trusts the Government
9 to get it right, but the morning it happened told the police,
10 "I'm not going to be able identify," the one person that
11 didn't have a mask because he was in the shadows, stated, said
12 that in his statement, said in his statement to police, "The
13 guy without the mask was in the shadows. I won't be able to
14 identify him." They trusted the Government to fully
15 investigate this case and to get the right people. They
16 trusted them. They have no basis from the burglary to
17 identify John. They have no basis. Only there was general
18 descriptions were given in here, and I think Mr. Jones said,
19 "About my height, about my weight." Well, we've seen John
20 stand up and, John, could you just right there, if you can
21 stand up a moment, please. Can you just face the jurors? In
22 fact, keep turning just a little bit, keep turning just a
23 little bit. Anybody talk about a tattoo on the back of his
24 neck, a big old tattoo? Thank you, John.

25 Seems to me instead of just middle-aged or twenties,

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1 thirties, white male, about my height, about my weight, and
2 he's really up in your face that would be a very recognizable
3 and easy thing to remember. They never testified about it.
4 They hope, they trust, they want to believe that the
5 Government did the right thing. They're emotionally connected
6 to this.. They're buying into this. You don't have to.
7 You're independent jurors that get to evaluate this evidence.

8 So unfortunately, they can't help and neither can this
9 evidence that's found because it doesn't go back to John's
10 residence and nothing of John's at the residence where it was
11 found. It's all at Natalia's Chisolm's house.

12 Now, the State in the beginning doesn't want to talk
13 about Natalia. We're the only one on trial, but Natalia's not
14 here. Joseph Arsenault's not here. The State wants you to
15 just trust them on this guy. Trust the Government despite the
16 Government failing to do its job, failing to try to identify
17 the SUV, taking photos, failing to take photos of the
18 suspects, "Can you identify them," failing to collect
19 evidence, video of this break-in at Cindy Drive, failing to
20 call the witness who did videotape it. Just trust them. Just
21 trust them. They've got four guns here. Did anybody identify
22 those guns? No. But you know, there's four. "So just trust
23 us. Trust us that these are the guns that were used." Again,
24 I don't doubt the crime happened at Bryan Drive, but you know,
25 trust these guns were used, only the vaguest of descriptions.

1 Any prints off these guns? What do you need, what do you need
2 to be firmly convinced before you convict somebody of burglary
3 in the first degree, three armed robberies, three kidnappings
4 and another burglary? What do you need more than that? Not
5 just the guns, any other items of evidence, including the SUV.
6 Asked one of the detectives, "Was it dusted for fingerprints?"
7 "Yes." "Anything found?" "No." No fingerprints in this case
8 whatsoever. What does the State do? Gets back up and goes,
9 "Aha. Gloves were worn." Did anybody mention any gloves
10 being worn whatsoever? No. "But trust us. We'll have an
11 explanation for any of the holes in our case. Just trust
12 us." Nobody said anybody wore gloves, and when I point
13 that out, "Well, by God, at the house, we" -- or at the,
14 forgive me, "We seized gloves. We seized gloves. So
15 that has to be the explanation for that. Just trust us,"
16 even though that doesn't connect with anybody else's
17 testimony.

18 Let's talk about Cindy Lane for a second because they
19 charged him with burglary in the third degree at Cindy Lane.
20 Okay. There's a call. People were suspicious, maybe a break-
21 in. It's four in the afternoon, daylight in October. Officer
22 Wright arrives on the scene, talks to Ms. Pringle. She says,
23 "You know what, a lady I used to work with just drove up in an
24 SUV, SUV with a few folks. I wasn't sure what they were doing
25 at the house but they show up. She comes talks to me. She

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1 comes talks to me. Talks to me, and then they load up
2 mattresses and go." So suspicious, so call the police. Okay.
3 Suspicious. Burglary in the third degree is entering a
4 building without permission with the intent to commit a crime,
5 entering a building without permission with intent to commit a
6 crime. How does she know they didn't have permission? How do
7 you know they didn't have permission? What do you need to be
8 firmly convinced that he or who he was with entered without
9 permission? How about signs of entry? How about somebody
10 identifying the mattresses? Didn't give permission to have
11 those. How about somebody saying, "That's my residence, as a
12 matter of a fact," either by remembering the address or seeing
13 a photo. Mr. Roberts did not. The State wanted him to. The
14 State sure did want him to, but he didn't. He didn't, but
15 just, just trust the Government. Trust that they, trust that
16 they didn't have permission to go in there. Trust that they
17 broke in, although there's no proof of that. Trust that they
18 hauled off these mattresses without permission. Is there any
19 evidence of that? And again, remember now, remember now, my
20 first question to Officer Graff who was testifying about that
21 responded to that, actually seated over here before I even got
22 up, "That's all you did?" "That's all I did." "Really?
23 Didn't you talk to another Ms. Pringle?" "Yeah. That's --
24 yeah, yeah, I talked to another Ms. Pringle." "Didn't she
25 tell you she had a video of this showing the people and what

1 they did on her cell phone?" "Yeah. As a matter of a fact
2 they did." Who got that evidence to you? Not the Government.
3 They didn't want you to know about it. They didn't call the
4 other Ms. Pringle. They didn't ask the officer when he was on
5 the stand about it. They don't want you to know about that.
6 Wouldn't it have been great to see that video? Would it have
7 been great to see that video? Who was actually there? What
8 did they actually do? We don't have it. The police didn't
9 collect it, but you know, just trust the Government.

10 "Well, all right, John, you call them." No. We don't
11 have to call anybody, and we don't have the ability of law
12 enforcement, local police, sheriff's department, SLED. We
13 don't have that ability. We're not required to do that, but
14 if the State comes in here and says, "We want you to convict
15 John of these charges," then what do you need to be firmly
16 convinced? More than that.

17 Now, you know, the Government tells you how fast to
18 drive. The Government tells you how much money to give to
19 them. The Government tells you where roads are built.
20 There's two times, two times you get to tell the Government
21 something is when you vote and that's now. You don't want to
22 be jurors. Nobody really wants to, but now's your chance to
23 say something back to the Government. Be skeptical of the
24 Government. What have they done to earn your trust? "Just
25 trust on these things that don't really, trust us." What have

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1 they done to earn your trust? Not call witnesses, not collect
2 evidence, not show photos of John or the SUV. What did the
3 Government do? This is rudimentary. Sorry, I don't -- two
4 plus two; right? Two plus two. The Government says, "Trust
5 us. You know what that is. You know what that is," and go
6 back there and say, "You know what that is. Look at all this.
7 Look at all this evidence." We're -- you're going to take all
8 this back with you. You'll have all this back with you in
9 the, in the jury room. Look at all this, but you know what
10 this reminds me of? This reminds me of in school when you get
11 that two-part question and you don't know a dang thing about
12 the first part, so you just write and write and write and
13 write and write about the second part and hope the teacher
14 gives you credit for everything? "Look. Look. A burglary
15 was committed. Look at all this stuff we've got that belonged
16 to those folks. Look. And John did it. Just trust us. John
17 did it, but look at all this evidence." They've got to prove
18 he was involved, table full of evidence, and none of it back
19 to John. The, yeah, the mattress, the big console TV which
20 you'll see, they were dumpster diving. That's what I call it.
21 I'm from West Virginia originally. Dumpster diving. Right?
22 Getting items from the side of the road. So could they have
23 had permission? Could they have been dumpster diving? I'm
24 speculating, but I'm speculating just as much as the Pringles
25 were and just as much as the Government is, and if you'll

1 recall Tristen's testimony he gets really vague about that
2 part, really vague, kind of sleeping in the vehicle, really
3 vague about that.

4 Just trust the Government that they got it right. Trust
5 the Government that it's John on that critical, says the
6 Government, the critical phone call. If it's that critical,
7 call the person talking on the other end. If it's that
8 critical, bring somebody in, say, "You know what, I've known
9 John all my life. I've had conversations with him for 30
10 years. That's his voice." No, no, no, no. Just trust the
11 Government. They got this computer thing that downloads it,
12 and just trust that it can only be from him even though the
13 lady said, "Yes, I know inmates use other inmates' PIN
14 numbers." What do you need to trust them? You need more
15 than, "We don't know who those people are, but had to been
16 John at one of them." It was so critical they would have
17 proved that more, and we'll talk about Tristen and then I'm
18 going to let you go do your job.

19 Sixteen year old kid, 16 year old kid isolated by the
20 police, put in an interrogation room, two male officers in
21 there with him, cuffed him, parents weren't there and got him
22 to talk with them in the generalist of terms that everybody
23 that was, that was just arrested did everything. Everybody
24 that was just at the SUV got arrested. "Yeah. They did, they
25 did everything," and they ran with it, the Government ran with

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1 it even if the stories didn't match. After I reminded him,
2 after he had a chance to refresh his memory, he told them that
3 he didn't -- he stayed in the car for a long while. That
4 doesn't match up with what they want you to believe now. He
5 told them it was 10, 15 minutes. Well, that doesn't match
6 what the State, the Government wants you to believe now. Says
7 one guy had his shirt completely off. Doesn't match what the
8 Government wants you to believe now. Gave no actual names of
9 the people involved, but that was enough for this -- the
10 Government to start running with it, but it wasn't enough for
11 trial. So what'd they do? The Government called him in and
12 prepared him for his testimony. The Government went with the
13 Prosecutors to prepare him for his testimony, and then it gets
14 detailed. Then it gets detailed. Then you get stuff like,
15 "Breaking fingers," then you get stuff like that after he
16 talks to the Government, attorneys, after he talks to the
17 Government attorneys who are presenting this case to you.
18 Why? Because he's hoping for something, and I don't blame him
19 either. He's hoping for something. He's 17 now. He's
20 charged with the same things. He knows, he knows what he's
21 facing, and he's got an agreement with the State to come
22 testify, and he sure does hope they do right by him. He sure
23 does hope they go easy on him. He sure does hope he doesn't
24 ruin his life at 16 years old. So when he comes in this week
25 what does he have to do? He has to point to John. If not,

1 what are they going to do to him? If he does, what are they
2 going to do to him? We don't know yet. But he has a reason
3 to say what he said, a teenager. It's understandable,
4 absolutely understandable.

5 The Government's asked you to go back to the jury room
6 and convict John burglary in the first degree, three armed
7 robberies, three kidnappings, burglary in the third degree,
8 possession of a weapon during a violent crime. The Judge
9 is going to tell you to do that you have to be firmly
10 convinced of John's guilt of each one. You're going to
11 have a sheet that has each charge. Consider each one of
12 them individually. Firmly convinced beyond a doubt that's
13 reasonable then he's guilty. Now, if you hesitate because you
14 have reasonable concerns about what the Government has
15 presented to you, then it's not guilty. Do you hesitate
16 because you didn't get to hear from the second Ms. Pringle?
17 Do you hesitate because the Government didn't bring you that
18 video? Do you hesitate because they can't really identify
19 Cindy Drive as belonging to Mr. Roberts? Do you hesitate
20 because he can't identify the mattresses? Do you hesitate
21 because there's no signs of entry? Do you hesitate because
22 there's no broken glass? Do you hesitate because it wasn't
23 ransacked? Do you hesitate? Do you hesitate to believe that
24 John was in there with a mask off and yet when they first talk
25 to police they never describe him, they never describe the

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1 tattoo? Do you hesitate to act when the only other time
2 they've seen him in their lives is in court and who else are
3 they going to point out to? They want to believe it's John.
4 You have taken an oath to want to believe it wasn't John
5 unless they convinced you.

6 The final thing I'll say, we do agree on this, both sides
7 picked you because we think you'll be fair, you'll use common
8 sense and you'll back with a verdict, but to convict somebody,
9 to convict somebody, you've got to get it right. This wasn't
10 John. He wasn't in that house at four a.m., and he did not
11 steal anything, burglarize those mattresses. Now, if you go
12 back there and you're firmly convinced the opposite,
13 you'll find him guilty, but if there's things that cause you
14 to hesitate to trust the Government's case because there are
15 things, because John's not guilty, then just check the boxes
16 all the way down not guilty because that's the right thing to
17 do. Thank you, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, all of the
19 evidence in this case has been presented to you, the attorneys
20 have made their closing arguments, and now is the time of
21 trial when I charge you with the law to be applied in this
22 case.

23 The indictments in this case allege several different
24 offenses against the Defendant. The charges against the
25 Defendant in this case are burglary in the first degree;

1 burglary in the third degree; three counts of armed robbery;
2 three counts of kidnapping; and possession of a firearm during
3 the commission of a violent crime.

4 Each indictment charges a separate and distinct offense.
5 You must decide each indictment separately on the evidence and
6 the law applicable to it uninfluenced by your decision as to
7 any other indictment. The Defendant may be convicted or
8 acquitted on any or all of the offenses charged. You'll be
9 asked to write a separate verdict of guilty or not guilty for
10 each indictment.

11 I remind you that the fact that the Defendant was
12 arrested, charged and indicted in this case is not evidence in
13 this case and cannot be considered by you as evidence of guilt
14 in this case, nor does the Defendant's arrest, charge or
15 indictment create any presumption or inference of guilt.
16 These indictments are simply the formal written instruments
17 which contain the charges made against the Defendant. They
18 are the formal documents by which this case is brought into
19 this court.

20 The Defendant pleads not guilty to these indictments, and
21 that plea puts the burden on the State to prove the Defendant
22 guilty. A person charged with committing a criminal offense
23 in South Carolina is never required to prove his innocence.

24 I charge you that an important rule of the law is that
25 the Defendant in a criminal trial, no matter what the

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1 seriousness of the charge may be, will always be presumed to
2 be innocent of the crime for which the indictment was issued
3 unless guilt has been proven by evidence satisfying you of
4 that guilt beyond a reasonable doubt.

5 This presumption of innocence does not end when you begin
6 your deliberations, but it accompanies the Defendant
7 throughout the trial until you reach a verdict of guilt based
8 on evidence satisfying you of that guilt beyond a reasonable
9 doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the Defendant
12 which remains with the Defendant until it has been stripped
13 from the Defendant by evidence satisfying you of the
14 Defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not a mere legal theory.
16 It is not just a legal phrase. It is a substantial right to
17 which every Defendant is entitled unless you, the jury, are
18 satisfied from the evidence of the Defendant's guilt beyond a
19 reasonable doubt.

20 Now, what is a reasonable doubt in the law? A reasonable
21 doubt is the kind of doubt that would cause a reasonable
22 person to hesitate to act.

23 Proof beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the Defendant's guilt. We know very few
25 things in this world with absolute certainty, and in criminal

1 cases the law does not require proof that overcomes every
2 possible doubt. If, based on your consideration of the
3 evidence, you are firmly convinced that the Defendant is
4 guilty of the crime charged, you must find the Defendant
5 guilty of that crime. If on the other hand, you think a real
6 possibility exists that the Defendant is not guilty, you must
7 give the Defendant the benefit of that doubt and find him not
8 guilty.

9 I remind you that, during this trial, you and I have
10 certain duties to perform. As the trial judge, my
11 responsibility is to preside over the trial of this case. I
12 also have the duty to rule on the admissibility of evidence
13 offered during this trial. You are to consider only the
14 competent evidence before you. If any testimony was ordered
15 stricken from the record in this case during this trial, you
16 must disregard that testimony. You are to consider only the
17 testimony which has been presented from the witness stand, any
18 exhibits which have been made a part of the record in this
19 case and any stipulations of counsel.

20 I have the additional duty to charge you the law
21 applicable to this case. As the presiding judge, I am the
22 sole judge of the law of this case. Your duty as jurors is to
23 accept and apply the law as I now state it to you. If you
24 have any idea as to what the law is or what the law ought to
25 be and your idea is different from what I now tell you the law

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1 is, you must disregard your idea of what the law is or ought
2 to be because you are sworn to accept the law and apply the
3 law exactly as I state it to you.

4 In every case tried in this court before a jury, the jury
5 is the sole and exclusive judge of the facts in a case. A
6 trial judge cannot intimate, state, comment on or make any
7 statement to a trial jury about the facts in a case. Since
8 you, the jury, are the sole judge of the facts of this case,
9 you are not to infer from what I have said during the progress
10 of this trial in ruling upon the admissibility of evidence, or
11 otherwise, or anything that I say now during the course of
12 this instruction to you, that I have any opinion about the
13 facts in this case. The law does not allow me to have an
14 opinion about the facts in this case. This is a matter solely
15 for you, the jury, to determine. As jurors, your duty is to
16 determine the effect, value, weight and truth of the evidence
17 presented during this trial.

18 Now, two types of evidence are generally presented during
19 a trial, direct evidence and circumstantial evidence. Direct
20 evidence is testimony of a person who claims to have actual
21 knowledge of a fact, such as an eyewitness. Circumstantial
22 evidence is proof of a chain of facts and circumstances
23 indicating the existence of a fact. The State has the burden
24 of proving the Defendant guilty beyond a reasonable doubt.
25 This burden rests with the State regardless of whether the

1 State relies on direct evidence, circumstantial evidence or
2 some combination of the two. The law makes absolutely no
3 distinction between the weight or value to be given to either
4 direct or circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence than of direct
6 evidence. However, to the extent the State relies on
7 circumstantial evidence, all of the circumstances must be
8 consistent with each other, and when taken together point
9 conclusively to the guilt of the accused beyond a reasonable
10 doubt. If these circumstances merely portray the Defendant's
11 behavior as suspicious, the proof has failed. The State has
12 the burden of proving the Defendant guilty beyond a reasonable
13 doubt. This burden rests with the State regardless of whether
14 the State relies on direct evidence, circumstantial evidence
15 or some combination of the two. You should weigh all of the
16 evidence in the case. After weighing all of the evidence, if
17 you are not convinced of the guilt of the Defendant beyond a
18 reasonable doubt, you must find the Defendant not guilty. On
19 the other hand, after weighing all of the evidence, if you are
20 firmly convinced of the guilt of the Defendant beyond a
21 reasonable doubt you must find the Defendant guilty.

22 Necessarily, you must determine the credibility of
23 witnesses who have testified in this case. Credibility simply
24 means believability. Your duty as jurors is to analyze and to
25 evaluate the evidence and determine which evidence convinces

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1 you of its truth. In determining the believability of
2 witnesses who have testified in this case, you may believe one
3 witness over several witnesses or several witnesses over one
4 witness. You may believe a part of the testimony of a witness
5 and reject the remaining part of the testimony of that same
6 witness. You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its entirety.
8 You may consider whether any witness has exhibited to you any
9 interest, bias, prejudice or other motive in this case. You
10 may also consider the appearance and manner of the witness
11 while on the witness stand.

12 Now, evidence has been presented that a witness made
13 prior statements which are not consistent with the witness'
14 present testimony.. You may use this evidence to decide
15 whether to believe the witness. You may consider -- excuse me
16 -- you may also use evidence of the earlier contradictory
17 statements to determine the truth of those statements. You
18 are to decide whether to believe the earlier statements or the
19 testimony given at trial.

20 If a witness is shown to have knowingly testified
21 untruthfully concerning any material matter, you may consider
22 this in determining whether to trust the witness' testimony as
23 to other matters. You may reject all testimony of that
24 witness or give all or part of the testimony the weight you
25 think it deserves.

1 One of the witnesses in this case has a prior criminal
2 record. A person who has a past criminal record is competent
3 to testify during a trial. A past record does not affect the
4 ability of that witness to testify. The past record may only
5 be considered by you, if at all, in determining the witness'
6 believability. Remember, you are the sole judge of the facts
7 in the case and of the believability of any or all of the
8 witnesses.

9 Now, I instruct you and emphasize that the fact that the
10 Defendant did not testify in this case is not a factor to be
11 considered by you in any way in your deliberation and in your
12 consideration on the question of the guilt or innocence of the
13 Defendant. The Defendant's failure to testify must not be
14 considered by you in any manner whatsoever.

15 A Defendant has the constitutional right to remain
16 silent, and the assertion of this right must not be considered
17 by you in your deliberations. I repeat, under your oath, you
18 are to draw no conclusion whatsoever from the fact that the
19 Defendant in this case did not testify. The fact that the
20 Defendant did not testify should not even be discussed in the
21 jury room.

22 The burden of proof, as I have stated to you, is on the
23 State to prove the Defendant's guilt beyond a reasonable
24 doubt. The Defendant is not required to prove his innocence.
25 The burden of proof remains on the State to prove the

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1 Defendant's guilt beyond a reasonable doubt.

2 Now, if a crime is committed by two or more people who
3 are acting together in committing a crime, the act of one is
4 the act of all. A person who joins with another to commit an
5 unlawful act is criminally responsible for everything done by
6 the other person which happens as a probable or natural
7 consequence of the acts done in carrying out the common plan
8 and purpose. For example, two people can be guilty of killing
9 another person when only one of the two had a gun, only one
10 bullet was used, and only one of the two people fired the shot
11 that caused the death. If two or more people are together,
12 acting together, assisting each other in committing the
13 offense, the act of one is the act of all or, as it is
14 sometimes said, "The hand of one is the hand of all".

15 Prior knowledge that a crime is going to be committed,
16 without more, is not sufficient to make a person guilty of
17 that crime. Mere knowledge that another person is going to
18 commit a crime, even if the Defendant is present when the
19 crime is committed, is not sufficient to convict the Defendant
20 as a principal. Guilt as a principal is shown by actual or
21 constructive presence at the scene as a result of a prior
22 arrangement. Therefore, a finding of a prior arranged plan or
23 common scheme is necessary for a finding of guilt as a
24 principal.

25 The State must prove beyond a reasonable doubt by

1 competent evidence the theory of the hand of one is the hand
2 of all. A principal is in a crime -- excuse me -- a principal
3 in a crime is one who either actually commits the crime or who
4 is present aiding, abetting or assisting in committing the
5 crime. When a person does an act in the presence of and with
6 the assistance of another, the act is done by both. Where two
7 or more, acting with a common plan or intent, are present at
8 the commission of a crime, it does not matter who actually
9 commits the crime. All are guilty. The hand of one is the
10 hand of all.

11 Present at the commission of a crime means to be
12 sufficiently near to aid and abet and assist in the commission
13 of the crime. However, mere presence at the scene of a crime
14 is not sufficient to convict one as a principal on the theory
15 of aiding and abetting. Intent is also a necessary element,
16 for there must have been a common design or intent to commit
17 the crime and the crime must have been committed pursuant to
18 the common design or intent with the person aiding and
19 abetting by some overt act.

20 Intent means intending the result which actually occurs,
21 not accidentally or involuntary. Intent may be shown by acts
22 and conduct of the Defendant and other circumstances from
23 which you may naturally and reasonably infer intent.

24 The State must prove these elements beyond a reasonable
25 doubt.

1 Now, in order to establish criminal liability, criminal
2 intent is required. For example, the mental state required to
3 be proven by the State for a particular crime might be
4 purpose, intent, knowledge, recklessness or criminal
5 negligence. Criminal intent must be proven by the State
6 beyond a reasonable doubt. Criminal intent is always a matter
7 that must be determined by the jury from the circumstances
8 surrounding the situation. No way exists to prove intent to a
9 mathematical certainty. Medical science cannot dissect a
10 person's brain and determine what the person had in mind, so
11 the law says that criminal intent may be inferred from the
12 circumstances shown to have existed. This is how you make a
13 determination of whether or not the element requiring intent
14 is present.

15 Intent does not have to be established by direct and
16 positive evidence. Intent may be established by inference in
17 the same way as any other fact, by taking into consideration
18 the acts of the parties and all of the facts and circumstances
19 of the case.

20 Criminal intent is a mental state, a conscious
21 wrongdoing. You must determine what the Defendant intended to
22 do based on the circumstances shown to have existed. Criminal
23 intent can arise from action or a failure to act. It may
24 arise from negligence, recklessness or an indifference to duty
25 or to consequences that is considered by the law to be the

1 equivalent of criminal intent.

2 Excuse me. An issue in this case is the identification
3 of the Defendant as the person who committed the crime
4 charged. The State has the burden of proving identity beyond
5 a reasonable doubt. You must be satisfied beyond a reasonable
6 doubt of the accuracy of the identification of the Defendant
7 before you may convict the Defendant. Identification
8 testimony is an expression of belief or impression by a
9 witness. You must determine the accuracy of the
10 identification of the Defendant. You must consider the
11 believability of each identification witness in the same way
12 as any other witness. Once again, I instruct you the burden
13 of proof is on the State and it extends to every element of
14 the crime charged, and this specifically includes the burden
15 of proving beyond a reasonable doubt the identity of the
16 Defendant as the person who committed the crime. If, after
17 examining the testimony, you have a reasonable doubt as to the
18 accuracy of the identification, you must find the Defendant
19 not guilty.

20 As I have previously advised you, the Defendant is
21 charged with burglary in the first degree, burglary in the
22 third degree, three counts of armed robbery, three counts of
23 kidnapping and possession of a firearm during the commission
24 of a violent crime.

25 Now, to prove the Defendant guilty of first degree

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1 burglary, the State must first prove beyond a reasonable doubt
2 that the Defendant entered a dwelling without consent.

3 A dwelling is any building or portion of a building in
4 which a person ordinarily sleeps. A building constructed as a
5 dwelling that has never been occupied cannot be considered a
6 dwelling for purposes of burglary, but a building is a
7 dwelling even if the residents are temporarily absent from the
8 building.

9 In order to prove that the Defendant entered the
10 dwelling, the State does not have to show that the Defendant's
11 entire body entered the dwelling. The smallest entry is
12 sufficient. It may be any part of the body, such as a hand or
13 foot, or even an instrument, such as a hook or other
14 instrument. In addition, the State does not have to prove
15 that force was used to gain entry. If a person enters a
16 building by using deception, artifice, trick or
17 misrepresentation to get consent to enter, this is an entry
18 without consent.

19 Next, the State must prove beyond a reasonable doubt that
20 the Defendant intended to commit a crime, either a felony or a
21 misdemeanor, at the time of the entry. The mere entry into a
22 dwelling without consent is not burglary. If the intent to
23 commit a crime is formed after the entry, it is not burglary.
24 On the other hand, if the Defendant intended to commit a crime
25 at the time of the entry, it is a burglary even if the intent

1 was abandoned after the entry. It does not matter that the
2 intended crime was not committed. Intent may be shown by acts
3 and conduct of the Defendant and other circumstances from
4 which you may naturally and reasonably infer intent.

5 Finally, the State must prove beyond a reasonable doubt
6 at least one of the following but need not prove all of the
7 following: one, when entering, while in the dwelling, or when
8 fleeing, the Defendant or an accomplice was armed with a
9 deadly weapon or explosive. A deadly weapon is any article,
10 instrument or substance which is likely to cause death or
11 great bodily harm. Whether an instrument has been used as a
12 deadly weapon depends on the facts and circumstances of each
13 case. The following are examples of instruments which may be
14 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
15 dagger, a knife, a sling shot, metal knuckles, a razor,
16 gasoline, a fire bomb or Molotov cocktail and lighter fluid.
17 A gun may be a deadly weapon even if it is not operating.

18 Or the State may prove burglary by showing -- burglary in
19 the first degree by showing that when entering, while in the
20 dwelling or when fleeing, the Defendant or an accomplice
21 displayed what was or appeared to be a knife, a pistol, a
22 revolver, a rifle, a shotgun, a machine gun or other firearm,
23 or the State may prove burglary, burglary in the first degree
24 by showing that the Defendant entered or remained in the
25 dwelling in the nighttime. Nighttime is the period between

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1 sunset and sunrise during which there is not enough daylight
2 to recognize a person's face, except by artificial light or
3 moonlight.

4 The Defendant is also charged with burglary in the third
5 degree. In order to prove third-degree burglary, the State
6 must first prove beyond a reasonable doubt that the Defendant
7 entered a building without consent. A building is any
8 structure, vehicle, watercraft or aircraft where any person
9 lodges or lives or where people assemble for the purpose of
10 business, government, education, religion, entertainment,
11 public transportation or public use or where goods are stored.
12 In order to prove that the Defendant entered the building the
13 State does not have to show that the Defendant's entire body
14 entered the building. The smallest entry is sufficient. It
15 may be any part of the body such as a hand or foot or even an
16 instrument such as a hook or other instrument. In addition,
17 the State does not have to prove that force was used to gain
18 entry. If a person enters a building by using deception,
19 artifice, trick or misrepresentation to get consent to enter,
20 this is an entry without consent.

21 Next, the State must prove beyond a reasonable doubt that
22 the Defendant intended to commit a crime, either a felony or a
23 misdemeanor at the time of the entry to be guilty of burglary.
24 The mere entry into a building without consent is not
25 burglary. If the intent to commit a crime is formed after the

1 entry it is not burglary. On the other hand, if the Defendant
2 intended to commit a crime at the time of entry, it is a
3 burglary even if the intent was abandoned after the entry. It
4 does not matter that the intended crime was not completed.
5 Intent may be shown by acts and conduct of the Defendant and
6 other circumstances from which you may naturally and
7 reasonably infer intent.

8 The Defendant is also charged with three counts of
9 kidnapping. To convict the Defendant of kidnapping, the State
10 must prove beyond a reasonable doubt that the Defendant
11 knowingly and unlawfully seized, confined, inveigled, decoyed,
12 kidnapped, abducted or carried away another person without
13 authority of law. To do a thing unlawfully is to do it
14 willfully against the law. Knowingly means with knowledge,
15 consciously, not accidentally. Seize means to take hold of
16 suddenly or forcibly. Confine means to limit, restrict, or
17 enclose within bounds, imprison or shut or keep in. Inveigle
18 means to lure, entice, or lead astray by false
19 representations, promises, or other deceptive means. Decoy
20 means to lure by, or as if by, decoy. A decoy is something to
21 entice a person into a trap. Kidnap is to remove a person
22 against his will by unlawful force or by fraud. Abduct means
23 to carry off secretly or by force for an illegal purpose.
24 Carry away means to remove. The State does not have to prove
25 that the Defendant did all of these things. Instead, if you

Charge

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1 find beyond a reasonable doubt that the Defendant did any of
2 these things, you may find the Defendant guilty of kidnapping.

3 Something done without authority of law is something
4 which the law does not sanction, permit, allow, condone or
5 provide justification for. The kidnapping does not have to be
6 for any personal or monetary gain or for any illegal purpose,
7 but may be for any reason whatsoever.

8 The Defendant is also charged with three counts of armed
9 robbery. In order to prove this offense, the State must first
10 prove beyond a reasonable doubt that the Defendant took
11 personal property from the person or presence of another
12 person. Property is in the presence of a person if it is
13 within the person's reach, inspection, observation or control
14 so that the person could, if not overcome with violence or
15 prevented by fear, keep possession of the property.

16 The State must also prove beyond a reasonable doubt that
17 the Defendant carried the property away intending to
18 permanently deprive the owner of the property and to keep the
19 property for the Defendant's own use. The slightest removal
20 of the property or the complete possession of the property,
21 even for an instant, by the Defendant is sufficient to show a
22 taking and carrying away of the property. The taking and
23 carrying away of the property must have been done with
24 violence or by putting the owner of the property in fear of
25 violence.

1 Finally, the State must prove beyond a reasonable doubt
2 that the Defendant was armed with a deadly weapon during the
3 robbery. A deadly weapon is any article, instrument or
4 substance which is likely to cause death or great bodily harm.
5 Whether an instrument has been used as a deadly weapon depends
6 on the facts and circumstances of each case. The following
7 are examples of instruments which may be deadly weapons: a
8 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling
9 shot, metal knuckles, a razor, gasoline, a fire bomb or
10 Molotov cocktail and lighter fluid. A gun may be a deadly
11 weapon even if it is not operating.

12 The Defendant is also charged with possession of a weapon
13 during the commission of a violent crime. To convict the
14 Defendant of this crime the State must prove beyond a
15 reasonable doubt that the Defendant was in possession of a
16 firearm or visibly displayed what appeared to be a firearm
17 during the commission of a violent crime. A firearm means any
18 machine gun, automatic rifle, revolver, pistol or any weapon
19 which will, is designed to or may be readily converted to
20 expel a projectile. In order to find the Defendant guilty of
21 possession of a weapon during the commission of a violent
22 crime, you must first find the Defendant guilty of either
23 committing a violent crime or attempting the commission of a
24 violent crime. Burglary in the first degree, armed robbery
25 and kidnapping are violent crimes. The State must also prove

Charge

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1 beyond a reasonable doubt that the weapon further advanced or
2 helped in the commission of the crime.

3 Now, you have heard testimony concerning the penalty a
4 person can serve for the crimes alleged in the indictments.
5 In determining the guilt or innocence of the Defendant you
6 cannot consider any possible penalty for any particular crime.
7 The punishment for a crime is a matter for me to determine and
8 should never be considered by you in any way whatsoever in
9 arriving at an impartial verdict on the guilt or innocence of
10 the Defendant.

11 Now, there are two possible verdicts for each indictment
12 in this case. No significance whatsoever is to be given to
13 the order in which I state these possible verdicts to you. I
14 simply have to state one first and one second.

15 The possible -- on each charge and indictment in this
16 case your possible verdicts are either guilty or not guilty.
17 Ladies and gentlemen, your verdicts must be unanimous. As
18 stated before, you must decide each indictment separately on
19 the evidence and the law applicable to that indictment
20 uninfluenced by your decision as to any other indictment.

21 Ms. Pritchett, as foreperson, when the jury agrees on a
22 verdict, the indictments are itemized right here. You'll
23 check guilty or not guilty for each indictment. When you've
24 reached a verdict on each indictment, sign your name on the
25 verdict form, then knock on the door and let the bailiff know

1 that the jury has a reached a verdict and we'll bring you back
2 in the court at that time.

3 Now, I'm going to excuse you back to the jury room, but
4 please do not begin your deliberations at this point in time.
5 I need to check with the attorneys to see if they have any
6 challenges or additional charges that I need to give you. If
7 they do and I deem them appropriate I'll bring you back in and
8 make whatever corrections or additional charges are necessary.
9 If there are none then the exhibits, the verdict form will all
10 be brought back to the jury room and the bailiff will tell you
11 you can begin your deliberations, but please do not begin your
12 deliberations until the bailiff instructs you to do so. Thank
13 you very much.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Any exceptions or additional charges from the
17 State?

18 MR. WEST: Nothing from the State, Judge.

19 THE COURT: Any from the Defense?

20 MR. DAVIS: No new objections, Your Honor, no.

21 THE COURT: All right. Here is the verdict form. Let's
22 mark sure we've got all the exhibits so we can take them back.
23 Here's the verdict form. I tell you, while they're doing this
24 could you -- let me -- I'm looking for my jury list -- can you
25 go ahead and bring the alternates out, yeah, Mr. Yeadon, Mr.

Charge

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1 Yeadon and Mr. Asbury. Thank you. Yeah. Just bring them
2 back in here.

3 MR. WEST: Judge, do you send the guns back or leave them
4 out here?

5 THE COURT: Huh? They've got the thing, if they've got
6 the thing on them you can send them back.

7 MR. WEST: Tags on them.

8 (Alternates enter courtroom.)

9 THE COURT: Just, if you all just have a seat right there
10 for just a second.

11 MR. DAVIS: Your Honor, obviously there's a concern.
12 We've got ammunition and weapons. My concern is if there's
13 ammunition in with the weapons, it not be removed out, but
14 I'll leave that to you.

15 THE COURT: Oh, no. Just send the weapons back without
16 ammunition in it.

17 MR. DAVIS: And there's an entire exhibit that's a bag,
18 backpack full of ammunition.

19 THE COURT: Well, I mean, it's an exhibit.

20 MR. DAVIS: Well, sir, I would prefer that the other
21 items not be altered then. I mean, it is what it is. If
22 we're concerned about safety then none of the ammunition
23 should go back or --

24 THE COURT: Okay. Send the, send the weapons back but
25 not loaded or without any ammunition. Send the bag back

1 that's got it in there. The clip that goes in the gun leave
2 it out. I'm not going to send it back there.

3 MR. DAVIS: Okay. Thank you, Judge.

4 THE COURT: Okay. If it's evidence, what is -- I mean,
5 if it's an exhibit, send it back to the jury room. All right?

6 (Exhibits reviewed and approved by counsel for the State
7 and counsel for the Defense.)

8 MR. DAVIS: Your Honor, the Defense has reviewed the
9 exhibits with the court reporter, and we have no objection to
10 the exhibits that are going back.

11 THE COURT: I mean, can we empty, empty those bullets out
12 of the clip?

13 MR. WEST: That's what I was attempting to do, Judge, I
14 mean.

15 THE COURT: Okay. But I mean, the guns are, are secured
16 where they can't fire; correct?

17 OFFICER: Yes, sir.

18 THE COURT: Okay. If they're secured where they
19 can't fire then that's fine. Go ahead and send them
20 in.

21 MR. DAVIS: And may we approach on one thing, Your
22 Honor?

23 (A bench conference is held.)

24 THE COURT: This is the verdict form that goes with that.
25 All right. Give them that, and you can tell them they can

Question from Jury

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1 begin their deliberations. Okay. All right.

2 (Alternates released by Court.)

3 THE COURT: All right. Anything from the State before we
4 recess while the jury deliberates?

5 MR. WEST: No, Judge.

6 THE COURT: Anything from the Defense?

7 MR. DAVIS: No, Your Honor.

8 THE COURT: All right. We'll be in recess until we get a
9 verdict.

10 (Deliberations begin at 11:21 a.m.)

11 OFF THE RECORD

12 (On the record. The following takes place outside the
13 presence of the jury. Question from jury at 11:41 a.m.)

14 THE COURT: All right. We've got a request from the
15 jury. It just says, "We need a breakdown of the charges." So
16 I'm assuming they want me to go down and say the State has --
17 I mean, I'll find out, but I'm assuming they want me to say,
18 "Okay. The State has alleged that the Defendant committed
19 burglary in the first degree as a result of the alleged break-
20 in of Mr. Roberts' residence in Moncks Corner. Burglary in
21 the third degree as a result of the State's, I mean, as a
22 result of the Defendant's alleged break-in in Mr. Roberts'
23 unoccupied dwelling in Summerville, three counts of armed
24 robbery for alleged armed robbery of Mr. Roberts, alleged
25 armed robbery of Ms. Simpson and the alleged armed robbery of

1 Mr. Jones, three kidnappings, alleged kidnapping of Mr.
2 Roberts, alleged kidnapping of Ms. Simpson, alleged kidnapping
3 of Mr. Jones, and pointing or presenting a firearm for
4 allegedly having a firearm during the commission of the
5 kidnapping, the armed robbery and the alleged burglary into
6 the residence of Mr. Roberts." What's the State's position?

7 MR. WEST: Yeah. I think that all that's, that's
8 permitted is to just re-read the charge. I don't know if we
9 can go into specificity about anything at this point.

10 THE COURT: What do you want me to do? I mean, they've
11 got a verdict form that itemizes what the charges are.

12 MR. DAVIS: Your Honor, may I have a moment?

13 THE COURT: Okay.

14 MR. WEST: I think there's some confusion as to whether
15 they're talking about the instructions or the actual --

16 THE COURT: And that's what I know. All it says is, "We
17 need a breakdown of the charges."

18 MR. DAVIS: Judge, I, I think both the State and the
19 Defense, if they are asking like you were trying to explain,
20 if that's what it is, that type of a breakdown, I think the
21 State and the Defense would agree that if you simply read the
22 face of the indictments because like you said --

23 THE COURT: Okay.

24 MR. DAVIS: -- on your -- that that would suffice. If
25 they want some more then I don't know what the State or the

Question from Jury

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1 Defense are going to say, but if it's simply what goes to
2 what, the itemized verdict form corresponds by number to the
3 indictment.

4 THE COURT: Right.

5 MR. DAVIS: You've read those at the beginning of the
6 trial. I can't imagine any prejudice to my client if you re-
7 read them number, face of it.

8 THE COURT: Okay.

9 MR. DAVIS: And I think the State was --

10 MR. WEST: I would agree with that, Judge.

11 MR. DAVIS: -- consents to that.

12 MR. WEST: If that's what they're seeking.

13 MR. DAVIS: If that's what they're seeking.

14 THE COURT: All right. All right. Anything from the
15 State before we bring the jury in?

16 MR. WEST: Nothing from the State, Judge.

17 THE COURT: Anything from the Defense?

18 MR. DAVIS: No, Your Honor.

19 THE COURT: All right. Let's bring the jury in.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. Ms. Pritchett, I've got your request. It says, "We
24 need a breakdown of charges." What exactly is it that you
25 want?

1 FOREPERSON: Just basically it was the list that the
2 State presented at the beginning that described each of the
3 charges basically saying --

4 THE COURT: Okay.

5 FOREPERSON: -- this is what a first degree, this is what
6 a third degree is. That's correct? That's what you wanted?

7 THE COURT: All right. I mean, are you --

8 FOREPERSON: Clarification of the charge.

9 THE COURT: Do you want clarification as to what is
10 burglary in the first degree or do you want clarification as
11 to what the State is saying the Defendant did to commit
12 burglary in the first degree or third degree or armed robbery?

13 FOREPERSON: If we could have both that would be very
14 helpful.

15 THE COURT: Okay.

16 FOREPERSON: But of the initial note was for the first
17 one, just the basic definition of each.

18 THE COURT: Of each crime?

19 FOREPERSON: Yes, sir.

20 THE COURT: Okay. All right. Let me see counsel for a
21 minute.

22 (Whereupon, a bench conference is held in the presence,
23 but out of the hearing of the jury.)

24 THE COURT: Excuse me. Are you just wanting the elements
25 of the crime, what constitutes burglary first degree, what

Question from Jury:

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1 constitutes burglary third degree, what constitutes armed
2 robbery --

3 FOREPERSON: Yes, sir.

4 THE COURT: -- etcetera. Okay. All right. Let me see
5 counsel. Come here for a second.

6 (Whereupon, a bench conference is held in the presence,
7 but out of the hearing of the jury.)

8 THE COURT: Okay. All right. All right. Ladies and
9 gentlemen, all right, burglary in the first degree, to prove
10 the Defendant guilty of first-degree burglary, the State must
11 first prove beyond a reasonable doubt that the Defendant
12 entered a dwelling without consent. A dwelling is any
13 building or portion of a building in which a person ordinarily
14 sleeps. A building constructed as a dwelling that has never
15 been occupied cannot be considered a dwelling for purposes of
16 burglary, but a building is a dwelling even if the residents
17 are temporarily absent from the building.

18 In order to prove that the Defendant entered the
19 dwelling, the State does not have to show that the Defendant's
20 entire body entered the dwelling. The smallest entry is
21 sufficient. It may be any part of the body, such as a hand, a
22 foot or even an instrument, such as a hook or other
23 instrument. In addition, the State does not have to prove
24 that force was used to gain entry.

25 If a person enters a building by using deception,

1 artifice, trick or misrepresentation to get consent to enter,
2 this is entry without consent.

3 Next, the State must prove beyond a reasonable doubt that
4 the Defendant intended to commit a crime, either a felony or a
5 misdemeanor, at the time of the entry. The mere entry into a
6 dwelling without consent is not burglary. If the intent to
7 commit a crime is formed after the entry, it is not a
8 burglary. On the other hand, if the Defendant intended to
9 commit a crime at the time of the entry, it is a burglary even
10 if the intent was abandoned after the entry. It does not
11 matter that the intended crime was not completed. Intent may
12 be shown by acts and conducts of the Defendant and other
13 circumstances from which you may naturally and reasonably
14 infer intent.

15 Finally, the State must prove beyond a reasonable doubt
16 at least one of the following, but does not need to prove all
17 of the following: one, when entering, while in the dwelling,
18 or when fleeing, the Defendant or an accomplice was armed with
19 a deadly weapon or explosive. A deadly weapon is any article,
20 instrument or substance which is likely to cause death or
21 great bodily harm. Whether an instrument has been used as a
22 deadly weapon depends on the facts and circumstances of each
23 case. The following are examples of instruments which may be
24 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
25 dagger, a knife, a sling shot, metal knuckles, a razor,

Question from Jury

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1 gasoline, a fire bomb or Molotov cocktail, a lighter fluid. A
2 gun may be a deadly weapon even if it's not operating. Or the
3 State may prove burglary in the first degree by showing that
4 when entering, while in the dwelling or when fleeing, the
5 Defendant or an accomplice displayed what was or appeared to
6 be a knife, a pistol, a revolver, a rifle, a shotgun, a
7 machine gun or other firearm. Or the State may prove burglary
8 in the first degree by showing that the Defendant entered or
9 remained in the dwelling in the nighttime. Nighttime is the
10 period between sunset and sunrise during which there is not
11 enough daylight to recognize a person's face, except by
12 artificial light or moonlight.

13 Now, burglary in the third degree, in order to prove
14 third-degree burglary the State must prove beyond a reasonable
15 doubt that the Defendant entered a building without consent.
16 A building is any structure, vehicle, watercraft or aircraft
17 where any person lodges or lives or where people assemble for
18 the purpose of business, government, education, religion,
19 entertainment, public transportation or public use or where
20 goods are stored. In order to prove that the Defendant
21 entered the building, the State does not have to show that the
22 Defendant's entire body entered the building. The smallest
23 entry is sufficient. It may be any part of the body such as a
24 hand or a foot or even an instrument, such as a hook or other
25 instrument. In addition, the State does not have to prove

1 that force was used to gain entry. If a person enters a
2 building by using deception, artifice, trick or
3 misrepresentation to get consent to enter this is an entry
4 without consent.

5 Next the State must prove beyond a reasonable doubt that
6 the Defendant intended to commit a crime, either a felony or a
7 misdemeanor at the time of the entry to be guilty of burglary.
8 The mere entry into a building without consent is not a
9 burglary. If the intent to commit a crime is formed after the
10 entry, it is not a burglary. On the other hand, if the
11 Defendant intended to commit a crime at the time of entry it
12 is a burglary even if the intent was abandoned after the
13 entry. It does not matter that the intended crime was not
14 completed. Intent may be shown by acts and conduct of the
15 Defendant and other circumstances from which you may naturally
16 and reasonably infer intent.

17 Now, to convict the Defendant of kidnapping the State
18 must prove beyond a reasonable doubt that the Defendant
19 knowingly and unlawfully seized, confined, inveigled, decoyed,
20 kidnapped, abducted or carried away another person without
21 authority of law. To do a thing unlawfully is to do it
22 willfully against the law. Knowingly means with knowledge,
23 consciously, not accidentally. Seize means to take hold of
24 suddenly or forcibly. Confine means to limit, restrict or
25 enclose within bounds, imprison or shut or keep in. Inveigle

Question from Jury

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1 means to lure, entice or lead astray by false representations,
2 promises or other deceitful means. Decoy means to lure by, or
3 as if by, decoy. A decoy is something that entices a person
4 into a trap. Kidnap is to remove a person against his will by
5 unlawful force or by fraud. Abduct means to carry off
6 secretly or by force for an illegal purpose. Carry away means
7 to remove. The State does not have to prove that the
8 Defendant did all of these things. Instead, if you find
9 beyond a reasonable doubt that the Defendant did any of these
10 things, you may find the Defendant guilty of kidnapping.

11 Something done without authority of law is something
12 which the law does not sanction, permit, allow, condone or
13 provide justification for. The kidnapping does not have to be
14 for any personal or monetary gain or for any illegal purpose,
15 but may be for any reason whatsoever.

16 Now, in order to prove armed robbery the State must first
17 prove beyond a reasonable doubt that the Defendant took
18 personal property from the person or presence of another
19 person. Property is in the presence of a person if it is
20 within the person's reach, inspection, observation or control
21 so that the person could, if not overcome with violence or
22 prevented by fear, keep possession of the property.

23 The State must also prove beyond a reasonable doubt that
24 the Defendant carried the property away intending to
25 permanently deprive the owner of the property and to keep the

1 property for the Defendant's own use. The slightest removal
2 of the property or the complete possession of the property,
3 even for an instant, by the Defendant is sufficient to show a
4 taking and carrying away of the property. The taking and
5 carrying away of the property must have been done with
6 violence or by putting the owner of the property in fear of
7 violence.

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

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

19 To convict the Defendant of possession of a weapon during
20 the commission of a violent crime the State must prove beyond
21 a reasonable doubt that the Defendant was in possession of a
22 firearm or visibly displayed what appeared to be a firearm
23 during the commission of a violent crime. A firearm means any
24 machine gun, automatic rifle, revolver, pistol or any weapon
25 which will, is designed to or may be readily converted to

Question from Jury

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1 expel a projectile. In order to find the Defendant guilty of
2 possession of a weapon during the commission of a violent
3 crime, you must first find the Defendant guilty of either
4 committing a violent crime or attempting the commission of a
5 violent crime. Burglary in the first degree, armed robbery
6 and kidnapping are violent crimes. The State must also prove
7 beyond a reasonable doubt that the weapon furthered, advanced
8 or helped in the commission of the crime.

9 All right. So that's an explanation as to what the
10 crimes are. All right. I'm going to send you back to the
11 jury room, let you continue your deliberations. If you have
12 any other questions let us know. Okay? Thank you.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. Anything further from the State?

16 MR. WEST: I think the record should reflect that it was
17 Defense's request to limit the instruction just to the reading
18 of the charges.

19 THE COURT: Okay. Yeah. I'd asked whether or not to
20 send the written charges back. The Defense objected. So I
21 didn't send it back because the parties didn't agree. So I
22 did what the Defendant requested, which was to simply read the
23 charges without sending them back. Okay?

24 MR. WEST: Thank you, Judge.

25 THE COURT: All right. Anything further from the

1 Defense?

2 MR. DAVIS: No, Your Honor.

3 THE COURT: All right. We'll stay in recess.

4 MR. DAVIS: Thank you, Your Honor.

5 THE COURT: Yeah. I'm going to mark this sheet. This'll
6 be Court's Exhibit Three.

7 (Court's Exhibit Number Three [Question from Jury]
8 appropriately marked.)

9 OFF THE RECORD

10 (On the record. The following takes place in the
11 presence of the jury. Jury enters courtroom at 1:17 p.m.)

12 THE COURT: All right. Ladies and gentlemen, welcome
13 back. I apologize for interrupting your deliberations, but I
14 just wanted to let you know that we've got lunch here for you.
15 Now, you can do one of two things. You can either deliberate
16 while you eat lunch if you want to do that or you can stop
17 your deliberations, eat lunch and then resume your
18 deliberations when you finish lunch. The only requirement is
19 that everybody must do the same thing. You can't have some
20 jurors deliberate while others do not. So I'll leave it up to
21 you as to how you want to do it. If you want to deliberate
22 while you eat you can do that or if you want to stop, eat
23 lunch and then resume your deliberations all at one time you
24 can do that as well. All right. I'll leave it up to you all
25 to decide. You all can go on back into the jury room and

Question from Jury

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1 continue.

2 OFF THE RECORD

3 (On the record. The following takes place outside the
4 presence of the jury. Note from jury received at 1:45 p.m.)

5 THE COURT: All right. I've gotten a note from the
6 foreperson. It says, "Besy P. Bayless wishes to be removed
7 from the jury panel because she doesn't want to convict
8 anyone. Morgan Pritchett, January 29th, 2016, 1:40 p.m." The
9 only thing I know to do at this point in time is to bring them
10 in, tell them I understand they've been unable to agree on a
11 verdict, that one of the jurors wishes to be removed from the
12 jury, that we cannot remove the jury simply because you've
13 been unable to reach a unanimous verdict and then just give
14 them the Allen charge to try to encourage them to reach a
15 unanimous verdict. What is the State's position on that?

16 MR. WEST: I believe that that's the only appropriate
17 course of action at this point.

18 THE COURT: Yeah. I think so, too.

19 MR. DAVIS: If I could just have a moment to explain it
20 to my client.

21 THE COURT: All right.

22 MR. DAVIS: Thank you, Your Honor. I've explained the
23 Allen charge process to my client. Because we want each
24 individual juror to vote their own conscience, I object to it,
25 but I understand and I think that -- I don't object to the

1 process. I object to the Allen charge.

2 THE COURT: Okay. So what would you suggest?

3 MR. DAVIS: And that, Judge, Defense believes in binding
4 that. I think I have to protect the record by objecting, but
5 I don't have another argument for you.

6 THE COURT: Okay. All right. Anything from the State
7 before we bring the jury in?

8 MR. WEST: Nothing from the State, Judge.

9 THE COURT: Anything from the Defense?

10 MR. DAVIS: Nothing additional, Your Honor.

11 THE COURT: All right. I'm going to overrule the
12 objection of the Defense and I'm going to proceed the way, way
13 we suggested. Let's go ahead and bring the jury in.

14 (Whereupon, the following takes place in the presence of
15 the jury.)

16 THE COURT: All right. Ladies and gentlemen, welcome
17 back. I've received a note from the foreperson saying that
18 you've been unable to reach a unanimous verdict, and one of
19 the jurors wishes to be removed from the jury, and I
20 understand that you've been unable to agree on a verdict in
21 this case and that one of the jurors wishes to be removed. We
22 cannot remove a jury -- a juror simply because you cannot
23 reach or that you've been unable to reach a unanimous verdict.
24 As I instructed you earlier, the verdict of the jury must be
25 unanimous. Now, when a matter is in dispute it isn't always

1 easy for even two people to agree. So when 12 people must
2 agree it becomes even more difficult. In most cases absolute
3 certainty cannot be reached or expected. However, you have a
4 duty to make every reasonable effort to reach a unanimous
5 verdict. In doing this you should consult with one another,
6 express your own views and listen to the opinions of your
7 fellow jurors. Tell each other how you feel and why you feel
8 that way, discuss your differences with open minds. Although
9 the verdict of the jury must be unanimous, every one of you
10 has the right to your own opinion. The verdict you agree to
11 must be your own verdict, the result of your own convictions,
12 and you should not give up your firmly held beliefs merely to
13 be in agreement with your fellow jurors. The majority should
14 consider the minority's position, and the minority should
15 consider the majority's position. You should carefully
16 consider and respect the opinions of each other and reevaluate
17 your position for reasonableness, correctness and
18 impartiality. You must lay aside all outside matters and
19 reexamine the questions before you based on the law and
20 evidence in this case. If you do not agree on a verdict in
21 this case I must declare a mistrial. In that case it does not
22 mean that anybody wins. It just means that at some future
23 time I will try this case with some other jury sitting where
24 you now sit. The same participants will come, and the same
25 lawyers will ask basically the same questions and give

1 basically the same answers, and we'll go through the whole
2 process again. Now, you were selected in the same manner and
3 from the same source as any future jury will be, and there's
4 no reason for me to suppose that the case will be ever be
5 submitted to 12 more intelligent, impartial, conscientious and
6 competent jurors than you or that more or clearer evidence
7 will be produced on one side or the other. So at this time
8 I'm going to send you back to the jury room, and I'm going to
9 ask that you resume your deliberations to see if you can reach
10 a unanimous verdict on these charges.

11 All right. Thank you very much.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Anything further from the State?

15 MR. WEST: Nothing from the State, Judge.

16 THE COURT: Anything from the Defense?

17 MR. DAVIS: No, Your Honor.

18 THE COURT: All right. We'll stay in recess. I'm
19 marking this note, I don't know if you all want to see it or
20 not, this'll be Court's Exhibit Four. All right.

21 (Court's Exhibit Number Four [Note from Jury]
22 appropriately marked.)

23 OFF THE RECORD

24 (On the record. The following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. Gentlemen, I apologize. I should
2 have put this on the record earlier. Sorry for the
3 inconvenience. I just want to let you know that when lunch
4 arrived for the jury you all were at lunch. We tried to
5 contact you. It was going to be a while before you got back,
6 and so I wanted to go -- let the jury go ahead and eat their
7 lunch. So what I did at that time is I called them back into
8 the courtroom and I just advised them that lunch was here and
9 that they could do one of two things, that they could eat
10 lunch and continue to deliberate or that they could stop their
11 deliberations, eat lunch and then resume their deliberations,
12 but that all jurors had to do the same thing. We couldn't
13 have some jurors deliberate while others didn't, and I said it
14 was up to them, whatever they wanted to do was fine with them,
15 excused them. What they decided to do I do not know, but they
16 left, lunch was taken in and they ate lunch. All right.
17 Anything from the State in that regard?

18 MR. WEST: Nothing from the State, Judge.

19 THE COURT: Anything from the Defense?

20 MR. DAVIS: No objection to that, Your Honor.

21 THE COURT: All right. Sounds good. We'll stay in
22 recess until we get a verdict.

23 OFF THE RECORD

24 (On the record. The following takes place outside the
25 presence of the jury. A verdict is reached at 2:11 p.m.)

1 THE COURT: All right. I understand the jury has reached
2 a verdict. Anything from the State before we bring the jury
3 in?

4 MR. WEST: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. DAVIS: No, Your Honor.

7 THE COURT: All right. Let's bring the jury in.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right. Ladies and gentlemen, welcome
11 back. Ms. Pritchett, I understand the jury has reached a
12 unanimous verdict on all charges; is that correct?

13 FOREPERSON: That's correct.

14 THE COURT: Have you completed the verdict form?

15 FOREPERSON: Yes, sir.

16 THE COURT: All right. If you'd please hand it to the
17 bailiff. (Complies with request. Court reviews.)

18 THE COURT: Get one of the clerks to please publish the
19 verdict.

20 THE CLERK: In the Court of, in the Court of General
21 Sessions, State of South Carolina versus John Alexander
22 Darrieux, as in -- as to indictment number 2015-GS-08-1024 for
23 burglary third degree, not guilty; indictment number 2015-GS-
24 08-1026, burglary first degree, guilty; indictment number
25 2015-GS-08-1027, armed robbery as of Charles Willard Roberts,

Verdict

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1 guilty; indictment number 2015-GS-08-1028 for armed robbery of
2 Stephen B. Jones, guilty; indictment number 2015-GS-08-1029
3 armed robbery of Rose Simpson, guilty; indictment number 2015-
4 GS-08-1030 for kidnapping of Charles Willard Roberts, guilty;
5 indictment number 2015-GS-08-1031 for kidnapping of Stephen B.
6 Jones, guilty; indictment number 2015-GS-08-1032 for
7 kidnapping of Rose Simpson, guilty; indictment number 2015-GS-
8 08-1034 possession of a weapon during a commission of a
9 violent crime, guilty, signed by the foreperson. Ladies and
10 gentlemen of the jury, if this is your unanimous decision
11 please raise your right hand.

12 (All jurors raise right hand.)

13 THE COURT: All right. Let the record reflect that all
14 jurors raised their right hand. Any polling of the jury by
15 the Defense?

16 MR. DAVIS: Yes, please, Your Honor.

17 THE COURT: All right.

18 MR. DAVIS: May we be seated, Your Honor?

19 THE COURT: Yes. You can be seated. Ladies and
20 gentlemen, the Defense has requested that the jury be polled.
21 Now, what that means is the Clerk of Court will call your jury
22 number. When your jury number is called, if you would please
23 stand, and you're going to need to respond to two questions.
24 She's going to ask you if these are your verdicts, and then
25 she's going to ask you if these are still your verdicts, and

1 then once you respond to those questions you can then be
2 seated. So please listen up and as your jury number is
3 called, please stand and respond to the questions of the
4 clerk.

5 THE CLERK: Juror Number 130, please stand. Is this your
6 verdict?

7 JUROR 130: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR 130: Yes.

10 THE CLERK: Thank you.

11 Juror Number 160.

12 JUROR 160: Yes, ma'am.

13 THE CLERK: Is this your verdict?

14 JUROR 160: Yes, ma'am.

15 THE CLERK: Is this still your verdict?

16 JUROR 160: Yes, ma'am.

17 THE CLERK: Thank you.

18 Juror Number 134. Is this your verdict?

19 JUROR 134: Yes.

20 THE CLERK: Is this still your verdict?

21 JUROR 134: Yes.

22 THE CLERK: Thank you.

23 Juror Number 68. Is this your verdict?

24 JUROR 68: Yes.

25 THE CLERK: Is this still your verdict?

Polling of Jury

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1 JUROR 68: Yes.

2 THE CLERK: Thank you.

3 Juror Number 128. Is this your verdict?

4 JUROR 128: Yes.

5 THE CLERK: Is this still your verdict?

6 JUROR 128: Yes.

7 THE CLERK: Thank you.

8 Juror Number 9. Is this your verdict?

9 JUROR 9: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR 9: Yes.

12 THE CLERK: Thank you.

13 Juror Number 70 -- 79, excuse me. Is this your verdict?

14 JUROR 79: Yes, ma'am.

15 THE CLERK: Is this still your verdict?

16 JUROR 79: Yes, ma'am.

17 THE CLERK: Thank you.

18 Juror Number 146. Is this your verdict?

19 JUROR 146: Yes, ma'am.

20 THE CLERK: Is this still your verdict?

21 JUROR 146: Yes, ma'am.

22 THE CLERK: Thank you.

23 Juror Number 177. Is this your verdict?

24 JUROR 177: Yes.

25 THE CLERK: Is this still your verdict?

1 JUROR 177: Yes.

2 THE CLERK: Thank you.

3 Juror Number 60. Is this your verdict?

4 JUROR 60: Yes, ma'am.

5 THE CLERK: Is this still your verdict?

6 JUROR 60: Yes, ma'am.

7 THE CLERK: Thank you.

8 Juror Number 14. Is this your verdict?

9 JUROR 14: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR 14: Yes.

12 THE CLERK: Okay. Thank you.

13 Juror Number 50. Is this your verdict?

14 JUROR 50: Yes.

15 THE CLERK: Is this still your verdict?

16 JUROR 50: Yes.

17 THE CLERK: Thank you.

18 Your Honor, all the jurors have been polled and the
19 verdict stands.

20 THE COURT: Thank you very much.

21 (Jury excused by Court.)

22 THE COURT: All right. Are there any post-trial motions
23 at this time?

24 MR. WEST: Nothing from the State, Judge.

25 THE COURT: All right.

Motions

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1 MR. DAVIS: Judge, I would renew all my post the State
2 resting motions. I would renew those now. I would also add
3 to that a motion for a new trial, but I have no additional
4 argument than what I made then.

5 THE COURT: Okay. All right. Your motions are noted.
6 However, I'm going to deny those motions, let the verdict
7 stand. Any reason why we cannot go ahead and impose
8 sentencing at this time?

9 MR. DAVIS: If I could have a moment with my client and
10 the State on that issue for just a moment, Your Honor?

11 THE COURT: All right. Sounds good.

12 MR. WEST: Mr. Poulos is printing sentencing sheets.

13 THE COURT: Okay. Sounds good.

14 MR. DAVIS: Your Honor, there is no reason on the Defense
15 we'd be asking for you to wait beyond the time it takes to get
16 the sentence sheets. Probation from here in Berkeley is
17 talking to my client right now. There is a Charleston
18 conviction, supervised by Dorchester County of which this
19 would be a violation and we've provided the appropriate
20 paperwork. I'll go ahead and tell the Court, it was a three-
21 sentence suspended to three years probation. Clearly while we
22 may dispute, we respect the jury's verdict, 15-year mandatory
23 minimum on the burglary would --

24 THE COURT: Okay.

25 MR. DAVIS: -- overwhelm that. So we're prepared to have

1 you deal with that today if you see fit even though it's from
2 a different county we'd be -- we'd, we'd be prepared to have
3 you deal with that today as well.

4 THE COURT: All right. And what is that for?

5 MR. DAVIS: I'll approach, Your Honor?

6 THE COURT: Yeah.

7 MR. DAVIS: It's, it's -- well, it's two indictments,
8 both of them from 2013-GS-10, both of them from Charleston
9 County, 1791 and 1792. Both of them appear to be possession
10 of cocaine first, sentenced by Judge Jefferson on October 7th,
11 2013, so a year before this incident.

12 THE COURT: Okay. And --

13 MR. DAVIS: And he's being served with the warrant by a
14 Berkeley Probation Officer right now.

15 THE COURT: All right. And do you have the sentencing
16 date?

17 MR. DAVIS: The sentencing date was, I'm sorry, October
18 7th, 2013, so a year before this incident.

19 THE COURT: All right. All right. Sounds good.

20 PROBATION OFFICER: May I approach, sir?

21 THE COURT: Yes, sir.

22 (Probation Officer and Court confer.)

23 THE COURT: Are we ready? All right. Mr. Davis, do you
24 also represent Mr. Darrieux in his violation of probation?

25 MR. DAVIS: In an abundance of caution, Judge, if you

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1 could order that I'm appointed because I was appointed on this
2 case, but I, I'd be happy to, to deal with it today.

3 THE COURT: Okay. All right. Then I'll appoint you as
4 his attorney for purposes of his violation of probation --

5 MR. DAVIS: Thank you, Your Honor.

6 THE COURT: -- hearing as well. Have you received a copy
7 of the violation report and a copy of the arrest warrant for
8 his --

9 MR. DAVIS: I have, Your Honor.

10 THE COURT: Have you had an opportunity to go over those
11 reports and warrants with your client?

12 MR. DAVIS: I've talked in general, if you'd just give me
13 one second, please, I'm sorry.

14 THE COURT: Okay.

15 (Defendant and counsel confer.)

16 MR. DAVIS: Your Honor, I've had a chance to review it
17 with him. Just housekeeping, Charleston conviction,
18 Dorchester supervision, he has indicated, and if you need to
19 ask him on the record, but he's indicated that he wishes to
20 waive this being handled in either Charleston or Dorchester
21 County and have you handle it here in Berkeley County today,
22 and we agree that -- Judge, it's a moot point. We're not -- I
23 don't have information to agree or disagree on what's found in
24 the warrant and violation report. These convictions by the
25 jury today is a violation of probation. We have -- while we

1 may dispute the verdict, we have no dispute that the
2 convictions today violate this probation.

3 THE COURT: All right. All right. So the Defendant
4 admits that he's willfully violated the terms of his
5 probation?

6 MR. DAVIS: By this conviction, yes, Your Honor.

7 THE COURT: And he consents to having or he waives venue
8 and consents to having his violation of probation disposed of
9 here in Berkeley County?

10 MR. DAVIS: Yes, Your Honor.

11 THE COURT: All right. Anything in mitigation with
12 regard to the convictions for burglary in the first degree,
13 armed robbery, kidnapping and possession of a weapon during
14 the commission of a violent crime or anything in mitigation
15 with regard to his violation of probation?

16 MR. DAVIS: Let me start with that, Your Honor. Judge,
17 with that being a three-year sentence he's been in the
18 Berkeley County Jail since October 21st of 2014, approximately
19 15 months. While we can never be sure how it will be
20 calculated by the Department of Corrections, a year and a half
21 active time usually satisfies a three-year sentence, first of
22 all. Second of all, Your Honor, he's been in there since
23 October of '14. This warrant was obtained on May of '15, not
24 served until today. There's a Blakeney case that I could
25 argue for credit. What I'm going to ask you to do, Judge,

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1 just terminate that. Certainly that -- normally I would, I
2 would understand a conviction while on probation why give a
3 benefit, you've got more than ample sentencing ability on the
4 multiples charges he's convicted of today, rather than having
5 to deal with time credit and all that, I just simply ask that
6 you, you simply just terminate this probation.

7 Then, Judge, as to the convictions today, as I'm sure you
8 understand, John and I have talked. He'll, he'll not be
9 addressing the Court, but on behalf of my client I do want you
10 to know a little bit more about John and what he was dealing
11 with at the time that he was arrested.

12 Judge, he was actually born in Hawaii. He's been living
13 here most of his adult life. He was born in 1978,
14 of '78. While not married, he was the stepfather to Lucas,
15 who is now, I guess, a year and a half about old.

16 MR. DARRIEUX: No. He's just turned six.

17 MR. DAVIS: I'm sorry. I've got -- I misread it as
18 months, not years. He just turned six. So I had it as five
19 months, I was saying he was a year and a half, he just turned
20 six. I apologize, and then he also is biological father of
21 his son Julian, who Julian would be almost two now or right
22 around two now.

23 Judge, he does have some medical issues that I think you
24 should know about, not as an excuse for any conviction but for
25 future purposes. He has been diagnosed with Hepatitis C. I

1 have medical records if I need to submit those, but I've
2 followed up once he -- once I was appointed to check in on
3 that. He has been diagnosed. He is Hepatitis C positive.
4 While at the jail over these past 15 months, you know, folks,
5 I've, I've visited many folks at the Department of
6 Corrections, and certainly that's no place anybody wants to
7 be, but I'm not sure in my 20 years of doing this it's not
8 worse in the county jail. This is a fine facility here, but
9 it's understaffed and overpopulated. In his 15 months there
10 he has fallen, had a severe testicular injury. He had a hand
11 injury separate and apart from that while here at the jail. He
12 is on medication. We addressed this on Tuesday, not to the
13 extent to cause me any concern about competency, but he has
14 suffered and been diagnosed and been prescribed medication for
15 depression, ADHD, post traumatic stress, acute anxiety. The
16 medication he's received at the jail has been adequate at
17 best, but he, he does suffer from those issues.

18 Judge, in addition to that, he has struggled with
19 substance abuse issues, and again, we've, we've raised this
20 not in -- in mitigation, Your Honor, in mitigation. It's,
21 it's just an issue that can afflict anyone, from, from the
22 highest of careers to the lowest of careers, from any economic
23 portion of our society, and he struggles with that. That is
24 one positive I would think over the last 15 months of being
25 clean. He's been bright eyed. He's been very involved in

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1 preparations on this case. When we circle back and tied it in
2 though, Judge, which I, one of the issues that I know is an
3 overarching influence on John's life, the mother of Julian,
4 when he was born, had also been a substance abuser. DSS got
5 involved and that child has not been in their custody from
6 birth. That was an incredibly difficult time. That would
7 have been the summer of 2014, Judge. Any traumatic event like
8 that cannot be relied on as an excuse for any conduct.
9 However, I can't imagine, I'm not a father myself, and I can't
10 imagine, and that, that's been an overarching shadow over John
11 even at our meetings.

12 Judge, he does have family here. In fact, in the
13 courtroom with us today is his father. His father works down
14 at MUSC down in Charleston. He was here on the first day, has
15 been very supportive of both me representing John in this case
16 and very supportive of John. I know they've stayed in touch
17 throughout this, and it's got to be difficult on his father as
18 well, but he's been there for him. He loves his son, and he's
19 here with us today. If you can give me just a moment to see
20 if he wants to address the Court.

21 THE COURT: All right.

22 MR. DAVIS: He'd like to address the Court, Your Honor.
23 I'm not sure where you want him to stand. He'd like to
24 address the Court.

25 THE COURT: I'll hear from anybody. Whenever you finish

1 I'll hear from anybody that wants to speak on his behalf.

2 MR. DAVIS: So, Judge, what we would ask is this, we know
3 the range. It's something I've made sure to talk with him
4 about during this whole process. He is 36 years old, 37. Get
5 the dates right. In September he just turned 37. As you
6 know, Judge, there's a flat five on the possession of a weapon
7 during a violent crime. He's got to serve that flat five. We
8 also know that it's 85 percent on every other charge. We know
9 that there's a mandatory minimum ten on the armed robberies.
10 We know there's a mandatory minimum of 15 on the burglary in
11 the first degree. 85 percent must be served of that. That's
12 12 years, nine months. He's done about 15. That's nearly a
13 dozen years still left if the minimum were given, and a dozen
14 years on 37 is, is 50 years old. I don't have it for you here
15 today, Judge, but on another case I recently pulled the stats
16 on the natural life expectancy, not some accident or crime in
17 prison, but natural life expectancy and it's fifties, early
18 fifties for males in Department of Corrections, natural life.
19 It's, it's a hard life. We would ask you respectfully to
20 consider the minimum on the burglary first as the lead
21 sentence and we would argue that is more than sufficient. We
22 hope at some point if he survives that sentence at that age
23 with his history, with his health issues, that at that point,
24 one, he would not be a danger to anyone when he's released,
25 and if he does have time left he could be a productive member

1 of society at that point.

2 That's all I have to present. Now, if you'd hear from
3 his father, Your Honor.

4 THE COURT: All right. He needs to come forward. He
5 needs to --

6 MR. DAVIS: Where do you wish him to stand, Judge?

7 THE COURT: Either slide the microphone over or if he
8 wants to come to this microphone right up here. If you would
9 give the court reporter your name.

10 MR. MARCELL DARRIEUX: My name is Marcell Darrieux.

11 THE COURT: I'm sorry?

12 MR. MARCELL DARRIEUX: Marcell Darrieux.

13 THE COURT: Could you spell your last name?

14 MR. MARCELL DARRIEUX: D-A-R-R-I-E-U-X. It's John's,
15 I'm his father.

16 THE COURT: All right, Mr. Darrieux, what would you like
17 to say?

18 MR. MARCELL DARRIEUX: I'd like to speak as John's dad
19 but also as a person who understands what a significant,
20 important and difficult job you have in trying to uphold the
21 law and also understanding that no one is necessarily all evil
22 or all good.

23 John, this is John as well, a person who talked to me not
24 too long ago and we were talking about the trial and he told
25 me he sensed that I was upset and concerned and worried, and

1 he said, "I want you to know, don't worry that whatever
2 happens I'll be okay." That was a solicit -- a solicitude for
3 me and, and, and something that he has shown on other
4 occasions as well, a solicitude to others. He has told me on
5 many occasions how he's -- his love for his mom and his hope
6 that she would think him a worthwhile person, and he wanted to
7 try to behave that way.

8 On a relatively minor note, it was not uncommon to have
9 people tell me how John was respectful of them and polite.
10 Then he, he's also always expressed to me, you know, owning
11 this, to take responsibility for his actions. I don't know
12 that he's ever really skirted that, and I guess the one thing
13 I would say is that's, you know, also the person who sits
14 before you today who has those characteristics and those
15 desires to, to be worthwhile. He sits there, too, and hope is
16 a, is a very important thing to have and it's devastating in a
17 way to not have it. I would, I would ask that whatever
18 verdict you hand down, he's still a young man, and with help
19 and the Lord I think he can still have hope that he, he
20 ultimately has time left for a life with his family and with
21 his children.

22 THE COURT: Thank you, sir.

23 All right. Mr. Darrieux, is there anything you'd like to
24 say?

25 MR. DARRIEUX: That would be all, Your Honor.

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1 THE COURT: Excuse me?

2 MR. DARRIEUX: That will be all, Your Honor.

3 THE COURT: All right. Any of the victims wish to speak?

4 MR. WEST: Yes, Your Honor.

5 THE COURT: All right. You need to come forward to the
6 podium.

7 All right. Please give the court reporter your name.

8 MS. SIMPSON: My name is Rose Simpson.

9 THE COURT: All right. Ms. Simpson, what would you like
10 to say?

11 MS. SIMPSON: Your Honor, I come before you. I'll try to
12 be calm today. My heart goes to John. I hope and pray that
13 he seeks the Lord and that he leans on him because that's the
14 way that I've had to get through this. I have PTSD now. It's
15 destroyed my relationship with Charles. I cannot be in that
16 home overnight, fear, but I have forgiven John. I just hope
17 he can forgive himself and find God because that's the only
18 way he's going to be able to live in peace, that the healing
19 inside of me. He's destroyed me. I'm not the same person,
20 and I've wanted to die, but if it wasn't for God I would have
21 killed myself over this because I thought I was going to die
22 that night.

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

24 Anyone else? Please give the court reporter your name.

25 Give the court reporter your name.

1 MR. ROBERTS: My name is Charles W. Roberts.

2 THE COURT: All right. Mr. Roberts, what would you like
3 to say?

4 MR. ROBERTS: I just wanted to tell you that John really
5 -- he disrupted my, my home and, and that he -- I've had --
6 since then I've had to put bars on my door to keep people from
7 breaking in and I, and I, I was afraid for, for my life. I'm
8 afraid for Rose's life, and I don't believe that he should be
9 -- have the opportunity to do this again. I do forgive him
10 tough.

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

12 Anyone else?

13 MS. LAUDANO: Yes. Hi. I'm Stephanie Laudano.

14 THE COURT: Could you spell your last name?

15 MS. LAUDANO: L-A-U-D-A-N-O.

16 THE COURT: All right. And how are you -- are you a
17 victim?

18 MS. LAUDANO: No. This is my family. My father and
19 Charles Roberts were very close as I was growing up, and they
20 are all the family that I have left.

21 THE COURT: Okay. But are you related to them?

22 MS. LAUDANO: Not blood, no.

23 THE COURT: Okay. All right. And I don't want to cut
24 you short, but I think I'm going to limit it to the victims of
25 the crime. Okay?

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1 MS. LAUDANO: Okay.

2 THE COURT: Thank you very much.

3 MS. LAUDANO: All right. Thank you.

4 THE COURT: All right. Anyone else? All right.

5 Anything further from the State?

6 MR. WEST: Yes, Your Honor, as you're aware, Mr. Darrieux
7 has a prior history. Would you like for me to go into it?

8 THE COURT: Yeah. I was getting ready to ask you what
9 are his prior convictions.

10 MR. WEST: 2014 open container from this stemming
11 incident; 2013 financial transaction card theft and possession
12 of methamphetamines; 2011 burglary in the second degree,
13 driving under suspension; 2010 breach of trust and possession
14 of stolen motor vehicle; 2009 trespassing; 2006 possession of
15 a controlled substance; 1998 possession of a controlled
16 substance.

17 THE COURT: All right. All right. First of all on the
18 violation of probation, I find that as a result of these
19 convictions there is a willful violation of probation. I'm
20 going to just give him credit for time served and terminate
21 probation on those charges.

22 As to charge of burglary in the first degree, the
23 sentence of the Court is that you be confined to the State
24 Department of Corrections for 30 years. On the charge of each
25 of the armed robberies and each of the kidnappings you're to

1 be confined to the State Department of Corrections for 30
2 years. On the possession of a weapon during the commission of
3 a violent crime you're to be committed to the Department of
4 Corrections for a period of five years. All sentences will
5 run concurrent and you'll be given credit for any time served
6 thus far.

7 MR. DAVIS: Thank you very much, Your Honor.

8 THE COURT: All right. Anything else?

9 MR. WEST: Nothing from the State, Judge.

10 THE COURT: All right. Thank you very much.

11 Oh, oh, I'm sorry. I need to put back on here, I just
12 noticed on here, the kidnappings --

13 MR. DAVIS: Thank you, Your Honor.

14 THE COURT: -- I'm putting that there is -- did not
15 involve sex offense or attempted sex offense, therefore, no
16 sex offender registry is required at the conclusion of the
17 sentence. Okay?

18 MR. DAVIS: Thank you very much, Your Honor.

19 THE COURT: All right. Thank you very much.

20 (Adjourned.)

21

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23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY) 2015-GS-08-01026 to 1032
2015-GS-26-01034

STATE OF SOUTH CAROLINA,)
)
Plaintiff,) **Transcript of Record**
)
vs.)
)
JOHN ALEXANDER DARRIEUX,) February 26, 2016
)
Defendant.)

B E F O R E:

Honorable Benjamin H. Culbertson
Georgetown County Courthouse
Georgetown, South Carolina

A P P E A R A N C E S:

E. Mason West, Esquire
Attorney for Plaintiff

Rodney D. Davis, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

I N D E XFebruary 26, 2016Pg.

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E X H I B I T S

<u>No.</u>	<u>ID</u>	<u>EV</u>
S123A CD "John Darrieux" 10/31/14 - 1/11/15		
S-B Affidavit of Katie Shuler		
S-C Affidavit of Kevin McGowan		

(Exhibits were admitted for Proffer.)

1 **(February 26, 2016)**

2 THE COURT: All right. We've got State v. Darrieux. Is
3 Mr. Darrieux here?

4 MR. DAVIS: He is, Your Honor.

5 THE COURT: All right. Who wants to go ahead and put a
6 caption on the record for the court reporter?

7 MR. WEST: I have a copy of the verdict form but I was
8 just gonna read the indictments into the record.

9 THE COURT: Okay. That'll be good.

10 MR. WEST: Your Honor, we're here before you -- Mason
11 West on behalf of the 9th Circuit Solicitor's Office of
12 Berkeley County as well as Mr. Daniel Poulos. We also have in
13 attendance Mr. Keven McGowan, an investigator with our office,
14 as well as Sergeant Shuler with the Berkeley County Sheriff's
15 Office. We're here regarding the matter of State versus John
16 Alexander Darrieux. Mr. Darrieux was convicted on Friday,
17 January the 29th of 2016 of several indictments in Berkeley
18 County starting with 2015-GS-08-01026 through 2015-GS-08-
19 01034, burglary in the first degree, three counts of armed
20 robbery, three counts of kidnapping and possession of a weapon
21 during the commission of a violent crime. After Mr. Darrieux
22 was convicted, I was informed by Sergeant Shuler of the
23 Berkeley County Sherriff's Office that there was a discrepancy
24 in her testimony and some of the evidence that was presented
25 to the State. At trial, State's Exhibit Number 123 was

1 introduced as a copy of a CD that contained phone calls from
2 Mr. Darrieux at the jail. The Jury was able to hear State's
3 123 during the trial. It was later discovered that the
4 original CD produced by Sergeant Shuler was not the CD that
5 was actually introduced at the trial, rather it was a
6 duplicate CD introduced at the trial. Once I was informed of
7 this discrepancy, I notified Defense counsel the following
8 Monday first thing. This was a late verdict that Friday, so
9 we got with Mr. Davis as soon as we could. I had my
10 investigator fill out an affidavit, as well as Sergeant Shuler
11 fill out an affidavit of sort of the procedural aspects of why
12 things went the way they did. I have those affidavits in hand
13 if they need to be made part of the record, Your Honor. I
14 also have a copy of the original CD and we can -- we have
15 Sergeant Shuler available to take some further testimony about
16 the handwriting on the top of that CD. One thing I do think
17 the record should reflect is the CDs are identical. The only
18 thing different is the labeling on top of the CDs. The actual
19 handwriting labeling on top of the CDs is the only distinction
20 between the two. So, there is no prejudice to the Defense
21 because the same call would've been played to the Jury at the
22 time of the trial to the Jury from the CD that we're now
23 trying to proffer to the Court. Prior to Sergeant Shuler's
24 testimony, she was shown the CD that was in evidence and she
25 had indicated that the signature on top of the CD was her

1 signature. That's by way of authentication the way that the
2 CDs are produced for the State is she downloads a certain
3 software program that's secure software that contains certain
4 phone calls and the way she -- she copies them onto a CD is
5 unalterable. The program is unable to be changed. And, she
6 produces them for our office and signs the front of the CD to
7 indicate that this is the CD that she in fact produced. So,
8 of course, she testified -- again she was shown State's
9 Exhibit Number 123 during her testimony. She did show some
10 hesitation as to the handwriting on top of the CD and
11 indicated such during her testimony. However, during her
12 testimony I was relying on our further -- our previous meeting
13 that the signature on the CD was in fact hers. So, I directed
14 her to the signature and asked if that was her initials and
15 her response was yes. So, the CD authenticated and introduced
16 into evidence and played for the Jury. Several questions were
17 asked after, after the initial authentication in regards to
18 the contents of the CD, the labeling. She was even -- she
19 even came down from the stand and described the software on
20 the computer before it was played to the Jury showing the
21 labeling of the secure system and such.

22 So, the purpose of today's hearing, Your Honor, is simply
23 to supplement the record with this CD that should've been
24 introduced but inadvertently was not. A duplicate CD was
25 produced and the best evidence rule that we have with our

1 evidentiary rules are -- there's obviously no harm here and a
2 copy is permissible. I think the only issue that we had that
3 I felt ethically needed to be brought forward was the
4 discrepancy and the signature on the CD.

5 THE COURT: All right. Mr. Davis, what's the Defendant's
6 position?

7 MR. DAVIS: Thank you, Your Honor. Out of an abundance
8 of caution and we've spoke with Your Honor's office by email
9 and the Solicitor included and I certainly -- first of all, I
10 appreciate their transparency on this, notifying me on Monday
11 afterward. It's a novel situation, I think, I'm speaking for
12 all of us, that we've dealt with and so out of an abundance of
13 caution I did two things. First of all, may I approach, Your
14 Honor?

15 THE COURT: Yes.

16 MR. DAVIS: I filed a motion. That motion relies on Rule
17 29, which is after-discovered evidence. Those cases don't
18 fall in line factually with this but I wasn't sure of another
19 mechanism to provide a paper trail as to this hearing. I
20 think that's the biggest purpose of being here today is to
21 provide a record. Following the verdict and the sentencing,
22 my client, who is present with us today, had advised me he
23 wanted to appeal the conviction. And so thirty days would be
24 this coming Monday. I wanted to provide that, file that with
25 the Clerk to extend that deadline based on, obviously, any

1 ruling Your Honor makes today, so that provides a paper trail.
2 Obviously, in it, we're asking as the rule provides for a new
3 trial based on after-discovered evidence or any other relief
4 you deem appropriate. I believe the Solicitor has stated the
5 factual scenario appropriately. What I would ask, especially
6 with the State bringing both the investigator from their
7 office who made the copying, it's my understanding, made the
8 copies and then the records custodian Shuler, who actually
9 testified. Not to instruct the Court but I think it would be
10 worthwhile, since we're here making a record of this, the
11 solicitor certainly paraphrased what happened but I think it
12 would be appropriate to make the record as to why there's two
13 different -- an original and a copy introduced.

14 Judge, the only final thing that I would correct, and I
15 don't know that it's that big of a deal, but in the -- in the
16 reciting of the indictments, I believe it's 1026 through 1032
17 and I believe 1033 was skipped over.

18 MR. WEST: That's correct.

19 MR. DAVIS: So it's in sequence, he was convicted of 1026
20 through 1032 separately, also indictment 1034. So, that's the
21 -- on my motion, I just put the warrant numbers but they
22 should correspond.

23 So, we would asked the Court to hear not just the summary
24 of the scenario but the actual factual testimony from the
25 individuals involved the copying the original and we'd ask to

1 make a record of that and then for Your Honor to deal with it
2 appropriately once that's been put on the record.

3 THE COURT: All right. Well, let's go ahead and I guess
4 for the purposes of this hearing and some of our pretrial -- I
5 mean, some of our prehearing conferences and emails, let's go
6 ahead and just proceed as though you were going to introduce
7 now this -- the original CD. And, I guess, the best way is
8 let's go ahead and mark it -- can we put it as 123A? I think
9 the best -- best way -- let's mark it for identification as
10 State's Exhibits 1 -- State's Exhibit 123A.

11 MR. WEST: And, Your Honor, would the Court like to
12 inquire of Sergeant Shuler or would you ---

13 THE COURT: No, I -- I think you need to go ahead as
14 though we're in the trial and you're seeking to introduce 123A
15 and we'll let it go that way. Okay?

16 MR. WEST: Thank you. State would call Sergeant Katie
17 Shuler.

18 THE COURT: All right. And all of this is proffered
19 testimony at this point in time. Okay?

20 Yes, let's swear her in.

21 KATIE SHULER, HAVING BEEN DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK: Would you please state and spell your name for
24 the record?

25 MS. SHULER: Katie Shuler, K-A-T-I-E S-H-U-L-E-R.

1 CLERK: Thank you.

2 DIRECT EXAMINATION OF KATIE SHULERBY MR. WEST:

3 Q: Sergeant Shuler, could you state for the record your place
4 of employment and title and rank?

5 A: I work Hill-Finklea Detention Center. I'm an admin
6 specialist.

7 Q: And you had an opportunity to testify in the case against
8 this Defendant, didn't you?

9 A: Yes.

10 Q: Okay. As your -- could you tell the Court your duties at
11 the Hill-Finklea Detention Center?

12 A: I process all of the inmate funds, canteen, any requests,
13 phone recordings that's done by subpoenas, just pretty much
14 help the inmates do what they need to do.

15 Q: Okay. And did you produce any phone recordings for this
16 case?

17 A: Yes.

18 Q: Okay. Tell the Court how those phone recordings are
19 produced.

20 A: Once I receive a subpoena, then I look at the information
21 in the secured system, I download those files and burn them to
22 a CD.

23 Q: Once that file is burned to a CD, is there any way to
24 change the contents of that CD?

25 A: No. The system that I have to burn the CD in, it does not

1 let you allow any alteration on that CD.

2 Q: No way to add, subtract, delete, modify or alter in any
3 way?

4 A: No.

5 Q: I'm gonna show you what's been marked as State's Exhibit
6 123A. Do you recognize that?

7 A: Yes.

8 Q: How do you recognize that?

9 A: It's my handwriting and I have my initials on it.

10 Q: Okay.

11 A: And is everything on the labeling of that CD in your
12 handwriting?

13 A: Yes.

14 Q: Okay. Could you read for the Court what you have written
15 on that CD?

16 A: I have John Darrieux' name on there, it had ninety-four
17 calls, it has my initials and then it has 10/31/14 through
18 1/11/15.

19 Q: The initials that you have indicated on State's Exhibit
20 123A, is that your -- what you would consider your signature?

21 A: Yes, that's my signature and my handwriting.

22 Q: Okay.

23 A: Is it common practice for you to actually listen to the
24 phone calls once you've produced the test -- the CD?

25 A: If I have to, I listen to them. It's not -- I don't -- I

1 mean, if I like listened to ninety-four calls every time or
2 or, you know, I mean, I wouldn't get my other stuff done. So,
3 if I have to go to trial or something and I'm asked to listen
4 to particular phone calls, then, yes, I do, but on a day-to-
5 day basis, I don't just listen to them.

6 Q: Did you listen to any of the calls on this CD that you
7 produced?

8 A: When we were in court originally, you know, before, I
9 heard the calls.

10 Q: Okay. So, during the trial is the first time you heard
11 any of the calls?

12 A: Yes.

13 Q: But you're positive this is the CD you produced as part of
14 the evidence in reply to the subpoena that you were given from
15 the Solicitor's office?

16 A: Yes.

17 MR. WEST: At this time, the State would move State's
18 Exhibit 123A into the record.

19 THE COURT: All right. I'm gonna let 123A be proffered
20 as an exhibit by the State over Defendant's objection. So,
21 it's part of the record as a proffered exhibit.

22 MR. DAVIS: And, Judge what I'll do is I would reference,
23 rather than going through our whole argument about this whole
24 issue because if you recall we had a in camera hearing about
25 the whole issue of the jail tapes, I would just renew all

1 objections just briefly. We had hearsay, confrontation,
2 probative versus prejudicial, authentication. The only one
3 I'd touch -- I renew all those. The issue I think this raises
4 is just the issue of authentication, primarily. We raised it
5 then. We now have the fact that a duplicate was introduced
6 rather than the original. So, I'm renewing all the old
7 objections to the issue.

8 THE COURT: All right. As I said, it's not an exhibit as
9 far as the trial transcript but it's being proffered into the
10 record. If the Appellate Court wants to review it, they can,
11 or deal with it how they deem appropriate. Okay?

12 All right, sir.

13 MR. WEST: Would you like to take any further testimony
14 as to the way it unfolded?

15 THE COURT: I don't think so. I think I -- we -- you
16 don't have to for me. I don't know if you need to -- you
17 know, as I said, I'm sure this is gonna go up on appeal so, if
18 there's anything else you want in the record, you need to go
19 ahead and get it in in your proffered testimony.

20 MR. WEST: Okay. Thank you.

21 BY MR. WEST:

22 Q: Sergeant Shuler, prior to your testimony, were you shown a
23 CD by me?

24 A: Yes.

25 Q: Okay. And the CD that was produced into evidence, one --

1 State's Exhibit 123, was that the same CD ---

2 A: Yes.

3 Q: --- that you were shown prior to your testimony?

4 A: Yes.

5 Q: And at that initial encounter, prior to your testimony,
6 did you indicate that that was in fact your signature on the
7 CD?

8 A: I did but it was from a distance. I mean, I didn't
9 physically hold it in my hand and look at the handwriting. I
10 did see that it appeared like my initials and I did not
11 recognize it -- realize that it was not mine until I
12 physically had it in my hand.

13 Q: Okay. And when you were on the stand testifying during
14 the case against this Defendant, did you -- while you had
15 discrepancies with the handwriting, the labeling on the top,
16 did you indicate that those were your initials on the CD?

17 A: I did and, you know, my initials is KS, so that was my
18 initials but I -- then I also stated that that was not my
19 handwriting.

20 Q: And you brought that to the State's attention very soon
21 after the trial, correct?

22 A: Yes. Once I left the courtroom, I went back to my office
23 and pulled my copies of the paperwork and, you know, sent over
24 a copy of the original copy of the CD, the printer copy of
25 what they signed when they come to pick it up.

1 Q: Okay. And you were asked to complete an affidavit in
2 regards to that progression of events?

3 A: Yes.

4 MR. WEST: How would you like this to be marked, Your
5 Honor?

6 THE COURT: See, I don't know how many exhibits we had.

7 MR. WEST: I have the exhibit list.

8 (REPORTER'S NOTE: Court confers with Court Reporter.)

9 MR. DAVIS: Your Honor, in talking with opposing counsel,
10 would you allow it to be a Court's exhibit and would be a
11 letter for the number?

12 THE COURT: Well, that's the thing is we've got a -- we
13 had a number of Court's exhibits at the trial, too, so I don't
14 know how many we had.

15 MR. DAVIS: What I would suggest is I think those are all
16 numbered and it would be A as to differentiate it from the
17 trial.

18 THE COURT: Well ---

19 MR. DAVIS: I don't want to overcomplicate things but I
20 know what you're trying to get at.

21 THE COURT: All right. Since we've got State's Exhibit
22 123A proffered, let's put this -- just identify it as State's
23 Exhibit B.

24 BY MR. WEST:

25 Q: I'm showing the witness State's Exhibit B ---

1 COURT REPORTER: I'm sorry, I put the wrong number on
2 there. Do you want it as State's or Court's?

3 MR. WEST: Court's Exhibit B.

4 THE COURT: Since you're putting it in, I'd prefer it to
5 be State's.

6 BY MR. WEST:

7 Q: State's Exhibit B. Do you recognize this?

8 A: Yes.

9 Q: How do you recognize it?

10 A: This is the affidavit that I wrote and gave to you guys.

11 Q: Okay. At this time, we would ask State's Exhibit B be
12 entered into the record.

13 THE COURT: All right. State's Exhibit B is admitted as
14 proffered exhibit into the record over Defendant's objection.

15 MR. DAVIS: No objection to the affidavit, Your Honor.

16 THE COURT: Okay.

17 MR. DAVIS: Yes, sir.

18 THE COURT: Admitted as proffered exhibit.

19 MR. DAVIS: Yes, sir.

20 STATE'S EXHIBIT B

21 ADMITTED FOR PROFFER

22 MR. WEST: No further witnesses or no further questions
23 for this witness.

24 THE COURT: All right. Do you wish to conduct any cross
25 examination?

1 MR. DAVIS: Just very briefly, Your Honor.

2 CROSS EXAMINATION OF KATIE SHULER BY MR. DAVIS:

3 Q: Ma'am, you had a chance to review Exhibit 123A, which is
4 the CD.

5 A: This one here?

6 Q: Yes, ma'am.

7 A: Yes.

8 Q: You reviewed it. Were you able to compare it to your
9 recollection of the one that was introduced at trial?

10 A: Well, I have a -- the original that I give them when they
11 come and pick it up, I make a photocopy of and that's what
12 they sign and date when they pick it up. So, I -- whenever I
13 physically seen the original one in trial, I knew that that
14 was not the one that -- the hard copy that I had given them.

15 Q: Which is 123A?

16 A: Yes.

17 Q: Okay. So, you weren't -- since 123 was put into evidence,
18 you have not actually compared it to that but you've compared
19 it to copies that you had, photocopies; is that right?

20 A: Yes.

21 Q: Okay. Were you -- since the trial, have you had an
22 opportunity to review the content of 123A?

23 A: No.

24 Q: Who has had custody of 123A from the time you gave it to
25 the Solicitor's office, are you aware?

1 A: It would -- I mean, it would be David Young come and
2 picked it up, so I mean, that would be the last known person
3 that I would know of because that's who I physically handed it
4 to.

5 Q: And that's an employee with the Ninth Circuit Solicitor's
6 Office, Berkeley County?

7 A: Yes.

8 Q: But you've had a chance to look at 123A today and it looks
9 in substantially the same condition as it was when you gave it
10 to Mr. Young?

11 A: Yes.

12 Q: Just so we're clear, can you tell the Court what, what did
13 you put on that original CD, 123A, what did you download onto
14 that CD?

15 A: I downloaded calls from inmate John Darrieux in the
16 timeframe that's notated on there, that would be the calls
17 that he made from Hill-Finklea Detention Center during that
18 timeframe.

19 Q: At the request of the Solicitor's office?

20 A: Yes.

21 Q: And I believe during your initial testimony, you indicated
22 that you reviewed -- to obtain that information you review it
23 by name of inmate and by the account number, correct?

24 A: Yes, their pin number.

25 Q: The Solicitor asked you at trial and again today about

1 inability to alter the contents, right?

2 A: Yes.

3 Q: And it's my understanding that once it's been transferred,
4 the content, meaning the words, the length of the call, all
5 that, they cannot be altered, correct?

6 A: Correct.

7 Q: Okay. It is possible though -- the State could've asked
8 for a wider call range, correct, and you would've been able to
9 put that on the CD?

10 A: Yes.

11 Q: Okay. Am I also correct in recalling that the last call
12 on the 123A was not Mr. Darrieux' or it was not from Mr.
13 Darrieux' account; is that right? Do you recall that, putting
14 a single call from another account?

15 A: I don't recall that.

16 Q: Okay. Is that possible for you to do that?

17 A: That -- explain it to me again.

18 Q: Sure. Is it possible to pull a single call from another
19 inmate's account and burn it onto the same CD as this -- all
20 of Mr. Darrieux' calls?

21 A: Yes. It just depends on what they ask for with the
22 subpoena. If -- sometimes, I get -- they want all calls from
23 that particular inmate and then sometimes they state that they
24 want calls from a particular number also. So, yes, on that
25 one CD I would add all of that information on that one CD

1 because it was all on one subpoena.

2 Q: You know, I just want to be clear about, about what can be
3 altered or not. You can pull apart calls but the content of
4 the call cannot not be edited; is that the testimony?

5 A: What are you -- what do you mean by pulling apart calls?

6 Q: Meaning, if he made 127 calls but there's only 94 on
7 there, that's because you only pulled 94 of them, correct?

8 A: Yes. Whatever timeframe I put in in the computer, that's
9 the timeframe that it's gonna pull up.

10 Q: And so similarly you could pull those 93 and add on to
11 that CD from a different date, different time?

12 A: I could but I only put on the information that is asked in
13 the subpoena.

14 Q: Certainly. But, what I'm trying to get it is my
15 recollection -- and I don't mean to testify. If you don't
16 recall this, that's fine. If the State had asked for a
17 certain range of calls from Mr. Darriéux and in addition a
18 single call from another inmate, could you put those on the
19 same CD?

20 A: Yes.

21 Q: Okay.

22 A: As long as the information is what was asked in the
23 subpoena.

24 Q: So, when the Solicitor asked you about being able to --
25 there's no way to add or subtract or edit, we're talking about

1 content of a call not date, time, or content of the call, you
2 couldn't not add, subtract or edit the content of the phone
3 calls; is that accurate?

4 A: No, you cannot add -- you cannot alter that call in any
5 way.

6 Q: That 123A could be wiped, could be cleaned, could be
7 deleted, however, correct? You could still delete the
8 contents of that CD, right?

9 A: No, because it's in the secure system.

10 Q: But those are files on that CD, you pull them off with a
11 secure system and copy them onto that original CD, correct?

12 A: Yes.

13 Q: Okay. And as with any computer file, could we not simply
14 put that in a computer and delete the contents of that CD?

15 A: I don't think you can delete anything off of the CD.

16 Q: All right.

17 A: I know you cannot change it in any way of the format that
18 it's in.

19 Q: So, getting back to -- to content of the phone calls you
20 can't mess with but whether you can delete that file or not,
21 you're not sure? You don't believe you can, correct?

22 A: I don't know.

23 Q: Okay. Judge, if I may have a moment?

24 THE COURT: All right.

25 Q: Thank you, Your Honor. Thank you, Ms. Shuler, I don't

1 have any other questions.

2 THE COURT: All right. Anything on redirect?

3 REDIRECT EXAMINATION OF KATIE SHULER BY MR. WEST:

4 Q: Once you put it onto a CD, can any investigator or any
5 member of the Solicitor's office change what you put onto that
6 CD?

7 A: No.

8 Q: No. The system doesn't allow any modifications?

9 A: True, yes.

10 Q: Okay. Thank you.

11 THE COURT: All right. You may step down.

12 Anyone else?

13 MR. WEST: Just for clarification, Your Honor, we would
14 call Investigator Kevin McGowan.

15 THE COURT: All right.

16 KEVIN MCGOWAN, HAVING BEEN DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 CLERK: Please state and spell your name for the record.

19 MR. MCGOWAN: It's Kevin McGowan, M-C capital G-O-W-A-N.

20 DIRECT EXAMINATION OF KEVIN MCGOWAN BY MR. WEST:

21 Q: Kevin, could you tell for the record where you work?

22 A: Currently, I'm at the Berkeley County Ninth Solicitor's
23 Office as an investigator.

24 Q: What is your position?

25 A: I'm an investigator.

1 Q: And what do some of those duties include?

2 A: Basically, I help the attorneys prepare for cases whether
3 it's locating people, making a copy of the CD, reports,
4 whatever.

5 Q: Did you have an opportunity to copy CDs in this case?

6 A: Yes, sir.

7 Q: Okay. State's Exhibit 123, are you familiar with it?

8 A: Oh, yes.

9 Q: Okay. Did you also have an opportunity to have in your
10 possession, State's Exhibit 123A?

11 A: Yes, sir.

12 Q: Okay. When you -- did you make any copies of State's
13 123A?

14 A: Yes, sir.

15 Q: Did you make any changes to the contents of that CD?

16 A: No, sir.

17 Q: Okay. You didn't add anything, delete anything, modify
18 anything, alter anything in any way?

19 A: No, sir, just make a copy of the CD and turn it back over.

20 Q: It was a duplicate of what you were produced by Sergeant
21 Shuler?

22 A: Yes, sir.

23 Q: Okay. Now, on the copies that you made, did you write
24 anything on the copies?

25 A: Yes, sir. I duplicate whatever is on the CD that I'm

1 making, the only change or only thing you put on there is the
2 triangle which indicates that it is a copy.

3 Q: Okay. And you did that in this case?

4 A: Yes, sir.

5 Q: Okay. And that included a duplication of Sergeant
6 Shuler's signature?

7 A: Yes, sir. Anything that's on the front of the CD gets put
8 on a copy.

9 Q: Okay. Was that duplication substantially similar to the
10 manner and style of Sergeant Shuler's handwriting?

11 A: It's in my handwriting. I mean, I don't ---

12 Q: Was it substantially similar though?

13 A: Yeah, yes, sir.

14 Q: Okay. No further questions for the witness.

15 THE COURT: All right.

16 Anything on cross examination?

17 MR. WEST: Your Honor, briefly.

18 BY MR. WEST:

19 Q: Investigator, did you complete an affidavit in regards to
20 your duties in this case?

21 A: Yes, sir.

22 Q: I'd like to mark this as State's Exhibit C.

23 Do you recognize this?

24 A: Yes, sir. This is the affidavit that I typed up.

25 Q: And how do you recognize that?

1 A: It's what I did.

2 Q: Did you have it notarized?

3 A: Yes, sir.

4 MR. WEST: At this time, we would move State's Exhibit C
5 into the record as well?

6 THE COURT: Any objection?

7 MR. DAVIS: No objection to the affidavit, Your Honor.

8 THE COURT: All right. So, State's Exhibit C is admitted
9 as a proffered exhibit for the record without objection.

10 STATE'S EXHIBIT C

11 ADMITTED FOR PROFFER

12 MR. WEST: Thank you. No further questions for this
13 witness at this time.

14 MR. DAVIS: I have no questions for this witness, Your
15 Honor.

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

17 A: Thank you.

18 THE COURT: No other witnesses, Your Honor.

19 THE COURT: All right. Let me see the attorneys for a
20 second.

21 (REPORTER'S NOTE: A bench conference was held off the
22 record.)

23 THE COURT: All right. All of the witnesses and exhibits
24 admitted thus far I'm gonna allow to be added to the record as
25 proffered testimony. It certainly didn't go to the Jury or

1 anything of that nature.

2 Mr. Davis, any arguments you want to place on the record?

3 ARGUMENT BY DAVIS:

4 MR. DAVIS: Yes, Your Honor. Thank you so much. Judge,
5 when the evidence was originally proffered, we had several
6 objections to it. The one that I think is most in play now is
7 the authentication issue. Clearly, there was a discrepancy as
8 to what was actually admitted versus what is now being
9 proffered. That goes directly to that concern, is it what it
10 claims to be. We understand the testimony that 123A is the
11 original that was copied by Sergeant Shuler in a request from
12 the State from the Solicitor's office. But the testimony at
13 the trial and again today shows that what was put on that CD
14 is by request and it's simply from a name and an inmate
15 number, and especially with the confusion of identifying it at
16 the time of trial, we think it brings into concern the
17 authentication issue as well as all other arguments we made at
18 the time. I would obviously cite rules of evidence that the
19 best evidence rule requires that if available, the originals
20 should be the evidence that is used, whether it's a contract
21 or it's a picture or a phone call. And in this case, we
22 certainly, and I want to be real clear, we've had personal
23 communications about this, I am not placing any intentional
24 blame as to Sergeant Shuler or the Ninth Circuit Solicitor's
25 Office. I do not believe it was intentionally done in any way

1 and I have no evidence of that and we're not making that
2 claim. However, the original exists and was not used and we
3 would argue that we discovered it obviously after the trial,
4 conviction and sentencing. Under Rule 29, it allows the
5 Court, if the Court deemed appropriate, to grant a new trial.
6 Also, in my motion, of course, I asked for whatever relief
7 that you may deem appropriate. It is a novel issue. In my
8 contact with your office and with the Solicitor's office, and
9 for the record, I did my own investigation on this novel
10 issue. I contacted attorneys at Appellate Defense to try to
11 determine what I ethically needed to do. I couldn't find a
12 clear path on that either. So, we thank Your Honor, and we
13 appreciate having this opportunity to at least proffer this
14 testimony and the evidence on the record. But, in an
15 abundance of caution on behalf of my client, I would renew our
16 prior objections and argue that you either grant a new trial,
17 you could -- in general -- you could grant a new trial and
18 order that the prior exhibits, prior evidence was admitted
19 improperly, and I'll do the catchall, or any other relief you
20 deem appropriate. That's our presentation, Your Honor.

21 THE COURT: All right. Anything from the State?

22 ARGUMENT BY WEST:

23 MR. WEST: Thank you, Your Honor. I do believe the rules
24 at this time, including the best evidence rule, elaborate that
25 I think it can be introduced at trial. We have testimony here

1 from Investigator McGowan that if -- this was simply a
2 duplicate CD, that none of the contents were altered in any
3 way. The contents are the same as was introduced at trial and
4 therefore there's no prejudice to the Defense. There was one
5 phone call that was actually published to the Jury, so we're
6 not dealing with the entirety of what is the contents of the
7 CD, we're just dealing with that one phone call which is
8 present on 123A and 123. And since there is no prejudice to
9 the Defense, we would respectfully request that you deny any
10 motions for a new trial.

11 RULING BY THE COURT:

12 THE COURT: All right. All right. I'm gonna deny the
13 motion for a new trial. As I said, the testimony and exhibits
14 were proffered into the record. The Appellate Court can do
15 with it as they deem appropriate. Okay?

16 MR. WEST: Thank you, Judge.

17 THE COURT: All right. Thank you very much.

18

19 (ADJOURNED.)

20

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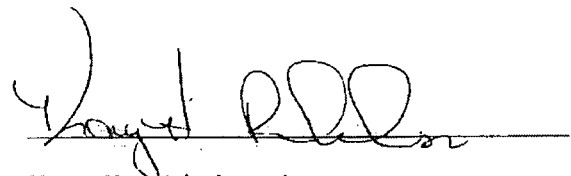
State v. Darrieux
CERTIFICATE OF COURT REPORTER

28

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus John A. Darrieux, held in the Court of General Sessions for Berkeley County, Berkeley County Courthouse, Georgetown, South Carolina, on February 26, 2016.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

August 30, 2016.

PSS/0235376/2014-10-02467

WITNESSES

John L. Miller

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401266

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Susan Duren
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-CS-08-01026

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

BURGLARY FIRST DEGREE

SC Code: § 16-11-0311

CDR Code: 0079

CASE NO.
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

2/1/15

✓
ATMA

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

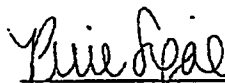
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

BURGLARY FIRST DEGREE

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant John Alexander Darrieux, did enter the dwelling of Charles Willard Roberts without consent and with the intent to commit a crime therein. That, in addition, said entry or remaining occurred in the nighttime; and/or the defendant displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the defendant was armed with a deadly weapon or explosive; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary First DegreeIn violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense;The plea is: ☐ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

E. Mason West

100788

E. Mason West, Assistant Solicitor

SC Bar #

Defendant:

Attorney for Defendant.

12396

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GFD ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

FILED
JAN 29 2016CASE NO. _____
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC☒ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 18.90
TOTAL		\$ 648.90

Clerk of Court/Deputy Clerk: K. MillsCourt Reporter: Grace HurleyPresiding Judge: Mary P. BrownJudge Code: 2148Sentence Date: Jan. 29, 2016CERTIFIED TRUE COPIES OF RECORD
IN THIS COUNTYDATE 3/21/16
CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY

SCCA/217 (03/2011)

PSS/0235376/2014-10-02467
WITNESSES
John L. Smith

Berkeley County Sheriff's Office

AGENCY CASE NUMBER
201410051182

ARREST WARRANT NUMBER
2014A0810401267

DATE OF ARREST
10/22/2014

ACTION OF GRAND JURY
True Bill

Samantha Dyer 6-23-15
Foreperson of Grand Jury Date:

VERDICT

Foreperson of Petit Jury Date:

DOCKET NO. 2015-GS-08-01027

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS
JUNE TERM 2015

THE STATE
VS.
JOHN ALEXANDER DARRIEUX

Indictment for
ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

FILED
JUN 23 2015
CASE NO. 2015-08-01027
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC

Amia

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about October 21, 2014, in Berkeley County, South Carolina, the Defendant, John Alexander Darrieux, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Charles Willard Roberts with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

COUNTY OF BERKELEY
STATE VS.JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

100788

E. Mason West, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

12396

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Recipient: _____

*Fine: _____

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ca

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

\$

TOTAL

\$133.90

Clerk of Court/Deputy Clerk:

Court Reporter:

Deputy Clerk:

Grace HusleyR. MillsR. Mills

Presiding Judge:

Judge Code:

Sentence Date:

Mary P. Brown2148Jan. 29, 2016**FILED**

JAN 29 2016

CASE NO. 14
MARY P. BROWN, CLERK OF COURT
BERKELEY COUNTY, SC☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

DATE

CLERK OF COURT, C.P. & C.S.

BERKELEY COUNTY

3/21/16

Amy

PSS/0235376/2014-10-02467

WITNESSES

Tham L. Thun

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401268

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarah Dyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01028

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

CASE NO.
MARY F. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

AMMA

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about October 21, 2014, in Berkeley County, South Carolina, the Defendant, John Alexander Darrieux, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Stephen B Jones with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

429

COUNTY OF **BERKELEY**

STATE VS:

JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2015-GS-08-01028A/W: 2014A0810401268Date of Offense: 10/21/2014S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

TO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

100788

E. Mason West, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

12396

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS: _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmis. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: Mary P. BrownJudge Code: 2148Sentence Date: Jan. 29, 2016

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

Court Reporter: _____

Clerk of Court/Deputy Clerk: Grace HurleyCourt Reporter: R. Mills

Deputy Clerk: _____

DATE 3/21/16 CLERK OF COURT, C.P. & G.S.
 BERKELEY COUNTY

SCCA/217 (03/2011)

FILED

JAN 29 2016

CASE NO. 16
 MARY P. BROWN CLERK OF COURT
 BERKELEY COUNTY, SC

KMD

PSS/0235376/2014-10-02467

WITNESSES

Shawn L. Miller

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401269

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill*Sarah Duon*
Foreperson of Grand Jury*6-23-15*
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01029

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)

CDR Code: 0139

CASE NO.
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

*FZH**✓*
MMH

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

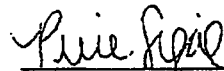
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

ARMED ROBBERY

That on or about October 21, 2014, in Berkeley County, South Carolina, the Defendant, John Alexander Darrieux, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Rose Simpson with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#: 2015-GS-08-01029A/W: 2014A0810401269Date of Offense: 10/21/2014S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

TO: Armed RobberyIn violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

E. Mason West

100788

E. Mason West, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

12396

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

*Fine: \$ _____

Substance Abuse Counseling ☐

§14-1-206 (Assessments 107.5%) \$ _____

Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 160.00

Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

\$ _____ Paid to Public Defender Fund

§56-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Court Reporter

Clerk of Court/Deputy Clerk:

Court Reporter:

Grace HurleyK. Mills

Presiding Judge:

Date:

IN THIS COURT

Mary P Brown

DATE:

CLERK OF COURT, C.P. & G.S.

BERKELEY COUNTY

3/24/16

FILED

JAN 29 2016

CASE NO. ✓
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

K.W.N.

PSS/0235376/2014-10-02467

WITNESSES

Theresa L. Oliver

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401270

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Dawn D. Dyer
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01030

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

CASE NO.
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

Ed 18

✓
AMH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant, John Alexander Darrieux, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Charles Willard Roberts, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

STATE VS.

JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/CaucasianSex: M

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lowd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

E. Mason West
E. Mason West, Assistant Solicitor100788
SC Bar #

Defendant

Attorney for Defendant

12396
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 36 days/months/years or ☐ under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$

plus 20% fee:

\$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Recipient:

*Fine:

\$

§14-1-206 (Assessments 107.5%)

\$

§14-1-211 (A)(1)(Conv. Surcharge)

\$100

\$ 100.00

§14-1-211 (A)(2)(DUI Surcharge)

\$100

\$

§56-5-2995 (DUI Assessment)

\$12

\$

§56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§14-1-212 (Law Enforce. Funding)

\$25

\$ 25.00

§14-1-213 (Drug Court Surcharge)

\$150

\$

§50-21-114 (BUI Breath Test Fee)

\$50

\$

§56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$ 5.00

3% to County (if paid in installments)

\$

\$ 3.90

TOTAL

\$ 133.90

Court Reporter

Glen of Court/Deputy Clerk:

Court Reporter

Sup. Clerk

Grace HusleyR. Mills

CERTIFIED TRUE COPIES OF RECORD

IN THIS COUNTY

Presiding Judge:

Mary P. Brown

Sentence Date:

Jan. 29, 2016

SCCA/217 (03/2011)

DATE

3/21/16CLERK OF COURT, C.P. & O.B.
BERKELEY COUNTYAnett

IN THE COURT OF GENERAL SESSIONS

435

INDICTMENT/CASE#: 2015-GS-08-01030

A/W:

2014A0810401270

Date of Offense:

10/21/2014

S.C. Code §:

16-03-0910

CDR Code #:

0095

SENTENCE SHEET

☒ CONVICTED OF orPLEADS

FILED

Attend. Voc. Rehab. Or Job Corp.

May serve W/E beginning

JAN 29 2016

Substance Abuse Counseling

☐

Random Drug/Alcohol Testing

CASE

Fine may be pd. in equal consecutive

pmts. of \$

Beginning

\$

Paid to Public Defender Fund

Other: NO Sex offense or attemptedSex offense. NO Sex offenseRegistry.☐ Appointed PD or appointed other counsel.

§47.12 requires \$500 be paid to Clerk during probation.

Kwan

PSS/0235376/2014-10-02467

WITNESSES

Sharon L. Smith

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401271

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill*Sharon L. Smith*
Foreperson of Grand Jury6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01031

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

CASE NO.
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

*204**✓*
AMM

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

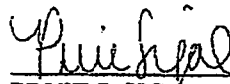
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant, John Alexander Darrieux, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Stephen B Jones, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

COUNTY OF BERKELEY
STATE VS.JOHN ALEXANDER DARRIEUX

AKA:

Race: White Non-Latino/Caucasian Sex: M

DOB: _____ SS#: _____

Address: _____
City, State, Zip: _____

DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: KidnappingIn violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1* or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense;The plea is: ☐ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

E. Mason West 100788
E. Mason West, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

12396
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____
days/hours Public Service EmploymentObtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90

Clerk of Court/Deputy Clerk: _____

Court Reporter: Grace HurleyPresiding Judge: Mary P. BrownDate: Jan. 29, 2016

IN THIS COUNTY

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-08-01031A/W: 2014A0810401271Date of Offense: 10/21/2014S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or☒ PLEADS

FILED

JAN 29 2016

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: NO Sex offense or attempted
Sex offense. no Sex offense
registry.☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk

during probation.

Kwmy

PSS/0235376/2014-10-02467

WITNESSES

David L. Smith

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401272

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarah D. Jones
Foreperson of Grand Jury

6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01032

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

KIDNAPPING

SC Code: § 16-03-0910

CDR Code: 0095

CASE NO.
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

JUN 23 2015

FILED

JLH

AMH

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

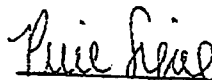
INDICTMENT

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

KIDNAPPING

That in Berkeley County, South Carolina on or about October 21, 2014, the Defendant, John Alexander Darrieux, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Rose Simpson, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

PSS/0235376/2014-10-02467

WITNESSES

Brason A. Jones

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

201410051182

ARREST WARRANT NUMBER

2014A0810401277

DATE OF ARREST

10/22/2014

ACTION OF GRAND JURY

True Bill

Sarah D. Jones
Foreperson of Grand Jury6-23-15
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-08-01034

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JUNE TERM 2015

THE STATE

VS.

JOHN ALEXANDER DARRIEUX

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490

CDR Code: 0549

CASE NO.
FILED
JUN 23 2015
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

FILED

JUN 23 2015

CJS

STATE OF SOUTH CAROLINA

INDICTMENT

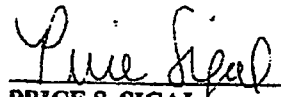
COUNTY OF BERKELEY

At a Court of General Sessions, convened on June 23, 2015, the Grand Jurors of Berkeley County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Berkeley County, South Carolina, on or about October 21, 2014, the Defendant, John Alexander Darrieux, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Burglary 1st Degree, Armed Robbery, and/or Kidnapping; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



PRICE S. SIGAL
ASSISTANT SOLICITOR

4th JUDGE OF SOUTH CAROLINA

COUNTY OF BERKELEY
STATE VS.

AKA: JOHN ALEXANDER DARRIEUX
Race: White Non-Latino/Caucasian Sex: M
DOF: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Possession Of A Weapon During The Commission Of A Violent Crime
In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS

☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense,

The plea is: ☐ Without Negotiations or Recommendation,

☐ Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)

☐ Negotiated Sentence, ☐ Recommendation by the State:

ATTEST:

E. Mason West 100788

E. Mason West, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

12396

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X, provided that upon the service of X days/months/years and or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for X
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 1/29/2016
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Ordered PTUP _____
days/hours Public Service Employment

Obtain GED ☐

☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

FILED

JAN 29 2016

CASE NO. 2015-GS-08-01034
MARY P. BROWN CLERK OF COURT
BERKELEY COUNTY, SC

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge: Mary P. Brown

Judge Code: 2148

Sentence Date: Jan. 29, 2016

Clerk of Court/Deputy Clerk: K. Mills

Court Reporter: Grace Hurley

CERTIFIED TRUE COPY OF RECORD
IN THIS COUNTY

Mary P. Brown
DATE 3/21/16
CLERK OF COURT, C.P. & G.S.
BERKELEY COUNTY

SCCA/217 (03/2011)

KW

Kwm

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

FILED

16 FEB 25 PM 1:48

IN THE GENERAL SESSIONS COURT FOR
THE NINTH JUDICIAL CIRCUIT

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Warrant #: 2014A0810401266-72 &
2014A0810401277

STATE OF SOUTH CAROLINA

vs.

JOHN DARRIEUX,

Defendant.

Charges: Burg. 1st; Armed Robbery (x3);
Kidnapping (x3); Poss. Weapon during
a Violent Crime

MOTION FOR NEW TRIAL
(AFTER DISCOVERED EVIDENCE)

Now comes the defendant, by and through his undersigned attorney, moving for an Order of this Court granting a new trial and whatever relief the Court may deem appropriate. The basis for such motion lies in the following:

- 1) State's Exhibit # 123 was introduced by a records' custodian, Sgt. Katie Shuler, and admitted as evidence during the above-listed trial, over Defendant's objections (including authenticity);
- 2) Exhibit # 123 was purported to be the original compact disc containing telephone calls imminating from the Hill-Finklea Dentention Center (Berkeley County Jail) from the inmate account associated with the Defendant;
- 3) One phone call from Exhibit # 123 was published to the jury during Sgt. Shuler's testimony;
- 4) The Defendant was convicted by the jury after deliberations on January 29, 2016 and sentenced to Thirty (30) years in prison; and
- 5) On Monday, February 1, 2016, Assistant Solicitor, Mason West (the lead trial prosecutor) notified the Defendant's attorney that Exhibit # 123 was not the original compact disc but a copy produced by Investigator McGown of the Solicitor's Office;

THEREFORE, pursuant to the South Carolina Rules of Criminal Procedure, Rule 29, the Defendant requests a new trial based on this after-discovered evidence and any other relief that the Court may deem appropriate.

Respectfully submitted,



Rodney D. Davis

Charleston, South Carolina

Dated: 2/23/16

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT FOR
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	Warrant #: 2014A0810401266-72 &
	)	2014A0810401277
	)	
	)	Charges: Burg. 1 st ; Armed Robbery (x3);
	)	Kidnapping (x3); Poss. Weapon during
STATE OF SOUTH CAROLINA,	)	a Violent Crime
	)	
vs.	)	
	)	
JOHN DARRIEUX,	)	ORDER DENYING DEFENDANT'S MOTION
	)	
Defendant.	)	

Upon a motion filed by the Defendant, based on evidence discovered after conviction on the above-listed charges, the Court conducted a hearing at the Georgetown County Courthouse. Following testimony of Sgt. Katie Shuler and Investigator McGown, the introduction of an affidavit for each witness (State's Exhibits "B" and "C"), the admission of the original "jail calls" CD (State's Exhibit "123A"), and arguments from both parties, the Court denies the Defendant's requested relief.

The testimony was proffered and Exhibit "123A" was ~~admitted~~ ^{proffered} over Defendant's renewed objections dealing with admitted Exhibit "123", specifically focused on authentication. State's Exhibits "B" & "C" were ~~admitted~~ ^{proffered} without objection.

IT IS THEREFORE ORDERED that, the Defendant's Motion for a New Trial (or any other relief deemed appropriate) is denied.

IT IS SO ORDERED.

Benjamin H. Culbertson
The Honorable Benjamin H. Culbertson

Conway
Georgetown, South Carolina
Dated: Feb. 29, 2016

16 MAR 10 PM 2:17
JERRY P. BRUNN
CLERK OF COURT
BERKELEY COUNTY, S.C.

AMH
FILED

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

201410051277

I, Courtney D. Pringle, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to PFC WRIGHT

Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am _____ years of age, and I live at _____

Summerville, SC 29483

I witnessed a female and 3 males taking a tag off of a silver Dodge Durango and going into a home coming out with a small bed. They were dressed in all black with black gloves. I noticed the girl because I use to work with her a few months ago she came over and said they were hitting licks and was going over to Summer Creek to see what they could find I then went in and called 911. I recognized her as "Netalia" they went into a yellow single wide across the street from mine.

~~END OF STATEMENT~~

CP

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at: CINDY DE LADSON SC

this 21ST day of OCTOBER 20 14

WITNESS:

PFC WRIGHT

Courtney Pringle

Signature of person giving voluntary statement

WITNESS:

State of South Carolina



Charleston County
101 Meeting Street, Suite 400
Charleston, SC 29401
Phone (843) 958-1900
Fax (843) 958-1905

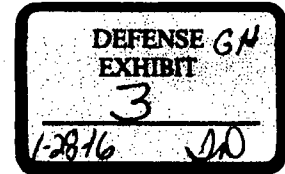
Berkeley County
300-B California Avenue
Moncks Corner, SC 29461
Phone (843) 723-3800 ext. 4529
Fax (843) 719-4588

SCARLETT A. WILSON

Solicitor, Ninth Judicial Circuit

September 1, 2015

Leslie Sarji
4000 Faber Pl Dr #300.
Charleston, SC 29405



Re: State of South Carolina v. Tristen Browder

Dear Ms. Sarji:

The following constitutes the proffer agreement between the Attorneys for the State and **Tristen Browder**, hereinafter referred to as "Client." The primary purpose of Client making this Proffer is to provide the State with an opportunity to assess the value, extent, and truthfulness of Client's information about the criminal liability of Client and others. Client agrees to waive his or her constitutional right to remain silent and proceed under the terms of this Proffer Agreement. With respect to any statements made pursuant to this Agreement, Client understands that providing false or misleading information will result in a waiver of protections afforded pursuant to this Agreement, as well as a waiver of any constitutional protections regarding his or her statements under the Fifth and Sixth Amendments.

PROFFER AGREEMENT

Client is freely providing information to the State because Client believes it is in his or her best interests to do so. Client understands that Client is not compelled to provide information to the State or to pursue this proffer agreement and has an absolute right to remain silent. If Client is not willing to give a statement and provide information pursuant to this agreement, the State may not compel Client to do so. Client has the right to be represented by an attorney and acknowledges (s)he was represented by counsel at the time of signing and providing information pursuant to this Proffer Agreement.

This is not a plea, prosecution *or immunity* agreement. Client has freely and voluntarily agreed to provide the State with statements and information and to respond to questions. The State will evaluate Client's statements and other information in making prosecutive decisions. By receiving Client's Proffer, the State does not agree to make any prosecutive decisions on the Client's behalf or to enter into a plea agreement, immunity or non-prosecutive agreement. While the State agrees to consider the truthful information provided by Client, the State makes no representation about the likelihood that any such agreement will be reached in connection with this Proffer.

By signing this "Proffer Agreement," Client agrees to be fully truthful and forthright with the Ninth Circuit Solicitor's Office and law enforcement agents in their investigation of unlawful activities, and to submit to truthful and complete debriefings with no misstatements or material omissions of fact of Client's knowledge concerning illegal activities. Also, Client understands that Client must fully disclose and provide truthful information to the State including any books, papers, or documents or any other items of evidentiary value to the investigation. If the State so elects, Client's failure to be fully truthful and forthright *at any stage* will cause the obligations of the State within this Agreement to become null and void. Further, it is expressly agreed that ***if the obligations of the State within this Agreement become null and void due to the lack of truthfulness on Client's part:***

- (1) the State will file any and all charges known to the State; and
- (2) ***the State may use for any purpose any and all statements made and other information provided by Client*** in the Prosecution of Client on any charges, including perjury. Client accepts this provision being fully advised that, under SCRE 410, statements made by Client pursuant to this Agreement would not ordinarily be admissible in any criminal proceedings including perjury and making false statements unless the statements were made under oath, on the record, and in the presence of counsel.

Client agrees to submit to polygraph examination(s) by a qualified polygraph examiner designated by the State should Client be requested to do so. *Failure to pass to the satisfaction of the State any polygraph examination administered pursuant to this Agreement constitutes a breach of the Agreement, and the State may use for any purpose any statements made and other information provided by Client in the prosecution of Client on any charges.*

Provided Client is truthful as described above, remaining terms of the Agreement are as follows:

1. No statements made or other information provided by Client during this Proffer or discussion will be used against Client in any state court criminal case except as provided herein.
2. The State may make derivative use of and may pursue any investigation leads suggested by any statements made or other information provided by Client for the purpose of obtaining other evidence which may be used in a prosecution of Client. This is necessary to prevent the State from having to prove that evidence offered at any future trial is not tainted by any statements made or other information provided by Client during this Proffer.

3. In the event that Client is a witness at a trial or other proceeding concerning any matter discussed in this Proffer and testifies materially differently from any statements made or other information provided during this Proffer, the State may cross-examine Client concerning any statements made or other information provided during this Proffer or use such to rebut any evidence or arguments offered by or on behalf of Client (including arguments made or issues raised *sua sponte* by the Court) at any stage of the criminal prosecution (including bail, trial, and sentencing) should any prosecution of Client be undertaken.

4. The State agrees that any self-incriminating statements made and other information provided by Client during this Proffer will not be provided to the Court for determining the applicable sentence should Client be convicted or enter a guilty plea unless there is a breach of this Agreement. The provisions of this paragraph shall not be applied to restrict the use of any such statements or information:

- (A) known to the State prior to the date Client makes this Proffer;
- (B) concerning the existence of prior convictions and sentences;
- (C) in a prosecution for perjury or giving false statement; or
- (D) in the event there is a breach of the terms of this Agreement or subsequent plea agreement.

The obligations of and restrictions on the State within this Agreement are expressly contingent upon Client's abiding by federal, state, and local laws and complying with terms and conditions of any bond executed in this case. Therefore, Client's violation of federal, state, or local law or of the provisions of any bond executed in this case constitutes a breach of this Agreement, and upon such violation, the State may use for any purpose any and all statements made and other information provided by Client in the prosecution of Client on any charges.

To the extent the Government is entitled under this Agreement to offer in evidence any statements made or other information provided by Client or leads obtained therefrom, Client shall assert no claim under the United States Constitution, the South Carolina State Constitution, any Statute, Rule 410 of the South Carolina Rules of Evidence, or any other rule that such statements made or other information provided or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects. Client does not waive any right to seek the suppression of any prior statement(s), or the substance thereof, provided to law enforcement before the execution of this proffer agreement.

The parties hereby agree that this Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements made prior to this Agreement are null and void.

Price Sigal
Assistant Solicitor, Ninth Judicial Circuit

Price Sigal

I AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT:

Josh Brown
CLIENT

Leslie Sarg
ATTORNEY

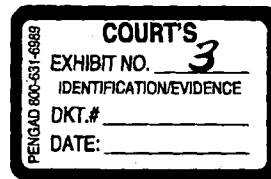
9/1/15
DATE

We need a breakdown of the charges.

Morgan Pritchett

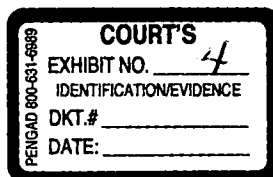
1/29/16

11:32am



Betsy P. Bayless wishes to be removed
from the jury panel because she
doesn't want to convict anyone.

Morgan Pitchett 1/29/16 1:40pm



AFFIDAVIT OF KATIE SHULER

My name is Katie Shuler; I am an Administrative Specialist at Hill-Finkea Detention Center.

On December 11, 2015, I received a subpoena from David Young requesting phone recordings for an inmate named John Darrieux. After researching in the Securus System, I found 94 calls that would need to be processed to fulfill the subpoenas request. Phone recordings are processed through the Securus System to prevent the recordings of being altered. When the phone calls are burned on a CD, once completed, I write my initials, the inmate name, and the time frame that is request from the subpoena on the CD. I then make a photo copy of the front of the CD so at the time of pickup the investigator can sign and date for the items he/she receives. December 23, 2015, I called David Young and informed him that the recordings where complete for pickup. When Mr. Young picked up the CD he dated and signed the photo copy of the CD that he received. I have included a photo copy of the signed paper that I have in my records.

On Janucary 26, 2016, I was served a subpoena stating I had to appear in court on the week of January 26, 2016 to testify in John Darrieux trial. On January 28, 2016, I reported to the Berkeley County Court House. When arriving to courtroom E, Mason West presented a CD to me. Mr. West then asked if the initials on the CD where mine? At a quick glance, I stated yes that is my initials. A short time later, I was called to testify for John Darrieux trial. While on the stand, Mr. West asked me to explain my duties at Hill-Finklea Detention Center. When stating that one of my responsibilities was to provide inmate phone recordings, when requested by a subpoena, he physical handed me a CD. While reviewing the CD, Mr. West asked if that was my initials on the CD. I responded, "Yes that is my initials but not my hand writing.

After returning to my office, I pulled the original copy of the CD that was signed by David Young. I then contacted Kevin McGowan to let him know that the CD that was given to me in court was not the one that I provided to them for trial. He stated he would let Mr. West know and he would get back to me about this. On Friday January 29, 2016, Mr. McGowan came to my office and got a photo copy of the CD that Mr. Young received from me. Mr. McGowan then stated that they do make copies of the CD's that I make for them. Mr. McGowan stated when they make the copies they write everything that is on the front of the CD so there is no confusion on everyone getting the same information. After Kevin showed Mr. West the copy that I had, he then figured the problem out. He then realized that he had handed me a copy of the original CD that I provided for them. They finally understand why I stated that yes that is my initials, but not my hand writing. 

 2.2.16



Sworn TO AND SUBSCRIBED BEFORE ME
This 2nd day of February, 2016


Notary Public for South Carolina

My Commission Expires: 12/3/19

February 1, 2016

To whom it may concern;

I Kevin McGowan, was instructed to make a duplicate copy of the original Jail Tape CD (John Darrieux) which was originally submitted by Katie Shuler of the Hill Finklea Detention Center. I proceeded to make a copy utilizing the Roxio Easy Media Creator 10 Suite desktop program. As common practice once completed, I verified that a full copy was made. I then wrote on the CD all the information contained on the original; to include the initials. A triangle is added to show that this is a duplicate. Both original and copy were returned to Mr. West.

Kevin McGowan
Investigator ,Ninth Judicial Circuit Solicitors Office

SWORN TO AND SUBSCRIBED BEFORE ME

This 1st day of February, 2016

[Signature]
Notary Public for South Carolina

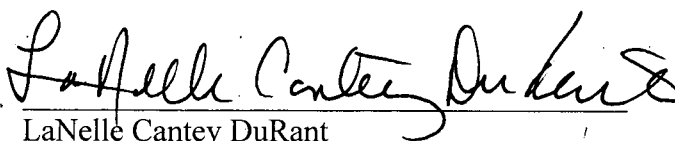
My commission expires: 12/3/19



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of April, 2017.

RECEIVED

APR 26 2017

SC Court of Appeals