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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

S.C. SUPREME COURT

The Honorable D. Craig Brown, Circuit Court Judge

Indictment Numbers: 2011-GS-07-01398, 1399, 1423, 1496
Appellate Case No: 2014-002176

The State,.....Respondent

v.

Juwan Andre Habersham.....Appellant

RECORD ON APPEAL

James A. Brown, Jr.
Attorney for Appellant

Alan Wilson, Esquire
Attorney General

Law Offices of Jim Brown, P.A.
1600 Burnside St, Suite 100
P.O. Box 592
Beaufort, South Carolina 29901
(843) 470-0003

Mark R. Farthing, Esquire
Assistant Attorney General

Office of the Attorney General
PO Box 11549
Columbia, SC 29211-1589
(803) 734-1890

ATTORNEY FOR APPELLANT

I. McDuffie Stone III, Esquire
Solicitor, Fourteenth Judicial Circuit

Fourteenth Circuit Solicitor's Office
PO Box 1880
Bluffton, SC 29910
(843) 255-5880

ATTORNEYS FOR RESPONDENT

INDEX

1.	Indictment Number 2011-GS-07-01398.....	2
2.	Indictment Number 2011-GS-07-01399.....	4
3.	Indictment Number 2011-GS-07-01423.....	6
4.	Indictment Number 2011-GS-07-01496.....	8
5.	Sentencing Sheet for 2011-GS-07-01398.....	9
6.	Sentencing Sheet for 2011-GS-07-01399.....	10
7.	Sentencing Sheet for 2011-GS-07-01423.....	11
8.	Sentencing Sheet for 2011-GS-07-01496.....	12
9.	Trial Transcript pp. 37, 39, 86, 90-124, 157-158, 164-261, 279-281, 296-297, 344-345, 357.....	13
10.	Notice of Appeal.....	159
11.	Certificate of Counsel.....	161

WITNESSES

i. Erdel - BPD

DOCKET NO. 2011GS0701398

The State of South Carolina

County of Beaufort

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

August Term 2011

Hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

157950

THE STATE

vs.

Jajuan Andre Habersham

Defendant

SECTION OF GRAND JURY

2

Brett Wolfe
representative of Grand Jury
date: **AUG 18 2011**

INDICT

Indictment for

Possession of Firearm by person convicted of felony

Witness:

SC Code: 16-23-0500(A)
CDR Code:3434

C.C.C. PLS. and G.S.

representative of Petit Jury
date:

INDICT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2011GS0701398

At a Court of General Sessions, convened on August 18, 2011, the Grand Jurors of Beaufort County present upon their oath:

Possession of Firearm by person convicted of felony

That in Beaufort County, South Carolina, on or about June 19, 2011, the Defendant, Jajuan Andre Habersham, did have in his possession a handgun, after having been convicted of a crime of violence; all in violation of Section 16-23-30, 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

WITNESSES

G. Erdel - BPD

ARREST WARRANT NUMBER

J357951

ACTION OF GRAND JURY

Brian Wolf
Foreperson of Grand Jury
Date: **AUG 18 2011**

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS0701399

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Jajuan Andre Habersham

Indictment for

**Weapons / Possession weapon during violent
crime**

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

G. Erdel - BPD

ARREST WARRANT NUMBER

J357945

ACTION OF GRAND JURY

Brian Wolf
Foreperson of Grand Jury **AUG 18 2011**
Date:

VERDICT

Kelly Wolf *12/11/2014*
Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2011GS0701423

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

Juwan Andre Habersham

Indictment for

Robbery / Armed Robbery

SC Code: 16-11-0330(A)
CDR Code:0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

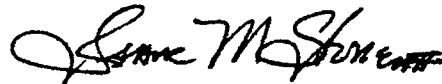
INDICTMENT
2011GS0701423

At a Court of General Sessions, convened on August 18, 2011, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery

That on or about June 19, 2011, in Beaufort County, South Carolina, the Defendant, Jajuan Andre Habersham; at 1006 Bay Street, Beaufort, 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 robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Kelsey Brown with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

WITNESSES

G. Erdel - BPD

ARREST WARRANT NUMBER

J357969

ACTION OF GRAND JURY

Burt Wick
Foreperson of Grand Jury
Date: **AUG 18 2011**

VERDICT

William [Signature]
Foreperson of Petit Jury
Date: **12/11/2014**
INDICT

DOCKET NO. 2011GS0701496

The State of South Carolina
County of Beaufort

COURT OF GENERAL SESSIONS

August Term 2011

THE STATE

vs.

JuJuan Andre Habersham

Indictment for
Attempted
Robbery / Armed Robbery

SC Code. 16-11-0330(A)
CDR Code: ~~0139~~ ^B 0024 *MR*

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
2011GS0701496

At a Court of General Sessions, convened on August 18, 2011, the Grand Jurors of Beaufort County present upon their oath:

Attempted
Robbery / Armed Robbery

AB
MTV

That on or about June 19, 2011, in Beaufort County, South Carolina, the Defendant, Jajuan Andre Habersham, at 1006 Bay Street, Beaufort, 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 robbery reasonably believed to be a deadly weapon, did *attempt to* take and carry away goods and/or monies from the person or immediate presence of Richard Parker with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Steve M. Stone

Solicitor

COUNTY OF Beaufort
STATE VS.
Jujan Andre Habersham
AKA.
Race: B Sex: M Age: 25
DOB: SS#
Address: ROADVILLE RD
City, State, Zip: RADCLIFF, SC 29934
DL#: SID#

INDICTMENT/CASE#: 2011GS0701398
A/W#: J357950
Date of Offense: 6/19/2011
S.C. Code §: 16-23-30
CDR Code #: 2364

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Possession of Firearm by person convicted of a crime of violence

in violation of § 16-23-30 of the S.C. Code of Laws, bearing CDR Code # 2364
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Lempesis, Mary Jordan SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 5 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: All convictions of 12-11-14
 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. 13 months, 21 days
 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: _____ \$ _____
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: _____

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Maria Black
Court Reporter: Maria Manley
SCCA/217 (03/2011) 10

Presiding Judge: [Signature]
Judge Code: 2760
Sentence Date: 12-11-14

COUNTY OF Beaufort
STATE VS.
Jajuan Andre Habersham
AKA:
Race: B Sex: M Age: 25
DOB: SS#:
Address: 6 FORDVILLE RD
City, State, Zip: RIDGELAND, SC 29936
DL#: SID#:

INDICTMENT/CASE#: 2011GS0701399
A/W#: J357951
Date of Offense: 6/19/2011
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

*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 §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
Lenepesis, Mary Jordan SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 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: All convictions of 12-11-14
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. 13 months, 21 days
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:
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$590, TOTAL \$13390.

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.

Clerk of Court/ Deputy Clerk: Myra Black
Court Reporter: Mima Manley

Presiding Judge: [Signature]
Judge Code: 2180
Sentence Date: 12-11-14

(10-30 years)

COUNTY OF Beaufort
 STATE VS.
Jujuan Andre Habersham
 AKA.
 Race: B Sex: M Age: 25
 DOB: 1/1/86 SS#: 123456789
 Address: FORDVILLE RD
 City, State, Zip: RIDGELAND, SC 29930
 DL# 123456789 SID# 123456789

INDICTMENT/CASE#: 2011GS0701423
 A/W#: J357945
 Date of Offense: 6/19/2011
 S.C. Code § : 16-11-0330(A)
 CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
 TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature]
Lempesis, Mary Jordan SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 30 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: All convictions 07/12-11-14.
 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. 13 months 21 days
 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

PTUP
 days/hours Public Service Employment

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100</u>
§ 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	\$ <u>25.00</u>
§ 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	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

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.

Clerk of Court/ Deputy Clerk [Signature]
 Court Reporter: Mona Manley 12
 SCCA/217 (03/2011)

Presiding Judge [Signature]
 Judge Code: 2760
 Sentence Date: 12-11-14

STATE OF SOUTH CAROLINA

0-20 years

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS
Jajuan Andre Habersham
AKA
Race: Sex: 25
DOB: SS#
Address: FORDVILLE RD
City, State, Zip: RIDGELEND, SC 29928
DL#: SID#

INDICTMENT/CASE# 2011GS0701496
A/W# J357969
Date of Offense: 6/19/2011
S C. Code § 16-11-0330(A)
CDR Code # 0139

SENTENCE SHEET

*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: Robbery / Attempted Armed Robbery

in violation of § 16-11-0330(A) 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

ATTEST

Lempets, Mary Jordan SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 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: All conditions of 12-11-14

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. 13 months, 21 days

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. \$ days/hours Public Service Employment

Payment Terms Obtain GED

Set by SCDPPPS Attend Voc Rehab or Job Corp.

Recipient May serve W/E beginning

*Fine \$ Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %) \$ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv Surcharge) \$100 \$ Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ beginning

§ 56-5-2995 (DUI Assessment) \$12 \$ \$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ Other:

Proviso 47 9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce Funding) \$25 \$

§ 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 (SCCA Surcharge) \$5 \$

3% to County (if paid in installments) \$390 \$

TOTAL \$13390

Clerk of Court/ Deputy Clerk Andrew Black

Court Reporter Mina Manley

SCCA/217 (03/2011)

Presiding Judge D. Campbell

Judge Code 2160

Sentence Date 12-11-14

EXAMINATION OF JUJUAN HABERSHAM

1 She's not going to handle any witnesses or speak to the
2 jury.

3 But we obviously didn't have her during jury
4 qualifications. I have spoke with the prosecution;
5 they have no problem, though we may want to ask the
6 jury whether any of them know Ms. Saxon or not today at
7 1:00. And I just wanted to make sure I put that in
8 front of you. She should be coming in any minute.
9 She's got a doctor's appointment she's coming from,
10 Your Honor.

11 THE COURT: I've made a note of that, but if for
12 some reason I forget, please remind me when we bring
13 the jury in. Okay?

14 MR. BAX: Yes, sir. Thank you.

15 The first motion, Your Honor, would be to,
16 pursuant to Jackson v. Denno, to have a hearing
17 concerning the voluntariness of my client's statement.

18 THE COURT: All right.

19 Ms. Lempesis.

20 MS. LEMPESIS: Thank you, Your Honor. The State
21 has Investigator George Erdel here, so we call
22 Investigator Erdel to the stand.

23 Thereupon,

24 GEORGE ERDEL
25 was called as a witness, having been first duly sworn,

EXAMINATION OF GEORGE ERDEL

1 Q Investigator Erdel, through your investigation did
2 you develop a suspect in this armed robbery?

3 A Yes, ma'am.

4 Q Who was that?

5 A Jajuan Habersham.

6 Q At any point was Mr. Habersham arrested?

7 A Yes.

8 Q Was he interviewed?

9 A He was.

10 Q Thank you. Investigator Erdel, we are going to
11 talk about the circumstances of that interview.

12 First, tell me where that interview took place.

13 A It took place at the Hardeeville Police
14 Department.

15 Q On what date?

16 A It was 6/24 of 2011, so the 24th.

17 Q Of June?

18 A Of June.

19 Q Do you remember about what time?

20 A It was later in the day. It was towards the
21 evening time. I don't recall the specific, exact time. But
22 I did mention the time on the recording of the interview. I
23 stated what time the interview did start.

24 Q Who was present during this interview?

25 A There was Detective Webber from Hardeeville. And

EXAMINATION OF JUJUAN HABERSHAM

1 does intend to introduce the certified prior conviction
2 of his common law strong armed robbery conviction. We
3 have to ^approve the indictment of possession of a
4 weapon by a person convicted of a crime of violence.
5 So that information will be coming out in the trial.
6 But that being said, I'm ready and prepared to omit
7 that portion from the interview recording of
8 Mr. Habersham's statement.

9 THE COURT: All right.

10 MR. BAX: Thank you, Your Honor. Briefly, as to
11 what Ms. Lempeisis has said, my intention was to ask if
12 they -- if we could stipulate to the fact that he has
13 the prior violent, and not necessarily go into any more
14 detail than that. They may refuse it, and then I would
15 leave it up to Your Honor what your ruling is on it.
16 Obviously, I'm trying to mitigate the level of prior
17 information going before my client. We know that he
18 has a prior violent offense that qualifies under the
19 statute and we know that that's the charge. There is
20 no intention by us to argue that he doesn't have the
21 prerequisite of that felony, of that violent
22 classification.

23 So my argument would be that going into what that
24 charge is, especially -- excuse me -- when that charge
25 is so similar to what we have here, my argument is that

1 MR. BAX: I apologize. And it's something that I
2 know that they are aware of because we have discussed
3 it. But I know Your Honor is not aware of it because
4 we haven't gone over it with you. By way of
5 background, my apology for not filling you in. And I
6 think that's the difficulty that the Bench, you know,
7 carries a lot of times; they stay in the dark until the
8 last minute.

9 But, Your Honor, I made mention of this during --
10 during Officer Erdel's testimony in a prior hearing
11 initially in the discovery that we were provided and
12 that I have had, literally, up until Friday, this past
13 Friday, which was December 5th, I believe, if I'm
14 remembering my date correctly, and knowing that we were
15 going to trial this week. Nothing in the discovery
16 indicated that a lineup or any kind of ID had ever been
17 shown to the alleged victims, Kelsey Brown, who is a
18 female, and Mr. Richard Parker.

19 THE COURT: Right.

20 MR. BAX: There was no indication in the discovery
21 whatsoever that they had ever been shown any kind of
22 lineup or shown the Defendant or shown a picture. So
23 there was no identification of an ID, positive or
24 negative.

25 On Friday I received an email from Assistant

EXAMINATION OF JUJUAN HABERSHAM

1 Solicitor Lempesis that she had been, in preparation
2 for this trial, interviewing Ms. Brown and Mr. Parker
3 in anticipation of their testimony this week. And
4 during that interview they relayed to her that sometime
5 after the incident they had been shown a lineup, each
6 of them, and that neither of them were able to identify
7 anyone in that lineup. And that that lineup did
8 contain a picture of my client, Mr. Habersham.

9 My contention and, obviously, I'm sure Your Honor
10 can see where I'm coming from, this is exculpatory
11 evidence in the defense's position. And I don't think
12 that it's really contestable that it's exculpatory. It
13 is a failure to identify my client as the person who
14 robbed him that evening. And we were never aware of
15 that.

16 Additionally, in that communication that I
17 received on Friday evening, the Solicitor indicated
18 that in her discussions with the victim, she then
19 followed that up with a discussion with Officer Erdel.
20 And he indicated that was true, he had shown that to
21 them; but because they couldn't identify him, he had
22 not saved those lineups and he had never done any
23 supplemental reports indicating that that happened. So
24 my indication on Friday was that that evidence was no
25 longer available.

EXAMINATION OF JUJUAN HABERSHAM

1 Your Honor, I came on Monday prepared to argue --
2 and I am still arguing -- but prepared to argue
3 spoliation in addition to Brady violation.

4 On yesterday, Your Honor, when I came into
5 court -- I needed to get another copy of the audio
6 interview of my client -- I was provided a copy of what
7 was -- has been represented to me as the lineup that
8 was shown to Ms. Brown and Mr. Parker. It does not
9 have any markings on it that would authenticate it as
10 the lineup that was shown to them. It's only been
11 given to me, and I was told that this is a copy of the
12 lineup that they were shown. I have no idea whether it
13 really is or not. But now I have been given something.

14 And this, obviously, Your Honor, goes to the heart
15 of the Brady violation portion of this. Brady does
16 require that these disclosures be timely in nature.
17 And for the Court's information, this is something that
18 I was provided yesterday after the jury had already
19 been picked. So there's that element to it.

20 That is what the motion goes to, is the fact that
21 we have exculpatory evidence that has been specifically
22 left out of discovery, that it has been suppressed up
23 until now, there's been no mention of it in what we had
24 from the officer. And it would be our contention that
25 this violation is clear enough and severe enough in

EXAMINATION OF JUJUAN HABERSHAM

1 nature to require, under the case law, dismissal of the
2 charges against Mr. Habersham. And I have several
3 elements that I have kind of gone through, but talking
4 about that. And I don't know if you want me to
5 continue or ask if there's any need for testimony.

6 THE COURT: Do you have any cases that you want me
7 to take a look at?

8 MR. BAX: Your Honor, we have looked at a number
9 of cases. Obviously, the primary case being Brady v.
10 Maryland, a 1963 U.S. case that Your Honor is well
11 familiar with. I can certainly grab the cite if you
12 would like. In my notes I just have the year and the
13 U.S., but I can grab the cite for you.

14 Additionally, Your Honor -- and I'm sorry. I'll
15 be happy to stop.

16 THE COURT: Just a second. Let me ask her
17 something to make sure she has my attention while --

18 MR. BAX: Yes, sir.

19 (Pause.)

20 THE COURT: All right. I'm sorry, Mr. Bax. Go
21 ahead.

22 MR. BAX: Thank you.

23 And, additionally, Your Honor -- and I'm going
24 down to it. And this is in anticipation of what I
25 expect. And I have to do that. As Your Honor is well

1 aware, I have to do that. As a Defense lawyer, I have
2 to try to anticipate what I'm going to be receiving in
3 argument and opposition. But, obviously, in this
4 particular case what I have been informed is that this
5 was something that Assistant Solicitor Lempesis was
6 unaware of until Friday as well. And I don't contend
7 that that's incorrect factually.

8 However, *Kyles v. Whitley*, a 1995 United States
9 Supreme Court case, specifically says that a prosecutor
10 not personally being aware of the evidence does not
11 relieve the State of its duty to disclose because the
12 State, quote/unquote, includes, in addition to the
13 particular prosecutor in the case, other lawyers in
14 their office, staff members, and law enforcement,
15 members of law enforcement.

16 So -- and having been on that side of the
17 courtroom myself I have had that same thing brought
18 against me as an Assistant Attorney General. The State
19 has been held to be the State. And regardless of
20 whether your particular agency has custody and control
21 of the information in question, it does not relieve the
22 State if the State is also -- that agency is another
23 government agency, specifically and especially when it
24 is the government agency that has brought this case to
25 you to prosecute. It is the law enforcement agency

1 that you have your discovery from.

2 So the Solicitor's Office is well aware that
3 Investigator Erdel is the primary investigating officer
4 on this case from the inception of the prosecution, and
5 have known that. So, you know, in anticipation, the
6 Kyles v. Whitley case does not relieve them of that.

7 Additionally, Your Honor, the cite for Brady v.
8 Maryland is 343 U.S. 83. And as I said before, that is
9 a 1963 case.

10 Those would be some of the cases that I would be
11 relying on. I have a whole list of them, but those are
12 the ones most specific to this issue.

13 Furthermore, Your Honor, I do believe that the
14 case law that I have looked at indicates that when
15 alleging that there has been a Brady violation, and
16 looking at what remedy the Court has to deal with, it
17 talks about, you know, that the Court needs to look at
18 whether or not bad faith is present, especially when
19 spoliation is an issue. And in this case, while I have
20 been provided something now, Your Honor, I don't have
21 any time or ability to confirm whether or not that is
22 actually the lineups that were shown to Ms. Brown and
23 Mr. Parker back three and a half years ago.

24 As you heard from Investigator Erdel on the stand,
25 these lineups were shown to those two individuals prior

1 to his interview with my client on June 24th, 2011. So
2 sometime between June 19th and June 24 of 2011 they
3 were shown these interviews -- or these lineups.

4 Excuse me. We have no way, nothing indicating whether
5 or not that has -- what I have been handed now is that.
6 I have no way to investigate that at this time.

7 And I think that there's some things that have
8 been conveyed to me by Officer Erdel that I think are
9 important. But I can't -- if he takes the stand by the
10 State we can go into those. If they don't wish to call
11 him I think that I would need to call him in order to
12 establish the elements to that. So there's some other
13 issues to that.

14 But before we get into that, though, I think that
15 the fact that there is specifically no mention of these
16 lineups or the Defendant's -- or the victims' failure
17 to identify my client in any of the discovery is
18 evidence of bad faith, especially when you look at the
19 fact that Officer Erdel has testified as to how long
20 he's been a law enforcement officer and how long he's
21 been an investigator. He had been an investigator in
22 2011, by my count, at least a year and a half, based on
23 his testimony.

24 Additionally, the fact that Officer Erdel
25 specifically -- and this was his testimony here

EXAMINATION OF JUJUAN HABERSHAM

1 today -- chose to lie to my client about whether or not
2 the victims had ID'd him. So, obviously, it is clear
3 that he understood and appreciated the importance of
4 their failure to identify my client. If he had gotten
5 in there and said, well, I don't know if they are going
6 to identify him or not, or if he had gotten in there
7 and said, they failed to identify you, he knows that it
8 would have impacted his ability to get a statement out
9 of my client. So the fact that he knew that it was
10 important enough to lie about but yet not important
11 enough to report in the discovery that he knows is
12 going to go to the Defense shows that bad faith.

13 And then, finally, Your Honor, there is an element
14 also, as always with case law, that we deal with a lot
15 of times of prejudice, a showing of prejudice to the
16 Defendant. And I think that the prejudice here is very
17 clear. It's two-fold. Number one, as I have already
18 mentioned, I do not have the time to investigate the
19 authenticity of these identifications, and whether or
20 not what I have is correct, whether or not there was
21 anything else that, you know, went to how they were
22 shown these.

23 Additionally, what I have typically seen, and what
24 I'd certainly like to see, is a warning given to --
25 kind of a disclaimer given to anyone who is about to

EXAMINATION OF JUJUAN HABERSHAM

1 look at a lineup, whether they are a witness, whether
2 they are a victim witness, whether they are, you know,
3 a codefendant, look at this. We are not saying that
4 the person that we say did this is even in this lineup.
5 And it's as important to exonerate innocent people as
6 it is to identify guilty people. And that is an
7 attempt to make sure that identification is not unduly
8 suggested.

9 As Your Honor is aware, we do -- I believe it's
10 called Neil v. Biggers hearings when there is an ID,
11 and it specifically goes to those elements. And I have
12 no evidence. I have nothing that I have been given as
13 to whether or not that warning was ever given to them,
14 whether it was given to them before or after, and
15 whether they acknowledged it. There is nothing there.

16 And, finally, as to prejudices element --
17 additionally, Your Honor -- and I think this is
18 something that goes to the heart of it. If I had been
19 provided this evidence in a timely manner and had it
20 pretrial and was able to investigate this I think I
21 would have been more able to advise my client as to how
22 this is going to play out in trial. Frankly, I don't
23 know right now exactly how that's going to play out in
24 trial because I was unaware until right now that this
25 was an issue. And while it's exculpatory in nature, as

EXAMINATION OF JUJUAN HABERSHAM

1 Your Honor knows, it doesn't get rid of other evidence
2 in the case.

3 And I think that an element of prejudice -- and I
4 believe that this is borne out by the case law, that
5 had I had this information it would have aided me in my
6 negotiations with the Solicitor's Office as to a plea.
7 And I might have been able to reach a plea that my
8 client would have been willing to take. I believe that
9 if I had this information, I think that the plea offer
10 made to him would have gotten better or started out
11 better than what it did had I had this information.
12 But since I don't have that information, I don't have
13 the ability to utilize it in any form or fashion,
14 whether in negotiation or preparation, prior to trial.

15 Finally, Your Honor -- and this goes to what Brady
16 stands for. The whole purpose behind Brady v. Maryland
17 and then the rules and the progeny that have come from
18 that is to prevent the State from continuing a practice
19 of disposing or hiding exculpatory evidence. That is
20 where this comes from and there's been progeny since
21 then. And the element -- the remedy of dismissal has
22 an element of deterrence against the government from
23 continuing such practices.

24 As I have said -- and this is certainly something
25 that we can take testimony on. But it's my

1 understanding from my discussions with the Solicitor's
2 Office as well as Officer Erdel -- and I appreciate him
3 taking the time to talk to me when he doesn't have
4 to -- is that he doesn't typically save lineups where
5 there was no ID made. So I don't know how many other
6 cases this might impact.

7 Additionally, the warning -- I have been told that
8 he does do those, but they are not attached to the
9 lineup and if there's no ID he doesn't fill it out.
10 Well, that doesn't make a lot of sense to me because,
11 from what I have seen, really the proper procedure that
12 I have seen from other law enforcement is to do the
13 warning before you ever show them the lineup. So the
14 warning itself should always be filled out and signed
15 and dated by the intended witness before there's ever
16 an indication of whether they can ID the person or not.
17 And what I have been told is that because there was no
18 ID in this case there was no warning signed and dated.
19 Well, that doesn't make a lot of sense either. And
20 that's obviously a practice that needs to be changed.

21 But up until now, up until today, that is the
22 practice of this officer and possibly other officers in
23 this agency. So there's a deterrent effect -- a need
24 for deterrence that comes out of the Brady and its
25 progeny. And I think that it's required in this case

EXAMINATION OF JUJUAN HABERSHAM

1 to do what is Constitutionally right.

2 Thank you.

3 THE COURT: Ms. Lempesis.

4 MS. LEMPESIS: Thank you, Your Honor.

5 I'm going to hand Mr. Bax some case law that we
6 have pulled. And I have a copy for the Court, Your
7 Honor. And I'll talk about those cases in a minute.

8 But just by way of further explanation, I want to
9 make it very clear the photo lineup that we are
10 discussing, I think what Mr. Bax has failed to
11 mention -- maybe I missed it -- but nobody was picked,
12 Judge. It was a photo lineup shown to the victims and
13 they didn't circle anyone. They could not identify
14 anyone. They have never been able to identify Jujuan
15 Habersham. They will testify in court today and they
16 still won't be able to identify Jujuan Habersham. They
17 will tell the Court and the jury that it was two white
18 men and a black man, and the black man is the one who
19 had the gun. So, Your Honor, I wanted to start with
20 that.

21 The photo lineup, Mr. Bax is correct. I
22 discovered in interviewing my victims that there was a
23 photo lineup shown to them. It is not mentioned in the
24 report, so I immediately contacted Investigator Erdel
25 to follow up on this. Investigator Erdel originally

EXAMINATION OF JUJUAN HABERSHAM

1 didn't recall, and was his best guess that perhaps they
2 hadn't picked anybody out; which the victims will both
3 say we didn't pick anybody out, that perhaps that is
4 why he didn't kept it.

5 Initially we thought that there was -- that he had
6 not kept it, that it had been destroyed. However, when
7 Investigator Erdel came back -- he was out on medical
8 leave last week. When he came back into the office
9 this week, just yesterday morning, I asked him to
10 please go back through and check and make sure it
11 wasn't somewhere. And then it was found, Your Honor,
12 the photo lineup, including Mr. Habersham's face. And
13 his picture had been not saved to the report, Judge,
14 but taken -- it had been printed out and put into what
15 Beaufort Police Department calls their general sessions
16 file. So it was in a separate file. Investigator
17 Erdel looked into it and did find that photo lineup,
18 which I then immediately gave to Mr. Bax. And again,
19 no one in that lineup is circled.

20 Your Honor, the cases that I have handed up deal
21 with the last-minute turning over of evidence. And
22 I'll point, Your Honor, first to the case of State v.
23 Whipple. That's a -- Your Honor, it's a Supreme Court
24 case that's 324 S.C.43. In that case the State turned
25 over 479 new pages during the jury selection of the

EXAMINATION OF JUJUAN HABERSHAM

1 case in this case. And the Court there found that
2 Whipple was given sufficient opportunity to review the
3 materials and suffered no prejudice from the Court's
4 refusal to give longer access for the Defense.

5 Your Honor, I'll also point you to State v.
6 Bryant. That's a 2007 Supreme Court -- South Carolina
7 Supreme Court case which discussed and dealt with the
8 last-minute turnover of records from SCDC to the
9 Defendant's counsel one night before trial. And the
10 Court there stated that the acquisition of requested
11 documents at the last minute is not uncommon in the
12 practice of law, and in this case is not grounds for a
13 new trial in light of the trial court findings that the
14 parties' -- and the parties' stipulations with respect
15 to various documents. So again there you have records
16 turned over at the last minute that was found not to be
17 an error.

18 And then, finally Judge, I have handed up a Fourth
19 Circuit Court of Appeals case; that is U.S. v. Smith
20 Grading and Paving, Incorporated. It's a 1985 case,
21 Judge, and I would direct you to page No. 8, where the
22 court found that there was no due process violation --
23 no due process violation occurs as long as the Brady
24 material is disclosed to the Defendant in time for the
25 effective use in trial. In this case, the exculpatory

1 information was put before the jury during
2 cross-examination of the State's first trial witness.
3 So it was turned over during the trial, Your Honor.
4 And even there it was found not to be a violation of
5 Brady and the defendant's due propose rights.

6 I think what we have to look to Judge is whether
7 or not there is any prejudice to Mr. Habersham. We
8 would argue that there has not been. Mr. Bax --
9 Mr. Habersham, through his attorney, Mr. Bax, will have
10 the opportunity to cross-examine the victims in this
11 case to ask them about that photo lineup. And, also,
12 Investigator Erdel will be able to talk to -- to
13 cross-examine Investigator Erdel as to the photo lineup
14 and why he didn't do a supplement and his failure to do
15 so. But -- so because of that there is no prejudice to
16 Mr. Habersham.

17 Mr. Bax has said that he hasn't had enough time to
18 investigate because of this late turnover and, also,
19 that he may have advised his client differently and
20 perhaps he may have gotten a better deal from the State
21 if we had known that this information was missing or
22 was going to be turned up late. Just as to that I can
23 say that Mr. Bax and I have discussed this last week
24 and into this week, and I have made it very clear that
25 there will be no other offer in this case. And we

100

EXAMINATION OF JUJUAN HABERSHAM

1 talked specifically on Monday about the fact that the
2 photo lineup, at that point, was missing, and he was
3 going to be able to really get after Investigator Erdel
4 on the stand about this -- about this flaw in the case.
5 Again I told Mr. Bax that that was not going to change
6 my position.

7 Mr. Habersham, as we have discussed, has rejected
8 an offer months ago. And the State is ready to go to
9 trial and we are not required to make a new offer or
10 offer him anything, for that matter.

11 So, Your Honor, that is what I would say in
12 response to Mr. Bax's motion pursuant to a Brady
13 violation. Thank you, Your Honor.

14 MR. BAX: If I may, Your Honor.

15 THE COURT: Briefly, please.

16 MR. BAX: Thank you, sir.

17 Just in response to the case law and in some of
18 the statements made in the prosecution's argument.
19 First of all, none of the cases that Solicitor has
20 cited, from our looking at it, specifically talk about
21 evidence provided that was specifically exculpatory.
22 For example, in the Whipple case it talks about a
23 number of discovery materials that had been provided
24 the week before trial. Prosecution contended that they
25 were duplicative in nature, but it does not say these

1 are exculpatory materials.

2 Additionally in that case the counsel was given by
3 the court until 4:00 that afternoon to review those
4 materials. And when the Defense counsel came back, the
5 Defense counsel said, I'm ready to go. And so the
6 court basically said, well, Counsel has stated for the
7 record that he's ready to go. And, therefore, the
8 argument that they were not able to go forward has been
9 waived. And that is not the case here.

10 Additionally, in the other two cases, one of which
11 includes SCDC records. SCDC records under no
12 imagination that I can think of are exculpatory. And
13 there's no mention in the case that they were
14 exculpatory. Obviously, perhaps if those records show
15 that he was in prison at the time the crime was
16 committed is exculpatory, but I couldn't see this being
17 a case we would be reading, because that would be
18 either dismissal by the court as a matter of law or not
19 guilty, which is not the case. So I have to assume
20 that they were not exculpatory in nature.

21 And neither were the materials that's discussed in
22 the Smith case, because those were from an engineer and
23 not even necessarily from the State. So there's no
24 discussion of exculpatory here.

25 Here we have exculpatory evidence that was

EXAMINATION OF JUJUAN HABERSHAM

1 specifically left out of discovery by the prosecuting
2 agency, by the arresting agency, investigative agency.
3 And that was on purpose. There's no -- there's no
4 question about that, because it helped the finding of
5 guilty. It didn't help the prosecution of Jujuan
6 Habersham. So it was not produced. It was related to
7 or discussed, period.

8 Finally, as to argument from the solicitor about
9 our negotiations, two things. Number one, obviously
10 this would be something that should have been produced
11 back when discovery was originally provided, because
12 they had it. So that would have been number one, Your
13 Honor.

14 Ian Deysach represented this individual prior to
15 April of 2013, because I was in private practice. And
16 when Mr. Deysach left the public defender's office I
17 took over his caseload, which included Mr. Habersham's
18 case. I've discussed this case thoroughly with
19 Mr. Deysach and he confirms that they never had
20 anything like that. And, obviously, he was in the
21 process of discussing the case with whoever represented
22 the State or was assigned the case at that time.

23 I dealt with for a good period of time in this
24 case Mr. Coppage. And he was the one who had made the
25 offer that was originally made of strong armed robbery

EXAMINATION OF JUJUAN HABERSHAM

1 for a recommendation of ten years. So I don't think
2 Ms. Lempeis can stand here and say that it wouldn't
3 have impacted how that went back then, because she
4 wasn't the assigned solicitor on that case at that
5 time.

6 Additionally, Your Honor, I would like to set the
7 record straight in that when I found out about this on
8 Friday I sent back an e-mail saying, you know, this --
9 at first blush, based on what -- you know, I'm still
10 processing what I was given -- "This looks like a Brady
11 violation. We need to discuss this." And it was
12 already late in the day. There was a social event
13 Friday evening. I said, Let's discuss it. She said,
14 I'm not talking about work tonight. I honored that
15 wish because I understand that we all have a hard time
16 being social without living on discussion of our cases.
17 So I honored that.

18 But what I can say, Your Honor, is that I
19 attempted to discuss this on Friday. And that was --
20 and the reason I bring that up is because that was when
21 we thought that these lineups were destroyed. It
22 wasn't until the next week that we found out that they
23 hadn't. So there wasn't a discussion on Friday. Now,
24 I did ask the Solicitor if this changes anything, I
25 believe on Monday. I don't know when she -- you know,

EXAMINATION OF JUJUAN HABERSHAM

1 I know I was provided the information, this lineup, on
2 Tuesday. But I don't know, you know -- I don't know
3 what the situation was as far as when she was made
4 aware of the fact that they found the lineup itself.

5 But there was no discussion about the potential of
6 a change of position by the State on Friday is what I
7 wanted to clear up.

8 Regardless of that, I think that --

9 THE COURT: Let me ask you this. In this Kyles v.
10 Whitley case, was that not information that was
11 disclosed post-trial?

12 MR. BAX: It was, because it talks about entitled
13 to a new trial.

14 THE COURT: It's exculpatory information --

15 MR. BAX: That's correct.

16 THE COURT: -- provided post-trial?

17 MR. BAX: That's correct.

18 And the reason that I cite it, Your Honor, is
19 because there was an argument in that case that the
20 prosecution was unaware of. And so, you know, they
21 didn't violate Brady v. Maryland because the
22 prosecution, the attorney and maybe a few other
23 attorneys in the office did not know about it.

24 However, what was responded, and I think the important
25 language in there, is that even if the prosecution is

EXAMINATION OF JUJUAN HABERSHAM

1 unaware of it it does not relieve the State of its duty
2 to disclose. Other agencies, such as law enforcement,
3 knowing about it is sufficient to require the duty of
4 disclosure in a timely fashion. And that is why I
5 brought up the Kyles v. Whitley case, for that purpose.

6 And then I think that there's nothing -- there's
7 no discussion in my reading of the case that the issue
8 concerning whether the prosecutor, him or herself, knew
9 about the discovery doesn't relate to whether it's
10 before or after trial that it happens. It has to do
11 with, do you still have the duty to disclose even if
12 the law enforcement agency is the one who knows about
13 it and you don't.

14 THE COURT: Right. They are an arm of the
15 prosecuting agency.

16 MR. BAX: That's correct. Thank you.

17 THE COURT: Anything else?

18 MR. BAX: No, Your Honor. Thank you.

19 MS. LEMPESIS: Just very briefly. When Mr. Bax
20 was talking about one of these cases I handed up the
21 information which is exculpatory. In that Fourth
22 Circuit case, Your Honor, on Page 8 as well, that
23 information that was disclosed in that case was
24 exculpatory information. And a footnote said, "When
25 determining the Constitutional validity of a Brady

EXAMINATION OF JUJUAN HABERSHAM

1 disclosure, the relevant inquiry is solely whether the
2 Defendant was able to effectively use the exculpatory
3 information.

4 And, Your Honor, again we would suggest that
5 Mr. Habersham is going to be able to effectively use
6 this information. Again, he will be able to
7 cross-examine the victims and Investigator Erdel about
8 the photo lineup. He can talk about his opening. I
9 mean, you know, he can bring it up as often as he would
10 like during this trial and effectively use it in the
11 trial, despite the Legislature.

12 THE COURT: All right.

13 (Pause.)

14 THE COURT: All right. In reviewing applicable
15 case law or cases cited and referenced by each counsel,
16 this case is separate and apart or very factually
17 different from that which is cited or referenced by
18 Defense counsel. *Kyles v. Whitley*, certainly the Court
19 understands that the prosecuting agency is an arm of
20 the arresting agency, so to speak, and bears the -- in
21 carrying out the prosecutorial responsibilities. And
22 certainly the Court is fully aware that the prosecution
23 is held to -- held responsible for documentation,
24 evidence, whether it's exculpatory or inculpatory. It
25 is held responsible for what is in the hands of law

EXAMINATION OF JUJUAN HABERSHAM

1 enforcement and has a duty and full responsibility to
2 turn over such information to Defense counsel, which
3 falls under Rule 5 and Brady.

4 In this particular case the information that was
5 turned over to Defense counsel was exculpatory -- was
6 exculpatory -- was turned over to Defense counsel on
7 Friday, December the 5th. It is now Wednesday,
8 December the 10th. And in reviewing, and based upon
9 arguments of counsel, first of all, I do not find that
10 there's any intentional withholding of any exculpatory
11 information by the State.

12 I do not, nor have I heard anything that would
13 give rise to the concern of bad faith on the part of
14 the law enforcement agency; that once such information
15 was realized by Prosecutor, such information was
16 required by immediately -- such information was further
17 conveyed to Defense counsel and there's no withholding
18 of such information after it was learned about by
19 Prosecutor.

20 Looking at State -- United States v. Smith Grading
21 and Paving, the Court states that no due process
22 violation occurs as long as Brady material is disclosed
23 to the Defendant in time for its effective use at
24 trial. This information has been disclosed to Defense
25 Counsel so that it can be effectively used at trial.

EXAMINATION OF JUJUAN HABERSHAM

1 And it is exculpatory, which will be allowed to --
2 which will be allowed by Defense Counsel to address in
3 its cross-examination each and every witness that this
4 may be applicable to.

5 Furthermore, one of the prejudicial implications
6 that Defense Counsel raises in its argument is about
7 the possibility of negotiating a better deal for his
8 client, so to speak. And it is clear that the State
9 has no obligation to negotiate at all. While the
10 Defense counsel may believe that it would have put him
11 in a better position to negotiate, that is, I guess,
12 speculation to some extent, maybe, on his part. But I
13 do not believe, based on what I have heard here today,
14 that there's any bad faith nor is there any prejudice
15 to the Defendant. And I will deny Defendant's motion
16 to dismiss pursuant to such.

17 MR. BAX: In light of Your Honor's ruling I would
18 ask, for the record, to be allowed to call Mr. -- or,
19 excuse me, Investigator Erdel, as Your Honor has found
20 that no bad faith was shown. As I have stated during
21 my argument, I'm more than willing to put him on the
22 stand. If there's a requirement that I need to show
23 it, then I think I need to put that up. I need to try
24 and show it. We argued, obviously, but no one
25 presented any evidence.

EXAMINATION OF JUJUAN HABERSHAM

1 THE COURT: Okay. Come around here, Officer
2 Erdel. Take the stand. You are still under oath.
3 Please, sir.

4 WITNESS: Yes, sir.

5 Thereupon,

6 GEORGE ERDEL

7 was recalled as a witness, having been previously duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BAX:

11 Q Investigator Erdel -- Investigator Erdel, you
12 testified earlier under oath that you had done some
13 supplemental incident report or supplemental incident
14 reports as to what you did in this case; is that correct?

15 A That's correct.

16 Q Okay. Do you recall how many pages those
17 incidental -- or those reports were?

18 A No.

19 Q Do you have your own copies with you here today?

20 A I do have one at the table over there.

21 Q Thank you.

22 MR. BAX: Approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 MR. BAX: I thank you.

25

EXAMINATION OF GEORGE ERDEL

1 BY MR. BAX:

2 Q I'm going to hand you this packet and ask you if
3 you can identify that for us here for the record.

4 A I can. It is a copy of the report that I brought
5 with me today.

6 Q And that packet looks similar to the one that I
7 got in discovery, so I'm going to ask you: Does that
8 include the incident reports by other officers in your
9 department that had contact with this case?

10 A It does contain supplemental reports from other
11 officers, yes.

12 Q Okay. Does it include everything that you
13 reported in this case, every incident report or written
14 report that you made in this case?

15 A This would be the sum total of everything that I
16 wrote in connection with this case, yes.

17 Q Okay. Can you point out to me where in your
18 incident reports that it was -- where you discussed the fact
19 that you had gone to the victims and shown them the lineups
20 that you had prepared?

21 A I failed to document that procedure. I did not
22 make a supplemental report about that.

23 Q So that is nowhere in here; is that correct?

24 A That is correct.

25 Q Okay. Now, Officer Erdel, prior to being sworn in

1 or at some point, did you attend the law enforcement academy
2 that is located in Columbia, South Carolina?

3 A Yes.

4 Q Okay. And -- well, tell me, how long is that
5 course? How long is that program, that education?

6 A At the time I went, it was nine weeks.

7 Q Nine weeks. Okay.

8 A Yes, sir.

9 Q And during that training period, during that
10 education period, you attend classes, correct?

11 A That's correct.

12 Q And more than one; there's a number of classes,
13 correct?

14 A Yes.

15 Q And in any of those classes did they discuss the
16 requirement or the necessity of documenting what you do in
17 an investigation?

18 A Yes.

19 Q And they discuss, you know, what an incident
20 report is; do they not?

21 A Yes.

22 Q And in that instruction in Columbia, they talk
23 about the importance of documenting everything that happens,
24 whether it's good or bad for your investigation?

25 A That's correct.

EXAMINATION OF GEORGE ERDEL

1 Q So you have had that education, correct?

2 A That's correct.

3 Q Okay. And at the time that you were investigating
4 this case, you were a detective or an investigator, correct?

5 A Correct.

6 Q And I believe that your testimony was that you
7 have been with the Beaufort Police Department for -- was it
8 15 years?

9 A Eleven.

10 Q Eleven. Excuse me. I apologize. I don't mean to
11 add any years to you. Eleven years.

12 And that you had been an investigator for approximate
13 five and a half at that point in time?

14 A Correct.

15 Q So at the time this was done you had been an
16 investigator for a year, a little over a year, maybe a year
17 and a half?

18 A Yes.

19 Q And your testimony is that you weren't aware that
20 you needed to report when there was failure to identify?

21 A No. I did not do it. Apparently, I forgot it. I
22 did not -- to my recollection I did not testify that I
23 didn't know that you should document. Obviously, I know
24 that you should document such a thing. But I apparently
25 neglected to do that.

EXAMINATION OF GEORGE ERDEL

1 Q So your testimony is that you forgot to do it.
2 Let me ask you this. Your -- you have heard the audio
3 interview, and we have talked about that in the prior
4 hearing, correct?

5 A Yes.

6 Q Okay. You've testified that you knowingly lied to
7 Mr. Habersham that there was an identification by the
8 alleged victims in this case, correct?

9 A Yes.

10 Q So you consciously chose to lie to him about that,
11 correct?

12 A Yes.

13 Q And you consciously chose to lie to him about that
14 because you wanted to induce him to confess to his
15 involvement with this case?

16 A Yes.

17 Q Okay. So you acknowledge that you knew that it
18 was important enough to lie about to Mr. Habersham that they
19 had ID'd him when they in fact had not?

20 A Can you say that again. I apologize.

21 Q You chose to lie to them about the fact -- to lie
22 to Mr. Habersham about the fact that they had identified
23 him, correct?

24 A Yes.

25 Q You knew at that time that they had not identified

EXAMINATION OF GEORGE ERDEL

1 him, correct?

2 A Yes.

3 Q And that choice was because you knew that if you
4 told him they failed to identify you, that was not going to
5 help you get a confession, was it?

6 A Correct.

7 Q So you acknowledge that you knew the importance of
8 that fact in this case, but yet you forgot to put that in
9 any incident report; is that correct?

10 A That's correct.

11 Q Now, Mr. Erdel -- or Investigator Erdel, this is
12 not the first time this case has been prepared for trial; is
13 it not?

14 A I have no idea.

15 Q Do you recall coming to court in anticipation of
16 trial in June of 2014 for this case?

17 A No, sir.

18 Q Okay. So you do not have any recollection about
19 being up here and trial starting on this case in June of
20 2014?

21 A No, sir.

22 MR. BAX: No further questions, Your Honor.

23 THE COURT: Any cross-examination, Ms. Lempesis?

24 MS. LEMPESIS: Very briefly.

25

EXAMINATION OF GEORGE ERDEL

1 BY MS. LEMPESIS:

2 Q Investigator Erdel, did you intentionally fail to
3 document the photo lineup that you had shown to the victims?

4 A No.

5 Q And if lying to suspects in an interview a common
6 tactic that is used?

7 A Yes.

8 Q Thank you.

9 MR. BAX: No further questions, Your Honor. I
10 have no objection.

11 THE COURT: You may step down.

12 WITNESS: Thank you, Your Honor.

13 MR. BAX: Briefly, Your Honor, and I appreciate
14 the Court's indulgence in allowing me to put that on
15 the record.

16 THE COURT: Well, to protect your client's
17 interest I think you've got to have that proffered
18 testimony to make sure the record is clear on what that
19 testimony would have been, just to the allegation to
20 support your position, so to speak.

21 MR. BAX: Thank you, Your Honor. I agree. That
22 was the purpose. And just briefly, because we have had
23 that testimony, Your Honor, it is clear to me, it's my
24 position that no reasonable person could see this as
25 anything other than bad faith. And I'm sorry because I

EXAMINATION OF GEORGE ERDEL

1 have to work with Officer Erdel, and I hope that we can
2 stay friendly, on terms, because we have to work with
3 each other. But I don't believe that testimony. And
4 the reason that I don't believe that testimony is that
5 it doesn't make any sense whatsoever that Officer Erdel
6 would put in all of the facts that implicate my client,
7 every one, but failed to leave out the one fact that
8 exculpates him that he acknowledges is important
9 because he chooses to lie about it to Mr. Habersham in
10 his quest to have him implicate himself in an
11 interview, but has nothing to explain other than a
12 failure of memory and that it was not intentional.
13 Your Honor, I submit that his testimony about that is
14 not credible. And that is the position of the Defense.
15 And the final thing I would point out, Your Honor,
16 is that the Court -- and I would ask the Court to take
17 judicial notice of this. This case was prepped for
18 trial. June 16th of 2014, the trial was to be held
19 before Judge Mullen. And I was there, prepared to go
20 forward and argue that case in front of Judge Mullen,
21 and it was ready to go. And my remembrance was that
22 Officer Erdel was there. And so to just completely
23 claim, you know, you do not remember that, it also goes
24 to credibility here. That case was continued at that
25 time based on the motion of Defense because my client

1 was not present. And I've discussed that briefly in
2 chambers with Your Honor.

3 And originally there was an attempt by the
4 Solicitor to go forward with the trial without
5 Mr. Habersham present; trial in absence, as Your Honor
6 is familiar. And ultimately Judge Mullen decided --
7 and I cited the Jackson case and Ravenel case, that in
8 the interest of justice it would be better to issue a
9 bench warrant and wait on Mr. Habersham to be placed in
10 custody before having a trial. So it didn't go
11 forward. However, it was ready to go forward. And we
12 actually argued that case for about a half a day. And
13 my remembrance was that the officer was present. So
14 this case has been prepped twice for trial. And here
15 we are in December of 2014, and now the memory suddenly
16 comes back.

17 So that's it, Your Honor. Thank you.

18 THE COURT: Anything further, Ms. Lempesis?

19 MS. LEMPESIS: Your Honor, I would just say that
20 the prior time it was prepped for trial, it was with
21 another Solicitor in our office; it was Ben Coppage in
22 our office who previously had the case. He no longer
23 works with our office. I have the case now. This is
24 the first time I have prepped it. And I would just say
25 that it's common practice for us to have our people on

EXAMINATION OF GEORGE ERDEL

1 standby. So I would ask Your Honor to find
2 Investigator Erdel's testimony today credible. He has
3 no reason to lie about that.

4 And again, just to go to the matter of prejudice,
5 there is no prejudice to Mr. Habersham by the failure
6 to turn over the photo lineup until yesterday. Again,
7 he will be able to cross-examine the victims, the
8 officer, and talk about it as much as he wants, which I
9 imagine that he will during this trial.

10 THE COURT: Certainly, after hearing the officer's
11 testimony, which, as I stated previously, I think it is
12 required in protecting Mr. Habersham's rights. That
13 information does need to be proffered and needs to be
14 in the record. But my rulings do remain the same for
15 the reasons previously stated. Okay?

16 MR. BAX: Thank you very much, Your Honor.

17 THE COURT: Okay. I'm taking a break. I don't
18 know about my court reporter; I'm sure she probably
19 needs a break, too. I understand that.

20 (A break was taken.)

21 THE COURT: All right. The next matter.

22 MR. BAX: Thank you, Your Honor. The final two
23 issues that Your Honor would like -- or that I would
24 like to raise to Your Honor -- and I can kind of
25 combine them if you would like, or not. But first,

EXAMINATION OF GEORGE ERDEL

1 Defense would move to suppress or have the Judge or
2 have the Court rule inadmissible a video in this case.
3 I know that there's been some discussions in chambers
4 about it. But by way of background and by way of
5 establishment, you heard a little bit of this in the
6 interview with my client.

7 There was an indication by communication to law
8 enforcement by Ms. Brown that one of her -- or more
9 than one of her financial transaction cards were being
10 used the next day. And that is what kind of led to
11 this video being found and taken by law enforcement.
12 My understanding is that it is a place called -- it's
13 referred to as a mini-mart. That the owner,
14 proprietor, and/or clerk that was there at the time was
15 a gentleman by the name Divyang Pandya. The last name
16 is spelled P-A-N-D-Y-A. And that the reports from law
17 enforcement are that they made contact with Mr. Pandya
18 because it listed that as a place where a transaction
19 had occurred, and that they spoke with Mr. Pandya. And
20 as a result of that conversation, they obtained
21 surveillance footage from that mini-mart. It is from
22 the inside.

23 And I would actually ask Your Honor to take a look
24 at that video. It is actually only eight and a half
25 minutes in length, so it is not going to be like the 35

JURY INSTRUCTIONS

1 The State is recognized for opening statements.

2 STATE'S OPENING STATEMENT

3 MS. LEMPESIS: Thank you, Your Honor. May it
4 please the Court.

5 Kelsey Brown was just trying to be nice when two
6 men approached her and her friend Jacob in the parking
7 lot of the marina in downtown Beaufort and asked them
8 for directions to Hilton Head. She was just trying to
9 be nice in answering them. On June 19th of 2011 at
10 about 2:45 in the morning, two friends, Kelsey Brown
11 and Jake Parker, were leaving downtown Beaufort. They
12 had been out that night, catching up with other friends
13 from high school.

14 And so at about 2:00 they left and they took a
15 walk around downtown Beaufort, walked around the
16 waterfront park, and then they headed back to their
17 car. Jake was walking Kelsey back to her vehicle,
18 which was parked in the marina parking lot.

19 They almost made it to Kelsey's car when two men
20 approached them. Two white men approached them and
21 asked for directions to Hilton Head. They didn't
22 really think anything of it. Kelsey and Jake both,
23 just trying to be nice, gave them directions. The men
24 again asked for directions, asked them to repeat the
25 directions. They didn't really think anything of it.

STATE'S OPENING STATEMENT

1 Again they gave them directions to Hilton Head.

2 It turns out this wasn't just a simple question by
3 two innocent strangers. As Kelsey and Jake are talking
4 to these two men, approaching from behind is a black
5 male and he has a gun. And that man is Jajuan
6 Habersham, sitting right there. This man has a gun
7 stuffed into his waistband. And Kelsey and Jake turned
8 around and they see him for the first time. They
9 didn't hear him coming up from behind them. They turn
10 around and they see him. And he's armed.

11 He tells them something along the lines of, give
12 me your money. They are both shocked. Kelsey has a
13 wallet and she says, well, I've got this cash, \$5. She
14 gives it to him. She walks over and gives it to him.
15 He then instructs her to give her wallet, her keys, and
16 her cell phone to the other men, to the two white men.
17 All the while Mr. Habersham is holding a gun. He's got
18 a gun and he's holding it and he's telling them to give
19 them all of his money -- of their money. Jake didn't
20 have anything on him, so they didn't get anything from
21 him.

22 After this, Jajuan Habersham, the man with the
23 gun, tells Kelsey and Jake to turn around and to count
24 to a hundred. And then he and the other two men take
25 off running. Kelsey and Jake don't see where they go.

DEFENSE'S OPENING

1 individual's liberty, one individual's assertion of his
2 rights that he shares with all of you, do what the
3 founders wanted you to do and hold the government to
4 their burden and punish them when they cheat to get it.
5 Thank you.

6 THE COURT: Call your first witness, please.

7 MS. LEMPESIS: Your Honor, the State calls Police
8 Officer Ryan Steady.

9 Thereupon,

10 RYAN STEADY

11 was called as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 WITNESS: Ryan Steady. R-Y-A-N. Last name is
14 S-T-E-A-D-Y.

15 THE COURT: Have a seat.

16 WITNESS: Yes, sir.

17 DIRECT EXAMINATION

18 BY MS. LEMPESIS:

19 Q Officer Steady, who do you work for?

20 A Beaufort City Police Department, ma'am.

21 Q How long have you worked for the Beaufort City
22 Police Department?

23 A Four years next month.

24 Q What is your current rank?

25 A Corporal.

EXAMINATION OF RYAN STEADY

1 Q And what do your duties include as a corporal with
2 the Beaufort PD?

3 A My duties, assist my shift supervisor, regular
4 patrol, helping out with the paperwork and getting the
5 day-to-day operations of the police department completed.

6 Q Officer Steady -- Corporal Steady, were you
7 working back in June of 2011?

8 A Yes, ma'am.

9 Q Do you remember what your rank was at that point?

10 A I was a Patrolman II.

11 Q Were you working specifically on June 19th, 2011?

12 A Yes, ma'am.

13 Q Did you respond to a call regarding an armed
14 robbery on Bay Street?

15 A Yes, ma'am.

16 Q Do you remember about what time that call came
17 out?

18 A About 2:35 in the morning. Probably 2:35 to
19 2:40 a.m.

20 Q What was the location that you went to for that --
21 in responding to that armed robbery?

22 A The back area, by Panini's.

23 Q Did you learn -- who did you meet with when you
24 went there?

25 A It was Ms. Kelsey Brown and Mr. Richard Parker.

EXAMINATION OF RYAN STEADY

1 Q And did you identify them and their involvement in
2 this case?

3 A Yes, ma'am. They were reporting that they were
4 victims of an armed robbery.

5 Q Thank you. Where did they -- or where did you
6 determine from talking to them where the robbery actually
7 occurred?

8 A The parking lot, if you're leaving Panini's to the
9 right. The actual marina parking lot. They were at 1006
10 Bay Street.

11 Q Okay. And, Officer Steady, is that in Beaufort?

12 A Yes, ma'am.

13 Q Is that in the County of Beaufort?

14 A Yes, ma'am.

15 Q You said you went to Panini's and met with them,
16 with the victims there behind Panini's. What was their
17 demeanor when you met with them, Kelsey and Jake Parker?

18 A I'm trying to remember. It was a long time ago.
19 Nothing stands out in my mind about anything out of the
20 ordinary. Relatively calm. They were able to have a
21 conversation with me, so they weren't overtly distraught,
22 but obviously upset that something like that would happen to
23 them.

24 Q Did you get any written statements from the
25 victims in this case?

EXAMINATION OF RYAN STEADY

1 A Yes, ma'am.

2 Q From both of them?

3 A Yes, ma'am.

4 Q In responding did you get any sort of description
5 of the suspects that were involved?

6 A Yes, ma'am. They were initially stopped and asked
7 for directions by a white male with curly hair, wearing a
8 collared shirt. While they were talking to them, they were
9 approached from behind by a black male subject they
10 described about five-ten or so, wearing a collared striped
11 shirt.

12 Q Okay. Did you call or did you report this
13 information at all to your other officers?

14 A Yes, ma'am. As soon as I get descriptions of the
15 suspects I put that over the radio so that the other
16 officers coming to that area would have an idea of what to
17 look for.

18 Q Okay. Was there a search of that conducted that
19 night?

20 A Yes, ma'am. The other officers in the area
21 checked around the area, the greater Bay Street area,
22 looking for those persons that I described.

23 Q Was anybody located that evening?

24 A No, ma'am.

25 Q Did you get a description from either one of the

EXAMINATION OF RYAN STEADY

1 victims about what sort of items were taken from them?

2 A The only things taken were ultimately from Ms.
3 Brown, which included the keys to her vehicle, wallet, cell
4 phone.

5 Q Okay. Did you make some sort of inventory of
6 those items?

7 A I notated them. She wrote those down in her
8 statement, as well, right after she told me. And I just
9 notated it in the report.

10 Q Okay. Did you instruct Ms. Brown any further
11 about -- about what to do or about whether or not she should
12 notify law enforcement in the future?

13 A Yes, ma'am. I told her to notify her credit card
14 companies, whatever financial institutions that she's got,
15 that the cards are stolen and to monitor the accounts; and
16 if they have been used or if the banks alerted her that they
17 are attempted to be used, to contact the Beaufort Police
18 Department.

19 Q What did you do after all of this? How did the
20 night end for you?

21 A I stayed on scene with Ms. Brown and Mr. Parker.
22 She, obviously, didn't have keys to her car. She called her
23 mom, and I waited with her until her mom came down and gave
24 her the other keys to her car so she could go home that
25 night.

EXAMINATION OF RYAN STEADY

1 Q Okay. Thank you, Corporal Steady.

2 MS. LEMPESIS: A moment, with the Court's
3 indulgence.

4 BY MS. LEMPESIS:

5 Q Corporal Steady, that's all of the questions that
6 I have for you at this moment. If you could answer any
7 questions that Mr. Bax has.

8 THE COURT: Cross-examination.

9 MR. BAX: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. BAX:

12 Q Corporal Steady, you have testified that as of
13 now, you have been an officer with the Beaufort City Police
14 Department for four years, correct?

15 A Approximately. I'm coming up on four years, yes,
16 sir.

17 Q Coming up on four years?

18 A Yes, sir.

19 Q Now, this incident occurred back in June of 2011;
20 is that correct?

21 A Yes, sir.

22 Q So how long had you been an officer with the
23 Beaufort City Police Department then?

24 A About six months.

25 Q Six months, okay.

EXAMINATION OF RYAN STEADY

1 And had you worked with any other law enforcement
2 agency before that?

3 A That was a prior military policeman. And then I
4 worked for the DOD (phonetic) Police Department with the
5 station here.

6 Q So you were with the military police with the
7 Marines, correct?

8 A Yes, sir.

9 Q All right. Now, the time that you got dispatched,
10 that was in the a.m. hours; is that right?

11 A Yes, sir.

12 Q I think what we've got indicated is approximately
13 2:30 in the morning or 2:35 in the morning; does that sound
14 accurate to you?

15 A That's close, sir, yes.

16 Q Okay. All right. Now, you testified, when you
17 were asked by the prosecution, that you met with the victims
18 and you don't really recall specifics that stand out, but
19 that they were able to talk to you, correct?

20 A Yes, sir.

21 Q Okay. Did you ask them what they had been doing
22 prior to this incident in the parking lot?

23 A I don't recall, sir.

24 Q Okay. And you testified that you met with them
25 at -- was it at Panini's or behind Panini's? Was it in the

EXAMINATION OF RYAN STEADY

1 store? Where was it at?

2 A That general area behind the restaurant or the
3 establishment.

4 Q Okay. Was the establishment still open?

5 A I don't believe so.

6 Q Did you ask them whether either of them -- I mean,
7 because this is 2:30 in the morning. Had either of them
8 been drinking that evening?

9 A I don't recall asking them. And my initial
10 observations, I usually clearly notate it in my reports if I
11 make contact with somebody and they are obviously under the
12 influence of a substance.

13 Q But you don't indicate that you asked them one way
14 or the other; is that correct?

15 A Correct, sir.

16 Q Now, you have also testified that you asked them
17 what had happened. And they described that, well -- I think
18 in your incident report you relay that you spoke to each one
19 of them individually; is that correct?

20 A Yes, sir.

21 Q Okay. So Ms. Brown indicated that she recalls
22 someone with dark, curly hair, a white male with dark, curly
23 hair asking them directions; is that correct?

24 A Yes, sir.

25 Q And Mr. Parker remembered the same thing, one

EXAMINATION OF RYAN STEADY

1 white individual with dark, curly hair asking directions,
2 correct?

3 A Yes, sir.

4 Q Not two, right?

5 A Right.

6 Q And, in fact, they both relayed that two people
7 came up behind them, correct?

8 A I do not recall precisely.

9 Q Okay. Now, in this case, you did an incident
10 report; is that correct?

11 A Yes, sir.

12 Q Okay. And if it indicates in your incident report
13 that in your interview they indicated that, would that be
14 correct or incorrect?

15 A That would be correct.

16 Q Okay. Because you would have done this a lot
17 sooner to that time period almost three and a half years ago
18 than today, correct?

19 A Absolutely, sir.

20 Q Okay. Typically, when do you try -- I know, life
21 being what it is -- typically, when do you try to do an
22 incident report when you have been called to some incident
23 that you have to do a report on?

24 A The very next available opportunity I can. So if
25 there was nothing else going on that night, it's possible I

EXAMINATION OF RYAN STEADY

1 could have went straight from there and come straight to the
2 department and typed that up.

3 Q Okay. All right. The individuals, Mr. Parker and
4 Ms. Brown, they were able to give you these descriptions of
5 the other individuals; this individual with dark, curly
6 hair, a white male, and another white male, correct?

7 A Yes, sir.

8 Q Now, did you get any written statements from them
9 that evening?

10 A From the victims?

11 Q From Ms. Brown and Mr. Parker.

12 A Yes, sir.

13 Q Okay. So those written statements would have been
14 what they remembered right then because it was right there
15 at the incident, correct?

16 A Yes, sir.

17 Q Okay. Did they indicate to you about how long
18 between the time that it happened and the time you arrived,
19 how much time had gone by?

20 A No, sir. Well, not that I can recall. I mean, I
21 know after the incident they were told to count to a hundred
22 and to -- turn around and count to a hundred. And the
23 amount of time it would take to walk from that marina
24 parking lot back to Panini's, it would probably be a couple
25 of minutes.

EXAMINATION OF RYAN STEADY

1 Q All right. Did they indicate that they were
2 waiting at Panini's for you very long?

3 A I don't recall, sir.

4 Q Do you recall where you were when you got the call
5 in Beaufort?

6 A I do not.

7 Q Okay. Do you recall taking -- anything about how
8 long it took you to get over to the marina parking lot or to
9 Panini's?

10 A I do not.

11 Q So it could have been a matter of minutes?

12 A Yes, sir.

13 Q Okay. And you don't recall putting anything in
14 your report indicating that it had been several hours or
15 anything before, that this was pretty immediate to when it
16 happened when you talked to them; is that correct?

17 A Yes, sir.

18 Q Okay.

19 MR. BAX: A moment's indulgence, Your Honor.

20 THE COURT: Yes, sir.

21 MR. BAX: No further questions, Your Honor. Thank
22 you.

23 THE COURT: Any redirect?

24 MS. LEMPESIS: Briefly, Your Honor.

25 REDIRECT EXAMINATION

EXAMINATION OF RYAN STEADY

1 BY MS. LEMPESIS:

2 Q Corporal, do you recall what time you were
3 dispatched out to Bay Street?

4 A Between 2:35 to 2:40.

5 Q If I gave you your report -- it's been so long --
6 would this help you remember?

7 A Yes, ma'am.

8 MS. LEMPESIS: Your Honor, permission to approach
9 the witness?

10 THE WITNESS: Yes, ma'am.

11 BY MS. LEMPESIS:

12 Q I'm just handing you the first page of the report
13 there. Do you see a dispatch time on that?

14 A 0238.

15 Q Okay. And do you have an arrival time, as well?

16 A 2:42, ma'am. So approximately five minutes.

17 Q Approximately five minutes between the dispatch
18 and your arrival time?

19 A Yes, ma'am.

20 Q Thank you.

21 And then, Officer -- officer Steady, Mr. Bax asked
22 about the victims and whether or not it appeared they had been
23 drinking. In your practice as an officer of Beaufort PD, if you
24 usually see someone who is intoxicated do you allow them to drive aw
25 from the scene?

EXAMINATION OF RYAN STEADY

1 A No, ma'am.

2 MR. BAX: Objection, Your Honor. I think that is
3 asking for opinion.

4 THE COURT: Objection overruled.

5 MS. LEMPESIS: Thank you, Your Honor.

6 BY MS. LEMPESIS:

7 Q And so --

8 THE COURT: Hold on a minute.

9 If somebody objects, wait until I rule.

10 Okay. Go ahead.

11 BY MS. LEMPESIS:

12 Q Officer Steady, did either of the victims smell of
13 alcohol?

14 A No, ma'am.

15 MS. LEMPESIS: No further questions.

16 THE COURT: Any recross?

17 MR. BAX: No, Your Honor.

18 THE COURT: Sir, you may step down. Thank you.

19 Call your next witness, please.

20 MS. LEMPESIS: The State calls Richard J. Parker.

21 Thereupon,

22 RICHARD J. PARKER

23 was called as a witness, having been first duly sworn,

24 was examined and testified as follows:

25 THE CLERK: Please state your name and spell.

EXAMINATION OF RICHARD J. PARKER

1 WITNESS: Richard Jacob Parker; R-I-C-H-A-R-D,
2 J-A-C-O-B, P-A-R-K-E-R.

3 THE COURT: You may be seated.

4 DIRECT EXAMINATION

5 BY MS. LEMPESIS:

6 Q Good afternoon, Mr. Parker.

7 A Good afternoon.

8 Q Mr. Parker, where are you from?

9 A Beaufort, South Carolina.

10 Q And where do you live now?

11 A Rock Hill, South Carolina.

12 Q What do you do up in Rock Hill?

13 A I am a software developer.

14 Q How old are you, Mr. Parker?

15 A Twenty-five.

16 Q And were you living in Beaufort in June of 2011?

17 A I was.

18 Q Do you recall what you were doing that -- that --
19 what you were doing in Beaufort that summer?

20 A I was finishing up an online class, trying to get
21 my degree.

22 Q Mr. Parker, do you recall the night of June 19th
23 of 2011?

24 A I do.

25 Q And I want to go back to that night and sort of

EXAMINATION OF RICHARD J. PARKER

1 start from the beginning. What did you do that evening?

2 A That evening I invited Kelsey out along with two
3 or three other of my friends. We met up just to get
4 together and say hey because we were all in the area. We
5 spent the evening just being sociable, having a drink or
6 two. We visited Panini's once. Maybe one or two other
7 places. And after that, we went home.

8 Q You said that you met with your friend Kelsey.
9 How did you know Kelsey?

10 A I have known Kelsey for years. We went to Sunday
11 school, preschool together. And occasionally we met up in
12 high school, middle school. And I have known her through
13 church since then.

14 Q So that night you all had been hanging out in
15 Downtown Beaufort. You said you had a couple of drinks. Do
16 you remember how many drinks you might have had that night?

17 A No more than five.

18 Q And going to the end of the night, about what time
19 did you all leave downtown?

20 A At this point, I couldn't tell you.

21 Q Do you think it was when the restaurants and bars
22 closed?

23 A Most certainly.

24 Q Do you recall what you did after you left the
25 restaurant or bar?

EXAMINATION OF RICHARD J. PARKER

1 A I believe we took a turn around Waterfront Park,
2 we went for a quick walk, and then I walked her back to her
3 car.

4 Q Jake, I'm going to hand you what I have already
5 shown to Mr. Bax.

6 MS. LEMPESIS: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes.

9 BY MS. LEMPESIS:

10 Q Just for demonstrative purposes, I'm going to hand
11 you this. Can you tell me what that is?

12 A It is a map of Downtown Beaufort.

13 Q Okay.

14 MS. LEMPESIS: I'm going to put this up on the
15 screen so that the jurors can see as well.

16 BY MS. LEMPESIS:

17 Q Jake, can you see that?

18 A Yes, I can.

19 Q Can you sort of describe on that map whereabouts
20 Kelsey's car was parked?

21 A Near the bottom left of that parking lot, on the
22 left-hand side.

23 Q Okay. Is that towards the water side?

24 A Yes.

25 Q Okay. I'm going to zoom in on that.

EXAMINATION OF RICHARD J. PARKER

1 Is it this area?

2 A Yes, ma'am.

3 Q Thank you.

4 So do you recall about where in that area of the
5 parking lot Kelsey's car was parked?

6 A Yes, ma'am.

7 Q About where -- whereabouts was it?

8 A The area that you circled was the approximate
9 location.

10 Q Okay. How many cars were left in the parking lot?

11 A Not many.

12 Q Were there that many people out still?

13 A No, ma'am.

14 Q As you were walking to the parking lot, tell me
15 what happened next.

16 A As I was walking her back to her car, we were
17 stopped and asked for directions to Hilton Head. I gave the
18 directions to the best of my ability. I was asked to repeat
19 those. I did. At which point I turned around -- I couldn't
20 tell you why at this point -- and there was a man there with
21 a gun saying something to the effect of, Give us your money.

22 Q I'm going to stop you there. I need you to
23 describe the people who approached you first.

24 A Certainly.

25 Q What were they -- the two men approached you, you

EXAMINATION OF RICHARD J. PARKER

1 said. What did they look like?

2 MR. BAX: Objection, leading.

3 THE COURT: Restate your question. Rephrase your
4 question.

5 BY MS. LEMPESIS:

6 Q Mr. Parker, tell us, the two men that approached
7 you, were they black or white?

8 A I can recall that man that asked for directions
9 was white. And the other man was as well.

10 Q Do you recall what they were wearing?

11 A I recall the man asking for directions had a
12 lighter-colored shirt on.

13 Q And the man that approached you from behind, what
14 did he look like?

15 A He was a black male.

16 Q Do you recall what he was wearing?

17 A Not very well. No, ma'am.

18 Q What again did the man -- let me rephrase.

19 Did you see a gun?

20 A Yes, ma'am.

21 Q Did you -- where was the gun?

22 A As I recall, it was held somewhere near his waist.

23 Q Was he holding it in his hand?

24 A Yes, ma'am.

25 Q Did you have any question in your mind that that

EXAMINATION OF RICHARD J. PARKER

1 was a gun?

2 A No, ma'am.

3 Q Did he ever point it at you?

4 A Not that I can recall.

5 Q What did the man say to you?

6 A He said something to the effect of, Give us money.
7 Give me money.

8 Q What did you do in response to that?

9 A I responded with, I ain't got no cash.

10 Q So did that man or the other two men take anything
11 from you?

12 A No, ma'am.

13 Q Do you recall if they took anything from Kelsey?

14 A As I recall, they took some amount of cash, her
15 keys, her wallet, and her cell phone.

16 Q What happened after that?

17 A We were told to turn around and count to a
18 hundred, which we did. And then we walked back to Panini's,
19 at my suggestion, and we called the police from there.

20 Q Mr. Parker, which of the three men told you to
21 turn around and count to a hundred?

22 A The black male.

23 Q Did the two white men give you any other
24 instructions?

25 A No, ma'am.

EXAMINATION OF RICHARD J. PARKER

1 Q Did either of the two white men have a gun?

2 A Not that I can recall.

3 Q You said that you walked back towards Panini's?

4 A Yes, ma'am.

5 Q What did you do once you got there?

6 A Called the police.

7 Q Do you remember about how long it took the police
8 to respond?

9 A Not very long at all. It couldn't have been more
10 than five or ten minutes.

11 Q Okay. Did you -- did you make any sort of written
12 statement that night to the police?

13 A I can't recall very clearly.

14 Q At what time did you leave? What time did this
15 all end? If you can't remember the time, that is fine, but
16 about how long until you left?

17 A I remember it being very late in the evening,
18 after we talked to the police for something close to 15, 20
19 minutes. After that, I got in my car and left.

20 Q So you drove yourself home?

21 A I did.

22 Q Mr. Parker, were you showed a photo lineup later
23 on after this incident?

24 A Yes, I was.

25 Q Do you recall if you picked anyone out of that

EXAMINATION OF RICHARD J. PARKER

1 photo lineup?

2 A I remember that I picked one or two people out.

3 Q Okay. Do you have -- do you recall if that was
4 out of a photo lineup with African-American men in it or
5 white men in it?

6 A I was shown a photo lineup of both.

7 Q Okay. Did you -- okay. Mr. Parker, did you have
8 any other interactions with the police after that photo
9 lineup?

10 A I believe there was a phone call, something to the
11 effect of, We are still working on your case. And I said,
12 Contact me if you need me.

13 Q And since then, you have left the Beaufort area?

14 A I have. I have moved to Rock Hill.

15 Q When you go back to that night, is there any -- to
16 the two white men and the one black man, is there any
17 question about who had the gun?

18 A No, ma'am, not to me.

19 Q Who had the gun that night?

20 A The black male.

21 Q Mr. Parker, just a couple more things.

22 Do you recall the robbery itself? About how long did
23 it last?

24 A Not very long at all. To my knowledge, it
25 couldn't have been more than five minutes.

1 Q Okay. What was your emotional state during
2 this -- during the robbery and after, as well?

3 A It wasn't very good. I was freaking out. It was
4 very shocking to me that something could happen like that in
5 the area that I had grown up in.

6 Q The area where you were in, Downtown Beaufort, is
7 that -- do you know if that is in Beaufort County?

8 A I do not know.

9 MS. LEMPESIS: No further questions for this
10 witness at this time.

11 THE COURT: Cross-examination.

12 MR. BAX: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BAX:

15 Q Good afternoon, Mr. Parker.

16 A Good afternoon, sir.

17 Q A couple of questions for you.

18 Do you recall when you were speaking with the police
19 that night, whether they asked you to do a written statement? In
20 other words, write down what happened?

21 A I do not recall.

22 MR. BAX: Approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. BAX:

25 Q I'm just going to hand you this and ask you if it

EXAMINATION OF RICHARD J. PARKER

1 refreshes your memory.

2 A Refresh my memory of what, sir?

3 Q Well, does that appear to be a statement that you
4 wrote, Mr. Parker?

5 A Yes, sir.

6 Q Is that your handwriting?

7 A It is.

8 Q And is that your signature at the bottom,
9 Mr. Parker?

10 A Yes, sir, it is.

11 Q And do you recall writing this that evening?

12 A No, sir.

13 Q Okay. Now, you have been present here in the
14 courtroom. If the officer testified he got that from you
15 that night, would he be wrong about that?

16 A I couldn't say, sir.

17 Q So you could have given that statement that
18 evening; you just don't recall?

19 A No, sir. It's been three years at this point, and
20 I just don't recall.

21 Q Well, I think it's important and I want to ask you
22 about it because in the statement that you wrote you
23 indicate that only one white male asked you and Ms. Brown
24 for directions, with curly, dark hair.

25 A Yes, sir.

EXAMINATION OF RICHARD J. PARKER

1 Q And that there was another white/light-skinned
2 male and a black male that formed a triangle around you?

3 A Yes, sir.

4 Q So that sounds different from what you told the
5 prosecutor. You told the prosecutor in response to her
6 questions that two white males asked you directions and that
7 a black male came from behind. That's different from what
8 you have in your statement that you wrote that night. So
9 which one is it?

10 A Sir, all I can recall at this point is that I was
11 asked by -- asked for directions by one person and that
12 there was three people there.

13 Q So as far as the other people's position around
14 you, you don't recall?

15 A At what point, sir?

16 Q Right now, today, do you recall where the other
17 two were?

18 A Yes, sir. They were right in front of us.

19 Q So all three of them were in front of you?

20 A Yes, sir.

21 Q Okay. So if all three of them were in front of
22 you, when did one of them go behind you?

23 A I'm sorry, at what point are you referring? I'm
24 doing my best to answer your question. I'm just not sure
25 what you are asking.

EXAMINATION OF RICHARD J. PARKER

1 Q You testified in your direct that you were asked
2 for directions by one white male, with another white male
3 standing in front of you, and that a black male came up
4 behind you after you were trying to give directions to
5 Hilton Head?

6 A That is what I recall, yes, sir.

7 Q But you've just testified that you don't recall
8 exactly what their positions were. And then you also
9 testified that all three were in front of you. So I'm
10 confused. I need to know what you do or do not recall here
11 today. Remember, you are under oath.

12 A Yes, sir.

13 Q What do you remember today? Were they all three
14 in front of you and one went behind you? Or were two in
15 front of you and one came behind? Or was there one in front
16 of you and the other two came from some other direction?
17 Because we've got all three stories here.

18 A Yes, sir. As I recall, I was asked for directions
19 by a white male with curly hair. And after I repeated the
20 directions we were approached from behind, at which point I
21 turned around and there was three people in front of me.

22 Q Okay. Mr. Parker, you testified earlier that that
23 evening you had gone out with some friends socially,
24 correct?

25 A Yes, sir.

EXAMINATION OF RICHARD J. PARKER

1 Q And you've testified today that you are 25 years
2 old, correct?

3 A Yes, sir.

4 Q So this is about three and a half years ago; you
5 would have been 21 or 22; is that right?

6 A Twenty-two, yes, sir.

7 Q Okay. And that you had had some drinks. Not more
8 than five, you said; is that right?

9 A Yes, sir.

10 Q What kind of drinks?

11 A Mixed drinks.

12 Q Okay. Do you remember what the mixed drinks were?

13 A Something to the effect of whiskey and Coke.

14 Q Okay.

15 A I remember one drink specifically, yes.

16 Q Okay. Do you remember if all of them were whiskey
17 and Cokes?

18 A I don't recall.

19 Q Okay. And, obviously, this was -- as you have
20 testified, this was approximately sometime between 2:00 and
21 2:30 in the evening, correct?

22 A When we were out drinking or when the incident
23 happened?

24 Q When the incident happened.

25 A Yes, sir, about that time.

EXAMINATION OF RICHARD J. PARKER

1 Q Well, let me ask you this since you brought it up.
2 Do you recall when you and Ms. Brown and the other people
3 involved started being social? When did you all go out in
4 the first place?

5 A I believe that we all met up around dusk, sometime
6 at night. I cannot be more specific than that.

7 Q Okay. Around dusk. So sometime around sunset
8 that day?

9 A Or after. Yes, sir.

10 Q Or after?

11 A I remember it being dark, if that helps.

12 Q You also testified that there was some other
13 people. Can you tell us who else was with you?

14 A Yes, sir. It was myself, Kelsey Brown. Anthony,
15 a friend of mine from high school, showed up first. After
16 that a friend of mine, Jake Parker, showed up with his
17 girlfriend Stacey.

18 Q Jake Parker?

19 A Yes, sir.

20 Q A different Jake Parker than you?

21 A A different Jake Parker, yes, sir.

22 Q But these individuals were not with you and
23 Ms. Brown when this incident happened, correct?

24 A That is correct, sir.

25 Q When had they left you?

EXAMINATION OF RICHARD J. PARKER

1 A Approximately 15 minutes before the incident.

2 Q Okay. And they had gone somewhere else; is that
3 correct?

4 A They returned home, to my knowledge.

5 Q Okay. All right. Now, as I have said before, you
6 wrote in your statement that you described one of them as
7 white/light-skinned male. Do you recall why you made that
8 description to law enforcement that evening?

9 A That was the only thing that I could recall about
10 that specific person.

11 Q So is it fair to say, based on your statement, you
12 weren't exactly sure if the other person was actually white?

13 A I couldn't tell you for sure, no, sir.

14 MR. BAX: A moment's indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 MR. BAX: Thank you.

17 Briefly, Your Honor.

18 BY MR. BAX:

19 Q Now, Mr. Parker -- and this is important -- you
20 testified that you were shown later on, at some point later
21 on, some photo lineups; is that correct?

22 A That is correct.

23 Q Okay. Do you recall when you were shown these
24 photo lineups?

25 A Approximately a couple of days after the incident,

EXAMINATION OF RICHARD J. PARKER

1 to my knowledge.

2 Q Where were you at when you saw these photo
3 lineups?

4 A The police department on Boundary Street.

5 Q Okay. So were you contacted by phone?

6 A I believe so.

7 Q Okay. Now, you have testified that you saw a
8 lineup -- or lineups with African-American individuals, but
9 you also saw a lineup or lineups with Caucasian individuals,
10 white people in them; is that right?

11 A Yes, sir.

12 Q Okay. Now, you testified before that you picked a
13 few people out.

14 A Yes, sir.

15 Q Okay. So if you picked some people out, why is
16 there no lineups showing that you identified anyone?

17 A I couldn't --

18 MS. LEMPESIS: Objection, Your Honor.

19 THE COURT: Objection. Go ahead and state your
20 ground.

21 MS. LEMPESIS: Your Honor, this is outside of the
22 witness' knowledge.

23 THE COURT: If he knows the answer, he can answer
24 it. I don't know if he does know the answer to it.

25 Go ahead, Mr. Bax.

EXAMINATION OF RICHARD J. PARKER

1 MR. BAX: I'll repeat the question. Okay.

2 BY MR. BAX:

3 Q If you picked individuals out of those lineups, do
4 you know why it is that we don't have any identifications in
5 this case; no people picked out of a lineup, nobody circled,
6 nobody signed, anything? Do you know why that is?

7 A Do I know why there's no identification because I
8 picked people out of a lineup?

9 Q I'm asking you if --

10 A I'm trying to understand.

11 Q -- you know why you testified that you identified
12 someone but there's no identification in this case.

13 A No, I do not know why.

14 Q You don't know why.

15 When you saw those lineups and you say that you picked
16 people out, do you recall whether or not you wrote anything down,
17 circled anything, signed anything?

18 A I don't recall.

19 Q Okay. Do you recall ever having law enforcement
20 read a warning to you that you've got to make sure that you
21 are sure and you can't pick out people just because of
22 maybe? Do you remember anything like that being read to
23 you?

24 A I don't recall.

25 Q Do you remember signing anything like that?

EXAMINATION OF RICHARD J. PARKER

1 A I don't recall.

2 Q Okay. So are you sure that you picked people out?

3 A Yes, sir.

4 Q But you are not sure whether you signed anything
5 or circled anything or got read a warning?

6 A No, sir.

7 Q You -- okay.

8 MR. BAX: No further questions, Your Honor.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION

11 BY MS. LEMPESIS:

12 Q Mr. Parker, do you remember if you picked anybody
13 out of the -- so you said that you saw two lineups. Do you
14 remember if you picked anybody out of the lineup with the
15 Caucasian people in it, the white people in it?

16 A I remember I did not pick anyone out of the
17 lineup.

18 Q Do you remember picking somebody out of the lineup
19 with African-American men in it?

20 A I remember pointing to two or three people.

21 Q Do you remember circling or signing anything?

22 A No, I don't remember.

23 Q You don't remember? Okay.

24 Okay. So, Mr. Parker, you are not -- as you can reca
25 from looking at the photo lineup, your recollection of that is that

1 you don't -- you were not a hundred percent sure that you saw anybc
2 any of the men that robbed you, in that lineup -- or in either one
3 the lineups?

4 A No, I do not recall seeing in the lineup any of
5 the men who robbed me.

6 Q Okay. Thank you.

7 One other-thing, Mr. Parker. The men that were ther
8 when you originally said that it was two white men and you have
9 testified that the black man was the man with the gun, what sort of
10 skin tone -- what sort of skin tone did the black male have? Was i
11 light-colored skin tone or a darker-colored skin tone?

12 A I remember it being darker than the other two.

13 Q Thank you.

14 THE COURT: Any recross?

15 MR. BAX: Briefly, Your Honor.

16 RECROSS EXAMINATION

17 BY MR. BAX:

18 Q Mr. Parker, you testified that in the lineup with
19 African-Americans in it, that you pointed out two or three
20 of them; is that correct?

21 A Yes.

22 Q So are you testifying that two or three of the
23 people in the lineup were there, or you're not sure which of
24 those two to three black males that you looked at might have
25 been there?

EXAMINATION OF RICHARD J. PARKER

1 A Sir, I was shown the lineup, and I indicated two
2 or three people. And I said those look possibly like what
3 the person that robbed me looked like.

4 Q Possibly like what the person that robbed you
5 looked like?

6 A Yes, sir.

7 MR. BAX: No further questions.

8 THE COURT: Sir, you may step down.
9 Call your next witness, please.

10 Thereupon,

11 KELSEY BROWN
12 was called as a witness, having been first duly sworn,
13 was examined and testified as follows:

14 THE CLERK: Please state your name and spell.

15 THE WITNESS: Kelsey Renee Brown. K-E-L-S-E-Y;
16 R-E-N-E-E; Brown, B-R-O-W-N.

17 THE COURT: Thank you. You may be seated.
18 Yes, ma'am. Go ahead.

19 MS. LEMPESIS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. LEMPESIS:

22 Q Good afternoon, Ms. Brown.

23 Where do you live?

24 A I live in Beaufort.

25 Q And how old are you?

EXAMINATION OF KELSEY BROWN

1 A Twenty-five.

2 Q Where do you work?

3 A I work at the hospital right now.

4 Q And are you -- where are you from?

5 A I was born in Mossy Oaks.

6 Q Okay. So you were born and raised in Beaufort?

7 A Uh-huh. (Indicating affirmatively.)

8 THE COURT: Hold on.

9 Ma'am, when it warrants a yes-or-no answer, please
10 give me a yes --

11 THE WITNESS: Oh, okay.

12 Yes.

13 THE COURT: Hold on.

14 -- give me a yes or no so my court reporter can be
15 clear on the record. Okay? Thank you.

16 I'm sorry. Go ahead.

17 MS. LEMPESIS: Thank you.

18 BY MS. LEMPESIS:

19 Q Were you living and working in Beaufort in June of
20 2011?

21 A Yes, I was.

22 Q And do you remember, Kelsey, the night of
23 June 19th, 2011?

24 A Unfortunately.

25 Q Let's talk about how that evening began. What did

EXAMINATION OF KELSEY BROWN

1 you do that night?

2 A I -- Richard -- Jake was, I believe he was going
3 to be moving soon, and we had just run into each other and
4 wanted to meet up with some high school friends, just to
5 catch up on how everything was going in our lives. And so
6 we decided to meet up downtown that night and -- which we
7 did. I -- we went to -- I believe some people had dinner.
8 And we -- we were right on Bay Street.

9 Q Do you remember about what time you met up with
10 your friends and went out?

11 A I don't recall.

12 Q Okay. Was it dark out?

13 A Yes.

14 Q And so you met up and hung out with your friends.
15 Do you remember about how long you stayed downtown that
16 night?

17 A It was a few hours. We had a lot of catching up
18 to do.

19 Q And do you remember what time you left Downtown
20 Beaufort?

21 A We were there until the establishment we were in
22 closed. And then we did take a walk. And then we ended up
23 walking back to my car.

24 Q Okay. Do you remember about how long you were out
25 walking?

EXAMINATION OF KELSEY BROWN

1 A It wasn't more than 15 minutes, 20 minutes.

2 Q Okay. And so you said that you went back to your
3 car. Who was with you, again?

4 A Jake. He was walking me back.

5 Q Was there anybody else with you?

6 A No. It was just us. Everyone else had left, so
7 it was just us.

8 Q Okay. And at that time of night, was the -- where
9 was your car parked?

10 A It was in the marina parking lot, by the day dock.

11 Q Okay. And do you remember if there were any
12 people around or a lot of cars parked in the parking lot?

13 A We didn't notice anybody around while we were
14 walking.

15 Q Okay. Kelsey, then tell me about -- tell me about
16 what happened next. Where were you in the parking lot?

17 A We had been using the sidewalk that follows the
18 marina, and we turned towards my car. It wasn't on the
19 front row; it was on, maybe, the second row. And somebody
20 approached us, asking for directions -- a white male -- to
21 Hilton Head -- asked me and we said. And so we -- I'm used
22 to being very friendly, so we gave directions.

23 Q Was there -- how many men approached you and asked
24 for directions?

25 A There -- I recall two white males. One did the

EXAMINATION OF KELSEY BROWN

1 talking and, as I recall, one asked for directions. And
2 that is -- you know, that is all that we saw in the
3 immediate -- immediately. So I -- I don't know why we
4 turned around, if there was a noise or something, I'm not
5 sure. But we ended up turning around and the black male was
6 there commanding us to -- well, he commanded -- I had a
7 clutch, so it was visible. So he said, you know, Give me
8 your money, or something like that.

9 Q Did -- did that man have a gun?

10 A Yes. It was in his waistband, and he had his hand
11 on it. It was in his pants.

12 Q Okay. And could you clearly see it?

13 A Yes.

14 Q Was there any question in your mind that it was a
15 gun?

16 A No, none.

17 Q Do you recall what he said again?

18 A It was -- at first he asked for money. And I
19 said, you know, I only have \$5. You can have it. I don't
20 care. And then I walked up to him with it. And I guess he
21 didn't like me approaching him, so he asked me to go get my
22 wallet. And he was kind of directing the whole thing. And
23 he said, I need you to give your wallet, your keys, and your
24 phone to the white guys. So I turned around because they
25 were kind of, you know, like he said, surrounding us. So I

EXAMINATION OF KELSEY BROWN

1 turned around and gave my personal effects to them.

2 Q About how long do you think this whole thing
3 lasted?

4 A It was very quick. It was.

5 Q What was in your wallet that you gave to the other
6 guys?

7 A It had lots of pockets and they were all full.
8 There was an ID, my driver's license. I know my debit card
9 was in there and I had a Discover credit card, but it had
10 just had fraud on it. It was brand-new; it had never been
11 activated. And then there was all kinds of, you know, BI-LO
12 cards and such.

13 Q Kelsey, going back to the man with the gun, you
14 said you walked over to him and actually handed him your
15 money?

16 A Uh-huh. (Indicating affirmatively.)

17 Q Did he have any sort of, like, mask on his face or
18 anything concealing his face?

19 A No.

20 Q Do you remember what sort of clothing he was
21 wearing?

22 A I don't know.

23 Q What happened after he instructed you to give your
24 other items to the other guys? What happened next?

25 A That is when they asked us to count and walk away

EXAMINATION OF KELSEY BROWN

1 from them. And so they disappeared from our view and we
 2 didn't look back to see. I immediately started crying
 3 because it was, obviously, a traumatic experience. And up
 4 until that point I was mainly in shock and terrified. So it
 5 all -- when they left it all kind of rushed to me, leaving
 6 me freaked out a little bit.

7 Q What happened after you walked away? What did you
 8 all do next?

9 A Once they were gone. We walked towards, you know,
 10 where we could find some help. So we walked over and sat on
 11 a bench -- or the brick wall behind Panini's. And Jake
 12 still had his phone, so we were able to use it to call
 13 police.

14 Q Do you remember about how long it took before the
 15 police responded?

16 A They were very -- they were fairly quick. I'm not
 17 sure exactly.

18 Q When the police arrived, did you make any
 19 statements to them? Did you give a written statement?

20 A Yes.

21 Q And do you remember any other interactions the
 22 police that night, anything else that happened with the
 23 police?

24 A I just remember them, you know, asking all of the
 25 specifics that we could remember, and then writing the

EXAMINATION OF KELSEY BROWN

1 statements. And like he said, we got -- they did it
2 individually. So there were more than one.

3 Q More than one officer there?

4 A (Nods in the affirmative).

5 Q Did -- how did you get home that night?

6 A I called my mom to come pick me up.

7 Q Okay.

8 A I know she had a spare key to my car, and I -- I
9 believe I drove home with her because I was still in shock.

10 Q Okay. All right. Kelsey, do you remember, did
11 the officers give you any instructions about what to do with
12 your credit cards that were taken?

13 A I don't remember exactly what he said. I know
14 that I went ahead and closed my bank card.

15 Q Okay. Did you -- so did you cancel -- you
16 canceled the credit card?

17 A I canceled my bank card. I didn't cancel my
18 Discover card because it hadn't been activated yet.

19 Q Okay. After that night, did you follow up with
20 the police at all?

21 A Yes. I was called down to the police station to
22 do the lineup. And then I think I got a couple of phone
23 calls from the detective.

24 Q Okay. Did you follow up on your credit card
25 information at all?

EXAMINATION OF KELSEY BROWN

1 A The next day my credit card was used. It had been
2 activated, which my Social Security card was in my wallet,
3 so -- which made it possible to activate my card. So I did
4 end up calling the bank and canceling and reporting the
5 fraud, and also telling the detective that my card had been
6 used and where.

7 Q Okay. So you reported that information to the
8 police?

9 A Uh-huh. (Indicating affirmatively.)

10 Q Okay.

11 MS. LEMPESIS: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 BY MS. LEMPESIS:

15 Q Ms. Brown, I'm going to hand you what I have
16 marked as State's Exhibit 3. Do you recognize that or can
17 you tell us what that is?

18 A It's a receipt at the mini-mart grocery in
19 Hardeeville. It's for \$91.76.

20 Q Okay. And what is -- can you see from that
21 receipt whose name is on the bottom?

22 A It is my name, Kelsey R. Brown.

23 Q Okay. Kelsey, is that your signature on the
24 receipt?

25 A It is not.

EXAMINATION OF KELSEY BROWN

1 Q Did you make that purchase?

2 A No. I don't know if I have been to Hardeeville.

3 Q You already mentioned this, but let's go to -- you
4 said that you were shown a photo lineup by the police. Tell
5 us about that. Do you remember when it was that you were
6 shown the photo lineup?

7 A It was shortly after I had reported my credit card
8 stolen. It was a few days within that.

9 Q Okay. Kelsey, do you remember if you picked
10 anyone out of that photo lineup?

11 A I wasn't able to.

12 Q You weren't able to pick anyone out?

13 A Exactly.

14 Q Okay. Were you shown one or two photo lineups?

15 A I only recall one, but I'm not sure.

16 Q Do you recall if it had African-American men in it
17 or white men in it?

18 A I recall a mix, but I'm not sure.

19 Q Okay. But you do recall not picking anyone?

20 A I wasn't able to.

21 Q Okay.

22 MS. LEMPESIS: A moment of the Court's indulgence?

23 THE COURT: Yes, ma'am.

24 (Pause.)

25

EXAMINATION OF KELSEY BROWN

1 BY MS. LEMPESIS:

2 Q Kelsey, just one last thing. Do you have any
3 doubt in your mind about who had the gun that night?'

4 A No doubt.

5 Q What did that man look like?

6 A It was a black male. I'm not sure.

7 Q Okay. Thank you.

8 MS. LEMPESIS: No further questions.

9 THE COURT: Cross-examination.

10 MR. BAX: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. BAX:

13 Q Good afternoon, Ms. Brown.

14 A Afternoon.

15 Q All right. I want to ask you a few questions
16 about what you have testified to here today, as well as what
17 you have told the police in this case.

18 You have testified that you were out with some friend
19 people you have known in the community, high school and whatever the
20 evening before this happened, correct?

21 A Yes.

22 Q And do you recall when you went out, what time it
23 was?

24 A It was the evening. I don't know what time
25 specific.

EXAMINATION OF KELSEY BROWN

1 Q Was the sun down? Was the sun up?

2 A The sun, I believe it was down.

3 Q Okay. Anything other than that you can tell us
4 about when you went out initially?

5 A I mean, like I said, I believe some people were
6 having dinner, so it was dinnertime.

7 Q All right. And you have testified, also, that you
8 stayed out until the establishment closed. Do you know what
9 time that was?

10 A I believe it's 2:00 when they close.

11 Q 2:00 a.m.?

12 A Uh-huh. (Indicating affirmatively.)

13 THE COURT: Is that a yes?

14 THE WITNESS: Yes. I'm sorry.

15 BY MR. BAX:

16 Q Now, when you were out, did you have dinner?

17 A I don't recall.

18 Q Okay. Did you have anything to drink?

19 A Yes.

20 Q Okay. Do you recall what it was that you had to
21 drink?

22 A I don't.

23 Q Do you recall -- were they alcoholic beverages?

24 A Yes.

25 Q Do you recall how many, roughly? Any recollection

EXAMINATION OF KELSEY BROWN

1 of that?

2 A I'm not sure. I wouldn't like to speculate. I'm
3 not sure.

4 Q Okay. And were you at just one establishment or
5 did you and your friends go to any others? Did you stay at
6 one place or move around?

7 A I remember one specifically. I'm not sure where
8 we moved. It's been so long now. I don't know.

9 Q Okay. And you testified -- and I want to ask you
10 about this -- that you and Mr. Parker were going back to
11 your car, and when you stepped into the parking lot to go
12 across to your car is when you were approached by a white
13 male who was asking you directions; is that right?

14 A Yes.

15 Q Okay. Then you testified that there were two
16 males. So where was the other white male when the first one
17 was asking directions?

18 A I don't recall exactly at the beginning what the
19 placement of everybody was. I know for a fact there were
20 two white males and a black male surrounding us by the end.
21 So I'm not sure exactly what the placement was at the
22 beginning.

23 Q So you remember specifically where everybody was
24 at the end, but you don't remember how they got there; is
25 that correct?

EXAMINATION OF KELSEY BROWN

1 A Yes.

2 Q Okay. Now, you have testified that it was the
3 black male that had the gun, right?

4 A Yes.

5 Q And that it was something in his waistband, but
6 you are sure that it was a gun; is that correct?

7 A Absolutely.

8 Q But your testimony is it never got pulled out of
9 the waistband; is that right?

10 A Yes.

11 Q And you have also testified that this individual
12 had his hand on this, quote/unquote, gun; is that right?

13 A Just the gun, yes.

14 Q Well, you are alleging it's a gun, correct?

15 A Yes.

16 Q Okay. Were you ever shown a gun in this case?
17 Did law enforcement ever show you a gun and say, was this
18 the gun you saw?

19 A No.

20 Q Okay. But despite the fact that it was in this
21 individual's waistband and their hand was on it, you are
22 sure it was a gun?

23 A Yes.

24 Q What color was the gun?

25 A Black. I'm really -- I'm not sure exactly. I

EXAMINATION OF KELSEY BROWN

1 don't really know.

2 Q Well, is it black or you're not sure?

3 A I'm not sure.

4 Q Now, you testified, when you were being asked
5 questions by Ms. Solicitor, that you approached the black
6 male to give him \$5 that you had, \$5 cash; is that correct?

7 A Yes.

8 Q But that he directed you to give it to someone
9 else, to the other people; is that right?

10 A He directed me to give the rest of the things to
11 the other people.

12 Q So he did take the \$5?

13 A He took -- yes, he took the \$5, which was -- I
14 can't remember exactly if it was in my wallet or if I had
15 taken it out and gave it directly to him and given my wallet
16 to the white males. But I did give him something, either
17 the \$5 or my wallet.

18 Q But you've testified that you gave the wallet to
19 the white guys?

20 A That's what I'm saying, I think I took the \$5 out
21 and gave it to him. I gave him either the \$5 or my whole
22 wallet with the \$5 in it.

23 Q Which one was it, Ms. Brown?

24 A I can't remember exactly.

25 Q Okay. Now, you have testified that you wrote out

1 a statement that evening, correct?

2 A Yes.

3 Q Okay. And, obviously, that was right after it
4 happened, correct?

5 A Yes.

6 Q Okay. And today it's been roughly three-plus
7 years since that happened, correct?

8 A Yes.

9 Q Okay. And you have testified several times that
10 you are having a hard time recalling details because of that
11 time that's elapsed since it happened; is that right?

12 A Yes.

13 Q But on that night your memory would have been
14 better than it is today, right?

15 A Yes.

16 Q So why is it in your statement you state that you
17 gave your wallet, cell phone, and keys to the black male
18 that night, but here today under sworn testimony you are
19 saying that you gave all of those to the white males? Which
20 is it?

21 A I walked up to him with them, and he told me to
22 turn around and give it to the white males.

23 MR. BAX: May I approach, Your Honor?

24 THE COURT: Yes.

25 MR. BAX: Thank you very much.

EXAMINATION OF KELSEY BROWN

1 BY MR. BAX:

2 Q Ms. Brown, does that piece of paper recollect --
3 refresh your recollection as to your statement?

4 A I -- do you want me to read it?

5 Q No.

6 Does that look like your statement?

7 A It is my statement, yes.

8 Q So the handwriting on there is yours; is that
9 correct?

10 A Yes.

11 Q And the signature at the bottom is yours; is that
12 correct?

13 A Yes.

14 Q And if I can direct you --

15 Let me see that for a second.

16 Thank you, Ms. Brown.

17 -- to the fifth line from the bottom. The sentence
18 starts "I gave him." If you would look at that. Does that say, "I
19 gave him all three," in reference to keys, wallet, and cell phone?

20 A Yes, it says, "I gave him all three, and walked
21 with Jake towards the docks."

22 Q So your statement indicates that you gave the
23 black male all three of these items; is that correct?

24 A It also states --

25 Q I'm asking you, is that correct? Does it say that

EXAMINATION OF KELSEY BROWN

1 you gave all three to the black male?

2 A Yes.

3 Q Okay. Thank you. Can I have that back?

4 A It also states that I gave it to the white males,
5 too. So --

6 Q Oh, it states that you gave it to the white males,
7 too?

8 A Yes.

9 Q So in your written statement you state that you
10 gave it to the black male? You wrote it, right?

11 A Because he was directing. It was him --

12 THE COURT: Ma'am, let him finish his question.

13 And you can answer it and explain it if you need to.

14 Okay?

15 THE WITNESS: Okay. Thank you.

16 THE COURT: Go ahead, Mr. Bax.

17 MR. BAX: Thank you very much, Your Honor.

18 BY MR. BAX:

19 Q This is a statement that you wrote down, correct?
20 This is not statements you were making out loud, correct?

21 A No, I wrote it down.

22 Q So you were having to physically take a pen or a
23 pencil and write this out, correct?

24 A Yes.

25 Q Okay. So in your statement, you write that you

EXAMINATION OF KELSEY BROWN

1 gave all three to the black male --

2 A Uh-huh.

3 Q -- and then later say that you gave your things to
4 a white male. You say, "We just handed my things to a white
5 male"?

6 A And --

7 Q Is that correct?

8 A Yes.

9 Q Okay. Which one was it?

10 A I gave my things to the black male and the white
11 male.

12 Q Okay. Now, you have testified that you have given
13 all of the things to the black male, you have given one
14 thing to the black male or -- we are not really sure right
15 now, but you obviously got close enough to hand something to
16 the black male; is that correct?

17 A Yes.

18 Q Okay. And you, obviously -- you also testified
19 and put in your statement you got close enough to hand
20 things to the white males; is that correct?

21 A Yes.

22 Q But you were shown lineups with both
23 African-Americans and white people in -- white males in the
24 lineups, correct?

25 A Yes.

EXAMINATION OF KELSEY BROWN

1 Q And you were not able to identify anybody?

2 A Correct.

3 Q Now, obviously, you've got to get close enough to
4 these individuals to hand them something, correct?

5 A Yes.

6 Q So isn't it true that you would have had at least
7 gotten within arms' length, which would have only been a few
8 feet; is that correct?

9 A Yes.

10 MR. BAX: A moment's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 (Pause.)

13 MR. BAX: No further questions, Your Honor. Thank
14 you.

15 THE COURT: Any redirect?

16 MS. LEMPESIS: Just briefly, Your Honor.

17 Your Honor, may I approach the witness?

18 THE COURT: Yes, ma'am.

19 REDIRECT EXAMINATION

20 BY MS. LEMPESIS:

21 Q Ms. Brown, I'm going to hand you what Mr. Bax
22 showed you as well, a copy of your statement. Start at the
23 point where he asked you to read, and read out the rest of
24 that statement, Ms. Brown.

25 A I said -- I wrote, "I gave him all three and

EXAMINATION OF KELSEY BROWN

1 walked with Jake to the docks. We did not protest; we just
2 handed my things to a white male and the black male and
3 walked away without looking back. We immediately called the
4 police."

5 Q Thank you, Ms. Brown.

6 A Thank you.

7 Q How many people were there? How many people?

8 A There were three males.

9 Q Okay. And out of those three males, who had the
10 gun?

11 A The black male.

12 Q Any question in your mind that it was a gun?

13 A No.

14 Q Who was in charge?

15 A The black male.

16 MS. LEMPESIS: Nothing further. Thank you.

17 MR. BAX: Briefly, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. BAX:

20 Q Ms. Brown, you just testified that there were
21 three males present, correct?

22 A Correct.

23 Q Isn't it true that there were four males present?

24 A Jake was present.

25 Q Right. And what is Jake; is he black or white?

EXAMINATION OF KELSEY BROWN

1 A He is white.

2 Q Okay. But he wasn't one of the ones involved; is
3 that correct?

4 A No. He was walking me to my car.

5 Q Okay. So these two white males that you have
6 described were clearly involved with this crime; is that
7 correct?

8 A Yes.

9 Q Do you have any doubt about that in your mind?

10 A None.

11 Q Okay. You have also testified that the black male
12 was in charge?

13 A Yes.

14 Q And you know that because you say he directed them
15 to do things?

16 A Uh-huh. (Indicating affirmatively.)

17 Q Or is it because he directed you and Mr. Parker to
18 do things?

19 A He directed me -- and he directed me to give them
20 things. And he was the one talking.

21 Q Okay. Well, you testified that he told you to
22 give that to the white guys; was that his exact words?

23 A I don't recall exactly, but I think he said them.
24 I'm not sure.

25 Q So how did -- do you recall specifically how he

EXAMINATION OF KELSEY BROWN

1 referred to the other individuals that were there?

2 A I don't recall exactly.

3 Q You don't recall if names were used?

4 A I don't -- I don't know.

5 Q And you are sure that the other two individuals
6 were white; is that correct?

7 A Yes.

8 Q So there's nothing that you saw that would
9 indicate one of the other individuals was possibly a
10 light-skinned black male?

11 A It was very dark. I mean, there were two white
12 guys and a black guy. And that is what I remember.

13 Q But your testimony is that you got close enough to
14 all three of these individuals to hand them items that are
15 yours?

16 A Yes.

17 MR. BAX: No further questions, Your Honor.

18 THE COURT: Ma'am, you may step down. Thank you.

19 All right. Ladies and gentlemen, I'm going to
20 step to the jury room for just a minute. We are going
21 to take a break. While you all are back there, if you
22 would do me a favor, please. We have Ms. Michelle
23 Chives --

24 Did I pronounce that correctly?

25 JUROR: Yes.

EXAMINATION OF KELSEY BROWN

1 THE COURT: Okay. And Ms. Nahkia Blackshear.

2 All right. You ladies are the only ones that
3 really have -- you can sit in any of those six seats on
4 that back row that you so desire. What I'll ask you
5 all to do is go back to the jury room and select a
6 foreperson for this jury. Okay? Please write that
7 down on a piece of paper.

8 Bailiff, make sure that they have paper and a
9 pencil back there, or a pen.

10 Write that down, provide it to the bailiff. And
11 when you all come back out, sit where this lady is,
12 closest to me. And that will be the foreperson's
13 assigned seat throughout the remainder of the trial.

14 Please step to the jury room and do not -- do not
15 discuss the case at all. And we will get you back out
16 here as quickly as possible.

17 You all can go. I'm sorry. And you all enter and
18 exit with the jury. Okay? You just sit back there
19 during the trial.

20 (The jury exits the courtroom.)

21 THE BAILIFF: The jury is cleared, Your Honor.

22 THE COURT: Thank you. We will stand down.

23 (Brief recess.)

24

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CERTIFICATE PAGE

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of March, 2015.

MONA L. MANLEY
Court Reporter
(850) 893-6662
mmanley@sccourts.org

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

Case No.: 2011GS0701398

State of South Carolina

Plaintiff(s),

vs.

Transcript of Record

Jajuan Habersham,

Defendant(s).

VOLUME 3 of 5

December 8, 2014

Beaufort, South Carolina

BEFORE:

The Honorable D. Craig Brown

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INDEX

WITNESSES:

Page:

GEORGE ERDEL

Direct Examination By Ms. Lempsis	225
Cross Examination By Mr. Bax	244

INDEX AS TO EXHIBITS

State's Exhibit No:

description:		marked:	received:
2 video	231	231	
3 receipt	233	233	
4 Miranda rights	239	239	
1 CD	243	243	

Court's Exhibit No.:

5 foreperson's name	225	225
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1 APPEARANCES

2
3 STATE'S ATTORNEY:

4 Office of the Solicitor
5 Mary Jordan Lempesis, Esquire
6 Julie Kate Keeney, Esquire
7 PO Box 1880
8 Bluffton, SC 29910

9
10 DEFENDANT'S ATTORNEY:

11 Office of the Public Defender
12 Arie Bax, Esquire
13 Jessica Saxon, Esquire
14 Beaufort, SC 29901

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PROCEEDINGS

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THE COURT: Thank you. Be seated, please.

All right, is the State ready to proceed?

MS. LEMPSIS: We are, Your Honor.

THE COURT: Just for scheduling purposes and me kind of figuring out where we are going this afternoon, it's 3:30. How many -- who is your next witness to go?

MS. LEMPSIS: Investigator Erdel. That is our last witness, Your Honor.

THE COURT: Okay. What I would propose doing, and I don't want to hem you up, so to speak, on what you want to do this afternoon, Mr. Bax, but what I would propose possibly doing is once the State rests I can send the jury to the jury room pending advising your client as to what his rights are as far as his right to testify, to put up a defense, and I'll give him the overnight break to consider that and we will resume in the morning. And depending upon what his response is we will go from there. Fair enough?

MR. BAX: Fair enough, Your Honor, no objection.

THE COURT: Anything before I bring the jury out, Ms. Lempsis?

MS. LEMPSIS: No, Your Honor.

THE COURT: Mr. Bax?

MR. BAX: No, Your Honor.

1 THE COURT: All right. Bring me the jury.

2 THE BAILIFF: Yes, Your Honor.

3 The jury is entering the courtroom, Your Honor.

4 THE COURT: Please be seated.

5 Ms. Bigley, is that your name?

6 FOREPERSON: That is correct.

7 THE COURT: You are our foreperson, forelady, and
8 that will be your seat throughout the remainder of this
9 trial.

10 That will be your seat.

11 Is the State ready to proceed?

12 *(Whereupon, Court's Exhibit No(s). 5 marked for*
13 *identification and received in evidence.)*

14 MS. LEMPSIS: We are, Your Honor.

15 THE COURT: Call your next witness, please.

16 MS. LEMPSIS: The State calls Investigator George
17 Erdel.

18 Thereupon,

19 GEORGE ERDEL

20 was called as a witness, having been first duly sworn,
21 was examined and testified as follows:

22 WITNESS: George Erdel. G-E-O-R-G-E E-R-D-E-L.

23 DIRECT EXAMINATION \

24 BY MS. LEMPSIS:

25 Q Thank you.

1 Investigator Erdel, who do you work for?

2 A Beaufort Police Department.

3 Q How long have you worked for the Beaufort Police

4 Department?

5 A Approximately 11 years.

6 Q What is your current position at Beaufort Police

7 Department?

8 A I'm an investigator.

9 Q What do your duties as an investigator include?

10 A I investigate all manner of crimes from

11 misdemeanors up to felonies, respond to patrol officers in

12 processing crime scenes, general investigative duties.

13 Q How long have you been an investigator with

14 Beaufort?

15 A At this point, about five, five and a half years.

16 Q And Investigator Erdel, were you working back in

17 June of 2011?

18 A I was.

19 Q And were you an investigator at that time?

20 A Correct.

21 Q And were you working specifically on June 19th,

22 2011?

23 A I was the on call investigator for that time

24 period.

25 Q Okay. What does that mean?

221

1 A That means if I'm at home, off duty, and something
2 happens of a nature that's, for example, an armed robbery or
3 something like that, they will call me and let me know if
4 something is going on. So, if it occurs during my call
5 period then I will be assigned to that case.

6 Q Were you notified of any such event on June 28th,
7 2011?

8 A Yes.

9 Q What were you notified of?

10 A I was notified of an armed robbery that occurred
11 down at the marina parking lot off of Bay Street.

12 Q Is that in Beaufort?

13 A It is in the city limits of Beaufort in Beaufort
14 County.

15 Q Thank you. Did you respond to the incident scene
16 that night?

17 A I didn't.

18 Q Do you remember why you didn't?

19 A My best recollection I have at this time is I was
20 told that there was nothing physically to process, so there
21 was nothing left behind by the suspects that could be
22 processed for evidence at that time.

23 Q Okay. So, what was your first real work on the
24 case after that evening?

25 A If I may refer to my report.

1 Q Please.

2 A I had a conversation with Kelsey Brown, who was
3 the female victim, on the telephone. And according to my
4 report that would have been the next day, on the 20th. She
5 had told me there were some transactions on her Bank of
6 America and Discover card, attempted transactions and a
7 transaction.

8 Q After you got that phone call, did you follow up
9 on those attempted transactions?

10 A Yes.

11 Q In following up, did that lead you to anywhere in
12 particular?

13 A I developed Jajuan Habersham as a suspect in the
14 robbery, as one of the suspects.

15 Q Okay. Where did you learn from Ms. Kelsey Brown
16 any particular place where her credit card had been used?

17 A There was a place called The Mini Mart in
18 Hardeeville, South Carolina, that there was a purchase made
19 with her Discover card, 91 dollars and 76 cents.

20 Q Okay. Did you go to that Mini Mart in
21 Hardeeville?

22 A Yes.

23 Q Did you meet with anyone there at The Mini Mart?

24 A I met with the owner of The Mini Mart.

25 Q Do you recall his name?

1 A I pronounce it Divyang Pandya. That's the best
2 way I can say it.

3 Q When you met with Mr. Pandya or Pandya, where did
4 you meet with him?

5 A At the actual store itself.

6 Q Do you recall what day?

7 A I need to go to my report, if you don't mind. I
8 believe it was the 21st.

9 Yes, sorry, it was the 21st.

10 Q Okay. So, you met with Mr. Pandya on June 21st.
11 What did you do when you went to that mini mart store and
12 met with him?

13 A I obtained video footage of the person using the
14 victim's card, and I also obtained a receipt for the
15 transaction involving the victim's card.

16 Q Okay. Investigator Erdel, I'm going to ask you
17 about that video footage. Where did you -- where was the
18 video equipment set up in the store?

19 A It was set up in the back of the store. There was
20 like a bedroom, like he was living there. So, there was a
21 bed and bedroom effects, and then in the corner there was
22 video equipment with a monitor and everything and all of the
23 equipment.

24 Q Okay. And did you review that footage showing the
25 transactions with Mr. Pandya, the owner?

1 A Yes. He had to access it for me. It was his
2 system.

3 Q Okay. Did he -- how did he access it?

4 A To my recollection, he had put in a numeric pass
5 code, or alpha-numeric pass code. Put a password in
6 basically to get to it.

7 Q Did you watch that entire video recording with
8 Mr. Pandya?

9 A Yes.

10 Q And was that video time or date stamped?

11 A It had a time and date stamp.

12 Q Okay. And after you watched Mr. Pandya pull up
13 the video and enter the pass code, and after you watched the
14 entire video with Mr. Pandya, did you get a copy of that
15 video?

16 A He gave me a copy, yes.

17 Q Okay. And what did you do with that copy once you
18 received it from Mr. Pandya?

19 A Upon my return to the police department I placed
20 it into evidence.

21 Q Okay.

22 MS. LEMPSIS: Permission to approach the witness,
23 Your Honor?

24 THE COURT: Yes.

25

1 BY MS. LEMPSIS:

2 Q I'll hand you what's been marked previously as
3 State's Exhibit 2. Do you recognize that?

4 A Yes.

5 Q What is it?

6 A It is a DVD plus R containing the footage from the
7 store.

8 Q How are you able to recognize that disc?

9 A I recognize my writing and the title that's on the
10 disc, and I also recognize my initials that I placed there
11 upon reviewing.

12 Q Did you initial it upon my request?

13 A Yes.

14 Q Is that video recording, is that a true and
15 accurate depiction of what you -- the video that you
16 observed on June 21st, 2011 at that mini mart with
17 Mr. Pandya?

18 A Correct, it is.

19 MS. LEMPSIS: Your Honor, at this point the State
20 would move to admit State's Exhibit 2 into evidence.

21 THE COURT: Any objection?

22 MR. BAX: Subject to prior.

23 THE COURT: Subject to prior objection, the
24 Court's ruling remains the same. So admitted.

25 *(Whereupon, State's Exhibit No(s). 2 marked for*

1 A 91.76.

2 Q Ninety-one dollars and 76 cents?

3 A Yes, 91 dollars and 76 cents.

4 Q Is there a date on the receipt?

5 A The date on the receipt is June 19th, 2011.

6 Q Okay. And again, that is the receipt that you
7 collected from Mr. Pandya, the owner of the mini mart?

8 A Correct.

9 MS. LEMPSIS: Your Honor, at this point the State
10 would move State's Exhibit 3 into evidence.

11 THE COURT: Subject to the Defendant's prior
12 objection, or rather over Defendant's prior objection.
13 But his objection is so noted for the record.

14 MR. BAX: Thank you.

15 MS. LEMPSIS: Thank you, Your Honor. May I
16 publish it to the jury?

17 THE COURT: Yes.

18 *(Whereupon, State's Exhibit No(s). 3 marked for*
19 *identification and received in evidence.)*

20 BY MS. LEMPSIS:

21 Q Investigator Erdel, did you develop a suspect
22 after your investigation into the credit card usage at the
23 mini mart?

24 A Yes.

25 Q Who was that suspect?

1 A Jajuan Habersham.

2 Q Do you see Mr. Habersham in the courtroom today?

3 A Yes.

4 Q Can you tell us where he's sitting, for the
5 record?

6 A He's sitting immediately next to Mr. Bax.

7 Q Did you put together any photo line-ups in this
8 case?

9 A I did.

10 Q Did you show those photo line-ups to the victims?

11 A I did.

12 Q Do you recall what date you did that?

13 A No.

14 Q Did you do a supplemental report about it?

15 A I did not.

16 Q Why didn't you do a supplemental report?

17 A I can't recall. I just failed to document it.

18 Q But you do recall showing them a line-up. Do you
19 recall if anyone was picked from those line-ups?

20 A They were not able to pick anybody.

21 Q Investigator Erdel, what was the -- do you recall
22 when or what the next thing you did in relation to this case
23 was?

24 A Looking back on my report, I -- on the 24th was
25 the next -- the next thing in my report is I was told by

1 Sergeant Webber of the Hardeeville Police Department that
2 Mr. Habersham had been captured in Hardeeville and that we
3 would be at the Hardeeville Police Department. They would
4 be there with him and I could come down there.

5 Q All right. And so did you go down to the
6 Hardeeville Police Department?

7 A Yes.

8 Q And did you have the opportunity to interview the
9 Defendant there at the Hardeeville Police Department?

10 A I did.

11 Q Okay. And Investigator Erdel, was this interview
12 recorded?

13 A It was recorded on an MP3 voice recorder, yes.

14 Q Excuse me. Was it video recorded?

15 A It was not. They didn't have the facilities for
16 that. They didn't have the cameras or anything.

17 Q Okay. So, it's just audio recorded?

18 A Correct.

19 Q Thank you.

20 And in interviewing Mr. Habersham at the
21 Hardeeville Police Department, where did -- or what time
22 about do you remember this incident -- this interview
23 occurred?

24 A I don't recall the specific time. I know that it
25 was kind of like late afternoon into early evening hours,

1 and I believe that I called out the time as I began the
2 recording, and it's also written down in some forms and
3 whatnot. But I don't particularly -- the hours and minutes
4 I don't recall at this time.

5 Q Okay. And you have already said it was at the
6 Hardeeville Police Department. Do you remember who else was
7 present during your questioning of Mr. Habersham?

8 A Sergeant Webber of the Hardeeville Police
9 Department, and my coworker, Investigator Dowling. And
10 obviously Mr. Habersham.

11 Q Okay. And do you recall whether or not
12 Mr. Habersham appeared to be under the influence of any sort
13 of alcohol or drugs to the extent that it would impair his
14 ability to understand what y'all were talking about?

15 A It did not appear that way to me.

16 Q Okay. Did he smell of alcohol?

17 A No.

18 Q Did he look like he was under the influence at
19 all?

20 A No.

21 Q Did you advise Mr. Habersham of his Miranda
22 rights?

23 A Yes.

24 Q How did you go about doing that?

25 A I read them verbatim off of a form supplied to me

1 by the Hardeeville Police Department.

2 Q Investigator Erdel, I'm going to hand you --

3 MS. LEMPSIS: Permission to approach the witness,

4 Your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. LEMPSIS:

7 Q I'm going to hand you what's been marked as

8 State's Exhibit 4, what is that?

9 A That is the Hardeeville Police Department Miranda
10 rights form.

11 Q Can you -- is that the form that you used when you
12 interviewed Mr. Habersham?

13 A Yes, ma'am.

14 Q Investigator Erdel, if you can go ahead and just
15 read through that form for us.

16 A Yes, ma'am. At the top of the form it has the
17 case number, the date and the time that the form was
18 started, which was 1745 or 5:45 p.m. The location is the
19 Hardeeville Police Department. The form reads, "Before we
20 ask you any questions, you must understand your rights. You
21 have the right to remain silent. Anything you say can and
22 will be used against you in a court of law. You have the
23 right to talk to an attorney and to have them present with
24 you while you are being questioned. If you cannot afford to
25 hire an attorney one will be appointed to represent you

1 before any questions, if you wish. You can decide at any
2 time to exercise these rights and not answer any questions
3 or make any statements."

4 The next line has a slot for the education
5 level of the person that you are interviewing, which is
6 filled out with a grade 12. The next line after that is an
7 acknowledgment that says, "I have read this statement of my
8 rights and understand each of these rights." And it has
9 Mr. Habersham's initials next to that indicating that he
10 understood.

11 And the line after that we didn't use because
12 it is for people -- crosses off people that can't read
13 saying I can't read this statement. We didn't use that
14 because he can read.

15 The one after that says, "I am willing to
16 make a statement and answer questions, I do not want an
17 attorney at this time. I understand and know what I'm
18 doing. No promises, threats, pressure or coercion of any
19 kind has been used against me," and that's also initialed by
20 Mr. Habersham as well.

21 Below that is his signature, printed name,
22 the date and then the time that he's signing, which is
23 reflected at 1748 or 5:48 p.m., and then I signed it as
24 witness signature and then I printed my name next to that.

25 Q That is a true and accurate depiction of that

1 form, and that's the form that you used that day?

2 A Correct.

3 MS. LEMPSIS: At this time the State would move
4 State's Exhibit 4 into evidence.

5 MR. BAX: Subject to prior.

6 THE COURT: Prior objections noted, ruling remains
7 the same.

8 MS. LEMPSIS: Thank you, Your Honor.

9 *(Whereupon, State's Exhibit No(s). 4 marked for*
10 *identification and received in evidence.)*

11 BY MS. LEMPSIS:

12 Q Investigator Erdel, as you were going through that
13 form that you just read out to the jurors, did Mr. Habersham
14 seem to have any sort of trouble understanding his rights?

15 A No.

16 Q Did he ever ask any questions about the form or
17 ask for a lawyer?

18 A He did not.

19 Q You mentioned that the interview happened at
20 Hardeeville PD. Where was it in the Hardeeville PD?

21 A It was in like a conference room type area. It
22 was like a big table. An open area. It wasn't a small
23 room.

24 Q Was Mr. Habersham allowed to take breaks during
25 the interview?

1 A He was.

2 Q Did you make any threats or promises to
3 Mr. Habersham in exchange for his statement?

4 A No. He had made a statement to me later during
5 the interview, or actually during one of his breaks, asking
6 for -- offering to exchange information regarding the case
7 in exchange for a plea for a lesser charge, and I told him
8 that I didn't have any authority to do that, I couldn't do
9 it.

10 Q All right. What was Mr. Habersham's -- what did
11 his emotional state appear to be during the interview?

12 A I mean, he wasn't overly excited or agitated. I
13 would call it appropriate for the circumstances of being
14 interviewed by the police in connection with a crime. But
15 he wasn't -- normal for those circumstances, I guess.

16 Q Did you, Mr. -- Investigator Erdel, or anyone else
17 in your presence ever threaten or coerce him in any way to
18 make a statement?

19 A No.

20 Q Investigator Erdel, tell us what in your interview
21 Mr. Habersham told you about the incident of June 28th,
22 2011.

23 A Mr. Habersham stated that he was downtown and had
24 been downtown with some individuals. He identified --

25 MR. BAX: Your Honor, I would like to object at

1 this time. Can I ask to approach the Bench, please?

2 THE COURT: Yes, sir.

3 (Off-the-record discussion held.)

4 BY MS. LEMPSIS:

5 Q Investigator Erdel, just to sort of recap since it
6 is audio recorded, just -- if you can just recap what was
7 said by Mr. Habersham during the interview. I don't need
8 you to tell me everything that he said, but just the basics
9 of it.

10 A If I can nutshell it, so to speak, the gist of his
11 statement was that he was present, that it was the
12 individual named Roach's idea, that he was basically along
13 for the ride in other words, and that he did not possess the
14 gun, that Roach had the gun.

15 Q One thing, Investigator Erdel, do you know what it
16 means when someone says hit a lick?

17 A Hit a lick is a slang term for commit a robbery.

18 Q Thank you. Was any portion of the interview with
19 Mr. Habersham not recorded?

20 A Yes, there was a break towards the end -- well,
21 actually, you will hear on the interview there were portions
22 where he didn't want certain things recorded. Speaking to
23 people on the phone. So, I was agreeable to that, so I
24 paused and I made note of verbally where we had paused.

25 There was one instance where he had reached

1 up and paused it, and when I came back -- I made a note of
2 the fact that he had done that and that I would be
3 controlling, when it stopped and when it started from that
4 point forward. And then towards the end we stepped out for
5 a smoke break, which was like a break from the interview, so
6 that portion was not recorded.

7 Q Since that portion is not recorded, can you tell
8 us what Mr. Habersham said during that portion of his
9 statement?

10 A During that portion when we were outside, which
11 was a smoke break for him, he said that he could tell me
12 where the gun was, but he would need -- he wanted it to be
13 like a non-violent plea. You know, he wanted like lesser
14 charges, and he kind of reiterated that. And I said, I
15 can't do that, I don't have that authority, I can't.

16 Q Okay. Investigator Erdel, in this interview, do
17 you ever -- is it a common tactic in interviews to lie to a
18 Defendant, to a suspect?

19 A Yes.

20 Q Okay. And did you do that in this interview?

21 A Yes.

22 MS. LEMPSIS: Permission to approach the witness,
23 Your Honor?

24 THE COURT: Yes, ma'am.

25

1 occurred, correct.

2 Q Do you recall exactly what time you got a
3 notification or a call?

4 A I don't recall. I'm relying on a submittal report
5 by another officer to refresh my memory on that. So I
6 couldn't say honestly when I got the call. If it was right
7 after or it was later. I could make an assumption, but I
8 couldn't tell you with any definitive statement.

9 Q Those notifications, do they come in the form of a
10 phone call, a page, a text message?

11 A Phone call.

12 Q Phone call. Even if it's late at night and you've
13 been asleep for hours, you would pick up and say a few words
14 over the phone; is that correct?

15 A Correct.

16 Q And you had testified that you spoke -- according
17 to your report, you spoke with Ms. Kelsey Brown the
18 following day, but the following day that you indicate was
19 June 20th; is that correct?

20 A Can I look at my report?

21 Q Sure, go right ahead.

22 A It says on 6/20 I spoke with Ms. Brown.

23 Q Okay. So, the reason I ask is because obviously
24 if it's the nighttime hours of June 19th, there was still
25 the daytime hours of June 19th that had to come and go; is

1 that correct?

2 A Yes.

3 Q Okay. And do you recall what day of the week
4 June 19th was?

5 A Going off of this report and everything, that
6 would have been Sunday, I believe.

7 Q Okay. So, during the hours of the -- during the
8 daylight hours of Sunday, there's no indication that you did
9 anything during that period of time; is that correct?

10 A That's correct.

11 Q Now, I want to get into this issue with the
12 line-ups. You have testified that as a result of
13 speaking -- well, let me back up.

14 You have testified that you got information
15 from Ms. Brown that the cards had been used or an attempt to
16 use them, and as a result you found out about this mini mart
17 in Hardeeville, right?

18 A Correct.

19 Q And you testified that you met with Mr. Pandya on
20 the 21st, June 21st, correct?

21 A Correct.

22 Q Okay. When did you first talk with Mr. Pandya?

23 A Referring to my report, that would be the 20th.

24 Q Okay. So you spoke with Mr. Pandya on the 20th,
25 correct?

1 BY MS. LEMPSIS:

2 Q Investigator Erdel, I'm going to hand you what's
3 been marked as State's Exhibit 1, do you recognize that?

4 A I do.

5 Q How are you able to recognize it?

6 A I recognize the writing, the words Habersham
7 interview on the disc, and I recognize the initials that I
8 placed there after reviewing it at your request.

9 Q Is that a true and accurate copy of the audio
10 interview of Jujuan Habersham on June 24th, 2011?

11 A Yes.

12 Q Okay.

13 MS. LEMPSIS: Your Honor at this point the State
14 would move to admit State's Exhibit 1 into evidence.

15 MR. BAX: Subject to prior, Your Honor.

16 THE COURT: Subject to prior objection, the
17 rulings remain the same. So admitted.

18 *(Whereupon, State's Exhibit No(s). 1 marked for*
19 *identification and received in evidence.)*

20 MS. LEMPSIS: Thank you. Your Honor, at this time
21 we would move to publish it to the jury.

22 THE COURT: Yes, ma'am.

23 BY MS. LEMPSIS:

24 Q Investigator Erdel, after the conclusion of this
25 interview what did you do next?

1 A After it concluded, we, Investigator Dowling and
2 I, transported Mr. Habersham to the jail in Beaufort.

3 Q He had been placed under arrest for these charges?

4 A Yes.

5 Q Thank you.

6 Investigator Erdel, I have nothing further at
7 this point. Please answer any questions that Mr. Bax may
8 have. Thank you.

9 A Yes, ma'am.

10 THE COURT: Cross examination.

11 MR. BAX: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. BAX:

14 Q Investigator Erdel, I want to talk to you about
15 some of the things that you testified about here today.

16 You testified in your direct testimony to
17 Solicitor Lempsis that you were notified on the evening of
18 June 19th because you were the on-call detective or on-call
19 investigator; is that correct?

20 A Correct.

21 Q And the incident that we've heard about occurred
22 in the morning hours of the 19th, somewhere around
23 2:00 a.m., in that area. So, you would have been notified
24 after 2:00 a.m.; is that correct?

25 A I would have been notified after the event

1 A Yes.

2 Q Okay. As a result of all of this you developed
3 Mr. Habersham as a suspect, correct?

4 A Yes.

5 Q And that was when you -- after you developed
6 Mr. Habersham as a suspect is when you put together these
7 line-ups that you talked about, correct?

8 A Yes.

9 Q Okay. And you showed these line-ups to Mr. Parker
10 and Ms. Brown, is that right?

11 A Yes.

12 Q Okay. Where were you -- do you recall where you
13 were at when you showed it to them?

14 A I do not. Again, I can make an assumption because
15 I didn't document it properly. I would assume that I would
16 have been at the police department, but I can't say for
17 sure. I mean, that would be my best guess.

18 Q Okay. You heard the testimony from Mr. Brown --
19 excuse me, Ms. Brown and Mr. Parker that it was at the
20 police station, correct?

21 A Yes.

22 Q Do you have any reason to believe that that is
23 incorrect?

24 A No.

25 Q Okay. Now, you also heard the testimony of

1 Mr. Parker that he pointed out two to three individuals on
2 the line-ups that had African Americans on it. In fact,
3 there were two line-ups, one with African American males and
4 one that I believe had Caucasian males; is that correct?

5 A That's correct.

6 Q And that he pointed out two to three black men,
7 but let me go back to this, there's no report about that,
8 correct?

9 A There is not, that is correct.

10 Q And you were asked this by the Solicitor, there's
11 no report that you did the line-ups and showed them to
12 Ms. Brown either, correct?

13 A That's correct.

14 Q Now, you have done reports in this case, correct?

15 A Yes.

16 Q And in your reports, you list what you talked to
17 Ms. Brown about with the credit card or card transactions,
18 correct?

19 A Yes.

20 Q You list the details of your contact with
21 Mr. Pandya at the mini mart, correct?

22 A Yes.

23 Q And you list your contact with Mr. Habersham and
24 what transpired there, correct?

25 A Correct.

1 Q But when the victims failed to identify
2 Mr. Habersham or anyone else, that is not in your reports,
3 correct?

4 A That's correct.

5 Q Now, obviously it's been approximately three plus
6 years since this incident, correct?

7 A That's correct.

8 Q And basically since most of these events in the
9 investigation transpired in the next several days after they
10 would also have been about that far back in time, correct?

11 A Yes.

12 Q Now, your memory, is your memory better now or was
13 it better when you wrote these reports?

14 A It's hard to say. I guess with certain things it
15 might be as good. Some not. Generally, anything written
16 down more recently after the incident would probably be
17 viewed as more accurate.

18 Q And you've testified that the things that are not
19 in your report are things that you have a hard time
20 recalling, correct?

21 Like the date that you showed Ms. Brown and
22 Mr. Parker these line-ups?

23 A That's correct.

24 Q Okay. Now, when you typically show a potential
25 witness a line-up do you say anything to them before you

1 show them the line-up or after you show them the line-up?

2 A Before.

3 Q Okay. And what do you tell them?

4 A There's a standard warning that you give that
5 basically says words to the effect, and I don't have the
6 printout in front of me, but basically it is as important to
7 clear suspects as it is to find the guilty person, and that
8 just because they are being shown a line-up you shouldn't
9 infer that the person is in the line-up.

10 Q In the forms that you use to tell people this
11 disclaimer, let's call it, do you have a place for the
12 person to sign after they have been informed of that
13 disclaimer?

14 A Yes.

15 Q Okay. And do you have in your file or in any of
16 the things that you turned over that form here in this case?

17 A That form, no, I do not.

18 Q Okay. Do you recall whether or not you even did
19 that form with Mr. Parker, for example?

20 A I can't recall. Like I say, I can make
21 assumptions because I didn't document it. I can say that I
22 probably did, but I can't sit here and tell you, yes,
23 definitely.

24 Q Okay. Now, you have testified that these forms
25 have a place for the witness to sign and date, correct?

1 A Yes.

2 Q Do you recall whether you had Mr. Brown [sic] sign
3 and date such a form?

4 A I do not. I don't believe so, but I couldn't say.
5 I don't think so, but -- because I don't remember it, I just
6 can't say.

7 Q But we do not have such a form here today that we
8 have talked about, correct?

9 A You are correct.

10 Q And the same questions as to Ms. Brown, do you
11 have any recollection of going through that warning with
12 Ms. Brown?

13 A I don't have any recollection of anything to do
14 with the line-up with Ms. Brown or the other gentleman.

15 Q In the line-up that had the African American males
16 in it, do you recall if Mr. Habersham's picture was in that
17 line-up?

18 A I do.

19 Q So Mr. Habersham was in there, correct?

20 A Correct.

21 Q But they didn't ID Mr. Habersham, correct?

22 A That's correct.

23 Q That is the evidence that we don't have, correct?
24 As far as -- we don't have any signed warnings?

25 A No, we don't have signed warnings.

1 Q We don't have a supplemental report documenting
2 what happened and when it happened?

3 A No.

4 Q And in this case -- Officer Erdel, are you aware
5 of the fact that copies of those line-ups without any
6 markings on them weren't even produced to the Defense until
7 yesterday; were you aware of that?

8 A I was aware that these line-ups were not produced
9 at a certain point and I was tasked with looking for them, I
10 know that much.

11 Q When did you find them?

12 A I was on medical leave last week, so I know the
13 one with the white male I believe was yesterday. And it was
14 recently with Mr. Habersham but I don't recall specific. I
15 don't recall.

16 Q When you found those you turned them over to the
17 prosecutors in this case, Assistant Solicitor Lempsis; is
18 that correct?

19 A That's correct.

20 Q And you have no information to refute whether or
21 not the Defense received those yesterday?

22 A I wouldn't be privy to that, that is not what I
23 do. I just give it to the prosecution and they go from
24 there.

25 Q Because you failed to document what happened when

1 you showed these line-ups to Mr. Parker and Ms. Brown, you
2 wouldn't have any memory of which individuals in that
3 line-up Mr. Parker pointed to, correct?

4 A No, I don't have any memory of anything that he
5 did, so.

6 Q So you wouldn't even be able to tell us if the two
7 or three black males that he picked even had Mr. Habersham
8 in that group of three?

9 A I'm sorry, can you say that again?

10 Q There are how many photographs in the line-ups?

11 A Six.

12 Q Six photographs. Mr. Habersham -- how many
13 photographs of Mr. Habersham were in the line-up?

14 A There would only be one.

15 Q One. Because of your failure to document this,
16 you can't even tell us whether or not any of the people that
17 Mr. Parker pointed to was Mr. Habersham; isn't that right?

18 A That's correct.

19 Q Now, you -- you have testified here today that you
20 don't recall when you showed Mr. Parker or Ms. Brown these
21 line-ups, but that it was most likely before you talked to
22 Mr. Habersham; is that correct?

23 A That would be my best recollection, yes.

24 Q Now, we have all listened to the audio of what you
25 recorded when you had that conversation with Mr. Habersham,

1 correct?

2 A Yes.

3 Q Okay. And in that audio, you clearly hear you
4 saying, I have showed -- I have developed a line-up, I've
5 showed them to the victims and they've ID'd you,
6 Mr. Habersham; is that correct?

7 A Yes.

8 Q You lied bald-facedly to Mr. Habersham?

9 A Absolutely.

10 Q And you also testified in response to the
11 questions from the prosecution it is a common practice.
12 Now, you can only testify that it's a common practice for
13 you and who you work with; is that correct?

14 A I mean, you can ask me have I read articles about
15 the practice, do I know that it's a common practice from
16 other information aside from my own personal knowledge,
17 reading, training. I can tell you that I know that it's a
18 common practice. I can go into all kind of things.

19 Q But you don't have to lie to the Defendant -- you
20 don't have to lie to suspects to do your job, do you?

21 A Not necessarily, it just depends.

22 Q Your boss don't go to you and say, I need you to
23 make sure you lie to the Defendant when you interview them,
24 he doesn't say that, does he?

25 A No, but he doesn't say don't do it either.

1 Q That is your choice? As an investigator, that's
2 your choice?

3 A Yes.

4 Q And you lied to Mr. Habersham in order to induce
5 him to tell you something that would help you in your
6 prosecution of him, correct?

7 A I lied to him in order to get him to tell me what
8 I believed was the truth. In order to get him to believe
9 something so that he would be more forthcoming with
10 information. Not to tell me something that I believed was
11 untrue, but that he would tell me something, yes, that's
12 correct.

13 Q But the fact that Mr. Parker and Ms. Brown failed
14 to identify him, that is true as well, right? That's a
15 fact, that is true, isn't it?

16 A Yes.

17 Q That is something that you didn't document, and
18 that's something that you don't recall, and that's something
19 that you felt was important enough to lie about in the
20 interview?

21 A I mean, I don't know how I felt about its
22 importance, but I knew if I told him at that point that they
23 didn't pick him, that that would likely end the interview.
24 That I would get nowhere as far as in the interview.

25 Q You also lied about several other things in that

1 interview, isn't that right? You talked to him about the
2 fact that you were trying to be truthful and not tricking
3 him. You said that right at the beginning. You said, I'm
4 not here to trick you; isn't that right?

5 A Right.

6 Q In fact, that is exactly what you did?

7 A In a sense.

8 Q You also told him that -- we heard on the audio,
9 well, it doesn't matter if I have the gun, I can charge you
10 with having the gun, I don't have to have the physical gun,
11 correct?

12 A Yes.

13 Q But you told him, I'm trying to be truthful to
14 you, and you talked about not necessarily charging him with
15 a gun charge, correct?

16 A Right.

17 Q And isn't it true that one of the charges that
18 this jury has to determine is a gun charge that you brought
19 against him after the interview, correct?

20 A Yes.

21 Q So that is one more thing that you lied to him
22 about, right?

23 A I don't know if I would agree with that statement.

24 It's entirely possible that I didn't intend to and I have

25 been directed to later. Maybe I did, maybe I didn't. It

1 could be, but it may not be also.

2 Q Maybe we should call it a failed prediction of the
3 future instead. But your prediction was, I don't think that
4 I'm going to charge you with a gun charge, and that turned
5 out not to be true, correct?

6 A Ultimately, yes.

7 Q And you also told him that you guys are going to
8 get the other two, the two white guys. You guys are going
9 to get them. They are going to get arrested, isn't it true?

10 A Yes.

11 Q Now, has any other individual been charged in this
12 case at all?

13 A No.

14 Q So, there are no white guys under arrest in this
15 case, correct?

16 A That's correct.

17 Q So when you predicted that, that was also a
18 prediction that turned out not to be true, correct?

19 A I don't know if I would call it a prediction.
20 More as a way of bolster and seem confident. If I said to
21 somebody that I'm interviewing, oh, I don't think I'm going
22 to get it, I don't know anything here, that is probably not
23 going to work too good for me. I have to express
24 confidence. And I believed that I probably would and it
25 didn't turn out that way.

1 Q Your confidence turned out to be not well-placed.
2 Your confidence turned out to be false; is that correct?

3 THE COURT: Don't talk over each other. One at
4 the time. Please let him finish his question before
5 you answer. Please let him finish his answer before
6 you proceed to the next question. Please.

7 You may continue.

8 MR. BAX: Thank you, Your Honor.

9 BY MR. BAX:

10 Q Let me rephrase. Your confidence in this
11 situation turned out to be false; is that correct?

12 A In the situation that we would determine who the
13 other parties were, that particular aspect turned out not to
14 bear out in that particular aspect, yes.

15 Q Now, you also have testified that -- obviously you
16 are already in this conference room with Mr. Habersham when
17 this recording starts, correct?

18 A Yes.

19 Q And you testified earlier that you don't recall
20 really what kind of conversation occurred prior to the
21 recording starting, correct?

22 A That's correct.

23 Q Okay. But that you and Mr. Habersham had
24 exchanged some words, you don't recall what they were, prior
25 to the recording starting, correct?

1 A I would assume that we said some sort of
2 pleasantries, or, hey, I'm Investigator Erdel, or words to
3 that effect. I don't recall all the verbiage, no.

4 Q We talked about the fact that in your incident
5 report it states that Mr. Habersham initially denied any
6 involvement at all with what happened, correct?

7 A That is what the report states, yes.

8 Q But what we heard on the interview was him stating
9 to you that he was there. He didn't have the gun, he wasn't
10 part of it. The guys that were there decided to do this
11 against his wishes. But he doesn't deny any involvement at
12 all. He doesn't say that he was not there at all, correct?

13 A No.

14 Q Okay. So, do you recall whether or not you told
15 him before the audio started that the victims had ID'd him
16 as the black guy that had the gun?

17 A I don't recall what I said to him.

18 Q So it's possible that you lied to him about that
19 before the audio even started?

20 A Anything is possible. I can't say.

21 MR. BAX: Thank you. No further -- well, Your
22 Honor, let me take a moment's indulgence if you don't
23 mind.

24 THE COURT: Yes, sir.

25 MR. BAX: Thank you very much.

1 (Pause.)

2 BY MR. BAX:

3 Q Briefly, and I just wanted to cover this with you.
4 You have testified that there was this conversation with
5 Mr. Habersham about asking for a more lenient deal in
6 exchange for information about the gun while you were on
7 smoke break, correct?

8 A That's correct.

9 Q But that was not recorded, correct?

10 A No, it was not.

11 Q But you came back on the recording after it
12 happened, right?

13 A Yes.

14 Q It was during one of those pauses?

15 A Yes.

16 Q And you chose not to say anything on the record
17 about that conversation when you came back on, correct?

18 A Apparently.

19 Q And you don't recall the conversation that
20 occurred prior to this recording. We just went over that,
21 correct?

22 A Yes.

23 Q So your testimony is once again that you remember
24 the things that helped you prosecute Mr. Habersham, but you
25 don't remember anything that helps him; is that correct?

1 A I don't think that was what I said, no.

2 MR. BAX: No further questions.

3 THE COURT: Any redirect?

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

5 THE COURT: Sir, you may step down, thank you.

6 WITNESS: Thank you, Your Honor.

7 THE COURT: All right. Call your next witness.

8 MS. LEMPSIS: Your Honor, may we approach?

9 THE COURT: Yes.

10 (Off-the-record discussion held.)

11 THE COURT: All right. Ladies and gentlemen, we
12 are getting ready to break for the balance of the day,
13 okay. I know that you have been here since 1:00 as
14 well, but we have been here all day. The lawyers have
15 been here all day, and I have too.

16 Before I send you out for the evening, I just
17 wanted to tell you something. The audio tape of the
18 statement that was played by the State, you noticed
19 that there were some breaks in there. That was done
20 because of some evidentiary rulings that I made. Okay.
21 Evidentiary rulings that I made. It is not a situation
22 where the State or defense counsel is trying to hide
23 anything from you, but it was based upon rulings that I
24 made, matters that we handled today before you got
25 here, okay, trying to speed things along.

COLLOQUY

1 what they have coming back to them to deal with, and
2 maybe potentially make their deliberations more
3 efficient. If they ask a question about the charge, we
4 have no objection, send the whole charge back. Since
5 they must consider the whole thing and not just part of
6 it.

7 THE COURT: Ms. Lempsis?

8 MS. LEMPSIS: The State is fine either way. I
9 have no problem with that position of Mr. Bax or
10 sending the whole thing back initially.

11 THE COURT: Well, I'll make a decision on it. At
12 the end of my charge it references that I'll send it
13 back, but I can certainly take that out. I'll make
14 that decision.

15 All right. I'm going to bring the jury out and
16 we'll read this stipulation to them. Then I'll
17 recognize you and you can rest and I'll send them back
18 and I'll hear arguments from you. Once I hear
19 arguments on directed verdict, then we will proceed
20 accordingly at that point.

21 Please bring the jury.

22 Madam forelady, Members of the Jury, I hope that
23 you had a restful evening last night and are ready to
24 proceed here today.

25 Before I recognize the State there's something I

COLLOQUY

1 want to read into the record. A stipulation -- State
2 and Defendant, Defense counsel has stipulated, have
3 entered into a stipulation agreeing that Mr. Jajuan
4 Habersham has a prior conviction for an offense
5 classified as a crime of violence. I'm going to read
6 the stipulation to you that they have entered into.

7 A stipulation is an agreement, admission or
8 concession made in judicial proceedings by the parties
9 thereto or their attorneys. Stipulations are binding
10 upon those who make them. A stipulation is an
11 agreement, an understanding. The Court and jury must
12 accept stipulations as binding upon the parties. If
13 counsel for the parties have stipulated to any fact,
14 or any fact has been admitted by counsel, you will
15 regard that fact as being conclusively proved as to
16 the party or parties making the stipulation or
17 admission.

18 In this case, the Defendant, Jajuan Habersham, in
19 the State of South Carolina, have stipulated that the
20 Defendant, Jajuan Habersham, has been convicted of an
21 offense classified as a crime of violence pursuant to
22 Section 16-23-10 of the South Carolina code of laws.
23 Each of the attorneys have signed this stipulation.

24 I'm going to give that to you, Madam Court
25 Reporter. That will be entered as a State's exhibit

1 without objection.

2 *(Whereupon, State's Exhibit No(s). 5 marked for*
3 *identification and received in evidence.)*

4 THE COURT: All right. Madam Solicitor, you are
5 recognized.

6 MS. LEMPSIS: Thank you, Your Honor. At this
7 point the State rests.

8 THE COURT: Ladies and gentlemen, at this point
9 the State has rested, it has presented its case to you.
10 I hate to do this to you, but I have to. I have to
11 send you back to the jury room for just a minute. I'll
12 get you back out here, there is a matter of law that I
13 need to take up with the attorneys.

14 I know you wonder, why we didn't do that before
15 you came in. As a matter of formality and by our
16 rules the State has to rest in front of you and then I
17 have to take up some matters outside of your presence.

18 Please step into the jury room and I'll get you
19 back out here as quickly as possible.

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

21 THE COURT: All right. Please be seated.

22 All right. Mr. Bax, I'd be happy to hear from
23 you, sir.

24 MR. BAX: Thank you very much, Your Honor. Now
25 that the State has rested the Defense would move for a

1 We also know from Kelsey that her credit cards
2 were taken that night. She also had her Social
3 Security card and a bunch of other cards in her wallet
4 that was taken. So, you heard from her that her
5 Discover card was used in Hardeeville the next day.
6 Not the next day, but later on that very same day,
7 June 19th, but just in the afternoon. That her
8 Discover card was used, she saw that receipt, she
9 testified that that was not her signature. That it
10 was her name on the bottom of the receipt, that was
11 \$91.76 was charged on her Discover card. She did not
12 authorize that charge, she didn't allow anyone to use
13 the credit card.

14 We know who used the credit card because
15 Mr. Habersham told us that he used it. He said he got
16 the credit card, activated it. Used it to buy beer,
17 cigarettes, liquor. Kelsey Brown had never done
18 anything for him, so he used her card. He didn't care
19 about that. He also didn't care about robbing her at
20 gunpoint.

21 The Defense has tried to distract you during both
22 of Mr. Parker and Ms. Brown's testimony. They tried
23 to distract you with the questions about the photo
24 line-ups that were shown to them. The fact is that
25 Kelsey and Jake were both shown a photo line-up and

STATE'S CLOSING ARGUMENT

1 neither one picked anybody out. They couldn't. They
2 could tell you, and they did, that it was two white
3 men and a black man that robbed them. And the black
4 man was the one who had the gun. The black man was
5 the one who was leading the robbery.

6 We are not trying to hide the fact that they
7 couldn't pick anybody out of this line-up, we are not
8 trying to hide that fact at all. You didn't see them
9 identify Jujuane Habersham in this courtroom. That
10 has never been what the State is trying to do. What
11 they can tell us, and you heard from both of them, is
12 that this was a traumatic experience, it lasted maybe
13 a few minutes, it was dark out, it was quick. They
14 described the people who robbed them to the best of
15 their ability. They didn't try to pick them out of a
16 photo line-up, they couldn't. They gave a description
17 that they knew. Three men, two were white, one was
18 black, and the black man had the gun, no question.

19 Investigator Erdel is the next person to testify.
20 Investigator Erdel had it all put together. He was
21 the lead investigator in this case and he led us to
22 Jujuane Habersham. He testified about how he followed
23 up Kelsey Brown's information regarding her credit
24 card being used, how he went to the mini mart in
25 Hardeeville and met with the owner of the mini mart

JURY DELIBERATIONS

1 (Jury enters the courtroom at 12:55 p.m.)

2 THE BAILIFF: The jury is entering, Your Honor.

3 THE COURT: Madam Forelady, have you and the jury
4 reached a verdict in this case?

5 MADAM FORELADY: Yes, we have.

6 THE COURT: I ask that you hand the verdict form
7 to the clerk, please.

8 The verdict appears to be in order.

9 Madam clerk, will you publish the verdict, please.

10 THE CLERK: In the case of South Carolina v.
11 Jajuan Andre Habersham --

12 Read the indictments?

13 THE COURT: Yes, ma'am.

14 THE CLERK: Indictment No. 2011GS0701398,
15 2011GS0701399, 2011GS0701496, 2011GS0701423. As to the
16 charge of attempted armed robbery of Richard Parker, we
17 the jury unanimously find the Defendant, Jajuan Andre
18 Habersham, guilty.

19 As of the charge of armed robbery of Kelsey Brown,
20 we the jury unanimously find the Defendant, Jajuan
21 Andre Habersham, guilty.

22 As to the charge of possession of a weapon during
23 a violent crime, we the jury unanimously find the
24 Defendant, Jajuan Andre Habersham, guilty.

25 As to the charge of possession of a firearm by a

THE VERDICT

1 person convicted of a crime of violence, we the jury
2 unanimously find the defendant, Jajuan Andre Habersham,
3 guilty.

4 Madam Forelady and ladies and gentlemen of the
5 jury, if this is your verdict, the decision of each and
6 every one of you, please indicate so by raising your
7 right hand.

8 (All jurors comply.)

9 Thank you.

10 THE COURT: Note for the record that all 12 jurors
11 raised their right hand.

12 Anything from the Defense counsel at this time?

13 MR. BAX: I ask that the jury be polled, Your
14 Honor.

15 THE COURT: Madam Clerk, will you poll the jury,
16 please.

17 THE CLERK: Do you want me to state their juror
18 number or their name?

19 THE COURT: You can say their name.

20 THE CLERK: Okay.

21 Robert McCloskey, Juror No. 164, was this your
22 verdict?

23 JUROR NO. 164: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 164: Yes.

SENTENCING

1 MR. BAX: Your Honor, there's two stints,
2 actually, on these charges. The current one, he's been
3 in for --

4 MS. LEMPSIS: A hundred and forty-one days.

5 MR. BAX: A hundred and forty-one days since the
6 bench warrant was served. And then, prior to that, I
7 believe that he stated that he had been in for
8 approximately nine months prior to bond. So we would
9 ask for credit for the nine months plus the 141 days,
10 Your Honor.

11 MS. LEMPSIS: No objection.

12 THE COURT: What was the initial offer in this
13 case?

14 MR. BAX: Recommendation for ten years on strong
15 armed robbery, Your Honor.

16 MS. SAXON: That is correct.

17 THE COURT: Mr. Habersham, prior to the start of
18 this trial there were discussions in chambers with the
19 prosecutor and your lawyer on Monday when I got down
20 here about this case being tried this week, and I asked
21 the very question that I asked just now about what was
22 initially offered in this case. And Mr. Bax, your
23 lawyer who has done an outstanding job for you, told me
24 what the offer was. And he said that you were
25 determined to go to trial. And you have every right to

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS

D. CRAIG BROWN, CIRCUIT COURT JUDGE

INDICTMENT NO(s).2011GS0701398, 2011GS0701399,
2011GS0701423, and 2011GS0701496.

STATE OF SOUTH CAROLINA - RESPONDENT,
verus
JUJUAN ANDRE HABERSHAM. - APPELLANT.

2014 DEC 16 AM 11:30
CLERK OF COURT
BEAUFORT COUNTY

JUJUAN HABERSHAM, appeals from his trial, conviction and sentence on the charges of Possession of Firearm by Person Convicted of a Crime of Violence , Possession of Weapon During Violent Crime, Armed Robbery and Attempted Armed Robbery on December 11, 2014 before the Honorable D. Craig Brown, Presiding Judge, Fourteenth Judicial Circuit; and JUJUAN ANDRE HABERSHAM appeals the Denial of his Motions on December 11, 2014 before the Honorable D. Craig Brown, Presiding Judge, Fourteenth Judicial Circuit.



Arie Bax
Post Office Box 525
Beaufort, South Carolina 29901
(843) 255-5805

Other counsel of record:
Mary Jordan Lempesis
Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

STATE OF SOUTH CAROLINA - RESPONDENT,
verus
JUJUAN ANDRE HABERSHAM. - APPELLANT.


2014 DEC 16 AM 11:30
FILED FOR SERVICE

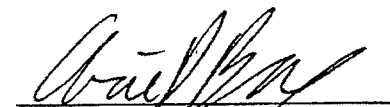
AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me, Arie Bax, who being duly sworn, states:

1. That regular communication exists throughout the State of South Carolina, and this is the proper circumstances for hand delivered mail.
2. That on December 16th, 2014 an Original Notice of Intent to Appeal in the above captioned case was filed with the Beaufort County Clerk of Court.
3. That an original Notice of Intent to Appeal in the above captioned case was served on the Clerk of Court, SC Court of Appeals, P.O. Box 11629, Columbia, SC by depositing same in the United States Post Office at Beaufort, South Carolina on December 16th, 2014 with the proper postage prepaid thereon.
4. That a true copy of the Notice of Intent to Appeal in the above captioned case was served on the Solicitor, Fourteenth Judicial Circuit, Post Office Box 1880, Bluffton, South Carolina by depositing same in the United States Post Office at Beaufort, South Carolina on December 16th, 2014 with proper postage paid thereon.

Sworn to and subscribed before me
this 16th day of December, 2014


Notary Public for South Carolina
My Commission Expires: 06/26/2016


Arie Bax
Attorney for Defendant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
General Sessions Court

The Honorable D. Craig Brown, Circuit Court Judge

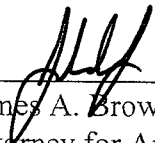
Indictment Numbers: 2011-GS-07-01398, 1399, 1423, 1496
Appellate Case No: 2014-002176

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

CERTIFICATE OF COUNSEL

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

February 1, 2016


James A. Brown, Jr.
Attorney for Appellant
1600 Burnside St., Suite 100
PO Box 592
Beaufort, SC 29901
(843) 470-0003

Opposing Attorney of Record:

Mark R. Farthing, Esquire
Assistant Attorney General
SC Office of the Attorney General
PO Box 11549
Columbia, SC 29211-11549
(803) 734-1890