

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Beaufort County
Honorable Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JULIUS ROOKS-MCBEAN,

APPELLANT

APPELLATE CASE NO 2016-001152

RECORD ON APPEAL

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

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
vs.)
JULIUS ROOKS AKA JULIUS)
ROOKS-McBEAN,) 2010-GS-07-972 - 974
DEFENDANT.)

May 23rd - 25th, 2016
Beaufort, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge; and a jury.

A P P E A R A N C E S:

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ASSISTANT SOLICITORS
Attorneys for the State

JARED S. NEWMAN
ESQ.
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
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P R O C E E D I N G S

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

THE COURT: All right. I have received a potential witness list from the State.

Does the defense have a potential witness list?

MR. NEWMAN: The defense will not be calling any witnesses, Your Honor.

THE COURT: Okay. And is there---

MR. NEWMAN: If, if the defense did call a witness, it would be Mr. McBean who's on trial. So --.

THE COURT: I understand. Well, I'll, I'll introduce him to the jury and I've got his name down as Julius Rooks also known as Julius Rooks-McBean.

Should I use---

MR. NEWMAN: He's also known as his real name is Julius Rooks-McBean.

THE COURT: Okay. So that's the one we're going to go by?

MR. NEWMAN: Yes, sir, that is his legal name.

THE COURT: I just wanted to be sure.

All right. And is there any requested voir dire from the State?

SOLICITOR FITTS: None, Your Honor.

1 THE COURT: Any from the defense?

2 MR. NEWMAN: Other than your standard.

3 THE COURT: I'm gonna use my standard.

4 Okay.

5 MR. NEWMAN: I've heard that before and that's fine.

6 THE COURT: Now, I do know that this case had been
7 mis-tried before.

8 I would assume your client has been arraigned on the
9 charge?

10 MR. NEWMAN: That is correct.

11 THE COURT: Is he still requesting trial by jury?

12 MR. NEWMAN: That is correct, Your Honor.

13 THE COURT: All right. Okay. Thank you very much.

14 Is that true, sir?

15 THE DEFENDANT: Yes, sir.

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

17 All right. We'll take about a five minute break and
18 then we'll call the jury back in for jury selection.

19 MR. NEWMAN: Thank you, Your Honor.

20 SOLICITOR SWANSON: All right. Thank you, Your Honor.

21 THE COURT: I'm gonna stay on the bench. If you need
22 to, need to see me, come on up.

23 SOLICITOR SWANSON: Your Honor, would you like me to
24 provide the original indictments to you or hang on to them?

25 THE COURT: Yes.

1 okay. I need them to be provided to me cause I will go
2 over them with the jury before I question them.

3 SOLICITOR SWANSON: Yes, sir.

4 THE COURT: Thank you, ma'am.

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

6 SOLICITOR SWANSON: Your Honor, when the jury is
7 selected and when you call each or when each of their names
8 are called, are you gonna have them stand out here or come
9 around front?

10 THE COURT: I have them come around the front.

11 SOLICITOR SWANSON: Okay. Thank you. Just wanted to
12 know how I should set up.

13 THE COURT: Yeah, I'll have them come around.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. Ladies and gentlemen, we're
17 about to begin the trial of the State of South Carolina
18 versus Julius Rooks-McBean.

19 I have been presented with three indictments in this
20 case. I will explain to you that the indictment is the
21 document that brings a case into this Court. It informs the
22 defendant of the charge that's been lodged against the
23 defendant. It informs this Court of the charges or the
24 charge to be tried.

25 Now, an indictment is not evidence of anything. It can

1 not be considered by a jury as evidence of anything. It
2 can't be used directly by a jury in determining the guilt or
3 innocence of anyone named in the indictment. However, I'm
4 going to go over these indictments with you at this time so
5 that you'll know a little bit about the charges that have
6 been brought, when they're alleged to have occurred, and I'm
7 going to ask you some questions in a few minutes that apply
8 specifically to this case, and perhaps that information
9 would allow you to more fully and completely answer the
10 questions that I'm going to ask you.

11 Now, the indictments in this case -- let me see. I'll
12 try to get them in the appropriate order.

13 The first case I'll discuss with you is 10-GS-07-972.
14 That indictment is for the offense of attempted armed
15 robbery.

16 The indictment states that, on or about
17 December 23rd of 2009 in Beaufort County, South Carolina,
18 at the Island Plaza Convenience Store, 862 Sea Island
19 Parkway, Saint Helena, South Carolina, the defendant, Julius
20 Rooks-McBean, by use of force, threats, or intimidation, and
21 while armed with a deadly weapon or while alleging, either
22 by action or words, that he was armed while using a
23 representation of a deadly weapon or other object which a
24 person present during the commission of the attempted
25 robbery reasonably believed to be a deadly weapon, did

1 attempt to take and carry away goods or moneys from the
2 person, person or immediate presence of Jay Patel with the
3 intent to deprive him of the possession thereof in violation
4 of Section 16-11-330(b) of the Code of Laws of South
5 Carolina, 1976 as amended, against the peace and dignity of
6 the State and contrary to the statute in such case made and
7 provided.

8 The next indictment is 10-GS-07-973. This indictment
9 is for the offense of assault and battery with the intent to
10 kill.

11 This indictment states, that in Beaufort County, South
12 Carolina, on or about December 23rd, 2009, the defendant,
13 Julius Rooks-McBean, with malice aforethought, did commit an
14 unlawful act of a violent nature upon the victim, Jay Patel.
15 To wit, the defendant did shoot the victim all in violation
16 of the common law of South Carolina in Section 16-3-620 of
17 the Code of Laws of South Carolina, 1976 as amended, against
18 the peace and dignity of the State and contrary to the
19 statute in such case made and provided.

20 The last indictment I've been presented is Case Number
21 2010-GS-07-974. This is for the possession of a weapon
22 during the commission of a violent crime.

23 The indictment states that, in Beaufort County, South
24 Carolina, on or about December 23rd of 2009, the
25 defendant, Julius Rooks-McBean, did possess a weapon or

1 visibly display what appeared to be a weapon during the
2 commission or attempted commission of assault and battery
3 with the intent to kill and/or attempted armed robbery, a
4 violent crime. This is in violation of Section 16-23-490 of
5 the South Carolina Code of Laws, 1976 as amended, against
6 the peace and dignity of the State and contrary to the
7 statute in such case made and provided.

8 Again, I go over those indictments with you simply for
9 the purpose of giving you additional information from which
10 you might more fully and completely answer the questions
11 that I'm about to ask.

12 Now, before I begin to ask those questions I'm going
13 to, going to ask that the attorneys involved in this case
14 introduce themselves to you, and, in the case of the
15 defense, if you would introduce the defendant to the jury
16 panel.

17 First of all for the State.

18 SOLICITOR SWANSON: Thank you, Your Honor.

19 May it please the Court.

20 My name is Hunter Swanson. I'm an assistant solicitor
21 here in Beaufort County. I've been working for solicitor
22 Stone for the past nine years. Sitting with me on this case
23 is Ann Fitts --

24 THE COURT: Ma'am, if you'll stand and face the jury
25 panel for me.

1 SOLICITOR FITTS: Yes.

2 THE COURT: Thank you.

3 SOLICITOR SWANSON: -- as well as Jeremiah Fraser, who
4 is an investigator with the Beaufort County Sheriff's
5 office.

6 THE COURT: All right. Thank you very much.
7 For the defense.

8 MR. NEWMAN: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 MR. NEWMAN: Good morning. My name is Jared Newman. I
11 practice law here in Beaufort. Been doing that for about 30
12 years now and this is Mr. Julius Rooks-McBean.

13 THE COURT: Thank you very much.

14 Now, ladies and gentlemen of the jury, it is important
15 that the information that you provide during my questioning
16 concerning this case is truthful, honest, and complete
17 information. For that reason it is -- you have to be sworn
18 again in this case to truthfully answer my questions.

19 So I'd ask that the clerk please swear the potential
20 jury panel for me.

21 Please stand and raise your right-hand.

22 (WHEREUPON, the entire jury panel was placed under oath
23 at this time.)

24 THE COURT: Please be seated.

25 Now, if there was any member of the potential jury

1 panel who either failed or refused to take the oath just
2 administered by the clerk, I'd ask that you now please
3 stand.

4 (No response.)

5 THE COURT: All right. The court record will reflect
6 then that all potential jurors have been sworn concerning
7 the answers that you're about to give to me.

8 Now, we'll follow the same procedure that we followed
9 in jury qualification. I'll be asking questions of you. If
10 you have a response, I'll be asking that you stand. I'll
11 need your name and juror number before I discuss any
12 response that you might have to the questions that I'm about
13 to ask.

14 My first question is has any member of this jury panel
15 ever been related by marriage or are you related by blood to
16 either the defendant, Julius Rooks, Rooks-McBean, or the
17 alleged victim, Jay Patel, if that's true, please stand.

18 (No response.)

19 THE COURT: Has any member of this jury panel ever had
20 a close personal or a social relationship with either the
21 defendant or either -- or a business relationship with the
22 defendant, Julius Rooks-McBean, or the alleged victim, Jay
23 Patel, if that's true, please stand.

24 (Juror responds.)

25 THE COURT: Sir, I'll need your name and number.

1 THE JUROR: Number 296, Raf Strut.

2 THE COURT: Yes, sir.

3 THE JUROR: I'm, I'm friends with the victim and the
4 wife and the whole family.

5 THE COURT: I see.

6 Now, would that fact, if you were seated on the jury,
7 the fact that he's the alleged victim in this case, would
8 that affect your ability to be fair and impartial to both
9 sides of the case?

10 THE JUROR: I would believe so.

11 THE COURT: Okay. Then I'm gonna excuse you from the
12 trial of this case. Please be seated and you no longer have
13 to answer my questions in this matter.

14 Anyone else?

15 (No response.)

16 THE COURT: Now, as to the attorneys that are involved
17 in this case, has any member of the jury panel ever been
18 represented by any of the attorneys involved in this matter
19 or have they ever appeared on the other side of a legal
20 matter from you, if that's true, please stand.

21 (No response.)

22 THE COURT: Has any member of the jury panel ever been
23 related by marriage or are you related by blood or have you
24 ever had a close social, personal, or business relationship
25 with any of the attorneys involved in this trial, if that's

1 true, please stand.

2 (Juror responds.)

3 THE COURT: Yes, sir, name and number.

4 THE JUROR: 266, Edward Sanders.

5 THE COURT: Yes, sir.

6 THE JUROR: I know Mr. Newman.

7 THE COURT: I see.

8 Has he -- you know him socially?

9 THE JUROR: I've been to a few parties with him, yeah.

10 THE COURT: I see.

11 Now, would the fact that you've been acquainted with
12 him in that fashion, if you were seated on the jury, he's
13 representing the defendant, would that affect your ability
14 to be fair and impartial to both sides in this case?

15 THE JUROR: I don't think so.

16 THE COURT: All right. Have a seat, sir. Thank you.
17 Anyone else?

18 (Juror responds.)

19 THE COURT: Sir, name and number.

20 THE JUROR: Alfred Dattle, 69.

21 THE COURT: Yes, sir.

22 THE JUROR: I know Mr. Newman socially.

23 THE COURT: I see.

24 would that fact affect your ability to be fair and
25 impartial to both sides in this case?

1 THE JUROR: No, sir.

2 THE COURT: Thank you, sir. You can be seated.

3 Anyone else?

4 (No response.)

5 THE COURT: Now, I'm going to go over a list of people
6 who have been identified to me as possible witnesses in this
7 case, and I've been provided with a little bit of
8 identification information concerning these people. I'm
9 going to call the names. There's about 15 of them. So
10 listen carefully as I go over these names to be sure that
11 you can answer my questions concerning them.

12 The list of witnesses is Brian Baird. He's with the
13 Beaufort County Sheriff's Office.

14 Antonio or Tony Brown. He lives in Saint Helena.

15 Christopher Capps with the Beaufort County Sheriff's
16 office.

17 Kimberly Clegg, a former hospital nurse here in
18 Beaufort.

19 Jeffery Maxwell. This looks like he's a records
20 custodian with Beaufort County.

21 Anjohnene Drake. This is -- with a nickname of AG --
22 AJ. Excuse me. She works with Beaufort County EMS.

23 Jeremiah Fraser with the Sheriff's Office.

24 Ashley Gadson from Saint Helena.

25 Jerry Griffin. He's from Beaufort.

1 Justin Jenkins from Saint Helena.

2 Dominick Lesesne from Saint Helena.

3 Jason Malphrus with the Beaufort County Sheriff's
4 Office.

5 Vic Patel from Saint Helena.

6 Jay Patel. He's the owner of the Island Plaza in Saint
7 Helena.

8 Jordan Posey from Beaufort.

9 Now, as to these individuals that I've named as
10 potential witnesses in this case, has any member of the jury
11 panel ever been related by marriage or are you related by
12 blood or have you ever had a close social, personal, or
13 business relationship with the people that I've identified
14 as possible witnesses, if that's true, please stand.

15 (Jurors respond.)

16 THE COURT: Ma'am, your name and number.

17 THE JUROR: May Case, Number 67. Brian Baird is my
18 neighbor and our children are life long friends.

19 THE COURT: I see.

20 Now, ma'am, if he were a witness in this trial, you
21 were on the jury, would that affect your ability to be fair
22 and impartial to both sides?

23 THE JUROR: No.

24 THE COURT: Thank you, ma'am. You can be seated.

25 Sir, name and number.

1 THE JUROR: 200, Robert McClary.

2 THE COURT: Yes, sir.

3 THE JUROR: I know Brian Baird. His daughter is best
4 friends with my wife, and Jordan Posey, I'm friends with her
5 brother.

6 THE COURT: All right. Now, again, if you were on the
7 jury and those people appeared as witnesses during this
8 trial, would that affect your impartiality to both sides?

9 THE JUROR: No, sir.

10 THE COURT: Thank you.

11 Sir, name and number.

12 THE JUROR: 266, Edward Sanders. I know the Patels.
13 They cash checks at their -- for the packing house.

14 THE COURT: I see.

15 Now, if they were, of course, witnesses in the case,
16 would that affect your impartiality to either side?

17 THE JUROR: I don't think so.

18 THE COURT: Thank you, sir.

19 Name and number, ma'am.

20 THE JUROR: Courtney Harmon, Juror 124. I know
21 socially Ashley Gadson. That's one of the potential
22 witnesses.

23 THE COURT: I see.

24 Now, if that person were a witness in this trial and
25 you were on the jury, would that affect your ability to be

1 fair and impartial to both sides?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, ma'am.

4 Anyone else?

5 (No response.)

6 THE COURT: Has any member of this jury panel received
7 any information such that it would have caused you to either
8 form or express an opinion concerning the issues that might
9 be involved in this trial, if you've received such
10 information, please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury panel who
13 is aware of any bias or a prejudice that you might have
14 either for or against the State or the defense in this case,
15 if you're aware of such a bias or prejudice, please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 may of been a member of the Beaufort County Grand Jury that
19 issued the indictments in this case, and I will tell you
20 that they were issued in May of 2010, if that's true, please
21 stand.

22 (No response.)

23 THE COURT: Is there any member of this jury panel who
24 is a member of or a contributor to a group which has as its
25 primary concern the promotion of law enforcement and/or

1 victim's rights?

2 These groups would include, but not be limited to,
3 Mothers Against Drunk Driving, Students Against Drunk
4 Driving, Citizens Against Violent Crime, the South Carolina
5 Sheriffs Association, the South Carolina Troopers
6 Association, or other similarly oriented organizations.

7 If you're a member of or contributor to such a group,
8 please stand.

9 (Juror responds.)

10 THE COURT: Yes, ma'am, I need your name and number.

11 THE JUROR: Lynn Davidson, 67.

12 THE COURT: Yes, ma'am.

13 THE JUROR: I'm a member of MADD and the Sheriffs
14 Association.

15 THE COURT: All right. Now, would those memberships
16 affect your ability to---

17 THE JUROR: No.

18 THE COURT: ---be fair and impartial in the trial?

19 THE JUROR: No.

20 THE COURT: Thank you, ma'am. You can be seated.
21 Anyone else?

22 (No response.)

23 THE COURT: Does any member of this jury panel know of
24 any reason whatsoever why he or she should not serve as a
25 juror in this case with particular emphasis being placed

1 upon your ability to be both fair and impartial to both the
2 State and the defense?

3 If you are aware of such a reason, please stand.

4 (No response.)

5 THE COURT: State propose any additional questions?

6 SOLICITOR SWANSON: No, sir.

7 THE COURT: Defense propose any additional questions?

8 MR. NEWMAN: No, Your Honor.

9 THE COURT: All right. I'll declare the remaining
10 members of the jury panel to be qualified as jurors in this
11 particular case.

12 Now, what we're going to do at this time, the clerk is
13 going to be preparing a list of potential jurors in this
14 matter. The strikes in this case are going to be five for
15 the state, ten for the defense. We'll pick two alternates.
16 State having one strike on each. Defense having two strikes
17 on each.

18 (Pause.)

19 THE COURT: What we're doing right now, there's a
20 computer program that the clerk has that makes a random
21 selection of names from your group. Once that list has been
22 compiled it will be provided to me, the court reporter, and
23 the clerk will have it, we'll begin to call names from that
24 list in the order in which the program has placed them on
25 the list. When your name is called from the list, we're

1 going to ask that you come down front right in front of the
2 clerk here and face the back doors of the courtroom. At
3 that point in time the attorneys will exercise their
4 strikes.

5 Now, if you are selected on the jury, you'll
6 immediately go to this jury box and have a seat over here to
7 my left. So if you have personal belongings with you, a
8 pocketbook, jacket, whatever you brought with you, be sure
9 you bring it with you because, if you're selected, you're
10 going to be seated over here. You won't be going back to
11 your seat.

12 (Pause.)

13 THE COURT: When I first started practicing law back in
14 1975 we picked juries by putting the names in capsules in an
15 oak barrel and we'd spin the oak barrel and we had to
16 legally have someone who was legally blind pull those
17 capsules out to pick a jury. We still have the oak barrel
18 in Spartanburg and the lady that use to pick the juries is
19 95 years old and she gives us her number every year in case
20 the computer breaks down and we can still pick a jury.

21 We might have to get the oak barrel out.

22 You may proceed.

23 (Pause.)

24 THE COURT: All right. Are you ready?

25 THE CLERK: Yes, sir.

1 THE COURT: You may proceed.

2 (WHEREUPON, a jury panel was selected at this time.)

3 THE COURT: All right. We're picking the first
4 alternate.

5 (WHEREUPON, the first alternate juror was selected at
6 this time.)

7 THE COURT: We are picking the second alternate.

8 (WHEREUPON, the second alternate juror was selected at
9 this time.)

10 THE COURT: Thank you, Madam Clerk.

11 Any objections to the jury selection process from the
12 State?

13 SOLICITOR SWANSON: None from the State, Your Honor.

14 THE COURT: Any from the defense?

15 MR. NEWMAN: Yes, sir.

16 THE COURT: All right. I'm gonna ask that you take the
17 jury panel back to the assembly room.

18 The other jury should be taken to the jury room.

19 (WHEREUPON, the following takes place outside the
20 presence of all jurors.)

21 THE BAILIFF: The jury is clear and the door's closed,
22 Your Honor.

23 THE COURT: Thank you.

24 Mr. Newman, your objections?

25 MR. NEWMAN: Thank you, Your Honor.

1 We raise a challenge to racial striking from the jury
2 under Batson versus Kentucky. The State exercised five of
3 its six, six strikes to strike three black females, a
4 Hispanic male, and a black male on this case. A person's
5 obviously a person of color and we are requiring the State
6 to present race neutral reasons for exercising their strikes
7 almost uniformly against African-Americans.

8 SOLICITOR SWANSON: I---

9 THE COURT: I do note -- let's see, of the five
10 strikes -- well, actually there were two African-Americans
11 according to my list, two Hispanic, and one Caucasian or
12 white.

13 MR. NEWMAN: The---

14 SOLICITOR SWANSON: There were---

15 MR. NEWMAN: The Hispanic female, actually, actually if
16 you observed her, she's not Hispanic. She's an
17 African-American. She may be listed wrong.

18 THE COURT: Well---

19 MR. NEWMAN: It does---

20 THE COURT: It's just what my list says.

21 MR. NEWMAN: That's what the list says, Your Honor.
22 She was the lady with the gold hair.

23 THE COURT: There are African-Hispanic people though.

24 MR. NEWMAN: There are.

25 THE COURT: Okay.

1 All right. Yes.

2 SOLICITOR SWANSON: Your Honor, if I may go through my
3 strikes and my notes on those strikes.

4 The first black female that I struck was Number 343 who
5 has some prior arrest history in 1996 for shoplifting as
6 well as 2001 for fraudulent check, which signifies possible
7 negative law enforcement contact. And also those are crimes
8 of dishonesty and I do worry about her candor with the Court
9 in answering any questions.

10 Additionally, she has a residence on Detour Road in
11 Seabrook. That is an area that I've had many incidents and
12 prosecuted many crimes where the community has not been
13 involved and come forward with what they have witnessed. So
14 that caused me pause as well and those are the reasons that
15 I struck her.

16 Number---

17 THE COURT: Next is 86.

18 SOLICITOR SWANSON: ---86, also a black female.
19 According to her rap sheet, she had a pending 2010
20 embezzlement charge from the U.S. Secret Service for theft
21 of public money.

22 Number 244 was the black female that approached Your
23 Honor and said that she ministers over at the jail, and she
24 indicated she was not comfortable with sitting. However,
25 she did not raise that again, but that is the basis for my

1 strike. I don't know what makes her uncomfortable.
2 Possibly sitting in judgment of someone that she is
3 ministered.

4 The Hispanic male, Number 215, his rap sheet indicates
5 a 2014 charge for alien removal. I'm not certain that he's
6 actually a citizen and so, therefore, I struck him.

7 My fifth strike was a Caucasian female. She had body
8 art. I don't believe Mr. Newman's objecting to that one,
9 but she had several tattoos, had also indicated before Your
10 Honor that she worked at DKNY, managed six people, and did
11 not wish to serve and you invited her to stay.

12 The last strike is a retired school teacher and he was
13 presented as an alternate and I thought he might be
14 sympathetic.

15 THE COURT: You thought what about him?

16 SOLICITOR SWANSON: I'm sorry?

17 THE COURT: You thought---

18 SOLICITOR SWANSON: I thought, as a retired school
19 teacher, he might be sympathetic. Apparently the, the last
20 holdout was, in, in the previous trial, was a school teacher
21 and so it was just something that we were considering.

22 THE COURT: All right. Yes, sir.

23 MR. NEWMAN: Okay. As to that, I would note that there
24 is a white retired school teacher from Wake County North
25 Carolina that's sitting on our jury. So I believe, on that,

1 that just patently does not work.

2 SOLICITOR SWANSON: I would---

3 MR. NEWMAN: Also I would like to---

4 THE COURT: Now just one second.

5 SOLICITOR SWANSON: Sorry.

6 MR. NEWMAN: In order to prepare my arguments on not
7 balancing on, on race neutral issues and merely pretextual
8 issues, I would like to see the solicitors entire rap sheet
9 to make sure that we are not sitting people on there that
10 had prior arrests, if that's what they want to go on, cause
11 I have nothing to compare it to.

12 THE COURT: Do you have the rap sheets?

13 SOLICITOR SWANSON: Oh, I have rap sheets for the three
14 I pulled, but if he, Mr. Newman, wants to go through all
15 these other rap sheets he's welcome to.

16 And, additionally, I should note that the retired
17 school teacher that I struck is from New York, which is
18 where the defendant is from and fled to and from there
19 several times. So that is a distinction between the two.

20 MR. NEWMAN: Yes, I don't know when he's retired from
21 Hardeeville High School, and if you're not familiar with
22 Hardeeville, it's about 30 miles from here in Jasper County.
23 He's not a retired New York school teacher. He's a retired
24 Hardeeville High School teacher.

25 SOLICITOR SWANSON: Your Honor, my notes have a New

1 York safety note on there. Let me see what my exact notes
2 were but --.

3 MR. NEWMAN: My notes say Hardeeville High School,
4 Master's Degree, and I'm pretty sure -- I know who he is
5 from being over there.

6 SOLICITOR SWANSON: Oh, his wife was a New York school
7 safety something or another and he's a retired school
8 teacher. So I mean it's, it's just the combination of the
9 two which is race and gender neutral.

10 MR. NEWMAN: Except when you balance it against our
11 white retired school teacher.

12 THE COURT: Give him the rap sheets.

13 SOLICITOR SWANSON: This is for the entire pool. These
14 are the three people that we discussed.

15 THE COURT: All right. The Court's gonna take about a
16 ten minute recess while you review those. Let, let me know
17 when you're ready.

18 MR. NEWMAN: Thank you, Your Honor. I'd like to step
19 into that little room chambers there.

20 THE COURT: We're gonna take a recess.

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

22 THE COURT: All right. I think the State has stated
23 their neutral reason for exercising the strikes.

24 I'll hear from the defense as to why they may be
25 pretextual reasons.

1 MR. NEWMAN: Well, Your Honor, as to 43, the
2 Hardeeville High School teacher versus the white high school
3 teacher, also Juror Number 24---

4 THE COURT: Just one second.

5 MR. NEWMAN: ---is a white male---

6 THE COURT: Just one second. 43 was Mr. Willis
7 Cheatham---

8 MR. NEWMAN: 43 was---

9 THE COURT: ---and he was the first -- he was picked
10 for the first alternate.

11 MR. NEWMAN: Correct. Mr. Cheatham.

12 THE COURT: That's right.

13 MR. NEWMAN: Okay. The excuse on 343 and 215 were some
14 type of vague prior---

15 THE COURT: Now, one -- let's go back to Mr. Cheatham.

16 MR. NEWMAN: Sir?

17 THE COURT: I'm not off Mr. Cheatham yet.

18 MR. NEWMAN: Oh, I'm sorry.

19 THE COURT: Okay. Mr. Cheatham, she indicated that it
20 was because he was a retired school teacher and may be
21 sympathetic and that his wife, when he stated her
22 employment, that she was retired from I think it was some
23 public safety job maybe in, in New York State, and because
24 of the defendant's connections with New York, she felt that
25 there might be some sympathy there I think is the State

1 reason.

2 Am I stating that correctly, ma'am?

3 SOLICITOR SWANSON: Yes, sir, and it -- just
4 additionally, I have wife, NYC school safety.

5 THE COURT: Okay.

6 SOLICITOR SWANSON: So some sort of school safety.

7 THE COURT: So a safety job is what I remembered, and I
8 think you've addressed the fact that there was another
9 school teacher, but didn't mention the fact that she thinks
10 there's some connection with New York.

11 MR. NEWMAN: Sure. Additionally, Your Honor, as to
12 the---

13 THE COURT: Well, are you gonna address the New York
14 issue?

15 MR. NEWMAN: The New York issue?

16 THE COURT: Yes.

17 MR. NEWMAN: One, I don't think it's gonna come out.

18 Two, New York, let's see, how many electoral votes they
19 have?

20 They are a pretty big state. New York City, and where
21 Mr. McBean is from, the Ithaca area, which is western New
22 York, have nothing to do with each other. I mean that's
23 just -- I mean this Solicitor's Office and this Sheriff's
24 office has a history of striking colored people from juries.
25 They don't want them on there and the only person---

1 THE COURT: I'm not dealing with history. I'm dealing
2 with this case.

3 MR. NEWMAN: Okay. Well, that's -- we believe, as to
4 that juror, that it's totally pretextual. He was struck
5 cause he's a black fellow.

6 THE COURT: Okay.

7 MR. NEWMAN: And as to the other two that, 240, I'm
8 sorry, 86 and 343, were allegedly struck because of arrest
9 records, Juror Number 24, who's sitting on there, has two
10 convictions, not just arrests, two convictions for DUI and
11 he's the white guy and the State saw no problem with putting
12 him on the jury, and the other two just merely had an arrest
13 report.

14 So that's pretextual. The colored people with arrest
15 records can't sit on juries. White people who have actual
16 convictions that are on the jury.

17 THE COURT: Hear from the State.

18 SOLICITOR SWANSON: Thank you, Your Honor.

19 DUIs are not crimes of dishonesty, which I did not
20 believe would affect possible candor with the Court, which
21 were my reasons behind the other two that I noted.

22 The other two black females, again, one had a pending
23 embezzlement charge from 2010 that we really don't know what
24 was going on with, and then the other black female, it was a
25 fraud check and a shoplifting, which are also crimes of

1 dishonesty. And, for the record, I would note that the
2 state did seat one black female as well as three black
3 males. It is not as if the State struck every
4 African-American person that appeared before it.

5 MR. NEWMAN: And the State did run out of strikes.
6 That was their problem.

7 SOLICITOR SWANSON: Not until the very end when I
8 struck a white female.

9 THE COURT: She ran out of strikes at Number 24, which
10 was a white female. There were two jurors seated
11 thereafter. Both were white. So she had strikes during the
12 presentation of all the black jurors.

13 MR. NEWMAN: I just -- the State is trying to classify
14 some crimes as colored crimes and some crimes as white
15 crimes. I think it's just patently thin. They don't, they
16 don't want African-Americans sitting on the jury period.
17 They used them in a racial, racial, racial manner.

18 Thank you, Your Honor.

19 THE COURT: Well, let's, let's address what she said.

20 She indicates that she sees a distinction between a DUI
21 and I think one was an embezzlement and something more --
22 she classified those as crimes involving dishonesty, which
23 she felt like was a more serious situation for jury service
24 than someone who had a DUI.

25 MR. NEWMAN: I guess white drunk drivers are less

1 dangerous than black shoplifters. That's all I can address
2 there.

3 SOLICITOR SWANSON: Only in candor to the Court I
4 believe that's true as far as just honesty in Court
5 proceedings and candor to the Court, yes, sir.

6 THE COURT: All right. My biggest concern here is the
7 alternate. Just to say because his wife is retired from a
8 job in New York that there's some connection with the
9 defendant, I find that to be a -- I don't find that to be
10 racially neutral reasons for striking. There is another
11 retired school teacher on the jury that was not stricken who
12 is not from a racially identifiable group.

13 Now, as to the distinction that she makes between the
14 various crimes, I see a difference. Quite frankly, I see
15 that where people are involved in crimes of dishonesty or
16 what we use to call moral turpitude in this state, I find
17 that to be and our Courts have long held that there are
18 distinctions between various crimes and types of crimes. So
19 I don't find those to be violative.

20 However, since I do find one violation, I am going to
21 require that we restrike the jury. We'll throw this one
22 out.

23 Let's pick another jury.

24 And as to that particular gentleman, Mr. Cheatham,
25 there would have to be some other racially neutral reason

1 for him to be stricken if he's on the jury.

2 SOLICITOR SWANSON: Yes, sir.

3 MR. NEWMAN: Your Honor, as to that, understanding your
4 ruling, it's my understanding though that only, the only one
5 you found that there was a problem was with one alternate
6 juror. I guess what I'm suggesting is that we just want to
7 re-pick the alternates. I think we can live with that.

8 THE COURT: State have any objection to us going
9 through that procedure?

10 SOLICITOR SWANSON: No objection --

11 THE COURT: All right.

12 SOLICITOR SWANSON: -- as was defense's motion.

13 THE COURT: All right. Does your client agree with
14 that?

15 MR. NEWMAN: He does, Your Honor.

16 THE COURT: I want him to say so on the record.

17 THE DEFENDANT: I do, Your Honor. I agree.

18 THE COURT: All right. Thank you.

19 All right. What we will do then, I'll ask you to pull
20 six juror names. We'll have to go -- and we'll pick both
21 alternates again. So a total of six names on a list and
22 we'll remove anyone who was picked on the regular jury from
23 the list.

24 (Pause.)

25 THE BAILIFF: As far as the jury, how do you want to

1 handle the jury?

2 THE COURT: Well, we're going to ask that you ask the
3 two alternates to step out. They're going to go back in the
4 pool. Ask the remainder to stay.

5 THE BAILIFF: Yes, sir.

6 You're going to bring the jury back or are you---

7 THE COURT: No, sir, just bring back the pool.

8 THE BAILIFF: But you're not going to bring them back?

9 THE COURT: No, leave them, leave them there.

10 THE BAILIFF: Yes, sir.

11 THE COURT: Thank you.

12 THE BAILIFF: Are you ready to bring these in?

13 THE COURT: Yes, sir.

14 (WHEREUPON, the following takes place within the
15 presence of the entire jury pool with the exception of the
16 12 jurors who were seated as jurors in this case.)

17 THE COURT: I'm going to ask the attorneys to approach.

18 (WHEREUPON, a bench conference was held at this time.)

19 THE BAILIFF: All jurors are present, Your Honor.

20 THE COURT: Thank you.

21 MR. NEWMAN: Back to two and one, correct, Your Honor?

22 THE COURT: Beg your pardon?

23 MR. NEWMAN: Two and one?

24 THE COURT: Yes, uh-huh. (Affirmative).

25 All right. Ladies and gentlemen of the jury, because

1 of a ruling we're going to re-pick the alternates. We're in
2 the process of getting the computer to catch up with what
3 we're doing. As soon as it prepares the list we're gonna go
4 through the selection of the alternates on the jury again.

5 (Pause.)

6 THE COURT: All right. We're gonna begin selection of
7 the two alternates.

8 The State has one strike. The defense will have two
9 for each alternate.

10 Madam Clerk, you may call the names.

11 (WHEREUPON, the first alternate juror was selected at
12 this time.)

13 THE COURT: All right. Picking Alternate Number Two.

14 (WHEREUPON, the second alternate juror was selected at
15 this time.)

16 THE COURT: Thank you, Madam Clerk.

17 Any objection from the State to the selection of
18 alternates?

19 SOLICITOR SWANSON: None from the State, Your Honor.

20 THE COURT: Any from the defense?

21 MR. NEWMAN: No, sir.

22 THE COURT: All right.

23 (Pause.)

24 THE COURT: And, if you would, bring the jury in
25 please.

1 THE BAILIFF: Yes, sir.

2 THE COURT: Thank you.

3 You can remain seated. You can remain seated over
4 there.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: All right. Ladies and gentlemen, you have
8 been selected as members of the jury in this case.

9 Now, I'm going to have some preliminary matters that I
10 have to go over with the attorneys. We're gonna be working
11 on exhibits and things of that nature. Hopefully it will
12 make the trial move along more smoothly once we get started.
13 But I'm gonna be doing that this afternoon, and obviously
14 that's something that you do not have to be here for.

15 So I'm going to excuse you for the remainder of the
16 day. I will ask that you return to the jury room in use for
17 this trial by 9:30 in the morning.

18 Now, while you're away from the courthouse, there's
19 some specific instructions that I want you to follow. First
20 of all, when you come back to the courtroom, you'll be
21 taking an oath concerning your responsibilities as jurors in
22 this case. That oath is that you will decide this case
23 based upon the law and the evidence presented in this
24 courtroom during the trial.

25 For that reason it would be highly improper for you to

1 try to gather any information about this case on your own
2 from any source outside of this courtroom. You will be
3 hearing a good bit about this case during the trial, and,
4 again, you are to decide the case bases solely upon the
5 evidence presented from the witness stand and the law as
6 given to you by me at the close of the trial.

7 So, so don't try to gather any information on your own
8 about this. I do not know whether this case will be
9 reported in the media. Should you see, hear, or come into
10 contact with any type of media report about this case, don't
11 listen to it. Don't watch it. Don't read it. In other
12 words, avoid any, any information that might exist in the
13 media about this case during your absence from the
14 courthouse.

15 Now, I hope you understand that we've gone to a great
16 deal of trouble to try to pick a jury that has an open mind
17 concerning the issues in this case, and I'm going to caution
18 you not to discuss this matter with anyone during your
19 absence from the courthouse. Not even among yourselves as
20 you're leaving. Don't discuss anything about this case.

21 I hope you realize that even the most innocent
22 conversation that you might have with someone about the
23 nature of the charges, the people involved in this case, or
24 the issues that might be involved in this case, if you have
25 a discussion with a third party about those things, that

1 might begin to color your decision in this case even though
2 you haven't heard the first word of testimony, you haven't
3 seen the first piece of evidence in this matter. So you
4 might begin to make up your mind just based on those
5 discussions.

6 So don't discuss this case with anyone. Don't allow
7 anyone to discuss it with you. I've already told you,
8 should someone try to contact you about your service on the
9 jury, that can potentially be a crime in this state. So if
10 anyone makes an effort to contact you about your service on
11 this jury, I would ask that you report that to the Clerk's
12 office so that we could take the appropriate action.

13 So, in a nutshell, my instructions are don't try to
14 gather any information on your own. Don't listen to, watch,
15 or read any media reports about the case. Don't discuss the
16 case with anyone. Don't allow anyone to discuss it with
17 you. And should anyone try to contact you, please report
18 that as soon as possible.

19 Now, again, I'd like for you to be in the jury room at
20 9:30 in the morning. We should be in a position to start
21 the trial of the case shortly thereafter, and, at that time,
22 you'll be taking your oath concerning your responsibilities
23 in this case.

24 I will inquire of you in the morning as to whether or
25 not you've been able to follow my instructions. I certainly

1 hope and trust that you-all will follow my instructions
2 while you're away from the courthouse.

3 So, at this point in time, for today, you're free to
4 go. Be back in the jury room at 9:30 in the morning.

5 Thank you very much.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

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

9 THE COURT: Any objection from the State concerning my
10 instructions?

11 SOLICITOR SWANSON: None, Your Honor.

12 THE COURT: Any from the defense?

13 MR. NEWMAN: Just ask for, at the appropriate time, for
14 an additional instruction. The Court read off the
15 indictments saying that my client did, like a specific
16 instruction on that indictment. Just a charging document.
17 Those are just---

18 THE COURT: Oh, I said that when I read them and I
19 certainly will do that again.

20 MR. NEWMAN: Thank you, Your Honor. I didn't hear that
21 part when you were reading them.

22 THE COURT: I told them it can not be used by a jury in
23 any fashion whatsoever in determining the guilt or innocence
24 of the defendant but I'll, I'll reiterate that later on.

25 MR. NEWMAN: Thank you, Your Honor.

1 THE COURT: That won't be a problem.

2 All right. Let's start back at 2:30 on our pretrial
3 matters. I'll see you at that time.

4 SOLICITOR SWANSON: Thank you, Your Honor.

5 THE COURT: Court's in recess.

6 MR. NEWMAN: Thank you, Your Honor.

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

8 THE COURT: All right. We're on the record in the case
9 of the State of South Carolina versus Julius Rooks-McBean.

10 I understand there's some pretrial motions I should
11 consider.

12 I'll start with the State.

13 SOLICITOR SWANSON: Thank you, Your Honor.

14 If it pleases the Court, I'd like to go ahead and take
15 up the Neil v. Biggers hearing --

16 THE COURT: Yes, sir.

17 SOLICITOR SWANSON: -- cause that's gonna require the
18 most proffered testimony.

19 THE COURT: Uh-huh. (Affirmative).

20 SOLICITOR SWANSON: My first witness will be Brian
21 Baird.

22 THE COURT: All right, sir. Come forward and be sworn.

23 MR. NEWMAN: Your Honor pleases, we, we don't need a
24 Neil versus Biggers hearing.

25 THE COURT: Okay. You're not challenging the

1 identification by lineup?

2 MR. NEWMAN: No.

3 THE COURT: Okay.

4 MR. NEWMAN: I'm gonna cross-examine the devil out of
5 it at trial.

6 THE COURT: You certainly have a right to cross-examine
7 but apparently there's not gonna be a need for a formal
8 hearing.

9 MR. NEWMAN: Okay.

10 THE COURT: So there's no objection to it being
11 admitted at all.

12 SOLICITOR SWANSON: Right.

13 THE COURT: Okay.

14 SOLICITOR SWANSON: So my understanding is that both
15 the---

16 THE COURT: Weren't there two lineups that I remember
17 from our pretrial conference?

18 SOLICITOR SWANSON: Yes, sir.

19 THE COURT: Okay. Is that true for both --

20 MR. NEWMAN: That is correct, Your Honor.

21 THE COURT: -- lineups?

22 SOLICITOR SWANSON: Thank you.

23 THE COURT: All right.

24 MR. NEWMAN: Just to be clear, my, my -- I think, and
25 based on the prior ruling, what I would argue goes to the

1 weight of the evidence. Not the admissibility.

2 THE COURT: I understand.

3 Okay.

4 MR. NEWMAN: Still gonna challenge the weight of the
5 evidence.

6 THE COURT: So it's admissible but you certainly have
7 the right to challenge the weight.

8 MR. NEWMAN: Correct.

9 THE COURT: I understand.

10 MR. NEWMAN: Thank you, Your Honor.

11 THE COURT: Okay.

12 SOLICITOR SWANSON: Yes, sir.

13 THE COURT: Thank you.

14 SOLICITOR SWANSON: Thank you.

15 The other issue that we can move on to is -- and I
16 wasn't sure if this would require proffered testimony from
17 Jay Patel as well as Tony Brown, the eye witnesses, and it's
18 the third party guilt issue as to the fingerprint.

19 There was previous sworn testimony by Jeremiah Fraser
20 we well as Corporal Capps, two sworn officers, Jay Patel,
21 the victim, as well as his employee, Tony Brown, that the
22 man that came in here and did this and the man in the video
23 was not Dominick Lesesne. If that's something that the
24 defense can stipulate to, we can, we can save the third
25 party guilt argument for later but it just goes to---

1 attorney.

2 I'm gonna find that he invoked his right to counsel and
3 I'm going to exclude the statement.

4 SOLICITOR SWANSON: Thank you, Your Honor.

5 Moving onto the next matter, the issue of judicial
6 estoppel, which was briefly discussed in chambers.

7 THE COURT: Yes, ma'am.

8 SOLICITOR SWANSON: Just for the record, it is my
9 understanding that Mr. Newman moved, at some point prior to
10 the second trial in this case, to limit the State's
11 presentation of the facts to the original witnesses and only
12 the facts that were brought out in the original trial.

13 Case law is very clear on the matter. I've got a
14 Supreme Court---

15 THE COURT: well, let's check, Mr. Newman.

16 Is that still your position?

17 MR. NEWMAN: It's, it's my position, judge, that it's
18 already been ruled on by another judge in a pretrial matter.
19 It is a interlocutory, in other words, I would not be able
20 to appeal that.

21 My basic ground on the judicial estoppel was on double
22 jeopardy grounds founded in the Fifth Amendment or parallel
23 amendments in our State Constitution that, under United
24 State versus Green, it says, you know, at trial, the State's
25 got to marshal and muster all the evidence it has. We also

1 get a mistrial, mistrial. Now we're gonna change gears, add
2 witnesses, bring in other evidence that we didn't have, and
3 Green talks about on double jeopardy grounds.

4 You know, you don't get to start from square one. The
5 State doesn't get to, to, all of a sudden -- well, like they
6 tried to get my guy's DNA. Judge Kinard ruled that was a
7 jeopardy issue, that you had him in jail for 29 months, you
8 could of done it anytime you wanted, you chose to try it
9 without it, it's out. Not letting or the Schmerber's out or
10 whatever.

11 So that, that -- my argument is more a, a jeopardy
12 argument than it is a---

13 THE COURT: Now, Judge Mullen ruled on this earlier?

14 MR. NEWMAN: She has and she had denied my motion.
15 It's interlocutory. I can't appeal it cause I might win
16 this case and don't have to. But I, I think that I am stuck
17 with Judge Mullen's order and I'm not seeking to raise it
18 here. Just reiterating, I am not waiving that argument.

19 THE COURT: Okay. I understand that but---

20 SOLICITOR SWANSON: And just---

21 THE COURT: Mullen has ruled on this.

22 SOLICITOR SWANSON: Yes, sir.

23 THE COURT: I will follow that ruling.

24 SOLICITOR SWANSON: Thank you, Your Honor.

25 And just for the record, the State would point to State

1 v. Mills, 281 S.C. 60, which stands for if, if the jury is
2 hung and a mistrial occurs, it's not double jeopardy and
3 it's the same as if no trial took place. I can make the
4 order denying the defendant's motion a part of the record at
5 this time --

6 THE COURT: Please do.

7 SOLICITOR SWANSON: -- which would be Court's Exhibit
8 No. 3.

9 THE COURT: All right.

10 (WHEREUPON, the order was marked as Court's Exhibit No.
11 3 for identification purposes only at this time.)

12 THE COURT: And will note, Mr. Newman, that you have
13 raised that question again and are preserving your right
14 to---

15 MR. NEWMAN: Thank you, Your Honor.

16 THE COURT: ---bring it up later.

17 SOLICITOR SWANSON: Thank you, Your Honor.

18 That brings us to the motion in limine regarding third
19 party guilt evidence if we'd like to argue that now.

20 THE COURT: Sure.

21 SOLICITOR SWANSON: There is a fingerprint that is
22 taken from the door of a very busy gas station. The
23 fingerprint -- actually there were four fingerprints lifted.
24 Only one was usable. The one that was usable came back to
25 Dominick Lesesne, local guy who, as testified to previously,

1 has -- he is very tall, just like the defendant, darker
2 complected, has always worn dreadlocks.

3 Both the store owner, the eye witness, and two sworn
4 law enforcement officers testified that that was not the
5 person in the video, that was not the person that committed
6 this crime, and, in fact, he was a regular of the Island
7 Plaza. Mr. Jay Patel has actually even employed his sister,
8 Quadillion Lesesne. Mr. Patel has been the owner of that
9 store since 2000. So he knows a lot of the locals is my
10 point.

11 I think, at this point, you know, the fingerprint that
12 comes back to Dominick Lesesne in a public place, a place
13 that he has a right to be, only raises a mere suspicion that
14 it could have been him, and it actually, if you look at the
15 previous trial testimony, I don't think it even raises that.
16 But, under the third party guilt law, it's not admissible.

17 Our Supreme Court has imposed extremely strict
18 limitations on the admissibility of third party guilt, and I
19 am referring to State v. Mansfield, which is a Court of
20 Appeals case from the Year 2000. Evidence offered by a
21 defendant as to the commission of the crime by another
22 person is limited to facts which are inconsistent with the
23 defendant's guilt.

24 well, somebody's fingerprint being on the door of a
25 business is certainly not inconsistent with the defendant's

1 guilt here. This is a business. Even though Mr. Newman
2 would like to believe that the door had been cleaned, it had
3 not, and, in fact, and I can show pictures to Your Honor, it
4 has bars on the inside that protects the actual windows. So
5 who knows how long that fingerprint could of been there.
6 There was nothing else to link Dominick Lesesne.

7 And so my point is that absolutely does not serve to
8 exculpate the defendant here. I don't think it's allowable
9 raising just a mere suspicion, and it's not a fact that's
10 inconsistent with the defendant's guilt.

11 THE COURT: All right. Let me hear from Mr. Newman.

12 MR. NEWMAN: Please the Court, Your Honor.

13 It's a question of Dominick Lesesne, whether the
14 detective was just, Fraser, was just swagging it or it
15 sounded good at trial, actually testified that he believed
16 Dominick Lesesne was in Charleston, South Carolina and had
17 not been to this store.

18 What, what you're gonna see, from the photographs, is
19 this, this is a still shot of somebody. The detectives both
20 testified that they, after viewing the video carefully, they
21 can't say that it's my client and they can't say who it is,
22 but, for some reason, they can magically say who it's not
23 and they all say it's not Dominick Lesesne.

24 But you'll notice this, this left-hand right here. The
25 perpetrator, you don't see it in pictures, is right-handed

1 apparently or is holding the gun in his right-hand. So you
2 see him approach this door. This is how he gets out of the
3 store and this is a shot from a second or two later. He
4 takes the left-hand and pushes that door open, a couple
5 shots, you know, he gets a little further out of the door,
6 but clearly the left hand's on the door and takes off, they
7 think, in that direction.

8 The detectives at the scene were very excited and
9 immediately, after viewing this video, in processing the
10 crime scene, they focus in on this particular area of the
11 door where the suspect had placed his hand and they get it.
12 They get a couple of other prints here. It could be from
13 the same person or not but they were unusable, but they get
14 this nice print from the exact location where you see the
15 suspect pushing the door with his left-hand and---

16 THE COURT: Can you pass me up the one that shows him
17 pushing the door?

18 (Mr. Newman complies.)

19 THE COURT: Thank you.

20 All right. Go ahead.

21 MR. NEWMAN: Okay. And, as I said, the detectives
22 cordoned off that area of the door and dusted for
23 fingerprints. A fingerprint is lifted and it's lifted
24 matching the left ring finger of Dominick Lesesne.

25 Now, Mr. Lesesne, contrary to what the witnesses say,

1 maybe witnesses have motives for lying or maybe they're
2 scared, Mr. Lesesne is 6-foot 6 tall. My client is 6-foot 6
3 tall. If you go to the CDC, Department of Statistics,
4 believe it or not, people that are over 6-foot 6 tall in
5 America, there's only about 280,000 of them in the whole
6 country. Why they keep those kind of stats I don't know,
7 but they break them down. Over 7-foot 2 there's only 20.

8 However, we're not matching it to, you know, a little
9 short fat guy like me. They have the same weight, 180 to
10 185 pounds, and we think that that is more of just hey,
11 well, word on the street was maybe some other dude did it
12 or, or something like that. We've got an, an exact
13 ten-point match of a fingerprint on a door in an exact spot
14 with the correct hand. That's more than just kind of mere
15 coincidence that it's just there.

16 THE COURT: You know, there's a case out of
17 Spartanburg, it wasn't my case, but a fellow was accused of
18 breaking into the community center and taking -- one TV got
19 gone hanging on the wall.

20 MR. NEWMAN: Left a drop of blood in a common area.

21 THE COURT: And a fingerprint.

22 MR. NEWMAN: And a fingerprint. I know the case.

23 THE COURT: Yeah, and the Supreme Court said that
24 wasn't sufficient evidence to even send to a jury.

25 MR. NEWMAN: That's what they said, but this, this is

1 part of my case---

2 THE COURT: Because they said he frequented that---

3 MR. NEWMAN: The common area.

4 THE COURT: ---that, that common area.

5 MR. NEWMAN: And nothing had cordoned it off.

6 THE COURT: Yeah.

7 MR. NEWMAN: Yeah.

8 THE COURT: And here we got a door that people go in
9 and out of all the time.

10 MR. NEWMAN: But they, but they find no other
11 fingerprints on that door.

12 THE COURT: Well, no, they found four.

13 MR. NEWMAN: In the same general area unusable that we
14 can assume---

15 THE COURT: So they---

16 MR. NEWMAN: ---maybe from the same hand.

17 THE COURT: Who knows.

18 MR. NEWMAN: They didn't do any DNA testing. The, the
19 rule on third, third party guilt, any case before 2006 is,
20 is no good under a case called Holmes versus South Carolina,
21 another U.S.---

22 THE COURT: U.S. Supreme Court.

23 MR. NEWMAN: U.S. Supreme Court, a unanimous opinion.
24 In that case the evidence was just the opposite in this
25 case. We're gonna talk about DNA matching somebody else

1 too, but we've got a, a print -- now, do you think that I
2 would have a very good defense if this print came back to
3 Julius Rooks-McBean because they say he's a frequent
4 customer of the store too?

5 I doubt it. That's coming into evidence I would think
6 as pretty good evidence of guilt. In Holmes---

7 THE COURT: It wasn't in that Spartanburg case.

8 MR. NEWMAN: I understand that but I'll have to go back
9 and reread that case and that's on a different---

10 THE COURT: I read it about ten times. I couldn't
11 believe the result.

12 Anyway.

13 MR. NEWMAN: Anyway, irrespective of that, that's not
14 the issue in this. The issue in this is what was said under
15 Holmes versus South Carolina is defendant's full and fair
16 opportunity to present evidence to a jury. In that case
17 they -- South Carolina's third party guilt -- our Supreme
18 Court ruled well, you know what, we got a DNA match on the
19 suspect, they might of even had a fingerprint on the
20 suspect, and you want to put in these three guys to say
21 another guy confessed to doing it and "word on the street"
22 and the Supreme Court upheld that and said that's just some
23 kind of vague third party guilty, we're not letting it in.

24 The South Carolina -- the United States Supreme Court,
25 in a unanimous opinion, overruled that because of a

1 defendant's right to present a full and fair presentation to
2 the jury of what the evidence is.

3 THE COURT: It didn't overrule excluding third party
4 guilt evidence.

5 MR. NEWMAN: No, no, they didn't, but they, they came
6 pretty close to overruling South Carolina's version of it.

7 THE COURT: Well, they certainly -- they weren't
8 impressed with it, but they certainly didn't say it all
9 comes in---

10 MR. NEWMAN: I understand that, Your Honor.

11 THE COURT: ---to use in a---

12 MR. NEWMAN: But there's also the case of Kyles versus
13 Whitley where a defendant is allowed to impeach the State's
14 case. Knowing that they had this fingerprint match, and
15 we'll talk about the DNA match, they don't bother to ever
16 interview Dominick Lesesne. They don't bother ever to
17 interview -- talk to any other witnesses about it. They
18 just ignore it because they've already got a confirmation
19 bias and that bias is that this guy did it.

20 So why are they gonna look at evidence that messes us
21 up?

22 This doesn't go with our theory of the case. This is
23 just throwing a Bug a Boo in it and that's exactly why a
24 defendant is allowed to present a full and fair trial --
25 case in front of a jury under the standards of due process.

1 THE COURT: This, this print, was it inside of the---

2 MR. NEWMAN: It was inside of the door, yes, sir.

3 THE COURT: Inside the bars?

4 MR. NEWMAN: I'm assuming. They said they got it off
5 the glass.

6 THE COURT: Yeah.

7 Okay.

8 MR. NEWMAN: And the bars---

9 THE COURT: See, I've never been there.

10 MR. NEWMAN: They're big enough to put your hands
11 through.

12 THE COURT: Yeah, I've never been to this store. So
13 I've never looked at this, but I think it looks like the
14 bars are maybe an inch, inch and a half on the inside of the
15 glass.

16 SOLICITOR SWANSON: That's correct.

17 THE COURT: Am I correct?

18 MR. NEWMAN: Yeah, maybe a half inch or so.

19 THE COURT: Yeah.

20 So this print would of been inside of those bars?

21 SOLICITOR SWANSON: That's correct.

22 MR. NEWMAN: Yeah, if they got it off the glass. I
23 don't know if they got it off the glass. I believe I read
24 in Wilson's report that it or in Capps -- Capps was the one
25 that actually lifted the prints.

1 SOLICITOR SWANSON: It was Capps that lifted it from
2 just one portion of the glass that is contained within the
3 bars that are on the inside of the door.

4 THE COURT: Okay. All right.

5 MR. NEWMAN: And, on examination, the reason he did
6 that area, I'm not bringing it, he's the one that said well,
7 we saw the guy pushing the door open. That's why we went to
8 that area.

9 THE COURT: That's what I was looking at to see if I
10 could determine where he put his hand exactly and I can't, I
11 can't from these two pictures.

12 MR. NEWMAN: Right. Well---

13 THE COURT: It's on the door somewhere but I can't---

14 MR. NEWMAN: Yes, sir, and this is---

15 THE COURT: I can't tell if he grabs the bars or if he
16 pushed on the glass.

17 MR. NEWMAN: Well, the---

18 THE COURT: This one right here he's kind of got his
19 arm bent. It looks like he's almost pushing the bar.

20 MR. NEWMAN: Well, having to push the door open.

21 THE COURT: Uh-huh. (Affirmative.)

22 MR. NEWMAN: And, at any rate, those are all fine
23 points that a jury might say, all right, Newman, you're full
24 of bugs. But I still think that a, a -- I mean, as I said,
25 if that print had come back to a little fat guy, little fat

1 white guy like me, then maybe there's some problems in that,
2 but it comes to a guy that matches the general description
3 of the suspect.

4 THE COURT: Any other evidence that puts the guy that
5 came back to at or near the scene at the time it occurred?

6 MR. NEWMAN: I don't know. The cops never, never
7 investigated it. To this day they hadn't investigated it.

8 THE COURT: And I'm not trying to shift the burden to
9 your client. I'm not going to do that, but I just wondered
10 if you were aware, and from the discovery you received, from
11 anything that there -- any evidence that put the guy came
12 back to at or near the scene.

13 MR. NEWMAN: Yeah, the fingerprint.

14 THE COURT: That's it.

15 well, you know, that's true but we don't know when the
16 fingerprint was put there.

17 MR. NEWMAN: Well, we don't but we also -- why didn't
18 the cops -- why did they focus on that one area of the door
19 right there?

20 THE COURT: Not---

21 MR. NEWMAN: Because you got a 6-foot 6
22 African-American male at 180 pounds pushing it open with his
23 left hand and they mentioned finger number nine, which is
24 the left ring finger.

25 THE COURT: Okay. Yes, ma'am.

1 SOLICITOR SWANSON: Thank you, Your Honor.

2 Just to respond to Holmes v. South Carolina, the
3 problem that the Supreme Court had with South Carolina's
4 analysis was that their focus was on the strength of the
5 prosecution's case instead of the analysis that I spoke
6 about earlier, which is evidence tending to show the
7 commission by another person of the crime may be introduced
8 by an accused when it is inconsistent with and raises a
9 reasonable doubt of his own guilt, but, you know, mostly
10 they're remote and lack such a connection with the crime
11 that they are excluded and that's still the law. So I don't
12 want Mr. Newman to confuse matters on that.

13 Additionally---

14 THE COURT: I'm gonna go back and read that case. I --
15 it was very important in a death penalty case I did a couple
16 years ago, and that's the reason I was familiar with the
17 case and I haven't really read it in detail since then. But
18 I'm gonna go back and read it again and be sure.

19 SOLICITOR SWANSON: Yes, sir.

20 May I provide the case cite?

21 THE COURT: Yeah, that'd be fine. I'd appreciate that.

22 SOLICITOR SWANSON: 547 U.S. 319 and that's Holmes v.
23 South Carolina, 2006 Supreme Court case.

24 THE COURT: Uh-huh. (Affirmative).

25 SOLICITOR SWANSON: And, judge, if I may, I'm going to

1 show you two pictures. Mr. Rooks-McBean, who's also seated
2 in front of you, and Mr. Dominick Lesesne, our local guy
3 whose fingerprint is on the Island Plaza which is situated
4 in the middle of Forgmere and frequented by just about
5 everyone that lives on the island.

6 THE COURT: Now, is that how they looked at that time?

7 SOLICITOR SWANSON: Yes, sir.

8 THE COURT: Both tall guys.

9 SOLICITOR SWANSON: Mr. Lesesne had dreads, has had
10 dreads in 2009 and beyond.

11 THE COURT: Okay. These are your pictures. Give that
12 back.

13 MR. NEWMAN: She's doing a real good job of defending
14 Dominick with a fingerprint.

15 I just ask the Court this, if that fingerprint came
16 back to Mr. McBean, would you let it in?

17 We don't know when it was put there, judge.

18 THE COURT: Well, I---

19 MR. NEWMAN: It's in a common area.

20 THE COURT: If it, you know, given the case in
21 Spartanburg, it might come in but it might not be sufficient
22 to get your client to a jury.

23 MR. NEWMAN: Well, where we're in a different position
24 here is we're, we're not arguing---

25 THE COURT: Now, now let me finish answering your

1 question.

2 MR. NEWMAN: Yes, sir.

3 THE COURT: If there were evidence from two eye
4 witnesses who identified him as the perpetrator and the
5 fingerprint showed up, now we're -- it depends on the
6 strength of the circumstantial evidence is what the case in
7 Spartanburg said, and a -- and they said a fingerprint
8 alone, where someone is known to be in or about that, that
9 location, is not sufficient and I think there's blood --
10 they found his blood too and that was sufficient either.

11 MR. NEWMAN: I understand that, Your Honor. That's
12 not -- we're not trying Dominick Lesesne. What we're doing
13 is putting up evidence which impeaches an investigation.

14 THE COURT: Well, again---

15 MR. NEWMAN: The cops thought that fingerprinting was
16 important enough---

17 THE COURT: The focus here---

18 MR. NEWMAN: ---and---

19 THE COURT: The focus here is suppose to be on whether
20 or not the evidence is inconsistent with your client's
21 guilt.

22 MR. NEWMAN: That's correct.

23 THE COURT: And I'm not suppose to focus on the
24 strength of the State's case. I understand all that. And
25 so I'm trying to determine if that fingerprint from a person

1 who's known to go into that store from time to time is
2 inconsistent with your client's guilt.

3 MR. NEWMAN: But since they didn't investigate it, we
4 don't know the last time he went in that store. Detective
5 Fraser actually gave testimony he believed that Dominick
6 Lesesne was living in Charleston or going to college in
7 Charleston---

8 THE COURT: Well, I---

9 MR. NEWMAN: ---at the time.

10 THE COURT: What I've been told, and I haven't tried
11 this case, you have, is that Mr. Patel identified -- has
12 identified that individual as somebody who frequented his
13 store. What I heard in the argument, and maybe it was
14 wrong, even his family member worked there.

15 MR. NEWMAN: That's what she said. That didn't come
16 out in the last trial.

17 THE COURT: Then I---

18 MR. NEWMAN: However, we have testimony from Fraser
19 that Dominick Lesesne was in Charleston.

20 SOLICITOR SWANSON: Your Honor, that would of been two
21 and a half years after the incident when Mr. -- after
22 Mr. Rooks-McBean had fled back up to New York, been
23 extradited and awaited pretrial detention for two years. So
24 I believe that's when Investigator Fraser was answering that
25 question.

1 MR. NEWMAN: I disagree.

2 Now, I have other cases that I ask the Court to look at
3 on meaningful opportunity to present a defense, and the key
4 ones are Kyles versus Whitley and I can get you a cite on
5 that. That is where defendants are allowed to impeach
6 investigations, why investigators did not do certain things,
7 why they did not put up certain witnesses, and that, that is
8 fair game.

9 THE COURT: Well, I, I don't know that I would stop you
10 from doing that to an investigator.

11 MR. NEWMAN: And the -- also Crane versus Kentucky and
12 Chambers versus Mississippi, 410 U.S. 284. Chambers,
13 another 1973 opinion, but in another unanimous opinion I
14 believe by the Supreme Court is on rules of evidence can not
15 be set or State Court rules can not be set to handcuff a
16 defendant in presenting a meaningful defense.

17 In the Chambers case, Chambers called a witness to the
18 stand that -- the defendant himself called a witness to the
19 stand that had allegedly confessed to the crime that the
20 client was on trial for and the witness denied making that
21 statement. The defense sought to impeach their witness
22 through a prior written statement or prior inconsistent
23 statement.

24 Mississippi hearsay rules did not recognize the
25 statement against penal interest as a hearsay exception, and

1 they followed what we use to follow, the common law voucher
2 rule, that the defense could not put up a witness then seek
3 to impeach their own witness. They disallowed that
4 statement and the Supreme Court reversed and said well, that
5 may be fine procedural law in Rules of Court. It violated
6 Chambers right to present a full defense by allowing a
7 confession from a third party to come in, and I believe
8 Crane versus Kentucky at 476 683 (sic) string cites a number
9 of cases in which state rules and third party guilt and
10 these types have handcuffed defendants, but have been found
11 constitutional infirmed on the right to present a meaningful
12 defense.

13 Now, we also have a second issue. I don't know if the
14 State's moved in limine for the DNA.

15 SOLICITOR SWANSON: Yes, Your Honor. That's my next
16 issue.

17 MR. NEWMAN: All right. The State is gonna flip over
18 backwards to try and link Mr. McBean to a silver or gray or
19 blue, depending on what witness you talk to, Lexus ES300
20 automobile, and they believed it was the getaway car,
21 although nobody saw the car, whether it was coming or going.

22 They tracked the car down a few days later and they're
23 all excited because there's an item in the car, this -- that
24 looks very much like this black knit cap that Capps
25 testified to, and you can see it better when you're actually

1 seeing the video. You can tell the person has on a black
2 pull down knit cap.

3 well, in 2015, for whatever reason, they decided to do
4 some testing on the DNA that they had from the black knit
5 cap that was found in the Lexus that they're gonna try and
6 link to Mr. McBean, and it matches a gentleman named Byron
7 Moultrie. Byron Moultrie is from Saint Helenas Island.
8 Byron Moultrie is 6-foot 4 time -- 6-foot 4, 180,
9 185 pounds, matching the description and the DNA in the car
10 they think was used in the robbery, and the hat they think
11 was used in the robbery, and Mr. Moultrie has a arrest
12 record for armed robbery and attempted murder.

13 He had an excellent lawyer and beat those charges, but
14 he has an arrest record for it, and that links yet another
15 person, 6-foot 4, very tall with the same build, to a
16 vehicle they believed was used in the robbery.

17 SOLICITOR SWANSON: Your Honor, our position is not
18 that the vehicle was used in the robbery. It's just that
19 the employees at the convenience store identified
20 Mr. Rooks-McBean as someone that had been there previously
21 multiple times in a Lexus with New York tags and referred to
22 him as the New York guy.

23 He was not seen fleeing in that vehicle. He actually
24 fled on foot within an accomplice who was either white,
25 Hispanic, or Puerto Rican is what the identification was.

1 Nobody could pick out that codefendant in a photo lineup.
2 But we're still dealing with something that's not
3 inconsistent with the defendant's guilt.

4 There is no testimony that this was the getaway car.
5 There is no testimony or evidence that this is the same hat
6 that was used by the perpetrator to cover his head when he
7 went into the Island Plaza on December 23rd of 2009.

8 The car was not searched or found until six days after
9 the incident. So who knows who had been in and out of that
10 car. As you heard in the defendant's own interview, he said
11 he didn't know what happened to that car. He said oh, I
12 don't know who, you know, did David give Ashley Gadson that
13 car. I don't know. I don't know what happened to it. So I
14 mean the car had been through a number of people.

15 The car, for my position, is simply used as, you know,
16 a way for that's why the employees remembered seeing
17 Mr. Rooks-McBean.

18 Additionally, I would like to note that there was no
19 further testing done in 2015. What came back was just a
20 state index -- a state DNA index system hit on that because,
21 whenever they establish a profile at the DNA lab, they enter
22 it into the system and it just came back as a hit because I
23 guess Byron Moultrie has been entered into the system since
24 then.

25 Your Honor, I think it would be patently unfair for the

1 defense to use this DNA you know---

2 THE COURT: Well, let me, let me ask it.

3 Is it true that there's no evidence that the car was
4 used in the robbery?

5 MR. NEWMAN: They -- what the State's -- I believe
6 that's true. What the State wants to do is somehow link
7 this vehicle to this defendant. However, they keep talking
8 about third party guilt. I keep talking about being able to
9 impeach a lazy investigation.

10 They took this knit cap.

11 Why did they take the knit cap?

12 They took the knit cap because they believe it had
13 something to do with it.

14 Why did they test the knit cap?

15 Why didn't they swab it?

16 And when they get a DNA on it that comes back to
17 somebody else other than my guy, it's not evidence of third
18 party guilt. It's evidence they never went and questioned
19 Byron Moultrie. Never talked to him. You know, they never
20 talked to Lesesne.

21 This is impeaching the investigation. It's not
22 necessarily evidence of third party guilt. It's evidence --
23 they have evidence that, that could take them in different
24 directions and they never did anything.

25 They got a confirmation bias and went with that story

1 and ignored clear hard scientific evidence that they could
2 of followed up, failed to do that, and I think we ought to
3 be allowed to point that out to the jury in all fairness.

4 THE COURT: Well---

5 MR. NEWMAN: Do you want the jury -- I mean there's --
6 it's out there.

7 THE COURT: Well, I don't know what -- what we're
8 looking at is a nondescript black hat. There's -- cap.
9 There's probably 10 million of those in the world.

10 I think, from what I just saw, I'm looking at the
11 pictures, it didn't have any logos on it or any other
12 identification -- identifying marks?

13 MR. NEWMAN: It's just described as a black knit cap.
14 It was found in the trunk with some other items of like a --
15 I think a bandanna, some -- a shaving kit or some kind of
16 toiletry kit.

17 THE COURT: So it was found in the back, back of a
18 Lexus?

19 MR. NEWMAN: Found in the trunk.

20 THE COURT: Okay. Trunk of a Lexus.

21 MR. NEWMAN: Correct.

22 THE COURT: That there's nothing indicating that Lexus
23 was used in the robbery.

24 MR. NEWMAN: Correct, but they want to put evidence in
25 linking that Lexus to my client, and we can link it to

1 somebody scientifically.

2 THE COURT: Again, I -- it wasn't at the scene of the
3 acts -- of the incident. So I'm not sure what, what purpose
4 would that come in for other than how those people
5 identified him as someone who --?

6 SOLICITOR SWANSON: How they identified him and it also
7 places Mr. Rooks-McBean in the area. Unless he wants to
8 admit to that, which was some of the testimony I was seeking
9 to get in through the, the Denno hearing, however
10 understanding that that's not allowed---

11 THE COURT: Yeah, that's not gonna come in.

12 SOLICITOR SWANSON: ---but I do have to place him in
13 the area, and that's what the traffic stop does, in the very
14 same car that all the store employees recognized him in as a
15 routine customer.

16 THE COURT: My last question cause I don't know much
17 about this situation.

18 The DNA that was recovered from the hat, were there
19 other DNAs recovered that there was not a hit on?

20 In other words, the hat can be worn by more than one
21 person. I don't know how many profiles they developed out
22 of that.

23 SOLICITOR SWANSON: One male DNA profile was obtained
24 from a hair that was recovered from the hat, and then that
25 profile was entered into CODIS back in 2012, and then the

1 hit just came back in 2015.

2 Now, we could not ever get Mr. Rooks-McBean's profile
3 because they fought that. So I don't think it's fair to
4 even talk about the DNA and talk about the failure, you
5 know, to, to link any of the DNA or compare the DNA in this
6 case because there were other profiles obtained from the
7 actual car but we were prevented from doing so.

8 MR. NEWMAN: They were prevented from doing so at their
9 own fault. The solicitor that tried that case decided she
10 wasn't gonna use any DNA and Judge Kinard then held her feet
11 to the fire that well, if you -- that was your tactic then,
12 and you didn't use it then, I'm not gonna let you use it in
13 the future.

14 Okay. We've got it excluded. That doesn't mean it's
15 fair game to tell a jury that there's none of
16 Mr. Rooks-McBean DNA.

17 THE COURT: well, let me ask you---

18 MR. NEWMAN: He doesn't have to play by our rules
19 saying I'll give it to you.

20 THE COURT: Let me ask you something, Mr. Newman.

21 If you make an issue in the case their efforts to fully
22 investigate, why doesn't that open the door?

23 MR. NEWMAN: It doesn't open the door because they
24 could of done that. If they'd of done that the first time,
25 as Judge Kinard said, he could of given them a Schmerber

1 order. They chose a path to go down and they got stuck with
2 it. That's their fault.

3 THE COURT: well---

4 MR. NEWMAN: We don't have to play by the State's
5 rules. I mean certainly---

6 THE COURT: I didn't say you did, but if you're gonna
7 get into their efforts to investigate, why isn't that one of
8 their efforts to investigate?

9 MR. NEWMAN: Because they had a chance to do that.
10 That's another thing they didn't do. They had a chance to
11 get his DNA and they blew it.

12 THE COURT: I'm not arguing that point with you.

13 I'm just saying that if you get into their efforts to
14 investigate, aren't they allowed to tell all their efforts
15 to investigate?

16 MR. NEWMAN: They're not able to tell that evidence was
17 suppressed because it was suppressed because they never
18 investigated it in the first place. Now they're blocking me
19 by saying well, you know, you get, you get a judge to throw
20 it out, you won't give us some DNA, so we should be able to
21 tell a jury that. They could of done that in the first
22 place and they didn't do it and they voluntarily chose not
23 to do it, and that's part of what they didn't investigate.

24 They put this man in jail for 29 months. All they got
25 to do is say hey, you know, we want this. You can

1 voluntarily give it to us or we're gonna do a Schmerber, and
2 after the trial, that's the first time, a couple months
3 after the trial and before the next trial was scheduled to
4 go when we got hit with a Schmerber motion and the judge
5 said too late.

6 So that's their fault. That's another lazy part to
7 impeach the investigation. They had him for 29 months and
8 never did it.

9 THE COURT: I'm not sure you're gonna be able to go
10 down that road and not have that road fully explored.

11 MR. NEWMAN: Sir?

12 THE COURT: I'm not sure you're gonna be able to go
13 down that road and not have that road fully discussed.

14 MR. NEWMAN: It's a, it's a---

15 THE COURT: Bring me a case that says they can't do it
16 just because it got excluded if you get into their efforts
17 to investigate. I mean you're the one that wants to argue
18 that to the jury, which is fine. I'm not telling you you
19 can't. I'm telling you you can. But if you go down that
20 road, I don't know why that doesn't allow them to say well,
21 here's the efforts we made to investigate it.

22 SOLICITOR SWANSON: It would be misleading to the jury
23 otherwise.

24 MR. NEWMAN: Well, that's the same thing, if you, you
25 know, you suppress some drugs on a Constitutional violation,

1 and then a defendant wants to say you didn't find any drugs
2 on me, and do you want to go tell the jury well, we had
3 drugs, the judge just said we couldn't use them?

4 You can't do that.

5 THE COURT: No, that's not what they would say. They
6 would just say they made an effort to do other testing and
7 they were stopped.

8 MR. NEWMAN: By a legal right of a defendant. That's
9 the same thing as saying the defendant, if you suppress a
10 statement, and say well, the defendant did make statements,
11 but he, he---

12 THE COURT: Well, I've never had a lawyer come into
13 Court, if I've suppressed a statement, and then start
14 arguing to the jury well, they didn't try to get any
15 statements in this case.

16 MR. NEWMAN: That's, that's a fair argument.

17 THE COURT: You're opening, you're opening the door
18 then. I'm not.

19 MR. NEWMAN: I don't believe so, Your Honor. That's --
20 you can't open the door -- Medora versus Ohio says that you
21 can't open a door by exercising a Constitutional right.

22 THE COURT: But you're arguing -- I'm talking about
23 your argument to the jury. I'm not talking about him
24 exercising his Constitutional right. That -- the act of
25 suppressing it does not open the door. I agree with you.

1 MR. NEWMAN: And that's, that's exactly right cause DNA
2 was suppressed and not open the door.

3 THE COURT: But then you're arguing that to the jury
4 just might.

5 MR. NEWMAN: Well---

6 THE COURT: You won that battle. I'm not, I'm not -- I
7 don't begrudge you that. Certainly not gonna mention it to
8 the jury. Then if you use that as an argument against the
9 State I'll have to look at that.

10 MR. NEWMAN: Well, I don't know---

11 THE COURT: I've got time to look at it between now and
12 tomorrow.

13 MR. NEWMAN: Yes, sir, and I don't know how or what you
14 could do about that cause if I don't put up a case I get the
15 last argument.

16 THE COURT: Again, I'll look into it but just see --
17 I've never, I've never -- it's unusual to me to have defense
18 counsel, who wins a suppression hearing, then go to the jury
19 and say they, they didn't do a full job because they didn't
20 do what I kept them from doing.

21 MR. NEWMAN: And that doesn't have anything to do---

22 THE COURT: I just never had that -- I've been doing
23 this a while and that hadn't happened before. It's
24 interesting.

25 MR. NEWMAN: Well, I'm not saying that they didn't do

1 it with Mr. McBean. What I'm saying is they never
2 interviewed, talked to, looked at 6-foot 4 185 pound dark
3 complected Byron Moultrie who lives on Saint Helenas Island.

4 THE COURT: I, I don't have a problem with you saying
5 that.

6 MR. NEWMAN: Oh, if I can say that then I got no
7 problems.

8 THE COURT: I don't have any -- but I'm saying that---

9 MR. NEWMAN: If I'm allowed---

10 THE COURT: You're talking about something else.
11 You're changing the factual situation on me.

12 MR. NEWMAN: No, sir, if I am allowed, if I'm allowed
13 to say that, that they didn't bother to interview 6-foot 4
14 Byron Moultrie, when they got physical evidence on him---

15 THE COURT: Oh, we're back on the fingerprint now?

16 MR. NEWMAN: I don't even have to say that. Physical
17 evidence. We got physical evidence on---

18 SOLICITOR SWANSON: No, we're actually talking about
19 the piece of hair from the beanie that doesn't even come
20 back to -- my argument would say the same as far as third
21 party guilt, but I mean it's way too far removed and it only
22 casts a mere suspicion.

23 THE COURT: All right. Well, I think I know the
24 issues. I'll look at them.

25 MR. NEWMAN: And, and we're not moving it under third

1 party guilt. We're moving it under Kyles versus Whitley to
2 impeach the investigation, or more aptly put, the lack
3 thereof.

4 THE COURT: Go ahead.

5 MR. NEWMAN: And, Your Honor, there's gonna be another
6 issue about information that they learned and gained from an
7 investigatory traffic stop, and I am moving to suppress any
8 information gained---

9 THE COURT: Time out, Mr. Newman. I was trying to go
10 through the State's motions first.

11 MR. NEWMAN: Oh, I'm sorry. I'm sorry.

12 THE COURT: And then I'm gonna get to yours.

13 MR. NEWMAN: Yes, sir.

14 THE COURT: I won't leave you out.

15 Go ahead.

16 SOLICITOR SWANSON: Yes, sir, Your Honor. I was going
17 to move on to that traffic stop --

18 THE COURT: Okay. We can get there now cause he wants
19 to go there.

20 SOLICITOR SWANSON: -- and it took place on
21 November 13th of 2009. It was conducted by Jason
22 Malphrus, who is outside if we need to proffer testimony. I
23 do think it is admissible because it goes towards identity
24 and opportunity. It places the defendant in the area.

25 This was simply a traffic stop. The defendant was not

1 to raise?

2 MR. NEWMAN: Yes, sir.

3 AS to the testimony of the investigatory stop, I would
4 ask the Court to note on the -- notice the solicitor did not
5 proffer it, but there is a police report redacted, the
6 person that got arrested, redacted out of there. would like
7 to note that this was five weeks before this incident
8 allegedly occurred on the robbery. It was on Lady's Island.
9 The Island Plaza is on Saint Helena Island and I just think
10 it's, it's, it's -- if the knit cap and the car's remote,
11 how is -- I think this is remote and I think it's
12 prejudicial and ask that any evidence from that stop be
13 suppressed under Jones and Rusher.

14 Thank you, Your Honor.

15 SOLICITOR SWANSON: I did neglect to say there is one
16 more issue. I'm sorry, Your Honor. And that's evidence of
17 flight.

18 we did touch on it briefly in chambers. The defendant
19 fled after this incident to New York. He was extradited.
20 He fled again when the case was coming back up for retrial
21 in 2013, and the Sheriff's Department, although he did waive
22 extradition, the Sheriff's Department had to go back and get
23 him from Virginia. I believe that this is all relevant and
24 admissible evidence that shows consciousness of guilt that
25 the jury can---

1 THE COURT: Was he on bond at the time?

2 SOLICITOR SWANSON: He was. He had been released on
3 bond after the initial trial, and then he was noticed well
4 in advance of this trial and he fled again.

5 I also---

6 THE COURT: I assume the bond did not have provisions
7 that allowed him to travel out-of-state?

8 SOLICITOR SWANSON: No, not that I'm aware of and he,
9 he was on notice that he was gonna be tried, and also to
10 point to the knowledge that he was on the run and knew he
11 was being sought. I have a jail phone call where he
12 acknowledges that he had been fleeing from this for
13 sometime. So I can play that for the Court now or---

14 THE COURT: Well, the -- I think, in pretrial
15 conference, I heard Mr. Newman mention that, as part of that
16 conversation or part of that statement, he said he was
17 running because they were trying to frame him down here or
18 something of that nature.

19 Is that right, Mr. Newman?

20 MR. NEWMAN: There's, there's something as to that
21 effect. The -- and my point on bringing that up is, as to
22 the flight issue, it has to be unexplained. Solicitors love
23 to leave that word out. It has to be unexplained flight.

24 Now, the first time he left is two days, two days or so
25 before Christmas. He actually says to the detective, which

1 was suppressed, I went home for Christmas.

2 THE COURT: I suppressed that.

3 MR. NEWMAN: Okay. That's suppressed. We have no
4 evidence that he ran from this, that he even knew that he
5 was being charged with this the first go round. I'll give
6 you the second go round, and if I came down here and had
7 some bad experiences with evidence and things like that and
8 how they do, I might run too. I believe they could get that
9 in.

10 But the first time around, they have no evidence that
11 he knew he was running from everybody -- anything. He was
12 arrested in New York I believe about three, four months
13 later and that's it. They have no evidence that --
14 conscious evidence that he goes oh, man, I got to get out of
15 here, I got to go back home.

16 THE COURT: Is there any evidence that he was aware of
17 if there's a prosecution at the first reference?

18 SOLICITOR SWANSON: Just that the totality of the
19 inference -- of the evidence can create an inference that he
20 had knowledge and that is a Supreme Court of South Carolina
21 case, 1999, State versus Beckham, 33---

22 THE COURT: What totality of the evidence before the
23 first arrest indicates that he knew he was being prosecuted
24 or sought?

25 SOLICITOR SWANSON: I mean they were actively

1 investigating the case and, you know, they had received a
2 lot of word on the street. In fact, Tony Brown, and this is
3 not admissible evidence in front of the jury, but Tony Brown
4 told Investigator Fraser that Julius Rooks had gone back to
5 New York, that he had fled back to New York, was not living
6 with the local guy, David Moon, anymore after this incident.
7 So --.

8 THE COURT: Yeah, but does -- again, I'm trying to get
9 the totality of the evidence that would indicate that he was
10 fleeing a prosecution---

11 SOLICITOR SWANSON: Right. Well---

12 THE COURT: ---or an arrest.

13 SOLICITOR SWANSON: Well, the investigators went to
14 David Moon's residence, I'm sorry, the night of the incident
15 to interview him because that's where the defendant had been
16 staying. And so the defendant was on notice at that point
17 that he was being investigated. Warrants were taken out on
18 I believe the 20 -- he did have active arrest warrants out.
19 This all did come in in the first trial, but he did have
20 active warrants that were taken out---

21 THE COURT: Well, you've already argued that this is a
22 new ball game.

23 SOLICITOR SWANSON: I understand. On the 27th, which
24 was four days after the incident, but it was certainly being
25 investigated in the small, pretty much very small town,

1 Frogmore, that island talks and---

2 THE COURT: All right. So, investigators visited his
3 residence the night of the incident?

4 SOLICITOR SWANSON: David Moon's residence the night of
5 the incident and that's---

6 THE COURT: Is that where he lived, at David Moon's
7 residence?

8 SOLICITOR SWANSON: That is who we have him -- yes,
9 that's the residence we have him living at. Now, again,
10 this is all kind of -- David Moon wouldn't cooperate.
11 Ashley Gadson wouldn't cooperate. So these are not people I
12 can put on the stand.

13 THE COURT: Oh, I'm -- but to answer my question---

14 SOLICITOR SWANSON: Yes, sir.

15 THE COURT: ---the night of the incident, an
16 investigator went to the home where he lived asking about
17 this fellow, about the defendant?

18 SOLICITOR SWANSON: Yes, sir, Corporal Capps, the
19 responding officer, checked the system, Cisco, for David
20 Moon's residence, who lives at ■ Peppermint Lane on Saint
21 Helena. That is where they went. They confirmed with his
22 mother that the guy from New York had been living there,
23 driving a Lexus with New York tags. They attempted to make
24 contact with David Moon and were met with negative results.

25 THE COURT: So they're asking about the guy from New

1 York?

2 SOLICITOR SWANSON: And that was on December 23rd.

3 THE COURT: Okay.

4 SOLICITOR SWANSON: The same day of the incident. As,
5 as far as the, the second flight goes, I mean I did pull---

6 THE COURT: Well, he's acknowledged that one.

7 SOLICITOR SWANSON: Okay.

8 THE COURT: He said he'd give us that one.

9 SOLICITOR SWANSON: I just wanted to make sure I pulled
10 clips that only talk about the flight and not the
11 objectionable matters. He and I can listen to those outside
12 of the Court's presence, if Your Honor wishes, and just make
13 sure he doesn't have any other objection.

14 THE COURT: Yes, sir, Mr. Newman.

15 MR. NEWMAN: Yeah, going back to the, the -- their
16 totality of evidence on their first go round, their totality
17 of evidence is the sum total that comes out I think is zero.
18 They can't show one thing that he would know, should know in
19 the law that somebody's looking for him. They said he lived
20 in New York. He went back to New York. It's Christmas
21 time. I don't think it's unexplained flight. Number one.

22 Number two. The -- because the State's seeking to
23 interview some other guy and my, my client's not there, has
24 already left, that doesn't show anything and the cops
25 investigating it---

THE COURT: All right. We're back on the record in the case of the State of South Carolina versus Julius Rooks-McBean.

First of all, I'd asked my law clerk to inquire of the attorneys, during the break, concerning the ownership of the Lexus in question in this matter, and apparently the only time it was identified in the evidence that was heard yesterday was in the statement given by Mr. Bean, which I, McBean, that I had ruled not admissible in the general trial. However, in that hearing, apparently the car was identified as belonging to his, his fiancée or the mother of his child and not belonging to him.

I was curious about that since apparently he, shortly after this incident, had left the State ostensibly, according to the defense, to go home for Christmas, and the, the car apparently stayed here since, six weeks later, it was discovered here in the -- and, of course, the stocking cap in question was located in the trunk of that car six weeks later. So apparently he -- that car had -- did not leave the State when he did.

1 of the investigation. So I'm gonna let you do that.

2 Now, as to the evidence of the DNA on the cap, I have a
3 real problem with this situation in, in that the evidence of
4 the defendant's connection to this vehicle so far has all
5 been before the incident occurred. He was seen at a traffic
6 stop in that car. Apparently there are employees at this
7 location who will identify him as being associated with that
8 car when he came on the premises prior to the incident.

9 There is no evidence, however, that the perpetrators,
10 when they left the scene, left in that car, that that car,
11 in anyway, was a participant in the event. There is no
12 evidence as to even the defendant's association with that
13 car after the event since apparently he left shortly
14 thereafter. The police tried to locate him that night, and
15 thereafter, were unable to locate him in South Carolina, and
16 apparently found him some two months later in New York.
17 February sometime I believe is when he was located in New
18 York.

19 So it appears that he left shortly after the time that
20 the event occurred, and there's no direct evidence that ties
21 that hat to this event other than it's the right color.
22 It's black. And, of course, there's a lot of black
23 toboggans in this world, and I don't believe that, that, in
24 and of itself, ties it to this event. It was found six days
25 later in the trunk of the vehicle that he had been seen in

1 the people in the store who said he's the New York guy and
2 driving -- they drive around in the New York car. They saw
3 him before the incident happened.

4 MR. NEWMAN: And oddly enough, the car they described
5 has a different license plate number, but be that as it may.

6 THE COURT: Well, that's be that as it may.

7 MR. NEWMAN: I guess I would be able to get into the
8 license plate number that they wrote down that does not
9 match the car?

10 THE COURT: I didn't say you couldn't.

11 MR. NEWMAN: Okay. Thank you.

12 SOLICITOR SWANSON: Just one additional thing I would
13 mention.

14 I know that Mr. Newman waived any arguments on the
15 admissibility of the identifications, and this was something
16 that wasn't talked about in the last trial, but was
17 certainly in all the police reports, and it wasn't a formal
18 photo lineup because this person was not a witness to the
19 event. But Brian Baird did present and show a photo lineup
20 to Vic Patel to show him -- to ask him is the New York guy
21 that you're talking about in this lineup and he does point
22 him out. I just wanted everyone to be aware that I am going
23 to be eliciting that testimony.

24 THE COURT: This is a third lineup?

25 SOLICITOR SWANSON: It's -- he doesn't circle it

1 because he's not an eye witness, but it's the same lineup
2 with Mr. Rooks-McBean in it and he identifies him as the New
3 York guy.

4 THE COURT: A third identification?

5 SOLICITOR SWANSON: Yes, sir.

6 THE COURT: Okay.

7 MR. NEWMAN: I have that no where in discovery.

8 SOLICITOR SWANSON: That's in Brian Baird's report.

9 THE COURT: You want to check that report?

10 MR. NEWMAN: I don't have the photo lineup that was
11 shown. I have the photo lineup that was shown to---

12 SOLICITOR SWANSON: He---

13 THE COURT: She said they used the same one.

14 MR. NEWMAN: ---Antonio Brown and I have the photo
15 lineup that was---

16 SOLICITOR SWANSON: Right.

17 MR. NEWMAN: ---shown to Jay Patel. I don't have a
18 photo lineup that -- provided to me that was shown to the---

19 SOLICITOR SWANSON: Correct.

20 MR. NEWMAN: ---Vic Patel.

21 SOLICITOR SWANSON: Correct. Because he goes to the
22 store, makes contact with Vic Patel first, Tony Brown's not
23 there, he asks him about this lineup, and then he comes back
24 to this store when Tony Brown is there and conducts the
25 lineup with Tony Brown as the eye witness, and it's all in

1 his report that you've been provided with.

2 MR. NEWMAN: So we're gonna have a person identify my
3 client from a photo lineup that did not witness the crime?

4 SOLICITOR SWANSON: As to who he believes the New York
5 guy is. The person that he has seen multiple times in the
6 store, took down the license plate of.

7 MR. NEWMAN: Wrong plate, but that's okay.

8 THE COURT: Talk to me, Mr. Newman.

9 MR. NEWMAN: It's the wrong license plate.

10 THE COURT: Thank you.

11 Mr. Newman.

12 MR. NEWMAN: I do object to that, first, on the double
13 jeopardy grounds under Burke versus United States that
14 they're now introducing evidence that they did not amass and
15 muster and use in the first trial, now using the second
16 trial, and I think it is -- would be confusing, unduly
17 prejudicial to a jury to have a third person, who did not
18 witness the event, kind of finger this guy here that his
19 father or uncle, I forget their relationship -- the question
20 is who was in the store.

21 Antonio Brown is gonna testify from a lineup. The
22 victim, Jay Patel, is gonna testify from a lineup. They
23 were in the store. They were eye witnesses. I don't
24 concede their credibility. I don't concede their ability to
25 relate and recall and all that.

1 But now you're bringing somebody in that's gonna say
2 hey, I seen this dude before. Yeah, that's the dude I've
3 seen before. How, how -- I mean that's just adding another
4 layer of identification and Vic Patel, and the State will
5 tell you, was no where near the crime scene and did not
6 witness the crime, and I just think it, it's a spurious
7 piling on of an identification from somebody that didn't
8 witness the crime.

9 THE COURT: Let's, let's back up.

10 In the discovery there is mention of the fact that this
11 occurred?

12 SOLICITOR SWANSON: Yes, sir, I will read from Brian
13 Baird's report. I also showed the lineup -- and this is on
14 December 26th of 2009. I also showed the lineup
15 separately to Vic Patel who was not present at the time of
16 the shooting. However, he said he could identify the man
17 who is from New York that everyone thinks is the man who
18 shot Jay. He was also able to identify the man in position
19 number two as the man who is from New York.

20 So he's not identifying him as the shooter. He's
21 identifying him as the man from New York.

22 THE COURT: I understand. I will ask that, before you
23 present that evidence, that we have a proffer. I'll give
24 him an opportunity to examine him on that issue, and then
25 we'll discuss it at that time.

1 SOLICITOR SWANSON: Okay. So I'll just -- I'll stay
2 away from it with Vic Patel and then we'll just wait until
3 Brian Baird's testimony.

4 THE COURT: However you want to handle it, but before
5 you put up that identification before the jury---

6 SOLICITOR SWANSON: Okay.

7 THE COURT: ---I'm going to ask you to proffer that
8 evidence and give Mr. Newman an opportunity to examine the
9 witness on that evidence.

10 SOLICITOR SWANSON: Okay. Thank you, Your Honor.

11 THE COURT: And I think he has the right to know what
12 he was thinking of or how he thought he was identifying that
13 individual. So I'm gonna give him a chance to look into
14 that before we put it up before the jury.

15 SOLICITOR SWANSON: Okay. So I -- just so I'm clear, I
16 think that will need to be done probably through Vic Patel
17 then.

18 THE COURT: I don't know the intricacies of it.

19 SOLICITOR SWANSON: Okay.

20 THE COURT: But before that goes in front of the jury
21 --

22 SOLICITOR SWANSON: Sure.

23 THE COURT: -- let's, let's make a proffer.

24 Anything else from the State?

25 SOLICITOR SWANSON: It's my understanding that Mr.

1 Newman is not objecting to the jail phone calls.

2 MR. NEWMAN: I am objecting to the jail phone calls.

3 SOLICITOR SWANSON: Okay. On what basis?

4 MR. NEWMAN: On the basis that the State is gonna use a
5 very limited out of context clip where they want to put in,
6 I think, where Mr. McBean says to a family member this is
7 gone on, this is gone on crazy stupid thing or I've been on
8 the run crazy stupid long. The conversation actually lasts
9 about 16 or 17 minutes. Most of the conversation is
10 absolutely benign about how so and so.

11 THE COURT: well, I -- what is it that, if it were to
12 come in, that you feel the State is not putting in that
13 needs to be put in?

14 MR. NEWMAN: well, I object to the statement on privacy
15 grounds. Although the, the recordings say -- I'd just like
16 to state for the record, Your Honor, my objection.

17 THE COURT: If it's like every other jail in the
18 State---

19 MR. NEWMAN: It says that---

20 THE COURT: ---it's not a private phone call.

21 MR. NEWMAN: It says that, but my argument is this,
22 that our Supreme Court and the U.S. Supreme Court has said,
23 when somebody's in jail, they don't lose all privacy rights
24 and the calls are recorded for a specific purpose, and the
25 specific purpose for which the calls are recorded is

1 security. You know, bust me out of here and smuggling,
2 security, and safety of the jail, and I think it should be
3 limited to the government interest that allows them to tape
4 them calls and that's for security and basically security,
5 contraband, and those type of issues.

6 I don't think a unconvicted person loses all of their
7 privacy interest in the government. I understand the
8 purpose for the recording of the phone call, and I ask that
9 this Court limit that to that purpose, to any security
10 issues.

11 THE COURT: Ms. Swanson.

12 SOLICITOR SWANSON: Thank you, Your Honor.

13 There is a warning on the jail phone call on that
14 system and it's the State's position that, as long as a
15 prisoner is given meaningful notice that the call is being
16 recorded and monitored, then it's the defendant's decision
17 to engage in that conversation and it's implied consent at
18 that point.

19 THE COURT: Yeah, I'm gonna -- I'll allow them to come
20 in.

21 I do not know, again, what it is that you want to have
22 included in the clip, Mr. Newman. We didn't get that.

23 So I'm gonna let it come in. Let's get over that hump.
24 I'll -- let's talk about what you want to have come in.

25 MR. NEWMAN: I don't know yet, Your Honor.

1 THE COURT: Okay. Well, before we do it, let's talk
2 about it. I want it to be complete. I don't want it to be
3 misleading. So if there is a statement in there that, that
4 you feel like is important concerning his motivation in
5 saying that, I would want that to be included.

6 MR. NEWMAN: Thank you, judge.

7 SOLICITOR SWANSON: And I'm happy to play the entire
8 jail phone call.

9 THE COURT: Well, he said it was 16 minutes and there
10 was---

11 MR. NEWMAN: About.

12 SOLICITOR SWANSON: It's ten minutes.

13 MR. NEWMAN: Ten minutes.

14 SOLICITOR SWANSON: A lot of it talks about him being
15 on the run, going back and forth to South Beach, and then
16 being in Virginia where they have some law enforcement
17 contact and he disappears, and then he comes back and he
18 keeps his mouth shut, and then one of his girls accuses him
19 of turning tricks, and it kind of goes on and on.

20 THE COURT: Well, if it's relevant.

21 SOLICITOR SWANSON: I am---

22 THE COURT: I would like for you folks to get together
23 and agree on what's relevant---

24 SOLICITOR SWANSON: Right.

25 THE COURT: ---on the issue you're trying to prove.

1 SOLICITOR SWANSON: I only---

2 THE COURT: If I have to listen to the whole thing and
3 make a ruling I will.

4 SOLICITOR SWANSON: I only pulled the clips that
5 indicate flight and that's why I did not---

6 THE COURT: well, and, again, he indicated that he felt
7 like that clip did not include everything that had to do
8 with his motivation for flight. So, again, I would like to
9 see the clip be complete. If you folks can't agree on that
10 I certainly have the ability to make a ruling. So I'll be
11 glad to do that if it becomes necessary.

12 SOLICITOR SWANSON: Okay.

13 THE COURT: Anything else?

14 SOLICITOR SWANSON: Nothing further.

15 THE COURT: Anything else, Mr. Newman?

16 MR. NEWMAN: No, sir.

17 THE COURT: All right. Why don't we take about a five
18 minute break and then we'll bring the jury in?

19 Court will be in recess. I'll say on the bench.

20 (WHEREUPON, a short recess was taken at this time with
21 the following conversation taking place during the marking
22 of exhibits.)

23 SOLICITOR SWANSON: Can we get the judge to rule on
24 this?

25 MR. NEWMAN: I don't think it's necessary. I told the

1 solicitor, in an email, as to---

2 SOLICITOR SWANSON: He doesn't like the bag?

3 MR. NEWMAN: ---as to her physical exhibits, I have no
4 objections as to authenticity and chain of custody and she
5 can introduce that. So the, the bag goes to chain of
6 custody and all that.

7 SOLICITOR SWANSON: Okay. So this will be four
8 separate items.

9 MR. NEWMAN: Can I read the writing on it?

10 I know they have handwriting notes on them.

11 SOLICITOR SWANSON: So are we just gonna put a sticker
12 on the bullet as well, Mr. Newman?

13 MR. NEWMAN: What's the bag say?

14 SOLICITOR SWANSON: Armed robbery, ABWIK, description,
15 one bullet.

16 MR. NEWMAN: I object to the bag, yes. I don't -- I do
17 not object to these.

18 SOLICITOR SWANSON: Okay.

19 THE COURT: That's gonna have to be in something.
20 What's wrong, what's wrong with the bag?

21 SOLICITOR SWANSON: It doesn't have suspect or his
22 client's name on it anywhere.

23 THE COURT: What's the objection to the bag, Mr.
24 Newman?

25 MR. NEWMAN: I, I would ask then that we take a black

1 magic marker cause it has the offense, armed robbery, ABWIK.
2 I just believe that's irrelevant. That's an officer saying
3 what the charges are, not the Court, and I would ask that
4 the offense---

5 THE COURT: what does it say---

6 MR. NEWMAN: ---be marked out.

7 THE COURT: what does it say beside that?

8 Does it say charges?

9 MR. NEWMAN: It says offense armed robbery/ABWIK.

10 THE COURT: Okay. I'm gonna overrule the objection.

11 Mark the bag.

12 SOLICITOR SWANSON: Thank you.

13 MR. NEWMAN: Thank you.

14 SOLICITOR SWANSON: All right. So I need to mark
15 the -- these four, the bag. so we'll take these out of the
16 bag as well.

17 MR. NEWMAN: Thank you.

18 SOLICITOR SWANSON: These are fingerprint lifts from --
19 1 through 4.

20 MR. NEWMAN: And I do, based on a stipulation that the
21 State and I had about the -- whether having Chris Wilson
22 here or not to discuss the fingerprint match, I don't intend
23 on introducing that in evidence but I intend on examining
24 the officer on it.

25 SOLICITOR SWANSON: Okay. well, it can't be published

1 to the jury unless you enter it into evidence.

2 MR. NEWMAN: Well, I would ask for a ruling on that. I
3 just seek to show it to the officer.

4 We have a stipulation that---

5 THE COURT: Well, she said publish to the jury.

6 SOLICITOR SWANSON: Right. It---

7 THE COURT: You said you're gonna show it to the
8 officer---

9 SOLICITOR SWANSON: Right.

10 THE COURT: ---while he's testifying?

11 SOLICITOR SWANSON: Right.

12 MR. NEWMAN: Yes.

13 THE COURT: He can look at that.

14 SOLICITOR SWANSON: Uh-huh. (Affirmative).

15 You just can't---

16 THE COURT: That's fine.

17 SOLICITOR SWANSON: ---show it to the jury unless you
18 enter it.

19 MR. NEWMAN: Well, I'm asking the Court on that. I
20 think it's just demonstrative. I don't have to introduce it
21 as evidence and that would be my proffer.

22 THE COURT: Well --.

23 SOLICITOR SWANSON: There would be no point in the
24 rules of evidence if that was how it worked.

25 MR. NEWMAN: But you stipulated that the fingerprint

1 matches the number nine left ring finger and that's Chris
2 Wilson's match.

3 SOLICITOR SWANSON: I stipulated to the fact that you
4 didn't have to bring Chris Wilson to get into it. However,
5 I am definitely objecting to you not entering something into
6 evidence and publishing it to the jury. That was not a part
7 of the stipulation.

8 THE COURT: Why would it, why would it not come into
9 evidence?

10 SOLICITOR SWANSON: I mean if he wants to enter it into
11 evidence, that's totally fine. He just doesn't want to put
12 in evidence.

13 MR. NEWMAN: That's correct. I want last argument.
14 Absolutely that's correct.

15 SOLICITOR SWANSON: But he wants to publish it to the
16 jury without putting it---

17 THE COURT: You know, quite often there are
18 demonstrative aides that are shown to a jury that are not
19 put into evidence and don't go back to the jury room. You
20 know, people draw pictures on easels. We do that quite
21 often---

22 SOLICITOR SWANSON: Right.

23 THE COURT: ---with demonstrative aids.

24 SOLICITOR SWANSON: That was not created by Mr. Newman.

25 THE COURT: Well, that creates a problem.

1 who created it?

2 MR. NEWMAN: It's created by Chris Wilson. I put the
3 labeling on it and I can redact the labeling. I have
4 another copy of this without the labeling on it and that's
5 fine.

6 THE COURT: Well, I don't know if that's the issue or
7 not. Chris -- see I don't know who these people are.

8 MR. NEWMAN: Chris Wilson is---

9 SOLICITOR SWANSON: She---

10 MR. NEWMAN: She's retired. She is a fingerprint
11 examiner, 30 years experience, Beaufort County Sheriff's
12 Department. She is retired and lives in Florida.

13 THE COURT: Uh-huh. (Affirmative).

14 MR. NEWMAN: I asked the solicitor would I need to, if
15 the fingerprint evidence did come in, would I need to get a
16 hold of Chris and subpoena her or ask her if she'd come
17 voluntarily to this Court. The solicitor and I stipulated,
18 because I -- she matched the number nine left ring finger to
19 Dominick Lesesne, that if the fingerprint evidence is
20 allowed, that she would stipulate that I could ask---

21 THE COURT: So who is Chris?

22 MR. NEWMAN: Chris Wilson, Detective Chris Wilson.

23 SOLICITOR SWANSON: Uh-huh. (Affirmative).

24 MR. NEWMAN: Detective Chris Wilson did this chart
25 right here. This is an unknown. It says -- and this is her

1 writing. This is unknown and known print. That I would be
2 able to, much like the detectives are gonna be able to put
3 in the video without having to get the people from the store
4 that do that type of stuff, that if Your Honor allowed it
5 in, that she would stipulate that I could ask the officer,
6 the, the investigating officer, who is Chris Wilson?

7 she's a fingerprint examiner.

8 Did she match a print in this case?

9 Yes, she did.

10 THE COURT: Okay. All right.

11 SOLICITOR SWANSON: Correct.

12 MR. NEWMAN: And what print did she match.

13 THE COURT: Okay.

14 MR. NEWMAN: And I just wanted to show Detective Fraser
15 this is in their file.

16 THE COURT: I thought you indicated that right there is
17 gonna be testifying?

18 MR. NEWMAN: Yes, sir, this is what's in their file.

19 SOLICITOR SWANSON: Well---

20 THE COURT: So what -- what's the issue?

21 SOLICITOR SWANSON: Chris Wilson's not gonna be
22 testifying and, and he can certainly show Jeremiah Fraser
23 this and, and have him say yes, Chris Wilson found it
24 matched. But if he's not going to enter it into evidence, I
25 don't think publishing it to the jury is proper.

1 MR. NEWMAN: What I intended to do was hold it up---

2 THE COURT: I'll let him use it as a demonstrative aid.

3 MR. NEWMAN: Thank you, Your Honor.

4 SOLICITOR SWANSON: Okay.

5 MR. NEWMAN: And I was likewise gonna do the same thing
6 much when I was talking to the Court about these
7 photographs.

8 THE COURT: Well, the State's gonna put the video in,
9 aren't you?

10 MR. NEWMAN: They are.

11 SOLICITOR SWANSON: The State is gonna put the video
12 in. So I don't have a problem with that because those are
13 just still shots from the video.

14 THE COURT: Uh-huh. (Affirmative).

15 SOLICITOR SWANSON: Okay.

16 MR. NEWMAN: And, Your Honor, while we're here---

17 THE COURT: Now, wait a second. Mr. Newman, she's
18 trying to get things marked here. My court reporter can't
19 do two things at one time.

20 MR. NEWMAN: I understand.

21 THE COURT: Lets let her finish that and then we'll get
22 to something else in a minute.

23 MR. NEWMAN: Yes, sir.

24 THE COURT: Okay. Maybe we should of stayed a lot
25 later last night.

1 Go ahead.

2 Might want to let the jury go sit down. This is gonna
3 take a while I'm afraid.

4 SOLICITOR SWANSON: Or I can -- judge, I can mark as we
5 go if you'd prefer.

6 THE COURT: We have bridges to cross. Let's cross
7 them.

8 SOLICITOR SWANSON: Okay.

9 Does anyone have any objection to us covering the
10 previous trials exhibit sticker?

11 MR. NEWMAN: I have no objection.

12 THE COURT: As long as both sides agree we can do that.

13 SOLICITOR SWANSON: Okay.

14 THE COURT: Put on the record what you're covering so
15 we know what's underneath there.

16 SOLICITOR SWANSON: Okay. What we are covering is the
17 plaintiffs or the State's Exhibit numbers from the previous
18 trial in 2012 that ended in mistrial, and we are covering
19 those with today's trial stickers, May 24th, 2016. I think
20 it prevents confusion.

21 (WHEREUPON, State's Exhibit Nos. 1 through 17 were
22 marked for identification purposes only at this time.)

23 MR. NEWMAN: If I may confer with the solicitor?

24 THE COURT: Yes.

25 (Pause.)

1 SOLICITOR SWANSON: well, then I ask that I be allowed
2 to publish this to the jury cause---

3 THE COURT: I don't know what this is.

4 MR. NEWMAN: well, this is, this is the photograph that
5 was used in the lineup allegedly of Mr. Rooks-McBean --

6 THE COURT: Yes, sir.

7 MR. NEWMAN: -- when Detective Fraser went to interview
8 him on 4/14, the day he was booked in or the day after.
9 This is the photograph. Mr. Patel looked at this in the
10 last trial and said this is not the man who shot me. Then
11 he was shown the booking report of Mr. Julius Rooks-McBean
12 for 4/14 and then he got all upset and said that's not the
13 man that shot me, you're trying to trick me, or something to
14 that effect.

15 SOLICITOR SWANSON: Because he looks different in the
16 booking photo.

17 THE COURT: Okay.

18 SOLICITOR SWANSON: So I would just ask that I be
19 allowed to enter and publish Mr. Newman's photo if that's
20 the case.

21 THE COURT: Any objection?

22 MR. NEWMAN: I don't think I have an -- I have an
23 objection to introducing the booking report with the charges
24 on it.

25 SOLICITOR SWANSON: well, if that's how you're---

1 MR. NEWMAN: I have no objection to the photograph.

2 SOLICITOR SWANSON: ---gonna present it though.

3 MR. NEWMAN: well, do you not agree that this is the
4 same photograph from the booking report?

5 Take a careful look. I don't want to trick you or Mr.
6 Patel.

7 SOLICITOR SWANSON: I mean I'd like to enter both.

8 Are you gonna show him both?

9 MR. NEWMAN: No, I'm gonna show him that photograph
10 and---

11 SOLICITOR SWANSON: This one?

12 MR. NEWMAN: Uh-huh. (Affirmative).

13 SOLICITOR SWANSON: Okay. well then I'll mark this and
14 enter it.

15 MR. NEWMAN: I don't have any objection to that.

16 THE COURT: Okay.

17 SOLICITOR SWANSON: I just -- I don't want him showing
18 pictures that the jury can't see because he hasn't entered
19 it into evidence.

20 MR. NEWMAN: But if the State wishes to introduce it, I
21 have no objection to this being---

22 THE COURT: Mark it.

23 MR. NEWMAN: And I do intend on asking Mr. Patel that
24 this is the photograph that you said in prior testimony.

25 THE COURT: well, mark it.

1 MR. NEWMAN: Thank you, Your Honor.

2 SOLICITOR SWANSON: Okay. This is 18 then.

3 (WHEREUPON, the photograph was marked as State's
4 Exhibit No. 18 and received into evidence at this time.)

5 SOLICITOR SWANSON: Okay. I think that's everything,
6 right?

7 Do you have anything else, Mr. Newman?

8 Do you want to hang on to this or should we just leave
9 it up here?

10 THE COURT: It's in evidence now. It stays with the
11 court reporter.

12 (Pause.)

13 THE COURT: State ready for the jury?

14 SOLICITOR SWANSON: State's ready.

15 THE COURT: Defense ready?

16 MR. NEWMAN: Yes, Your Honor.

17 THE COURT: Bring the jury in.

18 THE BAILIFF: Yes, sir.

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

21 THE BAILIFF: The jury's entering the courtroom, Your
22 Honor.

23 THE COURT: Thank you.

24 All right. The record will reflect the jury has
25 returned to the courtroom.

1 Yesterday afternoon, when I excused you, I gave you
2 some instructions concerning your behavior while you were
3 away from the courthouse, and, at this time, I'd like to ask
4 if any of you had any difficulty in complying with my
5 instructions during your absence from the courthouse, please
6 stand.

7 (No response.)

8 THE COURT: All right. The record will reflect that
9 all jurors have been able to comply with my instructions
10 thus far.

11 Now, I told you that, upon your return this morning,
12 you would be taking an oath concerning your duties and
13 responsibilities in this case.

14 So, at this time, Madam Clerk, I would ask that you
15 please swear the jury panel for me.

16 (WHEREUPON, the jury panel was placed under oath at
17 this time.)

18 THE COURT: Now, if there was any member of the jury
19 panel who either failed or refused to take the oath just
20 administered by the clerk, please stand.

21 (No response.)

22 THE COURT: The record will reflect that all jurors
23 have been sworn concerning their duties in this case.

24 Ladies and gentlemen, before we begin the trial of this
25 case, there's somethings that I would like to go over with

1 you.

2 First of all, I want to thank you for your patience
3 this morning, but we've been working with the attorneys
4 again this morning going over some pieces of evidence and
5 things that some of which have already now been put into the
6 record of the case. You'll hear about those later. But
7 hopefully that will help things move along more quickly as
8 the trial goes along. So we've been taking care of some
9 housekeeping matters and thank you for your patience with us
10 this morning.

11 For most of you I would expect this is your first
12 experience in actually serving on a jury in the trial of a
13 criminal case involving one of your fellow citizens, and for
14 those of you who have never been in this position before, I
15 would suspect that most of what you might know about what
16 goes on in courtrooms or how juries function you might of
17 gathered or learned from such sources as television shows
18 you've watched or movies you've seen, books that you've
19 read.

20 Unfortunately it's my belief they don't teach very much
21 about the jury system in our school system these days. So I
22 don't know that you got much from your formal education
23 about the judicial system and how trials work. But for
24 those of you for whom your source of information is
25 television or movies, I'd like to point out that those

1 sources of information are always full of high drama,
2 intense action, and rivetting circumstances. It never
3 ceases to amaze me, on television, that you can have an
4 event occur, the matter be tried, and the whole case wrapped
5 up in the space of an hour and they stop about four or five
6 times for commercials in the mean time.

7 Now, I would expect that you realize that because of
8 the way that's all wrapped in a neat package that sometimes
9 they take what's called literary license with what goes on
10 in the scrips of those TV shows. In other words, they make
11 the courtroom procedure and action fit the storylines so
12 that it stays interesting and conveys a plot and drama to
13 you.

14 You know, that's because those sources of information
15 are intended to entertain you. You know, the, the whole
16 idea behind television is to keep people watching because
17 the more, the more people that watch the commercials the
18 more money they make by selling those commercials. But, in
19 this case, I hope you realize that what you're engaged in
20 here is anything -- is intended for anything but your
21 entertainment.

22 What you're involved in is a fundamental part of our,
23 our system of government. You know, if you were to look
24 around the world today at most of the judicial systems that
25 exist, you would find that most systems do not allow the

1 direct participation by citizens in the decision making
2 process that goes on in the Court of those countries. Quite
3 often those countries have decisions that are made by either
4 bureaucrats, appointed government officials, and even in
5 some cases, by the military. So we're a little bit in the
6 minority in this world in that we require, through our
7 Constitution both of this State and the United States, that
8 every citizen have the right to a trial by a jury of their
9 fellow citizens, a jury of their peers.

10 What you're engaged in here is a, is a search for the
11 truth. It's an effort to see that justice is done between
12 the parties that are in this courtroom. That is, in the --
13 this case, the State of South Carolina that is brought a --
14 three charges actually against the defendant in this matter.
15 This courtroom is a place of honor. It's dedicated to the
16 preservation of citizen's rights through that system of
17 government that I've referred to, a Constitutional
18 democracy.

19 I want to thank you very much for your willingness to
20 serve on the jury. It's my personal belief that service on
21 a jury is the second highest service that a citizen can
22 render to one's government. Of course, the highest level of
23 service would be service in the military and we're not
24 asking anyone here today to risk their lives or carry a
25 weapon. But you're doing a duty for your, for your

1 government, jury duty. I know it's an inconvenience and I
2 thank you for it very much for your willingness to accept
3 that responsibility in this case.

4 Now, the attorneys that are involved in this case are
5 here to represent their client's interest. You can expect
6 that they will do an excellent job in presenting their
7 client's cases before you during this trial.

8 I want to point out something to you that probably most
9 laymen don't understand about attorneys, and that is that,
10 first and foremost though, attorneys are actually officers
11 of the Court. At some point in time they've appeared before
12 some judge or some judicial panel and taken an oath that is
13 prescribed by law referred to as the attorney's oath. Part
14 of that oath is that they will assist you in your search for
15 the truth in this case. You'll -- you can then expect that
16 they'll act in a reasonable, a professional, and an ethical
17 manner in the presentation of their client's cases before
18 you during this trial.

19 I want to remind you now that you just came in front of
20 this Court. You've taken an oath to decide this case based
21 upon the evidence presented in this case. You too are now
22 expected to act in a reasonable, a professional, and an
23 ethical manner in the discharge of your duties as jurors in
24 this case, and I want to discuss with you what those duties
25 are. So that's what I'm going to do at this point in time

1 is to go over with you the duties and the responsibilities
2 that each of us has in the trial of this matter.

3 Now, yesterday I went over with you, before we picked
4 the jury, the three indictments that have been presented to
5 me and I'm again gonna mention them to you. I'm not going
6 to read them again. we'll discuss them in more detail later
7 on.

8 I will tell you that Indictment Number 10-972 is for
9 the offense of attempted armed robbery, that Indictment
10 Number 10-973 is for the offense of assault and battery with
11 intent to kill, and the Indictment Number 10-974 is for the
12 offense of possession of a weapon during the commission of a
13 violent crime.

14 I explained yesterday, and I will repeat to you, the
15 indictment is simply the document that brings this case into
16 this Court. It's not, in any sense, evidence of any of the
17 allegations that it contains. The defendant has pled not
18 guilty to that indictment, and, under our laws, under our
19 Constitution, that plea places the burden of proof in this
20 case solely upon the State. The State has the only burden
21 of proof in this case and their burden is to prove the
22 elements of the crimes that are alleged in the indictments
23 to you by proof beyond a reasonable doubt.

24 It's your job, at the close of the trial, to determine
25 whether the State has met that burden of proof in this case.

1 I'm going to talk about all those concepts to you in more
2 detail later on when I charge you concerning the law that
3 you're to apply in this case. But suffice it to say, these
4 indictments inform us of the charges to be tried. It
5 informs the defendant of the charges to be lodged against
6 him but those documents are not evidence. They are simply
7 informational documents that bring the case into this Court.

8 Now, your purpose, as jurors, is to find and determine
9 the facts, and I will tell you that, in every case tried in
10 this court before a jury, the jury is the sole and exclusive
11 judge of the facts. You are to determine the facts from the
12 testimony that you hear and from any other evidence that is
13 introduced into the record of this trial through that
14 testimony or introduced into the record of the trial through
15 the agreement made by lawyers for the introduction of
16 evidence.

17 It is up to you to determine the inferences you feel
18 might be properly drawn from the evidence that's presented
19 to you through this -- in this trial, and I will tell you
20 that it's very important that you perform your duty of
21 determining the facts both diligently and conscientiously.
22 because, under our system of justice, ordinarily there's no
23 means by which an erroneous determination of fact made by a
24 jury can ever be corrected.

25 Now, on the other hand, and with the same -- with equal

1 emphasis, the law that makes you the sole judges of the
2 facts makes me the sole judge of the law in this case. The
3 law that I give to you at the close of the trial is the only
4 law that you can consider in reaching a verdict. It's your
5 responsibility, under your oath as jurors, to accept the law
6 exactly as I give it to you and apply it to the facts as you
7 determine those facts to be. That should put you in a
8 position to render a just, a true, and a fair verdict at the
9 close of this trial.

10 Now, I will tell you that, if you came into the
11 courtroom today with some notion or idea as to what the law
12 is or perhaps what the law ought to be, I will ask you to
13 leave those notions and ideas outside of the jury room
14 before you begin your deliberations. Again, under your
15 oath, you should take the law exactly as I give it to you
16 and then apply that law to the facts as you determine the
17 facts to be at the close of the trial.

18 Excuse me.

19 Now, I've cautioned you yesterday, and I will tell you
20 this every time you leave the courtroom, I'll remind you not
21 to discuss anything about this case, the testimony of any
22 witness, what's been said, what's happened in the trial.
23 Don't discuss any of those matters, anything about this case
24 until I tell you to begin your deliberations, and I'm only
25 going to tell you to begin your deliberations at the close

1 of the trial when you've heard all the arguments by the
2 lawyers, all the evidence has been presented and put into
3 the record, I've charged you concerning the law that you're
4 to apply in this case, and only then will you have all of
5 the tools or the elements that you need in order to begin
6 your discussion concerning the issues that are before you.

7 So, again, I caution you to remember that even the most
8 innocent conversation that you might have among yourselves
9 or with anyone else, based on partial information, based on
10 partial testimony, it would be improper and would cause you
11 to start making up your mind before you've ever heard all of
12 the evidence in the case. So don't do that.

13 Please let me know if other jurors are doing that
14 during the trial. I will tell you it's improper to do that
15 and it would be a violation of your oath, again, to begin to
16 decide the case before you've heard all the evidence in this
17 matter. I want you to keep an open mind in this case until
18 you have all the information necessary to begin your
19 discussions.

20 Now, it's going to be your job, at the close of the
21 trial, it's your solemn responsibility to determine the
22 guilt or the innocence of the defendant. Your verdict in
23 this case must be based then solely upon the evidence as
24 it's presented to you in the trial and the law as I instruct
25 you at the close of the trial.

1 Now, in just a few minutes we're going to begin the
2 case. The State will be allowed to go first with an opening
3 statement followed by the defense, and I will tell you that
4 our procedure allows the attorneys to talk to you directly
5 only on two occasions during the trial. That is once at the
6 beginning of the trial when they make an opening statement
7 to you about their case, and then at the close of the trial,
8 and that's sometimes referred to as the summation. It's
9 where they summarize the evidence that you've heard during
10 the trial and they will urge you to take certain inferences
11 from the evidence that you've heard.

12 But I want to point out to you one thing. Statements
13 made by lawyers, both at the beginning of the trial and at
14 the close of the trial, those statements, in and of
15 themselves, are not evidence. They can not be considered by
16 you as evidence. The only evidence in any trial is the
17 testimony of witnesses who are sworn to tell the truth from
18 this witness stand and any evidence that comes into the
19 record either through that testimony or by agreement of
20 counsel and approval of the Court. So statements made by
21 lawyers, while they let you know their client's position
22 regarding matters, do not constitute evidence and can't be
23 considered directly by you in reaching a verdict of guilt or
24 innocence in this case.

25 Now, from time to time, during the trial, there may be

1 objections that are raised by the attorneys and that could
2 be to the introduction of evidence or to the form of
3 questions being asked. I will consider those objections and
4 make rulings on them. I will tell you, however, if I
5 believe my discussion with the lawyers about those
6 objections, if I believe that discussion will mention or go
7 into matters that I believe is probably not admissible into
8 evidence under the rules that govern the admissibility of
9 evidence, if I think that discussion is going to go in that
10 direction, I may ask you to leave the courtroom while I
11 discuss those matters with the lawyers. Don't take from the
12 fact that I've asked you to leave the courtroom that I'm
13 trying to influence your decision in the case.

14 You see, judges are described quite often by the Courts
15 as the gatekeepers. We're the people who decide what comes
16 into the record and what does not come into the record. So
17 it's just me doing my job to decide what is admissible in
18 evidence and what is not admissible in evidence, and we have
19 longstanding rules as to the admissibility of evidence in
20 our Court system. So we're applying a set of rules that we
21 have for that purpose.

22 But now, what I'll do, is once I've made my ruling and
23 discussed those matters with the lawyers, I'll bring you
24 back into the courtroom. I'll make my ruling in front of
25 you and then we'll proceed with the trial. But don't think

1 that, that I'm trying to influence your decision by asking
2 you to leave the courtroom. I will tell you, however, I'm
3 doing my job and my job is to see that you only consider
4 properly admitted evidence in reaching a verdict in this
5 case, and if there's something that is not admissible, those
6 are matters that you should not consider in reaching a
7 verdict in this case.

8 Now, your job, as the finders of the facts, requires
9 that you're going to have to decide what testimony is
10 believable and what testimony is not believable. It's your
11 job to decide the credibility or the believability of what
12 you will hear during this case. I'm going to call on you to
13 use your own good common sense in making that decision.
14 That's one reason we pick juries from a cross section of the
15 community that has wide experiences both in work and what
16 goes on in your society.

17 So what I'm going to do is ask you to use your good
18 common sense in making decisions on credibility or
19 believability of what you hear. You do that everyday in
20 your day-to-day lives. You decide what you choose to
21 believe and you decide what you choose not to believe and
22 this trial will be no different in that regard.

23 As the sole judges of the facts, you have the right to
24 believe all of, part of, or none of what a witness may
25 testify to. You have the right to believe one witness

1 against all the others or all the others against one.

2 You're the sole judges of the believability and the
3 credibility of the witnesses.

4 Using your common sense, you have the right to consider
5 whether or not a witness has a stake in the outcome of the
6 case, a bias or prejudice either for or against one side or
7 the other, whether or not a witness actually has the ability
8 to know the facts about which that witness is testifying,
9 and I've been going into courtrooms now for a little over 40
10 years. I've never been in a courtroom where the witness
11 stand wasn't right in front of the jury box, and the reason
12 for that is that allows the jury to observe the witnesses as
13 they testify, the way they deliver their testimony.

14 So you use your common sense. Take any of the factors
15 I just mentioned using your common sense into consideration.
16 Make a determination as to the credibility or believability
17 of the testimony that you hear. Try to be in a position, at
18 the close of the trial, to discuss that with your fellow
19 jurors. So, for that reason, try not to let your thoughts
20 wonder. Try to stay focused on what's going on in the
21 courtroom. You have the right to use anything that you
22 observe or is in the record of this trial in reaching a
23 verdict in this case. So try to pay close attention to
24 what's being said. Be in a position to discuss that with
25 your fellow jurors at the close of the trial.

1 Now, I do not appoint a foreperson of the jury until I
2 charge you on the law at the close of the trial, and I've
3 done that for as long as I've been on this bench. I do that
4 for a reason. I want to stress to you that, at the close of
5 the trial when it comes time for you to consider a verdict,
6 there is no verdict until all 12 of the jurors agree upon
7 that verdict. It has to be unanimous before the -- a
8 verdict is reached by the jury. And so, for that reason,
9 there's not any one juror more important than any other
10 juror. All of you must agree on the verdict before it is
11 the verdict of the jury.

12 I do not want a juror to think that perhaps, because I
13 appointed one person or another person as the foreperson,
14 that that person must be the smartest person and I can just
15 not pay attention, I'll go along with whatever they say.
16 They're gonna be the foreperson anyway. No, I want each of
17 you to think you might be the foreperson of the jury. I
18 want you to listen like you might be the person who leads
19 those discussions with your fellow jurors.

20 Now, if there's something that you feel that needs to
21 be reported to the Court during the trial, let the bailiffs
22 know. They'll come directly to me. It can be reported to
23 me. So you don't have to have someone speak on your behalf
24 if there's something you think I need to know as the trial
25 goes along. The bailiffs will be sure that I get any

1 message that you might wish to convey to me should there be
2 such, such an event.

3 So I'm going to appoint the foreperson at the close of
4 the trial. Don't think I've forgotten the fact that I
5 haven't done that. I've done it that way as long as I've
6 been doing this.

7 Now, there are no assigned seats in the jury box. You
8 can sit anywhere you'd like to sit as you come and go except
9 for those two on the back row. Those are the alternates.
10 You'll be seated there until and unless you're made a part
11 of the jury during the trial.

12 Now, I want to be sure that I haven't violated anyone's
13 rights in what I've told you thus far.

14 Does the State have any objection to my comments?

15 SOLICITOR SWANSON: None from the State.

16 THE COURT: Defense have any objection to my comments?

17 MR. NEWMAN: No, sir.

18 THE COURT: All right. Now, ladies and gentlemen, I
19 mentioned to you that the State has the burden of proof in
20 this case. For that reason the State goes first with its
21 opening arguments followed by the defense. Then, in the
22 presentation of evidence, the State, again, goes first in
23 the presentation of evidence followed by any evidence the
24 defense chooses to put in. Then, at the close of, of
25 evidence, we will have the closing arguments. After closing

1 arguments I'll charge you on the law, and once the law has
2 been charged, I'm going to turn the case over to you for
3 your deliberations and ultimately your verdict in the case.

4 So those are the steps that we'll go through as this
5 case is presented to you during this trial.

6 At this time we'll begin with opening statements.

7 The State may proceed.

8 SOLICITOR SWANSON: Thank you, Your Honor.

9 May it please the Court?

10 THE COURT: Yes, Ms. Swanson.

11 SOLICITOR SWANSON: There is no question that Jay Patel
12 was the victim of a brutal and violent crime that occurred
13 two days before Christmas.

14 December 23rd of 2009, a man walked into his store,
15 the Island Plaza that he has owned and operated since 2000,
16 located in the middle of Forgmere on Saint Helena. A man
17 walks into the store while Jay and his employee, Tony Brown,
18 are doing the last bit of work before they close the store
19 for the night.

20 This man is armed with a gun. He comes up to Jay,
21 shoves this gun at him, demands money. Jay stands his
22 ground. Jay doesn't immediately hand over the money.

23 This man takes the gun, shoots him in the right side of
24 his chest, puts a bullet in the right side of his chest.
25 Fortunately, Jay is still here with us. That bullet did not

1 puncture a lung and it didn't sever an artery. The shooter
2 didn't know it wouldn't have though.

3 The State believes that this man, Julius Rooks-McBean,
4 who sits here on trial indicted for attempted armed robbery,
5 assault and battery with intent to kill, and possession of a
6 weapon during the violent crime, is the perpetrator. He's
7 the shooter. He's the attempted armed robber.

8 The State's not the only one to believe that though.
9 We're not going out on a limb to say that. Jay Patel, the
10 victim, knows it was him. He knows it was him because he
11 picked him out of a photo lineup immediately. He
12 immediately recognized him when he came into the store
13 because Julius Rooks-McBean had been in the store multiple
14 times.

15 The other eye witness in the case, Tony Brown,
16 Mr. Patel's employee who was there for the shooting and the
17 attempted robbery, also picks Julius Rooks-McBean out of a
18 photo lineup immediately. They know this guy. They know he
19 did it.

20 Now, the State bears the burden of proof in this case,
21 and the burden of proof is beyond a reasonable doubt. It is
22 a high burden of proof, but not an impossible one. Beyond a
23 reasonable doubt means not beyond any doubt, but beyond the
24 sort of doubt that would cause a reasonable person to
25 hesitate to act. Because the State bears the burden of

1 proof in this case, it's my job to present testimony and
2 evidence to convince you of Mr. Rooks-McBean's guilt in this
3 matter through the witness stand, the witness' physical
4 evidence, photos, video surveillance, everything that comes
5 into evidence. You analyze all that evidence and determine
6 what you think is the truth. That's your job as jurors, to
7 determine the truth and follow the law that Judge Couch will
8 charge you on later.

9 As your prosecutor, I'm going to ask of you -- exactly
10 that from you, to speak the truth, to follow the law, and
11 also to render justice, and the truth is Julius Rooks-McBean
12 did this, and the truth is justice will be rendered when he
13 is convicted on all counts.

14 Thank you.

15 THE COURT: Mr. Newman, for the defense.

16 MR. NEWMAN: Thank you, Your Honor.

17 Solicitor.

18 Good morning.

19 I represent Mr. McBean. My name is Jared Newman. We
20 met a little bit during jury selection process yesterday.
21 Sorry, for lawyers and probably for y'all, that's the most
22 painful process of having to sit there for an hour, hour and
23 20 minutes, and hear the roll call of jurors come down.

24 You were selected in this case because both sides, both
25 the State of South Carolina and Mr. McBean, believe that you

1 can be fair and impartial. You took an oath to be fair and
2 impartial. You took an oath to listen to the evidence or
3 lack thereof in this case.

4 what you're gonna hear in this case, the solicitor and
5 I will agree, is Mr. Patel was robbed. The store was
6 robbed. It's on video. He was shot. No question about
7 that.

8 The question is the State instantly, and we're gonna
9 talk about a little bit about later on in closing on a
10 confirmation class, developed Mr. McBean as a suspect. They
11 put his picture in a six pack photo lineup thing right in
12 position two, which is called framing, and we'll talk about
13 that, and Mr. Patel identifies him and you'll hear about
14 that, and Jay Brown, I'm sorry, Antonio Brown, identifies
15 him. Of course, on the video you're gonna see Antonio Brown
16 is on a cell phone in the back of the store sweeping. He
17 never saw him or the whole thing.

18 So they come up with this symbolic assailant because
19 the defendant is a very tall person. He's 6'6", 6'7", and,
20 as we all know, people that tall you tend to notice, and
21 they developed Mr. McBean, who they claim had been in the
22 store before, that must be the guy who did it.

23 well, there's a little problem with that. Eye witness
24 testimony can be through lineups. It can be tainted. It
25 can be suggestive. Can give tacit clues. You're gonna hear

1 the detective, when he gave Mr. Brown the -- showed him the
2 lineup, did not follow police procedure, accepted police
3 procedure, in showing him that lineup when he supposedly
4 picks out this photograph, and we'll talk about the
5 photograph.

6 Mr. Patel is shown later a photograph during some more
7 testimony and says that's not the guy that shot me. It
8 turns out that photograph is Mr. McBean.

9 Now, the problem that we have in this case is the State
10 has to prove someone guilty beyond a reasonable doubt
11 because when you are trying to take a citizen's liberty from
12 them, to brand them as a felon forever, that we've got this
13 high burden, that we just don't do this willy nilly. We
14 analyze the evidence, and if the evidence points beyond a
15 reasonable doubt, then you are able to convict him. If the
16 evidence does not do that, that's the truth when we talk
17 about the truth in criminal cases, the evidence does not --
18 able to do that, the State is not able to prove that, then
19 it's your duty, as jurors, to acquit.

20 So you're gonna hear from two witnesses and you'll hear
21 about the ID and the procedure and the State's gonna
22 dramatically have them look, look at that guy and point and
23 say let the record show that they've identified the
24 defendant.

25 Okay. Big deal. That's here in Court.

1 But what we're talking about, and the solicitor says,
2 you know, she believes, she doesn't know what happened. She
3 wasn't there anymore than I was there on December 23rd of
4 2009 almost seven years ago.

5 Okay. We have a video. Great. This video is gonna
6 help you, but the problem is and the police have given prior
7 testimony, they don't know who's in the video. The video is
8 not of good quality. You can tell it's a very tall person.
9 Ah ha. There we go. Look at Julius cause Julius is a tall
10 guy, but, you know, there's gonna be a problem because the
11 investigators that initially got there did their job.

12 They worked a crime scene. They did what they were
13 trained to do. However, the later investigators just
14 dropped the ball. They looked at the video. You're gonna
15 see, on the video, very clearly, although you can't tell who
16 it is, the fellow has the gun and he's walking out and, with
17 his left-hand, pushes the door open and makes his escape.

18 Okay. But, you know, well, the police officer, I
19 believe it was Capps that processed the crime scene, did a
20 really good job. He looked at the video and do this. Let's
21 fingerprint that door. Look at that. That's the guy's
22 left-hand and they get a print. They get a beautiful ten
23 point match fingerprint, and it matches an African-American
24 male who is 6-foot 6 tall who lives in the area and weighs
25 the same thing as Mr. McBean weighs.

1 You know, wait a minute, that didn't match Mr. McBean?
2 You'll see the video. You'll see why the detectives
3 immediately went to that door. You'll hear, in the
4 testimony from Antonio Brown, that that door gets cleaned at
5 least every other day if not more.

6 Now, armed with this evidence of the fingerprint,
7 scientific evidence, scientific evidence is not subject to
8 recall, to relations, to biases, to prejudice, blood's
9 blood, DNA is DNA, fingerprints are fingerprints, what did
10 they do to follow-up on that?

11 Absolutely nothing.

12 They don't even question Mr. Lesesne who matches the
13 description, and scientifically matches the fingerprint
14 cause they got their guy.

15 Why blow an eye witness with physical evidence?

16 And we're asking you, when you hear all of this and
17 about the, the shoddy investigation, the incomplete
18 investigation, that there is reasonable doubt in this case
19 that Mr. McBean did not do this. There is not sufficient
20 evidence to convict him in this case. And return him to his
21 liberty.

22 Thank y'all very much in advance.

23 Good morning.

24 THE COURT: The State may call its first witness.

25 SOLICITOR SWANSON: Thank you, Your Honor.

A.J. Drake - Direct examination
by Solicitor Swanson

1 The State calls A.J. Drake.

2 THE COURT: Ma'am, come forward please to be sworn.

3 (Witness complies.)

4 THE COURT: Ma'am, if you'll -- is there a Bible right
5 there?

6 A.J. DRAKE, being first duly
7 sworn, testified as follows:

8 THE CLERK: Okay. State your full name for the record.

9 THE WITNESS: Anjohnene Drake.

10 THE CLERK: Okay. Have a seat.

11 THE COURT: You may be seated, ma'am.

12 THE WITNESS: Thank you.

13 DIRECT EXAMINATION

14 BY SOLICITOR SWANSON:

15 Q Ms. Drake, if you can tell me what your full title is?

16 A I am a paramedic crew chief of the Beaufort County EMS.

17 Q Okay. So crew chief is --?

18 A Well, we have our paramedics and our crew chiefs kind
19 of. We ride the ambulance as well as do some supervisory
20 skills and administrative stuff as well as riding on the
21 ambulance.

22 Q Okay. And who do you work for?

23 A My immediate supervisor is Danny Taneil at Beaufort
24 County EMS.

25 Q Okay. So for Beaufort County EMS?

A.J. Drake - Direct examination
by Solicitor Swanson

1 A Absolutely, yes.

2 Q All right. And if you can just briefly describe what
3 duties a paramedic has?

4 A As a paramedic, we're responsible for responding to
5 9-1-1 calls and we treat minor injuries anywhere up to major
6 trauma, heart attacks. We kind of run the gamut of any
7 medical issues you can think of. We, we deal with that on a
8 daily basis.

9 Q And how long have you been a paramedic?

10 A I've been a paramedic since 2006.

11 Q Okay. And so were you on duty on December 23rd of
12 2009?

13 A I was, yes.

14 Q And tell us about the call that you were dispatched to?

15 A We were dispatched for a gunshot wound at the Island
16 Plaza and we went in route. We had to wait until the scene
17 was secured by the Sheriff's Department due to the nature of
18 the call. And once we got in there we went inside. The
19 fire department was already on scene. So we went inside.
20 They had already started bandaging and treating the patient
21 prior to us getting there.

22 Q Okay. And did you make contact with a gunshot victim
23 there?

24 A I did, yes.

25 Q Okay. I'm gonna show you what's been marked as State's

A.J. Drake - Direct examination
by Solicitor Swanson

1 8.

2 I believe it's without objection?

3 MR. NEWMAN: That's correct.

4 SOLICITOR SWANSON: Okay.

5 And ask if you recognize what's in this picture?

6 A Yes, that would be the victim himself laying on his
7 back and there was being pressure applied to the wound.

8 Q Okay. Is that a fair and accurate depiction of the way
9 the victim appeared that night?

10 A It is, yes.

11 SOLICITOR SWANSON: Your Honor, I'd like to move
12 State's 8 into evidence and ask to publish to the jury.

13 THE COURT: Any objection?

14 MR. NEWMAN: No, sir.

15 THE COURT: All right. It will be admitted.

16 (WHEREUPON, State's Exhibit No. 8 was received into
17 evidence at this time.)

18 THE COURT: You may publish to the jury.

19 SOLICITOR SWANSON: Thank you, Your Honor.

20 Okay. So, Ms. Drake, this is the victim that you came
21 into contact with?

22 A Yes.

23 Q And can you describe his injuries for us?

24 A When I got there the fire department had the large
25 trauma dressing gauze already over the shoulder and there

A.J. Drake - Direct examination
by Solicitor Swanson

1 was a lot of bleeding on scene. He was conscious. He was
2 alert. He was able to talk to me. I removed the bandage
3 just to inspect the wound and there was a small wound
4 denoted just I believe below the clavicle on the patient.

5 Q Okay. Did you recover or did you note an exit wound?

6 A There was an exit wound just below his scapula. Just,
7 just below that large bone that's in the -- in your back is
8 where there was an exit wound noted.

9 Q And that's kind of below your shoulder blade?

10 Is that---

11 A Yes.

12 Q Okay. So in the front right of the chest and exit
13 wound in the back?

14 A Correct. Yes.

15 Q And did you come across a projectile or a bullet?

16 A I did. Once I cut his shirt to kind of expose to check
17 for any other wounds, the bullet was noted to be sitting
18 just at the, the waistline where his, his pant was. The
19 bullet was sitting there.

20 Q Okay. How serious of a wound did he have?

21 A It could of been a very serious wound. You kind of, in
22 that case, you, you treat for the worse. In that area you
23 have your subclavian vein artery that runs there as well as
24 your lungs sit in that area. So he could of had a punctured
25 lung. If the artery or vein were disturbed in anyway, if

A.J. Drake - Direct examination
by Solicitor Swanson

1 they were nicked or cut or severed, he could of bled to
2 death just from, from that wound.

3 Q And, in your experience, is a gunshot wound in that
4 area something that could be life threatening?

5 A Absolutely, yes.

6 Q Okay. What happened after you did everything you could
7 to stabilize him at the scene?

8 A Once we did that we notified the hospital that we had a
9 trauma coming in so they could get their team ready, so that
10 when we got there, there was no delay in his care, and we
11 transported him immediately. We'd started some IVs. We had
12 him on the cardiac monitor, on oxygen, just those kind of
13 measures to make sure that he was -- we would help to keep
14 him stabilized until he got to the hospital.

15 Q Okay. And you took him to Beaufort Memorial ER?

16 A Correct. Yes.

17 Q All right. And so, once you arrived there, you turned
18 him over to the ER staff?

19 A Absolutely, yes.

20 Q Okay. Thank you.

21 I have nothing further for this witness.

22 THE COURT: Mr. Newman, your witness.

23 MR. NEWMAN: Okay. I don't have any questions. Thank
24 you, judge.

25 THE COURT: All right. Ma'am, you may step down.

Chris Capps - Direct examination
by Solicitor Swanson

1 THE WITNESS: Thank you.

2 THE COURT: You wish to excuse the witness?

3 SOLICITOR SWANSON: Yes, please, Your Honor.

4 THE COURT: Any objections?

5 MR. NEWMAN: No, sir.

6 THE COURT: You're free to go if you'd like.

7 THE WITNESS: Thank you.

8 THE COURT: Thank you, ma'am.

9 SOLICITOR SWANSON: State calls Chris Capps.

10 THE COURT: Sir, come forward and be sworn please right
11 over here.

12 CHRIS CAPPS, being first duly
13 sworn, testified as follows:

14 THE CLERK: State your full name for the record please.

15 THE WITNESS: Christopher Capps.

16 THE CLERK: You may be seated.

17 THE COURT: Counselor, your witness.

18 SOLICITOR SWANSON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR SWANSON:

21 Q How long have you worked for the Beaufort County
22 Sheriff's Office?

23 A I started in November of 2004.

24 Q Okay. And what's your title?

25 A Right now I'm an assistant supervisor on northern

Chris Capps - Direct examination
by Solicitor Swanson

1 patrol. A Team.

2 Q Okay. What did you do prior to working as a deputy for
3 the Sheriff's Department?

4 A I spent five years in the Marine Corp.

5 Q All right. And have you always been working on the
6 Lady Islands/Saint Helena area?

7 A I've always worked on the northern end of Beaufort,
8 which would be Lady's Island, Saint Helena, Beaufort, or
9 Sheldon.

10 Q Okay. And were you on duty December 23rd of 2009?

11 A Yes, ma'am.

12 Q Can you describe the call that you went out to?

13 A Yes, ma'am, I received a report of an armed robbery at
14 the Island Plaza, which I believe is 862 Sea Island Parkway.

15 Q Is that in Beaufort County?

16 A It is.

17 Q All right.

18 A Responded to the store. Upon arriving to the store we
19 found that the store was locked. Mr. Brown was standing at
20 the door, Antonio Brown.

21 Q And who is he?

22 Is he an employee?

23 A Yes, ma'am.

24 Q Okay.

25 A Mr. Brown opened the door, told us that Mr. Patel had

Chris Capps - Direct examination
by Solicitor Swanson

1 been shot, and Mr. Patel is the store owner and went in the
2 store and found Mr. Patel lying on the floor behind the
3 counter with appeared to be a gunshot wound to the chest.

4 Q Okay. And was he able to talk to you at that time?

5 A I don't believe Mr. Patel spoke to me.

6 Q Okay. Did you call EMS or anything?

7 A Yes, ma'am, I asked for EMS to respond after we made
8 sure that there was no threat, no more threat inside the
9 store or outside the store.

10 Q Okay. I'm gonna show you a few pictures. These are
11 State's 9, 10, 11, and 12, and if you can just briefly look
12 through those and tell me if those are fair and accurate
13 depictions of what you came across that night --

14 A Yes, ma'am.

15 Q -- before I ask to enter and publish them.

16 A (Witness complies.)

17 Yes, ma'am.

18 Q Okay. And did you actually take those pictures?

19 A I did.

20 SOLICITOR SWANSON: Okay. State would like to move
21 photos 9, 10, 11, and 12 into evidence and publish to the
22 jury.

23 THE COURT: Any objections?

24 MR. NEWMAN: Without objection.

25 THE COURT: Without objections they'll be admitted as

Chris Capps - Direct examination
by Solicitor Swanson

1 marked.

2 (WHEREUPON, State's Exhibit Nos. 9 through 12 were
3 received into evidence at this time.)

4 THE COURT: You may show them or publish to the jury.

5 SOLICITOR SWANSON: Thank you, Your Honor.

6 State is publishing State's 9.

7 And, deputy, if you can just please tell us what we're
8 looking at right here.

9 A This is the Island Plaza, which is 862 Sea Island
10 Parkway. That's the front of the store with the two
11 entrance doors into the store and with one of the gas pumps
12 sitting there.

13 Q And for those who don't know, can you describe the area
14 in which it's located?

15 A It's located on Saint Helena. When you're going out
16 Saint Helena where Martin Luther King Boulevard is and Sea
17 Island Parkway meet, it's at the corner right there and
18 there's a little park.

19 Q So is it right in the middle of Frogmore?

20 A Yes, ma'am.

21 Q And it's a gas station and convenience store?

22 A Yes, ma'am.

23 Q Okay. Do you come into contact with this store and
24 these owners often?

25 A In my time on the Sheriff's Office we've been to that

Chris Capps - Direct examination
by Solicitor Swanson

1 store a lot.

2 Q Okay. Is it a busy store?

3 A Yes, ma'am.

4 Q Okay. All right. This is State's 12.

5 If you can please describe what we're looking at here.

6 A This is the floor behind the counter. Those clothes
7 there are Mr. Patel's clothes that EMS actually cut off of
8 him after he -- while they were trying to treat his injury,
9 and then they were left there after he was transported to
10 the hospital.

11 Q Okay. This is State's 10.

12 What are we looking at?

13 A It's another downward view of the floor where you can
14 see Mr. Patel's blood on the floor from where he was laying
15 after he was shot in the chest.

16 Q Okay. And I'm publishing State's 11.

17 Can you tell us what that is?

18 A This is the bullet hole that was in the ceiling where
19 it appears that the second suspect had shot into the store
20 and went into the ceiling above the -- it was like a
21 Coca-Cola sign. This is behind it.

22 Q Okay. You testified that EMS removed the clothing from
23 the victim.

24 Did you collect anything when that was done?

25 A Yes, ma'am, when they were -- after they cut off his or

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by Solicitor Swanson

1 while they were cutting off his clothing, they found a --
2 the actual projectile from the gun laying in -- on him and
3 Ms. A.J. handed it to me.

4 Q Okay. I'm gonna show you what's been marked as State's
5 Exhibit No. 5, and ask if this bag contains the projectile
6 that you recovered.

7 A Yes, ma'am, it does.

8 SOLICITOR SWANSON: All right. At this time I would
9 move State's 5 into evidence.

10 THE COURT: Any objections other than your previous
11 objections?

12 MR. NEWMAN: No, sir.

13 THE COURT: The previous objections are noted. It's
14 admitted.

15 (WHEREUPON, State's Exhibit No. 5 was received into
16 evidence at this time.)

17 THE COURT: You may proceed.

18 SOLICITOR SWANSON: Thank you.

19 Now, was the store equipped with a surveillance system?

20 A Yes, ma'am, it was.

21 Q Okay. And did you watch the footage of that, of that
22 robbery?

23 A Yes, ma'am, I did.

24 Q Okay. I'm gonna show you what's been marked as State's
25 14 and ask if you can identify this disk.

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1 A Yes, ma'am.

2 Q Okay. And are your initials on this disk?

3 A Yes, ma'am.

4 Q Did you review this disk at my request?

5 A Yes, ma'am, I reviewed it in your office on the 11th.

6 Q Okay. And is this a fair and accurate depiction of
7 what came from that store surveillance video?

8 A Yes, ma'am.

9 SOLICITOR SWANSON: Okay. I would move State's 14 into
10 evidence and ask to publish to the jury.

11 THE COURT: Any objection?

12 MR. NEWMAN: No, sir.

13 THE COURT: Without objection it will be admitted.

14 (WHEREUPON, State's Exhibit No. 14 was received into
15 evidence at this time.)

16 THE COURT: You may publish.

17 SOLICITOR SWANSON: Thank you.

18 MR. NEWMAN: Your Honor, with the Court's permission,
19 my eye sight's not the best, if I could stand a little
20 closer while we're watching?

21 THE COURT: Oh, certainly. You can come right around
22 over here.

23 MR. NEWMAN: Thank you.

24 THE COURT: Get a good look at it.

25 SOLICITOR SWANSON: And for the Court's information,

Chris Capps - Direct examination
by Solicitor Swanson

1 this has several different camera views. I'm gonna let them
2 all play.

3 (WHEREUPON, State's Exhibit No. 5 was played for the
4 jury at this time.)

5 Q Deputy Capps, can you tell us who that little guy is
6 that we see right there?

7 A That is Mr. Griffin. He was in the store. I believe
8 he was filling out lottery tickets or buying lottery tickets
9 or something.

10 Q Okay.

11 A And the other gentleman walking around is Mr. Tony
12 Brown who's also an employee of the store.

13 Q Thank you.

14 And this is obviously just the camera angle behind the
15 counter?

16 A Yes, ma'am.

17 Q In that about five minutes of footage we see prior to
18 the attempted robbery and the assault and battery with
19 intent to kill, about how many people did we see come in and
20 out of the store?

21 A I think it's five people. Five or six people.

22 Q In just that five or so minutes.

23 We're obviously seeing the gun right there, deputy?

24 A Yes, ma'am, he's holding a gun. I believe Mr. Patel is
25 telling him to get out of the store and then he just shoots

Chris Capps - Direct examination
by Solicitor Swanson

1 Mr. Patel in the chest.

2 Q From about a foot away?

3 A Yes, ma'am.

4 Q I believe there's one more brief camera angle after
5 this clip, and then I'm gonna stop the video at this time.

6 I'm gonna show you what's been marked as State's 13,
7 deputy.

8 Is this a still shot from that video?

9 A Yes, ma'am.

10 Q Okay. Of the perpetrator?

11 A Yes, ma'am.

12 Q Okay. Is that a fair and accurate depiction?

13 A Yes, ma'am.

14 SOLICITOR SWANSON: Okay. I would move State's 13 into
15 evidence at this point.

16 MR. NEWMAN: They're no objections to it.

17 SOLICITOR SWANSON: Okay.

18 THE COURT: Without objections it will be admitted as
19 marked.

20 SOLICITOR SWANSON: Thank you.

21 (WHEREUPON, State's Exhibit No. 13 was received into
22 evidence at this time.)

23 SOLICITOR SWANSON: And I'd ask to publish to the jury
24 please.

25 THE COURT: You may.

Chris Capps - Direct examination
by Solicitor Swanson

1 SOLICITOR SWANSON: Thank you.

2 Q Okay. And this is State's 13, the shooter and
3 attempted robber. Still shot from the video.

4 All right. After you watched the video, what was the
5 next thing that you did?

6 A We went -- we attempted to try to get the bullet that
7 was in the ceiling.

8 Q Okay.

9 A And then basically it had went through some soft duct
10 work and eventually went into some hard metal ducting and we
11 weren't able to locate the second bullet.

12 Q Okay. So unable to locate a second bullet and were you
13 ever able to locate a gun?

14 A No, ma'am.

15 Q Okay. And did you try to get any fingerprints off of
16 the door?

17 A I did. In the video, as the shooter leaves the store,
18 you can see he puts his hand on the door. So we dusted that
19 area of the door for latents prints.

20 Q Okay. And I'm gonna show you State's 1, 2, 3, and 4.

21 MR. NEWMAN: No objection.

22 THE COURT: You want to admit those?

23 SOLICITOR SWANSON: I would like to go ahead and admit
24 1 through 4.

25 THE COURT: You said no objection?

Chris Capps - Direct examination
by Solicitor Swanson

1 MR. NEWMAN: No objections, Your Honor.

2 THE COURT: So they're admitted as marked as exhibits.

3 (WHEREUPON, State's Exhibit Nos. 1 through 4 were
4 received into evidence at this time.)

5 THE COURT: You may proceed.

6 SOLICITOR SWANSON: Thank you.

7 And those are the latent lifts that you recovered---

8 A Yes, ma'am.

9 Q ---from the door?

10 A Yes, ma'am.

11 Q And now when you say recovered from the door, do you
12 mean the glass part of the door or the bars in front of the
13 door?

14 A It's from the glass and I believe we also took from the
15 metal frame on the edge of the door.

16 Q Okay. But not the bars in front of the glass?

17 A No, ma'am.

18 Q And correct me if I'm wrong, but there are bars that
19 protrude from the glass on the inside of the door?

20 A Yes, ma'am.

21 Q Okay. When you were dusting and lifting these possible
22 prints, did it appear that the door had been cleaned?

23 A It did not.

24 Q Okay. And, in fact, do we see smudges on these lifts?

25 A Yes, ma'am.

Chris Capps - Direct examination
by Solicitor Swanson

1 SOLICITOR SWANSON: Okay. And I would like to ask to
2 publish to the jury.

3 THE COURT: You may.

4 Q All right. So this is the first possible area we see.
5 what do we see here?

6 A This is taken from the door and basically to the right
7 you see like a little picture where I've drawn the two --
8 the double doors and the area of the door where this actual
9 lift was taken from.

10 Q Okay. That was State's 1.

11 State's 2.

12 A Again, this is basically the same thing, but from the
13 next -- other side of that next set of bars that's on the
14 window.

15 Q Okay. State's 3.

16 A And that's the same thing, but it's the next, next
17 piece of glass after the last set of bars.

18 Q Okay. State's 4.

19 A And this is underneath the handle on the top portion of
20 that piece, first piece of glass in the corner of the door.

21 Q Okay. And are you aware that one usable print came
22 back?

23 A Yes, ma'am.

24 Q Okay. And are you aware of who it came back to?

25 A It came back to Dominick Lesesne.

Chris Capps - Direct examination
by Solicitor Swanson

1 Q Okay. And do you know Dominick Lesesne?

2 A Yes, ma'am.

3 Q How do you know Dominick Lesesne?

4 A Well, Antwan -- when I was in the Marine Corp I use to
5 live in Crestwood Mobile Home Park and Dominick's brother,
6 Antwan, lived two or three doors down from me. So I've
7 known him since he was a kid, him and his brother, and then,
8 when I joined law enforcement, I've had multiple dealings
9 with Dominick on Saint Helena.

10 Q Where does Dominick live?

11 A On Saint Helena.

12 Q And describe Dominick for me.

13 A Dominick's about 6-foot 4, 6'5" I think.

14 Q Tall?

15 A Yes, ma'am.

16 Q Okay. Is he a black male?

17 A Yes, ma'am.

18 Q Is he dark complected, light complected?

19 A He's very dark complected.

20 Q What is his hair like?

21 A As long as I can remember he's always had dreads that
22 come halfway down his back.

23 Q Okay. I'm gonna show you what's been marked as State's
24 17 and ask if you can identify who's in this picture.

25 A This is Dominick Lesesne.

Chris Capps - Direct examination
by Solicitor Swanson

1 SOLICITOR SWANSON: Okay. I ask to enter this State's
2 17---

3 THE COURT: Any objections?

4 SOLICITOR SWANSON: ---and publish.

5 MR. NEWMAN: No objections.

6 THE COURT: Without objections it will be admitted as
7 marked.

8 (WHEREUPON, State's Exhibit No. 17 was received into
9 evidence at this time.)

10 THE COURT: You may publish.

11 SOLICITOR SWANSON: Thank you.

12 THE COURT: Yes, ma'am.

13 Q Okay. I'm publishing State's 17, and, Deputy Capps,
14 this is how you remember seeing Dominick Lesesne pretty much
15 throughout the years you've known him?

16 A Yes, ma'am.

17 Q Never known him to look any different?

18 A No, ma'am.

19 Q Do you know if he's a regular at the Island Plaza?

20 A Yes, ma'am, he is.

21 Q Have you seen him there before?

22 A Yes, ma'am.

23 SOLICITOR SWANSON: Okay. Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 (Pause.)

Chris Capps - Direct examination
by Solicitor Swanson

1 Q Deputy Capps, just a few more questions about the
2 prints.

3 A Uh-huh. (Affirmative).

4 Q Do we know how long any of those prints were there?

5 A No, ma'am.

6 Q Okay. And for someone who's regular at the store,
7 would you expect to maybe find their print on a door?

8 A Yes, ma'am.

9 Q Okay. I've got nothing further at this time. Thank
10 you.

11 THE COURT: Your witness, Mr. Newman.

12 CROSS-EXAMINATION

13 BY MR. NEWMAN:

14 Q Okay. You've had, from my understanding, ample
15 opportunity to speak with Mr. Brown on that night, correct?

16 A Yes.

17 Q Tony Brown?

18 A Yes, sir.

19 Q The guy sweeping the floor?

20 A Yes, sir.

21 Q Okay. And you notice from the video that the last clip
22 we watched goes on for about 30 seconds after Mr. Patel is
23 obviously shot and on the ground?

24 A Yes, ma'am.

25 Q And nowhere in that clip is Antonio Brown, isn't it?

Chris Capps - Cross-examination
by Mr. Newman

1 A I can't recall. I believe he's in -- at the beginning
2 of the clip I believe he runs towards the back of the store.

3 Q Right.

4 A Yes, sir.

5 Q Okay. And that store has multiple aisles that are, at
6 least on me, about chest high?

7 A Yes, sir.

8 Q Maybe a little bit higher cause I'm not very tall?

9 A Yes, sir.

10 Q Okay. And you said you'd had a number of run-ins with,
11 with Dominick?

12 A Yes, sir.

13 Q And that's in your law enforcement capacity, isn't it?

14 A Well, in law enforcement and all.

15 Q Okay. Now, as I'm getting from your report that you
16 wrote, and I know it's been some time ago, that the --
17 basically after -- that the, the shooter -- and I believe
18 you've given the previous testimony that you can't identify
19 who this person is in the video?

20 A I can not, no.

21 Q Okay. You downloaded with I guess the -- a store
22 security guy came out?

23 I forgot what his name was.

24 A His name is Darwin.

25 Q Darwin or somebody like that?

Chris Capps - Cross-examination
by Mr. Newman

1 A Yeah.

2 Q And he assisted you in downloading the, the video that
3 we see today, correct?

4 A Yes, sir.

5 Q And being a trained and experienced officer, you looked
6 at the video right then and there to try and look for
7 evidence to see if you could recognize the suspect, which,
8 of course, you couldn't, but that's the reason you viewed
9 it, correct?

10 A That is correct.

11 Q You could get an accurate description of clothing to
12 send out a, a radio call to be on lookout for and those type
13 of things?

14 A That is correct.

15 Q Okay. And you noted that he had on some type of dark
16 pants, an orange or red some type of pullover?

17 A Yes, sir.

18 Q And a black knit cap, correct?

19 A Yes, sir.

20 Q Okay. Now, have you ever seen folks that wear dreads
21 that can pull them very tightly and put them in a rubber
22 band?

23 A Yes.

24 Q And put a beanie over the top of it?

25 A Yes.

Chris Capps - Cross-examination
by Mr. Newman

- 1 Q And can tuck it into a large fitting shirt?
- 2 A It could happen, yes.
- 3 Q Okay. So you immediately view the video to look for
- 4 these clues, and one of the things that we can tell on the
- 5 video, especially when we see other people come in the
- 6 store, this is a very tall person, correct?
- 7 A Yes, sir.
- 8 Q Okay. And I believe, from his various booking reports,
- 9 Dominick Lesesne is listed at 6'5"?
- 10 A Yes.
- 11 Q Would you go along with that?
- 12 A Yes, sir.
- 13 Q And Mr. McBean is 6'6"?
- 14 A Yes, sir.
- 15 Q Okay. The -- and, in individuals, that's pretty tall,
- 16 correct?
- 17 A To me it is, yes, sir.
- 18 Q Okay. So you got this individual and, as I got it, the
- 19 reason you examined this door because you saw the individual
- 20 stretch out his left-hand, correct?
- 21 A Yes, sir.
- 22 Q Because we know, from the video, the shooter had his
- 23 gun in his right-hand?
- 24 A Yes, sir.
- 25 Q That would tell us that the shooter's probably

Chris Capps - Cross-examination
by Mr. Newman

1 right-handed, doesn't have to be, but probably, correct?

2 A Yes, sir.

3 Q Okay. So the left hand is used to open the door?

4 A Yes, sir.

5 Q And in looking at the video, you see where it was
6 pushed open with the left-hand, and this is why you went to
7 the two doors?

8 This is why you went to that particular door, correct?

9 A Yes, sir.

10 Q All right. And you, in your training, you were trained
11 how to take latent prints?

12 A Yes, sir.

13 Q You have to be careful with them because, if you brush
14 them too hard, you could, you could actually contaminate the
15 prints yourself in trying to lift it, correct?

16 A That is correct.

17 Q So you very -- be very cautious with it, and, in these
18 prints, you went to the area of the door and did a little
19 diagram where you saw the shooter touching the door,
20 correct?

21 A That is correct.

22 Q In other words, it wouldn't make any sense, on the
23 door, to take any prints from down here because your suspect
24 didn't touch anywhere down here?

25 A That's correct.

Chris Capps - Cross-examination
by Mr. Newman

1 Q And, in fact, specifically, and with your diagram, your
2 suspect touched in this area here, correct?

3 A That is correct.

4 Q And that is the area you dusted?

5 A Yes, sir.

6 Q And that is the area where you were able to obtain a
7 usable, usable fingerprint, correct?

8 A Yes, sir.

9 Q All right. And I think I got it upside down. There we
10 go.

11 And the unknown print on the left is, in fact, the
12 print you lifted and it was matched up to a known print of
13 Mr. Lesesne from his arrest record, correct?

14 A Yes, sir.

15 Q All right. And Mr. Lesesne is the same -- almost the
16 same general height as the -- as Mr. McBean, correct?

17 A That is correct.

18 Q And he's nearly the same weight?

19 A That is correct.

20 Q All right. Now, did you ever ask Mr. Brown how often
21 the doors were cleaned in the store?

22 A I did not.

23 Q Did you not think to ask him that or when it was last
24 cleaned?

25 A I didn't think to.

Chris Capps - Cross-examination
by Mr. Newman

1 Q Okay. Would it surprise you if Mr. Brown will testify
2 that it's cleaned about every day or every other day?

3 A That wouldn't surprise me.

4 Q Okay. And you found, at the scene, no forensic
5 evidence that linked Mr. McBean to this crime.

6 Isn't that correct?

7 A That is correct.

8 Q You did find physical evidence linking another 6-foot
9 5, 6-foot 6 African-American male weighing around 180 to
10 190 pounds?

11 A I found -- can you repeat the question?

12 Q You did, you did find physical evidence that actually
13 connects to another person who has the same general
14 description, height, and weight as Mr. McBean?

15 A That is correct.

16 Q And that would be the Dominick Lesesne that you've
17 known for a long time?

18 A Yes, sir.

19 Q And have had enough -- a number of run-ins as a police
20 officer with---

21 A Yes, sir.

22 Q All right. Thank you.

23 SOLICITOR SWANSON: Just briefly.

24 THE COURT: Yes, ma'am, you may proceed.

25 I assume -- Mr. Newman, are you finished?

Chris Capps - Redirect examination
by Solicitor Swanson

1 MR. NEWMAN: I would---

2 SOLICITOR SWANSON: Oh, sorry.

3 MR. NEWMAN: I am, Your Honor. Thank you.

4 THE COURT: Okay. You may proceed.

5 SOLICITOR SWANSON: Thank you, Your Honor, just
6 briefly.

7 REDIRECT EXAMINATION

8 BY SOLICITOR SWANSON:

9 Q There were actually other fingerprints that you
10 recovered from these lifts, right?

11 A Yes, ma'am.

12 Q So there were a total of four?

13 A I don't remember the exact total.

14 Q Okay. But only one was usable?

15 A Yes, ma'am.

16 Q Okay. And then there were also all the smudges and
17 everything else on them?

18 A Yes, ma'am.

19 Q That couldn't be used for any identification?

20 A That is correct.

21 Q Okay. And when you watched the video and when you look
22 at the still shot, State's 13, although you might not be
23 able to tell who it is, is that Dominick Lesesne?

24 A It is not.

25 SOLICITOR SWANSON: Okay. I have nothing further.

Chris Capps - Recross examination
by Mr. Newman

1 THE COURT: Recross?

2 MR. NEWMAN: Yes, please.

3 RECROSS EXAMINATION

4 BY MR. NEWMAN:

5 Q Okay. So it's not Dominick Lesesne and you can't say
6 that it's Mr. McBean either, can you?

7 A That is correct.

8 Q All right. And the shooter went in and out of that
9 door twice, correct?

10 A That is correct.

11 Q All right. And did it appear that -- the, the finger
12 that was matched was number nine, the left ring finger of
13 Mr. Lesesne?

14 A Okay. Is that a question?

15 Q Yeah.

16 Well, do you know that?

17 A Yes.

18 Q Okay. And the left-hand was used to open the door?

19 A Yes.

20 Q Okay. And presumably Mr. Lesesne has all his fingers
21 on his left-hand?

22 A Last time I saw him.

23 Q Okay. You don't of him to be missing any digits?

24 A Not since the last time I spoke to him.

25 Q All right. And the prints you got were all from the

Chris Capps - Recross examination
by Mr. Newman

1 same area?

2 A Yes, sir.

3 Q Where you see the shooter touching that door?

4 A Yes, sir.

5 Q All right.

6 THE COURT: All right, sir. You may step down.

7 SOLICITOR SWANSON: I would ask that Deputy Capps be
8 allowed to be excused.

9 THE COURT: Any objection?

10 MR. NEWMAN: No, sir.

11 THE COURT: You're free to go at this time, sir. Thank
12 you very much.

13 THE WITNESS: Thank you, Your Honor.

14 THE COURT: State may call its next witness.

15 SOLICITOR SWANSON: Thank you, Your Honor.

16 If I may approach just briefly?

17 THE COURT: Yes, ma'am.

18 Counsel.

19 SOLICITOR SWANSON: Just regarding scheduling.

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

22 THE COURT: Ladies and gentlemen, we've been going for
23 about an hour and a half and I understand the next witness
24 may be rather lengthy. So we're gonna take our break at
25 this time. I'll allow you to step back to the jury room.

1 The bailiffs will assist you if you need anything.

2 As always, when you leave the courtroom, my
3 instructions are that you not discuss anything about this
4 case until I ask you to begin deliberations.

5 You may retire to the jury room.

6 (WHEREUPON, the following takes place outside the
7 presence of the jury.)

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

9 THE COURT: All right. Court's in recess for about ten
10 minutes.

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

12 THE COURT: All right. State ready to proceed?

13 SOLICITOR SWANSON: State's ready.

14 THE COURT: Defense ready?

15 MR. NEWMAN: Yes, sir.

16 THE COURT: All right. Let's bring the jury in.

17 (WHEREUPON, the following takes place within the
18 presence of the jury.)

19 THE BAILIFF: Ready, Your Honor?

20 THE COURT: Yes, sir.

21 THE BAILIFF: The jury is entering the courtroom, Your
22 Honor.

23 THE COURT: Thank you.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

1 THE COURT: All right. The record will reflect the
2 jury has returned to the courtroom.

3 The State's in the process of, of calling its
4 witnesses.

5 You may call your next witness.

6 SOLICITOR SWANSON: Thank you, Your Honor.
7 State calls Jay Patel.

8 THE COURT: Come forward, sir, and be sworn.

9 JAY PATEL, being first duly sworn,
10 testified as follows:

11 THE CLERK: State your full name for the record and
12 spell your last name.

13 THE WITNESS: Jayent S. Patel.

14 THE CLERK: Spell your last name.

15 THE WITNESS: Patel.

16 THE CLERK: Spell your last name.

17 THE WITNESS: P-A -- last name is P-A-T-E-L.

18 THE CLERK: Okay. You can have a seat.

19 THE COURT: Thank you, sir. Please be seated.
20 Counselor, your witness.

21 SOLICITOR SWANSON: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY SOLICITOR SWANSON:

24 Q Mr. Patel, tell us what you do for a living.

25 A I own the store and I manage the Island Plaza.

Jay Patel - Direct examination
by Solicitor Swanson

1 Q Is that located in Saint Helena?

2 A Yes.

3 Q And how long have you owned the Island Plaza?

4 A Since 2000.

5 Q Since 2000.

6 Okay. I'm gonna bring this microphone a little bit
7 closer to you, and if you can speak up and try and enunciate
8 for the jury.

9 A Okay.

10 Q English is not your first language, is it?

11 A No.

12 Q Okay. How old are you?

13 A Right now I'm 65.

14 Q All right. And do you go to the store?

15 How often do you go to the store and work?

16 A Every day seven days a week.

17 Q Are y'all open seven days a week?

18 A Yes.

19 Q And do you know a lot of your customers?

20 A We have a lot of repeat customers.

21 Q A lot of repeat customers?

22 A Yes.

23 Q If you were gonna say, about how many of your customers
24 are repeat customers?

25 A In a week time?

Jay Patel - Direct examination
by Solicitor Swanson

1 Q Sure. In a week.

2 A Thousands.

3 Q So do you notice when somebody else new comes to the
4 store?

5 A Yes.

6 Q Okay. Were you working on December 23rd of 2009?

7 A Yes.

8 Q And tell us about what happened that night?

9 A Between -- somewhere around between 9:00 and 9:30 and
10 ten o'clock, the person came to the store and he tried -- he
11 robbed me and shot me.

12 Q And shot you?

13 A Yes.

14 Q Now, when this person entered the store, what did he
15 have in his hand?

16 A The first time he didn't have anything and then he
17 walked out, came back, and he got a gun in his hand.

18 Q Okay. And did he point it at you?

19 A Yes.

20 Q And did he ask you for anything?

21 A He asked for money. I was doing the lottery. I said
22 one minute and before -- because the lottery, I was writing
23 the numbers for closing that day. So I had to go to the
24 register to open up the drawer and he said don't move and he
25 just shot me.

Jay Patel - Direct examination
by Solicitor Swanson

- 1 Q And he shot you.
- 2 And where exactly did he shoot you?
- 3 A Right here in the chest.
- 4 Q Okay. Did you recognize the person that shot you?
- 5 A Yes.
- 6 Q Was he someone that had been in the store before?
- 7 A Yes.
- 8 Q About how many times had he been in the store?
- 9 A In a couple months, maybe about three months, everyday
- 10 at least four to five times a day.
- 11 Q Okay. So for two to three months, four or five times a
- 12 day, this man came into this store?
- 13 A Yes.
- 14 Q The man that shot you?
- 15 A Yes.
- 16 Q And what did he do?
- 17 Did he purchase items or --?
- 18 A Yeah, he -- sometimes he buys chips, soda, cigarette,
- 19 and cigars.
- 20 Q Did he ever come in with anyone?
- 21 A In the beginning he come with a couple of friends.
- 22 Q After you were shot, what happened?
- 23 A After I got shot I gave the key to my employee, Tony
- 24 Brown. I asked -- told him to call 9-1-1 and lock the door.
- 25 Q And then did, did the police arrive?

Jay Patel - Direct examination
by Solicitor Swanson

- 1 Did the police come after that?
- 2 A Yes.
- 3 Q Okay. And then were you taken in an ambulance?
- 4 were you taken in an ambulance?
- 5 A No.
- 6 Q Okay. How did you get to the hospital?
- 7 A By EMS.
- 8 Q Okay.
- 9 A Ambulance.
- 10 Q Ambulance.
- 11 And you went to Beaufort Memorial first?
- 12 A Yeah.
- 13 Q Where did you go after Beaufort Memorial?
- 14 A After Beaufort Memorial they took me to Savannah
- 15 Memorial Hospital by helicopters.
- 16 Q Okay. So you went to Savannah Memorial by helicopter.
- 17 was is that night?
- 18 A Yes.
- 19 Q And did you go straight into surgery?
- 20 A That I don't remember because I was out.
- 21 Q Okay. Were you in the hospital for a few days?
- 22 A Yes.
- 23 Q Now, once you came back from the hospital, did you meet
- 24 with Investigator Fraser?
- 25 A Yes.

Jay Patel - Direct examination
by Solicitor Swanson

1 Q And where did you meet?

2 A I met him at the police station.

3 Q Okay. At the police station.

4 A He said annex building right across the street from
5 there.

6 Q I believe it was the northern investigations office?

7 A Yes.

8 SOLICITOR SWANSON: Okay. State would like to enter
9 Exhibit 7 without objection from the defense.

10 THE COURT: Any objections?

11 MR. NEWMAN: No, sir.

12 THE COURT: Without objections it will be admitted.

13 (WHEREUPON, State's Exhibit No. 7 was received into
14 evidence at this time.)

15 THE COURT: You may proceed.

16 Q I'm gonna show you what's been admitted as State's
17 Exhibit 7.

18 Is this the photo lineup that you looked at --

19 A Yes.

20 Q -- with Investigator Fraser?

21 A Right.

22 Q And was that on January 5th of 2010?

23 A Right.

24 Q Okay. And are these instructions that he read to you
25 on the back?

Jay Patel - Direct examination
by Solicitor Swanson

- 1 A Yes.
- 2 Q Along with your signature?
- 3 A Yes.
- 4 Q And did you pick someone out of this lineup?
- 5 A Yes.
- 6 Q Who did you pick out?
- 7 A Number two.
- 8 Q And is that, is that where you circled number two?
- 9 A Yes.
- 10 Q And initialed?
- 11 A I initial it.
- 12 SOLICITOR SWANSON: Okay. Permission to publish, Your
- 13 Honor.
- 14 THE COURT: You may publish.
- 15 Q All right. This is State's 7 and this is where you
- 16 picked number two out of the lineup as the man that shot
- 17 you?
- 18 A Yeah.
- 19 Q How certain are you that that's the man that shot you?
- 20 A I'm pretty sure. A hundred percent.
- 21 Q A hundred percent.
- 22 When Investigator Fraser showed you that lineup, were
- 23 you able to pick him out immediately?
- 24 A Yes.
- 25 Q Do you see the man that shot you in the courtroom

Jay Patel - Direct examination
by Solicitor Swanson

1 today?

2 A Yes.

3 Q Can you point him out for me?

4 A He is sitting right next to Mr. Newman.

5 Q Okay. Now, in another hearing on a different day you
6 were shown a picture which is been entered as State's
7 Exhibit 18 by Mr. Newman.

8 Do you recall being shown that picture?

9 A Yes.

10 Q And I believe you said that was not the man that shot
11 you?

12 A That's right.

13 Q Okay. And is that because he looks very different
14 there?

15 A Because I recognize who shot me.

16 Q Okay.

17 A So I know that this is not the picture.

18 Q That this is not a picture of that man?

19 A Right.

20 SOLICITOR SWANSON: Okay. I'm gonna publish State's
21 18.

22 (The Court nods affirmatively.)

23 Q And that was the picture that Mr. Newman showed you in
24 a previous hearing?

25 A Right.

Jay Patel - Direct examination
by Solicitor Swanson

1 Q Okay. And then, just for comparison, State's 7.

2 Okay. Do you know a lot of your regular customers?

3 A Yes.

4 Q Do you know any of the Lesesnes who live on Saint
5 Helena?

6 A Yes.

7 Q Okay. Do you know Dominick Lesesne?

8 A Yes.

9 Q I'm gonna show you what's been entered as State's 17
10 and ask you who this is.

11 A That's Dominick.

12 Q Dominick Lesesne. State's 17.

13 And is this how you recall Dominick Lesesne looking?

14 Has he always kind of looked like that?

15 A Yeah.

16 Q Okay. And, in fact, at one point, Mr. Patel, did you
17 employ Dominick's sister?

18 A Yes.

19 Q Quadillion?

20 A Yes.

21 Q Okay. Do you know Dominick's parents?

22 A Yes.

23 Q Have you seen him grow up over the past 16 years?

24 A Yes.

25 Q Is Dominick Lesesne the man who shot you?

Jay Patel - Direct examination
by Solicitor Swanson

1 A No.

2 Q Are you scared of Dominick Lesesne?

3 A No.

4 SOLICITOR SWANSON: Okay. Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 SOLICITOR SWANSON: I have nothing further at this
8 time.

9 Thank you, Mr. Patel.

10 THE COURT: Your witness, Mr. Newman.

11 CROSS-EXAMINATION

12 BY MR. NEWMAN:

13 Q Good morning, Mr. Patel.

14 Have I been in your store?

15 A Nope.

16 Q I've never been in your store?

17 A You might have come one or twice but I don't remember.

18 Q Okay.

19 A Because you're not my regular customer.

20 Q Okay. Now, as to that, your store is on -- it's an
21 excellent location. It's on a very busy highway, Highway
22 21, correct?

23 A Right.

24 Q It's on another busy highway too, Martin Luther King,
25 and near your store is the Penn Center, correct?

Jay Patel - Cross-examination
by Mr. Newman

1 A Right.

2 Q And that attracts thousands of visitors every year,
3 correct?

4 A Yeah.

5 Q Okay. And Fripp Island, people stop in and get stuff
6 from you to head out to Fripp Island, vacationers, correct?

7 A That's right.

8 Q And busy summer in Fripp, over the summer, maybe
9 thousands of people have stopped in your store to get ice
10 and beer and supplies to go out to Fripp and stay at Fripp?

11 A That's what I say.

12 Q Yeah.

13 Now, at another time we spoke you said that this is not
14 the man that shot you?

15 A That's right.

16 Q Okay. And you say that this fellow's come in about two
17 to three months, four or five times a day almost everyday?

18 A Right.

19 Q Okay. And I had asked you, at a prior hearing, about,
20 I don't know, maybe four years ago, that that information
21 that this had come in two to three times a day or four or
22 five times a day almost seven days a week for about three
23 months.

24 You testified to that before, correct?

25 A Yes, I did.

Jay Patel - Cross-examination
by Mr. Newman

1 Q And I asked you did you ever tell the police that and
2 you responded you never told the police that. The first
3 time we heard it was during that hearing.

4 A What is it?

5 Q The, the last time you and I spoke in Court.

6 A Say it again.

7 Q I asked you if you had told the police that the fellow
8 that shot you had been a regular customer in the store and
9 you had -- did not tell the police at that time.

10 A Well, maybe---

11 Q That was your answer.

12 A I didn't know that when I told police or not cause, at
13 that time when I said it, it took the testimony in the
14 emergency room in Beaufort Memorial.

15 Q Okay. But you didn't tell the police that information?

16 A No.

17 Q Okay. And when I asked you, you said this is, this is
18 not the man I showed you. It was dated on about four months
19 after this incident in your store at 4/14 of 2010, and I
20 asked you to read the name whose photograph that was
21 attached to.

22 Whose name is that?

23 Sure. You can use your glasses.

24 A McBean, Julius.

25 Q McBean, Julius Rooks, correct?

Jay Patel - Cross-examination
by Mr. Newman

1 A Right.

2 Q And that photograph that's in that booking form is the
3 same photograph we see up here, correct?

4 A But it looks different.

5 Q I understand that, but that's not the man that shot
6 you?

7 A This picture was old.

8 Q Well, look at the date the picture was taken.

9 A 4/14/2010.

10 Q Okay. And this robbery occurred at the end of
11 December, December 23rd, 2009, right?

12 A That's right.

13 Q So that picture was taken within about four months of
14 the robbery?

15 A But it looks a little different.

16 Q I understand that.

17 Do you know when that photograph was taken?

18 A Yes.

19 Q Do you know when it was taken?

20 A I don't know.

21 Q You -- I want to make sure that we're communicating.

22 You have no idea when that photograph was taken?

23 A He might have taken it when they, when they caught him.

24 Q Okay. And you have no idea who took that photograph or
25 when it was taken, correct?

Jay Patel - Cross-examination
by Mr. Newman

1 A who took the pictures?

2 Q Yes.

3 A I don't know.

4 Q Okay. Or when they were taken?

5 A what did you say?

6 Q Or when they were taken.

7 A When was it taken?

8 Q When this picture was taken?

9 A That picture, I have seen when I went to January --

10 Q Okay. I guess my---

11 A -- after I, after I got shot.

12 Q Yes, I under, I understand that.

13 what I'm asking you is you don't know when that

14 photograph, how old it is, or anything like that?

15 A It might be a time when it came and sought me and they

16 probably got it from the movie -- I mean the video or maybe

17 got arrested and the picture might have taken that time.

18 Q Okay. But you don't know?

19 A No.

20 Q Okay. And Mr. Brown has worked for you ever since

21 2000, correct?

22 A That's right.

23 Q And he's worked that store I believe before you

24 purchased it?

25 Is that correct?

Jay Patel - Cross-examination
by Mr. Newman

1 A That's right.

2 Q You said he worked there about 20 years, I guess 25
3 years now, something like that?

4 A I would imagine.

5 Q That sound right?

6 A long time?

7 A Yeah.

8 Q Okay. And his duties include, and see if this is right
9 cause this is what I understood him to say, that he takes
10 out the trash, stocks the shelves, cleans the shelves,
11 cleans the floor, cleans the doors and windows, things like
12 that?

13 A That's right.

14 Q Okay. And I believe he occasionally runs the cash
15 register too?

16 A Yeah, he does.

17 Q Okay. All right. And he cleans the doors just about
18 every day or every other day?

19 A No, we don't clean the door at all.

20 Q Okay. So Mr. Brown has never cleaned the, the door
21 ever?

22 A I don't think so.

23 Q Okay. So that door hadn't been cleaned, that you know
24 of, since 2000?

25 A I mean it's replaced a couple times, but he don't

Jay Patel - Cross-examination
by Mr. Newman

1 change -- clean the door everyday.

2 Q You clean them every other day?

3 A No.

4 Q Okay. Thank you.

5 I don't have any further questions.

6 THE COURT: Redirect.

7 SOLICITOR SWANSON: Just briefly.

8 REDIRECT EXAMINATION

9 BY SOLICITOR SWANSON:

10 Q I think you testified, Mr. Patel, that these photos of
11 the man that shot you appear different?

12 A It looks different --

13 Q Right.

14 A -- if you see the pictures.

15 Q Yes, sir.

16 And, again, do you recognize the man that shot you in
17 this courtroom today?

18 A Yes.

19 Q And where is he?

20 A He's sitting right next to Mr. Newman.

21 Q And are you sure?

22 A Yes, a hundred percent.

23 Q Thank you.

24 Nothing further.

25 THE COURT: Recross?

Tony Brown - Direct examination
by Solicitor Swanson

1 MR. NEWMAN: No, thank you.

2 THE COURT: All right, sir. You may step down. Thank
3 you very much.

4 THE WITNESS: Thank you.

5 THE COURT: State may call its next witness.

6 SOLICITOR SWANSON: Thank you.

7 State calls Tony Brown.

8 THE COURT: Come forward, Mr. Brown, over here to my
9 left to be sworn please.

10 (Witness complies.)

11 THE COURT: Thank you.

12 TONY BROWN, being first duly
13 sworn, testified as follows:

14 THE CLERK: State your full name for the record and
15 spell your last name.

16 THE WITNESS: Antonio Brown. B-R-O-W-N.

17 THE CLERK: Thank you.

18 THE COURT: Thank you, sir.

19 Your witness, counselor.

20 SOLICITOR SWANSON: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY SOLICITOR SWANSON:

23 Q Antonio, you go by Tony, right?

24 A Yes.

25 Q And where are you from?

Tony Brown - Direct examination
by Solicitor Swanson

1 A Saint Helena.

2 Q Have you always lived on Saint Helena?

3 A Yes.

4 Q Okay. And where do you work?

5 A At Island Plaza.

6 Q How long have you worked there?

7 THE COURT: Mr. Brown, I'm gonna ask you to move close
8 to the microphone so that we all can hear you. Speak up
9 please.

10 THE WITNESS: Okay.

11 THE COURT: Thank you very much.

12 Go ahead.

13 THE WITNESS: All right.

14 Q How long have you worked there, Tony?

15 A For over 24 years.

16 Q All right. And do you know a lot of the customers
17 there?

18 A Yes.

19 Q Do you -- would you say that you guys get a lot of
20 regulars?

21 A Yes.

22 Q Like local people that live on Saint Helena?

23 A Yes.

24 Q Okay. Are most of your customers repeat customers?

25 A Yes.

Tony Brown - Direct examination
by Solicitor Swanson

1 Q Is it a busy store?

2 A Yes.

3 Q Very busy, sort of busy?

4 A Very busy.

5 Q Very busy.

6 Were you working on December 23rd?

7 A Yes.

8 Q Okay. Tell us about what happened on December
9 23rd of 2009.

10 A At that night, bossman was wrapping up his paperwork.
11 I was doing the floors. I was talking on my phone. Then
12 all of a sudden a guy came in, demanded some money. It
13 didn't went that way. He pulled the trigger and walked out
14 the building.

15 Q Did he shoot Mr. Patel?

16 A Yes.

17 Q Okay. And he was demanding money?

18 A Yes.

19 Q And did Mr. Patel give him any money?

20 A No.

21 Q And is that when he shot him?

22 A Yes.

23 Q Did you recognize the man that came in?

24 A Yes.

25 Q Had he been in the store before?

Tony Brown - Direct examination
by Solicitor Swanson

1 A Yes.

2 Q How did you recognize him?

3 A Well, there was an incident that he did in November
4 when we had the Heritage at, at Penn Center and he made a
5 lot of commotion and like my eye lock on the -- I normally
6 look at people when they make loud noises and stuff like
7 that.

8 Q Okay.

9 A And then after that he just come in the store like
10 random after that.

11 Q Okay. He was definitely in the store on November kind
12 of making a ruckus?

13 A Yes.

14 Q During the Heritage---

15 A Yes.

16 Q ---Festival?

17 A Yes.

18 Q Okay. And he had come in since then?

19 A Yes.

20 Q All right. Now, did you meet with Brian Baird from the
21 Sheriff's Office?

22 A Yes.

23 SOLICITOR SWANSON: Okay. I'd like to enter State's 6
24 without objection at this time.

25 THE COURT: Any objections?

Tony Brown - Direct examination
by Solicitor Swanson

1 MR. NEWMAN: No, sir.

2 THE COURT: All right. Without objections it will be
3 admitted as marked.

4 (WHEREUPON, State's Exhibit No. 6 was received into
5 evidence at this time.)

6 THE COURT: You may publish or show the witness.

7 SOLICITOR SWANSON: Thank you. I'd like to show
8 State's 6 to the witness at this time.

9 Tony, is this the photo lineup that you were presented
10 with?

11 A Yes.

12 Q And did you pick someone out of it?

13 A Yes.

14 Q Who did you pick out?

15 A The number two.

16 Q Number two.

17 And did you circle and---

18 A Circle it---

19 Q ---initial it?

20 A ---and sign it.

21 Q Okay. So that's your signature?

22 A Yes.

23 SOLICITOR SWANSON: All right. May I publish to the
24 jury?

25 THE COURT: You may.

Tony Brown - Direct examination
by Solicitor Swanson

1 Q And, Tony, when you were presented with this photo
2 lineup, did the investigator indicate in anyway who you
3 should pick out?

4 A No.

5 Q Okay. How quickly were you able to pick out the
6 shooter?

7 A Instant.

8 Q And are you a hundred percent certain?

9 A Yes..

10 Q And do you see the shooter in the courtroom today?

11 A Yes.

12 Q Where is he?

13 A In the white shirt with the tie, black tie.

14 Q Okay. Over at defense counsel table?

15 A Yes.

16 Q Okay. I believe you're the one that called 9-1-1,
17 right?

18 A Yes.

19 Q So after Jay got shot, you called 9-1-1?

20 A Yes.

21 Q And locked the doors?

22 A Yes.

23 Q Okay. We had talked about the fact that you guys get a
24 lot of regular customers.

25 Are you familiar with a man named Dominick Lesesne?

Tony Brown - Direct examination
by Solicitor Swanson

- 1 A Yes.
- 2 Q Do you know him personally?
- 3 A Yes.
- 4 Q Does he live on the island?
- 5 A Yes.
- 6 Q All right. I'm gonna show you State's 17 and ask if
- 7 you can identify who's in this picture.
- 8 A Yes.
- 9 Q Who is it?
- 10 A Dominick in the white shirt, dreads.
- 11 Q Okay. And this picture that I'm publishing, State's
- 12 17, is that pretty much always how Dominick has looked?
- 13 A Yes.
- 14 Q Very tall?
- 15 A Dark skin. Long dreads.
- 16 Q Dark skin. Long dreads.
- 17 was Dominick the shooter that night?
- 18 A No.
- 19 Q would you recognize Dominick?
- 20 A Yes.
- 21 Q Are you scared of Dominick?
- 22 A No.
- 23 Q Is he a regular in the store?
- 24 A Yes.
- 25 SOLICITOR SWANSON: Okay. Beg the Court's indulgence.

Tony Brown - Direct examination
by Solicitor Swanson

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 SOLICITOR SWANSON: Nothing further for this witness.

4 Thank you.

5 THE COURT: Mr. Newman, your witness.

6 MR. NEWMAN: Thank you.

7 CROSS-EXAMINATION

8 BY MR. NEWMAN:

9 Q Hey, Mr. Brown.

10 A How you doing?

11 Q You and I had an opportunity to speak this morning just
12 right out---

13 A Yes.

14 Q ---the doorway here, correct?

15 A Yes.

16 Q And you told me that part of your regular duties,
17 although it may be somewhat random, on average you clean
18 down the doors about every other day.

19 Is that correct?

20 A Yes.

21 Q Okay. And you gave some prior statements that we see
22 from the video. This fellow comes in for looks like three,
23 four seconds, goes out, and then several seconds later comes
24 back in.

25 A Yes.

Tony Brown - Cross-examination
by Mr. Newman

1 Q And you gave prior testimony that you did not see him
2 come in the first time, correct?

3 A Not at first. I glanced up when I was mopping --
4 sweeping the floor.

5 Q Okay. Well, I asked you were you able to get a look
6 out and see who was coming in. You said no, by that time I
7 didn't know he came in the first time.

8 Do you recall testifying to that?

9 A I can't remember.

10 Q Okay. Four years ago, would that be more accurate than
11 your memory is today?

12 A I can't remember.

13 Q Okay. Now, in the, in the video and you were sweeping.
14 You had already swept the front part of the store, correct?

15 A Yes.

16 Q Okay. And if I got it right, you were on the back
17 aisles by the milk and deli sweeping back there when this
18 occurred?

19 A No, by the cook machine in the back part coming up that
20 aisle.

21 Q Okay. Is that the back aisle?

22 A Yes.

23 Q Okay. And you were on your cell phone?

24 A Yes.

25 Q And you were sweeping the floor?

Tony Brown - Cross-examination
by Mr. Newman

1 A Yes.

2 Q All right. And I had asked you if the fellow that was
3 in the store that did this was wearing a skull cap or a
4 beanie type cap and I asked you if you remembered that.

5 Do you remember that?

6 A I can't remember.

7 Q Okay. And your answer was, when I asked you did he
8 have a skull cap on, do you remember, your answer was could
9 of been. I didn't pay no attention to the head part.

10 Do you recall saying that?

11 A I can't remember.

12 Q All right. See if this refreshes your recollection.
13 See the question is I mean could it be a skull cap? Do you
14 remember?

15 And your answer was what?

16 A The person came in the store and was able to---

17 Q No.

18 A What part?

19 Q Your answer to that question. The highlighted part.

20 A Could have but -- could have been. Did not pay
21 attention to his head part.

22 Q I didn't pay no attention to the head part.

23 A The head part.

24 Q Okay. And then I asked you if you knew about
25 Dominick's arrest record.

Tony Brown - Cross-examination
by Mr. Newman

1 A Yes.

2 Q All right. And I asked you do you know his arrest
3 record, and your answer was well, when he got arrested or
4 when he shot Jay.

5 That was your prior testimony, correct?

6 A Yes, sir.

7 MR. NEWMAN: Okay. I don't have any further questions,
8 judge. Thank you.

9 THE COURT: Redirect.

10 SOLICITOR SWANSON: Thank you.

11 REDIRECT EXAMINATION

12 BY SOLICITOR SWANSON:

13 Q Just briefly, Tony.

14 When Mr. Newman asked you about his prior arrest, did
15 you mean to say that Dominick Lesesne was the person that
16 shot Jay?

17 A I did not say it like that.

18 Q Okay. Thank you.

19 A Okay.

20 Q So Dominick Lesesne did not shoot Jay?

21 A Yes.

22 Q Okay. The man in the courtroom, did he shoot Jay?

23 A Yes.

24 SOLICITOR SWANSON: All right. Any objections to the
25 window pictures?

Tony Brown - Cross-examination
by Solicitor Swanson

1 MR. NEWMAN: No.

2 SOLICITOR SWANSON: Fifteen and Sixteen.

3 Your Honor, at this time I would move State's 15 and 16
4 in.

5 THE COURT: Without objection they'll be admitted as
6 marked.

7 (WHEREUPON, State's Exhibit Nos. 15 and 16 were
8 received into evidence at this time.)

9 SOLICITOR SWANSON: Okay. And I'm going to publish to
10 the jury.

11 Tony, are these pictures of the door in the Island
12 Plaza?

13 A Yes.

14 Q And these bars, are they inside the door?

15 A Yes, once they got put inside to clean them. So we
16 don't even clean them.

17 Q Okay. So you don't clean inside the door?

18 A Not since them bars got up, no.

19 Q Right.

20 And were those bars up in 2009?

21 A Yes.

22 Q Okay. So when you're talking about cleaning doors and
23 windows, you mean other doors and windows?

24 A Windows. Not the door.

25 Q Okay. All right. So you're not cleaning inside of

Tony Brown - Cross-examination
by Solicitor Swanson

1 these bars?

2 A It's hard to clean.

3 Q Okay. Thank you. That really clears things up.

4 MR. NEWMAN: Your Honor, I object to comments by the
5 solicitor.

6 THE COURT: I'll ask you not to comment. Just ask
7 questions.

8 SOLICITOR SWANSON: Yes, sir.

9 THE COURT: Thank you.

10 MR. NEWMAN: May I approach?

11 Oh.

12 THE COURT: She's not finished yet.

13 You may proceed, Ms. Swanson.

14 SOLICITOR SWANSON: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Q And although -- during the attempted robbery and the
17 shooting, you may not have been paying attention to the
18 person's head or headwear as you testified previously.

19 Did you review the video surveillance?

20 A Yes.

21 Q And is that Dominick Lesesne in the video?

22 A No.

23 Q Thank you.

24 I have nothing further at this time.

25 THE COURT: Recross.

Tony Brown - Recross examination
by Mr. Newman

1 RECROSS EXAMINATION

2 BY MR. NEWMAN:

3 Q There was a second person that came in the store,
4 right, partially?

5 A At what time?

6 Q At the time, at the time of the robbery, what we're
7 talking about.

8 A When the guy came in and shot at the store the second
9 time and then walked out?

10 Q Yeah.

11 A I haven't seen this man. I know he came in, shot at
12 the, shot at the store.

13 Q Okay. And you weren't able to identify him?

14 A No.

15 Q Okay. Now, I asked you, just to make sure we have it
16 right, you know about Mr. Lesesne's extensive arrest record
17 and you say what's that. I asked you about Dominick's
18 arrest record and I asked you do you know about his arrest
19 record and your answer was what?

20 A I said what do you mean, that he shot Jay? That's what
21 I said.

22 Q Well, read, read what you said.

23 SOLICITOR SWANSON: Your Honor, this has been asked and
24 answered. This is not covering new ground, and, in fact, I
25 just clarified, on redirect, and now we're plowing old

Tony Brown - Recross examination
by Mr. Newman

1 ground again.

2 THE COURT: Is this the quote that you had him read
3 earlier?

4 MR. NEWMAN: No, sir.

5 THE COURT: Okay. I'll allow you to ask him.

6 Q Okay. If you'll read your answer about Dominick's
7 arrest record.

8 A Well, when he got shot, when he got arrested, then he
9 got shot, then he shot Jay or his background record.

10 Q Correct. You say well, when he got arrested when he
11 shot Jay, question, correct?

12 A I didn't say it like that.

13 MR. NEWMAN: Okay. No further questions.

14 SOLICITOR SWANSON: And just to clarify---

15 THE COURT: I'm gonna, I'm gonna let you clarify.

16 SOLICITOR SWANSON: ---because it was the same ground
17 we just covered.

18 REDIRECT EXAMINATION

19 BY SOLICITOR SWANSON:

20 Q Did Dominick Lesesne shoot Jay or did you get confused
21 in answering Mr. Newman's questions?

22 A I got confused in answering the questions.

23 Q Thank you.

24 You did -- you were presented with a few other lineups
25 by law enforcement, correct?

Tony Brown - Redirect examination
by Solicitor Swanson

1 A Yes.

2 Q And were you able to pick anyone out of those lineups?

3 A At that one, yes.

4 Q Just this one?

5 A Just that one, the one I signed.

6 Q Right.

7 But there were other lineups that---

8 A Yes.

9 Q ---where you couldn't pick someone out?

10 A No. No.

11 Q Okay.

12 A When I went to the office, no, I didn't pick nobody
13 out.

14 Q And, and is that because you weren't sure?

15 A No, I was sure. I just didn't see, see it in that
16 lineup.

17 Q Okay. Thank you.

18 THE COURT: All right, sir. You may step down.

19 THE WITNESS: Yes, sir.

20 THE COURT: Do you wish to excuse the witness?

21 SOLICITOR SWANSON: Yes, please.

22 THE COURT: Any objections?

23 MR. NEWMAN: No, sir.

24 THE COURT: You're free to go, sir. Thank you very
25 much.

1 THE WITNESS: All right.

2 THE COURT: Ms. Swanson, we're gonna break for lunch at
3 this time.

4 SOLICITOR SWANSON: Yes, sir.

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, I note it's about 15 minutes after 12:00. So we're
7 gonna break at this time, allow you to go to lunch, and be
8 leaving the courthouse. So you probably already know what
9 my instructions are.

10 Don't try to gather any information on your own. Don't
11 discuss the case with anyone. Don't allow anyone to discuss
12 it with you. Don't listen to, watch, or read any media
13 reports concerning this case and please report anyone's
14 effort to contact you should that occur during the break.

15 I'll ask that you be back in the jury room at 1:30. We
16 should be in a position to start shortly thereafter. I hope
17 you have a good break. You're free to go at this time.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

20 THE BAILIFF: They're clear, Your Honor.

21 THE COURT: All right. Court's in recess until 1:30.
22 Thank you.

23 SOLICITOR SWANSON: Your Honor, if I---

24 THE COURT: Yes, ma'am.

25 SOLICITOR SWANSON: ---may suggest, I do have Vic Patel

1 and Brian Baird who are the ones that we're gonna need to
2 proffer testimony from.

3 THE COURT: Uh-huh. (Affirmative).

4 SOLICITOR SWANSON: If we could reconvene, reconvene at
5 about 1:15?

6 I think we could do that prior to the jury---

7 THE COURT: Well, that's gonna be a little tighter
8 schedule---

9 SOLICITOR SWANSON: Okay.

10 THE COURT: ---than I'm use to. We'll just do 1:30.

11 SOLICITOR SWANSON: Okay. Sure.

12 THE COURT: We'll do what we have to do.

13 SOLICITOR SWANSON: Thank you. Thank you, Your Honor.
14 (WHEREUPON, Court was in recess for the lunch break.)

15 THE COURT: Okay. Is the State ready to proceed?

16 SOLICITOR SWANSON: State is ready.

17 THE COURT: Defense ready?

18 MR. NEWMAN: Yes, sir.

19 THE COURT: All right. Yes, ma'am.

20 SOLICITOR SWANSON: Prior to any proffered testimony,
21 judge, I would like to take the opportunity to renew my
22 motion in limine on third party guilt.

23 The Court has ruled and Mr. Newman has gotten
24 dangerously close to getting into some of that by
25 referencing -- talking about Dominick Lesesne's prior

1 criminal history and he brought up the beanie cap a few
2 times. I just want to make sure that everyone is clear and
3 is going to follow the ruling that the fingerprint is solely
4 for the purpose of attacking the thoroughness of the
5 investigation.

6 THE COURT: That was my ruling, Mr. Newman.

7 MR. NEWMAN: I don't disagree with that. But, during
8 the -- Officer Capps, I believe, opened the door to the
9 arrest report because he was asked, and not on
10 cross-examination, on direct, that he had a lot of run-ins
11 with Dominick Lesesne in his law enforcement capacity. I
12 followed that out in cross-examination. I objected to the
13 motion in limine. I think merely that it needs to be
14 followed by a contemporaneous trial motion. So the State's
15 witness brought out Lesesne's criminal history.

16 THE COURT: Perhaps if there had been a contemporaneous
17 objection -- but had there been one, that may of been
18 granted. As far as the arrest record, I'm not sure what
19 that has to do with the fingerprint being there.

20 MR. NEWMAN: I just -- it's out there in evidence now.
21 So --.

22 THE COURT: Well, I understand it got there, like I
23 said, without objections. So --.

24 SOLICITOR SWANSON: And, judge, I would just like to --
25 you know, I don't want to have to object in the middle of

1 Mr. Newman's closing, but I, you know, I mean arguing third
2 party guilt in closing would be improper.

3 THE COURT: Oh, as it stands now, that would be the
4 case.

5 SOLICITOR SWANSON: Thank you, Your Honor.

6 THE COURT: But you have the right to object to his
7 closing.

8 SOLICITOR SWANSON: Yes, sir.

9 MR. NEWMAN: I mean I do intend to go out where the
10 fingerprint was in the store and dusted the door. It was
11 that all -- it's all in evidence. It's all testified to.

12 THE COURT: If there are objections raised I'll rule on
13 them.

14 MR. NEWMAN: Yes, sir.

15 SOLICITOR SWANSON: At this time would you like to hear
16 the proffered testimony of Vic Patel and Brian Baird?

17 THE COURT: Yes, ma'am.

18 SOLICITOR SWANSON: Okay. State would call Brian
19 Baird.

20 THE COURT: On the point of the -- I think the
21 identification that there was not made a written record of?

22 SOLICITOR SWANSON: There was a written record in
23 Detective Baird's report.

24 THE COURT: By this witness?

25 SOLICITOR SWANSON: Yes, sir.

Brian Baird - Direct examination
by Solicitor Swanson

1 Okay. The State calls Brian Baird to the stand.

2 THE COURT: Come forward, sir, here to my left to be
3 sworn.

4 BRIAN BAIRD, being first duly sworn,
5 testified as follows:

6 THE CLERK: State your full name for the record.

7 THE WITNESS: Brian Mark Baird.

8 THE COURT: Okay. Have a seat.

9 SOLICITOR SWANSON: Thank you.

10 THE COURT: Your witness, counselor.

11 SOLICITOR SWANSON: Thank you.

12 DIRECT EXAMINATION

13 BY SOLICITOR SWANSON:

14 Q Is it investigator still?

15 Tell me what your rank is.

16 A I'm a lieutenant with the Sheriff's office.

17 Q Okay.

18 A But I am still an investigator.

19 Q Got you.

20 Okay. Lieutenant Baird, did you have a chance to come
21 into contact with Vic Patel back in 2009?

22 A Yes, I did.

23 Q Okay. And what date did you come into contact with Vic
24 Patel?

25 A I believe it was the 26th of December, 2009.

Brian Baird - Direct examination
by Solicitor Swanson

- 1 Q Okay. And where did you meet him?
- 2 A At the Island Plaza out on Saint Helena, the gas
- 3 station, convenience store.
- 4 Q Did you come with a photo lineup prepared?
- 5 A Yes, I did.
- 6 Q Who prepared that photo lineup?
- 7 A Ms. Pam Brown, one of our intel analysts.
- 8 Q Is that how the lineups are always prepared?
- 9 A At that point, yes, that's how we would do them.
- 10 Q Okay. And you came with a photo lineup.
- 11 Did you just come with one?
- 12 A I actually brought two with me that day.
- 13 Q Okay. Was it the same one?
- 14 A Yes, it was.
- 15 Q All right. And so it was just a copy of one?
- 16 A It, it was two originals but they were the same.
- 17 Q Yes, sir.
- 18 And did you present one of those photo lineups to Vic
- 19 Patel?
- 20 A Yes, I did.
- 21 Q Did you present it to him in the presence of anyone
- 22 else?
- 23 A No.
- 24 Q And for what purpose did you present that photo lineup?
- 25 A At that point he had informed me that he could identify

Brian Baird - Direct examination
by Solicitor Swanson

1 an individual who was a suspect in the shooting. He said he
2 could tell me if that was the person that everybody was
3 calling the guy from New York. There were people that had
4 contacted the store, after the shooting, and advised them
5 that there was information that these two guys had come down
6 from New York were the ones that were involved in the
7 shooting, and that he could look at the lineup and tell me
8 if that was one of the guys from New York.

9 Q Okay. Did he tell you how he knew the guy was from New
10 York?

11 A He said he had had constant contact with him over the
12 previous couple weeks. He had been in and out of the store
13 frequently. He said, at one point, he made a note of the
14 car they were driving and the license plate of the car
15 because he, as he put it, had a funny feeling.

16 SOLICITOR SWANSON: Okay. Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 MR. NEWMAN: If Your Honor please, it just comes to
20 mind. I want to make sure that I'm protected on this.

21 I know this is an in camera hearing for the, for the
22 Court only. I do object to numerous hearsay statements and
23 anything like that, but I know it's background for the Court
24 and this is in a motion.

25 THE COURT: Well, I'm gonna give you an opportunity to

Brian Baird - Direct examination
by Solicitor Swanson

1 state whatever objections you have to the testimony you've
2 heard in just a few minutes.

3 MR. NEWMAN: Thank you, sir. I just wanted to make
4 sure---

5 THE COURT: Yes, sir.

6 MR. NEWMAN: ---I'm protected.

7 THE COURT: You're not waiving anything at this point
8 in time---

9 MR. NEWMAN: Thank you, Your Honor.

10 THE COURT: ---as far as I'm concerned. That's my
11 opinion.

12 Q Lieutenant Baird, I don't have a blank copy, but I'm
13 gonna show you what's been entered as State's 6 and ask if
14 that's the same photo lineup that you showed to Vic Patel to
15 identify the guy from New York.

16 A Yes, this is.

17 Q Okay. And did he point any of the suspects out?

18 A Yes, he told me the individual in position number two
19 is indeed the person that was identified as the man from New
20 York.

21 Q Okay. And that's who we knew as the man from New York?

22 A That's correct.

23 Q And you -- did you have him mark it in anyway?

24 A I believe I had him -- I think he circled it and signed
25 it but I don't recall---

Brian Baird - Direct examination
by Solicitor Swanson

1 Q Okay.

2 A ---for certain I know because it wasn't -- he wasn't
3 identifying the shooter for me.

4 Q Right.

5 A He was merely providing some corroborating information.
6 I don't recall if I had him mark it or not.

7 Q Okay. And then, at a separate time, did you present a
8 photo lineup to Antonio Brown?

9 A Yes, I did.

10 Q And was that down outside the presence of Vic Patel?

11 A Yes, it was.

12 Q Okay. Thank you.

13 I have nothing further at this time.

14 THE COURT: Wish to question, question the witness, Mr.
15 Newman?

16 CROSS-EXAMINATION

17 BY MR. NEWMAN:

18 Q Now, are you saying the thing with Mr. Patel is it's
19 merely background information that allowed you to proceed
20 with showing photo lineups to Antonio Brown and ultimately
21 Fraser to Mr. Patel?

22 A Actually I showed the lineup to Antonio Brown first
23 cause he was identifying the individual that shot Mr. Patel.
24 I showed the lineup to him first. He picked out an
25 individual and then I showed the -- another copy of the

Brian Baird - Cross-examination
by Mr. Newman

1 lineup to Mr. Patel.

2 Q Okay. And, in another hearing in this matter, all
3 except possibly number four, you agree that Mr. McBean is
4 the lightest of the group?

5 A Yes, I believe I did. He still appears that way in
6 this---

7 Q Okay.

8 A ---picture.

9 Q And the information that you got about the car from Mr.
10 Patel, and I refer you to Capps report, but he wrote down a
11 license plate, a partial plate of [REDACTED]?

12 A A silver Lexus ES350 with partial plate, license plate,
13 New York license plate of [REDACTED] and they placed a BOLO out
14 for that vehicle.

15 Q Right.

16 Okay. And also with that, as part of the, the
17 background investigation, a Jordan Posey was interviewed.
18 If you remember her, she was the girl that saw the shooter
19 in the parking lot flee the store, and she described him as
20 tall, medium build, and dark complected, right?

21 SOLICITOR SWANSON: Your Honor, I'm gonna object cause
22 this is not in the scope of this hearing.

23 THE COURT: Now, this is, this is not a fishing
24 expedition. We were getting -- you had objected to him
25 bringing out testimony concerning the identification by a

Brian Baird - Cross-examination
by Mr. Newman

1 non -- someone who is not at the scene, and you said you had
2 not received a copy of that lineup in your discovery. The
3 reason I'm conducting this is to get into whether one was
4 made, a copy was made, that sort of thing. I'm not sure
5 what Ms. Posey has to do with that.

6 MR. NEWMAN: Well---

7 THE COURT: Maybe you can help me.

8 MR. NEWMAN: I can. The purpose of it is Detective
9 Baird said that they put in a light skinned black male.
10 Okay. And he agreed this is the -- he's the only really
11 light skinned black male in this array.

12 Their witness statements, I know they're talking to Mr.
13 Patel to try and locate a certain guy, but the witness that
14 actually saw the robber flee describes him as a dark
15 complected male and I want to know why they went for a light
16 complected male when they had information on a dark
17 complected male.

18 SOLICITOR SWANSON: Judge, that witness is not
19 testifying not to mention the fact it was ten o'clock at
20 night in the dark, and she couldn't see anyone close enough
21 to give much of a description nor could she pick anyone out
22 of any sort of lineup.

23 THE COURT: Well, I'm gonna let him ask him about it.

24 SOLICITOR SWANSON: Okay.

25 THE COURT: The question is identification.

Brian Baird - Cross-examination
by Mr. Newman

1 Q And even during the nighttime hours, the parking lot in
2 the -- when they got 12 pumps, is lighted at the Island
3 Plaza, correct, during store hours, open store hours?

4 A Directly in front of the store it's lit, yes.

5 Q It's very well lit?

6 A It's an opinion, but---

7 Q Okay. It's lit.

8 Okay.

9 A It is lit.

10 Q All right. And she gave a description of a dark
11 complected---

12 A That's what I'm reading here. I never spoke to her.

13 Q I understand that but---

14 A So---

15 Q ---through the -- your investigative report.

16 I don't have any further questions.

17 THE COURT: All right.

18 SOLICITOR SWANSON: Nothing further for this witness.

19 THE COURT: All right.

20 SOLICITOR SWANSON: State calls Vic Patel.

21 THE COURT: You can step down, sir.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Sir, come forward up here to be sworn.

24 (Witness complies.)

25 THE COURT: Thank you.

Vic Patel - Direct examination
by Solicitor Swanson

1 VIC PATEL, being first duly sworn,
2 testified as follows:

3 THE CLERK: State your name for the record, full name.

4 THE WITNESS: Vickous Jayante Patel.

5 THE CLERK: Okay. Have a seat.

6 THE COURT: Your witness, counselor.

7 SOLICITOR SWANSON: Thank you.

8 DIRECT EXAMINATION

9 BY SOLICITOR SWANSON:

10 Q They call you Vic, right?

11 A Yes, ma'am.

12 Q Okay. And your dad owns the Island Plaza?

13 A Yes, ma'am.

14 Q Okay. At some point did you get -- did you have
15 contact with Investigator Brian Baird at the Island Plaza?

16 A Yes, ma'am.

17 Q Okay. And did he ask you if you could identify the guy
18 from New York?

19 A Yes, ma'am.

20 Q All right. And did he show you a six pack photo
21 lineup?

22 A Yes.

23 Q Okay. And did he indicate that he was in there or that
24 he may not be in there?

25 A He did not indicate if he was in there or not.

Vic Patel - Direct examination
by Solicitor Swanson

1 Q Okay. And were you able to point someone out in that
2 lineup?

3 A Yes, ma'am.

4 Q Okay. Did you ever circle anything?

5 A No, ma'am.

6 Q You just pointed to it?

7 A Yes, ma'am.

8 Q Okay. I'm gonna show you what's been marked as State's
9 and entered as State's 6. This is the one that Tony Brown
10 looked at and signed.

11 Were there any marks on the one that you saw?

12 A No, ma'am.

13 Q Okay. And did you do this outside the presence of any
14 other employees?

15 A Yes, ma'am.

16 Q Okay. And so you just pointed to it?

17 A Yes, ma'am.

18 Q Was this the same photo lineup?

19 A I believe so.

20 Q Okay. And do you remember who you picked out of it?

21 A Yes, ma'am.

22 Q Okay. Which person did you pick out?

23 A Number two.

24 Q Number two.

25 Okay. Nothing further at this time.

1 THE COURT: Do you wish to ask any questions of the
2 witness?

3 MR. NEWMAN: I do not.

4 THE COURT: All right. You may step down, sir. Thank
5 you very much.

6 Is that the State's offer?

7 SOLICITOR SWANSON: That's the State's proffer.

8 THE COURT: All right. Mr. Newman, I assume you don't
9 wish to call any witnesses on the subject?

10 MR. NEWMAN: I do not.

11 THE COURT: All right. I'll hear from you.

12 MR. NEWMAN: Pleases the Court, Your Honor.

13 I think this would be evidence that would be legally
14 spurious, would be confusing to the jury. This is
15 background information that, that they used to "develop
16 their suspect" and I do have objections on hearsay and
17 things like that for the trial. But you do the background
18 to get to what they've already done and that's ultimately
19 the in-court identification. That is already in evidence.

20 This will do nothing to bolster the in-court
21 identification. It's been testified to by Antonio Brown and
22 Jay Patel. It leads into areas of the New York guy and
23 rumors on the street and things like that.

24 what they did with this witness, who did not witness
25 the event, did not see the person who robbed his father or

1 uncle, and it was used as a law enforcement tool to get, as
2 I said, to where they got and that's to be able to use their
3 in-court identification and they've already done that. So I
4 think it's spurious. It sounds like one more witness
5 identifying the dude that did this when he can't identify
6 the dude that did this at all.

7 SOLICITOR SWANSON: My response to that is those are
8 all certainly things that Mr. Newman can cross-examine on
9 and would be appropriate for cross-examination. Vic Patel
10 is simply identifying the guy that he associates as the New
11 York guy. He is the one, and I didn't get into the
12 testimony right here because it wasn't pertinent to this
13 particular issue, but he is the one that provides law
14 enforcement with a partial tag of the New York plates. He
15 recognizes the guy too and so it does go towards identity
16 and this is an identity case.

17 MR. NEWMAN: He -- just in reply.

18 While he may identify him as the guy from New York, he
19 can't identify him as the person. That's already been done.

20 SOLICITOR SWANSON: That's correct..

21 THE COURT: Well, one of the things that we look at,
22 and, and I charge the jury in identity cases, is the
23 opportunity that the identifier has had to become acquainted
24 with the person being identified in the past. It's -- I
25 guess the Court's assume that, the better known a person is

1 to the identifier, the more accurate the identification
2 might be. So it's one of the factors we consider is the
3 opportunity for a -- an identifying individual to have seen
4 the person prior to the incident in question.

5 I think this goes toward the identity of that person
6 that was identified by the two eye witnesses, and so I'm
7 going to allow the testimony. I do caution the State though
8 that the investigator did testify about a good bit of
9 hearsay and information that might have come off the street.
10 If it's objected to, that will not be allowed.

11 SOLICITOR SWANSON: Yes, sir, and I will not be
12 eliciting all of that hearsay recognizing that that was just
13 for the proffer.

14 THE COURT: All right. I, I agree with Mr. Newman.
15 There was some things that I found objectionable in his
16 testimony.

17 SOLICITOR SWANSON: Yes, sir, I agree.

18 THE COURT: Okay. All right. Anything further before
19 we bring the jury in?

20 SOLICITOR SWANSON: No, sir, I will say as -- the first
21 thing I would like to do when the jury comes in is to have
22 Mr. Rooks-McBean present himself for the jury.

23 THE COURT: All right. My ruling was that I'm gonna
24 ask you to step out from behind counsel table but he can
25 remain at counsel table and allow the jury to see. I'll ask

1 you to turn around one time.

2 SOLICITOR SWANSON: Okay. Thank you.

3 THE COURT: Bring the jury in.

4 THE BAILIFF: Yes, sir.

5 SOLICITOR SWANSON: Your Honor, may I publish a photo
6 that's in evidence at the same time?

7 THE COURT: I'm not sure. I'll allow you to do it once
8 he's done -- finished.

9 SOLICITOR SWANSON: Okay. Thank you.

10 MR. NEWMAN: Your Honor, so I can do this before you, I
11 understand---

12 THE COURT: Well, I need to keep the jury out. We got
13 some other issues we need to deal with?

14 MR. NEWMAN: No, I just wanted to state my objection to
15 that procedure and I want my objection noted.

16 THE COURT: All right. Okay. It's on the record.

17 THE BAILIFF: The jury is coming in the courtroom, Your
18 Honor.

19 THE COURT: Thank you.

20 (WHEREUPON, the following takes place within the
21 presence of the jury.)

22 THE COURT: All right. The record will reflect the
23 jury's returned to the courtroom.

24 I hope everyone had a good lunch break.

25 If anyone had any difficulty in complying with my

1 instructions during lunch, please stand.

2 (No response.)

3 THE COURT: It appears that everyone's been able to
4 comply with my instructions thus far.

5 The State has made a motion that I allow you to view
6 the person of the defendant. I have granted that motion.

7 Therefore, I'm going to ask Mr. McBean, sir, if you
8 would step in front of counsel table here, sir, and then if
9 you would face the jury and do quarter turns please.

10 (Defendant complies.)

11 THE COURT: Thank you, sir. You can be seated.

12 (Defendant complies.)

13 THE COURT: All right. The State may proceed.

14 SOLICITOR SWANSON: Thank you, Your Honor.

15 At this time I would like to republish a still photo
16 from the video surveillance, and that's State's 13, so that
17 the jury may view it.

18 Thank you, Your Honor.

19 THE COURT: You may call your next witness.

20 SOLICITOR SWANSON: State calls Jason Malphrus to the
21 stand.

22 THE COURT: Sir, if you'd come forward to my left and
23 be sworn please.

24 JASON MALPHRUS, being first duly
25 sworn, testified as follows:

Jason Malphrus - Direct examination
by Solicitor Swanson

1 THE CLERK: State your full name for the record.

2 THE WITNESS: Jason Malphrus.

3 THE CLERK: Have a seat.

4 THE COURT: Your witness, counselor.

5 SOLICITOR SWANSON: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY SOLICITOR SWANSON:

8 Q Investigator Malphrus, what were your duties back in
9 2009?

10 A I was assigned to the northern patrol division.

11 Q Okay. And so were you working on November 13th of
12 2009?

13 A Yes, ma'am, I was.

14 Q And did you have an occasion to make a traffic stop on
15 a silver Lexus?

16 A I did.

17 Q Okay. What kind of license plate did that Lexus have?

18 A It had a New York plate on it.

19 Q All right. And when you made that traffic stop, who
20 was contained in that car?

21 A The driver of the car was Ashley Gadson, the front
22 passenger seat occupant was David Abbott, and there was a
23 gentleman in the back seat who was identified as Rocky
24 McBean.

25 Q Okay. And how did you identify him?

Jason Malphrus - Direct examination
by Solicitor Swanson

1 A Through a North Carolina, I'm sorry, a New York
2 driver's license.

3 Q And did you get a date of birth on him?

4 A I got a [REDACTED] of 1986.

5 Q All right. And, again, this was on November 13th of
6 2009?

7 A Yes, ma'am, November 13th, '09.

8 Q And where was the traffic stop?

9 Was it in Beaufort County?

10 A It was on Lady's Island near the intersection of Hazel
11 Farm and Inlet Road.

12 Q Okay. Is Lady's Island close to Saint Helena Island?

13 A They, they adjoin by a bridge, yes, ma'am. You got to
14 go through Lady's Island to get to Saint Helena.

15 Q Okay. Thank you. I have nothing further.

16 THE COURT: Your witness, counselor.

17 CROSS-EXAMINATION

18 BY MR. NEWMAN:

19 Q And to be clear, Mr. McBean was not driving this
20 vehicle, correct?

21 A No, Mr. McBean was not driving the vehicle. He was in
22 the rear passenger.

23 Q And Mr. McBean---

24 A Back seat.

25 Q And he wasn't charged with any crime, criminal activity

Jason Malphrus - Cross-examination
by Mr. Newman

1 during that stop, correct?

2 A No, Mr. McBean was not charged with any crime.

3 Q All right. And the license plate on the Lexus is echo,
4 uniform, Yankee [REDACTED]?

5 A I don't have the, the numbers on it. I just recall it
6 was a New York plate.

7 Q Well, I'm sorry. I thought I heard, through the
8 investigation, that, that the younger Mr. Patel had written
9 down a partial tag number?

10 A He may have. This -- I didn't -- I don't have the, the
11 number to the plate on my traffic stop. That part has been
12 redacted out of the police report.

13 Q All right. And do you know whether or not echo,
14 uniform, Yankee, is, in fact, the plate, New York plate to
15 that car?

16 A I, I do not. I don't know the actual number to the
17 plate.

18 Q Do you know that Mr. Patel wrote down numbers [REDACTED]?

19 A No, I wasn't aware of that.

20 MR. NEWMAN: Okay. I don't have any further questions.
21 Thank you, judge.

22 THE COURT: Redirect.

23 SOLICITOR SWANSON: No redirect.

24 THE COURT: Sir, you may step down.

25 Do you wish to excuse the witness?

vic Patel - Direct examination
by Solicitor Swanson

1 SOLICITOR SWANSON: Yes, please.

2 THE COURT: Any objections?

3 MR. NEWMAN: No, sir.

4 THE COURT: You're free to go, sir. Thank you very
5 much.

6 THE WITNESS: Thank you.

7 SOLICITOR SWANSON: State calls vic Patel.

8 THE COURT: Sir, if you would, come forward to my left
9 and be sworn please.

10 VIC PATEL, being first duly
11 sworn, testified as follows:

12 THE CLERK: State your full name for the record.

13 THE WITNESS: Vickous Jayante Patel.

14 THE CLERK: Have a seat.

15 THE COURT: Counselor, your witness.

16 SOLICITOR SWANSON: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY SOLICITOR SWANSON:

19 Q Vic, tell us where you work.

20 A Island Plaza.

21 Q Okay. And are you related to Jay Patel?

22 A Yes, ma'am.

23 Q Who is he?

24 A He's my father.

25 Q Your father.

Vic Patel - Direct examination
by Solicitor Swanson

1 All right. How often do you work at the Island Plaza?

2 A Seven days a week.

3 Q And about how much business do you guys get?

4 A A good bit.

5 Q Do you have a lot of regular customers?

6 A Yes, ma'am.

7 Q Do you become familiar with peoples' faces?

8 A Yes, ma'am.

9 Q And how do you associate people?

10 A By what they, by what they drive.

11 Q Okay. The night that your dad was shot,
12 December 23rd of 2009, where were you?

13 A I was in Perry, Florida.

14 Q Okay. And did you receive a phone call from Tony that
15 night?

16 A Yes, ma'am.

17 Q Was it right after the incident?

18 A It was pretty close to right after.

19 Q Okay. And what did he tell you?

20 MR. NEWMAN: Your Honor, I object to any hearsay.

21 SOLICITOR SWANSON: Right, and I believe that falls
22 under present sense impression, Rule 803(1), a statement
23 describing or explaining an event or condition while made --
24 while the declarant was perceiving the event or condition or
25 immediately thereafter.

vic Patel - Direct examination
by Solicitor Swanson

1 THE COURT: Well then you're gonna have to lay a
2 foundation as to when this was in relationship---

3 SOLICITOR SWANSON: Okay.

4 THE COURT: ---to this incident before I can rule on
5 that position. I would preserve your objection till I see
6 if she lays that foundation.

7 MR. NEWMAN: Yes, sir, and I also have a confrontation
8 clause objection.

9 THE COURT: Ladies and gentlemen of the jury, I'll ask
10 you to step in the jury room. Don't discuss anything about
11 the case while you're outside the courtroom.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

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

15 THE COURT: Thank you.

16 State your objection.

17 MR. NEWMAN: Your Honor, hearsay is one issue.

18 However, the confrontation clause under the Sixth Amendment
19 to the United States Constitution and any parallel
20 amendments under the South Carolina, under Article I of the
21 South Carolina Constitution that I am not able to confront
22 the speaker of those words.

23 SOLICITOR SWANSON: Your Honor, the speaker is Tony
24 Brown whose already been on the stand and is available for
25 recall.

Vic Patel - Direct examination
by Solicitor Swanson

1 MR. NEWMAN: Mr. Brown was not asked that during his
2 testimony. Were he asked that during his testimony, that
3 might be a little bit different where I could of
4 cross-examined it. If the State wanted to elicit that from
5 Mr. Brown, they had their chance to do that and they did not
6 and I can't confront.

7 I am not -- it's not constitutionally correct for the
8 defendant in a position to call -- recall -- to call a
9 witness to explain evidence. That's up to the State to
10 bring witnesses to prove their case.

11 THE COURT: Well, he's still in the courtroom.

12 SOLICITOR SWANSON: I'm sorry?

13 THE COURT: Isn't he still in the courtroom?

14 SOLICITOR SWANSON: Yes, he is, and I, I mean it's a
15 present sense impression. He -- Mr. Patel did testify that
16 the call came right after his father was shot. So -- I mean
17 and we know who the speaker is. It's a hearsay exception.
18 There is no confrontational clause violation.

19 THE COURT: You got a case?

20 MR. NEWMAN: I do not. I go straight to the amendment,
21 the one that has the right to---

22 THE COURT: well, I'm gonna ask that you give me some
23 authority. It's your objection.

24 MR. NEWMAN: Yes, sir, I would cite the Crawford case
25 on what the confrontation clause is and what testimonial

Vic Patel - Direct examination
by Solicitor Swanson

1 evidence is. Crawford v. Washington or Washington v.
2 Crawford. I think it's Crawford v. Washington.

3 SOLICITOR SWANSON: The only time it's an issue is when
4 the reliability is at issue, and if this was a speaker that
5 we couldn't identify, it would not be allowed in under,
6 under case law. However, it's an identified speaker and my
7 hearsay exception. So---

8 THE COURT: Well, my concern is perhaps we need to put
9 Mr. -- you need to recall Mr. Brown and get into this issue
10 with him and give him a chance to cross-examine him.

11 SOLICITOR SWANSON: Sure.

12 THE COURT: Do you wish to do that?

13 SOLICITOR SWANSON: I wish to do that at this time and
14 then I'll recall Mr. Patel to the stand.

15 MR. NEWMAN: And I do have a problem and ask that
16 Mr. Brown be barred from further testimony. He was under an
17 order of sequester and has been in this courtroom since he
18 testified.

19 THE COURT: I don't think I've issued a sequester order
20 in the case, sequestration order.

21 MR. NEWMAN: We agreed to that with the State.

22 SOLICITOR SWANSON: Yes, and then Mr. Brown was
23 excused, and so he was no longer under sequestration.

24 THE COURT: I didn't issue---

25 SOLICITOR SWANSON: Again, I---

Vic Patel - Direct examination
by Solicitor Swanson

1 THE COURT: I didn't issue a sequestration order.

2 MR. NEWMAN: Well, I ask you to issue one based on our
3 agreement with the State nunc pro tunc, and the State has
4 been abiding by a voluntary sequestration, sequestration.

5 THE COURT: I didn't issue one at -- up to this point
6 in time.

7 MR. NEWMAN: I'm asking you, based on our agreement
8 with the State, you issue one nunc pro tunc.

9 THE COURT: Well, sir, given this circumstance I
10 probably will not do that. It wasn't requested at the
11 beginning of the trial. I didn't issue one.

12 MR. NEWMAN: Understood. Be a PCR issue maybe. I
13 don't know.

14 THE COURT: Well, again, I didn't issue one.

15 Let me go do some research on this. We'll just stop
16 right where we are and see where we are.

17 Court's in recess.

18 SOLICITOR SWANSON: Thank you.

19 Your Honor, may Mr. Patel be allowed to come off the
20 stand?

21 THE COURT: Yes.

22 You can step down but do not discuss your testimony
23 with anyone during this break.

24 THE WITNESS: Yes, sir.

25 THE COURT: Thank you.

Vic Patel - Direct examination
by Solicitor Swanson

1 SOLICITOR SWANSON: Thank you.

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

3 THE COURT: All right. We're back in session in the
4 McBean case.

5 I am going to rely on the case of State versus Dennis,
6 a South Carolina case. I believe the cite is 337 S.C. 275.
7 That particular case indicates that, where there -- in this
8 case there was a non-testifying codefendant who was being
9 quoted, and the State presented that quotation as an
10 exception under the hearsay rule. The Court ruled that it
11 did fall within one of the exceptions as an excited
12 utterance, and the question was whether it violated the
13 confrontation clause because of the unavailability of that
14 witness to testify since he was refusing to testify.

15 The Courts said that, in that case, that if it falls
16 within a exception to the hearsay rule, that would guarantee
17 reliability of that statement, that the confrontation clause
18 is not violated by allowing such a statement to be entered.
19 However, in this case, what I will do is, if I were to rule
20 and I haven't gotten to that point yet with this statement
21 since I'm asking to lay a better foundation as to it falling
22 within the exception under the hearsay rule, if I were to
23 rule that it does come in under an exception to the hearsay
24 rule, I'm gonna require that Mr. Brown remain present. If
25 the defense wishes to cross-examine him on that point, I

Vic Patel - Direct examination
by Solicitor Swanson

1 will make him available for you to continue your
2 cross-examination so that you will have the opportunity to
3 cross-examine him on that issue if you choose to do that.
4 That will be up to you.

5 MR. NEWMAN: Without me having to call him as the
6 witness?

7 THE COURT: That's right. The Court will call him.

8 MR. NEWMAN: Thank you.

9 THE COURT: As -- back to the stand and allow you to
10 continue your cross-examination.

11 MR. NEWMAN: Thank you.

12 THE COURT: Now, are we ready to proceed?

13 SOLICITOR SWANSON: Yes, sir.

14 THE COURT: All right. Let's put Mr. Patel back on the
15 stand please, sir.

16 (Witness returns to the stand.)

17 THE COURT: Again, Ms. Swanson, I'm going to ask that
18 you lay a little better foundation to support your position
19 that this statement falls within the exception under the
20 hearsay rule.

21 SOLICITOR SWANSON: Yes, sir.

22 Shall we proffer that at this time?

23 THE COURT: Well, if you'd like. I don't mind taking
24 it outside the hearing of the jury.

25 SOLICITOR SWANSON: Okay.

Vic Patel - Direct examination
by Solicitor Swanson

1 THE COURT: However you'd like to do it.

2 SOLICITOR SWANSON: Yes, sir, the jury's not coming?

3 THE COURT: Hold the jury outside.

4 THE BAILIFF: No, I'm just switching sides.

5 THE COURT: I see. Thank you. Thank you, Mr. Henson.

6 All right.

7 SOLICITOR SWANSON: Okay.

8 CONTINUED DIRECT EXAMINATION

9 BY SOLICITOR SWANSON:

10 Q Okay. Mr. Patel, where were you the night that your
11 dad was shot?

12 A Perry, Florida.

13 Q All right. And, that night, did you receive a call
14 from Tony?

15 A Yes, ma'am.

16 Q When did you receive the call from Tony?

17 A Shortly after my dad got shot.

18 Q Okay. Where was your dad at the time?

19 A I believe he was still at the store. I'm not sure.

20 I'm not a hundred percent sure if EMS had already taken him
21 or he was still there.

22 Q Okay. But you received a call from Tony right after
23 your dad was shot and what did he tell you?

24 A That my dad was shot and I asked Tony who did it and if
25 my dad was okay.

Vic Patel - Direct examination
by Solicitor Swanson

1 Q Okay. And did he tell you -- did he give you any
2 indication about who did it?

3 A Yes, ma'am.

4 Q Okay. And what indication did he give you?

5 A He said the two guys from New York.

6 SOLICITOR SWANSON: Okay. Your Honor, that's the
7 extent of what I would get in through the hearsay exception
8 of present sense impression.

9 THE COURT: All right. Would you like to cross-examine
10 concerning that testimony, Mr. Newman?

11 CROSS-EXAMINATION

12 BY MR. NEWMAN:

13 Q And you were where in Florida?

14 A Perry, Florida.

15 Q Perry..

16 About where, where is that?

17 A Close to Tallahassee.

18 Q Okay. So out, out western Florida.

19 Did you see Mr. Brown on that night?

20 A No.

21 Q Did you observe him at all?

22 A I was in Florida.

23 Q Okay. Thank you.

24 I don't have any further questions.

25 THE COURT: All right. Anything further from the

V
vic Patel - Cross-examination
by Mr. Newman

1 State?

2 SOLICITOR SWANSON: No, I mean I would have more
3 testimony, but not regarding that issue.

4 THE COURT: Oh, I understand that.

5 All right. You wish to be heard on your objection?

6 MR. NEWMAN: I do, Your Honor.

7 THE COURT: Yes, sir.

8 MR. NEWMAN: He can't state whether or not Mr. Brown
9 was under the influence of the immediacy of the, the
10 shooting, whether he was rationally thinking. Apparently,
11 given the information, he had already called 9-1-1. Don't
12 know whether EMS is there or not.

13 In short, he can't say what Mr. Brown's state of mind
14 was to make it an excited utterance. It sounds more like a
15 testimonial rational statement of what's going on. I
16 believe, therefore, that it's not admissible cause we do
17 not -- State's proffered nothing about the state of mind or
18 influence of the situation on Mr. Brown and Mr. Patel is in
19 Florida.

20 THE COURT: I'll hear from the State on that.

21 SOLICITOR SWANSON: Thank you.

22 Your Honor, I've been arguing Rule 803(1), present
23 sense impression. A statement describing or explaining an
24 event or condition made while the declarant was perceiving
25 the event or condition or immediately thereafter.

Vic Patel - Cross-examination
by Mr. Newman

1 Mr. Brown's already been on the stand to describe the
2 event that happened, and he calls the victim's son right
3 after it happened to tell him he's been shot, and tell him
4 who he thinks did it.

5 THE COURT: All right. I'm gonna overrule the
6 objection. I'll allow it to come in as an exception --

7 SOLICITOR SWANSON: Thank you.

8 THE COURT: -- to the hearsay rule.

9 SOLICITOR SWANSON: Thank you, Your Honor.

10 THE COURT: All right. Bring the jury back.

11 THE BAILIFF: Yes, sir.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE BAILIFF: The jury's entering the courtroom, Your
15 Honor.

16 THE COURT: Thank you.

17 All right. Thank you. You can be seated.

18 Just one second before you proceed.

19 (Pause.)

20 THE COURT: All right. I have overruled the objection
21 by the defense.

22 You may proceed, ma'am.

23 SOLICITOR SWANSON: Thank you, Your Honor.

24 THE COURT: And I have ruled that the statement was --
25 to be given by the witness does qualify as an exception to

Vic Patel - Direct examination
by Solicitor Swanson

1 the hearsay rule, 803(1), a present sense impression.

2 You may proceed.

3 SOLICITOR SWANSON: Thank you, Your Honor.

4 CONTINUED DIRECT EXAMINATION

5 BY SOLICITOR SWANSON:

6 Q Vic, the last time when we were talking we had gotten
7 to the part where you were in Florida on the night of the
8 shooting and you received a call from Tony.

9 when did you receive that call?

10 A Shortly after my dad got shot.

11 Q Okay. And what did he tell you in that phone call?

12 A That my dad was just shot and I asked Tony if he was
13 all right and who did it.

14 Q And did he give any indication as to who did it?

15 A Yes, ma'am.

16 Q what did he say?

17 A He said the two guys from New York.

18 Q Did you know who he was talking about?

19 A Yes, ma'am.

20 Q why did you know who he was talking about?

21 A I pay attention to vehicles, their tags, people, what
22 they smoke, what they drink, what they buy, and we had an
23 incident with them prior.

24 Q Okay. Tell us about that incident.

25 A It was during Heritage Days weekend where there was, I

Vic Patel - Direct examination
by Solicitor Swanson

1 don't know if it was a misunderstanding or if there was a
2 fight or something, but an incident happened outside in the
3 parking lot.

4 Q Okay. And so did you ever make a note of the license
5 plate of the car that they drove?

6 A Mentally I had a note.

7 Q Okay. And did anything stand out to you about the car
8 that you associated them with?

9 A Nothing really standed (sic) out about the vehicle
10 itself. I just have a really good memory about vehicles.

11 Q Okay. What kind of vehicle was it?

12 A It was a Lexus ES300, blue.

13 Q Okay. And what kind of tags did it have?

14 A New York tags on the front and back.

15 Q And did you give that information to police?

16 A Yes, ma'am.

17 Q Where did you go once you left Florida?

18 A I went straight to Savannah to -- Memorial Hospital
19 where my dad was airlifted to.

20 Q Okay. Did you ever meet with Investigator Baird with
21 the Sheriff's Office?

22 A Yes, ma'am.

23 Q Okay. And did you meet with him on your own at the
24 Island Plaza?

25 A Yes, ma'am.

Vic Patel - Direct examination
by Solicitor Swanson

1 Q Was anyone else present when he showed you a photo
2 lineup?

3 A Not around me.

4 Q Okay. Did he ask you if you could identify the New
5 York guy?

6 A Yes, ma'am.

7 Q Okay. I'm gonna show you a lineup that's been marked
8 up and entered as State's 6. This is Tony Brown's lineup.

9 Was this the lineup that he showed you just without the
10 marks on it?

11 A I'm pretty sure it was the lineup. I'm not sure of all
12 the faces but it looks similar to the lineup.

13 Q Okay. And who did you pick out?

14 A Number two.

15 Q As the New York guy?

16 A Yes, ma'am.

17 Q And did you just point to it or did you circle it?

18 A I pointed to it.

19 Q And, again, you weren't there for the shooting but you
20 knew who the New York guy was?

21 A Yes, ma'am.

22 Q Let me ask you this because his name has come up.
23 Are you familiar with Dominick Lesesne?

24 A Yes, ma'am.

25 Q Does Dominick Lesesne look like the New York guy?

Vic Patel - Direct examination
by Solicitor Swanson

1 A No, ma'am.

2 Q Okay. What does Dominick Lesesne look like?

3 A He's tall, dark, with dreads. He's had dreads ever
4 since I've known him for 16 years.

5 Q Sixteen years.

6 Okay. Thank you. I have nothing further at this time.

7 THE COURT: Your witness, Mr. Newman.

8 MR. NEWMAN: Thank you.

9 CROSS-EXAMINATION

10 BY MR. NEWMAN:

11 Q And you thought to write down the license plate of
12 this, this Lexus, correct?

13 A No, I never wrote it down. I had a mental note of it.

14 Q Made a mental note of it.

15 Did you speak with Corporal Capps or anybody from the
16 Sheriff's Department?

17 A I'm not sure of which officers I spoke with.

18 Q All right. Well -- and this was about six and a half
19 years ago.

20 Do you, do you remember the number of the plate that
21 you gave?

22 A It was, I believe, 6438 but I'm not sure. It was a
23 long time ago --

24 Q Okay.

25 A -- of the exact plate number.

Vic Patel - Cross-examination
by Mr. Newman

1 Q If Corporal Capps wrote down in his report [REDACTED], would
2 that be what you would of told him?

3 A If that's what he wrote down, yes, sir.

4 Q Okay. And now you think it might be a different
5 number?

6 A It was six and a half years ago. I can't remember four
7 numbers.

8 Q Okay.

9 A I'm sorry.

10 Q And that's, and that's why I'm asking.

11 Corporal Capps recorded this on 12/23 of '09 of [REDACTED]
12 after talking to you.

13 A That would be correct. If he wrote that down, that's
14 what I would have a note of.

15 Q Okay. And, specifically, what purchases did the New
16 York guy make in the store?

17 A He bought t-shirts, tobacco products, something to
18 drink. He would frequent the store four or five times a
19 day.

20 Q Okay. Referring to State's 15 and State's 16, these
21 are -- this is the -- one of the front doors to your store.

22 Is that correct?

23 A Yes.

24 Q Okay. And that's how they would of appeared in 2009,
25 correct?

Vic Patel - Cross-examination
by Mr. Newman

1 A Minus a few signs but with the bars and everything,
2 yes, sir.

3 Q Yeah, that's what I'm asking.

4 A Uh-huh. (Affirmative).

5 Q Okay. And how many times has that door been replaced?

6 A The door's never been replaced.

7 Q Oh, it hadn't?

8 A No.

9 Q Okay. Thank you.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION

12 BY SOLICITOR SWANSON:

13 Q Vic, has the glass on the door been replaced?

14 A I believe so.

15 Q Okay. I think that was the confusion there.

16 And these doors, do they ever get cleaned on the
17 inside?

18 A Very, very rare.

19 Q Okay. And Dominick Lesesne, was he a regular in the
20 Island Plaza?

21 A Yes, ma'am.

22 SOLICITOR SWANSON: Okay. Thank you. Nothing further.
23 Recross.

24 THE COURT: Recross.

25 RECROSS EXAMINATION

✓ Vic Patel - Recross examination
by Mr. Newman

1 BY MR. NEWMAN:

2 Q In your store, you sell fried chicken, fried pork
3 chops, hot dogs, things like that, don't you?

4 A Yes, sir.

5 Q You sell the---

6 A Not hot dogs but --.

7 Q Okay. Did you sell fried chicken, fried pork chops?

8 A Yes, sir.

9 Q Tater Planks or whatever they're called?

10 A Yes, sir.

11 Q Okay. And you also sell ice cream products, don't you?

12 A Yes.

13 Q Ice cream sandwiches, ice cream cones, and the
14 wrappers, and those type of things?

15 A Yes, sir.

16 MR. NEWMAN: Okay. I don't believe I have anything
17 else. Thank you, judge.

18 THE COURT: You may step down, sir.

19 Wish to excuse the witness?

20 SOLICITOR SWANSON: Yes, Your Honor.

21 THE COURT: Any objections?

22 MR. NEWMAN: No, sir.

23 THE COURT: You're free to go, sir.

24 THE WITNESS: Thank you.

25 THE COURT: You may call your next witness.

Brian Baird - Direct examination
by Solicitor Swanson

1 SOLICITOR SWANSON: Thank you.

2 Is there any need to recall Mr. Brown?

3 THE COURT: Oh, let me see -- find out if he wishes.

4 You wish to make Mr. Brown available for

5 cross-examination?

6 MR. NEWMAN: No, sir.

7 THE COURT: Okay.

8 SOLICITOR SWANSON: State calls Brian Baird.

9 THE COURT: Come forward, sir, to my left and be sworn.

10 BRIAN BAIRD, being first duly sworn,
11 testified as follows:

12 THE CLERK: Please state your name for the record.

13 THE WITNESS: Brian Mark Baird.

14 THE COURT: Thank you, sir.

15 Your witness, counselor.

16 SOLICITOR SWANSON: Thank you.

17 DIRECT EXAMINATION

18 BY SOLICITOR SWANSON:

19 Q Lieutenant Baird, how many years in law enforcement do
20 you have?

21 A 34, 34 and a half.

22 Q 34 and a half.

23 Where were you before the Beaufort County Sheriff's
24 office?

25 A I started off as a marine military policeman. Then I

Brian Baird - Direct examination
by Solicitor Swanson

1 moved into Marine criminal investigations and I finished up
2 my career working for the Naval Criminal Investigative
3 Services and retired and came to work for the Sheriff's
4 office.

5 Q Okay. Is that what they call NCIS?

6 A It is, like the show.

7 Q Okay.

8 A Kind of.

9 Q Were you an investigator for BCSO back in 2009?

10 A Yes, ma'am, I was.

11 Q Okay. And when -- were you on call kind of over the
12 Christmas break of that year?

13 A Yes, I was.

14 Q Okay. Tell us about your involvement in the
15 investigation of the shooting and the attempted armed
16 robbery that occurred at the Island Plaza on
17 December 23rd please.

18 A Like I said, ma'am, on the 23rd of December there was
19 a, 2009, there was an armed robbery attempted at the Island
20 Plaza where the store owner, Mr. Vic Patel, I mean, excuse
21 me, Mr. Jay Patel, was shot during the armed robbery
22 attempt. I was not on duty that night. Another
23 investigator was. That investigator was leaving the area
24 and I was taking over duty over the Christmas holiday, two
25 or three day period.

Brian Baird - Direct examination
by Solicitor Swanson

1 During that timeframe there was a bunch of calls made
2 to the Island Plaza in which some information was passed
3 along about who the possible shooter was.

4 Q Okay. And without getting into what that information
5 was, did -- you began fielding that information?

6 A That's correct, ma'am. I received that information,
7 developed a possible suspect from that information,
8 developed a photographic lineup including the individual who
9 thought might be involved in the shooting, and then
10 presented that photo lineup to two of the employees out
11 there at the Island Plaza.

12 Q Okay. And who was the suspect that you developed?

13 A Julius Rooks-McBean.

14 Q And you had a photo lineup created?

15 A Yes, I did.

16 Q And who was that created by?

17 A Ms. Pam Brown. She's an intel analyst for the Beaufort
18 County Sheriff's Office.

19 Q Okay. And so you showed it to two different employees.
20 Who was the first employee that you showed it to?

21 A Mr. Antonio Brown.

22 Q All right. I'm gonna show you what's been entered as
23 State's 6, and ask if this is a photo lineup that you showed
24 to Mr. Brown.

25 A Yes, it is.

Brian Baird - Direct examination
by Solicitor Swanson

1 Q okay. And can you tell the jury exactly how you went
2 through that process with him?

3 A well, I approached Mr. Brown. I determined -- I had
4 called out there, determined that he was working, and I went
5 out. I met with him at the store. I told him I had a
6 photographic lineup that I wanted to show him. I told him
7 that it would be six pictures and that, if he saw the
8 individual who did the shooting, to please let me know. At
9 this point I put the paper down in front of him, turned it
10 over, let him look at it. As soon as I turned it over he
11 looked at it. He pointed to the individual in position
12 number two and said that's the man that shot Jay.

13 Q Okay. So he picked him out immediately?

14 A That's correct.

15 Q Okay. And so position number two, that is, in fact,
16 Julius Rooks-McBean?

17 A Yes, it is.

18 Q Okay. Who is the other employee that you showed the
19 photo lineup to?

20 A Mr. Vic Patel.

21 Q And I'm publishing State's 6 just for the record.
22 Mr. Vic Patel.

23 was it a blank photo lineup?

24 A Yes, it was. It was not marked in anyway.

25 Q Right.

Brian Baird - Direct examination
by Solicitor Swanson

1 Because -- was he even there during the shooting?

2 A No, he was not.

3 Q But why did you present him the photo lineup?

4 A People had informed him that---

5 MR. NEWMAN: Your Honor, please the Court, I'm gonna
6 object to hearsay.

7 THE COURT: I'll sustain the objection as to what
8 anybody had told him -- the witness.

9 SOLICITOR SWANSON: Yes, sir.

10 Did you ask him if he, if he could identify the New
11 York guy?

12 A Yes, I did.

13 Q Okay. And so, in looking at the photo lineup, was he
14 able to point to who he believed the New York guy was?

15 A Yes, he was.

16 Q And who did he point to?

17 A Mr. Julius Rooks-McBean.

18 Q Okay. Now, when you showed this to Vic Patel, was Tony
19 Brown around?

20 A He was in the store but he was in the back of the
21 store. I presented it to Mr. Brown first and towards the
22 back of the store and then I came up to the front of the
23 store and spoke to -- vic was at the cash register I
24 believe, believe and showed it to him there.

25 Q Okay. And, of course, he was not shown Tony Brown's

Brian Baird - Direct examination
by Solicitor Swanson

1 selection, correct?

2 A No, he was not.

3 Q Okay. And you gave no indication that the actual
4 suspect was, in fact, in the lineup, did you?

5 A No, I did not.

6 Q Okay. After you met with these two employees, did you
7 obtain arrest warrants for Julius Rooks-McBean?

8 A Yes, I did.

9 Q Okay. And when was that?

10 A I believe it was the next day possibly.

11 Q Okay. Shortly thereafter?

12 A Yes.

13 Q All right. And after you obtained the arrest warrants,
14 did Investigator Fraser take over the case?

15 A Yes, he did.

16 SOLICITOR SWANSON: Okay. Judge, I have nothing
17 further at this time.

18 THE COURT: You may cross-examine.

19 MR. NEWMAN: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. NEWMAN:

22 Q Now, when you were preparing to do the photo lineups,
23 did you consider any information given by a Jordan Posey who
24 witnessed the shooter run out of the store?

25 A No.

Brian Baird - Cross-examination
by Mr. Newman

1 Q All right. And she described to detectives that it was
2 a tall, medium build, dark complected man?

3 A That's what she listed in the -- that's what's listed
4 in the police reports. I had not spoken to her.

5 Q Right.

6 And as we've discussed, the parking lot, it's a covered
7 parking lot and it's lit by -- I believe it's florescent
8 lighting?

9 A I believe it is.

10 Q Okay. And the door area is -- likewise is lit?

11 A Yes, sir.

12 Q And the store has kind of large plate glass windows in
13 it, correct?

14 Did---

15 A I believe it does but I don't --.

16 Q The brick on the bottom or cinder blocks on the bottom
17 but then windows across the front of it where light can come
18 in?

19 A I'm not sure you can see all the way through it.

20 Q Okay. Well, certainly we know the, the door that we've
21 been talking about, light would come out of?

22 A (Witness nods affirmatively.)

23 Q And this is the covered parking lot up here, is it not?

24 A It is.

25 Q Let me make that a little bit bigger.

Brian Baird - Cross-examination
by Mr. Newman

1 The top part of it, this would be one of the columns?

2 A Yes, sir.

3 Q And the canopy runs all the way across wherever all the
4 gas pumps are, correct?

5 A That it does.

6 Q Okay. And I've asked you that the person in position
7 two is the lightest skinned person in that photograph,
8 correct?

9 A Yes, he does to be appear light skinned.

10 Q Okay. Now, on your procedure with Mr. Brown, I believe
11 you admitted that you did not follow the correct or full
12 procedure on the -- on showing a photo lineup, correct?

13 A No, sir, I did not read it to him.

14 Q You did not read him the warning?

15 A Nor did I not follow the procedure.

16 Q I'm sorry?

17 A Nor did I not follow the procedure. There was no
18 procedure, in 2009, for exactly how you presented it.

19 That's---

20 Q Okay.

21 A ---what I said.

22 Q And due to certification standards, around that time
23 you adopted procedures where you read to the witness that
24 the person may not be in there?

25 A In 2011 we changed the policy.

Brian Baird - Cross-examination
by Mr. Newman

1 Q Okay. So you were following policy at the time, but
2 that was changed to include special warnings such as the
3 person -- well, what we're about to show you may or may not
4 contain the person?

5 A Now, the only thing that actually changed was, on the
6 back of the photographic lineup, there's a stamp now that
7 said that you must read verbatim. Whereas, in 2009 when we
8 did it, when I presented it, I told him, you know, I want
9 you to look at these pictures, and if you see the
10 individual, he may or may not be in there. If you see the
11 individual, you may go ahead and, and identify him. Now we
12 actually read it verbatim. Whereas back then you just said
13 it out of common procedure.

14 Q Okay. And you are proficient in firearms, correct?

15 A Correct.

16 Q All right. And you have to train so many times a year
17 and have to hit your target so many times to be
18 proficient---

19 A Yes, sir.

20 Q ---in order to stay certified, correct?

21 A Yes, sir.

22 Q And you've been doing that for a long time.

23 On a -- on your pistols, they have a back sight that
24 looks basically like that, does it not?

25 A Very similar.

Brian Baird - Cross-examination
by Mr. Newman

1 Q And they have a front sight that looks like that?

2 A Very similar.

3 Q And the, the reason for that is so that you look down
4 at your target and center the sight on your target, correct?

5 A It assists in aiming at the target.

6 Q Right.

7 And a good aim is when you have everything lined up so
8 that you can see that front sight, and it's nice and level
9 and it's centered, correct, and you should be able to hit
10 your target?

11 A You should be able to.

12 Q Okay. And that sight's set up to draw the eye into the
13 sight so that you can get your target?

14 A Makes sense, yes, sir.

15 Q Okay. And, and all of these lineups, actually it was
16 the same lineup, but they've been reproduced I guess,
17 Mr. McBean appears in the number two position?

18 A In the two lineups I presented?

19 Q Yes.

20 A I don't know about any other lineups, what position he
21 would of been in.

22 Q Okay. I believe, if you'll look at these, this is
23 State's 6 and State's 7. I believe State's 7 is the one
24 done by, by Fraser.

25 Do they appear to be the same, copy of the same lineup?

Brian Baird - Cross-examination
by Mr. Newman

1 A Yes, they are.

2 Q Okay. And they're both in position two, correct?

3 A Correct.

4 Q Thank you.

5 No further questions.

6 THE COURT: Redirect.

7 SOLICITOR SWANSON: Just briefly.

8 REDIRECT EXAMINATION

9 BY SOLICITOR SWANSON:

10 Q Lieutenant Baird, did you ask that Julius Rooks-McBean
11 be placed in position two so that the eye would be drawn
12 towards it?

13 A No, I didn't ask that he be placed in any position. I
14 always leave that up to the intel analyst. That way there's
15 no influence from me on that.

16 Q Okay. And was there any hesitation by the two that did
17 identify Julius Rooks as number two or the shooter as number
18 two and the New York guy as number two?

19 Was there any hesitation in those witnesses?

20 A None whatsoever. It was immediate. As soon as I
21 turned the paper over they both pointed right to them and
22 said that's him.

23 Q Thank you.

24 THE COURT: Recross.

25 RECROSS EXAMINATION

Brian Baird - Recross examination
by Mr. Newman

1 BY MR. NEWMAN:

2 Q And to follow up on that, we know for an absolute fact
3 that Vic Patel did not witness this and can not say who did
4 this.

5 Isn't that correct?

6 He did not witness this incident?

7 A All he said was that -- his statement was that's the
8 guy from New York, that Mr.---

9 Q He can not say he's the shooter?

10 He can't say any of that or that he was even at that
11 store that night, correct?

12 A He was not there at the time of the shooting, no, sir.

13 Q Okay. Thank you.

14 THE COURT: You may step down, sir.

15 THE WITNESS: Thank you, sir.

16 THE COURT: You wish to excuse the witness?

17 SOLICITOR SWANSON: Yes, please, Your Honor.

18 THE COURT: And you---

19 MR. NEWMAN: No objections.

20 THE COURT: All right. You're free to go, sir, if
21 you'd like to go.

22 THE WITNESS: Thank you, sir.

23 THE COURT: State may call its next witness.

24 SOLICITOR SWANSON: Thank you.

25 State calls Investigator Fraser.

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 JEREMIAH FRASER, being first duly
2 sworn, testified as follows:

3 THE CLERK: State your name for the record for me.

4 THE WITNESS: Jeremiah Fraser. F-R-A-S-E-R.

5 THE COURT: Thank you.

6 Counselor, your witness.

7 SOLICITOR SWANSON: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR SWANSON:

10 Q Investigator Fraser, how long have you been with the
11 Sheriff's Department?

12 A I worked for the Sheriff's Office for 14 years.

13 Q And what did you do before that?

14 A Prior to that I was in the Marine Corp.

15 Q Okay. For how many years?

16 A Four years.

17 Q All right. And how long have you been in
18 investigations?

19 A Roughly ten years.

20 Q All right. Have you always investigated on Saint
21 Helena?

22 A During this time I was the primary investigator for the
23 Island of Saint Helena, yes.

24 Q All right. And you've recently been promoted, right?

25 A Yes, ma'am.

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 Q Okay. What's your title now?

2 A Master sergeant.

3 Q And that's over investigations on the northend?

4 A Yes, ma'am.

5 Q Correct?

6 A Yes, ma'am.

7 Q Okay. Tell us a little bit about Saint Helena.

8 What's the community like?

9 A Saint Helena Island is a very tight knit community.

10 There's a lot of families out there. It's a very, it's a
11 very spread out community. You can go down one road and run
12 into an entire three, four generations of one family. They
13 live, a lot of families, together in small groups on Saint
14 Helena Island. They stay very close together. They take
15 care of each other out in the island. Most people out there
16 still grow their own crops, believe it or not.

17 Q Okay. After Mr. Patel was released from the hospital,
18 did you have a chance to sit down and talk with him?

19 A I did. Once Mr. Patel was released from Savannah,
20 actually when he came back from Savannah, I believe he
21 stayed down there a couple of extra days. When he came back
22 from Savannah I asked him to stop by the investigations
23 office so that I could talk to him further and also
24 conducted a photo lineup.

25 Q Okay. What date was that?

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 A I believe it was January 5th of 2010.

2 Q All right. And did you, in fact, conduct a photo
3 lineup?

4 A I did, yes, ma'am.

5 Q And I'm gonna hand you what's been entered as State's 7
6 and ask if this is the photo lineup that you conducted with
7 him?

8 A It is. I know that because my initials appear on the
9 back.

10 Q Okay. Can you describe for the jury how you conducted
11 that photo lineup with Mr. Patel?

12 A I did. As Lieutenant Baird said earlier, this is a six
13 pack array that was created by our intel analyst. I've also
14 attached what he referred to as advisement on the back of
15 it.

16 Would you like me to read it?

17 Q Yes. Please.

18 A The back of the advisement reads you will be asked to
19 look at a group of photographs. The fact that the
20 photographs are shown to you should not influence your
21 judgment. You should not conclude or guess that the
22 photographs contain the picture of the person who committed
23 the crime. You're not obligated to identify anyone. It's
24 just as important to free innocent persons from suspicion as
25 it is to identify guilty parties. Please do not discuss the

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 case with other witnesses nor indicate in anyway that you
2 have identified someone.

3 After I read this Mr. Patel said he understood the
4 instructions. He signed the instructions sheet with a date
5 and time and I initialed it as well.

6 Q Okay. And how immediate did he pick Mr. Rooks-McBean
7 out?

8 A Once the photo lineup was flipped over and presented to
9 him he immediately identified Mr. Rooks-McBean in the number
10 two photograph.

11 Q Okay. As the investigator in the case, are you
12 familiar with the latent prints that were taken off the
13 door?

14 A I am, yes, ma'am.

15 Q Okay. And did you actually do the analysis of those
16 prints or did somebody else?

17 A No, Sergeant Chris Wilson did the analysis of those
18 latent prints.

19 Q Is she still with the Sheriff's Department?

20 A No, ma'am, she retired.

21 Q Okay. Are you familiar with the findings on those
22 prints?

23 A I am, yes, ma'am.

24 Q Okay. Can you just tell the jury about those please?

25 A Yes, ma'am, I know that several smudges and partial

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 latent prints were lifted. Only one was identifiable. The
2 identifiable latent print came to Dominick Lesesne, Dominick
3 being a member of that community who frequents the store.

4 Q Okay. Are you familiar with Dominick Lesesne?

5 A Very, including his family.

6 Q Okay. Tell us about your familiarity and what his
7 appearance is like.

8 A Dominick Lesesne, he's, he's very tall. He's about
9 6'5", 6'6". He has long dreadlocks. He's very dark
10 complected and he's got a round face. He does fishing for a
11 living. His father, Jonathan Pope, is a fishermen. His
12 brother, Antwan Lesesne, is a fishermen. He's got two
13 sisters that live on Seaside Road, Quadillion and Tasha.
14 One lives up around Folly and one lives around Boot Parker's
15 store, which is actually Katie Parker, which is a
16 neighborhood on Saint Helena on Seaside Road. He's also got
17 a half brother named Devin Pope and I think Devin lives with
18 Joe on Old Church Road.

19 Q So Dominick's pretty well known in the area would you
20 say?

21 A He is. It's very -- it's another one of those very
22 large families.

23 Q Okay. And out of the four latent prints that were
24 recovered, there was only one usable?

25 A Yes, ma'am.

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 Q Okay. So then there's three unusable prints that
2 presumably could of come back to somebody else?

3 A There's, there's several. In looking at the lift that
4 was made, they're several what we call smudges. Smudges
5 don't have any ridge detail that you can identify a latent
6 print from. They're several partials that don't either have
7 enough ridge detail or identifying features to make a
8 positive identification. As far as I know the only print
9 that was identified was Dominick Lesesne's with enough ridge
10 detail.

11 SOLICITOR SWANSON: Okay. Your Honor, may we approach
12 briefly?

13 THE COURT: Yes, ma'am.

14 SOLICITOR SWANSON: Defense counsel and I.

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

17 THE COURT: You may proceed.

18 SOLICITOR SWANSON: Thank you, Your Honor.

19 THE COURT: Yes, ma'am.

20 Q Investigator Fraser, at some point after the defendant
21 was charged and arrested, did Mr. Rooks-McBean flee South
22 Carolina?

23 A He did. I believe it was towards the end of 2013 he
24 fled the state.

25 Q Okay. And where was he eventually located?

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 A The end of 2015 I believe he was located in Virginia.

2 Q Okay. And so he was brought back to South Carolina.
3 after a couple years at the end of 2015?

4 A Yes, ma'am, that's correct. I believe he'd been gone
5 nearly two years.

6 SOLICITOR SWANSON: Okay. And if we may approach one
7 more time please?

8 THE COURT: Yes, ma'am.

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

11 THE COURT: You may proceed.

12 SOLICITOR SWANSON: Thank you, Your Honor.

13 Q And once Mr. Rooks-McBean was returned to our
14 jurisdiction, did you have a chance to review a phone call
15 made from the Beaufort, Beaufort County Detention Center on
16 May 1st of 2016?

17 A Yes, I was.

18 SOLICITOR SWANSON: Okay. May I have a sticker for
19 this please?

20 (WHEREUPON, a CD was marked as State's Exhibit No. 19
21 for identification purposes only at this time.)

22 Q I'm gonna present you with State's Exhibit No. 19, a
23 clip from the recording that you reviewed earlier.

24 A Yes, ma'am.

25 SOLICITOR SWANSON: Okay. Like to enter this at this

Jeremiah Fraser - Direct examination
by Solicitor Newman

1 time subject to defense's objections.

2 THE COURT: All right. Subject to your prior
3 objections, Mr. Newman, any additional objections?

4 MR. NEWMAN: No.

5 THE COURT: All right. It will be admitted---

6 SOLICITOR SWANSON: And I'd like---

7 THE COURT: ---and I've already ruled that it comes in.

8 (WHEREUPON, State's Exhibit No. 19 was received into
9 evidence at this time.)

10 SOLICITOR SWANSON: Thank you.

11 I'd like to publish it at this time.

12 THE COURT: You may do so.

13 SOLICITOR SWANSON: Beg the Court's indulgence.

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 (WHEREUPON, State's Exhibit No. 19 was played for the
17 jury at this time.)

18 SOLICITOR SWANSON: Beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 (Pause.)

21 SOLICITOR SWANSON: I have nothing further at this
22 time.

23 THE COURT: You may cross-examine, Mr. Newman.

24 MR. NEWMAN: Thank you.

25 CROSS-EXAMINATION

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 BY MR. NEWMAN:

2 Q And you're considered the lead investigator on this
3 case.

4 Is that correct?

5 A Yes, sir, I took it over from Lieutenant Baird.

6 Q All right. And you're familiar and have reviewed the
7 reports from Corporal Capps and PFC Neal and Brian Baird and
8 others, correct?

9 A Yes, sir.

10 Q Okay. And that's your job, as case officer, to know
11 the case?

12 A Yes, sir.

13 Q All right. And as you testified with Chris Wilson,
14 when this fingerprint, the unknown and the known, do you --
15 you mentioned that Chris Wilson is not here and I believe
16 that she's retired and lives in Florida, correct?

17 A That's correct, yes, sir.

18 Q And she worked for the Sheriff's Department for a
19 stupid long time, right?

20 A A long time, yes, sir.

21 Q A long time.

22 A She did.

23 Q You have any reason to doubt her voracity as an expert
24 in fingerprint analysis examination and comparison?

25 A None whatsoever.

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 Q Okay. And her analysis showed that this is the number
2 nine finger of the left ring finger of Dominick Lesesne?

3 A That's correct.

4 Q Okay. And in the report---

5 A Which report are we talking about, sir?

6 Q We're gonna talk about Corporal Capps. He writes down
7 a license plate number after speaking, or Sergeant Bush did,
8 after speaking with vic of [REDACTED]?

9 I think it's on yes, page -- it says 3 of 4 of
10 supplemental.

11 A [REDACTED], yes, sir.

12 Q Okay. And, in fact, the records to this Lexus that
13 this fellow was stopped in a number of miles away and a
14 month or so before had the partial number of [REDACTED] or 28 --
15 26 or 28, correct?

16 A Is this from the redacted report?

17 Q This is -- it's either inferable from the redacted
18 report, but I was talking about the tow sheet to the
19 vehicle.

20 A Do you have it?

21 May I see it?

22 Q I don't have it in front of me.

23 A Okay. And what was the question?

24 I'm sorry.

25 Q Okay. What was the license plate of the vehicle you

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 impounded?

2 A I don't believe there was a vehicle or I don't know
3 that there was a tag on the vehicle.

4 Q And I'm sorry, the number wouldn't be [REDACTED] EUY, echo,
5 union, Yankee?

6 [REDACTED]?

7 A It may be. I don't recall, sir.

8 Q Well, you---

9 A I'm looking for it.

10 Q Okay. Please.

11 A You say it's on the impound sheet---

12 Q At---

13 A ---of -- they're several reports.

14 Can you refer to which report?

15 Q I believe it's on the impound sheet.

16 A Attached to a -- which report, sir?

17 Q I don't know which report the impound sheet's attached
18 to.

19 A E, uniform -- echo, uniform, Yankee, EUY [REDACTED].

20 Q Correct.

21 A Yes, sir.

22 Q Okay. And the number that Mr. Patel gave you whoever
23 he was identifying as the New York boy or one of your
24 officers was [REDACTED], correct?

25 A And that's in -- that's from --?

Jeremiah Fraser - Cross-examination
by Mr. Newman

- 1 Q From---
- 2 A Officer Capps report, [REDACTED]?
- 3 Q Yes, sir.
- 4 A The partial?
- 5 Q Yes, sir.
- 6 A Yes, sir.
- 7 Q Okay.
- 8 A Yes, sir.
- 9 Q So those aren't the same numbers, correct?
- 10 A No, sir.
- 11 Q All right. And officers interviewed, through the
- 12 course of the investigation and she actually testified, was
- 13 a Jordan Posey, correct?
- 14 A Yes, we did interview Jordan Posey, yes, sir.
- 15 Q Okay. And she described the man as tall, medium build,
- 16 and dark complected?
- 17 SOLICITOR SWANSON: Your Honor, I object as to hearsay.
- 18 THE COURT: Objection is what?
- 19 SOLICITOR SWANSON: Hearsay. He's going into what a
- 20 witness described who's not here to testify.
- 21 THE COURT: I'm gonna overrule the objection. He's
- 22 just asking him -- I assume these are reports that are in
- 23 the investigator's file?
- 24 MR. NEWMAN: Yes, sir.
- 25 THE COURT: All right. He can state whether or not he

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 reviewed those or used them for any purposes.

2 A And this is gonna be---

3 THE COURT: You may continue.

4 A ---O'Neal's report, sir?

5 Q Yes, sir.

6 A Okay.

7 Q Page 1 of 2.

8 A Yes, sir.

9 Q It's about midway down on the paragraph of notes of
10 interview with Jordan Posey. Described the suspect as tall,
11 medium build, and dark complected, complexion.

12 A Tall, medium build, and dark complexion, yes, sir.

13 Q Okay. And y'all write those things down in the report
14 because you do have to come in, often years later, in Court
15 and testify?

16 A Yes, sir, that's correct.

17 Q And you're trained to report things accurately that
18 witnesses give you?

19 A That's correct.

20 Q Truthfully and correctly?

21 A Yes, sir.

22 Q Okay. Now, Mr. Patel's testified and Brown and the
23 other Patel that---

24 A Jay Patel.

25 Q Yeah, Jay and---

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 A Yes, sir.

2 Q That, at least for a month or so, this fellow was in
3 the store all the time?

4 A Yes, sir.

5 Q Okay. And the store has video surveillance?

6 A Yes, sir, that we showed, yes, sir.

7 Q It's like one, two, three, four, five -- I think they
8 got like five or six cameras?

9 A Yes, sir, that's correct.

10 Q Okay. And this fellow that they wanted to describe,
11 the New York boy or whatever, no one from your department or
12 no one under your direction decided to look at any of the
13 store videos to see if they could get a clear picture or a
14 better picture of who this guy that shot Patel was?

15 A Are you asking did we try to change the photo or change
16 the video?

17 Q No.

18 A Enhance the video?

19 Q That's not what I'm asking.

20 What I am asking, the video that we have are what are
21 known as tif images, correct?

22 A Yes, sir.

23 Q Okay. And, in fact, out of these one or two, this is
24 where showing the suspect with the left-hand touching the
25 door and the area where Capps got the prints.

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 Now, the tif images, the State I think's introduced one
2 or two of them in evidence, and the video capture has
3 hundreds and hundreds, if not a thousand, tif images in it,
4 the video clip that we watched?

5 A Yes, I'm not an expert but a tif image I believe is a
6 still shot of that particular image, yes, sir, from the
7 video.

8 Q Right.

9 The State introduced one but there's probably almost a
10 thousand other ones?

11 Every time we see that blue blink, what it's really
12 doing is just showing us photographs?

13 A I'm not exactly sure how that system works.

14 Q Okay. You would agree there's almost a thousand of
15 those pictures there?

16 A Yeah. Oh, yeah, absolutely, yes, sir.

17 Q Yeah.

18 Okay. But what my question is, since you can't
19 identify the person who's in the video, and you testified to
20 that a number of times, correct?

21 A That's correct.

22 Q Okay.

23 A Before this I didn't know Mr. McBean.

24 Q Okay. And you can't identify him as Mr. McBean?
25 That's what you've testified to.

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 A That's correct. I, I can't. Again, I didn't know him.

2 Q Right.

3 So my question is, as an investigator, you get lots of
4 tools and resources, correct?

5 A Yes, sir.

6 Q Okay. The -- either you or assigning to somebody,
7 since we know gee, this guy, this guy might of been in the
8 store even the same day cause he comes in everyday three and
9 four times, nobody went back and looked at any other videos
10 or tif images to see if they could see if that fellow is
11 that fellow?

12 A Did we go back and review more video?

13 Q Yes.

14 A No, sir.

15 Q You didn't look at any of them, did you?
16 Only this one?

17 A Only this video, yes, sir.

18 Q Yes.

19 And you had at least word, whether it's true or not,
20 that this fellow was in the store everyday for a month or so
21 a couple times a day?

22 A That's correct.

23 Q And you didn't look at anything else?

24 A No other event occurred before that.

25 Q And it just didn't occur to you to look at available

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 video evidence to see if you could identify the person on
2 the video?

3 A Sir, the -- there -- this video, this is the quality of
4 video there and that is the best that we have.

5 Q Okay. So you didn't make any attempt?

6 A There was no further attempt to go back in time.
7 Again, this -- the purpose of this video was to capture this
8 robbery and this attempted murder.

9 Q Okay. And the closest person, other than Patel --
10 Patel, to the robbery was a gentleman named Terry Griffin?

11 A Yes, sir.

12 Q Okay.

13 A He was doing his lottery tickets in the back.

14 Q Doing his lottery tickets?

15 A Uh-huh. (Affirmative).

16 Q In fact, he's seen pretty much at the counter where
17 this robbery takes place---

18 A That's correct.

19 Q ---correct?

20 Okay. And is he gonna be testifying today?

21 A I have no idea, sir.

22 Q Okay. And he was the person standing nearest Mr. Patel
23 during the incident, correct?

24 A Prior to the incident, yes.

25 Q Right.

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 Okay. And Mr. Griffin was not able to identify
2 Mr. McBean.

3 Isn't that correct?

4 A No, according to him, he had his back turned, and when
5 he heard the shot, it was already over. As you can see from
6 the video, this is about 20 seconds long. So it was very
7 quick.

8 Q And out of that twenty seconds, there's, there's about
9 six, seven seconds on each side of it on the coming and
10 going, correct?

11 A Roughly.

12 Q Okay. So a very limited window to be able to see the
13 shooter?

14 A Yeah, especially if you don't know who they are.

15 Q Okay. And would you agree that, based on Tony Brown's
16 testimony, that he was in the back of the store near the
17 deli section, milk, milk aisle -- it's a rather -- pretty
18 good size store, correct?

19 A It is, yes.

20 Q There's a number of aisles that would of been
21 in-between Mr. Brown where he says he is, correct?

22 A I believe there's three.

23 Q Okay. And would you agree with me that, from
24 Mr. Brown's vantage point, what he would of mainly seen is
25 the back of the suspect?

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 A No, I think he would of seen the front too. He
2 didn't -- according to what Mr. Brown says, he didn't see
3 him come in the first time, but he saw him the second time.
4 I believe Mr. Brown would of seen him. He's about the same
5 height I am and I can see over the shelves.

6 Q Okay. And Mr. Brown was sweeping and on a cell phone?

7 A Correct.

8 Q Okay. And, for some odd reason, we don't see Mr. Brown
9 come over to where Mr. Patel is, do we?

10 A I believe we do at the end.

11 Q On the clip we watched?

12 A I believe so.

13 Q Okay. Okay. So we don't have Ms. Posey. May not have
14 Mr. Griffin.

15 Now, eye witness identification is subject to a number
16 of factors, is it not?

17 A It is.

18 Q Lighting, stress, ability to relate, memory to recall,
19 whether a person is the same or a different race?

20 A Familiarity with the person, yes, sir.

21 Q Familiarity.

22 There's a lot of things that affect identifications,
23 correct?

24 A Absolutely.

25 Q But -- and also bias motivations, all those type of

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 things, correct?

2 A Sure.

3 Q Okay. Now, when we look at scientific evidence, that's
4 not subject to interpretation, bias, prejudice, simply being
5 mistaken, is it?

6 A No, but it does have to be taken in context.

7 Q Right.

8 The context that we find that this print is lifted off
9 a door and it comes back to a person that's about 6-foot 6
10 tall, and not only that, but it's the left-hand?

11 A Absolutely.

12 Q It's the number nine left ring finger?

13 A Absolutely, Dominick's the same size. He'd hit the
14 door in the same spot. Quite frankly I'd be surprised if
15 Dominick, as often as he, he went into the store, his
16 fingerprints wouldn't be there.

17 Q Okay.

18 A Dominick's the---

19 Q When was the last time Dominick was in that store?

20 A I couldn't tell you but I've seen him there several
21 times.

22 Q When was the last time you were in that store prior to
23 this?

24 A Prior to the shooting?

25 Q Prior to the robbery.

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 A Prior to the robbery?

2 Q Or attempted robbery or whatever.

3 A Primarily right next to the store there's a park. It's
4 called the Martin Luther King, Junior Park. It's associated
5 with the Penn Center. Right across the street there's a
6 hotel.

7 That park is a common meeting place for people on Saint
8 Helena. They congregate, hang out. They use the store to
9 buy whatever and they congregate at the park. That is
10 probably the single best place to start when you're trying
11 to find people. I regularly run down several people,
12 including Dominick, his brothers, his father, at the park to
13 include the Island Plaza.

14 Q Okay. I appreciate that.

15 My question was when, prior to this robbery, attempted
16 robbery, when were you inside the Island Plaza?

17 A I would of said I would of been in there during the
18 month of December, 2009, absolutely.

19 Q Okay. And doing what?

20 A If I wasn't stopping to buy something to drink, to talk
21 to Vic, to talk to somebody else out there.

22 Q Okay.

23 A I regularly stop at the Island Plaza. The best way to
24 make contact with people that work in a community like
25 Lady's Island is to build relationships and the Island Plaza

Jeremiah Fraser - Cross-examination
by Mr. Newman

1 is a great place to do that.

2 Q Okay. And on Saint Helena, this tight knit community,
3 you work a number of shootings and gang activity, do you
4 not?

5 A I do, yes.

6 Q Okay. And, in this case, we do not have -- I know
7 there's a projectile that was recovered by an EMS worker and
8 given to you guys. We have no gun.

9 Is that correct?

10 A No, there's no gun.

11 Q Okay. And the only processing of evidence at the store
12 was Corporal Capps with the fingerprint lifts?

13 A Yes, as you can see from the video, the only thing that
14 the suspect touched was the door. There was nothing else to
15 process in the store.

16 MR. NEWMAN: Okay. Your Honor, I think I'm about
17 finished.

18 THE COURT: All right.

19 MR. NEWMAN: Let me just check one of my notes.

20 (Pause.)

21 Q And you didn't see Dominick Lesesne on December 23rd,
22 2009, correct?

23 A No, sir.

24 Q Okay. And you can not account for his whereabouts?

25 A No, I can't.

Jeremiah Fraser - Redirect examination
by Solicitor Swanson

1 MR. NEWMAN: Okay. Thank you. I don't have any
2 further questions.

3 THE COURT: Redirect.

4 SOLICITOR SWANSON: Just briefly.

5 THE COURT: Yes, ma'am.

6 REDIRECT EXAMINATION

7 BY SOLICITOR SWANSON:

8 Q Investigator Fraser, when you receive several eye
9 witness identifications of the same perpetrator, is it
10 protocol to kind of stay on that lead unless other evidence
11 presents that somebody else could of been the perpetrator?

12 A You run all information. You don't limit yourself to
13 one thing and that's, that's exactly what we, what we would
14 have done had there been another suspect identified.

15 However, Mr. Patel, Mr. Brown, me, Investigator, I'm sorry,
16 Officer Capps, we're all very familiar with Dominick Lesesne
17 and I can look at the video, I can look at the still images,
18 and I can tell you for sure that's not Dominick.

19 Q Okay. And, in fact, because the codefendant who is
20 shooting from the doorway was never arrested, right?

21 A That's correct.

22 Q Okay. And, and y'all tried to follow-up with people on
23 leads regarding that codefendant?

24 A I did, yes.

25 Q And several lineups were presented to the very same

Jeremiah Fraser - Redirect examination
by Solicitor Swanson

1 witnesses who didn't pick anyone out, right?

2 A That's correct.

3 Q Okay. So there were lineups where there were very
4 certain, pick someone out, and then there were lineups where
5 they were uncertain and did not pick anything out---

6 A That's correct.

7 Q ---anyone out?

8 And would you expect, in a busy store with a window
9 that hasn't been cleaned or is rarely cleaned, would you
10 expect smudges and different peoples' fingerprints beyond
11 that?

12 A Absolutely, and you can clearly see it on the
13 fingerprint, on the fingerprint lifts themselves. They're
14 several smudges.

15 SOLICITOR SWANSON: Okay. I don't have anything
16 further.

17 THE COURT: Recross.

18 MR. NEWMAN: Yes, sir.

19 RE CROSS EXAMINATION

20 BY MR. NEWMAN:

21 Q And these fingerprints, Mr. Lesesne's, is he
22 left-handed or right-handed?

23 A I couldn't tell you.

24 Q I thought you knew him for years.

25 A I do.

Jeremiah Fraser - Recross examination
by Mr. Newman

1 Q You said---

2 A But I've never paid attention.

3 Q Never seen him drink a beer or a Coke or something?

4 A No.

5 Q Okay. So these four smears, Dominick has four fingers
6 on his left-hand, correct?

7 A Absolutely.

8 Q Okay. And out of these photographs, out of these tif
9 images, which there are literally a thousand or so, out of
10 all of those images, you can not say, with all your
11 investigative ability, that that is this man.

12 Isn't that correct?

13 A I can not identify him, no, sir.

14 Q All right. Thank you.

15 A And, again, I didn't know him prior to this.

16 Q Thank you.

17 No further questions, judge.

18 THE COURT: All right, sir. You may step down. Thank
19 you very much.

20 THE WITNESS: Thank you, judge.

21 THE COURT: Thank you.

22 Thank you, ma'am.

23 All right. Ladies and gentlemen, we're gonna take a
24 short break. You've had a couple of breaks but the people
25 in the courtroom haven't. So we're gonna take a short

1 break, let you go back to the jury room.

2 As you retire, again I'll instruct you not to discuss
3 anything about the case until I ask you to begin
4 deliberations. You may retire to the jury room at this
5 time.

6 Thank you very much.

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

9 THE COURT: We'll take about a ten minute recess.
10 Thank you.

11 SOLICITOR SWANSON: Thank you.

12 MR. NEWMAN: Thank you, Your Honor.

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

14 THE COURT: All right. Is the State ready to proceed?

15 SOLICITOR SWANSON: Yes, sir.

16 THE COURT: Defense ready?

17 MR. NEWMAN: Yes, sir.

18 THE COURT: Let's bring the jury in.

19 THE BAILIFF: Yes, sir.

20 (Pause.)

21 THE BAILIFF: The jury's entering the courtroom, Your
22 Honor.

23 THE COURT: Thank you, sir.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

1 THE COURT: All right. The record will reflect the
2 jury has returned to the courtroom.

3 At this point in time the State may call its next
4 witness.

5 SOLICITOR SWANSON: Thank you.

6 State calls Kimberly Clegg.

7 THE COURT: Ma'am, come forward to my left and be
8 sworn. Right over here.

9 (Witness complies.)

10 KIMBERLY CLEGG, being first duly
11 sworn, testified as follows:

12 THE CLERK: State your full name for the record.

13 THE WITNESS: Kimberly Clegg.

14 THE CLERK: Have a seat.

15 THE WITNESS: Thank you.

16 THE COURT: Counselor, your witness.

17 SOLICITOR SWANSON: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY SOLICITOR SWANSON:

20 Q Ms. Clegg, where do you work?

21 A Currently?

22 Q Yes, ma'am.

23 A At Coastal Carolina Hospital.

24 Q And what do you do there?

25 A I am a nursing supervisor.

Kimberly Clegg - Direct examination
by Solicitor Swanson

1 Q Okay. And back in 2009 where did you work?

2 A Beaufort Memorial Emergency Room.

3 Q Okay. How long did you work in the ER at Beaufort
4 Memorial?

5 A Roughly eight, nine years.

6 Q All right. And were you on duty on December 23rd of
7 2009?

8 A Yes, I was.

9 Q Did you have the opportunity to treat Jay Patel?

10 A Yes, I did.

11 Q Okay. Can you tell us about his injuries?

12 A Can I refer to my notes please?

13 Q Yes, ma'am.

14 A Mr. Patel arrived to the emergency room with a gunshot
15 wound to his right chest that had an exit wound to the right
16 scapula area.

17 Q Okay. How serious was a wound of this nature?

18 A It could be a significant injury to a patient because
19 of your veins and your arteries that run right through that
20 area. Also your lung could be affected from that gunshot
21 wound.

22 Q Okay. And, and you stated -- you'd been in the ER for
23 how long?

24 A I graduated from nursing school in 2000, and I went
25 straight into the emergency room at that point.

Kimberly Clegg - Direct examination
by Solicitor Swanson

1 Q Okay. Have you ever testified in Court before?

2 A Yes, I have.

3 Q Okay. How many times?

4 A Numerous times.

5 Q Okay. Have you been declared an expert?

6 A In sexual assault.

7 Q Okay. In sexual assault.

8 What about ER work or just nursing?

9 A No, just sexual assault.

10 Q Okay.

11 A Yeah.

12 SOLICITOR SWANSON: Would Mr. Newman have any objection
13 to Ms. Clegg being declared an expert in nursing?

14 MR. NEWMAN: I don't know how to answer that. This is
15 the first time I've---

16 THE COURT: Are you offering her for nurse, emergency
17 room nursing, emergency---

18 SOLICITOR SWANSON: Emergency room nursing, yes, sir.

19 THE COURT: Ma'am, you said you've worked there how
20 long?

21 THE WITNESS: I have---

22 MR. NEWMAN: Nine years.

23 THE WITNESS: Yeah, yeah. Yes, sir. Yeah.

24 THE COURT: Any objection to her being qualified as an
25 emergency room nurse expert?

Kimberly Clegg - Direct examination
by Solicitor Swanson

1 MR. NEWMAN: Since I don't know this witness to this
2 case, I have no idea what she's gonna testify to.

3 THE COURT: Well, the question is whether she's
4 qualified as an expert right now. It's not the content of
5 her testimony necessarily. It's whether or not you feel
6 like she is sufficiently trained or has sufficient
7 experience to be able to render opinions within this field
8 of expertise. We haven't gotten into her education or
9 training. If you would like for me to ask her that---

10 MR. NEWMAN: No, I understand that and I, I actually
11 know Ms. Clegg and have examined her as a witness on several
12 occasions. I don't object to her being a expert in nursing
13 or even ER nursing, but I don't waive any objections to her
14 testimony because I don't have any.

15 THE COURT: Oh, I understand that. I'm not asking you
16 to do that. The question is whether I can qualify her as an
17 expert within that field or not.

18 MR. NEWMAN: I know her qualifications. I would be
19 comfortable with that.

20 THE COURT: Okay. Ladies and gentlemen, let me explain
21 what we're doing right now so you understand what this is
22 about.

23 Generally -- I, I told you, at the beginning of the
24 trial, there are rules of evidence that govern testimony by
25 witnesses and what evidence can come in and what evidence

Kimberly Clegg - Direct examination
by Solicitor Swanson

1 can't come in, and generally lay witnesses are not allowed
2 to state their opinions concerning any subjects. They have
3 to testify from facts within their knowledge.

4 There's an exception made for any witness who is
5 qualified as an expert within some profession or field or
6 endeavor, and for witnesses who we classify as an expert
7 within some field or profession, they are allowed to state
8 their opinions within the area of their expertise and
9 allowed to state the reasons why they hold those opinions.

10 Now, later on, during my charge on the law, I will give
11 you some information as to how you can treat statements made
12 by experts in a trial and we'll discuss that in more detail
13 at that time. But, at this time, the State has offered this
14 witness as an expert as an emergency room nurse. Without
15 objection from the defense I will qualify her as an expert
16 within that field. That will allow her to state her
17 opinions within that field. We'll discuss how you handle
18 those opinions later.

19 You may proceed at this time, counselor.

20 SOLICITOR SWANSON: Thank you, Your Honor.

21 CONTINUED DIRECT EXAMINATION

22 BY SOLICITOR SWANSON:

23 Q Have you previously treated gunshot wounds?

24 A Yes, ma'am.

25 Q Okay. And do they -- do victims of gunshot wounds

Kimberly Clegg - Direct examination
by Solicitor Swanson

1 always get transferred out to other trauma centers?

2 A Not necessarily. It really depends on the mechanism of
3 the injury, where it affected the body. Nine times out of
4 ten the ER physician will consult the general physician or
5 the general surgeon that is on call that night, and then
6 they will make a determination if the patient needs a higher
7 level of care like a trauma surgeon.

8 Q Okay. And in Jay Patel's case, what was decided?

9 A He needed a higher level of care.

10 Q Okay. And so, as a result, what happened?

11 A He was transferred to Savannah Memorial---

12 Q That---

13 A ---to the trauma center.

14 Q Okay. Was he flown there?

15 A Yes, ma'am.

16 Q And what exactly were y'all concerned about?

17 Were you concerned about internal bleeding?

18 A Yes, ma'am, and then also a lung involvement.

19 Q Okay. And lung involvement.

20 A Yes, ma'am.

21 Q In your opinion and in treating gunshot wounds of this
22 nature to the chest, are these life threatening?

23 A They could potentially be life threatening, yes, ma'am.

24 Q Okay. Thank you.

25 I have nothing further.

Kimberly Clegg - Cross-examination
by Mr. Newman

1 THE COURT: Your witness, counselor.

2 CROSS-EXAMINATION

3 BY MR. NEWMAN:

4 Q Hey, Ms. Clegg. Nice to see you again.

5 A Hi, sir.

6 Q All your training and experience and, and scientific
7 education and all of that, you have no idea in the world who
8 shot Mr. Patel, do you?

9 A No, sir.

10 Q okay. Thank you.

11 A Yes, sir.

12 Q Have a good afternoon, Ms. Clegg.

13 A Yes, sir. Thank you.

14 THE COURT: Anything on redirect?

15 SOLICITOR SWANSON: No, sir.

16 THE COURT: All right. Ma'am, you may step down.
17 Do you wish to excuse the witness?

18 SOLICITOR SWANSON: Yes, please.

19 THE COURT: Any objection?

20 MR. NEWMAN: No, sir.

21 THE COURT: Ma'am, you're free to go at this time.

22 Thank you.

23 THE WITNESS: Thank you, sir.

24 SOLICITOR SWANSON: Thank you, Your Honor.

25 THE COURT: The State may call its next witness.

1 SOLICITOR SWANSON: Your Honor, at this time the State
2 rest its case.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, I'm going to ask that you step back to the jury room
5 while I take up some matters with the attorneys. As always,
6 I'll ask you not to discuss anything about the case until I
7 ask you to begin deliberations.

8 You may retire to the jury room.

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

11 THE BAILIFF: The jury's clear, Your Honor.

12 THE COURT: All right. Any motions at this time?

13 MR. NEWMAN: There are. I know the motions, I don't
14 think are gonna be granted, but I mean I'm gonna make them
15 anyway.

16 THE COURT: I understand.

17 MR. NEWMAN: And I think the rules allow me to do that.

18 THE COURT: Yes, sir.

19 MR. NEWMAN: Make a motion for directed verdict in that
20 in amassing all of the State's evidence, that there's not
21 sufficient evidence from which a jury could infer the
22 defendant's guilt beyond a reasonable doubt, and, therefore,
23 we move for a verdict of acquittal --

24 THE COURT: All right.

25 MR. NEWMAN: -- for a directed verdict.

1 THE COURT: State's position.

2 SOLICITOR SWANSON: The evidence, taken in the light
3 most favorable to the State, does meet the elements for
4 attempted armed robbery and assault and battery with intent
5 to kill as well as the possession of a weapon during a
6 violent crime.

7 All of the actions in those crimes were testified to by
8 the eye witnesses who also identified Julius Rooks-McBean as
9 the perpetrator. Two separate eye witnesses identified,
10 identified him immediately in the photo lineups. So I do
11 believe that gets us past directed verdict.

12 THE COURT: All right. I will agree that taken the
13 light -- evidence in the light most favorable to the State
14 that there are issues for a jury to decide in this matter.
15 There is sufficient evidence that the case should be allowed
16 to go to the jury.

17 Now, I need to inquire of your client concerning his
18 right to, his right to testify. I know, at the beginning of
19 the trial, you indicated perhaps he was not going to
20 testify. Of course, the trial's gone on and now he has a
21 right now too if he wishes to or not.

22 MR. NEWMAN: Yes, sir. Yes, sir, as to the directed
23 verdict issue, and I'm certainly not challenging your
24 ruling --

25 THE COURT: Yes, sir.

1 MR. NEWMAN: -- as to the one charge of the possession
2 of weapon during a violent crime, I move for a directed
3 verdict specifically on that one --

4 THE COURT: Okay.

5 MR. NEWMAN: -- cause the crime of attempted armed
6 robbery necessarily has its element that there is a
7 dangerous weapon involved as an element of that crime, and
8 that it is redundant because you can not have an attempted
9 armed robbery without a weapon.

10 THE COURT: Hear from the State.

11 SOLICITOR SWANSON: Is the argument on double jeopardy
12 grounds or I'm not, I'm not sure I'm following the argument.

13 MR. NEWMAN: It's on a merger grounds that the -- that
14 you can not have a attempted armed robbery or armed robbery
15 without being armed with a deadly weapon. Therefore, that
16 charge is subsumed in the armed robbery or attempted armed
17 robbery charge, and, therefore, it is duplicative.

18 SOLICITOR SWANSON: Okay. But the Legislature has
19 deemed it a separate offense and so he has been indicted for
20 the separate offense of possession of a weapon during the
21 commission of a violent crime. Now, obviously if he were
22 acquitted on one or both of those counts, he could not be
23 convicted of that additional charge. So I'm, I'm gonna
24 disagree that it's duplicitous. The Legislature has stated
25 otherwise.

1 THE COURT: I'm gonna deny the motion.

2 All right. Any other motions?

3 I'm sorry.

4 MR. NEWMAN: No, they're, they're not, Your Honor, and
5 I'm sorry, I just needed to put that on the record.

6 THE COURT: I understand. That's fine.

7 Okay. Now please -- you want to talk to your client
8 for just a second?

9 MR. NEWMAN: Yes, sir, please do.

10 (Pause.)

11 MR. NEWMAN: At this time, after discussing with Your
12 Honor, offer my client for a colloquy as to his rights and
13 he indicated to me that he does not wish to testify and that
14 we would rest our case.

15 THE COURT: All right. Well, I'm gonna go through the
16 colloquy with him.

17 So, sir, if you would, please be placed under oath.

18 Madam Clerk, please place the defendant under oath for
19 me.

20 (WHEREUPON, the defendant was placed under oath at this
21 time.)

22 THE COURT: You can be seated.

23 (Defendant complies.)

24 THE COURT: Mr. McBean, at this time we are about to
25 begin the portion of the trial where you have the right to

1 present your defense. I will make you aware of certain of
2 your Constitutional rights. If you don't understand what
3 I've explained to you when I finish, I'll be more than happy
4 to offer additional explanation or give you an opportunity
5 to consult with your lawyer about these matters.

6 Do you understand what I'm doing at this time?

7 THE DEFENDANT: I do, sir.

8 THE COURT: All right. As I've said, we've reached the
9 stage of the trial where you have the right to present your
10 defense, and, as part of that defense, you have the right to
11 testify in this case. You also have the right, however, to
12 claim the protections which are afforded to you under the
13 Fifth Amendment of the United States Constitution. That
14 amendment reads, in part, that no person shall be compelled,
15 in any criminal case, to be a witness against himself.

16 Now, while that -- while you have the right to testify,
17 that amendment states that you can not be made to testify or
18 you have the right to remain silent. I will tell you that,
19 if you decide to testify, you will be subject to the same
20 rules that govern any other witness in Court. That means
21 you would be examined by your attorney and cross-examined by
22 the State's attorneys.

23 Now, if there are matters on your criminal record which
24 involve dishonesty, false statements, or for crimes which
25 were punishable by imprisonment for more than one year, and

1 this Court were to make a determination that the probative
2 value of that information outweighs its prejudicial effect
3 to you, the solicitor would be able to introduce those
4 convictions to attack your credibility.

5 I'll ask the solicitor, does he have convictions on his
6 record that you would attempt to use in that fashion?

7 SOLICITOR SWANSON: He does have one prior conviction
8 that would fall under the rules regarding impeachment, and
9 it was an April 2nd, 2008, conviction for possession of
10 forged instrument, third degree --

11 THE COURT: I see.

12 SOLICITOR SWANSON: -- out of New York.

13 THE COURT: Okay. Now, I will tell you that the
14 decision as to whether or not to testify is less -- left
15 entirely up to you. You must decide as to whether or not to
16 testify freely, voluntarily, and intelligently with
17 knowledge of the protections given to you by the Fifth
18 Amendment to, to the United States Constitution.

19 Now, I will instruct -- tell you or instruct you that,
20 if you decide not to testify, that I would instruct the jury
21 in this case that they can not give the fact that you did
22 not testify any consideration whatsoever in reaching a
23 verdict. In fact, my instruction to them would they --
24 would be that they could not even discuss that factor during
25 their deliberations.

1 Now, so there should be absolutely no prejudice to you
2 because of the fact that you did not testify.

3 Now, the decision, again, is left entirely up to you.
4 You can talk with your attorney, family, friends, or anyone
5 else you'd like to talk to but the decision is yours and
6 yours alone.

7 Now, do you understand the right that I've just gone
8 over with you?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: Do you have any questions about that right?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you need for me to explain it any
13 further?

14 THE DEFENDANT: No, sir.

15 THE COURT: Now, you have a right to discuss this, as I
16 said, with anyone before you decide how to proceed.

17 Do you wish to consult with your lawyer or anyone else
18 at this time?

19 THE DEFENDANT: I'm okay.

20 THE COURT: All right. Now, do you intend to testify
21 in this case?

22 THE DEFENDANT: No, I do not.

23 THE COURT: Okay. Thank you very much.

24 Now, does the defense intend to call any other
25 witnesses at this time?

1 MR. NEWMAN: No, sir, we intend to rest, Your Honor.

2 THE COURT: All right. Well, what I will do then is I
3 will call the jury back and I will call on you to call your
4 witness if you choose to. You can rest in front of the jury
5 and then what I will do is excuse them until nine o'clock in
6 the morning. At that time we'll do argument and charge and
7 then I would expect though that we'll discuss briefly any
8 specific requests to charge once I've dismissed the jury.

9 All right. Let's bring the jury in.

10 THE BAILIFF: Yes, sir.

11 (Pause.)

12 THE BAILIFF: The jury's entering the courtroom, Your
13 Honor.

14 THE COURT: Thank you, sir.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: All right. The record will reflect that
18 the jury has returned to the courtroom.

19 When you left, left a few moments the State had rested
20 or completed the presentation of evidence in this case. At
21 this time the defense has the right to call witnesses.

22 Does the witness -- does the defense wish to call any
23 witnesses?

24 MR. NEWMAN: Pleases the Court, Your Honor, the defense
25 rests.

1 THE COURT: All right. So, ladies and gentlemen, with
2 the resting of the defense, that means we have completed the
3 presentation of evidence in this case. Our next step would
4 be for the attorneys to give you their closing or final
5 arguments and then I would charge you concerning the law.

6 I do note that we're almost to four o'clock this
7 afternoon, and, if we do those closing arguments, and I
8 charge you on the law, you would not get the case until
9 after five o'clock, and that would be fairly late to expect
10 you to begin your deliberations at that time.

11 So I'm going to excuse you for the remainder of the
12 day. I'll ask you to be back in the jury room at nine
13 o'clock in the morning. The attorneys, at that time, will,
14 will begin with the closing arguments by attorneys and then
15 I will charge you on the law and the case will be turned
16 over to you for your deliberations.

17 There are some matters I need to discuss with the
18 attorneys before we do those closing arguments, arguments
19 and my charge. We'll deal with that before we leave this
20 afternoon. So we'll be ready to start pretty close to nine
21 o'clock in the morning. So please be there at that time.

22 Now, as you leave, I will, again, instruct you as I
23 have in the past. Don't attempt to gather any information
24 about this case from any other source. Don't discuss it
25 with anyone. Don't allow anyone to discuss it with you.

1 Don't listen to, watch, or read media reports concerning the
2 case. Should anyone attempt to contact you about this case,
3 please report that to us as soon as possible. And, again,
4 I'll be checking on these things in the morning. So please
5 be in a position to be able to say you've complied with my
6 instructions.

7 So I hope you have a good evening. We'll see you at
8 nine o'clock in the morning back in the jury room.

9 Thank you very much.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

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

13 THE COURT: Thank you.

14 Any specific requests for charge from the State?

15 SOLICITOR SWANSON: Your Honor, I do not have any
16 specific request. I'm fine with your standard.

17 THE COURT: All right. Any specific request to charge
18 from the defense?

19 MR. NEWMAN: I don't have any at this time, Your Honor.

20 Do you charge -- I don't know whether you're gonna
21 charge identity or not?

22 THE COURT: I am.

23 MR. NEWMAN: Do you charge the standard charge from the
24 bench book?

25 THE COURT: That's what I would normally charge, yes,

1 sir.

2 MR. NEWMAN: I assume you charge direct and
3 circumstantial evidence, the elements of the crimes,
4 reasonable doubt, presumption of innocence.

5 THE COURT: Yes, sir.

6 MR. NEWMAN: If I could have a slight leeway, unless I
7 find something tonight or, or---

8 THE COURT: Sure.

9 MR. NEWMAN: ---something specific this evening.

10 THE COURT: Just let me know in the morning if there's
11 something you request specifically. I will---

12 MR. NEWMAN: But as of right now I don't have anything.

13 THE COURT: I don't believe you presented any evidence,
14 scrupulously did not do that. So you will be going first in
15 the morning. You'll be prepared to do that.

16 Is that correct?

17 MR. NEWMAN: I will have last argument.

18 THE COURT: I mean -- excuse me. You'll be going last.
19 The State will be going first.

20 So you'll be prepared for that in the morning?

21 MR. NEWMAN: Yes, sir.

22 THE COURT: All right.

23 MR. NEWMAN: And, at this time, for the record, and I
24 apologize to interrupt, but let me do it while I think about
25 it---

1 THE COURT: Yes, sir.

2 MR. NEWMAN: ---at -- since I have rested, I renew all
3 my objections and trial objections and renew my motion for a
4 directed verdict.

5 THE COURT: All right. Those are all noted. The Court
6 will make the same rulings at this time.

7 MR. NEWMAN: Understood, Your Honor.

8 THE COURT: All right. We'll see everyone in the
9 morning, nine o'clock.

10 Thank you very much.

11 MR. NEWMAN: Thank you, judge.

12 SOLICITOR SWANSON: Thank you, Your Honor.

13

14 (WHEREUPON, Court was in recess for the evening.)

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1 Wednesday, May 25th, 2016

2
3 THE COURT: Good morning.

4 MR. NEWMAN: Good morning.

5 SOLICITOR SWANSON: Good morning, Your Honor.

6 THE COURT: State ready to proceed?

7 SOLICITOR SWANSON: State's ready.

8 THE COURT: All right. Defense ready to proceed?

9 MR. NEWMAN: Yes, sir.

10 THE COURT: All right. Let's bring the jury in.

11 THE BAILIFF: Yes, sir.

12 (WHEREUPON, the following takes place within the
13 presence of the jury.)

14 THE BAILIFF: The jury's entering the courtroom, Your
15 Honor.

16 THE COURT: Thank you, sir.

17 All right. The record will reflect the jury has
18 returned to the courtroom.

19 I hope everyone had a good evening last night.

20 If any of you had any difficult in complying with my
21 instructions during your absence from the courthouse, please
22 stand.

23 (No response.)

24 THE COURT: It appears that all jurors have been able
25 to comply with my instructions thus far.

1 Upon your return this morning I indicated to you that
2 we will be proceeding with the closing arguments or
3 summations by the attorneys. The State will be going first.

4 You may proceed.

5 SOLICITOR SWANSON: Thank you, Your Honor.

6 May it please the Court?

7 THE COURT: Yes, ma'am.

8 SOLICITOR SWANSON: This is the last time that I'm
9 going to be able to address the facts with you. Mr.
10 Newman's gonna get last closing and I'm sure he'd like to
11 tell you how many years he has on me as far as practicing
12 law goes, but I'm gonna do my level best to anticipate the
13 arguments that he's gonna make. So we're gonna talk about
14 some of those.

15 Just as the judge told you in the beginning of the
16 case, you guys are the finders of the fact, and the facts
17 come from the witness stand. Nothing that the lawyers say
18 are facts, and if we misstate testimony, if either one of us
19 do that, then you rely on your memory. If your collective
20 memory is not good enough, you certainly rehear or re-listen
21 to testimony. I want you to get this right.

22 I'd like to start by talking about the facts that are
23 not in dispute. These are things that happened, things that
24 you don't have to talk about whether or not they happened.

25 A would be robber comes into the Island Plaza on

1 December 23rd of 2009 around 10:00PM when they're closing
2 up for business. That would be robber comes in, checks the
3 place out, looks for some witnesses, exits the store. He
4 comes back in, levels a gun at Jay Patel, and demands money.
5 When Jay Patel does not give him money, he shoots him from
6 about a foot away in the chest. Those facts are not in
7 dispute.

8 Also not in dispute are Jay Patel's injuries. He gets
9 shot in the right side of the chest. A paramedic, as well
10 an ER nurse, testified that those are life threatening
11 injuries. He had to be flown to Savannah Memorial that
12 night to a Trauma Center to receive a higher level of care.

13 These facts meet the elements of the crimes that Julius
14 Rooks-McBean is charged with. The judge is going to charge
15 you on the law at the end of this case, and he will tell you
16 exactly what elements we need to meet, but attempted armed
17 robber is just that. It's an attempt to steal something
18 that doesn't belong from you with the use of a deadly
19 weapon. Here we have a gun and an attempt to steal money.

20 Assault and battery with intent to kill is an unlawful
21 act of violent nature with malice aforethought. Now, malice
22 aforethought is kind of a weird term and the judge is gonna
23 tell you about that, but what malice is is basically evil
24 intent and it can be implied or expressed. It can be
25 implied by shooting someone in the chest with a deadly

1 weapon, a gun. Intent is pretty obvious when you shoot
2 someone point blank in the chest.

3 So we're not really arguing about the elements of the
4 crimes or the fact that the crimes occurred. What we're
5 obviously arguing about is identity.

6 How do we know Julius Rooks-McBean, who is on trial for
7 these crimes, did these crimes?

8 We know this because Jay Patel and Tony Brown saw him
9 do these crimes. We know this because Julius Rooks-McBean
10 was caught on video doing these crimes. They knew his face.
11 They were familiar with him coming into the store on
12 multiple occasions over the course of a month. At least a
13 month.

14 Let's think back to their testimony. Tony Brown
15 remembers seeing him in November during Heritage Days on
16 Saint Helena and he noticed him because he and a friend
17 caused a ruckus in their store. They noticed that he would
18 come in multiple times a day, buy snacks, tobacco, drinks,
19 what have you, but he also caused that ruckus and that
20 ruckus is something that Vic Patel also noticed because he
21 testified, around Heritage Days, that's when he took note of
22 the New York guy, and he took note of the car that he was
23 driving because he and his friend would always come in in a
24 Lexus ES300 with New York tags. They had their eye on that
25 New York guy because they're vigilant and he was bold and he

1 was loud.

2 Tony Brown viewed the lineup presented by Investigator
3 Baird, and he was a hundred percent certain that he picked
4 out the shooter. Absolutely no hesitation whatsoever.

5 He also tells Vic Patel, in the phone call right after
6 the shooting, the New York guy did it and Vic Patel knew who
7 he was talking about. And when Investigator Baird asked Vic
8 Patel hey, who is this New York guy you're talking about, he
9 points out the same guy, Julius Rooks-McBean, the New York
10 guy.

11 Jay Patel remembers him coming into the store for a
12 couple months several times a day. He, again, was able to
13 immediately identify Julius Rooks-McBean in that photo
14 lineup with Investigator Fraser. He was a hundred percent
15 certain that he picked out the right guy, the guy that, in
16 this picture, looks exactly like the guy that's sitting over
17 here on trial, the New York guy.

18 Don't forget that they also, without hesitation,
19 identified him for you in the courtroom. Vic and Jay work
20 at that store seven days a week. They have plenty of
21 opportunity to observe people. Tony has worked there for
22 over 20 years. They want to keep that store safe.

23 And when is the best time to rob a store?

24 Closing time?

25 Maybe the employees are extra vigilant, extra observant

1 at closing time. But let's not forget how many times they
2 had seen this guy before. We're not talking about 19
3 seconds of eye witness, you know, oh, saw the guy for 19
4 seconds because that's the only -- that's, that's how long
5 the whole thing took, about 19, 20 seconds, but that's not
6 all we're talking about. We're talking about a month or two
7 of observing this guy.

8 Another thing that lends credibility to the Island
9 Plaza folks is corroboration.

10 Remember that November 13th, 2009, traffic stop that
11 Jason Malphrus did with the Sheriff's Department?

12 He stopped a Lexus with New York tags on Lady's Island.
13 He identified Julius Rooks-McBean by his New York driver's
14 license. That places him in the area around the time that
15 we're talking about.

16 Now, remember Heritage Days Festival was in November,
17 and that's when Tony and Vic remember the defendant being in
18 the store. This is corroboration. It also associates him
19 with the Lexus that Vic remembers.

20 Now, Vic may have gotten a partial tag number wrong,
21 but do we just discount his whole testimony and throw it
22 out?

23 Absolutely not.

24 He accurately described the car, and, of course, let's
25 not forget that he was caught on video. You had the

1 opportunity to view the defendant, his stature, his stance,
2 his mannerisms when he stood up before you right over here.
3 You can corroborate the witness identifications by observing
4 him, watching the video, and observing the still shot.

5 That's Julius Rooks-McBean. Tall. Slender build.
6 Angular face. No dreadlocks. Identified by people who were
7 familiar with him.

8 Let's go ahead and play the video.

9 We're gonna watch that 20 seconds of the robbery occur
10 again.

11 (WHEREUPON, a portion of State's Exhibit No. 14 was
12 played for the jury at this time.)

13 SOLICITOR SWANSON: Scope the store out. Meanwhile a
14 bunch of people had come and gone. The store's getting more
15 quiet. So he goes back in and Julius reaches under his
16 sweatshirt, pulls out the gun, demands money, Jay doesn't
17 give it to him, he shoots him, and he flees. Pretty bold.

18 Another thing that we've heard about was that Julius
19 Rooks-McBean, after having been arrested and charged with
20 this incident, fled the area. He was gone for two years and
21 you, as the jury, can consider that flight as consciousness
22 of guilt. You heard his jail phone call about going back
23 and forth to Miami, how he'd been on the run from this
24 stupid long.

25 (WHEREUPON, State's Exhibit No. 19 was played for the

1 jury at this time.)

2 SOLICITOR SWANSON: His glory days of running up and
3 down to Miami are over and he don't seem worried about this.
4 Well, there's no escaping your verdict.

5 Now, let's think about what Mr. Newman's gonna say
6 about the lineups. Three false identifications would seem
7 to be a stretch particularly when we're dealing with people
8 who know the person that shot Jay Patel.

9 He made himself known. Julius Rooks-McBean made
10 himself known to all of the employees at the Island Plaza.

11 He's also gonna harp on the fact that he showed Jay
12 Patel what appears to be a very different picture of the
13 defendant and succeeded in confusing him during a prior
14 hearing. I entered that picture into evidence because I
15 want you to see how different it looks and you can look at
16 him right over here.

17 Huh.

18 Which looks more like Julius Rooks-McBean?

19 The picture in the photo lineup, the accurate one.

20 I don't know if this picture had been squashed in
21 transition or something that made his face appear to look
22 fuller, we don't know, but the accurate picture, the one
23 that looks like Julius Rooks-McBean, is the one that law
24 enforcement used. If law enforcement used this picture in
25 the photo lineup, we would be hearing about how this looks

1 nothing like Julius. You better believe Mr. Newman would
2 point that out.

3 The fact is that Jay Patel had already identified
4 Julius by an accurate looking picture and Mr. Newman was
5 reduced to trickery.

6 He's also gonna tell you that position two in the photo
7 lineup is where your eye is drawn much like that weird
8 example, that line of questioning he got into with Brian
9 Baird about how to aim your gun or target practice.

10 well, you know where your eye is drawn?

11 It's drawn to the person that shot you. That's where
12 your eye is drawn. It's drawn to the person that you
13 recognized from months of coming into this store on multiple
14 occasions.

15 Don't forget too that all of these witnesses from the
16 Island Plaza were shown multiple photo lineups. The other
17 ones, they weren't able to identify anyone. They didn't
18 just pick out the person in number two. They're not trying
19 to get this wrong. They don't want to finger the wrong guy.
20 They didn't pick anyone out and that lends credibility to
21 their identifications.

22 So please keep your common sense in tact when Mr.
23 Newman is trying to pick apart the lineup evidence.

24 what else is Mr. Newman gonna talk about?

25 Maybe what he calls a failure to investigate Dominick

1 Lesesne. The testimony and the pictures could not be more
2 clear. The Patels know Dominick Lesesne. Tony Brown knows
3 Dominick Lesesne. Law enforcement knows Dominick Lesesne.
4 Everyone on Saint Helena Island knows Dominick Lesesne, and
5 other than the fact that these are two black males of
6 abnormally, you know, tall stature, they look nothing alike.

7 Dominick Lesesne whose always had dreadlocks. Dominick
8 Lesesne whose sisters worked at the Island Plaza.
9 Dominick's lived on the island his entire life. If Dominick
10 Lesesne shot Jay Patel, Jay Patel would say Dominick Lesesne
11 shot Jay Patel.

12 Dominick Lesesne didn't shoot Jay Patel. Dominick
13 Lesesne didn't try and rob him. It's a nonstarter. It's a
14 red herring. It's something to distract you from Julius
15 Rooks-McBean.

16 He's gonna talk about the fingerprint, the fingerprint
17 on the door that is rarely, if ever, cleaned. Mr. Newman
18 tried to get my witnesses to say it had been cleaned, but,
19 in fact, it hadn't cause bars that go on the inside.
20 Dominick Lesesne's fingerprint was somewhere on the window.

21 well, big surprise because he was a regular. He lives
22 on the island. who knows how long it could of been there,
23 and you can tell, by the lifts that Corporal Capps did, and
24 you get to look at these back in your jury room, there are
25 all kinds of smudges, all kinds of possible fingerprints

1 that were not usable.

2 There's simply no evidence that Dominick Lesesne is the
3 perpetrator in this case. There is evidence that he was a
4 regular at the Island Plaza which everyone testified to.

5 At the beginning of the -- at the case -- at the
6 beginning of the case I did tell you that there's not a lot
7 of CSI evidence, which we would call forensic evidence, and
8 the fact is is that this incident took place at a very very
9 busy gas station. It does not lend itself to that type of
10 evidence. There's probably no place on Saint Helena Island
11 that has more fingerprints or touch DNA than the Island
12 Plaza because everybody goes there.

13 There is not a convenience store and deli in the area
14 that is close like that, and Chris Capps did his best to
15 view the video and lift the prints that he thought might be
16 relevant. It just turns out they're not. Again, remember
17 that there was one usable print out of four not to mention
18 all the smudges and we don't know if Julius actually put his
19 hand on the glass part of the door or if he just put it on
20 the bars or if he used his closed arm to open the door.

21 If law enforcement had tried to swab that door for
22 possible DNA, it would reveal mixtures of everyone who had
23 been in and out of that store for who knows how long because
24 there is one thing that science does not tell you, and
25 that's when somebody left a fingerprint or when they left

1 their DNA, and let's remember, Julius Rooks-McBean was a
2 regular in that store. If we did have his DNA in that store
3 Mr. Newman would be arguing well, that was when he came for
4 chips and soda because science doesn't tell you when.
5 witnesses tell you when. The video told you when.

6 Jay Patel and Tony Brown are telling the truth. Julius
7 Rooks-McBean is guilty beyond a reasonable doubt. They
8 don't want the wrong guy to go down for this. They have a
9 combined 52 years of experience in running a convenience
10 store. They are vigilant. This is the Patels' livelihood,
11 and they recognize that the New York guy was a problem from
12 the get go.

13 He was bold, he was loud, and he was the guy that tried
14 to rob the store and shoot Jay Patel, all without a mask and
15 all while being caught on video. And we certainly didn't
16 hear that he ever returned to that store after being a
17 frequent customer.

18 There may be other things that Mr. Newman will say to
19 you that I won't get to respond to. If Mr. Newman wants to
20 talk about race, it's not relevant. If Mr. Newman wants to
21 talk about God, it's not relevant. If Mr. Newman wants to
22 talk about weather, it's not relevant. If Mr. Newman wants
23 to talk to you about anything but the facts in this case, he
24 is scared of the facts in this case.

25 I am asking that you speak the truth, follow the law,

1 and render justice. Justice means convictions on all three
2 indictments.

3 Julius Rooks-McBean is guilty of attempted armed
4 robbery, assault and battery with intent to kill Jay Patel,
5 and possession of a weapon during the commission of a
6 violent crime. There is no doubt.

7 Thank you.

8 THE COURT: Mr. Newman, for the defense.

9 MR. NEWMAN: Your Honor.

10 Ma'am, thank you, solicitor.

11 Good morning.

12 The solicitor talks about doubts and no doubts and all
13 that. Well, the fact is neither I nor she were there.

14 Okay. So however confident she may be, and however
15 confident I may be, of course, we've got nothing to prove.
16 They do. It doesn't matter.

17 I'm a little upset that the solicitor doesn't want me
18 to talk about God and says God is irrelevant. God touches
19 our lives in many ways. Brings us here. Bring us to our
20 trials and tribulations, and just like an oath you took,
21 will grant us a true deliverance from those trials and
22 tribulations.

23 Let's talk about what the State hid from you, hid on
24 purpose from you, used crazy stupid rules of hearsay because
25 this gentleman could not testify that he told Vic Patel it

1 was the New York boys. So they use a crazy stupid rule of
2 evidence, a hearsay rule.

3 SOLICITOR SWANSON: Your Honor, I'm gonna object to
4 that. It is, it was a proper rule of evidence.

5 THE COURT: It was a ruling made by the Court to allow
6 that testimony.

7 MR. NEWMAN: I understand that.

8 THE COURT: And I -- and the rule I quoted at the time.

9 MR. NEWMAN: All right.

10 Let's say it's a, a very excellent legal rule, but the
11 fact is Tony Brown could not testify, he could not put his
12 hand on the Holy Bible and testify that he told Vic Patel it
13 was the New York boys. He was sitting right in the
14 courtroom. They could of called him and put him right back
15 on the stand. So they used Vic Patel, whose got skin in the
16 game. His father was shot. Vic Patel who works there
17 everyday seven days a week.

18 Well, what in the world is he doing in Tallahassee,
19 Florida?

20 He wasn't in that store. He doesn't know anything.

21 Vic Patel, for some reason, if this is the right guy,
22 had a vengeance, something against him, thought he did
23 something wrong in the store and said, you know what, I
24 wasn't there but I'm gonna tell you who did this. I'm gonna
25 tell my father who did this because I get skin in the game.

1 witnesses can lie. Science can not lie.

2 This solicitor's Office has a favorite phrase. It's
3 called Dina, don't lie. DNA doesn't lie. Fingerprints do
4 not lie. They are not subject to interpretation, to biases,
5 to prejudices to establish a fact.

6 Eye witnesses aren't. Reading the Savannah Paper on
7 Monday. A man walked out of a prison in Georgia after 29
8 years. Three eye witnesses fingered him for a crime.
9 Twenty-nine years later---

10 SOLICITOR SWANSON: Your Honor---

11 MR. NEWMAN: ---physical evidence---

12 SOLICITOR SWANSON: I'm gonna object to this line of---

13 MR. NEWMAN: Read it.

14 THE COURT: I have an objection, counselor.

15 Yes, ma'am.

16 SOLICITOR SWANSON: Mr. Newman is arguing something
17 that is certainly not in evidence and I believe it's offered
18 in---

19 THE COURT: Mr. Newman, I'm not aware---

20 SOLICITOR SWANSON: ---in order to impassion the jury.

21 THE COURT: I'm not aware of what you're referring to
22 being discussed in the trial of the case.

23 MR. NEWMAN: Your Honor, the solicitor raised DNA. I
24 did not. So I think it's -- and all the exonerations from
25 DNA. I think it's a common sense, people watch TV, read

1 news.

2 THE COURT: Well, you're referring to a specific case
3 that I don't know the facts on. I don't know whether, in
4 anyway, it relates to this case. It was not placed into
5 evidence in this trial.

6 So I'm gonna ask you to confine your remarks to the
7 evidence that's presented to the jury in the trial or what
8 might be known by common knowledge and that particular case,
9 I'm not sure, is common knowledge among the jurors.

10 So I'm gonna sustain the objection as to that case.

11 MR. NEWMAN: Yes, sir.

12 As to common knowledge, maybe we've heard and read and
13 seen on the news over the years of the hundreds of people
14 that have been exonerated from eye witness testimony, from
15 physical scientific forensic CSI evidence, which we have in
16 this case, and we will talk about.

17 Kind of working backwards in the case, you heard about
18 an eye witness they had named Jordan Posey. Jordan Posey,
19 who gave a statement, who gave prior testimony, the State
20 did not see fit to bring her this time, because her
21 statement doesn't fit their biases in the case, their
22 confirmation bias.

23 Confirmation bias is where you pick a suspect, you pick
24 a theory, and you do whatever you can, and scientist have
25 this -- you do whatever you can to confirm your theory. You

1 don't want to ignore it. So you focus on the evidence that
2 merely confirms your theory. While there's evidence,
3 scientific evidence, physical evidence, that messes up your
4 theory, you ignore that cause you don't want to do that.

5 Jordan Posey, an eye witness who was in the parking lot
6 and saw they had cameras in the parking lot, has testified
7 to the parking lot was lighted. Jordan Posey saw the
8 shooter, the robber, whatever they want to call him, come
9 out of the store. Laid eyes. Gave a description to the law
10 enforcement, to Capps. Remember he was the first responding
11 officer. Gave a description. Tall, thin, dark complected
12 man. Not light skinned. Not just a tall guy. Specific
13 information of a dark man with a dark -- a man with a dark
14 complexion that we read through. She gave that statement.
15 She's given prior testimony.

16 why didn't the state call her?

17 why didn't they call her in this trial since she's an
18 eye witness?

19 She never IDs him from the video. She never IDs this
20 man. The state's suppose to be fair. It's suppose to
21 present all the evidence to you that it has, but in picking
22 and choosing evidence that they want to put before you.

23 Did they not call her because her statement is the
24 exact opposite of their theory that it was a light skinned
25 man that committed this crime?

1 Ask her. I can't.

2 Was that fair for the State?

3 This man's on trial for his life and liberty.

4 Is that fair for the State to have an actual eye
5 witness at the door of the store and not call her before
6 you?

7 Is that fair?

8 Does that create a reasonable doubt?

9 Terry Griffin, he gave prior testimony. They didn't
10 bring Terry Griffin. You see in the video and the judge
11 will probably tell you, if you want to watch the video
12 again, he'll bring you out and watch the video however you
13 want. Terry Griffin is the gentleman that's right there at
14 the same counter as Mr. Patel.

15 What's Mr. Patel doing at the end of the counter?

16 He's not particularly paying attention to anything.
17 He's running his lottery numbers. I guess receipts or you
18 have to balance out. I'm not sure. But you see him looking
19 down.

20 See Terry Griffin right there at the lottery register.
21 I guess he likes to go to that store to pick his numbers and
22 that's fine. He was a regular in that store. He's a
23 regular in that store all the time.

24 Why didn't they ask him to look at the, the video, to
25 look at Mr. McBean?

1 They showed him a lineup.

2 You know why they didn't bring him?

3 Because he didn't pick Mr. McBean. That's why they
4 didn't bring him. Confirmation bias. It does not fit their
5 theory.

6 Now, the -- Fraser tells you well, we, you know, Terry
7 Griffin, who's standing literally right there where the
8 robbery happened, had his back to him.

9 So does that make any sense?

10 well, a man walks in and says give it up or give me the
11 money, I'm not playing, do you think a guy with a gun would
12 walk up to Jay Patel and say (Mr. Newman whispers at this
13 time) give me the money?

14 No.

15 That guy standing right there is gonna look over.
16 That's human nature. And he looked over and they showed him
17 a lineup and he doesn't pick this fellow out. It doesn't
18 fit their theory. It doesn't confirm their theory. So they
19 don't bring Terry Griffin, a man who was standing literally
20 two to three feet from where this robbery occurred.

21 why didn't they bring him?

22 It that fair that they didn't bring him?

23 They didn't bring him cause they've heard his prior
24 testimony. It doesn't fit their theory. It doesn't fit the
25 railroad. It's cold. It doesn't stoke the train of

1 conviction. So they don't bring him.

2 Let's talk about the curious case of Vic Patel, the eye
3 witness who identified Mr. McBean that was in an area near
4 Tallahassee, Florida ten and a half hours away from Saint
5 Helena, South Carolina.

6 Vic -- I guess Vic's not here. Vic, who wasn't there,
7 comes up with the idea hey, I know who did this. I think I
8 know a guy that was a jackass in our store. Let me go talk
9 to the cops.

10 Did Tony Brown give him that idea?

11 Brown never testified to that. Mr. Brown couldn't
12 testify to that because he put his hand on the Holy Bible.
13 He never said that. If he did, he'd of said it right from
14 that witness stand.

15 So Vic Brown (sic) has this symbolic assailant and the
16 symbolic assailant is some New York guy. And when I say
17 symbolic assailant, when we were young and my dad called it
18 the boogie man or something like that, it's something that
19 happens to you you're afraid of and you pick out something
20 that you're afraid of. I was afraid of, from a, a picture
21 book story of this big bear in overalls and all that. That
22 use to scare the living crap out of me when I was little.
23 That's a symbolic assailant.

24 In past times, in South Carolina, riding in the car
25 with my mother, a large black man walked by. She'd ease

1 over and push down the door locks. She was scared, for
2 whatever reason, not based in truth, not based in fact, not
3 based in rationality, but a symbolic assailant.

4 That's what Vic Patel picked out. Vic Patel fingered
5 this gentleman and Vic Patel wasn't there. Told his father
6 that's who it is. I know who it is. I wasn't there. I'm
7 in Tallahassee, Florida but I'll tell you who it is
8 dad-gummit. Can't tell you it's a guy that lives on the
9 island. Vic Patel never told this to the police.

10 Don't you think Jeremiah Fraser would of testified to
11 that?

12 we hear about this six and a half years later for the
13 first time in this courtroom.

14 You are able to judge the credibility of witnesses,
15 their truthfulness, their bias, their ability to relate,
16 recall, their motivations, their intelligence, or lack
17 thereof in forging opinions on things they may know. That's
18 why, in modern day life, we look to science.

19 we looked at things like the solicitor said like touch
20 DNA. When you give a fingerprint, they're little chemicals
21 called cepo nurium that exude from your ridges. You lay
22 that down, lay a little grease spot. That grease spot you
23 can swab and develop DNA profiles from.

24 They took, from the door in the exact place, four, four
25 latent lifts. Four from the spot in the door. Capps was

1 very excited about that. He's trained in crime scene. Look
2 at the video. He looked at it right away. Couldn't
3 identify anybody but he looked where the fingerprint is.

4 One, two, three, four on a left-hand in the exact spot
5 where the 6-foot 6 shooter, 6-foot 7 shooter left the door.
6 One, two, four are smears. What's not a smear is finger
7 number nine. One, two, three, four, five, six, seven,
8 eight, finger number nine, the left ring finger.

9 The shooter had to use the left ring finger because the
10 shooter was probably right-handed because the shooter had
11 the gun in his right-hand. Detective Fraser, whose known
12 Mr. Lesesne since he's been nine years old, knows his mama,
13 knows his daddy, knows his uncle, knows his cousins, knows
14 his sisters---

15 SOLICITOR SWANSON: Your Honor?

16 MR. NEWMAN: ---has this intimate relationship---

17 SOLICITOR SWANSON: I'm gonna object.

18 May we approach?

19 THE COURT: Yes, you may.

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

22 MR. NEWMAN: The detective who has intimate knowledge
23 of Dominick Lesesne, Lesesne, or so he claims, doesn't even
24 know that he's left-handed or right-handed.

25 Okay. But he has intimate knowledge of Mr. Lesesne so

1 he claims.

2 Is Mr. Lesesne one of his informants he needs to
3 protect?

4 I don't know.

5 Think about it. He's got motivations too.

6 So, anyway, no where in a report was anything about
7 this New York boys. Vic Patel says he's got an excellent
8 memory and remembered this car or this Lexus.

9 Have you heard about the Lexus?

10 Well, we know the Sheriff's Department hasn't. They
11 read the tag off an impound sheet.

12 What evidence have you seen from this Lexus?

13 You seen anything?

14 They got the car. They can't connect it.

15 So what do you do?

16 Confirmation bias.

17 Ignore the car. Ignore anything you found in it
18 because it didn't connect Mr. McBean to this crime.

19 That's hiding evidence and the State ought not do that.

20 SOLICITOR SWANSON: Your Honor, I'm gonna object to
21 that as well because that was a subject matter of a pretrial
22 ruling.

23 THE COURT: It was the subject matter of a pretrial
24 ruling. However, I think he's talking about the car at this
25 point in time. It was put into evidence that the car was

1 impounded. I'll allow him, as long as he complies with my
2 pretrial ruling.

3 MR. NEWMAN: Thank you, Your Honor.

4 Nothing to connect that car whatsoever to Mr. McBean.
5 Got to be some kind of physical evidence. Something.

6 We hear the testimony of Investigator Brian Baird.
7 These investigators aren't rookies, you know. They do these
8 six pack lineups. They have a fingerprint from Dominick
9 Lesesne.

10 Did they ever put Dominick Lesesne in a lineup for
11 Jordan Posey, Terry Griffin to look at?

12 No.

13 Why not?

14 Confirmation bias. We don't want to screw up a good ID
15 case by having Jordan Posey or Terry Griffin going oh,
16 that's the dude right there. They didn't do that. They
17 didn't even try to do it.

18 Now, Fraser says that, based on what Mr. Patel says,
19 what you see in those video is really not a video. What it
20 is is about a thousand or so pictures that are taken one
21 right after the other and this store has surveillance.

22 Now, if Julius had been in the store every day, two to
23 three times a day one person said, four or five times a day
24 another said, everyday, since November, why don't we, as an
25 investigator, look at the video from earlier in the day?

1 why don't we look at it from the day before or the day
2 before that?

3 Remember now we got a second guy that supposedly shot
4 that nobody can ID. Now we're good, trained investigators
5 trying to get to the heart, to the truth, to the bottom of
6 the matter. We got all this photographic evidence and they
7 don't look at it.

8 Confirmation bias. They'd already picked who their
9 suspect was. They'd already picked who they wanted to
10 finger, who they could most amass evidence against. They
11 don't want to screw that up. So they never look at the
12 videos.

13 Brian Baird admits that the person was the lightest
14 skinned person even though Jordan Posey said it was a dark
15 skinned man and was put in number two, position number two,
16 and he tells you well, I didn't do that. Some evidence tech
17 that we don't know did that. We don't even know that's a
18 picture of Julius in there.

19 They didn't tell you where it came from. It doesn't
20 have a name on it. It doesn't have a date on it. I don't
21 even know where it is.

22 So they show you this six pack lineup and out of the
23 six pack lineup, if you want to use just a little simple
24 math, six goes into a hundred 16.666 repeat times. Almost
25 17 percent. So, if you just went like this on picking

1 somebody in a six pack lineup, you'd have a 17 percent
2 chance of getting it right whether you were right or not.
3 They didn't show them pictures of Mr. Lesesne.

4 So I mentioned the six pack lineup. You get the
5 lightest guy and you can look at Julius right here. This is
6 supposedly a picture of Julius at least when he's eight
7 years younger than he is now. We don't even know if this is
8 Julius. I asked the detective about the sights and what
9 draws your eye from shooting and what gives you a focal
10 point and why they always use position number two because,
11 if you frame it a little bit better and actually that's
12 where the word framing comes from, you get a sight picture
13 that draws your eye right to the target. That's why they
14 put it there.

15 Another curious thing you heard from Brian Baird's
16 testimony is that he says, in 2009, December, when they did
17 this, that we, we didn't use this thing on the back of the
18 car that says you'll be asked to look at a group of
19 photographs. The fact that you're shown them should not
20 influence your judgment. You're not obliged to pick
21 anything. It's kind of a, a warning.

22 Well, Detective Baird, because the Sheriff's
23 Department, they didn't use that warning yet, they had not
24 changed their procedure, and if I remember the testimony
25 right, they did not change their procedure until 2011.

1 well, you got this photographic lineup, and its got the
2 warning on the back of it, but you'll have this. Look at
3 the staples. It's stapled to the back of this lineup. On
4 this lineup there's nothing on the back of it and you can
5 feel the statements.

6 How did they put that warning on there when they
7 weren't using that until a year and a half, two years
8 afterwards?

9 You think about that and you think about the fairness
10 of the evidence and what the State has given you and whether
11 any of this causes a person to doubt the evidence.

12 Brian Baird, the experienced investigator who's sitting
13 here in the dapper seersucker suit today, never IDd himself,
14 looked at the videos, good detective, could not ID
15 Mr. McBean from the videos, and, in fact, for that matter,
16 neither did Fraser.

17 what did Fraser tell you?

18 I've looked at those thousand pictures. I've looked at
19 them a lot. I didn't look at any. I didn't do my job and
20 go back the day before to see if there were any other
21 pictures the day before or the day before that. But he
22 couldn't ID anybody in the video.

23 For that matter, Deputy Capps, the first witness that
24 testified, immediately looked at that video, immediately got
25 excited about that door because the possibility of touch DNA

1 or fingerprints, he could not identify Mr. McBean as being
2 the person in the video. For that matter, neither did Ms.
3 Posey could not ID Mr. McBean.

4 For that matter, Jason Malphrus, he was the deputy,
5 this is the closest we'll come to any evidence, he was the
6 deputy that stops the Lexus, not on Saint Helena Island, but
7 on Lady's Island, sometime in November and says that he
8 identifies a man in the car that didn't do anything criminal
9 as Julius McBean.

10 Did Jason Malphrus, the guy that stopped him, ever look
11 at this guy and go that's the guy I stopped?

12 He didn't. He stopped another guy named David Abbott
13 or something like that and the girl that was driving that
14 they stopped was a girl from the island named Ashley Gadson.
15 They listed Ashley Gadson as a witness, which you've not
16 seen her.

17 The State gives you this photo to look at of Dominick
18 Lesesne whose had his many run-in's with law enforcement,
19 but we don't know who the girl Dominick is with because the
20 state has altered this photograph and pixilated her face.

21 Is that Ashley Gadson?

22 We'll never know because this picture that they give to
23 you of Mr. Lesesne undated, undated is photographically
24 altered to hide the identity of this girl.

25 Is that fair?

1 Does that cause a hesitation?

2 So we have six witnesses that had an opportunity to
3 identify Mr. McBean and they failed to do that.

4 Cleverly, Tony Brown never said anything about New York
5 boys. That silence speaks volumes. Brian Baird used an
6 identification procedure that was inherently unreliable and
7 did what they wanted to do.

8 Confirmation bias. Let's confirm what we believe.
9 Let's not follow the scientific evidence.

10 Now, Corporal Capps went to that door for a reason, and
11 the reason he goes to this door, and you'll have this, this
12 is State's Exhibit 15, and you'll get a good chance to, to
13 look at it up close and personal, is because this is where
14 the guy in the video reaches, not just a hand, but his
15 left-hand, and puts it right where they find the
16 fingerprint.

17 Now, if you want to believe the testimony of Vic Patel
18 and Jay Patel and Tony Brown, listen to their first
19 testimony and they -- how they cleaned it up. These are --
20 what did they say, 59 years of experience in running retail,
21 convenience stores?

22 They have a store where they sell food, a store that
23 has to be inspected because they sell cooked food, and they
24 serve pork chops and fried chicken and fried, french fried
25 potatoes, and ice cream, all manner of sticky stuff, and

1 they say that this door, because it doesn't fit the State's
2 theory, confirmation bias.

3 well, you know why?

4 That fingerprint could of been left at anytime because
5 we never cleaned this door. You can look at the window in
6 that door.

7 Do you think, since 2000, that window, that glass has
8 never been cleaned?

9 Look how nice and clear and clean it is.

10 Tony Brown said -- cause you remember he was cleaning
11 the store. He was talking on the cell phone. That's his
12 duties is to clean. He said, on average, about every other
13 day I clean the store, and the solicitor helped him out
14 because it didn't fit her theory. Confirmation bias.

15 well, you didn't clean the glass. Oh no, no, no, no,
16 no. We clean the bars and the frame.

17 Is that just patently ridiculous?

18 And I asked Vic Patel well, has the door been replaced?

19 No, the door's never been replaced.

20 The solicitor comes back well, what about the glass?

21 Oh, yeah, yeah, yeah, I get you now. The glass, that's
22 right. This fingerprint thing is throwing a bugaboo on us.

23 If you believe that a convenience store that has
24 thousands of people in it almost everyday for that many
25 years, that you don't clean your point of entry, the first

1 point your customers look at that come into your store, if
2 that door had been filthy dirty, are you gonna want to eat
3 food from that store?

4 Absolutely not.

5 But they had to clean that up because they're gonna
6 tell you we don't know when that fingerprint was left.

7 I will tell you this.

8 That if that fingerprint had matched this defendant,
9 Julius, do you think the State would argue oh, that could of
10 been left there at anytime?

11 They'd go no, we've seen the pictures. We see the
12 photograph. We see the video. It was left that night then
13 and there. But since it doesn't help their case,
14 confirmation bias, ah, it could of been left there at
15 anytime.

16 I asked Detective Fraser did you see him, Dominick, on
17 that day?

18 No.

19 Doesn't know what he looks like on that day. Doesn't
20 know whether he's in the store or not.

21 The State asked the defendant, to which he complied, to
22 stand up and do a pirouette.

23 well, how hard is it to pick somebody out of a lineup
24 when you're the only somebody in the lineup?

25 why didn't the State bring Dominick Lesesne to come in

1 and testify?

2 This man knows him, knows his family, mom, dad, uncle,
3 brothers, cousins. Knows where they live. Knows where they
4 work.

5 Why didn't the state bring Mr. Lesesne?

6 These two 6-foot 6, 6-foot 7 gentlemen could of stood
7 together.

8 They didn't want you to see them together. They hid
9 him from you because they want you to buy into their
10 Kool-Aid, to their confirmation bias without the evidence.
11 They don't bring in Ms. Ashley Gadson who apparently lives
12 on the island because it can be assumed she does not fit
13 their case.

14 When we look at Antonio Brown, who gave this ID, works
15 for Mr. Patel, calls Mr. Patel the boss man, and I think
16 that's a respectful thing, I'm not getting on him or
17 anything like that, but that's his boss. That's where he
18 earns his money. That's where he earns his pay check.

19 He was cleaning the store and you see him in the video.
20 You see him go back two or three times. He cleaned the
21 front of the store with a broom.

22 But what else was he doing in the video and admitted
23 to?

24 He's on his cell phone.

25 Many states now have laws about talking on your cell

1 phone and driving. It's called distraction because that's a
2 distraction. He's focused on the floor. He's all the way
3 in the back of the store by the dairy, the back wall of the
4 store. Terry Griffin's right up front, that they didn't
5 bring, with the counter.

6 At the back of the store, all Mr. Brown would of been
7 able to see, if he saw anything cause he said he didn't see
8 the guy come in, would be the back of the guy's head and the
9 guy walking out touching the door with his left-hand.
10 You'll see in the video, even after Mr. Patel was shot, and
11 we don't deny any of that, whatever happened happened, you
12 don't see Mr. Brown at all.

13 He didn't come up there at least for the 30 something
14 seconds you see after the incident happened. He didn't see
15 anything. He might know a New York guy. He might know a
16 guy that comes in. He might be able to finger somebody. He
17 didn't see anything.

18 If the guy at the counter standing right next to Mr.
19 Patel didn't see anything, how's this guy on the cell phone
20 in the back of the store looking down at the floor see
21 anything?

22 And bam shot rings out.

23 Do you see him run up to the front to even come in the
24 picture, any of the pictures, the three pictures that you
25 saw?

1 One of the pictures actually looks out toward the back
2 of the store and you don't even see him back there. Yet he,
3 100 percent, can ID Julius after six and a half years. You
4 can look at how their ID was.

5 Did they even look at him when they said that's the
6 guy?

7 Mr. Patel says well, I'm pretty sure, and through the
8 Solicitor's Office, she has to say wait a minute, I'm pretty
9 sure, and he goes oh, yeah, I'm a hundred percent sure, a
10 hundred percent sure. You might be a hundred percent sure
11 that's somebody he's seen in the store, but he's not a
12 hundred percent sure that this is the fellow that shot him
13 and I feel for Mr. Patel. Nobody should have to go through
14 this. This is not what this is about at all.

15 You have the door. You'll have all this in evidence.
16 Mr. Patel says this is not the guy. That's from his booking
17 photo that I had him read and the detective read from 4/14
18 of 2010. That's what he looked like in 2010. About six
19 years ago or so. Patel says that's not the guy.

20 So they show you this digitally stretched out
21 photograph of somebody that doesn't even have a name on it
22 and say that's Julius Rooks-McBean.

23 Where did that photograph in the lineup come from?

24 We have no clue. It's not dated. It doesn't say any
25 police departments that it was taken from. We have no clue.

1 So he says this guy didn't do it. Do not believe your
2 lying eyes, ladies and gentlemen. Believe our witnesses.
3 Do not believe the fingerprint. The four -- three -- one of
4 which matches the fingerprint. Don't believe that, and just
5 to show you, we had them look at the booking sheet of Julius
6 Rooks-McBean. That's the same photograph.

7 There is the shooter. There is his left-hand and there
8 is his fingerprint.

9 The State, and the judge will tell you, in this case,
10 has the burden of proof. The defense has nothing to prove.
11 They never have because, if you think in life, if you pick a
12 random day out and try to prove yourself innocent if
13 somebody accused you, you probably could not do that.

14 So our Constitution and laws require a burden of proof
15 and it's a burden of proof that is a heavy burden because,
16 if the State does not prove its case, or if it leaves you
17 with a doubt for which you can give a reason, this heavy
18 burden rests on the State. It always rests on the State and
19 it never moves from that table.

20 Do the ID procedures cause you to hesitate to act?

21 Does that cause you a reasonable doubt?

22 Does the fingerprint cause you a reasonable doubt and a
23 fingerprint that matches a guy that's 6-foot 6 tall?

24 Now, I'll put to you that fingerprint had matched a
25 little short fat white guy like me, then it's probably

1 meaningless, but it matches the exact description of who the
2 robber is. The dark complected---

3 SOLICITOR SWANSON: Objection, Your Honor.

4 MR. NEWMAN: ---robber.

5 SOLICITOR SWANSON: This was subject to a pretrial
6 ruling on third party guilt.

7 THE COURT: I'll sustain the objection.

8 SOLICITOR SWANSON: Thank you.

9 THE COURT: Direct that the last comment be stricken
10 from the record.

11 MR. NEWMAN: It matches that guy right up there, and
12 you've had four witnesses, including police officers, and
13 two witnesses that the State failed to call, says they can't
14 identify that man. And if that causes you in the least to
15 hesitate to act, then you must acquit Mr. McBean.

16 If you've ever heard, in a civil case, on the matters
17 of proof, civil case just is it's more likely than not. If
18 you think it's more likely than not that Mr. McBean did
19 this, if you think-- you strongly suspect he did this, he's
20 not guilty. You have to know, beyond a reasonable doubt,
21 that he did this, and if there is a hesitation in that
22 doubt, the judge will charge you that you must acquit
23 Mr. McBean.

24 We'll put to you there's a Mack truck that went through
25 that uncleaned door for 20 years of reasonable doubt. The

1 state has a lot of holes in its case and failed to follow
2 reasonable leads in this case, and now they want you to fill
3 in some gaps and pin this on Mr. McBean on shoddy evidence,
4 and we are asking you to consider all the evidence and the
5 lack thereafter.

6 I'm sorry I've taken up so much of your time, but
7 Mr. McBean has one day in Court and that is today and that
8 is you 12. You sit in the most unique position in the world
9 to judge the evidence and how it will affect a man's life
10 and judge the lack of evidence and any doubts that you may
11 have.

12 Ladies gentleman, thank y'all very much.

13 THE COURT: Mr. Newman, if you'd take the photographs
14 off the viewer please.

15 MR. NEWMAN: Yes, sir, I apologize.

16 THE COURT: And if you'll pick up the bowling ball.

17 All right. Ladies and gentlemen of the jury, that
18 completes the closing arguments by counsel---

19 (WHEREUPON, at this time Mr. Newman dropped the bowling
20 ball.)

21 THE COURT: Excuse me.

22 MR. NEWMAN: Oh, I'm sorry. I apologize. I didn't
23 know it rolled that way. I apologize.

24 THE COURT: That completes the closing arguments by
25 counsel. At this point in time we'll take a short break and

1 let you go back to the jury room, and, again, I'll caution
2 you don't discuss anything about this case until I ask you
3 to begin your deliberations.

4 You may retire to the jury room.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

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

8 THE COURT: Thank you.

9 The Court will take a short recess. I'll stay on the
10 bench.

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

12 THE COURT: Mr. Swanson, State ready to proceed.

13 SOLICITOR SWANSON: Yes, sir.

14 THE COURT: Okay. Defense ready?

15 MR. NEWMAN: Yes, Your Honor. Thank you.

16 THE COURT: Bring the jury in.

17 THE BAILIFF: Yes, sir.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE BAILIFF: The jury's entering the courtroom, Your
21 Honor.

22 THE COURT: All right. Let the record reflect the jury
23 has returned to the courtroom.

24 All right. Ladies and gentlemen, we have reached the
25 stage of this trial where it's my responsibility to charge

1 you concerning the law that you're to apply in this case.

2 First of all, we started the case and I went over with
3 you at that time the indictments in this case. Those are
4 the documents that bring the case into this Court and they
5 inform us of the charges to be tried, and they inform the
6 defendant of the charges that have been lodged against the
7 defendant.

8 Again, they are informational documents. However, they
9 do contain the charges and, of course, the State is
10 responsible to prove the allegations contained in the
11 indictment to you by proof beyond a reasonable doubt. For
12 that reason I'm going to go over those indictments with you
13 again at this time, and we will give you an opportunity to
14 review the indictments during your deliberations in the jury
15 room.

16 The first indictment that I'll discuss with you is Case
17 Number 2010-972. It is for attempted armed robbery.

18 The indictment states that, on or about December the
19 23rd of 2009, in Beaufort County, South Carolina, at
20 Island Plaza Convenience Store, 862 Sea Island Parkway,
21 Saint Helena, South Carolina, the defendant, Julius, Julius
22 Rooks-McBean, excuse me, by use of force, threats, or
23 intimidation, and while armed with a deadly weapon or while
24 alleging, either by action or words, he was armed while
25 using a representation of a deadly weapon or other object

1 which a person present during the commission of the
2 attempted robbery, robbery reasonably believed to be a
3 deadly weapon, did attempt to take and carry away goods or
4 monies from the person or immediate presence of Jay Patel
5 with the intent to permanently deprive him of possession
6 thereof in violation of Code Section 16-11-330(b) of the
7 Code of Laws of South Carolina, 1976 as amended. All of the
8 indictments all contain this following phrase, against the
9 peace and dignity of the State and contrary to the statute
10 in such case made and provided.

11 The second indictment is for assault and battery with
12 intent to kill. This indictment states that, in Beaufort
13 County, South Carolina, on or about December 23rd of 2009,
14 the defendant, Julius Rooks-McBean, with malice
15 aforethought, did commit an unlawful act of a violent nature
16 upon the victim, Jay Patel. To wit, the defendant did shoot
17 the victim all in violation of the common law of South
18 Carolina and Section 16-3-620 of the Code of Laws of South
19 Carolina, 1976 as amended, against the peace and dignity of
20 the State and contrary to the statute in such case made and
21 provided.

22 The final indictment in the case is Case Number
23 2010-0974. This one states that, in Beaufort County, South
24 Carolina, on or about December 23rd of 2009, the
25 defendant, Julius Rooks-McBean, did possess a weapon or

1 visibly display what appeared to be a weapon during the
2 commission or attempted commission of assault and battery
3 with intent to kill and/or attempted armed robbery, a
4 violent crime, in violation of Section 16-23-490 of the Code
5 of Laws of South Carolina, 1976 as amended, against the
6 peace and dignity of the State and contrary to the statute
7 in such case made and provided.

8 Those are the indictments that have been presented to
9 us and the indictments that we are trying in this case.

10 I will remind you the fact that a defendant has been
11 arrested, charged, and indicted in this case is not evidence
12 in this case and it can not be considered by you as evidence
13 of guilt in this case nor does the fact that those documents
14 have been presented to this Court create any presumption or
15 inference of guilt. Again, those are simply informational
16 documents that bring this case into this Court.

17 Now, each of these indictments contains a separate and
18 distinct offense, and you will be called upon to decide each
19 indictment separately on the evidence and the law that's
20 applicable to that particular indictment, and that decision
21 should be uninfluenced by your decision as to other
22 indictments except as I will instruct you later on. The
23 defendant may be convicted or acquitted on any or all of the
24 charges that have been, have been presented, and, again,
25 you'll be asked to write a separate guilty of -- guilty or

1 not guilty verdict as to these indictments.

2 The defendant has pled not guilty to those indictments,
3 and I've explained to you earlier, I explain to you in more
4 detail, that plea and, under our justice system, places the
5 burden upon the State to prove the defendant guilty. A
6 person who's charged with the commission of a criminal
7 offense is never required to prove himself innocent. It's
8 an important rule of law that a defendant, in a criminal
9 case, no matter what the seriousness of the crime might be,
10 is always presumed to be innocent of the crime for which an
11 indictment has been issued until and unless guilt has been
12 proven to you, the jury, by evidence that satisfies you of
13 that guilt beyond a reasonable doubt.

14 The presumption of innocence doesn't end when you begin
15 your deliberations. Many Courts have described the
16 presumption of innocence just like the robe that a judge
17 wears into the courtroom. So if you consider the robe to be
18 a presumption of innocence, that robe is about the
19 defendant's shoulders at the beginning of the trial. It
20 remains about his shoulders throughout the trial. It
21 remains on his shoulders as you go into your deliberations.
22 It stays on his shoulders until such time as it has been
23 stripped from him by evidence that satisfies you of the
24 defendant's guilt beyond a reasonable doubt.

25 I will tell you that the presumption of innocence is

1 not just a legal theory. It's not just a legal phrase.
2 It's a substantial right that every defendant is entitled to
3 until and unless you, the jury, are satisfied from the
4 evidence of the defendant's guilt beyond a reasonable doubt.

5 Now, I've used the phrase of proof beyond a reasonable
6 doubt a couple of times already. It's an important concept
7 in our judicial system that, in criminal cases, the standard
8 of proof is proof beyond a reasonable doubt.

9 So you might ask yourself well, what's the legal
10 definition of a legal doubt -- what is -- I mean a
11 reasonable doubt?

12 What is the legal definition of that phrase?

13 I will tell you that the Courts that have defined what
14 a reasonable doubt is have defined it as that kind of doubt
15 that would cause a reasonable person to hesitate to act and
16 the State has the burden of proving its case beyond a
17 reasonable doubt.

18 Now, I don't want you to be confused by civil cases.
19 Civil cases, it's different Court, Court of Common Pleas,
20 and, in civil cases where money damages are being sought,
21 the standard of proof is proof by the greater weight of the
22 evidence. Sometimes described as the preponderance of the
23 evidence.

24 So if you were to think of the scales of justice in a
25 civil case, you would be looking to see if the scales tilted

1 ever so slightly either, either in favor, favor of a
2 plaintiff or in favor of a defendant, and whichever way
3 those scales tilt, that's the side that's entitled to a
4 verdict. That's a civil case. Not a criminal case.

5 In a criminal case such as this one, the standard of
6 proof is more powerful than that. I will tell you that
7 proof beyond a reasonable doubt is that kind of proof that
8 leaves you firmly convinced of a defendant's guilt.

9 Now, there's very few things in this world that can be
10 proven beyond any doubt whatsoever, and the State is not, is
11 not put to that burden of proof. The State is not required
12 to provide proof that overcomes any possible -- any possible
13 doubt.

14 I will tell you that if, after weighing all of the
15 evidence in this case, if you are firmly convinced of the
16 defendant's guilt of the crimes charged beyond a reasonable
17 doubt, you must find the defendant guilty. However, on the
18 other hand, if you find that there's a real possibility that
19 the defendant is not guilty of the crimes charged, then you
20 must give the defendant the benefit of that doubt and find
21 the defendant not guilty.

22 At the beginning of the trial I tried to go over with
23 you the duties that we were required to perform in this
24 trial and I'll remind you of those. And as the trial judge,
25 it's been my responsibility to rule on certain matters that

1 came up during the trial such as the admissibility of
2 evidence or the appropriateness of questions that were being
3 asked.

4 I will tell you that you should consider only the
5 competent evidence that was put into the record of this
6 trial, and if there was anything that I excluded from the
7 trial or struck from the record, you should not consider
8 those matters at all in reaching a verdict in this case.
9 You are to consider only the testimony that's been presented
10 from the witness stand and the exhibits which have been made
11 a part of the record as a result of that testimony or by
12 agreement of counsel that those, those exhibits were made a
13 part of the record.

14 I told you also that I have, as the presiding officer,
15 the additional duty of charging you concerning the law to be
16 applied in this case, and I explained to you that I am the
17 sole judge of the law in this case. That means that you are
18 to accept and apply the law as I now state it to you, and,
19 again, should you have an idea or a notion as to what the
20 law is or you have a belief that the -- that some -- that
21 the law ought to be some certain way, those notions and
22 beliefs should not be taken by you into the jury room. You
23 should take the law exactly as I give it to you and then
24 apply it to the facts as you decide the facts to be.

25 Now, in every case tried before a jury in this Court,

1 you are the sole and exclusive judges of the facts in this
2 case, and I have told you earlier, and I will remind you,
3 you should not take from anything that I have said or done
4 in the discharge of my duties as the presiding officer in
5 this trial to indicate to you that I have an opinion one way
6 or the other as to how you should determine the facts in
7 this case. The law doesn't allow me an opinion concerning
8 the facts. I have no opinion as to how you should determine
9 the facts in this case. You're the sole judges of the facts
10 in this case, and, again, that is not something that I have
11 a right to have an opinion on.

12 Now, the question of the facts is a matter solely for
13 you, the jury, to determine and it's your duty to determine
14 the effect, the value, the weight, and the truth of the
15 evidence that's been presented in this case.

16 Now, in doing that, you have the right to consider what
17 we call two different types of evidence and let me explain
18 to you what I mean by considering two types of evidence.

19 The law divides evidence into either direct testimony
20 or evidence or circumstantial evidence. Now, direct
21 testimony is testimony given by a witness who claims to have
22 actual knowledge of the facts about which that witness
23 testifies. Someone who experienced the events, was an eye
24 witness. That person would be testifying directly on the
25 facts seek -- sought to be proven and they would be

1 testifying from their own direct knowledge. That's what we
2 mean by direct evidence.

3 Circumstantial evidence, on the other hand, is proof of
4 a chain of facts or circumstances which indicate the
5 existence of a fact. It's been described as proof of
6 collateral facts from which a main fact might be reasonably
7 inferred.

8 Now, that's a fairly fancy lawyer language to me, and I
9 like to give a very simple example as to what might be meant
10 by proving a fact by circumstantial evidence. Let's say
11 last night, before you went to bed, you walked to the window
12 in your bedroom, looked outside. You noticed the moon was
13 shining and the stars were twinkling. It's a clear night.
14 So you went to bed. You slept well all night, didn't wake
15 up at all.

16 The next morning you got up and walked over to that
17 same window that you were at the night before and you looked
18 outside and the sun's shining outside. But you know you
19 look a little closer and you notice there's water dripping
20 out of all the trees. You notice that there's puddles in
21 the driveway or in the road out in front of your house that
22 weren't there the night before. You notice that the grass
23 is covered by a thick coating of water on the grass.

24 Now, you slept all night. You didn't see it rain. You
25 didn't hear it rain. But from those collateral facts that

1 you know to be true, water dripping out of the trees,
2 puddles where they weren't the night before, extremely wet
3 grass in front of your house, from those facts, you could
4 reasonably infer that at sometime during the night it
5 rained. So that's what we mean by proof of collateral facts
6 from which a main fact can be inferred.

7 Now, the law doesn't make a distinction between the
8 weight or the value that you, the jury, can give to either
9 circumstantial evidence or direct. There's not a greater
10 degree of certainty required of circumstantial evidence than
11 that of direct. I will tell you, as jurors, you have the
12 right to weigh all of the evidence in this case. And if,
13 after weighing all of the evidence, if you're not convinced
14 of the defendant's guilt beyond a reasonable doubt, you must
15 find the defendant not guilty. However, if, after weighing
16 all of the evidence, if you are firmly convinced of the
17 defendant's guilt beyond a reasonable doubt, you must find
18 the defendant guilty.

19 Now, as the finders of fact, I told you, at the
20 beginning of the trial, it's necessary for you to determine
21 the credibility of the witnesses that you hear in this case
22 and credibility means that, believability, and I asked you
23 to use your own good common sense in making those
24 determinations. It's your duty, as jurors, to analyze and
25 evaluate the evidence, determine which evidence convinces

1 you of its truth.

2 In determining the believability of witnesses who
3 testified in this case, as the sole judge of the facts, you
4 have the right to believe all of or part of or none of what
5 any witness may have testified to. You can believe one
6 witness against all the others. You can believe all the
7 others against one. You're the sole judges of the facts.
8 That makes you the sole judge of the credibilities of the
9 testimony that you've heard in this case.

10 Again, you can consider, using that good common sense
11 that I referred to, whether any witness has exhibited to you
12 any interest, bias, prejudice, or other motive in their
13 testimony. You have the right to consider whether a witness
14 actually had the ability to know the facts about which the
15 witness testified and you've had the ability, you've been
16 present, you've had the right to consider the appearance and
17 the manner in which the witness delivered their testimony
18 from the witness stand. You have the right to consider any
19 of those factors, using your good common sense, in making a
20 determination as to the credibility or the believability of
21 the testimony that you've heard in this case.

22 Now, one of the issues in this case is the issue of
23 identification of the defendant as the person who committed
24 the crimes that are charged, and the State has the burden of
25 proving identity beyond a reasonable doubt. You must be

1 satisfied, beyond a reasonable doubt, of the accuracy of the
2 identification of the defendant before you may convict the
3 defendant. Identification testimony is an expression of
4 belief or an impression by a witness, and you must determine
5 the accuracy of the identification of the defendant. You
6 must consider the believability of each identification
7 witness in the same way as any other witnesses.

8 You may consider whether the witness had an adequate
9 opportunity to observe the offender at the time of the
10 offense. This can be affected by such factors of -- as
11 whether -- or how long or short the time was available, how
12 far or close the witness was, the lighting conditions, and
13 whether the witness had a chance to see or know the person
14 in the past. Once again, I instruct you, the burden of
15 proof on the State extends to every element of the crime
16 charged and that includes the burden of proving, beyond a
17 reasonable doubt, the identity of the defendant as the
18 person who committed the crime. If, after examining the
19 testimony, if you have a reasonable doubt as to the accuracy
20 of the identification of the, of the defendant as the
21 perpetrator, then you must find the defendant not guilty.

22 Now, I'm going to instruct you and I want to emphasize
23 one matter to you. The fact that the defendant did not
24 testify in this case is not a factor to be considered by you
25 in anyway in your deliberations and in your consideration on

1 the question of the guilt or the innocence of the defendant.
2 It must not be considered by you in any manner whatsoever.

3 You see a defendant has a Constitutional right to
4 remain silent. The assertion of this right must not be
5 considered by you in your deliberations. Under your oath,
6 you are to draw no conclusion whatsoever from the fact that
7 the defendant, in this case, did not testify. The fact that
8 the defendant did not testify should not even be discussed
9 by you in the jury room during your deliberations. As I
10 have stated to you earlier, earlier, the burden of proof in
11 this case is on the State. The defendant is not required to
12 prove his innocence and the burden of proof remains upon the
13 State, throughout the trial, to prove the defendant's guilt
14 beyond a reasonable doubt.

15 Now, in just a minute I'm going to go over with you the
16 specific crimes that have been charged and we'll be talking
17 about the elements of those crimes, and when we talk about
18 elements, what we're referring to, those are the things that
19 the State must prove in order for someone to be found guilty
20 of any particular crime that's been charged. Those are the
21 essential things that have to be proven. Those are the
22 elements of the crime. And you -- and part of this we will
23 be listening to, one of the factors are elements in some of,
24 in some of the crimes charged is the element of intent, and
25 I want to talk to you briefly about what we mean by intent.

1 In order to establish criminal liability criminal
2 intent is required. That's the mental state that might be
3 required by any particular charge that has to be proven by
4 the State for a particular crime, and it might be, depending
5 on the charge, it might be purpose, intent, knowledge,
6 recklessness. In some cases it could even be criminal
7 negligence but you need to listen for the specific type of
8 intent needed in each of the charges that I'm going to talk
9 to you about.

10 I will tell you that criminal intent must be proven by
11 the State beyond a reasonable doubt. Criminal intent is
12 always a matter, however, that must be determined by the
13 jury from the circumstances surrounding the situation
14 because, you see, there's no way that we can be present when
15 someone is committing any particular act and open up their
16 head and look at their brain and be able to scientifically
17 determine what they intended to do while they're doing that
18 act. That's not possible. So there's no way that, that
19 science can prove what someone's intent was.

20 Intent, therefore, must be inferred from the
21 circumstances shown to have existed around a particular
22 event that we're discussing. That's how you determine
23 whether or not the element requiring intent in any crime was
24 present. It's not necessary to establish intent, therefore,
25 by direct evidence or positive evidence, but intent may be

1 established by inference, the same way as any other fact, by
2 taking into consideration the acts of the parties and all of
3 the facts and circumstances of the case. I will tell you,
4 however, criminal intent is a mental state. It's a
5 conscious wrongdoing and it would be up to you to determine
6 what the defendant intended to do based upon the
7 circumstances that are shown to have existed at the time of
8 the event.

9 Also, one of the crimes charged is an attempted armed
10 robbery, and I will tell you that, under the law, an attempt
11 is an effort to accomplish a crime which does not succeed.
12 An attempt includes a specific intent to do a particular
13 criminal act along with an act falling short of the act
14 intended. The State must show that, that mere -- the State
15 must show more than mere preparation and intent.

16 The State must show that there was some overt act
17 committed in an effort to commit the crime. So intent means
18 intending the result which actually occurs. Not
19 accidentally or involuntarily. Intent may be shown, again,
20 by the acts and conduct of a defendant or other
21 circumstances from which you might naturally and reasonably
22 infer intent.

23 I'm going to talk to you, first of all, about the
24 offense of attempted armed robbery. That's one of the
25 indictments in this case and that, that particular offense

1 is codified, it's in our Code of Laws, at Code, at Code
2 Section 16-11-330. So the defendant is charged in the
3 indictment with attempted armed robbery.

4 In order to prove this offense, the State must prove,
5 beyond a reasonable doubt, that the defendant attempted to
6 take personal property from the person or presence of
7 another person. That's one element.

8 Property in the presence -- is in the presence of a
9 person if it's within the person's reach, inspection,
10 observation, or control so that the person could, if not
11 overcome by violence or prevented by fear, that person could
12 keep possession of the property. The State must prove also,
13 beyond a reasonable doubt, that the defendant attempted to
14 carry the property away with the intention of permanently
15 depriving the owner of the property and to keep the property
16 for the defendant's own use. I will tell you the attempted
17 slightest removal of property or the complete possession of
18 the property, even for an instant, is sufficient to show a
19 carrying away or of property.

20 Now, the next thing the State must prove is the intent
21 to take and carry away the property must have been done by
22 violence or by putting the owner of the property in fear of
23 violence.

24 Finally, the State must prove, beyond a reasonable
25 doubt, that the person or the perpetrator in this case was

1 armed with a deadly weapon during the robbery, and a deadly
2 weapon is any article of instrument or substance which is
3 likely to cause death or great bodily harm. whether the
4 instrument has been used as a deadly weapon depends on the
5 facts or circumstances of each case.

6 Now I'm going to talk about the second indictment in
7 this case, and this is assault and battery with the intent
8 to kill. The defendant has been charged with assault and
9 battery with intent to kill.

10 In order to prove assault and battery with intent to
11 kill, the State must prove, beyond a reasonable doubt, that
12 the defendant committed an unlawful act of a violent nature
13 to the person of another person -- of another person with
14 malice aforethought.

15 Now I'm going to go through defining some of the terms
16 that I just gave you. Again, the State must prove, beyond a
17 reasonable doubt, that the defendant committed an unlawful
18 act of a violent nature to the person of another with malice
19 aforethought.

20 First of all, I'm going to define for you what an
21 assault and battery is. First of all, an assault occurs
22 when a person unlawfully attempts or offers to commit a
23 violent injury to another person and has the presentability
24 to complete the attempted injury. An assault is the
25 intentional creation of reasonable fear of immediate bodily

1 harm. It's not necessary that the attempted injury or harm
2 actually occur for an assault to occur.

3 To give you an example of -- a simple example of an
4 assault, if you and I were to meet in the hall out behind
5 the courtroom here and we walked toward each other, and I
6 get within about three feet of you and I suddenly draw back
7 my fist as if to hit you, and you're within my arm's length,
8 then an assault would have occurred because I would of
9 placed you in fear of immediate bodily injury and I would be
10 close enough to actually hit you with my fist. If we'd been
11 at opposite ends of the hall and I pulled back my fist, I
12 couldn't hit you from that distance. An assault wouldn't
13 have occurred.

14 So that's what they mean by putting someone in fear of
15 bodily injury and being able to carry out that assault being
16 close enough to strike someone. So that's what an assault
17 is.

18 A battery is the unlawful touching of another person by
19 a person who is committed an assault. It's the unlawful
20 touching and it can be caused by any part of the accused
21 body or any object that the accused puts into motion. A
22 battery is the completion of the assault by using or
23 applying force to another person and that can be however
24 slight as long as it's done in a rude, angry, or resentful
25 manner without legal justification.

1 Using my earlier example, if I walked up within three
2 feet of you, pulled back my fist, but then I brought my fist
3 forward and touched you in a rude, angry, or resentful
4 manner, that would be a battery and that would complete what
5 we call an assault and battery.

6 Now, one of the phrases used in the definition I gave
7 you earlier is malice, and malice is defined as either
8 hatred, ill will, or hostility toward another person. It's
9 the intentional doing of a wrongful act without just cause
10 or excuse with the intent to inflict injury or under
11 circumstances that the law would infer that evil intent.
12 Malice aforethought does not require that the malice exist
13 for any particular length of time before the act is
14 committed, but malice must exist in the mind of the
15 defendant just before and at the time the act is committed.
16 Therefore, there has to be a combination of either the
17 previous, the previous evil intent and the act being
18 committed.

19 Malice aforethought can either be expressed or
20 inferred. That doesn't mean there's different kinds of
21 malice. There's just different ways of proving that malice.

22 Excuse me.

23 That is it can be either proven by, as I told you
24 earlier, direct evidence or by inference from the facts and
25 circumstances.

1 Therefore, express malice is when someone speaks words
2 which express hatred or ill will for another person. That's
3 what we mean by expressed malice.

4 Inferred malice, however, is malice which can be
5 inferred from the facts and circumstances of the events. As
6 I told you earlier, we can't look inside someone's brain to
7 determine what they intended at any given time, but you can
8 infer those things from the facts and circumstances that are
9 shown to have existed at the time the act was occurring, and
10 I will tell you that malice may be inferred from conduct
11 which shows a total disregard for human life.

12 So, if the facts are proven beyond a reasonable doubt
13 sufficient to raise an inference of malice to your
14 satisfaction, I will tell you this inference would simply be
15 an evidentiary fact to be considered by you along with the
16 other evidence in the case and you give it the weight you
17 think it deserves.

18 Now, a specific intent to kill is not an element of
19 assault and battery with an intent to kill, but there must
20 be a general intent to commit serious bodily injury. Intent
21 means intending the result which actually occurs. That
22 means it didn't happen accidentally or involuntary. Intent
23 may be shown by the acts and conduct of a defendant or other
24 circumstances from which you might naturally and reasonably
25 infer intent.

1 Evidence of the character of the assault, the character
2 of the instrument used, the manner in which it was used, the
3 purpose to be accomplished, and the resulting wounds or
4 injuries may all be considered by you in determining the
5 intent with which the assault was committed. Intent, again,
6 can be inferred when it is demonstrated that the defendant
7 willfully and voluntarily committed an act, the natural
8 tendency of which is to destroy another's life.

9 Now, the final charge in this case is a charge of
10 possession of a weapon during the commission of a violent
11 crime.

12 Now, let me explain to you. The first two crimes I've
13 described to you in this case, that is attempted armed
14 robbery and assault and battery with intent to kill, both of
15 those crimes are defined by our code as violent crimes. So
16 in order for you to consider this final charge, the
17 defendant would have to have been found guilty of either the
18 assault with intent -- assault and battery with intent to
19 kill or the attempted armed robbery before this crime could
20 be proven and I'll explain that to you in just a moment. If
21 the defendant was found not guilty of both of those crimes,
22 the defendant could not be found guilty of the possession of
23 a weapon during the commission of a violent crime since you
24 would of found him not guilty by -- of the violent crimes.

25 Now, the defendant is charged with possession of a

1 weapon during the commission or attempt to commit a violent
2 crime, and the State must prove, beyond a reasonable doubt,
3 that the defendant was in the possession of a deadly weapon
4 and used that deadly weapon during the commission of a
5 violent crime. A firearm means a gun, rifle, pistol,
6 revolver, any other weapon which is designed and may be used
7 to expel a projectile, and, of course, there can be other
8 things used as deadly weapons such as knives, Molotov
9 Cocktails, chemicals, things of that nature.

10 In order to find the defendant guilty of the possession
11 of a weapon during the commission of a violent crime, you
12 must first find the defendant guilty of committing, of
13 committing a violent crime, and that's what I just explained
14 to you. You'd have to have found the defendant guilty of
15 one of those two crimes before you can consider this charge,
16 and the State must prove, beyond a reasonable doubt, that
17 the weapon in this case would have further advanced or
18 helped in the commission of that violent crime.

19 Now, let's see. Rebecca -- is it Mastropole?

20 Did I say that right?

21 THE FORELADY: Yeah.

22 THE COURT: You're gonna be the foreperson of the jury.
23 That means you're gonna be the person who will be leading
24 the discussions of the jury. Should the jury have any
25 questions during deliberations, it will be your job to

1 been correctly stated. That would be fine.

2 THE FORELADY: Okay.

3 THE COURT: Now, at this point in time I've gone over a
4 lot with you. I'm gonna go over with the attorneys my
5 charge and see if I've misspoken on something or maybe I, I
6 need to clarify something. So we're gonna talk about that.
7 We're gonna gather the evidence together and be sure we've
8 got an agreement on what's been put in the record so that
9 can go back to the jury room with you.

10 So there's some things I have to go over with the
11 lawyers before I can tell you to actually begin your
12 deliberations. So this may be the last time I tell you
13 this, that I'm gonna tell you to go back to the jury room.
14 Don't discuss anything about this case until I bring you
15 back in the courtroom for to receive your final instructions
16 in this matter.

17 So, at this time, you may retire to the jury room.

18 (WHEREUPON, the following takes place outside the
19 presence of the jury.)

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

21 THE COURT: Exceptions to the charge from the State?

22 SOLICITOR SWANSON: None from the State, Your Honor.

23 THE COURT: Any from the defense?

24 MR. NEWMAN: None, Your Honor.

25 THE COURT: All right. I'll ask you to come forward.

1 Let's reach an agreement as to the exhibits to be sent back.
2 I have the verdict form here. Let me pass -- pass this down
3 and let them take a look at that form and see if there's any
4 objections to the verdict form.

5 SOLICITOR SWANSON: No objection from the State, judge.

6 MR. NEWMAN: No objection, Your Honor.

7 THE COURT: Okay. If you'll pass it back up to me
8 please, ma'am.

9 SOLICITOR SWANSON: As far as the disks go, if, I
10 guess, if they need to hear---

11 THE COURT: I'll instruct them if they wish to view the
12 disks to let the bailiffs know and we'll arrange to bring
13 them back in the courtroom.

14 SOLICITOR SWANSON: Thank you, Your Honor.

15 MR. NEWMAN: Exhibits look correct, Your Honor.

16 THE COURT: Okay. I have the indictments here if you'd
17 like to review those. I do intend to send those back to the
18 jury. Be sure there's not something on there that they
19 shouldn't see.

20 MR. NEWMAN: I do have an objection to the indictments.
21 I think the front -- I don't have an objection to the body
22 of the indictments but I think the front needs to be
23 redacted. It lists an AKA on there. He was indicted
24 incorrectly, no fault through his own, and then they
25 indicted as an AKA and there's also a notation, FTA, failure

1 or verdict.

2 Thank you.

3 (WHEREUPON, the jury began deliberations at 2:42PM and
4 returned with a verdict at 3:35PM.)

5 THE COURT: All right. I'm informed that a verdict has
6 been reached in the McBean case.

7 Is the State ready to receive the verdict, Ms. Swanson?

8 SOLICITOR SWANSON: Yes, sir.

9 THE COURT: Defense ready to receive the verdict?

10 MR. NEWMAN: Yes, Your Honor.

11 THE COURT: Let's bring the jury in.

12 THE BAILIFF: Yes, sir.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE BAILIFF: The jury's entering the courtroom, Your
16 Honor.

17 THE COURT: Thank you.

18 All right. The record will reflect the jury has
19 returned to the courtroom.

20 Madam Forelady, I'm informed by a bailiff, by the
21 bailiff that a verdict's been reached.

22 Is that true?

23 THE FORELADY: Yes, sir.

24 THE COURT: Pass the form to the bailiff please.

25 (Forelady complies.)

1 THE COURT: Madam Clerk, you may publish the verdict.

2 THE CLERK: State of South Carolina. County of
3 Beaufort. State of South Carolina versus Julius
4 Rooks-McBean, defendant. Case Numbers 2010-GS-07-0973,
5 2010-GS-07-0974, 2010-GS-07-0975, we, the jury, unanimously,
6 unanimously find the defendant, Julius Rooks-McBean,
7 concerning the offense of assault and battery with intent to
8 kill, Case Number 2010-GS-07-0973, guilty.

9 We, the jury, unanimously, unanimously find the
10 defendant, Julius Rooks-McBean, concerning the offense of
11 attempted armed robbery, Case Number 2010-GS-07-0973,
12 guilty.

13 We, the jury, unanimously find the defendant, Julius
14 Rooks-McBean, concerning the offense of possession of a
15 weapon during the commission of a violent crime, Case Number
16 2010-GS-07-0974, guilty.

17 I certify the decision was unanimous, was the unanimous
18 decisions of the jury, Rebecca Mastropole, foreperson, May
19 25th, 2016.

20 THE COURT: Ladies and gentlemen of the jury, if this
21 is your verdict and still your verdict, raise your
22 right-hand.

23 (WHEREUPON, all jurors raise their right-hands at this
24 time.)

25 THE COURT: Thank you very much.

1 Anything further from the State before I release the
2 jury?

3 SOLICITOR SWANSON: No, sir.

4 THE COURT: Anything further from the defense before I
5 release the jury?

6 MR. NEWMAN: Request that the jury be polled, Your
7 Honor.

8 THE COURT: All right. Madam Clerk, please poll the
9 jury.

10 (WHEREUPON, the jury was polled and all jurors answered
11 in the affirmative that this was and is still their
12 verdict.)

13 THE COURT: Thank you, Madam Clerk.

14 Anything further from the defense before I release the
15 jury?

16 MR. NEWMAN: No, Your Honor. Thank you.

17 THE COURT: All right.

18 (WHEREUPON, the jury panel was dismissed at this time.)

19 THE COURT: All right. Any motions?

20 MR. NEWMAN: Your Honor, I was gonna ask you for your
21 availability tomorrow. They're a number of trial, post
22 trial motions I need to make, and, quite frankly, I'd
23 probably like to speak with the solicitor as well. Just the
24 time of day, I'm a little bit winded.

25 THE COURT: Oh, I intend to be here tomorrow. I'll be

1 glad to hear your motions.

2 State have any suggestions as to when you'd like to do
3 that?

4 SOLICITOR SWANSON: Whenever suits Mr. Newman. I would
5 like to wrap it up this term of Court certainly.

6 THE COURT: Well, I'm not scheduled to be back in
7 Beaufort. So I will -- we're gonna need to wrap it up.

8 MR. NEWMAN: Your Honor, I think if we could start at
9 9:00 or 9:30.

10 I'm---

11 THE COURT: Well, why don't we just say nine o'clock in
12 the morning?

13 MR. NEWMAN: Yes, sir.

14 THE COURT: All right. And I'll defer sentencing until
15 that time---

16 MR. NEWMAN: Thank you, Your Honor.

17 THE COURT: ---and consider the motions.

18 SOLICITOR SWANSON: Okay. I, I would just request that
19 we go ahead with sentencing today as my victim is here
20 present and---

21 THE COURT: I don't have any problem with doing that.

22 SOLICITOR SWANSON: ---withhold motions until tomorrow.

23 THE COURT: Well, I've got -- I'll have to hear the
24 motions before I issue sentence cause he may be entitled to
25 a new trial if I were to decide the motion in a certain

1 fashion.

2 SOLICITOR SWANSON: Well, in that case, Your Honor, I,
3 I would request that we go ahead today.

4 THE COURT: All right. Do you want a few minutes
5 before we do the motions --

6 MR. NEWMAN: All right.

7 THE COURT: -- or I can leave it open for you to file
8 your motions post trial and go forward with sentencing?

9 MR. NEWMAN: Excuse me, judge.

10 THE COURT: Yes, sir.

11 SOLICITOR SWANSON: I'm sorry, Your Honor. I apologize
12 but it's been seven years for my victim. I think we're
13 ready to settle this.

14 MR. NEWMAN: Your Honor, I -- and, and I understand
15 that certainly. If we can have it marked that I can argue
16 the motions in the morning, the Court to sentence however
17 you see fit.

18 THE COURT: Yes, sir, I'll be glad to allow you to
19 argue your motions in the morning.

20 MR. NEWMAN: And if any motions are granted---

21 THE COURT: No problem with that and I'll go forward
22 with sentencing this afternoon.

23 SOLICITOR SWANSON: No problem with that, Your Honor.

24 THE COURT: Okay. All right.

25 MR. NEWMAN: We'll do that.

1 THE COURT: Do you need to talk with your client
2 briefly before we consider sentencing?

3 (Pause.)

4 THE COURT: Do you have the sheets?

5 SOLICITOR SWANSON: I do have sentencing sheets.

6 If -- defense counsel, would you like to review the
7 sentencing sheets or shall I pass them up to the judge?

8 MR. NEWMAN: Pass them up to the Court.

9 THE COURT: Okay. I'm gonna need for you to sign the
10 sentencing sheets, Mr. Newman.

11 SOLICITOR SWANSON: Oh, I apologize.

12 THE COURT: That's quite all right. If you'll pass
13 them over to Mr. Newman---

14 SOLICITOR SWANSON: Yes, sir.

15 THE COURT: ---as well. They need to be signed by all
16 parties.

17 (Pause.)

18 MR. NEWMAN: I would like to put on the record I've
19 explained to my client, by signing the sentencing sheet, he
20 is not acknowledging anything other than that these are the
21 sentencing sheets.

22 THE COURT: And the information is correct that he is
23 now been convicted of the crime.

24 MR. NEWMAN: That's correct.

25 THE COURT: Okay. If you'll pass that back up please.

1 All right. Mr. McBean, having been found guilty by a
2 jury of your peers, at this time the Court is going to
3 consider sentencing on the attempted armed robbery, assault
4 and battery with intent to kill, and the possession of a
5 weapon during the commission of a violent crime. I want to
6 hear from your attorney first concerning these matters.
7 Then I will give you an opportunity to speak to the Court
8 about these issues as well.

9 Counselor, I'll be glad to hear from you.

10 MR. NEWMAN: Pleases the Court, Your Honor.

11 Julius is 29 years old. This would of been back
12 approximately 22. Ask you to take his young age into
13 account, the factors, and that you've heard from the State
14 if Julius were to, you know, testified. I believe the only
15 conviction that would be considered a felony or carry over a
16 year is some type of forgery conviction in 2008, and then
17 when Mr. McBean was, of course, he tells me he was a
18 teenager when that crime allegedly occurred and it was a
19 nonviolent crime.

20 It's always difficult after a jury verdict. We believe
21 that this was a case that the -- Mr. McBean, not out of any,
22 any type of just stubbornness or anything like that, there
23 were true issues in this case that needed to be litigated by
24 a jury, and we thought it was a case wherein any plea offers
25 that were offered that it was in Mr. McBean's best interest

1 to have a jury examine this. And as the Court knows, this
2 is actually a retrial from a mistrial from the first time.

3 THE COURT: Yes, sir.

4 MR. NEWMAN: So I guess my point is, you know,
5 sometimes we have defendants come into Court and there's
6 just a mountain of evidence against them and they just say
7 no respect for the system. I want to convey to you that I
8 think you've seen Mr. McBean in Court. I think he's treated
9 the Court very respectfully.

10 THE COURT: I found him to be well mannered during his
11 trial and very attentive.

12 MR. NEWMAN: And I ask you to consider that, Your
13 Honor, because I've come obviously, over the years, to know
14 him.

15 My COs at the jail tell me that he has gotten along
16 very well over there. He's not involved in any disciplinary
17 actions, any fights. Tells me he actually is good with the
18 other inmates cause he can take what may be a situation over
19 there and my client has a very good sense of humor, and can
20 get the, get the other folks in there joking and get the --
21 liven up the mood. They tell me he's been model and hadn't
22 had any problems out of him.

23 THE COURT: How long has he been incarcerated?

24 MR. NEWMAN: Thirty-six months, Your Honor.

25 THE COURT: All right. State agree?

1 SOLICITOR SWANSON: Well, that would be in total from
2 the initial and then he's actually been bench warranted
3 since his return to South Carolina for the second time.

4 THE COURT: Okay.

5 MR. NEWMAN: And he's been in jail for that I believe
6 seven months.

7 THE COURT: For the bench warrant?

8 MR. NEWMAN: Sir?

9 THE COURT: Been in jail for the bench warrant for
10 seven months?

11 SOLICITOR SWANSON: Yes, sir, since---

12 MR. NEWMAN: He's been in jail on the charges.

13 SOLICITOR SWANSON: Since October.

14 THE COURT: All right. So how much time -- how much
15 credit for time served does the State believe this inmate's
16 entitled to?

17 SOLICITOR SWANSON: Probably all of his pretrial
18 detention before he was released on bond back in -- he was
19 in beginning on April 14th of 2010, and then I can't
20 recall without looking at---

21 THE COURT: Well, if you don't mind, do the calculation
22 cause I like to put down a specific time so we don't end up
23 with issues later on concerning how much credit he should of
24 received. I want to see he gets credit for every day but I
25 also don't want there to be a controversy once we complete

1 this. I'd like for us to reach an agreement on that.

2 MR. NEWMAN: I understand and appreciate that, Your
3 Honor. I tell that counsel having to track down judges and
4 getting the orders right---

5 THE COURT: It can cause problems later on.

6 MR. NEWMAN: It does, Your Honor.

7 THE COURT: Yeah.

8 All right. I'm sorry I interrupted you.

9 Go ahead.

10 MR. NEWMAN: I'm sorry, Your Honor. I just -- Julius
11 tells me that he has three girls.

12 What are their ages, Julius?

13 THE DEFENDANT: I got a one year old. She'll be two in
14 September. Then I have a six year old. Then I have a 12
15 year old.

16 THE COURT: I see.

17 THE DEFENDANT: She was 12.

18 THE COURT: All right.

19 MR. NEWMAN: And you support your children, right?

20 THE DEFENDANT: Oh, yes, definitely.

21 THE COURT: All right. How far did you go with your
22 education, sir?

23 THE DEFENDANT: I went to the tenth grade but then I
24 went and got my GED.

25 THE COURT: Good.

1 All right. What type of work were you doing if you
2 were -- if you had, if you had a job, what were you doing?

3 THE DEFENDANT: I was working like loading docks and
4 warehouses.

5 THE COURT: I see.

6 Okay. Anything else you'd like for me to know,
7 Mr. Rooks?

8 THE DEFENDANT: No, sir, I'm sorry that this situation
9 happened.

10 THE COURT: All right. Let's see if we can agree on
11 this credit for time served figure.

12 SOLICITOR SWANSON: Mr. Sipling, do you have an
13 account, a number of days that Mr. Rooks-McBean has been in
14 your detention center?

15 THE OFFICER: I got to go get it.

16 SOLICITOR SWANSON: Okay. I apologize. If he had not
17 fled, then this would be easier to calculate.

18 THE COURT: Oh, I understand. I just -- but this is
19 precisely the kind of case we end up with controversy as to
20 how much credit he might be entitled, might be entitled to.

21 SOLICITOR SWANSON: I understand.

22 THE COURT: I'd rather reach that agreement today then
23 try to do it five years from now.

24 SOLICITOR SWANSON: And I just -- I suppose it depends
25 on if Your Honor believes he's entitled to credit during the

1 time he's been in on bench warrants.

2 THE COURT: I would give him credit for the time before
3 the bench warrant.

4 SOLICITOR SWANSON: Before the bench warrants.
5 Okay.

6 MR. NEWMAN: That was 29 months.

7 THE COURT: Twenty-nine months?

8 MR. NEWMAN: Yes, Your Honor.

9 THE COURT: Would you agree with that figure?

10 SOLICITOR SWANSON: I would agree with that.

11 THE COURT: All right.

12 MR. NEWMAN: And, Your Honor, in taking everything into
13 consideration, of course, you've heard the facts and seen
14 the case. I would ask Your Honor to take into consideration
15 the relative lack of a prior record. No record for any
16 crimes of violence, or weapons, and I think, from the brief
17 time that I've talked with Julius, you can see that he is
18 relatively mild mannered. I think that he can do well.

19 I ask Your Honor to strike a balance between society
20 and a sentence for Julius that he can survive and hopefully
21 come out and rejoin his family and become productive because
22 I think, the time I've come to know him, he's certainly an
23 intelligent young man.

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

25 Now, the range of sentencing on these is 20 years on

1 the attempted armed robbery is the maximum, assault and
2 battery with intent to kill, kill is 20 years. On the
3 possession of a weapon during the violent crime, I believe
4 that's a mandatory five years since there is no mandatory
5 minimum on the other two sentences.

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

7 THE COURT: Is that your understanding?

8 MR. NEWMAN: Yes, sir. We would ask, whatever sentence
9 that you impose, Your Honor, that you could impose those
10 concurrently. We have -- I think we talked a little bit
11 about the, the possession of a weapon, you're right, that is
12 a mandatory five years. We, we still believe, and I
13 understand what the Legislature says, but I'd ask the Court
14 to consider running that concurrent cause that is really
15 kind of consumed in the attempted armed robbery.

16 THE COURT: All right. I'll hear from the State.

17 SOLICITOR SWANSON: Thank you, Your Honor.

18 Although Mr. Rooks-McBean has a limited prior record,
19 he does have some. Largely from New York and Pennsylvania.

20 A 2003 petty larceny.

21 2004, sale of marijuana for which he received community
22 service.

23 A 2013 drug case out of Pennsylvania as well as that
24 possession of forged instruments, what was originally a
25 felony and pled down to a misdemeanor.

1 Obviously these were extremely violent crimes that he
2 committed here in Beaufort County. Our county actually had
3 to go get him twice. Once from New York and once from
4 Virginia after he fled after his first trial. My victim
5 does not wish to address the Court but it's been a long
6 seven years coming.

7 At this time, Your Honor, I would like to ask that you
8 impose the maximum sentences of 20 years and request that
9 you consider running the five consecutive.

10 Thank you.

11 THE COURT: Thank you very much.

12 Mr. Rooks, I considered all of the factors that have
13 been presented to me in setting sentence. I've also
14 considered the nature of what occurred in this, this
15 situation.

16 We have a gentleman who is in his place of business for
17 a long period of time, minding his business, doing what he's
18 suppose to be doing, and then he was needlessly attacked and
19 shot in his, in his place of business, and, but for the
20 Grace of God, we would be trying a murder trial as opposed
21 to what we're trying here. Thank goodness the shot did not
22 hit anything vital such that he was able to survive. So the
23 violent nature of this is not lost on the Court.

24 The Sentence in this case, on the assault and battery
25 with intent to kill and on the attempted armed robbery, the

1 Sentence is 15 years with credit for 29 months.

2 On the possession of a weapon during the commission of
3 a violent crime, the Sentence is five years with credit for
4 29 months. I have run all those sentences concurrent.

5 Good luck to you, sir.

6 MR. NEWMAN: Thank you, Your Honor.

7 SOLICITOR SWANSON: Thank you, Your Honor.

8 MR. NEWMAN: And we will appear before you tomorrow for
9 posttrial motions.

10 THE COURT: Yes, sir.

11 MR. NEWMAN: Thank you.

12 THE COURT: Now, your client will need to be present
13 for that or is he waiving that?

14 MR. NEWMAN: I request that---

15 THE COURT: Is he waiving his presence?

16 MR. NEWMAN: He's not going anywhere tonight?

17 THE OFFICER: No, sir.

18 MR. NEWMAN: Okay. Then I would ask that, since he's
19 gonna be in the county, that we---

20 THE COURT: Nine o'clock in the morning then.

21 MR. NEWMAN: Thank you.

22 THE COURT: Thank you. Have him here at nine o'clock.
23 Thank you very much.

24 SOLICITOR SWANSON: Thank you, Your Honor.

25 MR. NEWMAN: Thank you, Your Honor.

Thursday, May 26th, 2016

THE COURT: All right. We're on the record in the case of the State of South Carolina versus Mr. McBean.

Defense had requested an opportunity to argue -- make and argue posttrial motions this morning.

You may proceed.

MR. NEWMAN: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. NEWMAN: First of all, we renew our motions for directed verdict on the same grounds. Just want the Court to know, at this juncture, we are renewing those motions.

THE COURT: I understand that you are.

MR. NEWMAN: We are.

THE COURT: They'll be considered renewed and the Court would not change its rulings. So we're gonna proceed from that.

MR. NEWMAN: I understand, Your Honor.

THE COURT: Yes, sir.

MR. NEWMAN: Also we move for a new trial in this matter.

We believe that there were two key things that came out that we objected to in our, in our motion for a new trial. Evidence was deduced about this silver Lexus and the fact that the "New York Boys" or something like came out and the

1 silver Lexus was noted to have a New York tag on it, and
2 Your Honor allowed evidence in that a deputy had stopped
3 that car about a month before and had, and had identified,
4 as a passenger in that car, Mr. McBean.

5 Our argument to you, under State versus Jones, that
6 this "investigator's stop" was clearly illegal. It's
7 inferrable illegal because the only person that was arrested
8 was Mr. Abbott and presumably for a pistol that was found in
9 the car. Those charges were dismissed. Whether the
10 prosecutor recognized it was an illegal search or whether
11 his lawyer made some type of motion, that I do not know, but
12 I know it was dismissed because the record was expunged.

13 Our argument to you was that the car, that was an
14 illegal traffic stop, as such that was a seizure, that
15 Mr. McBean would have the ability to argue as a passenger
16 because his Fourth Amendment rights were directly related
17 because he was seized as a result of that stop. Evidence
18 was collected against him, i.e. his identity, and connected
19 him to that car, during that illegal seizure, and there was
20 nothing to taint that, and we move to suppress that
21 evidence. The Court ruled otherwise but I'm asking a
22 reconsideration on that and to grant a new trial on that
23 because we believe that evidence should not have been heard
24 by the jury and it was, it was a pretty key part of the
25 evidence in the case.

1 The second ground that we move for a new trial, Your
2 Honor, is on the issue of the DNA that was on a knit cap.
3 It was very similar to a knit cap that was seen in the video
4 during the robbery.

5 As you know, we wanted to bring out the fact that DNA
6 did match on that cap to a 6-foot 4 African-American named
7 Mr. Moultrie who had a record for, arrest record for armed
8 robbery and assault with intent to kill. And, again, under
9 our theory on the cops never following up on that or asking
10 anything under Kyles verse Whitley for impeachment of the
11 investigation. The Court indicated that it, if I got into
12 the DNA, so I took that as I might not be prohibited from
13 bringing that fact out and cross-examining the police
14 officer or the lead detective, Fraser, that the State moved
15 and you indicated you would grant that they would be able
16 to, be able to put into evidence that the defendant resisted
17 having his DNA taken and made a motion and ultimately got a
18 ruling from the judge in a Schmerber hearing and that he did
19 not have to do that.

20 Under Doyle versus Ohio, we believe that this is
21 similar to bringing out evidence that the defendant failed
22 to make a statement when he had a Constitutional right not
23 to do that. Judge Kinard granted, basically on jeopardy
24 grounds, that since the State didn't amass the DNA in the
25 first trial, that they would be prohibited from doing such

1 or getting his DNA in the first trial especially since he
2 was in custody for 29 months prior to that trial, that they
3 had ample opportunity to do it and failed to do it.

4 We feel that that would be burden shifting, and for
5 those reasons, we're asking this Court -- we believe that
6 was critical evidence as well for a new trial on those
7 grounds.

8 THE COURT: I'll hear from the State.

9 SOLICITOR SWANSON: Thank you, Your Honor.

10 I would refer back to my previous arguments and any
11 case law that I cited to Your Honor.

12 THE COURT: Uh-huh. (Affirmative).

13 SOLICITOR SWANSON: The State still believes there was
14 no seizure regarding the traffic stop, and that was relevant
15 proper evidence. The defendant was not charged, arrested,
16 or anything of that nature and so he is---

17 THE COURT: I think the case -- I believe was a---

18 SOLICITOR SWANSON: Rusher.

19 THE COURT: Rusher.

20 SOLICITOR SWANSON: Rusher.

21 THE COURT: Yes, that---

22 SOLICITOR SWANSON: There actually was---

23 THE COURT: There was an actual seizure in that case of
24 evidence---

25 SOLICITOR SWANSON: Yes, sir.

1 THE COURT: ---in that case. In this particular case,
2 anything that was seized was taken from a car that didn't
3 belong to this defendant. He was a passenger in it and I
4 only allowed that evidence in for purposes of identifying
5 him as having been seen with that car, and there were other
6 witnesses in the trial that testified to the same thing at
7 other times. When he came to the store in that car with his
8 other friend, he'd been identified with that car on numerous
9 occasions other than this particular occasion.

10 SOLICITOR SWANSON: Yes, sir, it was, it was certainly
11 just for corroboration of identity and the association with
12 the car and it placed him in the area.

13 THE COURT: So I let it in for that purpose and that
14 purpose alone.

15 SOLICITOR SWANSON: And, secondly, the third party
16 guilt issue regarding the DNA on the knit cap, obviously
17 already litigated. I believe that it's still improper third
18 party guilt evidence as well as the fact that defense
19 counsel had previously moved to suppress the DNA, won that,
20 and then wanted to argue about the DNA, which would possibly
21 mislead the jury.

22 THE COURT: Well -- and I also found that the
23 evidence -- that there was nothing that actually tied that
24 particular cap that was found in the trunk of that car to
25 this particular incident simply because I think the only

1 thing that I heard in the case was that the perpetrator left
2 on foot. The car was not seen at the scene. No witness
3 identified the car as being at the scene. It was six days
4 later when the car was located. At that time this black
5 stocking cap, which is fairly nondescript, there were no
6 identifying marks on the one that was used in the robbery.
7 None on this particular cap. There are a large number of
8 black stocking caps in the world today, and, at that time of
9 the year, in February, a lot of people wear stocking caps.

10 So it was -- I didn't find anything that tied that
11 particular cap to this incident directly, and I also found
12 that, that that evidence would not mitigate the possible
13 guilt of the defendant. I don't find anything that was
14 inconsistent with his -- with the State's theory of the case
15 in that regard. So I found that it was not proper third
16 party evidence and I pointed out I did that in analyzing the
17 strength of that evidence itself. Not the strength of the
18 State's case in regards to it.

19 So I found that it would be -- not, not be proper third
20 party evidence and I did point out that the defense did
21 block the taking of the DNA sample. There were apparently
22 other DNA samples taken from the cap that they could not
23 compare to any standard in testing it. I felt that if the
24 defense were allowed to argue that the State did nothing to
25 compare it, that would be misleading to the jury and be

1 false information since the State did make an effort to
2 compare it albeit Judge Kinard ruled it was too late to do
3 that and did not allow it.

4 I don't believe he -- I never heard the argument that
5 Judge Kinard denied that Schmerber test on Constitutional
6 grounds.

7 Did he?

8 MR. NEWMAN: Yes, sir, that's what we raised. We
9 raised a double jeopardy.

10 THE COURT: What did his order say?

11 MR. NEWMAN: I -- if there's a written order I can not
12 find it. I think it was an oral order that the State did
13 not---

14 THE COURT: Well, what was argued to me was it was too
15 late. He had him for so many months and he said he wasn't
16 gonna allow it to be known.

17 SOLICITOR SWANSON: I have not---

18 MR. NEWMAN: We raised it on a double jeopardy ground
19 on the -- in a new trial this would be additional evidence
20 that the State has marked that it could of marshaled in the
21 first trial and did not.

22 THE COURT: Well, I didn't see a written order that
23 that would -- that there was -- that it was Constitutional
24 in nature. However, again, it would be misleading to a jury
25 and not true for an argument to be made to the jury that the

1 State made no effort to test it when they did.

2 So I just was not gonna allow that to go on without
3 full explanation to the jury, the truth being given to them
4 in that situation.

5 All right. I understand the motions. The motions are
6 denied for a new trial.

7 MR. NEWMAN: And lastly, Your Honor, two other motions.

8 We would make a motion for Your Honor, if I can be
9 heard briefly, to reconsider a sentence. One of the things
10 that I failed to argue to you yesterday, and I apologize,
11 everybody was a little bit tired at the end of a, end of a
12 long trial, I would ask Your Honor to consider reducing the
13 sentence. I've, I've looked at these. These are 85
14 percent, no parole sentences, and I would ask Your Honor to
15 take into consideration, you heard that the defendant has
16 three daughters and he unfortunately is very very far away
17 from home and is gonna be functionally cut off from his
18 family except for maybe a rare visit because of the extended
19 travel and the expense it would take to do it.

20 So I would ask Your Honor to take that into
21 consideration, and also ask Your Honor to take into
22 consideration what I call the, the Judge Block Rule in
23 Federal Court. He always considered a slight downward
24 departure when a defendant had spent a substantial amount of
25 time in a county detention center because county -- the, the

1 time is, you know, 29 months, is a lot harder of a time
2 really because there's really nothing to do at the detention
3 center in prison. He would be able to work on college
4 credits, for example. He'd be able to work for Prison
5 Industries if he qualifies, which I think he would, work for
6 Prison Industries, and have an active day where you're just,
7 just not counting time minute by minute, and I would ask
8 Your Honor to consider reducing a sentence to the ten to
9 thirteen year range.

10 SOLICITOR SWANSON: Thank you, Your Honor.

11 You know, obviously the State would oppose that motion.
12 There has been nothing new presented to Your Honor at this
13 time.

14 I also did neglect to inform Your Honor that
15 Mr. Rooks-McBean had an additional armed robbery pending
16 from this -- from the Express Lane just right down the road
17 from the Island Plaza the State is not pressing as a result
18 of this conviction. He made his choices. He took himself
19 away from his daughters, and, as you heard on the jail phone
20 call, he ain't been spending a lot of time at home with his
21 daughters. He's been back and forth to Miami.

22 THE COURT: Well, you know, in setting the sentence, I
23 did consider the -- I talked to him about his daughters. I
24 got their ages and I, I did not hear that they lived
25 anywhere other than New York. I assume that they did in

1 making the sentences.

2 In this particular case, the total amount of time he
3 was facing would of been 45 years. I certainly did not run
4 any of the sentences consecutively. Quite often I would run
5 sentences for use of a weapon in a violent crime
6 consecutively. I did not do that in this particular case.

7 So I did, in my opinion, create a downward departure
8 from where I would of normally been especially in a
9 situation where we got a, got a gentleman in the store
10 minding his own business literally and someone walks in and,
11 and so quickly. I mean it was a, as everyone said, 19
12 seconds, it was over and stuck a gun in his face and then
13 shot him in an area where the natural result could of been
14 death.

15 So I, as I said, I think, but for the Grace of God, we
16 were not trying a murder case when we tried this case.

17 So I considered all of those things. I would not
18 change the sentence given the other factors that have been
19 mentioned.

20 MR. NEWMAN: Understand, Your Honor.

21 THE COURT: Yes, sir.

22 MR. NEWMAN: And if I may have one second?

23 THE COURT: Yes, sir.

24 (Pause.)

25 MR. NEWMAN: Pleases the Court, Your Honor?

1 THE COURT: Yes, sir.

2 MR. NEWMAN: My last motion, I believe that I've
3 discharged my contractual duties with my client. I've
4 discussed with my client his right to appeal and the---

5 THE COURT: Uh-huh. (Affirmative).

6 MR. NEWMAN: ---jurisdictional time limit that that has
7 to be effected in. I'm gonna give him some paperwork that
8 will assist him in that. But, at this time, with my
9 client's consent, I'm asking to be relieved as counsel. I
10 believe he will be indigent and would be able to apply for
11 the Office of Appellate Defense to perfect any---

12 THE COURT: Any objection to that?

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay. I'll grant that relief.

15 MR. NEWMAN: Thank you.

16 THE COURT: You want me to sign an order?

17 MR. NEWMAN: I -- if---

18 THE COURT: I can order it from the bench as I just
19 did. So I'll order it from the bench.

20 MR. NEWMAN: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. NEWMAN: Thank you.

23 THE COURT: That meant -- again, my order is provided
24 you do as you said, and I'm sure you will, Mr. Newman, is
25 advise him of what's necessary for him to protect his rights

1 in the matter and assist him in, in whatever documentation
2 you might give him to be aware of those rights and take
3 advantage of them if he'd like to.

4 MR. NEWMAN: I have a package and I'll even provide him
5 with a self-addressed stamped envelope of where he needs
6 to---

7 THE COURT: Okay.

8 MR. NEWMAN: ---send these documents.

9 THE COURT: Very good.

10 MR. NEWMAN: Thank you, sir.

11 THE COURT: Thank you.

12 That concludes the hearing.

13 SOLICITOR SWANSON: Thank you, Your Honor.

14 THE COURT: And good luck to you, Mr. McBean.

15 THE DEFENDANT: Thank you.

16

17

18 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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22

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24

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WITNESSES

Baird - BCSO

ARREST WARRANT NUMBER

J348169

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAY 20 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS0700973

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

vs.

Julius Rocks McBean

FTA 5/2/14

Indictment for

Assault and battery with Intent to Kill (ABWIK)

SC Code: 16-03-0620
CDR Code:0014

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700973

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Assault and battery with Intent to Kill (ABWIK)

That in Beaufort County, South Carolina, on or about December 23, 2009, the Defendant, Julius Presley Rooks aka Julius Rooks McBean, with malice aforethought, did commit an unlawful act of a violent nature upon the victim, Jay Patel to wit: the Defendant did shoot the victim; all in violation of the Common Law of South Carolina and Section 16-0-620 of the 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.


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort
STATE VS.
Julius Rooks

AKA:

Race: B Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] RdCity, State, Zip: Lansing MI 4882DL#: [REDACTED] STD#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and battery with Intent to Kill (ABWIK)

INDICTMENT/CASE#: 2010GS0700973A/W#: J348159Date of Offense: 12/23/2009S.C. Code §: 16-03-0620CDR Code #: 0014

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0620 of the S.C. Code of Laws, bearing CDR Code # 0014

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Swanson, Hunter #72934
SC Bar# [REDACTED]

Defendant

Attorney for Defendant

SC Bar# 12936WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 29 months

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u> </u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Pamela Green

SCCA/217 (03/2011)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2175Sentence Date: 5/25/10

WITNESSES

Beird - BCSC

ARREST WARRANT NUMBER

J348168

ACTION OF GRAND JURY

True Bill

[Signature]
 Foreperson of Grand Jury
 Date: MAY 20 2010

VERDICT

[Signature]
 Foreperson of Petit Jury
 Date: INDICT

DOCKET NO. 2010GS0700972

The State of South Carolina
 County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

vs.

Julius Proctor, Roelke *[Signature]*
 Aka *[Signature]*
 Julius Roelke McBean

FTA 5/2/14

Indictment for

Robbery / Attempted Armed Robbery

SC Code: 16-11-0330(B)
 CDR Code: 0026

After being fully advised as to my legal
 rights, I hereby waive presentment to the
 Grand Jury.

Defendant

Hereby appear in my own proper person
 and plead guilty to the within indictment or
 to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700972

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Attempted Armed Robbery

That on or about December 23, 2009, in Beaufort County, South Carolina, at Island Plaza Convenience Store, 862 Sea Island Pkwy, St. Helena, SC, the Defendant, Julius Presley Rooks aka Julius Rooks McBean, 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 other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of Jay Patel with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) 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.



Solicitor

STATE OF SOUTH CAROLINA

0-20 yrs

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.

Julius Rooks

AKA:

Race: B Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Rd

City, State, Zip: Lansing NY 14882

DL#: [REDACTED] STD#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Attempted armed, or allegedly armed, robbery

INDICTMENT/CASE#: 2010GS0700972

A/W#: J348158

Date of Offense: 12/23/2009

S.C. Code § : 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Arrested by: [Signature] # 72934

Swanson, Hunter

SC Bar#

Defendant

Attorney for Defendant

12938
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/25/16

☒ 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. 29 months

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 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) \$ 3.40

TOTAL \$ 133.90

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code: 2135

Sentence Date: 5/25/16

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Pam V. Gunnis
Pamela Green

WITNESSES

Bairst - BCSO

ARREST WARRANT NUMBER

JS48160

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: MAY 20 2010

VERDICT

Robert M. Skypala

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS0700874

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2010

THE STATE

vs.

~~Julius Rocks McBean~~
Julius Rocks McBean

FTA 5/2/14

Indictment for

Weapons / Possession of weapon during
commission of violent crimeSC Code: 16-23-0480
CDR Code: 0549After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2010GS0700974

At a Court of General Sessions, convened on May 20, 2010, the Grand Jurors of Beaufort County present upon their oath:

Weapons / Possession of weapon during commission of violent crime

That in Beaufort County, South Carolina, on or about December 23, 2009, the Defendant, Julius Presley Rooks aka Julius Rooks McBean, did possess a weapon or visibly display what appeared to be a weapon during the commission, or attempted commission, of Assault and Battery with Intent to Kill and/or Attempted Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Beaufort

VS.

Julius Rooks

AKA:

Race: B Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Lansing NY 14882

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] #72934

[Signature] Swanson, Registrar

SC Bar#

[Signature] Defendant

[Signature] Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 05 ^{five} ~~days~~ months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 29 months☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$30	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS0700974

A/W#: J348160

Date of Offense: 12/23/2009

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

Presiding Judge

Judge Code: 2135

Sentence Date:

5/25/16

RECEIVED

AUG 18 2017

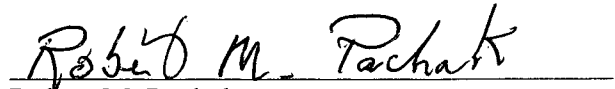
379

SC Court of Appeals

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,



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 18th day of August, 2017.