

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Honorable Brooks P. Goldsmith, Circuit Court Judge

JOSEPH MACK,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001640

APPENDIX

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

State of South Carolina,)
v.) Case No. 13-GS-08-0331
Joseph Mack, Jr.)
Defendant)

TRANSCRIPT OF JURY TRIAL

The within jury trial in the above-captioned matter was held on March 17-18, 2014, before The Honorable Carmen Mullin in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel as follows:

APPEARANCES:

Colleen Dixon Taylor, Assistant Solicitor
Charles Condon, Assistant Solicitor
9TH CIRCUIT SOLICITOR'S OFFICE
300 California Avenue
Moncks Corner, South Carolina
Appearing for State of South Carolina

David Schwacke, Public Defender
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Neil v. Biggers Hearing

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
John Rhodan	49	57		
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Keith Blake	152	170	185	
Jacquelyn Myers	187	199	214	215
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Lane Beaudoin	232	242		
Jonathon Ellwood	252	260		
Rolando Valdez	267	272		
David Warren	280			
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1 MARCH 17, 2014

2 (DEFENDANT PRESENT)

3 (JURY PANEL IN @ 10:10 A.M.)

4 (ROLL CALL - JUDGE NOT PRESENT)

5 (STATUTORY QUALIFICATION)

6 THE COURT: Ladies and gentlemen,
7 I find this panel qualified. What I need to
8 do now is ask some question for this first
9 case we're going to pull.

10 Ladies and gentlemen, my intent is to
11 pull this jury. There are a couple of pre-
12 trial matters I need to take up with the
13 attorneys. I will then most probably send
14 you to lunch and bring you back. And we're
15 going to get started.

16 I endeavor always to get these cases
17 through as quickly as possible. Again, I
18 understand your time is important. I also
19 understand that what we do is important here.

20 Ladies and gentlemen, at this time, does
21 anyone need a quick break before I go ahead
22 and begin to start asking these questions,
23 anyone? (No response).

24 Don't be shy. It's all right. (No
25 response). Okay.

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1 All right. Ladies and gentlemen,
2 I'm just going to go ahead and begin. Sir,
3 we have one person? Yes, sir. Do you want
4 to take a quick break?

5 JUROR NUMBER 178: I'm sorry?

6 THE COURT: Do you need to take a
7 quick break, sir?

8 JUROR NUMBER 178: Oh, no. No. I
9 just had a question. I done forgot now.

10 THE COURT: Okay. Ladies and
11 gentlemen, at this time, we are about to
12 begin the trial of the case entitled The
13 State of South Carolina versus Joseph Mack.

14 Ladies and gentlemen, Mr. Mack is charged
15 in the bill of indictments of this case with:

16 three counts of armed robbery:
17 failure to stop for a blue light,
18 and possession of a weapon during
19 the commission of a violent crime.

20 Ladies and gentlemen, I'm going to go
21 ahead and begin this case by having the
22 Solicitor's office stand and introduce
23 themselves and anyone that's sitting with
24 them, if you would.

25 SOLICITOR TAYLOR: Thank you,

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1 Your Honor.

2 THE COURT: Thank you.

3 SOLICITOR TAYLOR: Good morning,
4 ladies and gentlemen. My name is Collen
5 Taylor. I'm an Assistant Solicitor here in
6 Berkeley County, which is part of the Ninth
7 Circuit, made up of Berkeley and Charleston
8 Counties.

9 The Ninth Circuit Solicitor is Scarlett
10 Wilson.

11 Assisting me in this case is Assistant
12 Solicitor Charlie Condon. We also have our
13 paralegal and the case investigator. Thank
14 you.

15 THE COURT: Mr. Schwacke.

16 MR. SCHWACKE: Thank you, Your
17 Honor. This is Joseph Mack. My name is
18 David Schwacke and I'll be representing him
19 along with Ms. Keisha White, who is in the
20 Public Defender's Office with me.

21 THE COURT Ladies and gentlemen,
22 I have a number of questions to ask you in
23 regards to this case.

24 As you did before, during the qualify-
25 cation process, if you need to respond to one

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1 of these questions, simply stand, give me
2 your name and juror number and go ahead and
3 respond.

4 You have sworn them in, haven't you?

5 CLERK: Yes, ma'am.

6 THE COURT: I just remind you,
7 ladies and gentlemen that under the oath that
8 you took you are required to respond to these
9 questions if appropriate. All right.

10 Therefore, ladies and gentlemen, is
11 there any member of the jury panel related by
12 blood or connected by marriage to the
13 Defendant in this case, Mr. Joseph Mack? If
14 so, please stand.

15 MR. SCHWACKE: And, Your Honor,
16 he is a Junior.

17 THE COURT: Sir?

18 MR. SCHWACKE: He is a Junior.
19 His father ---

20 THE COURT: And I -- thank you.
21 I'm sorry. It wasn't on my list. Again,
22 Joseph Mack, Jr.

23 Ladies and gentlemen, again, is there any
24 member of the jury panel related by blood or
25 connected by marriage of the Defendant,

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1 Joseph Mack, Jr.? If so, please stand? (No
2 response).

3 Ladies and gentlemen, I want to give you
4 just a brief rendition of this case. As you
5 understand, Mr. Mack is charged in a number
6 of indictments. And I apologize -- give me
7 just one moment.

8 Ladies and gentlemen in this case it is
9 alleged that on or about January 6 of 2013 in
10 Berkeley County, South Carolina that Mr. Mack
11 did allegedly commit a robbery and take away
12 goods or monies from the person or immediate
13 presence of a Keith Blake, Jacqueline Meyers,
14 and John Rhodan.

15 Ladies and gentlemen, the following
16 is a list of potential witnesses in this
17 case. My question is going to be is anyone
18 related by blood or connected by marriage
19 with any of these potential witnesses.

20 And additionally, ladies and gentlemen,
21 is anyone a close personal friend or share a
22 special relationship with any of these
23 potential witnesses or the Defendant in this
24 case, ladies and gentlemen, Mr. Mack, Jr.,
25 please stand.

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1 Those witnesses are:

2 Jacqueline Meyers.

3 John Rhodan.

4 Keith Blake.

5 Corporal Travis Lanphere, Hanahan,
6 the Hanahan Police Department.

7 Officer Jonathan Ellwood, of the
8 Hanahan Police Department.

9 Sergeant Orlando Valdez of the
10 Hanahan Police Department.

11 Detective Fred Durant of the Hanahan
12 Police Department.

13 Corporal Lane Beaudoin of the
14 Hanahan Police Department.

15 David Warren.

16 And Danielle Brodnicki.

17 And Ronnell Freeman.

18 Again, -- Yes, sir?

19 MR. SCHWACKE: And Spencer Clark.

20 THE COURT: And Spencer -- I'm
21 sorry. The last name?

22 MR. SCHWACKE: Clark.

23 THE COURT: Clark. All right.

24 And additionally Spencer Clark.

25 Ladies and gentlemen, again, is

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1 there any member of the jury panel related by
2 blood, connected marriage or have a close
3 personal friendship or share a special
4 relationship with any of these potential
5 witnesses. If so, please stand? (No
6 response).

7 Ladies and gentlemen, additionally,
8 you've been introduced to the attorneys
9 trying this case. My question is the same.
10 Is there any member of the jury related by
11 blood, connected by marriage or have a close
12 personal friendship or relationship with any
13 of these attorneys? (No response).

14 And, additionally, I'll make it a bit
15 broader. Have any of these people ever been
16 represented by these lawyers or worked for
17 either of their offices or their firms? If
18 so, please stand?

19 (JUROR NUMBER 78 STANDS)

20 THE COURT: Sir, Your name and
21 juror number.

22 JUROR NUMBER 78: 78, Tashawn T.
23 Johnson.

24 THE COURT: Mr. Johnson?

25 JUROR NUMBER 78: I know Ms. Keisha

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1 White.

2 THE COURT: Ms. Keisha White. How
3 do you know Ms. White?

4 JUROR NUMBER 78: She represented me
5 once.

6 THE COURT: How long ago was that,
7 sir?

8 JUROR NUMBER 78: A couple years
9 ago.

10 THE COURT: A couple of years ago.
11 Sir, the fact that Ms. White has represented
12 you in the past would that affect your
13 ability to be fair and impartial in the trial
14 of this case?

15 JUROR NUMBER 78: I'm not sure.

16 THE COURT: You're not sure?

17 JUROR NUMBER 78: No, ma'am.

18 THE COURT: Sir?

19 JUROR NUMBER 78: No, ma'am.

20 THE COURT: You do not think it
21 would affect you?

22 JUROR NUMBER 78: (No verbal
23 response).

24 THE COURT: I need you to be
25 confident, sir?

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1 JUROR NUMBER 78: I'm just answering
2 the question you ask, ma'am. She represented
3 me a couple of years ago. No question, no,
4 ma'am, I don't think so.

5 THE COURT: You don't think you
6 can be fair?

7 JUROR NUMBER 78: No.

8 THE COURT: Okay. Sir, I'm going
9 to go ahead and excuse you from the trial of
10 this case.

11 You don't need to -- don't go anywhere.
12 You don't need to respond to any further
13 questions as to this trial. But at the end I
14 am going to release this jury panel to come
15 back on Wednesday for a second trial, okay?
16 And she's not involved in that case.

17 So, again, you are excused from the trial
18 of this first case. Sir, give me your number
19 again, please?

20 JUROR NUMBER 78: Seventy-eight
21 (78).

22 (JUROR NUMBER 78 EXCUSED)

23 THE COURT: Anyone else? (No
24 response).

25 Ladies and gentlemen, I know I told

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1 you very little about this case. It's an
2 alleged armed robbery that occurred on
3 January 6th in 2013 in Berkeley County.

4 And I did state the people that were the
5 alleged victims in this case.

6 But does anyone have any independent
7 knowledge about this case whatsoever? (No
8 response).

9 Have you read anything, heard anything,
10 seen anything about this case? If so, please
11 stand? (No response).

12 Ladies and gentlemen, has any member of
13 the jury panel been a witness to or a victim
14 of a crime? If so, please stand?

15 (JUROR NUMBER 24 STANDS)

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

18 JUROR NUMBER 24: Sarah Burris, number
19 24.

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 24: I've been a victim of
22 a break-in -- I mean my house has been broke
23 into.

24 THE COURT: Okay. How long ago was
25 that, Ms. Burris?

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1 JUROR NUMBER 78: That was about a year
2 and a half ago.

3 THE COURT: Okay. Is the case on-going
4 or was it resolved?

5 JUROR NUMBER 78: It's resolved.

6 THE COURT: Okay. Ms. Burris, the fact
7 that your house has been broken into, would
8 that affect your ability to be fair and
9 impartial in the trial of this case?

10 JUROR NUMBER 78: No.

11 THE COURT: Thank you, ma'am. You may
12 be seated.

13 (JUROR NUMBER 32 STANDS)

14 THE COURT: Yes, ma'am, your name and
15 juror number?

16 JUROR NUMBER 32: My name is Barbara
17 Crolley and my juror number is 32. I've been
18 robbed at gunpoint at work.

19 THE COURT: Okay. Where do you work,
20 ma'am?

21 JUROR NUMBER 32: Well, I don't work
22 now. I'm retired. But it's been about four
23 years ago.

24 THE COURT: Where did you work at?

25 JUROR NUMBER 32: I worked for Buck

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1 Management.

2 THE COURT: Okay. Ma'am, the fact
3 that you were robbed at gunpoint four years
4 ago, and this is an alleged armed robbery
5 case, would that affect your ability to be
6 fair and impartial in the trial of this case?

7 JUROR NUMBER 78: No.

8 THE COURT: I appreciate it. You
9 may stay with us.

10 Anyone else? (No response).

11 Ladies and gentlemen, has any member
12 of the jury panel -- and I asked this before,
13 but I want to make sure -- does any member of
14 the jury panel or a close personal friend or
15 an immediate family member ever been a victim
16 of a violent crime? If so, please stand?

17 (JUROR NUMBER 178 STANDS)

18 THE COURT: Sir, your name and
19 juror number?

20 JUROR NUMBER 178: Number 178,
21 Quentin Colleton.

22 THE COURT: Mr. Colleton, your
23 juror number again?

24 JUROR NUMBER 178: 178.

25 THE COURT: Yes, sir.

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1 JUROR NUMBER 178: My first cousin
2 was murdered.

3 THE COURT: Okay. How long ago
4 was that, Mr. Colleton?

5 JUROR NUMBER 178: About a year and
6 a half ago.

7 THE COURT: Sir, would that affect
8 your ability to be fair and impartial in the
9 trial of this case?

10 JUROR NUMBER 178: I'm very out-
11 spoken. It probably would.

12 THE COURT: It would?

13 JUROR NUMBER 178: I'm very out-
14 spoken.

15 THE COURT: All right. Sir, I'm
16 going to go ahead and excuse you from the
17 trial of this case. I'm going to ask you to
18 sit down and stay with us. To follow further
19 instructions later, okay? Mr. Colleton is
20 excused from this trial.

21 (JUROR NUMBER 178 EXCUSED)

22 THE COURT: Anyone else? (No
23 response).

24 Ladies and gentlemen, is any member
25 of the jury panel or a member of your

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1 immediate family currently or formerly police
2 officers or work in law enforcement? If so,
3 please stand.

4 And I'm going to start from the far
5 right. Since you were the first one to raise
6 your hand, ma'am, your name and juror number?

7 (JUROR NUMBER 63 STANDS)

8 JUROR NUMBER 63: Chelsea Hall and
9 I'm 63.

10 THE COURT: Yes, Ms. Hall.

11 JUROR NUMBER 63: My husband works
12 for the highway patrol.

13 THE COURT: Where is he stationed
14 right now?

15 JUROR NUMBER 63: His area is
16 Berkeley and Charleston County.

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

19 (JUROR NUMBER 16 STANDS)

20 THE COURT: Yes, ma'am.

21 JUROR NUMBER 16: I'm Tammy Broome,
22 Juror Number 16.

23 THE COURT: Yes, ma'am?

24 JUROR NUMBER 16: My stepdad is a
25 patrol officer for North Charleston City.

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1 THE COURT: The City of North
2 Charleston?

3 JUROR NUMBER 16: Yes, ma'am.

4 THE COURT: Okay. Thank you,
5 ma'am.

6 (JUROR NUMBER 80 STANDS)

7 THE COURT: On the far right.
8 Yes, ma'am?

9 JUROR NUMBER 80: Paulatoria E.G.
10 Jones, Juror 80. My sister is a police
11 officer for City of North Charleston and my
12 brother-in-law is a police officer.

13 THE COURT: For North Charleston
14 as well?

15 JUROR NUMBER 80: Yes, ma'am.

16 THE COURT: Thank you, ma'am. You
17 may be seated.

18 (JUROR NUMBER 113 STANDS)

19 THE COURT: Yes, ma'am.

20 JUROR NUMBER 113: Virginia Nelson,
21 113. And my cousin is with Charleston County
22 or North Charleston County.

23 THE COURT: Okay. Thank you. I
24 appreciate it, Ms. Nelson.

25 (JUROR NUMBER 42 STANDS)

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1 THE COURT I'm going to go to the
2 far right and -- yes, ma'am, you.

3 JUROR NUMBER 42: My brother is a
4 Inspector for the Virginia Sheriff's
5 Department.

6 THE COURT: Ma'am, your name and
7 juror number?

8 JUROR NUMBER 42: Michelle Eaton,
9 Number 42.

10 THE COURT: Okay. Ms. Eaton.

11 JUROR NUMBER 42: And my other
12 brother is VA inspector with NCIS.

13 THE COURT: Okay. Thank you,
14 ma'am. You may be seated.

15 (JUROR NUMBER 70 STANDS)

16 THE COURT: Yes, ma'am.

17 JUROR NUMBER 70: Elizabeth
18 Henderson, Juror number 70. My uncle is law
19 enforcement ---

20 THE COURT: Okay.

21 JUROR NUMBER 70: --- North
22 Charleston.

23 THE COURT: Okay. Thank you.
24 This is a Hanahan case; isn't it?

25 CLERK: Yes.

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22

1 THE COURT: Okay.

2 (JUROR NUMBER 32 STANDS)

3 THE COURT: Yes, ma'am.

4 JUROR NUMBER 32: Barbara Crolley,
5 Juror Number 32. My son-in-law is a retired
6 lieutenant from Hanahan police department.

7 THE COURT: Okay. Ma'am, do you
8 know anything about this case?

9 JUROR NUMBER 32: No.

10 THE COURT: Okay. Thank you,
11 ma'am. You may be seated.

12 Well, ma'am, Ms. Crolley, I need to
13 ask you, understanding that the agency
14 involved is Hanahan Police Department, would
15 that affect your ability to be fair and
16 impartial in the trial of this case?

17 JUROR NUMBER 32: No.

18 THE COURT: Okay. And ma'am, you
19 heard me state the names of the officers that
20 were involved in this case. Did you know any
21 of them?

22 JUROR NUMBER 32: I don't know any
23 of them.

24 THE COURT: Okay. All right. Ms.
25 Crolley, you may be seated. Thank you,

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23

1 ma'am.

2 (JUROR NUMBER 122 STANDS)

3 THE COURT: Sir, finally.

4 JUROR NUMBER 122: Robert R.
5 Pitchford, 122.

6 THE COURT: Yes, sir.

7 JUROR NUMBER 122: My sister-in-
8 law was a police officer in North Charleston
9 a few years ago.

10 THE COURT: Okay. And, again,
11 your name and juror number, I apologize?

12 JUROR NUMBER 122: Robert
13 Pitchford, 122.

14 THE COURT: Thank you, sir.
15 Anyone else? (No response).

16 Ladies and gentlemen, is any member
17 of this jury panel a member of or contributor
18 to any group, which has as its primary
19 concern crime prevention, such as:

20 CAVE, Citizens Against Violent Crimes;
21 PAR, Peoples against Rape.

22 Again, ladies and gentlemen, the
23 question is, is there any member of the panel
24 who is a member of or a contributor to any of
25 these types of organizations? If so, please

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24

1 stand? (No response).

2 Ladies and gentlemen, is any member
3 of the jury panel aware of any interests or
4 any bias or prejudice you may have for or
5 against the Defendant in this case? If so,
6 please stand? (No response).

7 Is any member of the jury panel
8 conscious or have already formed an opinion
9 or a bias in reference to this case? If so,
10 please stand? (No response).

11 And lastly, ladies and gentlemen,
12 based on the nature of this case that is an
13 alleged armed robbery, is there anything
14 about that particular charge that would
15 affect your ability to be fair and impartial
16 in the trial of this case? (No response).

17 And, lastly, ladies and gentlemen,
18 does anyone know of any reason whatsoever
19 that you cannot be fair to both the State and
20 the Defense in the trial of this particular
21 case. If so, please stand?

22 Very well. Is there any further
23 questions requested of this panel for the
24 State?

25 SOLICITOR TAYLOR: None from the

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25

1 State, Your Honor?

2 THE COURT: From the Defense?

3 MR. SCHWACKE: No, Your Honor.

4 THE COURT: Ladies and gentlemen,
5 does anyone need to take a break at this
6 time? (No response).

7 Y'all okay? (No response). Very
8 well.

9 What is happening now is those of
10 you that have been qualified, your name has
11 been put into a computer. It is going to
12 draft a random list.

13 When your name is called, I need you
14 to come forward. You're going to turn around
15 -- and I'm assuming they come right in front
16 of the chairs here -- turn around, face the
17 panel. You don't have to say or do anything.

18 You are either going to be invited
19 to take a seat in the jury box or you're
20 going to be told to go back to the panel.

21 Ladies and gentlemen, if you're
22 returned back to the panel, don't leave. I
23 still need you.

24 But, again, -- the strikes are five
25 and ten, okay?

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1 How many alternates do y'all need?

2 SOLICITOR TAYLOR: I'd be fine with
3 one, Your Honor.

4 THE COURT: You think one is fine?
5 Mr. Schwacke?

6 MR. SCHWACKE: Yes, ma'am.

7 THE COURT: Okay. One alternate,
8 please. Okay. All right.

9 Ladies and gentlemen, if anyone
10 needs to stand up and take a stretch -- I
11 call this the second-inning stretch, you are
12 welcome to.

13 THE COURT: Madam Clerk.

14 CLERK: Ladies and gentlemen of e
15 jury, as I call your name, please come
16 forward and bring your personal belongings
17 with you.

18 If I say "seat the juror", please
19 have a seat the jury box.

20 If I say "excuse the juror", please
21 return to your original seat.

22 And please follow the instruction of
23 the bailiffs as you come up.

24 Juror 124, Teresa Rademacher.

25 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

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1 CLERK: What say you as to State?
2 SOLICITOR TAYLOR: Please present the
3 juror.
4 CLERK: What say as to Defendant?
5 SOLICITOR CONDON: Please seat the
6 juror.
7 CLERK: Seat the juror.
8 THE COURT: Welcome, ma'am.
9 (JUROR NUMBER 124 SEATED)
10 CLERK: Juror 1, Shawn Abrams.
11 (JUROR, WHITE MALE, BEFORE COUNSEL)
12 CLERK: What say as to State?
13 SOLICITOR TAYLOR: Please present the
14 juror.
15 CLERK: What say as to Defendant?
16 MR. SCHWACKE: Please seat the
17 juror.
18 THE COURT: Welcome.
19 (JUROR NUMBER 1 SEATED)
20 CLERK: Juror 150, Melanie Stevens.
21 (JUROR, WHITE FEMALE, BEFORE COUNSEL)
22 CLERK: What say as to State?
23 SOLICITOR TAYLOR: Please present the
24 juror.
25 CLERK: What say as to Defendant?

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1 MR. SCHWACKE: Please excuse the
2 juror in the trial of this case.

3 CLERK: Excuse the juror.

4 (JUROR NUMBER 150 EXCUSED)

5 CLERK: Juror 179, Christina Ellis.

6 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

7 CLERK: What say you as to State?

8 SOLICITOR TAYLOR: Please present the
9 juror.

10 CLERK: What say you as to the
11 Defendant?

12 MR. SCHWACKE: Please seat the
13 juror.

14 CLERK: Seat the juror.

15 (JUROR NUMBER 179 SEATED)

16 CLERK: Juror 60, Bruce Grimm.

17 (JUROR, WHITE MALE, BEFORE COUNSEL)

18 CLERK: What say you as to the
19 State?

20 SOLICITOR TAYLOR: Please present the
21 juror.

22 CLERK: What say you as to the
23 Defendant?

24 MR. SCHWACKE: Please excuse the
25 juror.

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1 CLERK: Excuse the juror.

2 THE COURT: Okay. Sir, you can go
3 back and take your seat.

4 (JUROR NUMBER 60 EXCUSED)

5 CLERK: Juror 24, Sarah A. Burris.

6 (JUROR, ASIAN FEMALE, BEFORE COUNSEL)

7 CLERK: What say you as to the
8 State?

9 SOLICITOR TAYLOR: Please present the
10 juror.

11 CLERK: What say you as to the
12 Defendant?

13 MR. SCHWACKE: Please excuse the
14 juror.

15 CLERK: Excuse the juror.

16 (JUROR NUMBER 24 EXCUSED)

17 CLERK: Juror 152, Gamaliel Taylor.

18 (JUROR, BLACK MALE, BEFORE COUNSEL)

19 CLERK: What say you as to the
20 State?

21 SOLICITOR TAYLOR: Please present the
22 juror.

23 CLERK: What say you as to the
24 Defendant?

25 MR. SCHWACKE: Please seat the

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1 juror.

2 CLERK: Seat the juror.

3 THE COURT: Welcome, sir.

4 (JUROR NUMBER 152 SEATED)

5 CLERK: Juror 32, Barbara Crolley.

6 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

7 CLERK: What say you as to the
8 State?

9 SOLICITOR TAYLOR: Please present the
10 juror.

11 CLERK: What say you as to the
12 Defendant?

13 MR. SCHWACKE: Your Honor, would
14 you entertain a challenge for cause of this
15 juror based upon her experience of being a
16 victim and knowledge of the Hanahan Police
17 Department.

18 THE COURT: May I see the
19 attorneys quickly? I'm not going to put this
20 on the record just yet. This is not on the
21 record.

22 (BENCH CONFERENCE)

23 THE COURT: All right. Ma'am, I'm
24 going to go ahead and excuse you for cause. I
25 appreciate you being here. Thank you.

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1 (JUROR NUMBER 32 EXCUSED)

2 CLERK: Juror 98, Christopher
3 McCullough.

4 (JUROR, BLACK MALE, BEFORE COUNSEL)

5 CLERK: What say you as to the
6 State?

7 SOLICITOR TAYLOR: Please present
8 the juror.

9 CLERK: What say you as to the
10 Defendant?

11 MR. SCHWACKE: Please seat the
12 juror.

13 CLERK: Seat the juror.

14 (JUROR NUMBER 98 SEATED)

15 CLERK: Juror 73, Glenda Howard.

16 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

17 CLERK: What say you as to the
18 State?

19 SOLICITOR TAYLOR: Please present
20 the juror.

21 CLERK: What say you as to the
22 Defendant?

23 MR. SCHWACKE: Please excuse the
24 juror.

25 CLERK: Excuse the juror.

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1 (JUROR NUMBER 73 EXCUSED)

2 CLERK: Juror 42, Michelle Eaton.

3 MR. SCHWACKE: Who?

4 THE COURT: Ms. Eaton.

5 CLERK: 42.

6 MR. SCHWACKE: I'm sorry?

7 THE COURT: Michelle Eaton. Thank
8 you. Come on around, Ms. Eaton.

9 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

10 CLERK: What say you as to the
11 State?

12 SOLICITOR TAYLOR: Please present
13 the juror.

14 CLERK: What say you as to the
15 Defendant?

16 MR. SCHWACKE: Please excuse the
17 juror.

18 CLERK: Excuse the juror.

19 (JUROR NUMBER 42 EXCUSED)

20 CLERK: Juror 136, Mary Ryan.

21 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

22 CLERK: What say you as to the
23 State?

24 SOLICITOR TAYLOR: Please present
25 the juror.

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1 CLERK: What say you as to the
2 Defendant?

3 MR. SCHWACKE: Please excuse the
4 juror from the trial of this case.

5 CLERK: Excuse the juror.

6 (JUROR NUMBER 136 EXCUSED)

7 CLERK: Juror 80, Pauletoria Jones.

8 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

9 CLERK: What say you as to the
10 State?

11 SOLICITOR TAYLOR: Please present the
12 juror.

13 CLERK: What say you as to the
14 Defendant?

15 MR. SCHWACKE: Please seat the
16 juror.

17 CLERK: Seat the juror.

18 (JUROR NUMBER 80 SEATED)

19 CLERK: Juror 135, Kenneth Ruedy.

20 (JUROR, WHITE MALE, BEFORE COUNSEL)

21 CLERK: What say you as to the
22 State?

23 SOLICITOR TAYLOR: Please present
24 the juror.

25 CLERK: What say you as to the

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1 Defendant?

2 MR. SCHWACKE: Please excuse the
3 juror from the trial of this case.

4 CLERK: Excuse the juror.

5 (JUROR NUMBER 136 EXCUSED)

6 CLERK: Juror 94, Cynthia Manuel.

7 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

8 CLERK: What say you as to the
9 State?

10 SOLICITOR TAYLOR: Please present the
11 juror.

12 CLERK: What say you as to the
13 Defendant?

14 MR. SCHWACKE: Please seat the
15 juror.

16 CLERK: Seat the juror.

17 (JUROR NUMBER 94 SEATED)

18 CLERK: Juror 88, Ashley Lawrence.

19 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

20 CLERK: What say you as to the
21 State?

22 SOLICITOR TAYLOR: Please present the
23 juror.

24 CLERK: What say you as to the
25 Defendant?

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1 MR. SCHWACKE: Please seat the
2 juror.

3 CLERK: Seat the juror.

4 (JUROR NUMBER 88 SEATED)

5 CLERK: Juror 153, Jennifer Taylor.

6 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

7 CLERK: What say you as to the
8 State?

9 SOLICITOR TAYLOR: Please present
10 the juror.

11 CLERK: What say you as to the
12 Defendant?

13 MR. SCHWACKE: Please seat the
14 juror.

15 CLERK: Seat the juror.

16 (JUROR NUMBER 153 SEATED)

17 CLERK: Juror 36, Brian Davis.

18 (JUROR, BLACK MALE, BEFORE COUNSEL)

19 CLERK: What say you as to the
20 State?

21 SOLICITOR TAYLOR: Please present
22 the juror.

23 CLERK: What say you as to the
24 Defendant?

25 MR. SCHWACKE: Please seat the

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1 juror.

2 CLERK: Seat the juror.

3 (JUROR NUMBER 36 SEATED)

4 CLERK: Juror Number 180, Dennis
5 McCloskey.

6 (JUROR, WHITE MALE, BEFORE COUNSEL)

7 CLERK: What say you as to the
8 State?

9 SOLICITOR TAYLOR: Please present
10 the juror.

11 CLERK: What say you as to
12 Defendant?

13 MR. SCHWACKE: Please excuse the
14 juror.

15 CLERK: Excuse the juror.

16 (JUROR NUMBER 180 EXCUSED)

17 CLERK: Juror 51, Sarah Ann Frost.

18 THE COURT: Ms. Frost, just stand
19 and face the panel right here.

20 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

21 CLERK: What say you as to the
22 State?

23 SOLICITOR TAYLOR: Please excuse the
24 juror.

25 CLERK: Excuse the juror.

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1 (JUROR NUMBER 51 EXCUSED)
2 CLERK: Juror number 5, Vicente
3 Baca.
4 (JUROR, WHITE MALE, BEFORE COUNSEL)
5 CLERK: What say you as to the
6 State?
7 SOLICITOR TAYLOR: Please present the
8 juror.
9 CLERK: What say as to Defendant?
10 MR. SCHWACKE: Please excuse the
11 juror.
12 CLERK: Excuse the juror.
13 (JUROR NUMBER 5 EXCUSED)
14 CLERK: Defense has nine strikes.
15 THE COURT: Pardon me?
16 CLERK: The defense has nine.
17 THE COURT: The defense has nine
18 strikes. Yes, ma'am.
19 CLERK: Juror 50 Kenneth Fristoe.
20 (JUROR, WHITE MALE, BEFORE COUNSEL)
21 CLERK: What say as the State?
22 SOLICITOR TAYLOR: Please present the
23 juror.
24 CLERK: What say as to Defendant?
25 MR. SCHWACKE: please seat the

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1 juror.

2 CLERK: Seat the juror.

3 (JUROR NUMBER 50 SEATED)

4 CLERK: Juror 125, Audrey Rasque.

5 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

6 CLERK: What say as to State?

7 SOLICITOR TAYLOR: Please present the

8 juror.

9 CLERK: What say you as to the
10 Defendant?

11 MR. SCHWACKE: Please seat the
12 juror.

13 CLERK: Seat the juror.

14 (JUROR NUMBER 125 SEATED)

15 CLERK: Alternates?

16 THE COURT: Yes, ma'am.

17 CLERK: Juror 103, Barbara Jones.

18 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

19 CLERK: What say you as to the
20 State?

21 SOLICITOR TAYLOR: Please present the
22 juror.

23 CLERK: What say you as to the
24 Defendant?

25 MR. SCHWACKE: Please seat the

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1 juror.

2 CLERK: Seat the juror.

3 (JUROR NUMBER 103 SEATED)

4 THE COURT: Are there any matters
5 of law we need to take up regarding the jury
6 selection process from the State?

7 SOLICITOR TAYLOR: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. SCHWACKE: None, Your Honor.

10 THE COURT: All right. Ladies and
11 gentlemen, welcome. As I'm sure you under-
12 stand, you are the jurors in the trial of my
13 first case.

14 There are a few brief instructions I
15 need to give you before you break for lunch.
16 So if you would just please sit tight.

17 Ladies and gentlemen, for the
18 remainder of the panel ---

19 Do they have a line to call in here?

20 CLERK: Yes, ma'am.

21 THE COURT: All right. Ladies and
22 gentlemen, I am going to ask that you call in
23 to the jury line here after six o'clock
24 tonight. I anticipate that what it's going
25 to say is call in tomorrow night after six

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1 o'clock. But, again, out of an abundance of
2 caution, if we did need you for some reason
3 tomorrow, I want to make sure I have you
4 available if I need to bring you back.

5 Ladies and gentlemen, you are free
6 at this time to go about your business. Just
7 make sure you call that line and follow its
8 instructions. Again, what I hope it will say
9 is that I look forward to seeing y'all back
10 here Wednesday morning at 9:30 where we'll go
11 ahead and pull the second jury to finish out
12 the week, ladies and gentlemen.

13 But, again, please call after 6:00
14 tonight, follow the instructions, all right?
15 I appreciate you being here. Thank you.

16 (JURY PANEL EXCUSED)

17 THE COURT: Again ladies and
18 gentlemen, "Welcome."

19 As you know you are my jury for this
20 first trial. I need to tell you a couple of
21 things before we break for lunch, ladies and
22 gentlemen.

23 To begin with, you must not discuss
24 this case with anyone, and that includes each
25 other, until the case has been sent to you

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1 for its deliberations.

2 And the reason why that is at this
3 stage, ladies and gentlemen, you haven't
4 heard the opening arguments of the lawyers,
5 you haven't heard any evidence. You haven't
6 heard the closing arguments nor my charge on
7 the law. It simply would be inappropriate
8 for you to discuss this case in any way with
9 anyone before all of that occurs.

10 Ladies and gentlemen, if you happen to
11 come into contact with someone over the lunch
12 hour or if you have to call family members or
13 talk to friends, the only thing you're
14 permitted to say is you've been chosen as a
15 juror in a criminal trial.

16 You can't say anything about the charges,
17 the lawyers involved, the parties involved
18 and the reason why is this, inevitably
19 someone is going to try to tell you something
20 about something and they know nothing about
21 this case, ladies and gentlemen. And, again,
22 I wouldn't want you to be influenced.

23 Additionally, ladies and gentlemen, if
24 you were able to get into the courthouse this
25 morning with your cellphone, I'm going to ask

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1 that you leave it back in your car when we
2 take a break. And the simple reason is
3 because you can get so much information off
4 of a cellphone these days. I remind you that
5 you're going to have everything you need
6 right here in this courtroom to decide this
7 case.

8 And, again, it would be inappropriate for
9 you to do any outside research or speak to
10 anyone. So, you take the temptation away by
11 keeping the phones out of the courtroom and
12 out of the jury room.

13 If you do need to use a phone to call
14 someone while you're performing your jury
15 duty, simply ask the bailiffs.

16 Ladies and gentlemen, I also want you to
17 know that the bailiffs' sole job is to take
18 care of you, the jury. If you need anything
19 while you're performing jury service, go to
20 them and they will immediately come to me.

21 If anyone is worried about being out of
22 contact with a family member or friends while
23 they're here, simply tell them that you are
24 sitting as a juror and tell them to call the
25 clerk of court's office up here at the court-

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1 house, tell them your name and that you're a
2 juror and I assure you, I will get you
3 immediately, all right?

4 Lastly, ladies and gentlemen, before we
5 go ahead and break -- and when we do break,
6 I'm going to send you back to your jury room
7 so you know where to return when you come
8 back from lunch -- I need to tell you that
9 I've instructed the parties and the attorneys
10 and any witnesses in this case not to speak
11 with you in coming and going from the
12 courthouse. And the reason why is even an
13 innocent conversation out in the parking lot
14 of 'can you believe it's raining again', will
15 be conceived improperly. Ladies and
16 gentlemen, it will be reported back. It
17 always does. So I have to ask you about it.
18 So, again, out of an abundance of caution, I
19 just tell them not to speak to you.

20 So, again, if you pass them in the walls
21 of the courthouse and they don't even say
22 hello, they're not being unfriendly. They're
23 simply following my orders, all right?

24 Ladies and gentlemen, the one other thing
25 I'm going to need you to do right before you

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1 break for lunch is to elect a foreperson.

2 The foreperson doesn't have any more say than
3 anyone else. They are simply the person that
4 I communicate with regarding scheduling and
5 timing during the trial. And, additionally,
6 at the end of the case when it's sent to you
7 for your deliberations, the foreperson kind
8 of gets the ball rolling and gets everyone
9 involved in talking in the case.

10 When you come back, ladies and gentlemen,
11 I'm going to ask that foreperson to take this
12 front seat right here and also give the name
13 to the bailiff.

14 I'll need my alternate to remain in the
15 seat that she's in during the rest of the
16 trial.

17 Ladies and gentlemen, the rest of you, as
18 you come and go can move around seats. It
19 does not matter.

20 All right. Ladies and gentlemen, I
21 appreciate you being here. We look forward
22 to seeing you back. The last thing I need to
23 do is remind you to be prompt. I can't start
24 until all thirteen of you are here. So if
25 for some reason you run into car trouble or

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1 have a problem, please call to the clerk's
2 office. We're looking for you, okay?

3 Ladies and gentlemen, I'm going to excuse
4 you back to your jury room. We are going to
5 go ahead and resume the trial of this case at
6 1:00. We're taking a little longer lunch
7 break right now because there are some pre-
8 trial matters I need to deal with the lawyers
9 and I need to make sure they have an
10 opportunity to have a lunch break. But I
11 just wanted to let you know typically,
12 probably tomorrow, we're going to break
13 roughly around 1:00 usually for lunch and go
14 for about an hour, maybe an hour and fifteen
15 minutes, okay?

16 Yes, ma'am?

17 JUROR: Your Honor, is it
18 appropriate to bring writing utensils and
19 notepads to take notes?

20 THE COURT: Ma'am, what I'm going
21 to do is this. I'm going to speak with the
22 attorneys about whether or not they are fine
23 with that. You don't need to bring them.
24 If, in fact, we do allow you or permit you to
25 take notes, we're going to give you pads and

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1 pencils or whatever we give them here,
2 okay? So I don't want you worried about
3 that.

4 But I appreciate the inquiry and
5 over the lunch hour I'm going to speak with
6 the attorneys, all right?

7 Anything else?

8 Ladies and gentlemen, we look
9 forward to seeing you promptly back in your
10 jury room at 1:00 where we're going to go
11 ahead and start the trial of this case.
12 Thank you for being here. You're excused
13 back to your jury room.

14 (JURY OUT @ 11:35 A.M.)

15 THE COURT: How long do you think
16 the *Biggers* hearing is going to last, y'all?

17 SOLICITOR TAYLOR: I don't antici-
18 pate it will last long, Your Honor. Our
19 witnesses was on the road, on the way here
20 last time I checked. So I've sent the
21 paralegal to go check to see if everybody's
22 here.

23 THE COURT: Okay. My thought
24 would be is if they're not all here, let's go
25 ahead and break for lunch right now and maybe

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1 come back at about twenty minutes till one.
2 Do you think that's enough time? We can do
3 thirty minutes or twenty minutes to one.

4 SOLICITOR TAYLOR: Twenty minutes.

5 THE COURT: Let's do twenty
6 minutes till one. We'll go ahead and have
7 the *Biggers* hearing and we'll take care of
8 that and we'll go right into openings.

9 SOLICITOR TAYLOR: Yes, ma'am.

10 THE COURT: Anything further from
11 the State?

12 SOLICITOR TAYLOR: No, Your Honor.

13 THE COURT: From the Defense?

14 MR. SCHWACKE: None, Your Honor.

15 THE COURT: Yes?

16 SOLICITOR TAYLOR: I'm sorry, do we
17 need to put on the record the amendment?

18 THE COURT: Yes, we do. And I
19 appreciate it and I apologize. Prior to the
20 reading of -- and I didn't actually even read
21 the indictments in this case, but I did give
22 a short rendition of the facts in this case.
23 I went ahead and amended, with consent of
24 Defense counsel, Indictment 2013-331 to
25 reflect the proper date of the allegation of

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1 the alleged armed robbery as being January
2 6th. I made the change on the indictment. I
3 have initialed it myself. It was on motion
4 of the solicitor and with consent of defense
5 counsel. Is that correct, Solicitor?

6 SOLICITOR TAYLOR: Yes, Your Honor.

7 THE COURT: And, Mr. Schwacke?

8 MR. SCHWACKE: That is correct.

9 THE COURT: Very good. All right.
10 Thank you, y'all. I appreciate it. Have a
11 nice lunch and look forward to seeing you
12 back.

13 CLERK: Juror 32 ---

14 THE COURT: Pardon?

15 CLERK: Juror 32 released for
16 cause?

17 THE COURT: Yes, ma'am. Yes,
18 ma'am. Oh, I apologize. I should have told
19 you that. Yes, Number 32 was excused for
20 cause, without objection from the State.

21 CLERK: Okay.

22 THE COURT: Okay?

23 CLERK: Yes.

24 THE COURT: It was on motion of
25 the Defense, but without objection from the

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1 State.

2 CLERK: Thank you.

3 THE COURT: I'm sorry. Thank you.
4 Thank you.

5 (LUNCH RECESS)

6 THE COURT: We're going to have a
7 *Biggers* hearing; is that correct or we could
8 go ahead and start with the jury and take it
9 up on our first break?

10 SOLICITOR TAYLOR: Our first
11 witness is actually an identification
12 witness, Your Honor.

13 THE COURT: All right. Let's
14 start with that. Would you go ahead and call
15 your witness?

16 SOLICITOR TAYLOR: The State calls
17 John Rhodan.

18 CLERK: Please come forward, sir.

19 THE COURT: Come on forward, sir.

20 (WITNESS TAKES STAND)

21 JOHN RHODAN, having been duly sworn to
22 tell the truth, and nothing but the truth,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR TAYLOR:

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1 Q. And Mr. Rhodan, do you remember an
2 incident that occurred on January 6th, 2013?

3 A. Yes, I do.

4 Q. And where were you on that evening?

5 A. I was on Century's yard, truck yard,
6 in North Charleston, Hanahan area.

7 Q. And can you explain just to the
8 Court kind of what that truck yard looks
9 like?

10 A. The truck yard, it's a fenced yard
11 with lighting going around the exterior of
12 the yard.

13 Q. And what does the interior of the
14 yard look like?

15 A. The interior holds trucks and
16 containers that's going out for shipping, and
17 coming in and go inside, it's returned for
18 their customers.

19 Q. Okay. At some point -- at what time
20 did you arrive at the truck yard?

21 A. Well, probably about 6:00, 6:00 p.m.

22 Q. And was it light or dark outside?

23 A. It was light when I arrived.

24 Q. At some point were you approached by
25 a male that you did not know?

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1 A. Yes. It was approximately 7:00 p.m.
2 a male approached me on the yard.

3 Q. And was it light or dark outside at
4 that point?

5 A. It was dark at that point.

6 Q. Were you able to see this individual
7 clearly?

8 A. Yes, ma'am.

9 Q. And how is that?

10 A. The area that he approached me in
11 was lighted.

12 Q. When he first approached you, did
13 you recognize him?

14 A. No, I didn't.

15 Q. And how close did he come to you?

16 A. Close enough to pat me down.

17 Q. Did you get a good look at his face?

18 A. Yes.

19 Q. Tell the Court, just kind of
20 briefly, about how long was this individual
21 close to you?

22 A. Probably two minutes, a minute and a
23 half, something like that.

24 Q. And after that minute and a half to
25 two minutes, what happened?

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1 A. He saw a couple of other individuals
2 on the yard and went to approach them also or
3 have a conversation with them.

4 Q. And did you -- did he direct you in
5 any way?

6 A. Yes, he did.

7 Q. And what did he tell you?

8 A. Actually, he called me over. When
9 he first arrived in the yard, he walked up to
10 me and said, 'are you going out at' this --
11 and I told him, no, I wasn't going out at
12 this time.

13 I was actually going to -- I was checking
14 these trucks out to make sure that they're
15 operable for the next morning.

16 And at that time, he patted me down.
17 The only thing I had on me at that time was
18 a flashlight, a miniature flashlight and he
19 took it out of my pocket.

20 Q. Before he patted you down, did he
21 have anything on his person?

22 A. Yes, he did.

23 Q. And what was that?

24 A. He had a gun. Actually, when he did
25 approach me he said, "give me all your

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1 wallet." After he patted, he fully padded me
2 down, he said "give me all your money." I
3 was like, "I don't have any money."

4 Q. And when he pulled the gun out, how
5 far away from you was he?

6 A. Within arm's reach.

7 Q. Okay. After he patted you down, did
8 you -- were you still near him?

9 A. Yes.

10 Q. And what happened at that time?

11 A. At that time we saw Keith Blake
12 walking around his truck. He was also out
13 there checking his truck. And he wanted to
14 know who was that? I told him just another
15 driver. So he wanted me, myself, to call
16 Blake over. And usually when we see each
17 other we usually talk anyway. So Blake
18 started to walk that way. And once he got to
19 the point where we were, the guy also said,
20 told Blake to give him all his money he had.
21 Blake thought it was a joke. And I told
22 Blake at that time, I didn't know this guy
23 and he wasn't joking.

24 Q. Were you still, at this point, able
25 to get a good look at his face?

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1 A. Yes, ma'am.

2 Q. After he spoke with Mr. Blake, what
3 happened next?

4 A. He saw Ms. Meyers walking around
5 checking her truck also, wanted to know who
6 is that? And I told him another driver. So
7 at that point he gave us the directive, Blake
8 and myself, to walk toward Ms. Meyers where
9 she were in front of the truck.

10 And during that time he approached her
11 and ask her for money. She said she didn't
12 have any, but he saw the jewelry, earrings
13 and some necklace and rings that she had on
14 and proceeded to tell her to take them off.
15 And also patted her down at that time, too.

16 Q. Did you, at some point, go to a
17 different part of the yard?

18 A. Yes, ma'am. There was a car parked
19 -- our car was parked on the other side of
20 the truck. And he wanted to know what, whose
21 car was it. And I told him, so he rambled
22 through the car for a minute.

23 And once he got through going through the
24 car he told us, give us directive to walk to
25 walk to the back of the yard.

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1 And as we were walking to the back of the
2 yard, when I look across my shoulder, he was
3 going to Blake's truck. And once he got
4 through with Blake, going through Blake's
5 truck -- after we got to the back of the
6 yard, turned around, he was running back
7 toward his vehicle.

8 Q. About how long, from the time that
9 you first saw him, until the time that you
10 lost sight of him, would you say that the
11 encounter was?

12 A. Anywhere from eight to ten minutes.

13 Q. And during that eight to ten
14 minutes, were you able to get a good look at
15 his face?

16 A. Yes, ma'am.

17 Q. At some point, Mr. Rhodan, did the
18 officers ask you to attempt to identify
19 someone?

20 A. The officers actually said that they
21 had apprehended someone and asked us to
22 identify him at the time.

23 Q. Was that at the truck yard or were
24 you transported somewhere else?

25 A. We was transported to somewhere

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1 else.

2 Q. And where was that, if you remember?

3 A. I don't actually remember the street
4 name, but it was over there off of Remount
5 near the Hot Spot. And it was like a mobile
6 home park.

7 Q. How long did it take you to get
8 there from the truck yard?

9 A. Probably two to three minutes.

10 Q. And how long after the encounter
11 with the individual had stopped were you
12 taken there to do an identification?

13 A. Immediately.

14 Q. Okay. When you arrived at the
15 trailer park location, what did you see?

16 A. The first thing I saw was the
17 vehicle that the individual was in, which was
18 a Chevy GMC pickup with the side steps on it.
19 And I saw the individual standing there.

20 Q. And were you able to get a good look
21 at his face?

22 A. Yes.

23 Q. How was the lighting at the trailer
24 park?

25 A. The lighting wasn't great at the

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1 trailer park. The officers actually put a
2 spotlight on him when -- to identify him.

3 Q. And when they put the light on him,
4 were you able to identify that person?

5 A. Yes, ma'am.

6 Q. And who was it?

7 A. The individual that was on the yard
8 that actually approached us with the gun.

9 Q. How certain are you that the person
10 you identified is the same person that robbed
11 you at gunpoint?

12 A. One hundred percent (100%).

13 Q. Thank you.

14 SOLICITOR TAYLOR: No further
15 questions, Your Honor.

16 THE COURT: Mr. Schwacke.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. The person that you saw at the truck
20 yard that night, had he done anything to try
21 to conceal his face?

22 A. No, he didn't.

23 Q. You were able to see his face?

24 A. Yes.

25 Q. Did he have gloves on?

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1 A. No, he didn't.

2 Q. So it's dark when this happens;
3 correct?

4 A. Correct.

5 Q. And you have a lighted truck yard.
6 And that's down at the end of the -- down at
7 the end of -- it's a dead-end of the road, a
8 cul-de-sac?

9 A. Correct.

10 Q. One way into that lot?

11 A. Right.

12 Q. So you had a flashlight?

13 A. Yes, it was in my pocket.

14 Q. In which pocket was that?

15 A. I'm not certain which one at this
16 time.

17 Q. How would you describe the flash-
18 light?

19 A. It's a short miniature flashlight.

20 Q. Like one of those miniature Mag
21 Lights?

22 A. Yes.

23 Q. What color was it?

24 A. Red in color.

25 Q. Now, what had you out on the lot

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1 that night?

2 A. Checking the trucks, more or less
3 like a pre-trip. We had more than one truck.
4 So sometimes the drivers do not check the
5 trucks so I go out to do that, to make sure
6 it can make it through another day without
7 being beside the highway.

8 Q. And when you say "we," who do you
9 mean by "we?"

10 A. Well, just in general. Myself, Ms.
11 Meyers, we go out to do that.

12 Q. Now, are you and Ms. Meyers related
13 or together somehow?

14 A. Yes.

15 Q. Tell me about that.

16 A. Cohabit.

17 Q. Pardon me?

18 A. We actually cohabit.

19 Q. Okay. So how long have y'all been
20 together?

21 A. Eight years.

22 Q. And are each of you commercial
23 drivers?

24 A. Yes.

25 Q. So you each have your own CDL's?

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1 A. Well, mine is disqualified because
2 of a medical reason at this time.

3 Q. I'm sorry. What's the medical
4 reason?

5 A. Hypertension.

6 Q. So when you say we were out there to
7 see the truck, it was you and Ms. Meyers?

8 A. Right.

9 Q. How would y'all have gotten out to
10 the lot?

11 A. We drove our POV.

12 Q. Personal vehicle?

13 A. Yes.

14 Q. And what vehicle was that?

15 A. A Lexus, white in color.

16 Q. Okay.

17 SOLICITOR: (Tenders document to
18 be marked as exhibit).

19 COURT REPORTER: Defendant's
20 Exhibit Number 1 for this hearing, ID only.

21 (SO MARKED AS DEFENDANT'S EXHIBIT 1)

22 CROSS-EXAMINATION CONTINUED

23 BY MR. SCHWACKE:

24 Q. Okay. I'm going to show you what's
25 been marked as Defendant's Exhibit Number 1

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1 for identification for the purpose of this
2 hearing. And I ask if you're familiar with
3 that?

4 A. That's the truck yard.

5 Q. And the night after this happened
6 you were shown a video; correct?

7 A. The night -- yeah, which ---.

8 Q. The night that this happened?

9 A. Right. Correct.

10 Q. And who all was with you? I'm
11 sorry?

12 A. Ms. Meyers, Mr. Blake, and the
13 owners of Century, the owners of the company
14 that has the truck out front.

15 Q. Are there two companies that operate
16 on that lot?

17 A. Correct. Right.

18 Q. And which company do you drive for?

19 A. We are our own individuals. We are
20 under Transportation, Inc. So it's actually
21 three that's on the yard at this present
22 time.

23 Q. Three companies?

24 A. Correct.

25 Q. Is Mr. Blake with the same company

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1 you are?

2 A. No, he isn't.

3 Q. So does this appear to be a screen
4 capture or a frozen picture taken from the
5 video that you watched that night?

6 A. I reckon it was on the -- this is
7 Blake's truck, Ms. Meyers' truck. That's
8 where I was parked there.

9 Q. Okay. All right. So you've
10 indicated this truck right here in the back
11 is Mr. Blake's truck?

12 A. Correct.

13 Q. And this truck right here ---

14 A. Correct.

15 Q. --- is Ms. Meyers' and your truck?
16 Is it in her name or both your names or ---

17 A. It's actually in the company's name.

18 Q. When were you shown -- all right.
19 And at some point you're taken in a police
20 car to a different location, away from the
21 yard; correct?

22 A. Correct.

23 Q. And who all goes?

24 A. Ms. Meyers and myself.

25 Q. Are y'all in the same police

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1 vehicle?

2 A. Yes, we are.

3 Q. Where are you seated in the vehicle?

4 A. In the rear of the vehicle.

5 Q. Both of you in the backseat?

6 A. Correct.

7 Q. And do you know which officer took
8 you there?

9 A. Yes.

10 Q. Who was that?

11 A. I don't know his name but he's
12 present.

13 Q. Okay. Did you see him earlier
14 today?

15 A. Yes.

16 Q. Outside somewhere?

17 A. Right.

18 Q. And what did he tell you about going
19 to this other location?

20 A. He said that they apprehended some-
21 one and he want us to see if that was the
22 individual.

23 Q. So he said they had apprehended
24 someone. Is that the word they had used?

25 A. Well, basically.

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1 Q. And they wanted you to do what?

2 A. To see if that was the individual
3 that actually, you know, that was at the
4 incident that went on.

5 Q. Well, did that happen after or
6 before you watched the video?

7 A. That was on -- a few minutes before
8 we watched the video.

9 Q. And you gave a written statement?

10 A. Yes, I did.

11 Q. When did you give the written
12 statement?

13 A. At the office.

14 Q. Was that after or before you were
15 asked to identify someone?

16 A. That was after.

17 Q. Okay. Do you carry identification?

18 A. Yes, I do.

19 Q. What do you carry it in?

20 A. My wallet.

21 Q. Your wallet?

22 A. (Affirmative nod).

23 Q. So you had your wallet that night?

24 A. Yes, but I didn't have it with me.

25 It was in the trunk of the car.

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1 Q. And do you -- what are you required
2 to have -- your license is suspended;
3 correct?

4 A. Correct.

5 Q. For medical reasons?

6 A. Yes, sir. Hypertension.

7 Q. So when's the last time that you
8 were able to drive a truck?

9 A. August of last year, this past year.
10 This year.

11 Q. So when you arrived to the location
12 where the police officer is driving you in
13 the back of his cruiser, what does he say to
14 you?

15 A. He didn't actually say anything, as
16 I can recall. After he told us he was, you
17 know, that he wanted us to go to identify an
18 individual, he didn't say anything along the
19 route as I can recall.

20 Q. And how did you describe the area
21 where this was?

22 A. It was on -- it was dark.

23 Q. And you were asked to identify
24 someone?

25 A. Yes.

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1 Q. Were they in or out of the vehicle?

2 A. Out.

3 Q. Were they in -- out of the vehicle
4 the entire time you were there or did he step
5 out of the vehicle when you were there?

6 A. I can't remember. I think they
7 actually -- when we got there, he was in the
8 vehicle. And he got -- I think they pulled
9 him out, but I know he was handcuffed at the
10 time.

11 Q. Right. So he's handcuffed, it's
12 dark. You say at some point they put a light
13 on him?

14 A. Yes, sir, because it was dark.

15 Q. What kind of light are we talking
16 about?

17 A. Like a spotlight.

18 Q. A spotlight from the side of the car
19 or handheld?

20 A. Yes, car.

21 Q. And who said something first after
22 that happened, between you and Ms. Meyers?

23 A. I did.

24 Q. And what did you say?

25 A. That that was the individual.

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1 Q. And who did you say that to?

2 A. The officer.

3 Q. And Ms. Meyers would have been able
4 to hear you say that?

5 A. Yes.

6 Q. And then what did she say?

7 A. I think he also asked him (sic).
8 I mean asked her, and she said that that was
9 him, also.

10 Q. Mr. Blake wasn't with you?

11 A. No, he wasn't.

12 Q. Why did he not go?

13 A. I don't know, sir.

14 Q. Was he still at the lot when y'all
15 were drive over to the location to identify
16 this person?

17 A. Yes.

18 Q. Was he with anyone still there?

19 A. I think he was with one of the
20 officers.

21 Q. So there were still officers there
22 at that point?

23 A. An officer and the individual that
24 actually owns the, that runs that company.

25 Q. The individual that runs the

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1 company?

2 A. Yes.

3 Q. At the time this happened that
4 night, was there only the three of you on the
5 lot?

6 A. Yes.

7 Q. Were you aware of anyone else?

8 A. No.

9 Q. Thank you.

10 MR. SCHWACKE: That's all the
11 questions I have.

12 THE COURT: Anything further?

13 SOLICITOR TAYLOR: Nothing from
14 the State, Your Honor.

15 THE COURT: You may step down,
16 sir. Thank you.

17 (WITNESS STEPS DOWN)

18 SOLICITOR CONDON: The State calls
19 Jacquelyn Meyers.

20 THE COURT: Okay. Come forward,
21 Ms. Meyers.

22 (WITNESS TAKES STAND)

23 JACQUELYN MEYERS, having been duly sworn
24 to tell the truth, and nothing but the truth,
25 testified as follows:

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DIRECT EXAMINATION

BY SOLICITOR CONDON:

Q. Good afternoon. Were you involved in an incident on January 6th, 2013 involving the Defendant, Joseph Mack?

A. Yes.

Q. And can you describe the events leading up to the robbery?

A. Well, we were on the yard over there off Trident Street, which is in Hanahan, which is our trucking yard over there with a couple of other companies, checking the trucks out, getting everything situated, preparing to leave out the following morning.

And the truck, a pickup went by and I kind of glanced to my right, on the street. And it went into the trucking yard that's dead-end on that street where it turned around and came out.

But I didn't really didn't think nothing of it because pickups and cars and whatnot is going in and out that yard and our yard both, you know, all the time.

So he came -- the truck came into our yard. And it stopped right as it came in the

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1 gate. And Blake and John was at the back of
2 where my truck's parked at. And so I thought
3 it was somebody that they knew. So I didn't
4 even bother to walk back there. I just kind
5 of stayed up front on the driver's side of my
6 truck.

7 And then maybe about a few minutes, all
8 three of them came walking towards me. And
9 so I thought it -- like I said, I thought it
10 was somebody that they knew. Because, you
11 know, a lot of times the trucking companies
12 hire on different drivers. And sometimes I
13 don't get to see all of them all of the time.
14 And I usually, I eventually see them, but,
15 you know, sometime it take a little time, a
16 couple days or whatever. So I thought maybe
17 it was just somebody new.

18 But anyway, so the three of them comes
19 walking towards me. And Blake said "he's not
20 playing." He's got a gun. And I was, just
21 kind of looked, kind of shocked like. And so
22 he told them and us to put our hands up.

23 And he made John and Blake face the
24 driver's side of my truck. And then he got
25 right in my face and he asked for the

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1 jewelry, which I had on some earrings and had
2 a bracelet, had on some rings. And he asked
3 for all of that. He asked what else I had.
4 He kind of patted me down. And I had like
5 twenty-one dollars (\$21) in my pocket because
6 I had on some sweat pants. And he took that.
7 And I was taking too long taking the jewelry
8 off. And he was like "hurry up, hurry up."
9 And so I, you know, finally took it all off
10 and just gave it to him.

11 Blake and John, like I said, was standing
12 against the truck with their hands up. And
13 he made them face the truck. And so they was
14 kind of turning around, looking at me. And
15 he was like, "Don't turn around. Don't turn
16 around."

17 And then he saw my white car and he
18 wanted to know whose car was it. And then he
19 proceeded to -- he told us to walk towards
20 the car. And, of course, you know, he had a
21 gun, which looked like a real gun, kind of --
22 I guess it was kind of silver. And made all
23 of us walk towards the car. And then he went
24 searching through the car. And he went
25 through the trunk, but he didn't find

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1 anything in the car or the trunk. And then I
2 think he took Blake's phone and he threw it
3 across the yard.

4 And then he told all three of us to start
5 walking towards the back of the yard. It's a
6 big yard, and start walking back, going that
7 way. And that's what we did. And then he, I
8 guess, he turned around and proceeded to go
9 over and get in his pickup and leave. And
10 then a couple of times we turned around. And
11 I was looking at him and he said, "Don't turn
12 around. Don't look at me. Don't look at
13 me." And he turned around and he left. And
14 by the time we walked and turned around, he
15 was gone off the yard.

16 And so we jumped into the white car and
17 proceed to follow. And at the same time,
18 everybody was calling 9-1-1 to tell, you
19 know, to get the police involved.

20 Q. Okay. And when he first approached
21 you, how close did he get to you?

22 A. He was very close, right up in my
23 face.

24 Q. What was the lighting like that
25 night?

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1 A. Well, it was -- the yard is pretty
2 lit, but on the driver's side of my truck, it
3 was a little dark but not that dark that I
4 couldn't see his face.

5 Q. Were you able to get a good look at
6 his face?

7 A. Yeah, because he was right in my
8 face, right up here, like this.

9 Q. How long was he in your face for?

10 A. It seemed like forever, but it
11 probably was maybe just a couple of minutes.
12 Long enough for me to take my jewelry off and
13 give it to him.

14 Q. Were you paying close attention to
15 what he looked like, his face and different
16 features?

17 A. Yeah.

18 Q. And after the Hanahan Police
19 Department arrived, did anyone offer to take
20 you somewhere to ID the possible suspect?

21 A. Yes, because we had jumped in the
22 car and was going to follow. But the
23 dispatch said not to, to turn around and come
24 back and just wait for the police to come.
25 And so somebody did shortly afterwards.

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1 Q. Do you remember an officer that took
2 you to the show-up with the Defendant?

3 A. Yes.

4 Q. And who was that?

5 A. I think it was Ellwood, I think was
6 his last name. And he took us over there to
7 where they found him and we identified him.

8 Q. Okay. If you saw the officer, would
9 you recognize him? If you had the name
10 wrong, would you recognize his face?

11 A. Yes.

12 Q. Okay. And when you arrived -- en
13 route to identify the suspect, what instruct-
14 tions were given to you?

15 A. Well, he told us to -- that he was
16 taking us over there to identify the guy but
17 that he couldn't see us in the back of the
18 car, but we would be able to see him.

19 Q. And what was the lighting like when
20 you got to where you observed the possible
21 suspect?

22 A. It was pretty good lighting. I
23 think it was a light post or something right
24 by that mobile home where they had him.

25 Q. And were you able to identify

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1 anybody?

2 A. Yes, I identified him.

3 Q. And who did you identify?

4 A. The suspect that robbed us, that
5 robbed me.

6 Q. Is that Joseph Mack, Jr.?

7 A. Yes, sir.

8 Q. And how certain were you when you
9 saw him?

10 A. I was very certain because it was
11 just a few minutes ago that he robbed me.

12 Q. Did you have any doubt it was him?

13 A. No.

14 Q. And why is that?

15 A. No doubt because it looked just like
16 him, same clothing and everything, same
17 pickup.

18 Q. Was it the same truck that you saw?

19 A. Yes, sir.

20 SOLICITOR CONDON: No further
21 questions.

22 THE COURT: All right. Mr.
23 Schwacke.

24 CROSS-EXAMINATION

25 BY MR. SCHWACKE:

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1 Q. Hey, Ms. Meyers.

2 A. Hello.

3 Q. So you're a commercial driver as
4 well?

5 A. Yes.

6 Q. And what type of commercial driving
7 do you do?

8 A. The eighteen-wheelers, we do the
9 containers out of Charleston to wherever.

10 Q. So is that out-of-state or is that
11 mostly local?

12 A. Some out-of-state, but mostly I stay
13 in South Carolina.

14 Q. And you've been doing that for how
15 long?

16 A. Since the late '90s.

17 Q. And you operate off that lot?

18 A. Yes.

19 Q. How long have you been doing that?

20 A. For the past ten years over there on
21 that lot.

22 Q. And has anything like this ever
23 happened there before?

24 A. No, not per se as the truckers.
25 Now, containers have been broken into on that

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1 yard and -- for the most part throughout that
2 time period, but no drivers have ever been
3 involved in anything like this.

4 Q. I'm going to show you what's been
5 marked as Defendant's Exhibit Number 1 for
6 identification for this hearing only. And
7 ask if you're familiar with that?

8 A. Yes, sir.

9 Q. And is your vehicle in that picture?

10 A. Yes, it is.

11 Q. And which one is that, please?

12 A. Right there.

13 Q. So I'm just going to make sure
14 everybody understands where you're pointing
15 to. So you're pointing to this truck right
16 here?

17 A. Yes. Uh-huh.

18 Q. And it depicts some people in the
19 picture. Do you know who that is?

20 A. That looks like John and I. It's
21 kind of hard to identify, but anyway..

22 Q. Is that you in the white shoes?

23 A. Yes.

24 Q. And you said you wearing gym ---

25 A. Sweats.

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1 Q. --- sweats?

2 A. Uh-huh.

3 Q. Is that you?

4 A. Yes.

5 Q. So the first person, to your
6 testimony today, that sees this man as he
7 drives up in the truck is Mr. Rhodan and Mr.
8 White?

9 A. Yes.

10 Q. And that's roughly at the same time?

11 A. Yes.

12 Q. And at the time that happened, you
13 said you were on the driver's side of your
14 truck?

15 A. Yeah, up front.

16 Q. Okay. Was your truck idling?

17 A. I don't even know. I don't think
18 so.

19 Q. And the lights on the truck, at what
20 point did they go off? I mean just
21 generally. Can you turn them off with the
22 key in the ignition?

23 A. No, no. You have to get up in there
24 and turn the lights off with the switch
25 that's on the dash.

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1 Q. So does the truck have to be idle
2 with the lights on?

3 A. No.

4 Q. Well, why were you on the yard that
5 night?

6 A. Prepping, getting ready to go out
7 the next morning.

8 Q. And does Mr. Rhoden ride with you or
9 do you go out solo?

10 A. Sometime he goes with me, but
11 sometime -- most of the time I go solo.

12 Q. And your CDL is current?

13 A. Yes, it is.

14 Q. You indicated he asked you to remove
15 jewelry?

16 A. Uh-huh.

17 Q. And that he also ---

18 A. Patted me down.

19 Q. Because in your statement that you
20 gave to the police that night, you didn't say
21 anything about jewelry, just the pat-down?

22 A. Well, he took the jewelry but then
23 they brought it back.

24 Q. Okay. And so after he leaves the
25 lot, what do y'all do?

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1 A. We jump in the white car and take
2 off. We try to go behind him at the same
3 time taking to 9-1-1, which she's telling us
4 not to go ---

5 Q. Who's driving ---

6 A. --- not to follow him.

7 Q. I'm sorry. Who's driving the white
8 truck, the white car?

9 A. John.

10 Q. And that's y'all's car?

11 A. Yes, it is.

12 Q. And who's calling 9-1-1?

13 A. John called. I called and then
14 Blake called early -- had his girlfriend call
15 early because he was talking to her before he
16 took the phone and threw it across the yard.

17 Q. Okay. And where was your phone?

18 A. In my pocket. In my jacket pocket
19 until I took it out to make the call.

20 Q. Where was John's phone?

21 A. His was probably in his pocket too
22 until he took it out to make the call.

23 Q. And the person that came on that
24 lot, didn't do anything to conceal his face?

25 A. No.

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1 Q. No ski mask?

2 A. No.

3 Q. Can you remember whether he was
4 wearing a hat or not?

5 A. No hat.

6 Q. No hat? Do you remember whether he
7 had gloves?

8 A. No, I don't think he had on gloves,
9 but he had his, the gun wrapped up and kind
10 of concealed and only was showing like the
11 tip of it.

12 Q. So what happens with your vehicle?

13 A. What vehicle?

14 Q. Well, you had keys to it or John?

15 A. Yes, John had the keys.

16 Q. Okay. So somewhere on his person
17 were the keys to that vehicle?

18 A. Right.

19 Q. His phone was -- Blake's phone was
20 taken from him and tossed?

21 A. Uh-huh.

22 Q. John still had his phone and you
23 still had your phone?

24 A. Right.

25 Q. And you're driven -- do y'all

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1 actually drive off the lot in the white car?

2 A. Yeah. Yes, we do.

3 Q. Where do you drive to?

4 A. We were going to follow, to see if
5 we could find where he went.

6 Q. So where -- how -- where did you go?

7 A. Well, we turned around when the
8 dispatcher said not to follow, that the
9 police was already notified and that they
10 would get him. And we would just go back --
11 she said to go back to the yard and just wait
12 for somebody to come.

13 Q. Where were you at the point you
14 turned around? That's what I'm trying to
15 figure?

16 A. Oh. Probably half-way down Trident
17 Street from the yard, between the yard and
18 the stop sign.

19 Q. And that's just industrial buildings
20 on Trident Street?

21 A. Yes.

22 Q. That's not a very -- nobody in those
23 buildings?

24 A. No, sir.

25 Q. There's another truck yard further.

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1 up towards North Rhett?

2 A. Uh-huh.

3 Q. But that would have been the only
4 other thing kind of in operation at the time?

5 A. Yes. And then that yard that's
6 dead-end.

7 Q. Right. And that's just, immediately
8 just past the gate ---

9 A. Yeah. Uh-huh.

10 Q. --- coming into that lot?

11 A. Uh-huh.

12 Q. So y'all go back to where on the
13 lot?

14 A. Pulled in right where the office is,
15 like you're going to come in the gate. The
16 office is sitting right there.

17 Q. Was anybody sitting in the office?

18 A. No.

19 Q. So who's the first person to arrive
20 after y'all return back to the office in the
21 car?

22 A. I think it was the Officer Ellwood
23 was the first person that came. And then
24 another guy came, also.

25 Q. Another cop?

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1 A. Another cop, yes.

2 Q. All right. And at some point,
3 someone from the business arrives as well?

4 A. Yes. I think later on Vanessa comes
5 over, but I don't exactly remember when, what
6 time it was when she got there.

7 Q. Do y'all go into the office
8 building?

9 A. No. That's just a drop-me-off for
10 us.

11 Q. I mean that night, after this
12 happened, did y'all go inside?

13 A. I don't think so.

14 Q. Did you watch a video?

15 A. Did we watch a video at that, that
16 night?

17 Q. Yes, ma'am?

18 A. I don't know. I can't remember
19 that. I don't know if we went in there or
20 not.

21 Q. I mean, at some point does an
22 officer suggest you go with him to another
23 location?

24 A. Yes.

25 Q. And tell me how that plays out.

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1 What did they say to you?

2 A. Well, he said he was, they caught
3 him and they were going to -- wanted us to
4 identify him and take him -- and they were
5 going to take us over there so we could see
6 because they caught him.

7 Q. And who's the one saying this, which
8 officer's saying that to you?

9 A. I think that was Ellwood.

10 Q. And so you go over to this location?

11 A. Yes.

12 Q. And do all of you go?

13 A. Just John and I with that officer,
14 that particular officer.

15 Q. With that officer. Does Mr. Mack go
16 with a different officer? I'm sorry, does
17 Mr. Blake go with a different officer?

18 A. He may have because I only remember
19 John and I in the back seat.

20 Q. And y'all are both in the back seat
21 of the single officer's car?

22 A. Yes.

23 Q. And you're driven to a location.
24 How would you describe where you were taken
25 to?

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1 A. It was a mobile home park, not too
2 far from our yard, off of North Rhett.

3 Q. And was that well lit?

4 A. Well, it was lit enough to see what
5 was going on.

6 Q. Okay. And the officer then, like,
7 stops the car at some point?

8 A. Yes, once he turns into the mobile
9 home park.

10 Q. And what happens next?

11 A. And he says 'Just sit there.
12 They're going to turn him around or whatever
13 and then you'll be able to see whether that's
14 him or not.'

15 Q. So is he, he, the person you're
16 describing as the person who robbed you that
17 night, is he in the vehicle in the back seat,
18 sitting down? Is he out of the vehicle
19 standing up?

20 A. He was standing.

21 Q. Did you see him taken out of the
22 vehicle or was he out of his vehicle ---

23 A. I think he was already out of the
24 vehicle when we got there, pulled up?

25 Q. Was any lighting used to assist you?

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1 A. I think he might have flashed, used
2 the light that's on their car. But there was
3 also lighting out there.

4 Q. So it was a spotlight is what you're
5 describing, from the police ---?

6 A. From the car, yes.

7 Q. And then what happens?

8 A. And then they put the -- they turned
9 him around and I told them yes, that's him
10 and so did John.

11 Q. And which one of you two spoke first
12 then?

13 A. John did.

14 Q. I just want to make clear, the
15 officer -- before y'all went to the location
16 where the spotlight was used, so while you're
17 still at the lot, the officer said to you, we
18 caught him or said what?

19 A. Yes, that's what he said. 'We got
20 the guy. We just need y'all to identify
21 him.'

22 MR. SCHWACKE: That's all the
23 questions I have. Thank you.

24 THE COURT: Anything further?

25 SOLICITOR CONDON: Nothing further,

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1 Your Honor.

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

4 WITNESS: Thank you.

5 (WITNESS STEPS DOWN)

6 SOLICITOR CONDON: The State calls
7 Orlando Valdez.

8 THE COURT: Come on in, Sergeant
9 Valdez.

10 (WITNESS TAKES STAND)

11 ORLANDO VALDEZ, having been duly sworn
12 to tell the truth, and nothing but the truth,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY SOLICITOR CONDON:

16 Q. Good afternoon. Who are you employ-
17 ed by and what is your job title?

18 A. I'm employed the City of Hanahan
19 Police Department. I'm a sergeant.

20 Q. And did you respond to an incident
21 involving the Defendant Mack on January 6th,
22 2013?

23 A. I did.

24 Q. And can you describe what happened
25 when you responded; just kind of walk us

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1 through that?

2 A. The initial call came out as an
3 armed robbery in progress. Several of my
4 officers were already en route. I was still
5 at the office taking care of some
6 administrative stuff. As they made contact
7 and a vehicle pursuit began is when I
8 initially, actually got involved. I
9 attempted to catch up with the pursuit, at
10 which point in time I overshot it. There was
11 a motor vehicle collision, subsequent
12 detention of the suspect and arrest at that
13 point. From there, I coordinated with the
14 victims in getting them from the initial
15 incident location on Trident Street to where
16 the suspect was being detained, and held at
17 that time for a field identification.

18 Q. Now, do you recall the victims'
19 names?

20 A. Yes, the two that I transported were
21 Ms. Jacquelyn Meyers and Mr. John Rhodan.

22 Q. And why didn't you transport the
23 third victim, Keith Blake?

24 A. He advised that he was not willing
25 to go with us. As to why, I don't know.

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1 Q. Did he appear very distraught at the
2 time?

3 A. He did.

4 Q. Was he crying?

5 A. I don't recall that he was crying,
6 but he was definitely visibly shaken and
7 upset.

8 Q. And did the victims state that they
9 had a -- the two victims you took, did they
10 state they had a good recollection of the
11 Defendant?

12 A. They did.

13 Q. And did they say that they would
14 know him if they saw him?

15 A. They did.

16 Q. And how quickly after the incident
17 did you take the victims to see if they
18 recognized ---

19 A. The initial call was at 7:02 p.m., I
20 took the victims at 7:40, so roughly about
21 thirty-eight (38) minutes.

22 Q. From the original call?

23 A. From the original call.

24 Q. Do you know if that original call
25 came in while the robbery was in progress?

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1 A. I believe it was right after it had
2 occurred.

3 Q. What instructions did you give to
4 the victims when you took them to possibly
5 identify the suspect?

6 A. I stated to them, as we pulled up,
7 "There's going to be a gentleman standing
8 next to a police car. I want you to take a
9 good look at him. Don't worry. He's not
10 going to be able to see you through my
11 windows. And with the lighting as it was,
12 just get a really good look at him. If
13 you're one hundred percent certain that
14 that's the person that robbed y'all, let me
15 know that that's him. If there's any shadow
16 of a doubt at all as to whether that's him or
17 not, you need to tell me as well that you're
18 not one hundred percent certain.'

19 Q. And did you tell the victims any
20 suggestive information about the suspect on
21 the way?

22 A. No.

23 Q. And how did the suspect, Joseph
24 Mack, Jr., appear during the show up ID?

25 A. He was standing outside of, outside

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1 of one of the other patrol cars, facing with
2 his back to the patrol car, so that he was
3 facing out, towards the lot.

4 Q. And did you do anything to mitigate
5 the suggestiveness of the identification?
6 Like, were the handcuffs in plain view?

7 A. No. No, the handcuffs weren't
8 visible at all.

9 Q. Did either victim, Jackie Meyers or
10 John Rhodan, recognize the Defendant?

11 A. They both did.

12 Q. And what did they state?

13 A. They stated "that's him."

14 Q. And did they say how certain they
15 were?

16 A. I asked, I said, "Are you both one
17 hundred percent, absolutely certain that
18 that's him?" And they both said, yes,
19 absolutely.

20 Q. And is the person they identified,
21 is he present in the courtroom today?

22 A. He is.

23 Q. And could you point him out to the
24 Judge?

25 A. (Complies).

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1 SOLICITOR CONDON: Please note that
2 the officer has identified the Defendant.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR CONDON:

5 Q. How quickly did the victims
6 recognize the Defendant, Joseph Mack?

7 A. It was almost immediately.

8 Q. And, again, how certain were they?

9 A. One hundred percent (100%).

10 Q. Was there any doubt?

11 A. Not that they referred to me or that
12 they told me about.

13 SOLICITOR CONDON: No further
14 questions.

15 CROSS-EXAMINATION

16 BY MR. SCHWACKE:

17 Q. Mr. Valdez, are you familiar with a
18 CAD report?

19 A. I am. I have it right here in front
20 of me.

21 Q. Do you have yours?

22 A. Uh-huh.

23 Q. So your testimony was that the
24 identification happened at Trident near North
25 Rhett.

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1 A. (No verbal response).

2 Q. About 7:40?

3 A. Uh ---

4 Q. That was your testimony; correct?

5 A. Yes. Said it was roughly about
6 7:40, that's when I transported them.

7 Q. But the CAD report would indicate
8 that it was actually nine (9) minutes after
9 that?

10 A. Roughly.

11 Q. Because it says, two victims
12 positively ID him. And that's at 19:49:21?

13 A. Yes.

14 Q. So that would be 7:49?

15 A. Yes, sir.

16 Q. That evening did you go first to the
17 location where the pickup truck had had its
18 wreck, or did you go to the ---

19 A. No, I went to the location where the
20 collision had occurred first.

21 Q. All right. And then at some point
22 you're directed to go over to the lot?

23 A. No, I wasn't directed. I went there
24 on my own.

25 Q. When you arrived at the truck lot,

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1 who all was there?

2 A. It would have been the three victims
3 as well as well as one of my officers,
4 Officer Ellwood.

5 Q. And what happens at that location?

6 A. I spoke with Officer Ellwood who
7 initially briefed me and introduced me to the
8 victims. And then I spoke with the victims
9 briefly.

10 Q. Did you take statements from anyone?

11 A. No, I did not.

12 Q. Was there anyone present at that
13 location who was not an officer or a victim?

14 A. I believe at some point later on the
15 owner of that lot showed up to provide us
16 with the video footage.

17 Q. And did y'all watch that?

18 A. Not until well after the identifica-
19 tion.

20 Q. Y'all watched it at the location?

21 A. At the trailer [sic] park, yes.

22 Q. Now, who asked Mr. Blake if he was
23 willing to go for identification?

24 A. I did.

25 Q. And he would not do that?

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1 A. Correct.

2 Q. But he didn't indicate a reason, he
3 was just visibly shaken?

4 A. He didn't state anything specific-
5 ally to me that I can recall.

6 Q. Just 'I don't want to do it?'

7 A. (No response).

8 Q. I mean, how did he express it?

9 A. Basically, I was there to -- 'are
10 any of you willing to go provide, to go see
11 if this gentleman is the person who robbed
12 you?' And Ms. Meyers and Mr. Rhodan said,
13 'yeah, we can.'

14 And I asked Mr. Blake, 'what about you?'
15 And he said, 'no, I really don't want to.'
16 I'm ---

17 Q. So when you take Ms. Meyers and Mr.
18 Rhodan over to that location, there are
19 police vehicles there?

20 A. There was a couple, yeah.

21 Q. And a truck, a pickup truck was
22 there?

23 A. Well, there was a few pickup trucks
24 because it's a trailer park.

25 Q. Were there people out at that

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1 location that were not in uniform?

2 A. Not that I can recall.

3 Q. So the only person that would have
4 not been in a police uniform would have been
5 Mr. Mack and the two witnesses?

6 A. I believe so because we had that
7 area pretty much contained.

8 Q. And he was or he was not in hand-
9 cuffs?

10 A. I believe he was in handcuffs at the
11 time, but they were behind his back and he
12 was facing to where the handcuffs themselves
13 were concealed by the other officers' patrol
14 vehicle.

15 Q. Were you sitting in your vehicle the
16 entire time that this identification was
17 going on?

18 A. Yes.

19 Q. Did you use any special lighting?

20 A. (No verbal response).

21 Q. To illuminate Mr. Mack?

22 A. No.

23 Q. You did not turn on your side light,
24 spotlight?

25 A. Not that I can recall, no.

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1 Q. And at that time, he was the only
2 suspect you had?

3 A. In custody, yes.

4 Q. Many law enforcement agencies have
5 advisement forms for these types of
6 identifications. Does the Hanahan Police
7 Department have that form?

8 A. Not that I've ever seen.

9 Q. A form that says, you're about to
10 see -- I mean, you said you went through an
11 identification process; correct?

12 A. A verbal one, yes.

13 Q. You don't have a written policy or a
14 sheet that does that?

15 A. Not at the time of that incident,
16 no.

17 Q. And it's your testimony that you, in
18 fact, gave that recitation to the two
19 witnesses?

20 A. (No verbal response).

21 MR. CONDON: That's all the
22 questions that I have, Your Honor. Thank
23 you.

24 THE COURT: Anything further?

25 SOLICITOR CONDON: No.

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1 MR. SCHWACKE: I'm sorry.

2 THE COURT: That's okay. Mr.

3 Schwacke, you go ahead.

4 CROSS-EXAMINATION CONTINUED

5 BY MR. SCHWACKE:

6 Q. So did you indicate to Ms. Meyers
7 and Mr. Rhodan that someone was in custody
8 when y'all were still back at the truck
9 location?

10 A. I advised them that we had someone
11 that had run from us.

12 MR. SCHWACKE: Thank you, Your
13 Honor. No further questions.

14 THE COURT: Anything further, Mr.
15 Condon?

16 SOLICITOR CONDON: Nothing from the
17 State, Your Honor.

18 SOLICITOR TAYLOR: That's all the
19 State's witnesses, Your Honor.

20 THE COURT: All right. You may
21 step down, sir.

22 (WITNESS STEPS DOWN)

23 THE COURT: I'm going to step out
24 for a two-minute break. We'll be right back
25 out. Y'all take the same, refresh your-

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1 selves. We'll come back and I'll hear, if
2 necessary, any argument regarding that.

3 MR. SCHWACKE: Thank you, Your
4 Honor.

5 THE COURT: And we'll go forward.
6 Be ready to go in a couple minutes, okay?

7 SOLICITOR TAYLOR: Thank you, Your
8 Honor.

9 THE COURT: Thank you. Y'all be
10 at-ease for just a couple of minutes.

11 (BRIEF RECESS)

12 (DEFENDANT PRESENT)

13 THE COURT: All right. Do either
14 of you have any argument?

15 MR. SCHWACKE: Thank you, Your
16 Honor. For the record I would move to have
17 the identification suppressed. I would base
18 that on the testimony as it was provided
19 here.

20 You have conflicting testimony in you
21 have the police officer saying that he was
22 handcuffed in the back and they saw him from
23 the front, so they didn't see him in
24 handcuffs.

25 The witness, however, Ms. Meyers

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1 testified that he was initially facing away
2 from them and then he was asked to turn
3 around.

4 So he was wearing the cuffs at some point
5 and the suggestiveness of the handcuffs
6 would have been visible to her.

7 Your Honor, in a forty-seven minute
8 period between the incident and when the
9 identification was done -- you have the
10 officer stating that he gave them a
11 notification process that this may be
12 someone, but neither one of the actual
13 victims testified that that was done.

14 He is the only non-law enforcement person
15 that's not them out there. So he would have
16 stood out based on dress.

17 Your Honor, the testimony of Ms. Meyers
18 was clear that she was told that they got
19 him. So that would also be suggestive to
20 identification.

21 Also the fact that both were done
22 simultaneously, that one potentially, one had
23 the potential to influence the other's
24 identification.

25 For all of those reasons, I would ask for

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1 suppression of the identification.

2 THE COURT: I will be happy to
3 hear any argument from the State?

4 SOLICITOR TAYLOR: Your Honor, the
5 State would rely most heavily on the *State v.*
6 *Mansville*, which gives the Court factors to
7 be considered.

8 Even if an identification is the totality
9 of the circumstances argument from *Neil v.*
10 *Biggers*.

11 And the factors to be considered are the
12 time after the alleged crime, which in this
13 case is as short as forty-seven (47) minutes,
14 whether it was near the scene of the crime.
15 And one of the witnesses testified it was
16 two-minutes away, if the witness' memories
17 are still fresh. This suspect has not had
18 time to alter his looks. So to be considered
19 is also their degree of attention and the
20 level of certainty, which in this case they
21 both testified was a hundred percent.

22 THE COURT: Okay. I will
23 respectfully agree that a showup two minutes
24 from the scene and officers saying that we've
25 got the suspect in custody or a suspect in

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1 custody and only one person being there, that
2 can certainly be suggestive.

3 But I do think, based on the testimony of
4 Ms. Meyers' and Mr. Rhodan, I do think that,
5 again, I think they had both had a
6 demonstrated ability to see the alleged
7 perpetrator. I think the identification was
8 good. I think, again, their level of
9 certainty was a hundred percent (100%) by
10 their testimony. And, again, the length of
11 time, it was minutes not even hours. So,
12 again, I think based on the totality of the
13 circumstances, I think their, both of the
14 identifications, is reliable and I'm going to
15 allow it. All right. Are y'all ready to go?

16 SOLICITOR TAYLOR: The State's ready,
17 Your Honor.

18 THE COURT: Okay.

19 MR. SCHWACKE: Yes, ma'am.

20 THE COURT: Mr. Schwacke. Okay.

21 All right. Let's bring the jury in.

22 (JURY IN @ 2:11 P.M.)

23 THE COURT: Welcome back, ladies
24 and gentlemen of the jury. I apologize for
25 the wait. That was my fault. And,

additionally, we had some pre-trial matters that we need to take up. We've resolved any of those issues and the case is definitely streamlined for you.

Ladies and gentlemen, at this time we're just going to go ahead and swear you in as the jury as the jury in the trial of this case. I am going to make a few brief comments, and then the lawyers are going to go ahead and make their opening statements. All right. Now, ladies and gentlemen, if you would please just begin by standing and raising your right hand to accept the jurors oath.

(WHEREUPON JURY SWORN)

(BENCH CONFERENCE)

THE COURT: Ladies and gentlemen of the jury, the attorneys just reminded me that you asked about pens and pads. We are going to go ahead and provide you with pens and notebooks or pencils and notebooks. At this time, though, I'm going to go ahead and make my opening comments. And we're going to do opening statements and then we'll make sure we get you pens and pads for you. All

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1 right.

2 Ladies and gentlemen what I am now going
3 to say to you is intended to serve as an
4 introduction to the trial of this case.
5 These remarks are not the charge on the law.
6 I'm going to charge you on the law that's
7 applicable to this case at the end of the
8 trial. It's just merely an explanation as
9 you can better understand what is happening
10 during this trial.

11 Ladies and gentlemen, the Defendant in
12 this case, Mr. Mack, Jr. is charged by
13 indictment that's filed in this Court with
14 the offenses of armed robbery, failure to
15 stop for a blue light and possession of a
16 weapon during the commission of a violent
17 crime; the elements of which I will explain
18 to you at the end of this trial.

19 Ladies and gentlemen, the indictments are
20 simply the charge by which the case is
21 brought into this courtroom and they are not,
22 in any sense, evidence of any of the
23 allegations that those indictments contain.

24 Now, ladies and gentlemen, the Defendant
25 in this case, Mr. Mack, has pled not guilty

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1 to these indictments.

2 The State, therefore, has the burden of
3 proving each of the elements of the indict-
4 ments beyond a reasonable doubt. And it's
5 your duty, as jurors, to determine whether
6 the State has met that burden.

7 Now, ladies and gentlemen, your purpose
8 as jurors is to find and determine the facts.

9 You, the jury, are the sole judge of all
10 facts in this case. If, at any time, I make
11 any comment regarding the facts of this case,
12 you must disregard it. Now, ladies and
13 gentlemen, you are to only determine the
14 facts of the case from the witnesses that you
15 hear on the witness stand as well as any
16 other evidence that's introduced into this
17 case or as well any stipulations that the
18 attorneys enter into.

19 Ladies and gentlemen, please understand
20 that it is especially important that you
21 perform your duty of determining the facts
22 diligently and conscientiously because
23 ordinarily there is no way to correct an
24 erroneous determination of the facts by a
25 jury.

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1 Ladies and gentlemen, on the other hand
2 and with equal emphasis, the same law that
3 makes you the judges of the facts, makes me
4 the judge of the law.

5 The law as given by the Court is the only
6 law that you may consider. You must accept
7 and follow it even though you may disagree
8 with it. I cannot tell you what the facts of
9 this case are. You cannot disagree with me
10 about what the law is or what you think the
11 law ought to be. Your job is to take the law
12 as I give it to you and apply it to the facts
13 as you find them. And from there, render a
14 true and just verdict under the solemn oath
15 you took.

16 Ladies and gentlemen, I remind you that
17 until I advise you that you cannot begin your
18 deliberations, you must not discuss this case
19 with anyone and that includes each other.

20 Ladies and gentlemen, and then after the case
21 is submitted to you, you must discuss it only
22 in the jury room with your fellow jurors. A

23 I remind you the attorneys and the
24 parties and the witnesses have been
25 instructed not to speak to you. So, again,

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1 ladies and gentlemen, if you pass them in the
2 hall and they don't even say hello, they're
3 not being unkind. Again, they are simply
4 following my orders.

5 Additionally, ladies and gentlemen, I
6 don't know that there's going to be anything
7 in the news or the radio or in the newspaper
8 about this case, but out of an abundance of
9 caution, I need to instruct you that while
10 this case is going on you are not to read,
11 hear anything about this case or do any
12 independent research yourself, go on the
13 internet or anything along those lines,
14 ladies and gentlemen. It would be
15 inappropriate for you to do so.

16 And ladies and gentlemen, I need to also
17 remind you that it's important that you keep
18 an open mind and not decide any issue in this
19 case until all the evidence has been
20 presented, the parties have made their
21 closing arguments and I've instructed you on
22 the law of the case.

23 Please understand it is your sole
24 responsibility to determine this case, ladies
25 and gentlemen, and your verdict must be based

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1 solely on the evidence presented here in this
2 courtroom, weighing it fairly and
3 impartially, as I have every confidence you
4 will.

5 Now, ladies and gentlemen, in just a
6 minute the Solicitor, Ms. Taylor, is going to
7 make an opening statement. And she's going
8 to explain to you what she believes the
9 issues are in this case.

10 Then the Defense attorney, Mr. Schwacke,
11 is also going to make an opening statement.

12 I remind you, ladies and gentlemen that
13 what these attorneys say in their opening
14 statements is not facts in this case. Again,
15 they're not evidence in this case. It is
16 just their contention as to what they believe
17 the issues to be in this case. I remind you
18 again ladies and gentlemen the evidence will
19 come from the witness stand and the other
20 evidence and stipulations that may come into
21 the case.

22 Ladies and gentlemen, I also want to tell
23 you that from time-to-time you may hear the
24 lawyers say something like, Your Honor, we
25 have a matter of law we need to take up. Or

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1 I may ask them to approach the bench. We may
2 have a sidebar conversation. I want you to
3 understand something, we're not hiding
4 anything from you.

5 Oftentimes, what I have to decide as a
6 matter of law whether or not certain evidence
7 is admitted, I may need to comment on the
8 facts of the case. And because I never want
9 anything I say to influence you in your
10 determination of the facts, out of an
11 abundance of caution, we just do it on the
12 side, all right?

13 Ladies and gentlemen, in determining what
14 the true facts are in this case, you must
15 decide whether or not the testimony of the
16 witnesses is believable. It's my
17 responsibility to rule as a matter of law
18 whether or not certain testimony is admitted,
19 but ladies and gentlemen, once it's admitted,
20 it's for you to believe whether or not you
21 think it's good and reliable.

22 Ladies and gentlemen, in deciding whether
23 to believe a witness, you have a right to
24 consider the interests of a witness, the bias
25 of a witness, any possible prejudice of a

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1 witness. And you can look at the opportunity
2 that witness had to see and hear and know the
3 things about which they're testifying. And
4 you can also look at the way the witness acts
5 on the witness stand.

6 You have the right to use anything that
7 is in the record that will help you evaluate
8 the testimony of the witnesses. Therefore, I
9 ask you to pay careful attention while
10 they're testifying so at the end of the case
11 you can go back and accurately remember what,
12 in fact, the witnesses did say.

13 And, again, we will provide you with
14 pencils and pads, ladies and gentlemen, if
15 you wish to take notes. But, again, you are
16 not required to take notes. Understanding,
17 ladies and gentlemen, some people are better
18 note takers than others. You are to rely on
19 your notes solely for your purpose.

20 But please, I want to make sure you
21 understand that any recollection or memory
22 you may have shouldn't be outweighed by
23 anyone else who may have taken notes. So I
24 want to make sure you all understand that,
25 that your notes are for your personal use.

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1 Ladies and gentlemen, in order to
2 preserve everyone's rights, every time I
3 address you, I'm going to ask the attorneys
4 if there's anything further they wish for me
5 to instruct you.

6 Is there anything further from the State?

7 SOLICITOR TAYLOR: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. SCHWACKE: None, Your Honor.

10 THE COURT: All right. Ladies and
11 gentlemen, we are going to go ahead and begin
12 the trial of the case. And please give your
13 attention to the Solicitor. And Mr. Condon
14 is making the opening statement. I
15 apologize, sir.

16 SOLICITOR CONDON: That's okay, Your
17 Honor.

18 THE COURT: Thank you.

19 SOLICITOR CONDON: May it please the
20 Court?

21 THE COURT: Yes, sir.

22 MR. CONDON: Good afternoon. The
23 evidence in this case will show that on the
24 night of January 6th, 2013, the Defendant,
25 Joseph Mack, Jr. was looking to rob somebody.

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1 And he did just that.

2 The three victims, Keith Blake, Jackie
3 Meyers and John Rhodan are truck drivers.
4 And they were at a little truck yard in
5 Hanahan, getting their rigs ready for the big
6 haul the next morning. That's when the
7 Defendant, Joseph Mack, drove into that truck
8 yard with bad intentions.

9 Drove in with a green pickup truck, got
10 out of that truck, approached the victims,
11 pulled out, what they believed to be a
12 pistol, pointed it at them, threatening to
13 take their lives before robbing them. He
14 took money, jewelry, keys. That wasn't
15 enough. He then went through their pockets.
16 He patted each one of them down. He went
17 into their car and then he went in their
18 tractor trailer because he was out to rob.
19 He wanted more. And the evidence will show
20 that.

21 Unbeknownst to the Defendant, one of the
22 victims, Keith Blake, was on his bluetooth.
23 So he was able to get his friend on the other
24 line to call for help. Help did arrive.
25 Officers from the Hanahan Police Department

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1 came.

2 The incident occurred at the end of a
3 cul-de-sac. And there's only was only out
4 and that was down Trident Street to North
5 Rhett Street. And the officers intersected
6 the Defendant as he was fleeing the scene
7 before he got on to North Rhett Extension.

8 They blue-lighted him. He didn't stop.
9 The evidence will show that he led police on
10 a chase that lasted almost half a mile. All
11 along the way, he was throwing out items he
12 had stolen, leaving a trail of evidence
13 behind him. But he didn't get rid of
14 everything. After he crashed at the end of
15 the chase, he had two of the rings he had
16 stolen from the victim, Ms. Meyers.

17 The Defendant is charged with three
18 counts of armed robbery, possession of a
19 firearm during a crime of violence, for
20 failure to stop for a blue light. I'm going
21 to go over the law regarding each of these
22 charges:

23 First, we've got armed robbery. That's
24 pretty straightforward. It's a robbery while
25 someone is armed with a gun or weapon.

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1 And what's a robbery? That's the taking
2 or carrying away by the use of violence. And
3 the violence doesn't have to be actual
4 violence. It can be a threat of violence,
5 like pointing a gun at you. That's pretty
6 straightforward.

7 When is a person armed? If they have in
8 their possession a pistol, a dirk, a knife,
9 or other deadly weapon or a representation of
10 a deadly weapon or something, you know,
11 something that appears to be a deadly weapon.
12 Or the last part, or any object, which a
13 person present during the commission of a
14 crime reasonably believes to be a deadly
15 weapon.

16 Possession of a firearm during the
17 commission of a violent crime, the person is
18 in possession of a firearm or visibly
19 displays what appears to be a firearm.
20 Remember, a firearm is a legal term. And it
21 just means that any type of weapon which is
22 designed to expel something. That's pretty
23 straightforward.

24 And the person has to be convicted of a
25 violent crime, which is defined by statute as

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1 armed robbery.

2 The last charge is failure to stop for a
3 blue-light. That's also straightforward.
4 The Defendant is driving a motor vehicle and
5 it's on a public street or highway and
6 officers signal the Defendant to stop by the
7 blue light and sirens, and the Defendant
8 fails to stop.

9 The State has the burden of proving its
10 case and its proof beyond a reasonable doubt.
11 It's not proof beyond all doubt, because few
12 things in life do we know beyond all doubt.

13 If you knew something beyond all doubt,
14 we'd call you as a witness because you
15 witnessed the event.

16 Case law defines it as proof that leaves
17 you firmly convinced of the Defendant's
18 guilt. The State asks that you pay close
19 attention to the witnesses presented, the
20 victims' testimony, the officers' testimony
21 and we believe you will be firmly convinced
22 at the end of our case that the Defendant is
23 guilty of three counts of armed robbery,
24 possession of a firearm in a crime of
25 violence, failure to stop for blue lights.

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1 Thank you.

2 THE COURT: Thank you, Mr. Condon.

3 Mr. Schwacke?

4 MR. SCHWACKE: Thank you. Good
5 afternoon. My mom at church the other day
6 said something to a friend, that I have more
7 gray hair than she does. Which shows that I
8 have been doing this for a long time.

9 We're here tonight or this afternoon, for
10 a very serious case. But that doesn't mean I
11 need to stand up here and talk to you a lot
12 about this case right now because the Judge
13 has already told you, that what we say
14 doesn't count. It's not evidence. It's not
15 something you can use in the jury room.

16 So as another sign that I'm getting
17 older, I'd like to make things short, and I'm
18 going to say this to you, we have a defense.
19 We're going to answer most of these charges.

20 And I said most. And I want you to think
21 that this is how we're going to do it.
22 Because this is our theme, things are not
23 always as they first appear. Things are not
24 always as they first appear. We don't know
25 what evidence is going to come from them. We

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1 have an idea, but until it happens and
2 the Judge allows it in because she's the
3 judge of the law or determines whether or not
4 it's going to be admissible, we really don't
5 know what is going to happen. But I do know
6 this, things will not seem as they first
7 appear by the time we reach the end. Thank
8 you.

9 THE COURT: Thank you.

10 You may call your first witness.

11 SOLICITOR TAYLOR: Thank you, Your
12 Honor. The State calls John Rhodan.

13 THE COURT: Okay.

14 Come forward, Mr. Rhodan.

15 (WITNESS TAKES STAND)

16 JOHN RHODAN, having been duly sworn to
17 tell the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR TAYLOR:

21 Q. Good afternoon, Mr. Rhodan.

22 A. Good evening.

23 Q. Where do you work?

24 A. Just -- actually, I'm self-employed
25 and actually just retired from the South

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1 Carolina Department of Corrections in
2 January.

3 Q. How long were you with the Depart-
4 ment of Corrections?

5 A. Twenty-seven and a half years.

6 Q. What did you do there?

7 A. Supervisor of support service staff.

8 Q. Okay. And you said that you were
9 self-employed?

10 A. Yes, ma'am.

11 Q. What does that mean?

12 A. I actually own a trucking company.

13 Q. A trucking company. Could you tell
14 the jury kind of what your trucking company
15 does?

16 A. We move export and import containers
17 in and out of the port to different locations
18 throughout the southeastern states.

19 Q. What have you got big trucks, little
20 trucks?

21 A. Eighteen-wheelers, big trucks.

22 Q. Big trucks. And how long have you
23 been doing that?

24 A. Since the early '90s.

25 Q. Do you own that company with

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1 anybody?

2 A. No. It's sole proprietor.

3 Q. Okay. And does anybody else work at
4 your company?

5 A. Yes, ma'am.

6 Q. How many employees do you have?

7 A. Six.

8 Q. All drivers?

9 A. Yes.

10 Q. Were you working for the trucking
11 company and did you own your own trucking
12 company back in January of 2013?

13 A. Yes, I did.

14 Q. And do you remember an incident that
15 occurred on January 6th of 2013?

16 A. Yes, ma'am.

17 Q. Okay. Tell the jury kind of what
18 you were doing early that evening?

19 A. As I can recall, it was a Sunday
20 afternoon. Usually, over the weekend we
21 would always park the trucks on the yard.
22 What we do is called a pre-trip. Most
23 drivers do a pre-trip before going out that
24 morning. What I usually do is go and check
25 the vehicles to make sure that they are

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1 capable of going out, that all the fluid
2 levels are -- stuff of that sort. During
3 that time, I went out to the yard at
4 approximately 6:00.

5 Q. Mr. Rhodan, I'm going to stop you
6 just real quick. Where is the yard located?

7 A. The yard's located on Trident Street
8 in Hanahan.

9 Q. Okay. Sorry. Go ahead.

10 A. Okay.

11 Q. You went out to the yard.

12 A. Went to the yard at Hanahan to
13 perform those duties. At that time, a young
14 man drove up in a pickup truck, which was a
15 Chevy GMC with some sidesteps. Drove up
16 there, approached me as I was walking around
17 one of the containers to check the lights and
18 the ties on the containers.

19 At first he was friendly. He said, are
20 you about -- 'are you getting ready to go?'
21 I said, 'no, I'm just checking everything to
22 make sure it's on, that the vehicles are
23 ready to go out in the morning.'

24 At that time he said, "well, give me all
25 your money" and pulled out a gun. I'm -- at

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1 first, you know, everyone's on the yard.
2 During that time, the other company was going
3 through transitions and hiring drivers. So I
4 -- when he did approach, I had thought he was
5 just a regular driver, someone else that was
6 coming on, on board. But when he did that, I
7 told him I didn't have anything. So he
8 actually patted me down, which I did have a
9 miniature flashlight, red in color. And he
10 took that Mag-Lite and had it.

11 At that time, he saw another driver,
12 which is Mr. Blake. He was doing, walking
13 around his truck, checking his truck also.
14 And he asked me, 'who is that?' I said,
15 well, 'it's another driver.'

16 So he asked me to call Mr. Blake over to
17 where we were. By that time, Mr. Blake
18 started to walk towards us at that time. And
19 Blake came over and, you know. And he said,
20 told Mr. Blake at that time when he
21 approached us, to give him all the money. So
22 Blake said, 'man, I don't have any money on
23 me.'

24 At that time, Mr. Blake thought that he
25 was joking with me. I told Mr. Blake that he

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1 wasn't joking because 'I don't know this
2 guy.'

3 And he also patted Mr. Blake down and
4 looked in his pocket. At this time, Mr.
5 Blake had his headset on. He was actually on
6 the phone with someone.

7 And as we were walking back toward the
8 truck, after he saw Ms. Meyers, which is --
9 she was out there checking her truck also.
10 He said 'well, who's that?' I told him
11 another driver. So he directed us to walk
12 toward Ms. Meyers.

13 But Mr. Blake had his headset on during
14 that time. He was on the phone. And whoever
15 he was talking to, he was telling them as we
16 were walking that we were being robbed at
17 that present time.

18 Q. Let me just ask you some questions
19 just to clarify some of that. How do you
20 know Mr. Blake?

21 A. He's a driver for another company
22 and parks in the yard.

23 Q. And how do you know Ms. Meyers?

24 A. Ms. Meyers, we cohabitate.

25 Q. Who did you go to the yard with that

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1 evening?

2 A. Ms. Meyers.

3 Q. And how did y'all get there?

4 A. We drove a personally owned vehicle.

5 Q. Okay. Now, you said that you were
6 by yourself when you were first approached?

7 A. Correct.

8 Q. Did you see the Defendant's vehicle
9 pull in the yard?

10 A. Yes, I did. At first, the vehicle
11 went past where we were, down to the -- I
12 call it a cul-de-sac, a turnaround. And he
13 turned around. One of them's down there --
14 there's two other yards down there, Cowan and
15 -- I can't remember the other company that
16 has -- but no one was down there then. He
17 came in, drove back and made a right into our
18 yard.

19 Q. Did you recognize the truck when it
20 pulled into the yard?

21 A. No, I didn't.

22 Q. Okay. And when the Defendant
23 approached you, did you recognize him?

24 A. No, I didn't.

25 Q. Had you ever seen him before?

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1 A. No, I haven't.

2 Q. Do you know him at all?

3 A. No.

4 Q. And when he approached you, you said
5 that he said something to you. What was
6 that?

7 A. At first he said -- like I say, he
8 was trying to -- he asked are we getting
9 ready to go? And I said, no, we're just
10 prepping the vehicles for in the morning.
11 And then he said, "give me all your money."

12 Q. When he said "give me all your
13 money," did he have anything in his hands?

14 A. Yes.

15 Q. And what was that?

16 A. A gun.

17 Q. What did the gun look like?

18 A. It was silver in color. You know, I
19 didn't actually pay too -- once he told me
20 that that first time, I didn't pay too much
21 attention to it. I was actually paying
22 attention to, more attention to his movement.
23 To see, you know, what the next move was
24 going to be.

25 Q. Were you afraid, Mr. Rhodan?

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1 A. Yes, ma'am.

2 Q. He points a gun at you?

3 A. Yeah.

4 Q. Do you remember where he got the gun
5 from?

6 A. Out of his jacket pocket.

7 Q. Okay. Pointed the gun at you and
8 then what does he do?

9 A. That's when we proceeded to pat me
10 down, when I told him I didn't have anything.

11 Q. You didn't have a wallet on you that
12 night?

13 A. No, I didn't.

14 Q. Okay. What did you have on you?

15 A. Just a flashlight in my pocket.

16 Q. And what happened to that flash-
17 light?

18 A. He took it.

19 Q. Okay. Then you said that Mr. Blake
20 approached?

21 A. Right.

22 Q. And at some point he patted Mr.
23 Blake down?

24 A. Correct.

25 Q. And then Ms. Meyers?

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1 A. Right.

2 Q. Pick up the story there for me?

3 A. Okay. Once we proceeded to -- he
4 gave us directive to proceed to where Ms.
5 Meyers was. He asked -- he told Ms. Meyers
6 the same thing, to give her (sic) all the
7 money. And after she said she didn't have
8 anything, he patted her down also. And he
9 saw the rings and the earrings that she had
10 on and gave her directives to take those off
11 and give it to him.

12 Q. And did she do that?

13 A. Yes, she did.

14 Q. Okay.

15 A. She complied. He also went through,
16 patted her down, went through her pockets and
17 I think she had -- I don't know what pocket
18 she had money in, but it wasn't about --
19 anyway, he took some money from her also.

20 And during that time, Mr. Blake and I are
21 just standing in front, and he keep -- we was
22 looking at him. And he ask -- keep asking
23 "Where's the money?" He's not playing, he
24 pointing the gun. And "why are we looking at
25 him" like that, you know. Actually, we was

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1 looking at him so we could identify him again
2 just in case we needed to.

3 But during that time, after patting Ms.
4 Meyers down, taking her jewelry, he gave us
5 -- he looked at the car. The car was parked
6 probably ten feet away, twelve feet away.
7 And gave us -- wanted to know whose car that
8 was. And I told him it was mine. So he went
9 through the vehicle also.

10 So he's got through going through the
11 vehicle, he also gave us -- he looked at Mr.
12 Blake truck and wanted to know whose truck
13 was it. And I told him it was Mr. Blake's
14 truck.

15 At that time, with the gun still pointed
16 at us, he gave us directive to walk to the
17 back, off the yard. As I was walking, I
18 looked across my shoulder. He was heading
19 toward Mr. Blake's truck. By the time we got
20 to the back of the yard, he had already went
21 through Mr. Blake's truck. And when we
22 turned around, he was heading back toward his
23 vehicle.

24 THE COURT: Mr. Rhodan, I
25 apologize. Do you mind, the air conditioning

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1 just kicked on. Please talk a little bit
2 louder if you can, sir?

3 WITNESS: Okay.

4 THE COURT: Thank you. And if
5 you'll pull that mic a little bit closer, it
6 may help you.

7 WITNESS: Okay.

8 THE COURT: Thank you.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR TAYLOR:

11 Q. Mr. Rhodan, do you know if the
12 Defendant got anything out of your car?

13 A. No, ma'am. There wasn't anything to
14 get out of there.

15 Q. Okay. After he had directed y'all
16 to the back of the yard, did you see the
17 Defendant leave?

18 A. Yes.

19 Q. And what did you do at that point?

20 A. We could see -- actually, we went to
21 our vehicle. On the way, Ms. Meyers called
22 9-1-1 again. And I think whoever she spoke
23 to told them that someone was already called
24 and someone was being dispatched.

25 And we proceeded -- we got -- we

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1 proceeded to our vehicle. By the time we got
2 in the vehicle and off the yard, another
3 officer was actually coming toward us and we
4 spoke to him, you know, down Trident Street.

5 Q. When you got in the vehicle and left
6 the yard, where were you going?

7 A. Well, we was actually going to see
8 which way he went. So we could give the
9 officer direction on which way he went.

10 Q. Now, let's go back to the yard, just
11 because none of us were there. So describe
12 it for us. How is it set up?

13 A. The yard is set up, it's in a square
14 form. It's fenced with cameras. And it's
15 set up something like this room. And it's
16 lighting on the outside perimeter off the
17 yard, all the way around. The middle of the
18 yard, it contains trucks, containers, and
19 other parked tractors that's going out, in
20 and out.

21 Q. So would it be fair to describe it
22 as a parking lot for tractor-trailers?

23 A. Yes, ma'am.

24 Q. Okay. How is the lighting on the
25 yard?

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1 A. The lighting is great on the
2 outside. It's not great in the middle of the
3 yard, but it's visible.

4 Q. When the Defendant approached you
5 originally, how far away from you was he?

6 A. Well, he was close enough to pat me
7 down. After he patted me down, he was within
8 an arm's length.

9 Q. Were you able to get a good look at
10 his face?

11 A. Yes, ma'am.

12 Q. At some point after the Defendant
13 had left the yard, did an officer ask you to
14 go with him?

15 A. Yes, ma'am.

16 Q. And what did he tell you?

17 A. He said that they apprehended
18 someone and we needed -- wanted us to go with
19 him to identify him, see if that was the
20 person who robbed us.

21 Q. Okay. And did you go with the
22 officer?

23 A. Yes, ma'am.

24 Q. Do you know about how far you had to
25 drive?

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1 A. Probably three or four miles, if
2 that.

3 Q. Okay. And when you got to the place
4 where the officer took you, did you recognize
5 anyone there?

6 A. Yes, ma'am. When we approached the
7 area where the individual was, the first
8 thing I recognized was the vehicle that he
9 was driving in, which was the Chevy pickup,
10 the GMC pickup with the sidesteps. And the
11 individual that actually took, that actually
12 rob us.

13 Q. Were you able to identify the
14 Defendant as the person that had robbed you?

15 A. Yes, ma'am.

16 Q. And how certain are you that the
17 person you identified that night was the same
18 person that had robbed you?

19 A. A hundred percent.

20 Q. The weapon that he was holding, Mr.
21 Rhodan, did you believe that to be a gun?

22 A. Yes, ma'am.

23 Q. Did he act like it was a gun?

24 A. Yes, ma'am.

25 SOLICITOR TAYLOR: One minute, Your

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1 Honor, (sidebar with Mr. Condon).

2 Nothing further.

3 CROSS EXAMINATION

4 BY MR. SCHWACKE:

5 Q. Mr. Rhonda, do you have a commercial
6 driver's license?

7 A. Not at this time.

8 Q. And its status is what?

9 A. Disqualified.

10 Q. Disqualified?

11 A. Yes.

12 Q. And can you tell us the reason for
13 that?

14 A. Medical reasons.

15 Q. Aren't there other reasons that a
16 CDL can be affected?

17 A. Yes.

18 Q. Such as? What are some examples?

19 A. Your driving record, driving tests,
20 medical issues.

21 Q. So drugs can have an impact on a
22 commercial driver's license?

23 A. Yes, sir. Each commercial driver
24 takes random drug tests throughout the year.

25 Q. And you don't know when they're

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1 coming?

2 A. No, sir.

3 Q. And I guess convictions for those
4 types of offenses too could be an effect,
5 have an effect on it?

6 A. Yes.

7 Q. So you're out there that night
8 prepping one of the trucks that you and Ms.
9 Rhodan [sic] own together or is it her truck
10 or ---

11 A. It's the company's truck, sir.

12 Q. Okay. And you indicate you have,
13 you said, six employees?

14 A. Yes.

15 Q. And that night you indicate that a
16 pickup truck pulls into the lot and you're
17 the first person that meets up with that
18 individual driving that truck; is that right?

19 A. That's correct.

20 Q. It's just you?

21 A. Right.

22 Q. Is that person wearing any
23 particular types of clothes?

24 A. Just jeans and a jacket, regular
25 shirt.

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1 Q. Did he have anything to cover his
2 face?

3 A. No, sir.

4 Q. Did he have anything in an attempt
5 to cover his hands?

6 A. No, sir.

7 Q. You indicated that another gentleman
8 out there was Mr. Blake?

9 A. Correct.

10 Q. And that he was on the phone at the
11 time?

12 A. That's correct.

13 Q. And how was he on, was he on a
14 handheld phone or was he ---

15 A. Headset.

16 Q. A headset?

17 A. Yes, sir.

18 Q. So when you're talking about a
19 headset, what do you mean?

20 A. Just a regular headset that goes
21 across your head.

22 Q. Okay. So not like an ear ---

23 A. Not like an ear bud, sir.

24 Q. So something that actually fits over
25 the head. This way?

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1 A. I do believe it was, yeah, across
2 the head.

3 Q. And is it wired? Is it a wire?

4 A. Wireless.

5 Q. Wireless. So phone and headset were
6 something that could be seen?

7 A. Yes.

8 Q. Okay. And we're talking about Mr.
9 Blake. I'm sorry. I didn't finish. I was
10 going to let you say it, but you didn't do
11 it.

12 A. Oh, okay.

13 Q. So that's who we're talking about?

14 A. Right, Mr. Blake.

15 Q. And so he approaches you and he pats
16 you down?

17 A. That's correct, sir.

18 Q. And the only thing he finds on you
19 is a flashlight?

20 A. That's correct.

21 Q. And what kind of flashlight are you
22 talking about?

23 A. It's one of those miniature flash-
24 light, LED lights, red in color.

25 Q. How big we talking about?

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1 A. Miniature flashlight.

2 Q. And he didn't find your phone?

3 A. No, sir.

4 Q. So you had a phone on you?

5 A. No. It was actually in my bag in
6 the car. And I got my phone out the car when
7 he was patting -- I mean, when he had give us
8 directive to walk to the car, I threw it
9 underneath the car.

10 Q. Oh, okay. I thought you testified
11 there was nothing to search in ---

12 A. There was nothing else. There's
13 nothing in the car after ---

14 Q. Your bag was in ---

15 A. It was in the trunk.

16 Q. And he looked in the trunk.

17 A. It wasn't there at the time, because

18 ---

19 Q. According to ---

20 A. Right.

21 Q. --- your testimony ---

22 A. There wasn't anything to find
23 because I took the bag and threw under the
24 car because all my personal stuff was in
25 there.

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1 Q. When did you have the opportunity to
2 do that?

3 A. While he was going through the car.

4 Q. And so you're saying that you were
5 able to get the trunk open ---

6 A. Well, the trunk ---

7 Q. --- and take the bag out and put it
8 somewhere ---

9 A. The trunk was open because I was
10 getting stuff out of there to do work to the
11 -- like a screwdriver or something.

12 Q. So we just added tools into the
13 equation? Now there were tools in the trunk
14 too?

15 A. It was a screwdriver.

16 Q. Anything else you can think of?

17 A. No. Like I said, there wasn't
18 anything in the car besides -- after my bag
19 was there and I took it and I threw it under
20 the car when he decided to start going
21 through the car.

22 Q. So -- all right. Let's go back.

23 A. Uh-huh.

24 Q. Then at some point Mr. Blake is
25 called over. Is it by you or does Mr. Blake

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1 just come over?

2 A. He started to walk that way while we
3 actually was talking.

4 Q. What's the line of sight? Is there
5 anything in between you and ---

6 A. Well, the truck. It was the truck
7 line and you could see directly between the
8 truck line, directly to Mr. Blake's truck.

9 Q. Okay. And so, Mr. Blake, according
10 to your testimony, then comes over?

11 A. Yes.

12 Q. And he gets searched?

13 A. Yes.

14 Q. And then your girlfriend comes over?
15 Did he call her?

16 A. No, no. He gave us directive to
17 walk toward her where she was at that time.

18 Q. And then she comes over?

19 A. No. We walked, we went to her, sir.

20 Q. And where did you go with her?

21 A. She was in the front or to the side
22 of her truck, near the front left side of her
23 truck. And he gave us directive to walk over
24 to her at that time.

25 Q. And is at that point that after

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1 y'all say that she's asked to give her
2 jewelry and her money, that he goes to the
3 car next?

4 A. Correct.

5 Q. And then y'all walk to the back of
6 the lot, is what you're saying?

7 A. Yeah. He gave us directive to walk
8 to the back of the lot. We didn't choose to
9 walk to the back of the lot.

10 Q. And this is a man who's pointed,
11 what you say is a gun at you?

12 A. Yes, sir.

13 Q. So did you see him throw that, get
14 rid of it?

15 A. No, I didn't.

16 Q. So as far as you know, he still had
17 that gun?

18 A. Yes, sir.

19 Q. And y'all left the lot to go look
20 for this man that you said threatened you
21 with a gun?

22 A. No, we went to -- not look for him.
23 We went to see where he went to, get the
24 officers the right to on where he went just
25 in case they didn't know. When we get the

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1 end of the street, you could either go left,
2 right or across. We at least wanted to give
3 them a general idea at which direction he
4 went.

5 Q. So you were following the man that
6 you said pointed a gun at you?

7 A. Sir, the guy was long-gone. The
8 only thing you could probably see was the
9 tail light. And like I said, we wanted to
10 give them, the officers directive which way
11 he went. That's all we wanted to do.

12 Q. At that point you had already, you
13 have your phone back up?

14 A. Yes.

15 Q. Which you say was in the bag, which
16 was in the trunk that you took out?

17 A. Right.

18 Q. What is a Com check?

19 A. A Com check is a -- it's like a
20 regular check that's issued through the Com
21 system for fuel or as a driver need it.

22 Q. And that's how you truckers operate?

23 A. Com check, fuel cards.

24 Q. Fuel cards? Data cards?

25 A. Yes.

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1 Q. So those are all items that you
2 would have and need if you're going to be
3 operating the vehicle?

4 A. No, there's more than two. That was
5 some of them.

6 Q. Some of them?

7 A. Yes.

8 Q. And there's probably more?

9 A. Yes.

10 Q. What are some of the others?

11 A. Basically, you need cash. You need
12 to have to have the items that you need, cell
13 phone, things of that magnitude.

14 Q. Have you operated the vehicle since
15 your license has been suspended?

16 A. No, I haven't.

17 Q. At all?

18 A. No.

19 Q. What type of identification do you
20 need to operate those trucks?

21 A. You need to have your medical card
22 and your CDL, your driver's license.

23 Q. What was the first card?

24 A. Medical card.

25 Q. What is a medical card?

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1 A. It's a card stating that you are
2 fit, are qualified, your health is good
3 enough to operate that vehicle.

4 Q. How long have you known Mr. Blake?

5 A. I don't know the correct numbers of
6 years, but it has been quite some time.

7 Q. Well, can you be closer than "quite
8 some time"?

9 A. Probably four, four years.

10 Q. And you met with him where?

11 A. I met with him?

12 Q. How did you actually first come to
13 know him?

14 A. He used to drive for a relative of
15 mine.

16 Q. Has anyone from law enforcement ever
17 shown you a weapon?

18 A. Yes.

19 Q. You don't know where that came from?

20 A. Excuse me?

21 Q. You don't know where that was found?

22 A. What?

23 Q. The weapon?

24 A. Oh, okay. Can you restate your
25 question?

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1 Q. Did the police ever show you a
2 pistol, and which you thought was a pistol?

3 A. I mean, he never brought it -- if
4 you're talking about that night, no. We
5 never saw a weapon that night from an
6 officer.

7 Q. Okay. Did -- you indicated, your
8 testimony is that Mr. Mack went into Mr.
9 Blake's truck?

10 A. Yes, sir.

11 Q. Did he ever go into Ms. Meyers'
12 truck?

13 A. No, sir.

14 Q. You didn't see that happen?

15 A. No.

16 Q. And you said he went into the
17 personal owned vehicle?

18 A. Correct.

19 Q. Which is a Lexus?

20 A. Yes.

21 Q. Did the police ever go through the
22 Lexus?

23 A. No, sir.

24 Q. You gave a statement to the police
25 that night?

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1 A. Yes, sir.

2 Q. And did they ask you for any
3 identification information?

4 A. Yes, sir.

5 Q. And what did you give them?

6 A. Driver's license.

7 Q. Driver's license?

8 A. Yes.

9 Q. So where was your driver's license?

10 A. In my bag.

11 Q. And with regard to going to a
12 location to identify someone, it was just you
13 and Ms. Meyers?

14 A. Yes.

15 Q. Mr. Blake didn't go?

16 A. No, sir.

17 MR. SCHWACKE: One moment, Your
18 Honor. Thank you. That's all the questions
19 I have.

20 SOLICITOR TAYLOR: Thank you, Your
21 Honor.

22 REDIRECT EXAMINATION

23 BY SOLICITOR TAYLOR:

24 Q. Mr. Rhodan, I just want to clear up
25 a few things. So I'll try to be quick. I

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1 don't mean to be personal, but you told
2 Mr. Schwacke that your commercial driver's
3 license had been suspended for medical
4 reasons?

5 A. Correct.

6 Q. Can you tell the jury what those
7 medical reasons are?

8 A. I have hypertension and I'm not
9 qualified to drive. I couldn't get my DOT
10 physical card.

11 Q. So you have high blood pressure?

12 A. Yes.

13 Q. Okay. And Mr. Schwacke also asked
14 you some questions about drug tests?

15 A. Yes.

16 Q. As a commercial driver's license
17 holder, are you subject to drug tests?

18 A. Yes, ma'am.

19 Q. And how does that work?

20 A. It's at random. You never know when
21 you are going to be called to take a drug
22 test. You can sometime be out on the highway
23 and they'll call you and say, you're up for a
24 test. It's random. And they'll find you a
25 location nearest to you to go and take a drug

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1 test.

2 Q. How long do you have after they
3 notify you to actually give them a drug
4 sample?

5 A. Well, sometimes it's the same day if
6 you're close enough to one. Between the
7 department and driving commercial vehicles, I
8 think sometimes I take anywhere -- between
9 four and six drug tests a year.

10 Q. Have you ever failed a drug test?

11 A. No, ma'am.

12 Q. And you mentioned this, but you
13 worked in the Department of Corrections back
14 in 2013?

15 A. Yes, ma'am.

16 Q. And you were subject to drug test
17 for them?

18 A. Yes, ma'am.

19 Q. Ever fail one for them?

20 A. No, ma'am.

21 Q. Do you take drugs, Mr. Rhodan?

22 A. No, ma'am.

23 Q. Ever been arrested for drugs?

24 A. No, ma'am.

25 Q. Ever been convicted of having drugs?

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1 A. No, ma'am.

2 Q. I also want to just clear up, you
3 told Mr. Schwacke that your phone and your
4 driver's license were in a bag in a car.

5 A. Yes, ma'am.

6 Q. So let's talk -- just to make it
7 clear. When you first approached your car
8 tell us how everybody was standing

9 A. When we first approached the car,
10 like I said, the car was probably ten to
11 twelve feet from where the four of us was.
12 When he gave us directive to walk toward the
13 car, I was the first one to approach the car.
14 He went -- the trunk was open. The four
15 doors was closed. I was the first one to
16 approach. Knowing that I had my personal
17 stuff in the trunk, I walked directly to the
18 trunk. Mr. Mack and Ms. Meyers and Mr.
19 Blake, they went directly to the passenger
20 front door of the car.

21 Q. And where was the Defendant, Mr.
22 Mack?

23 A. He was behind Ms. Meyers, Mr. Blake
24 and myself.

25 Q. And what part of the car did he go

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1 to first?

2 A. The passenger front door.

3 Q. Other than your driver's license,
4 your wallet, and your phone, what else was in
5 that bag?

6 A. Cash.

7 Q. About how much?

8 A. Fifteen, Fifteen sixteen hundred?

9 Q. So is it safe to say you were
10 concerned about getting that out?

11 A. Yes, ma'am.

12 Q. When you took the bag out of the
13 car, where was the Defendant?

14 A. He was going through the glove box.

15 Q. So he was inside your car?

16 A. Yes, ma'am.

17 Q. Did he see you take the bag out?

18 A. No, ma'am.

19 Q. What did you do with the bag when
20 you took it out?

21 A. Tossed it underneath the rear of the
22 car, near the gas tank and the rear tires.

23 Q. Okay.

24 SOLICITOR TAYLOR: Nothing further,
25 Your Honor.

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1 THE COURT: Anything further, Mr.
2 Schwacke?

3 RECROSS EXAMINATION

4 BY MR. SCHWACKE:

5 Q. I'm still trying to understand the
6 sequence. So I think your testimony is at
7 one point the man with the gun, you're saying
8 he was in the front seat checking the glove
9 compartment; correct?

10 A. Yeah. That was the first thing he
11 did when he opened the door. And when I saw
12 him do that, I ---

13 Q. So that leaves the three of y'all
14 free outside, no gun pointed at you?

15 A. No, it wasn't -- the sequence is
16 that when he had -- he was halfway -- not
17 totally in the car, he was halfway in the
18 car, turned sideways, going through the glove
19 box. I mean, if you have someone pointing a
20 gun at you, you really don't know their
21 intent. It would have been real dumb of me
22 or Ms. Meyers or Mr. Blake to take a chance.

23 Q. So how is this gun being held on
24 you?

25 A. He was halfway in the car with the

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1 gun pointed back.

2 Q. And that's at the car?

3 A. Yes, sir.

4 Q. How about before that? How's he
5 holding it?

6 A. Before, he was walking with the gun
7 pointed -- I was the first one walking but he
8 was behind Mr. Blake and myself with the gun
9 pointed.

10 Q. And pointing, pointing, pointing,
11 how?

12 A. Just pointing.

13 Q. With his hands out like that?

14 A. A little closer to him.

15 Q. With something that looks like a
16 gun, you think?

17 A. Yes, sir.

18 Q. And that's as y'all walk towards the
19 car?

20 A. Yes, sir.

21 MR. SCHWACKE: No further
22 questions.

23 SOLICITOR TAYLOR: Nothing further,
24 Your Honor.

25 THE COURT: You may step down,

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1 sir.

2 (WITNESS STEPS DOWN)

3 THE COURT: The State will call
4 your next witness.

5 SOLICITOR TAYLOR: Thank you, Your
6 Honor. The State calls Keith Blake.

7 THE COURT: Come on Forward, Mr.
8 Blake, be sworn, sir.

9 (WITNESS TAKES STAND)

10 KEITH BLAKE, having been sworn to tell
11 the truth, and nothing but the truth,
12 testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR TAYLOR:

15 Q. Mr. Blake, what do you do for a
16 living?

17 A. I drive trucks.

18 Q. How long have you been doing that?

19 A. About seven years.

20 Q. And do you work for someone else or
21 work for yourself; how does that work?

22 A. I'm an independent. I contract with
23 different companies.

24 Q. So what does an independent truck
25 driver mean?

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1 A. We maintain our own trucks, you
2 know, kind of just find our own loads.

3 Q. Okay. And Mr. Blake, I want to go
4 ahead and get this out of the way. Have you
5 ever been convicted of a crime?

6 A. Yes, when I was in the military.

7 Q. And what was it?

8 A. Conspiracy, identity theft and bank
9 fraud.

10 Q. Okay. Have you ever been convicted
11 of any drug offenses?

12 A. No.

13 Q. Ever been arrested for a drug
14 offense?

15 A. No.

16 Q. Do you have a CDL?

17 A. Yes.

18 Q. As a commercial truck driver, are
19 you subject to random drug tests?

20 A. Yes.

21 Q. And how often do you say that would
22 happen?

23 A. It's just random, any given time. I
24 just took one about three weeks ago.

25 Q. Okay. Have you ever failed a drug

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1 test?

2 A. No.

3 Q. If you failed a drug test, what
4 would happen?

5 A. You lose your license, have to
6 attend a drug rehab class, all these things,
7 you know.

8 Q. Okay. Were you driving your truck
9 back in January of 2013?

10 A. Yes.

11 Q. And when you are in town, when
12 you're not on the road, where do you park it?

13 A. I'll park on the yard at [REDACTED]
14 Trident Street in Hanahan.

15 Q. Okay. And how long have you been
16 parking there?

17 A. Since about 2011.

18 Q. Do you know Mr. Rhodan and Ms.
19 Meyers?

20 A. Yes.

21 Q. How long have you known them?

22 A. 2011 or maybe longer.

23 Q. Do you remember an incident that
24 occurred on January 6th of 2013?

25 A. Yes.

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1 Q. Can you tell the jury what you were
2 doing that evening?

3 A. I was on, getting ready to clock,
4 headed to Nashville. You know, checking my
5 truck out before I got on the road. And a
6 guy came on the yard, just robbed us,
7 whatever.

8 Q. All right.

9 SOLICITOR TAYLOR: Your Honor, I'm
10 showing the witness what has been previously
11 marked as State's 4 for identification. May
12 I approach?

13 THE COURT: You may.

14 DIRECT EXAMINATION CONTINUED

15 BY MS. TAYLOR:

16 Q. Mr. Blake, do you recognize this
17 disk?

18 A. Yes.

19 Q. And how do you recognize it?

20 A. I initialed it. I saw it this
21 morning.

22 Q. Okay. What does this disk contain?

23 A. The incident that happened on the
24 yard.

25 Q. And is this a fair and accurate

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1 representation of what happened that evening?

2 A. Yes, it is.

3 SOLICITOR TAYLOR: Your Honor, at
4 this time, we'd ask permission to publish
5 portions of this disk. To enter it into
6 evidence and then publish.

7 MR. SCHWACKE: No objection.

8 THE COURT: Without objection.

9 You may.

10 (SO ENTERED AS STATE'S EXHIBIT 4)

11 DIRECT EXAMINATION CONTINUED.

12 BY SOLICITOR TAYLOR:

13 Q. While he's getting that set up Mr.
14 Blake, you said someone pulled on the yard.
15 Tell me the first thing you remember.

16 A. The first thing I remember, I was
17 about to get in my truck and I seen the
18 pickup truck drove past the yard, and come
19 back inside the gate. And I seen Mr. Rhodan
20 at the back of the trailer, where the pickup
21 truck stopped, and I saw the guy get out.

22 You know, my instinct is like protective
23 so I seen some guy up at the truck. I didn't
24 know what was going on so I just walked down
25 the side of the trailer to make sure every-

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1 thing's okay, you know. And then I saw the
2 fellow had pulled out the gun.

3 Q. Let's talk about the truck. Did you
4 recognize the truck?

5 A. I didn't recognize the truck.

6 Q. Could you describe it for the jury?

7 A. It was like a gray 1500 Chevrolet.

8 Q. I don't know a lot about trucks, Mr.
9 Blake. So is there any other truck that
10 looks a lot like a Chevy 1500?

11 A. Like a GMC, I think a GMC Sierra,
12 but they're like in the same in the same
13 class. Kind of like GMC is a step above the
14 Chevrolet.

15 Q. Okay. And if anybody on the jury is
16 like me and doesn't know anything about the
17 trucks, the difference in looking at a Chevy
18 1500 and the GMC Sierra?

19 A. The difference, you've got to kind
20 of look at the grille, because the grille has
21 GMC and the Chevrolet has a bowtie. That's
22 about the main difference you really can
23 tell. At nighttime, you know, you really
24 can't tell at night.

25 Q. Is it safe to say they're pretty

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1 much the same truck?

2 A. Yes.

3 Q. So you see this truck pull up onto
4 the yard. And you say you didn't recognize
5 the truck?

6 A. I didn't recognize it.

7 Q. Okay. All right. I'm going to ask
8 you to turn around, Mr. Blake. (Video
9 playing), can you tell the jury what they're
10 looking at here?

11 A. That's the yard where we park the
12 trucks at. And off to the left is the
13 building. That side is the side of the fence
14 and farther back, that's the back of the
15 yard.

16 THE COURT: Mr. Blake, if you
17 don't mind, my court reporter is taking down
18 everything you say. So if you would speak
19 up. And, also, when you're referring to
20 sides, if you could refer to the left or
21 right for her, I appreciate it.

22 WITNESS: Yes, ma'am, okay.

23 THE COURT: And just speak up
24 because you're not on the microphone at this
25 time, okay?

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1 WITNESS: All right. So talk
2 towards this way or --- ?

3 THE COURT: She's actually right
4 here.

5 WITNESS: Okay. How you doing?

6 COURT REPORTER: Fine, thank you.

7 WITNESS: All right.

8 THE COURT: And just so the jury
9 can hear you because it's difficult when
10 you're turned.

11 WITNESS: Okay. All right.
12 Like I say, to the left of the screen, that's
13 the front of the, that's the trailer. And
14 the top of the screen is the side of the
15 yard. And farther off to the right, is the
16 back. Where this black truck is sitting at,
17 that's the front side of the yard where he
18 came in. That's the main entrance.

19 DIRECT EXAMINATION CONTINUED

20 BY MS. TAYLOR:

21 Q. Do you recognize that truck, Mr.
22 Blake?

23 A. Yeah, that's the truck the guy
24 jumped out and robbed us with.

25 Q. Okay. And you can see on the video

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1 someone getting out of the truck?

2 A. Yes.

3 Q. Did you see that that evening?

4 A. I didn't see him get out of the
5 truck, I just seen him approach Mr. Kenny at
6 the back of the trailer.

7 Q. Okay.

8 SOLICITOR TAYLOR: Okay. If you
9 can just fast forward to that part.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. TAYLOR:

12 Q. (Video playing) -- was that the only
13 truck that pulled on the yard at that time,
14 Mr. Blake?

15 A. Yes. That was the only truck.

16 Q. And is that the truck you described
17 as the Chevy 1500?

18 A. Yes, it is.

19 Q. Okay. Thank you. Thank you. You
20 can turn back around this way. Thank you.

21 A. All right.

22 Q. You said earlier that you didn't
23 recognize the truck?

24 A. That's right, yeah. I didn't
25 recognize it coming in.

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1 Q. And you saw someone approaching Mr.
2 Rhodan?

3 A. Yes.

4 Q. Did you recognize the person that
5 was approaching him?

6 A. I didn't recognize him, no.

7 Q. Did you know him?

8 A. Didn't know him, (negative gesture).

9 Q. Ever seen him before?

10 A. Never seen him a day in my life.

11 Q. Okay. As you approached Mr. Rhodan,
12 what's the first thing that you noticed?

13 A. I noticed that he was having a
14 conversation with someone. That's when I,
15 you know, like said, 'okay, this is good.'
16 You know, he must know this fellow.

17 Q. And then what happened?

18 A. And that's when he saw me coming to
19 the trailer, pulled the little gun out and
20 cocked it. I was like, back up.

21 He said, "Where's the money at?" He said
22 this and that. I started backing up. He
23 said, "No, come back. Come back."

24 And I was like, "What do you want me to
25 do?" He said, 'I got the gun, I'll shoot you

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1 right now', all this and that.

2 Q. Okay. Let's back up. You said that
3 he pulled a gun?

4 A. Yes.

5 Q. What did the gun look like?

6 A. The gun was silver. And it looked
7 like, the knowledge that I have of guns, like
8 a .22 with a silver barrel.

9 Q. Do you remember where he pulled it
10 from?

11 A. I think he pulled it out of his
12 pocket. I don't know.

13 Q. How was he holding the gun?

14 A. He was holding like, you know, like
15 he meant business, like 'I'm ready to kill
16 you right now.'

17 Q. When you say "like he meant
18 business," was it arms all out, closer to the
19 side, how was he ---

20 A. No, he was kind of like stretched
21 out right here.

22 Q. Okay. And when you saw the gun,
23 what was your reaction?

24 A. My reaction was, like, 'is this guy
25 playing?' I don't know. Acting like he was

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1 serious, but I don't know.

2 Q. At the time that you approached the
3 Defendant and Mr. Rhodan, were you doing
4 anything?

5 A. I was just walking towards them.
6 Before, I was getting in the truck. That's
7 when I seen all this. And that's when I
8 walked over, down the side of the trailer.
9 But with me walking to the back of Mr.
10 Rhodan's trailer, I was just coming up on ---

11 Q. Were you talking on the phone?

12 A. Yeah. I was on the phone.

13 Q. Describe for the jury, did you have
14 like an actual phone or a headset, how were
15 you on the phone?

16 A. I had a Bluetooth on my head.

17 Q. And that's the ear piece?

18 A. Had a ear piece, got a little mic
19 attached to the headset.

20 Q. Is that something you use when
21 driving?

22 A. Yes.

23 Q. Who were you on the phone with?

24 A. I was on the phone with Danielle.

25 Q. And who is Danielle?

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1 A. She's a friend.

2 Q. When the Defendant pulled the gun
3 out, about how far away were you?

4 A. I probably had maybe about three and
5 a half feet from them.

6 Q. Okay. And you said that he said
7 something to you?

8 A. Yeah. He was like, "Where's the
9 money at?" And "back up." So I backed up.
10 "No, come here. Come here. Where's the
11 money? I know you got the money. Where's
12 the money at?"

13 I said, man, "I'm broke. You know?
14 That's why I'm out here trying to go to work.
15 I ain't got no money, man."

16 Q. Did you have any money on you?

17 A. I had money in my wallet inside the
18 truck?

19 Q. How much money did you have in your
20 wallet?

21 A. It was seven hundred dollars (\$700).

22 Q. Is that unusual for you to carry
23 that amount of money?

24 A. That's normal because, you know,
25 when we're out there on the road, you know.

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1 You never know where you're going to be at.
2 You might have to get on a toll road, you
3 might have a breakdown, can't get to the ATM.
4 People might not take a card, might not take
5 a check or anything so -- or a debit card.
6 So I have cash on me. You never know when
7 you need it.

8 Q. Other than the Bluetooth that you
9 had in your ear, did you have anything on
10 you?

11 A. I had my Durango keys and my
12 cellphone in my pocket.

13 Q. Okay. After the Defendant told you
14 to "come back, come closer, where's the money
15 at", what happened next?

16 A. He turned us around. He told us to
17 go back where we were at because he saw
18 someone else back there. "Put your hands on
19 the truck. Tell your friend don't act, don't
20 do anything stupid. I'll shoot you guys,
21 kill you right now." And we had our hands on
22 the truck. He frisked us like the police.

23 Q. You said there was someone else
24 there?

25 A. Yes.

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1 Q. Who was that?

2 A. Ms. Jackie.

3 Q. And where was she when this all
4 started?

5 A. Mr. Kenny and I, and the guy was at
6 the back of the trailer. She was off at the
7 other truck, farther along the side, to the
8 side of the yard, walking back to the red
9 truck where we were told to put our hands on
10 it.

11 Q. So the man told you to put your
12 hands on the truck?

13 A. Yes.

14 Q. And then he said you patted you
15 down?

16 A. Yes.

17 Q. Did he take anything from you?

18 A. Yeah. He took my keys to the
19 Durango. And, you know, he threw my phone
20 all the way across the yard.

21 Q. Before he threw your phone across
22 the yard, did you say anything to Danielle?

23 A. Yes. When he turned us around and
24 told us to walk back here. I said, 'Hey,
25 call Hanahan Police. We're getting robbed.

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1 And I don't know who the guy is. Silver
2 Chevrolet 1500 pickup truck', you know.

3 Q. And were you saying that in a loud
4 voice?

5 A. I was in a soft, soft tone voice.

6 Q. So kind of whispering?

7 A. Yes.

8 Q. Okay. So he took your keys?

9 A. Uh-huh.

10 Q. And then what?

11 A. He took my keys, took Mr. Rhodan's
12 little miniature LED flashlight, took Ms.
13 Jackie's ring, and told us to walk to the
14 back of the yard. He looked inside their
15 car. Told Jackie, Ms. Jackie to get in the
16 car. And Mr. Rhodan was taking his stuff out
17 of the car, just in case he took the car. I
18 think he had his tools in the trunk, you
19 know, mechanics tools. So he was taking his
20 tools out the trunk and I was standing behind
21 him, off to the gate while the guy was going
22 through the car. And he told us to walk to
23 the back of the yard. And I saw him run to
24 my truck, look inside my truck, took my CD
25 out my CD player and just left them on the

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1 floor and then he jumped in the car and left.

2 Q. Was anything taken out of your
3 truck?

4 A. The only thing that was taken out of
5 place was my CD player.

6 Q. Where was your wallet?

7 A. My wallet was like behind the cup
8 holder behind the passenger's seat.

9 Q. After the Defendant left, what
10 happened?

11 A. I found my phone. We had called
12 9-1-1 off of either Mr. Rhodan or Ms.
13 Jackie's phone. And we hopped in the car to
14 go behind him. And then the 9-1-1 agent lady
15 was, like, 'Stay where you're at. We caught
16 him', this, this, and that. So we turned
17 around and went to the yard.

18 Q. At some point, did the police
19 respond?

20 A. Yeah, they responded from when I
21 told Danielle to call them. I guess they
22 were sitting out somewhere on North Rhett.
23 They wouldn't be on Trident Street because
24 it's a dead-end road. No need to come down a
25 dead-end road.

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1 Q. So other than Trident Street exiting
2 onto North Rhett Extension, is there anywhere
3 else to go?

4 A. Nu-uh, not if you want to go in the
5 woods or whatever in the bushes, but, uh-uh,
6 catch the barbed wire. I don't think you
7 want to do that.

8 Q. Anywhere else you can drive a car?

9 A. No.

10 Q. Okay. When the police came to the
11 lot, did you tell them what had happened?

12 A. Yeah. We told them what happened.

13 Q. How were you feeling at that point,
14 Mr. Blake?

15 A. I was just all mixed up, you know.
16 My emotions was high, you know. I was in an
17 uprage whatever, you know.

18 Q. It's safe to say you were angry?

19 A. Yeah, I was pretty angry.

20 Q. Were you upset?

21 A. I was upset. I shed a little tear
22 here, there, you know.

23 Q. The officers at some point took Mr.
24 Rhodan and Ms. Jackie to another location.

25 Do you remember that?

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1 A. Yeah. They took them to identify
2 the fellow, but they didn't take me. I guess
3 they realized, you know, my state of mind
4 right then, you know. So they left me at the
5 yard.

6 Q. Did you stay there with other
7 officers?

8 A. I stayed with that officer.

9 Q. Okay. So tell the jury then what
10 was taken from you that evening?

11 A. My Durango keys were taken and my
12 cellphone was thrown across the yard.

13 Q. And your keys, could you describe
14 those for us? Like a keychain on it?

15 A. Yeah, keychain on it. Keys to the
16 big truck, to the house and, of course, the
17 key to my Durango.

18 Q. Were you able to get those keys
19 back?

20 A. Yes, they got them back.

21 Q. And how did you get those back?

22 A. The officers did a search and rescue
23 (sic) through the bushes wherever he fled at.

24 Q. Okay.

25 SOLICITOR TAYLOR: Nothing further,

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Testimony of Keith Blake - Cross Examination
Before The Honorable Carmen Mullin

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1 Your Honor.

2 CROSS EXAMINATION

3 BY MR. SCHWACKE:

4 Q. Mr. Blake, how many, how many CDs
5 were you shown?

6 A. I was shown one?

7 Q. Just one?

8 A. Yes.

9 Q. That night after this incident, did
10 you stay with stay with the police and Ms.
11 Meyers and Mr. Rhodan and watch some videos?

12 A. No. I think the officers was
13 looking, reviewing the videos. I was
14 standing by the door. I didn't see what was
15 going on.

16 Q. But they were watching three
17 different videos?

18 A. I don't know how many videos they
19 watched, but whatever was showing that night
20 on the yard, that's what they were watching.

21 Q. So the State has only shown you one
22 video?

23 A. Yep.

24 Q. And you described the truck in your
25 statement as a silver Chevy?

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1 A. Yes.

2 Q. So describe for me the type of phone
3 and headset you were wearing?

4 A. It was a Bluetooth like you see at
5 McDonald's. You know, you've been to
6 McDonald's drive through. The headset they
7 have at McDonald's, they have a little mic
8 right here and big little bulky piece for the
9 earpiece; my cellphone, a little small deal
10 in my pocket, you know. I didn't have the
11 light flashing on it so he never knew I was
12 on the phone. So normally when you got the
13 option to have the light flashing, that's how
14 you know people are on the Bluetooth, but I
15 keep it off.

16 Q. And your truck, at the time this was
17 going on, was it idling?

18 A. Yes, it was idling.

19 Q. So there were keys in the truck?

20 A. Yeah, I have numerous keys to my
21 truck

22 Q. All right. And your testimony is,
23 is that you're saying the person with the gun
24 out there that night got into your truck?

25 A. Yeah, because the doors are locked.

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1 Q. And nothing got taken out of the
2 truck?

3 A. No, nothing was taken out of the
4 truck.

5 Q. And the person that was out there
6 that night didn't do anything to cover up his
7 face?

8 A. No, he just had a little skull cap
9 on or a blue hat or something like that.

10 Q. So he had a hat on?

11 A. Yeah. But his face was wide open.
12 It stopped right here. Had a little fur
13 right here, a little earlobe, dog-ear type
14 deal.

15 Q. You notice whether he was wearing a
16 Bluetooth?

17 A. No, I didn't. No.

18 Q. Okay. So it's something that fits
19 like over the -- the headset that we're
20 talking about, like you were wearing, is one
21 that fits over the ear or does it come up
22 over the head?

23 A. It comes over the head right here.
24 Got a little bulky piece right here, and the
25 mic comes down right. It was noticeable.

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1 You got to be blind not to see it.

2 Q. Okay. And at some point you see a
3 weapon?

4 A. Yeah.

5 Q. Describe that?

6 A. A little gun, it looked like a
7 silver .22.

8 Q. And when does it get pulled out?
9 When do you see it for the first ---

10 A. When I come out into the light from
11 between the trailers.

12 Q. And where did he pull it from?

13 A. He pulled from out of his pocket.
14 It went click-clack. "Give me the money.
15 Back up."

16 Q. What's click-clack?

17 A. You know, the slider. You know the
18 cock, when you cock the gun, throw that
19 bullet in that barrel.

20 Q. Okay. So you're saying you heard
21 that and saw that?

22 A. Yeah.

23 Q. So who ends up calling the police
24 after the man in the truck leaves?

25 A. It was either Ms. Jackie or Mr.

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1 Rhodan.

2 Q. And at some point y'all all get into
3 a vehicle?

4 A. Yes.

5 Q. Whose vehicle was that?

6 A. Mr. Rhodan's.

7 Q. What happens at the vehicle?

8 A. Well, when we got in or after he'd
9 gone through the vehicle?

10 Q. Well, let's say -- let's get you to
11 the vehicle first. So the truck arrives.
12 There's some interaction between the truck
13 driver and Mr. Rhodan?

14 A. Yes.

15 Q. You can't hear what's going on?

16 A. I can't hear what was going on.

17 Q. You can see what's going on?

18 A. I can see what's going on.

19 Q. Completely?

20 A. Not completely. I just seen him get
21 out and Mr. Rhodan had his back turned to the
22 guy. I don't believe in people walking up on
23 folks, blindsiding them, just in case
24 something happened and that's why I got out
25 of my truck, started walking down the side of

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1 the trailer. That's when the guy saw me,
2 pulled the gun out.

3 Q. And he called you to come over
4 there?

5 A. No, he didn't call me over there.
6 I just was going over there on my instinct,
7 just because ---

8 Q. You walk towards a man who you'd
9 already seen pull a gun?

10 A. No, I didn't see him pull the gun
11 until I got out from between the trailer.

12 Q. Okay. So you don't know whether he
13 pulled the gun on Mr. Rhodan or not?

14 A. I don't know if he pulled the gun
15 from the time I was stepping in my truck
16 until the time I got over there. But I know
17 when I got over, that's when he pulled the
18 gun out. So if he pulled it out before I got
19 over there, I can't account for that. I can
20 only account for when I walked up, got into
21 the light from the between the trailer, he
22 pulled the gun out on me.

23 Q. Do you hang out at all with Mr.
24 Rhodan and Ms. Meyers?

25 A. Besides when we're in the yard, no.

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1 Q. Okay. So no socialization?

2 A. We talk but we don't, we don't go to
3 the bar, we don't hang out or anything. I
4 mean, if it's work but -- we don't do that.

5 Q. How many times have y'all gotten
6 together to talk about this case?

7 A. One. After that night it was just,
8 you know, whatever happens, happens. It
9 wasn't no friendly discussion, no.

10 Q. So you haven't met with the
11 Solicitor's staff?

12 A. Yeah. We met with them?

13 Q. How many times?

14 A. Just once.

15 Q. Just once.

16 A. And then this morning.

17 Q. And just today?

18 A. Yeah.

19 Q. That's the only time you've met with
20 them?

21 A. Today and a couple of weeks ago.

22 Q. Okay. And what day did you watch
23 the one video they showed you?

24 A. This morning.

25 Q. So where were your Durango keys?

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1 A. My Durango keys before he took them?

2 Q. I'm asking, where were they?

3 A. My Durango keys were in my left
4 pocket with my cellphone.

5 Q. Okay?

6 A. I had on some sweatpants, gray
7 sweatpants.

8 Q. And what did he throw across the
9 yard?

10 A. My cellphone.

11 Q. The phone or the headset?

12 A. My cellphone.

13 Q. What happened to the headset?

14 A. It disconnected. Bluetooth
15 disconnected because when he threw it, it was
16 too far away.

17 Q. So you're still wearing it?

18 A. Yes. Still wearing my headset.

19 Q. How far did he throw your phone?

20 A. It would have had to have been at
21 least forty-eight (48) feet, because that's
22 how far you can go from the phone before it
23 disconnects, forty-eight (48) feet.

24 Q. Did you find your cellphone?

25 A. Yeah.

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1 Q. Got it back?

2 A. Yeah.

3 Q. Do you have a brother named Bobby?

4 A. Who?

5 Q. Do you have a brother named Bobby?

6 A. Not unless my dad has some children

7 I don't know about, no.

8 Q. Okay. And you lived at Old Pond

9 Road; correct?

10 A. Yes.

11 Q. And you don't know a Bobby Blake
12 that lives at that location?

13 A. No, no. My grandparents lived
14 there. No Bobby Blake ever lived there.

15 Q. Okay. Do you know a person named
16 Meano?

17 A. Meano Brown.

18 Q. You didn't go over to try to
19 identify the person the police said they had
20 caught?

21 A. No. They didn't let me go because I
22 was, you know, too emotional.

23 Q. They didn't let you?

24 A. No.

25 Q. And did you -- did they tell you why

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1 they might want to have people go over there
2 and do that?

3 A. Just to make sure it's the right
4 person that we could identify from the
5 robbery.

6 Q. They said they already got somebody?

7 A. Yeah.

8 Q. Have you ever been asked by law
9 enforcement to look at a weapon?

10 A. That he had or just any guns?

11 Q. Law enforcement, this case, ever
12 ask?

13 A. No, no, I didn't. After he fled the
14 scene they had the gun in custody, you know,
15 in their possession. I didn't see any gun
16 anymore.

17 Q. So you weren't asked to identify
18 that?

19 A. No.

20 MR. SCHWACKE: One moment.

21 CROSS EXAMINATION CONTINUED

22 BY MR. SCHWACKE:

23 Q. You were on the phone with someone
24 at the time this happened or did you have to
25 call someone?

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1 A. I was already on the phone. I was
2 already on the phone.

3 Q. And what had happened to the point
4 that you told that person, 'I think we're
5 about to get robbed.'

6 A. It happened to the point he pulled
7 the gun out on us and the robbery was in
8 progress.

9 Q. So he has pulled a gun on you?

10 A. Yes.

11 Q. And you're talking into your phone?

12 A. Yeah. I stopped talking when he
13 pulled the gun out. And, of course, he
14 realized, well, 'this guy's on the phone.'
15 So I stopped talking, but I never hung up the
16 phone.

17 Q. How did you get to the white car?

18 A. We had to walk.

19 Q. You had to walk.

20 A. Yeah.

21 Q. And who all was doing the walking?

22 A. All of us, man. Ms. Jacquelyn, Mr.
23 Rhodan, Ms. Jackie, myself, all three of us
24 are walking.

25 Q. And y'all go to where?

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1 A. To the white car.

2 Q. And what happens there?

3 A. That's when he started looking
4 through the car. 'You stand over here. You
5 get in the car.' Ms. Jackie gets in the car.
6 Mr. Rhodan is pulling his mechanic tools out
7 the car.

8 Q. And none of that stuff gets taken?

9 A. None of that stuff gets taken.

10 Q. Besides the mechanics tools, what
11 all's in the car?

12 A. I don't know. That's not my car. I
13 can't account for what's in it.

14 Q. I know, but what did you see?

15 A. All I see is he's pulling these bags
16 of tools out. I know he keeps his tools in a
17 bag. That's all I saw.

18 Q. And who's driving the white car
19 after the man leaves the lot?

20 A. Mr. Rhodan.

21 Q. And where do y'all get to before you
22 were told to return to the yard?

23 A. We got to North Rhett and Remount to
24 the stop light and turned around.

25 Q. You got all the way to the red light

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1 up there?

2 A. Yes.

3 Q. So then you go back to where?

4 A. Back to the yard where he robbed us
5 at.

6 Q. And at that point, it's just the
7 three of y'all on the lot?

8 A. Yes. As soon as we pulled back up
9 to the lot, Hanahan Police, I think it was
10 Officer Valdez or Vuldez, I think that's when
11 he pulled up.

12 Q. Did anybody else come to the lot?

13 A. Yeah. The lady that runs the show
14 out there, that runs the company out there,
15 she came out there.

16 Q. How do the gates work at that lot?

17 A. You have a combination to get in or
18 you don't get in.

19 Q. So normally, those gates are locked?

20 A. Yeah.

21 Q. And it's a combination lock.

22 A. Yeah, combination locks.

23 Q. Not something you need a key for.

24 You got to know the combination?

25 A. You got to know the combination.

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1 Q. And it's a about what, that road
2 from North Rhett to where it sort of dead-
3 ends there, is about a quarter of a mile
4 long?

5 A. Yes.

6 Q. Got a lot of manufacturing kinds of
7 things along the side there?

8 A. Yes.

9 Q. And those places are closed at
10 night?

11 A. Yes.

12 Q. Nobody's there?

13 A. Nobody is there at night.

14 Q. So it's that truck lot and another
15 one that's farther up ---

16 A. Farther up, yeah. Cowan.

17 Q. And that's it.

18 A. That's it.

19 Q. Anybody that's going to be living or
20 breathing out there, it's going to be at one
21 of those two lots?

22 A. Yes.

23 MR. SCHWACKE: One moment, Your
24 Honor.

25 THE COURT: Anything further?

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1 MR. SCHWACKE: That's all, Your
2 Honor.

3 THE COURT: Ms. Taylor, anything?

4 SOLICITOR TAYLOR: One question, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY SOLICITOR TAYLOR:

8 Q. Mr. Blake, were the gates open that
9 night?

10 A. Yes.

11 Q. Thank you.

12 THE COURT: Anything further.

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: All right. You may
15 step down, sir.

16 (WITNESS STEPS DOWN)

17 THE COURT: Ladies and gentlemen
18 of the jury, we're going to go ahead and take
19 a brief recess.

20 Take your pads and put them in your
21 seats, please.

22 Additionally, I need to instruct you, do
23 not discuss this case. It wouldn't be
24 appropriate to do so.

25 Refresh yourselves, come right back out

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1 and we'll go ahead and continue, okay? Thank
2 you.

3 (JURY OUT @ 3:31 P.M.)

4 THE COURT: All right. Solicitor?

5 SOLICITOR TAYLOR: Yes, ma'am.

6 THE COURT: How many more
7 witnesses do you have to put up today? I
8 believe you still have Ms. Meyers, and at
9 least one officer. How many do you have
10 left?

11 SOLICITOR TAYLOR: We have three
12 available today, Your Honor.

13 THE COURT: You do, okay. Great.

14 SOLICITOR TAYLOR: Yes, ma'am.

15 THE COURT: And it's 3:30 so I
16 think we'll be fine.

17 SOLICITOR TAYLOR: Okay.

18 THE COURT: Okay. All right.
19 Okay. We'll be at ease for about ten
20 minutes, okay?

21 SOLICITOR TAYLOR: Thank you.

22 THE COURT: Thank you.

23 (BRIEF RECESS)

24 (DEFENDANT PRESENT)

25 THE COURT: Are you ready, Solicitor?

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1 MS. TAYLOR: Yes, ma'am.

2 THE COURT: Mr. Schwacke, is the
3 defense ready?

4 MR. SCHWACKE: Yes, Your Honor.

5 THE COURT: Thank you. Let's bring in
6 the jury.

7 (JURY IN @ 3.42 P.M.)

8 THE COURT: Welcome back, ladies
9 and gentlemen. The State will call their
10 next witness..

11 SOLICITOR CONDON: The State calls
12 Jacquelyn Meyers.

13 THE COURT: Okay. Come on forward
14 and be sworn in.

15 (WITNESS TAKES STAND)

16 JACQUELYN MEYERS, having been sworn to
17 tell the truth, and nothing but the truth,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR CONDON:

21 Q. Good afternoon, Ms. Meyers. Where
22 do you live?

23 A. Yarden Drive in North Charleston.

24 Q. Okay. And what is your occupation?

25 A. Truck driver.

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1 Q. And who are you employed by?

2 A. We have our trucks leased at
3 Transportation, Inc., in Hanahan.

4 Q. Are you an independent contractor?

5 A. Yes, sir.

6 Q. And were you involved in an incident
7 on January 6th, 2013 involving the Defendant,
8 Joseph Mack, Jr.?

9 A. Yes, sir.

10 Q. And can you describe for the jury
11 the events leading up to the robbery that
12 day?

13 A. Well, we were on our yard over on
14 Trident Street, which is off of North Rhett
15 in Hanahan. Over there checking the trucks
16 to make sure everything was ready when it was
17 time for me to get ready to go out the
18 following morning.

19 I saw the light go by as we were on the
20 yard, but I really didn't pay it that much of
21 attention because, you know, cars and trucks
22 are going through there all the time. And
23 it's a trucking yard at the dead-end of that
24 street. And so the truck went in there. He
25 turned around, and came out.

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1 Then he came on the yard where we were
2 at. And so he stop and got out. I kind of
3 glanced back behind me and he was talking to
4 Blake and John. So I just took that to mean
5 that that was somebody that they knew,
6 because that's how they greet each other, you
7 know, when they see each other. Sometimes it
8 could be days and sometimes, you know, so
9 they were back there talking. I just thought
10 it was a conversation so I didn't bother to
11 walk back there to see what they, you know,
12 what they were talking about or whatever.

13 I just kind of stayed up front on the
14 driver's side of my truck. And then maybe a
15 couple minutes later they came walking up.
16 And he told them to put their hands up and
17 face the driver's side of my truck.

18 And then Blake said, well, "he's got a
19 gun. He's not playing." And so I just kind
20 of looked at them and looked at him.

21 And then he said, "what you've got?" And
22 he went through -- he proceeded to pat me
23 down. All I had was like twenty-one dollars
24 (\$21). And then he saw the jewelry that I
25 had on. And he asked for it. And so I was

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1 taking too long. And he said, "Hurry up.
2 Hurry up!"

3 Q. I'm going to stop you there for a
4 second. How many ear piercings do you have
5 on each side?

6 A. I have five holes in each ear.

7 Q. Now, was that -- were you wearing
8 the jewelry that he asked you to take off?

9 A. No, I'm not wearing that jewelry.

10 Q. I'm saying were you wearing it?

11 A. Yes, I was. Yes.

12 Q. And what exactly did he ask you to
13 take off?

14 A. I had, I think it was two pair of
15 like hoops. And then the other holes had
16 studs. So I took all those out. And then I
17 had, I think I had some bracelets. And then
18 I had some rings. And he wanted all of that.

19 Q. And did you recover that jewelry?

20 A. Yes, I got it back.

21 Q. When did you get that back?

22 A. The same night.

23 Q. And how did you get that back?

24 A. The officer brought it back to the
25 yard.

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1 Q. And do you know where he recovered
2 those items from?

3 MR. SCHWACKE: Objection.

4 THE COURT: That's hearsay? I'm
5 sorry.

6 MR. SCHWACKE: I object.

7 THE COURT: Okay. Sustained. Why
8 don't you ask another question?

9 SOLICITOR CONDON: Sure.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR CONDON:

12 Q. If I show you the property receipt,
13 do you recall signing a property receipt when
14 you got your items back?

15 A. (No verbal response).

16 Q. If I showed you that, would that
17 refresh your recollection of what items were
18 taken?

19 A. Yes.

20 Q. In detail?

21 A. Yes, those are the items.

22 Q. Can you describe one more time
23 exactly what the items were?

24 A. Earrings. It was a couple of hoops
25 and some studs. And I think I had a couple

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1 of rings on, and these bracelets. And I had
2 a red bracelet, a red and gold bracelet,
3 like.

4 Q. Are you wearing any of the items
5 that were taken that night?

6 A. Just this ring and these bracelets.

7 Q. Could you kind of show it to the
8 jury?

9 A. (Witness complies).

10 Q. That was recovered that night?

11 A. Yes.

12 Q. And that's what the Defendant,
13 Joseph Mack, took from you?

14 A. Yes.

15 Q. And why did you give him your
16 jewelry and the money?

17 A. Well, he had a gun. Well, what
18 looked like a gun, to me, pointed at me.
19 It was just commonsense to give it to him.

20 Q. Were you afraid of him?

21 A. Yes.

22 Q. Did you think he could possibly kill
23 you and the others?

24 A. Of course. No doubt.

25 Q. What did the gun look like?

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1 A. Well, all I saw was just the end of
2 it, which was silver looking. He kind of had
3 it wrapped or somehow in his jacket, in the
4 sleeve of the jacket, where I didn't see the
5 whole thing, just the tip, which was enough
6 for me.

7 Q. I'm not sure if you've already said
8 this, but how much money did he take from
9 you?

10 A. Twenty-one dollars (\$21).

11 Q. And did you give the Defendant
12 permission to take your property?

13 A. No.

14 Q. And after he robbed you of your
15 jewelry and the money and the other items,
16 what happened next?

17 A. Then he saw the white car and he
18 wanted to know what was in the car. And we
19 said -- everybody said nothing. But he went
20 and looked and searched through it anyway,
21 which he didn't find anything because there
22 was nothing there. We just happened to drive
23 that particular car that day over there.

24 Q. Was there anything in the trunk?

25 A. Nothing in the trunk.

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1 Q. Do you remember a bag being in the
2 trunk that was taken out?

3 A. A bag?

4 Q. By Mr. Rhoden?

5 A. Okay. Well, maybe he took that bag
6 out and threw it under the car or something.
7 I didn't see it when I was looking in there.

8 Q. You didn't see it in there?

9 A. And he didn't get it. Mr. Mack
10 didn't get it.

11 Q. So after you went through that white
12 car, was that -- whose car was that?

13 A. That's my car.

14 Q. That's your car?

15 A. Yes.

16 Q. And after you went -- what kind of
17 car is it?

18 A. It's a Lexus.

19 Q. And after he went through your
20 Lexus, what happened next?

21 A. I think he -- the next thing was he
22 took Blake's phone and threw it across the
23 yard. And then proceeded to tell us to walk
24 away from the car, going towards the back of
25 the yard, and not to look back, and just keep

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1 walking.

2 As we were doing that, he turned and went
3 and got back in his, the truck he drove on
4 the yard, and drove away.

5 Q. Did he make any statements to y'all
6 when y'all were walking away?

7 A. To don't look back.

8 Q. Did he say anything else?

9 A. No.

10 Q. What did you think his intentions
11 were when he told you to walk away?

12 A. Well ---

13 MR. SCHWACKE: Objection, would
14 be speculation.

15 THE COURT: Okay. Again, you need
16 to rephrase the question.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. CONDON:

19 Q. What thoughts went through your head
20 when you were walking away?

21 A. That he possibly could shoot, shoot
22 us in the back of the head or shoot us in the
23 back, just shoot us from the back, period.
24 Because our backs were turned to him and we
25 were walking away.

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1 Q. And how do you know the other
2 victims in this case, Keith Blake and Mr.
3 Rhodan?

4 A. Well, Keith Blake works with one of
5 the other trucking companies. And John
6 Rhodan is my fiancé.

7 Q. Did y'all drive to the truck yard
8 that night together?

9 A. John and I, yes.

10 Q. Did you witness the Defendant going
11 into anyone's tractor-trailer that night?

12 A. No.

13 Q. And did you call the police?

14 A. Yes, I did.

15 Q. When did you call?

16 A. As soon as we knew he was gone and
17 we jumped in the car to follow him, that's
18 when I called 9-1-1.

19 Q. Was it quickly after the incident
20 occurred?

21 A. Yes.

22 Q. And did you give the police the
23 description of what happened?

24 A. Yes, I did. To the best of my
25 recollection, yes.

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1 Q. Do you recall what kind of vehicle
2 he was driving?

3 A. It looked it was a Chevy pickup
4 truck.

5 Q. And did you get a good look at the
6 Defendant's face that night when he was
7 robbing you.

8 A. Yes.

9 Q. And how close was he when he was
10 robbing you?

11 A. Very close.

12 Q. What was the lighting like?

13 A. It wasn't bright-bright, but it was
14 bright enough to see his face because he was
15 right in my face.

16 Q. What's the lighting like in the
17 truck park there?

18 A. Well, they have lights along the
19 side of the fence there, once you turn in.
20 And then it's lights against the fence on the
21 other side of the yard.

22 Q. Well, what was his height and build?

23 A. He might have been 5'11, maybe,
24 5'12. He's a little bit taller than I am, so
25 -- I'm 5'9. I don't know exactly, but that's

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1 just a wild guess for me.

2 Q. And what was his race?

3 A. Black.

4 Q. And do you recall going to view a
5 suspect shortly after this incident occurred?

6 A. Yes.

7 Q. And can you describe that, how that
8 went about?

9 A. Well, the officer said that they had
10 apprehended him and he wanted us to identify
11 him. And he was going to take us around
12 there to do that.

13 Q. So what happened after that?

14 A. Well, we left from the yard. He put
15 us in the patrol car and took us over there
16 off of North Rhett. It was a mobile home
17 park. I don't recall the name.

18 Q. And what happened when you got
19 there?

20 A. Well, they had him standing out
21 there and then he -- the pickup truck that he
22 drove to the yard was there. And the officer
23 said, you guys can see him but he can't see
24 you.

25 Q. Did you recognize anybody?

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1 A. I recognized him right away.

2 Q. Why is that?

3 A. Because he just robbed me and he was
4 right here in my face.

5 Q. How certain were you that the
6 Defendant ---

7 A. Very. I could bet my life on it
8 that was him.

9 Q. Joseph Mack, Jr.?

10 A. Yes, sir.

11 SOLICITOR CONDON: No further
12 questions.

13 CROSS EXAMINATION

14 BY MR. SCHWACKE:

15 Q. Ms. Meyers, how long have you been
16 using that parking lot?

17 A. Probably for about the past ten
18 years.

19 Q. And you have a CDL, a Commercial
20 Driver's License?

21 A. Yes, sir.

22 Q. How long have you had that?

23 A. Since '95.

24 Q. And you were out on that lot that
25 night to get a truck or trucks ready for a

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1 run?

2 A. Yes.

3 Q. What's involved in that?

4 A. Starting up, making sure all your
5 lights are working, pulling the hood back,
6 checking your oil, your water, those sorts of
7 things.

8 Q. So in that process, the trucks are
9 all idling?

10 A. Not necessarily. You don't have to
11 have it idling to check those things.

12 Q. What about that night for your
13 truck?

14 A. We'd already been through that.

15 Q. Have you -- well, anyway. So that
16 particular truck lot's located at the end of
17 Trident Street in Hanahan?

18 A. Yes, to the left.

19 Q. And that would be about a quarter of
20 a mile or so from where North Rhett would
21 intersect it?

22 A. Yeah, probably so.

23 Q. And that's all an industrial kind of
24 area?

25 A. Uh-huh.

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1 Q. And this was at 7:00 at night?

2 A. Yes.

3 Q. What night of the week was it?

4 A. I think it was a Sunday.

5 Q. So all those businesses up and down
6 that road would be closed?

7 A. Yes.

8 Q. So the only things that might be
9 open would have been the truck yards?

10 A. The truck yards, yes.

11 Q. There's more than one on that road?

12 A. Uh-huh.

13 Q. Is there a gate to the truck yard
14 that you use?

15 A. Yes, it's a gate.

16 Q. And is it locked or closed?

17 A. Yes, it is.

18 Q. So were y'all the ones to have
19 opened the gate that night?

20 A. Yeah, we probably would have been
21 because that was a Sunday so nobody, nobody
22 was actually over there as of yet.

23 Q. And what's the mechanism that
24 secures the lot, the truck lot? You have a
25 gate. Is there a lock?

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1 A. There's a gate. Yes, there's a
2 lock.

3 Q. What kind of lock are you talking
4 about?

5 A. It's a combination lock.

6 Q. Okay. So the company informs you
7 what the number is?

8 A. Yeah.

9 Q. When your monthly -- how do ---

10 A. Well, all the drivers, whoever's a
11 driver for that particular, everybody gets
12 the combination.

13 Q. Okay. So that night was just the
14 three of y'all there?

15 A. Yes.

16 Q. Who got there first?

17 A. I think Blake was already there by
18 the time John and I got there.

19 Q. And you've known him, again, how
20 long?

21 A. Blake?

22 Q. Yes, ma'am?

23 A. Not quite ten years.

24 Q. And Mr. Rhodan, you and he have been
25 together for ---

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1 A. Quite some time.

2 Q. Long than ten?

3 A. Longer than ten, yes.

4 Q. You gave a statement to the police
5 that night?

6 A. Right.

7 Q. And in that statement -- that was
8 written by yourself?

9 A. Yes.

10 Q. And, again, how long after this had
11 happened did you write that statement?

12 A. Probably, maybe thirty minutes,
13 forty-five minutes, something like that.

14 Q. So within an hour you had written
15 that down as what you remembered happened?

16 A. Correct.

17 Q. Well, have you had a chance to look
18 at your statement?

19 A. Not since it happened.

20 Q. I mean, have you sat down with the
21 solicitors and discussed your testimony here
22 today?

23 A. Yes.

24 Q. When was the last time? Or is there
25 a last -- was there only one time? How many

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1 times are we talking about?

2 A. I talked with them about it on
3 Friday.

4 Q. Okay. Any other time besides that?

5 A. Probably a couple of times during
6 the week.

7 Q. Okay. So your testimony today was
8 that the three of y'all were out on the lot?

9 A. Uh-huh.

10 Q. This truck pulls up, this man comes
11 out and he's acting like he knows all of you?

12 A. Mainly John and Blake, (affirmative
13 nod).

14 Q. And he's talking to all of y'all
15 right? And then he -- he then comes up there
16 and while he's talking to all of you is when
17 he pulls out a gun?

18 A. Yes, he comes walking -- I guess he
19 was walking with it. He didn't actually pull
20 it out. It was already there by the time he
21 got to where I was standing.

22 Q. I'm sorry?

23 A. It was already out when he got to
24 where I was standing. So I'm guessing he had
25 already had it out.

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1 Q. In your statement that night --
2 would that help you refresh your memory?

3 A. (No verbal response).

4 Q. I'm asking? And did your statement
5 say that, (reading): "A black male came on
6 the yard. We thinking this was someone we
7 knew. He walked up like he knew us. Then he
8 showed us a chrome gun and said give us what
9 you got."

10 A. Okay.

11 Q. And that's what you wrote that
12 night?

13 A. Right.

14 Q. So that would have been happening
15 all at the same time?

16 A. More than likely yes.

17 Q. According to your statement?

18 A. Uh-huh.

19 Q. And then at some point they move to
20 a car?

21 A. My white car.

22 Q. That's your white Lexus?

23 A. Yeah. It was like in the middle of
24 the yard.

25 Q. You own that, you own that vehicle?

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1 A. Yes.

2 Q. And was that vehicle locked,
3 unlocked?

4 A. It was unlocked. The trunk was up,
5 the door was open.

6 Q. Was that all part of the process of
7 getting the trucks ready?

8 A. Yeah, sometimes. Because sometimes
9 you've got to get things out of the trunk
10 like you might need like oil, antifreeze or
11 something.

12 Q. And sometimes, I mean, when you're
13 getting your truck ready for a long trip,
14 you're probably stashing food and things
15 inside of your truck as well?

16 A. Yes, sir, that too.

17 Q. So those are the things that are
18 going to be coming out of your trunk?

19 A. Uh-huh.

20 Q. And that's the process that y'all
21 were in that night?

22 A. Yes.

23 Q. Okay. I'm going to show you what's
24 been marked as State's [sic] Exhibit Number 1
25 for identification and ask if you're familiar

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1 with that?

2 A. Yes.

3 Q. What is that?

4 A. It's a picture of our yard over on
5 Trident Street.

6 Q. Okay. And is that you depicted in
7 that?

8 A. Yes. That looks me with the white
9 sneakers, because I had on sweats.

10 MR. SCHWACKE: Your Honor, at
11 this time, I'd move to introduce State's
12 Exhibit -- Defendant's Exhibit Number 1.

13 SOLICITOR CONDON: No objection, Your
14 Honor.

15 THE COURT: Without objection,
16 into evidence.

17 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

18 CROSS EXAMINATION CONTINUED

19 BY MR. SCHWACKE:

20 Q. Do you know where that picture --
21 you've seen that picture before; correct?

22 A. Probably on the camera, I mean, on
23 the video.

24 Q. Correct. You were shown some videos
25 at the lot that night?

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1 A. Yes.

2 Q. And was that before or after you
3 went to identify someone?

4 A. I don't remember on that one.

5 Q. But that night after the incident,
6 y'all ---

7 A. It probably would have been
8 afterwards, but I'm not really sure.

9 Q. Okay. And you stayed at the lot and
10 watched the videos that were taken that
11 night; correct?

12 A. Yes. That would have been after
13 then.

14 Q. And this is part of that video that
15 you watched?

16 A. Uh-huh.

17 Q. And just because we have the jury in
18 here, if you could show them your truck?

19 A. Right here.

20 Q. And where -- we need to make sure we
21 turn that. And where -- which one is you?

22 A. With the white sneakers, right
23 there.

24 Q. And then there's another truck over
25 there. Whose truck is that?

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1 A. I can't even make out what truck
2 this is. I don't know. I can't even tell
3 what kind it is.

4 Q. Okay. But this is your truck right
5 and that's you?

6 A. Yeah, this is me.

7 MR. SCHWACKE: Your Honor,
8 permission to publish to the jury?

9 THE COURT: You may.

10 MR. SCHWACKE: If Your Honor
11 wishes to pause for them to look at it.

12 THE COURT: Okay. Ladies and
13 gentlemen of the jury, I just want to remind
14 you, don't feel rushed in looking at the
15 evidence. You will have it back in your jury
16 room when you begin your deliberations.

17 You can go ahead and continue, Mr.
18 Schwacke,

19 MR. SCHWACKE: Thank you, Your
20 Honor.

21 CROSS EXAMINATION CONTINUED

22 BY MR. SCHWACKE:

23 Q. Ms. Meyers, the night that this
24 happened and you gave your statement, do you
25 recall not mentioning that any jewelry was

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1 taken from you?

2 A. No, I thought I had put that on
3 there.

4 Q. If you want to refresh your memory
5 and if you can find to for me, let me know,
6 please?

7 A. (Upon review of statement), all
8 right.

9 Q. Do you recall?

10 A. Yeah, I recall it. It's not on here
11 but I recall it because it happened.

12 Q. At your car, could you tell us what
13 happened at the car?

14 A. Well, he searched through the car as
15 we're all standing there.

16 Q. When he's searching through the car,
17 how is he physically doing that?

18 A. Rumbling through the car. Rumbling
19 through the trunk, lifting up the mat where
20 the spare tire is at. Looking through
21 whatever was back there. Looking through the
22 car, which there wasn't too much of anything
23 in the car.

24 Q. Too much of anything?

25 A. Sometime I have a pillow in there,

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1 maybe a towel, but that's about it. There's
2 nothing in there. There wasn't anything in
3 there for him to take.

4 Q. When the police took your statement
5 that night, did they ask you for a form of
6 identification before you gave your
7 statement?

8 A. I believe so, yes.

9 Q. And what did you give them?

10 A. My CDL.

11 Q. Your CDL. And where was that?

12 A. In my pocket.

13 Q. And what else did you have in your
14 pocket?

15 A. My money, the twenty-one dollars
16 (\$21).

17 Q. And a phone?

18 A. Yes, I had my phone.

19 Q. You had a cellphone?

20 A. Yes.

21 Q. And that wasn't taken from you?

22 A. No.

23 Q. That was not asked for?

24 A. No.

25 Q. And, again, the person that's doing

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1 this, this man is not covering his face in
2 any fashion?

3 A. No.

4 Q. Not wearing anything on his hands?

5 A. No.

6 Q. So nothing was in the trunk?

7 A. No.

8 Q. Have you ever been asked to identify
9 any type of weapon?

10 A. No.

11 Q. And you indicated it had some sort
12 of silver tip and that's all you needed to
13 see?

14 A. That's all I needed to see; yes,
15 sir.

16 Q. What's a Comcheck?

17 A. That's what we use sometimes if
18 you're having issues with your fuel card and
19 you call your dispatch, they can get that for
20 you, especially to pay for your fuel. If
21 your, you know, your Comdata card is not
22 working.

23 Q. And so that has value?

24 A. Yes, it does.

25 Q. A Comdata card?

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1 A. A Comdata car is what they use for
2 fuel.

3 Q. And that has value?

4 A. Like a credit card.

5 Q. And that has value as well?

6 A. Yes, sir.

7 Q. And did you have those things with
8 you that night or were they in your truck?

9 A. That was probably in my purse, which
10 I didn't have my purse with me.

11 Q. Where was your purse?

12 A. I left my big purse at home, because
13 I didn't need the card.

14 Q. I mean, you have a smaller purse
15 somewhere?

16 A. Sometimes I do. Sometimes I just
17 carry the cards themselves.

18 Q. Since you left your big purse at
19 home, did you have your little purse with you
20 that night?

21 A. No, I just usually have -- I had the
22 license, just out of the purse, just in my
23 pocket.

24 Q. So at some point, y'all said the man
25 told you to walk away; right?

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1 A. Right.

2 Q. And where did he go?

3 A. We're walking away from the car,
4 going towards the back of the yard.

5 Q. And when do you walk back in the
6 opposite direction?

7 A. When we heard him squeal off the
8 yard and leave. So we turned around and came
9 back towards the car, jump in the car.

10 Q. So it's at the point that you hear a
11 squeal that you walk back from where you
12 walked the farthest away from this?

13 A. Yes.

14 Q. And, again, how many videos were you
15 shown?

16 A. I don't know exactly how many. I
17 just saw some videos.

18 Q. More than one?

19 A. Yes, more than one.

20 MR. SCHWACKE: One moment, Your
21 Honor.

22 Thank you. That's all the questions I
23 have.

24 REDIRECT EXAMINATION

25 BY SOLICITOR CONDON:

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1 Q. Just a couple of quick questions so
2 I can clarify a couple of things, just so I
3 can wrap this up. When you were talking
4 about the twenty-one dollars (\$21) in your
5 pocket, is that the twenty-one dollars (\$21)
6 that was taken?

7 A. Yes.

8 Q. And your commercial driver's license
9 was not taken?

10 A. No.

11 Q. Were you upset when you were writing
12 this statement for the police?

13 A. Of course. Definitely.

14 Q. Why were you upset?

15 A. Somebody points a gun at you,
16 wouldn't you be upset?

17 Q. And do you recall telling the
18 officers that he stole your jewelry?

19 A. Yes, I do because he took it.

20 SOLICITOR CONDON: Nothing further.

21 RECROSS EXAMINATION

22 BY MR. SCHWACKE:

23 Q. So somebody points a weapon at you,
24 and you're okay about getting behind the
25 wheel of a car and driving out chasing the

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1 robber?

2 A. I wasn't driving.

3 Q. But you were in the car?

4 A. Yes, I was. And on the phone with
5 9-1-1.

6 Q. Thank you.

7 MR. SCHWACKE: No further
8 questions.

9 THE COURT: You may step down,
10 ma'am.

11 (WITNESS STEPS DOWN)

12 THE COURT: Call your next
13 witness.

14 SOLICITOR TAYLOR: Thank you, Your
15 Honor. The State calls Sergeant Travis
16 Lanphere.

17 (WITNESS TAKES STAND)

18 TRAVIS LANPHERE, having been sworn to
19 tell the truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR TAYLOR:

23 Q. Sergeant, where do you work?

24 A. City of Hanahan Police Department.

25 Q. And how long have you worked there?

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1 A. Since 2007.

2 Q. What do you do for the City of
3 Hanahan?

4 A. Currently, I'm a patrol sergeant
5 over Bravo squad.

6 Q. What does that mean?

7 A. I've got a corporal that works
8 underneath me, and three other officers. And
9 it's just a basic patrol unit, answer basic
10 calls for service, the usual day-to-day stuff
11 for police work.

12 Q. Are you -- what is your shift?

13 A. Permanent night shift.

14 Q. And when's the last time you worked?

15 A. Last night.

16 Q. You're pretty tired today?

17 A. I'm exhausted.

18 Q. I'll try to get through this
19 quickly.

20 A. That's fine.

21 Q. Were you working for the Hanahan
22 Police Department back in January 2013?

23 A. Yes, I was.

24 Q. And what were your duties back then?

25 A. At the time, I was assistant shift

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1 supervisor. I was a corporal. I was also
2 the city's only K-9 handler.

3 Q. And were you working night shift
4 back then?

5 A. Yes, ma'am, I was.

6 Q. Were you working on January 6th,
7 2013?

8 A. Yes, ma'am.

9 Q. What time does the night shift
10 start?

11 A. Our shift briefing starts around
12 5:45 and we're all supposed to be on the
13 street by 6:00.

14 Q. And were you on the street that
15 evening?

16 A. Yes, ma'am.

17 Q. Were you a K-9 officer back then?

18 A. Yes, ma'am.

19 Q. Did you have your dog with you?

20 A. I did.

21 Q. At some point after your shift
22 started, did you receive a call?

23 A. I did.

24 Q. And what was that call for?

25 A. I was at a convenience store and it

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1 came out that there was an armed robbery in
2 progress near the commerce area, which is off
3 of North Rhett.

4 Q. And what did you do?

5 A. I left the convenience store and
6 started heading in the direction where the
7 information was coming to, about where we
8 needed to be.

9 Q. Do you remember about what time the
10 call came out?

11 A. I would say some time around 7:00,
12 7:00 in the evening..

13 Q. You headed in the direction, where
14 did you have to go?

15 A. From where I was at, I was at the
16 'Lil Cricket Gas Station on Yeamans Hall
17 Road. I came out of the parking lot, took a
18 right Yeamans Hall, headed up towards Hammond
19 Brown and North Rhett. When I got to the
20 intersection of Hammond Brown and North
21 Rhett, I took a right. That turns into North
22 Rhett. Follow that down up until I got to
23 Commerce and then I took a left onto
24 Commerce. And once I was on Commerce, we
25 were advised by our dispatch that the actual

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1 incident location was [REDACTED] Bankton. So I had
2 turn around and come back out off of
3 Commerce, onto North Rhett. And just as I
4 got to Trident Street, the Defendant's
5 vehicle was coming off Trident.

6 Q. You said [REDACTED] Bankton.

7 A. I'm sorry. [REDACTED] Trident.

8 Q. Okay. I just wanted to make sure we
9 were all on the same street. This may seem
10 obvious, but what county is [REDACTED] Trident
11 Street located in?

12 A. The county of Berkeley.

13 Q. Okay. You said that you were
14 provided with a description of the
15 Defendant's vehicle. Kind of tell us, at
16 that point, what information did you have?

17 A. As I was coming up to Commerce, my
18 dispatcher advised that the suspect's vehicle
19 was leaving, coming off of Trident.

20 I had asked the -- we had gotten the
21 description it was a Chevy or GMC, green,
22 with step sides.

23 It was coming off of Trident. As I came
24 up past the railroad tracks on North Rhett,
25 Trident intersected from my right.

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1 I slowed down and saw the vehicle come.
2 So I activated my blue lights. He took a
3 right onto North Rhett. I came up beside him
4 with another officer -- I came behind him. A
5 second officer, which was PFC Scott, came up
6 beside him. And then the vehicle pursuit
7 began when the suspect increased his speed.

8 Q. How many officers were involved in
9 the pursuit?

10 A. I took the lead. I believe Officer
11 Scott was behind me. Officer Ellwood, I
12 think might have been behind him. I really
13 wasn't counting the cars behind me. I was
14 paying attention to the suspect vehicle.

15 Q. Did you have your blue lights on?

16 A. Yes, I did.

17 Q. Did the other officers have theirs
18 on?

19 A. They did.

20 Q. Did you have your siren running?

21 A. Yes, I did.

22 Q. Did the Defendant stop?

23 A. No.

24 Q. After he turned onto North Rhett,
25 you said he increased his speed?

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1 A. He did.

2 Q. What happened next?

3 A. We were driving down Remount Road,
4 headed towards Rivers Avenue. There's the
5 Westvaco Park that's on the right-hand side
6 where the baseball fields are. We're driving
7 down Remount Road. A silver object was
8 thrown through the passenger, out of the
9 passenger window. I advised dispatch that an
10 object was thrown. I also advised other
11 officers an object was thrown in case it was
12 a gun. The vehicle pulled -- acted like it
13 was going to pull into the Westvaco Park,
14 came to a stop for a second, and then
15 accelerated again, turned right onto Chatham
16 Street. Was actually driving on the wrong
17 side of the road down Chatham, cut through
18 Chatham Place Apartments and over to Murray.
19 Took a right onto Murray and then took an
20 immediate left into [REDACTED], I believe is what
21 it is, Murray, where the vehicle came to a
22 stop after colliding with a camper. At that
23 point the suspect exited the vehicle, tumbled
24 to the ground. I stopped my patrol vehicle.
25 The suspect was trying to flee. I challenged

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1 him. He turned around. I had him at
2 gunpoint, saw that he wasn't armed. I took
3 him to the ground and placed him in
4 handcuffs.

5 Q. And who was the suspect that you
6 took into custody that evening?

7 A. It was the gentleman sitting over
8 there, Mr. Mack, Jr.

9 SOLICITOR TAYLOR: Let the record
10 reflect he's indicated the Defendant, Your
11 Honor.

12 THE COURT: It shall so reflect.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR TAYLOR:

15 Q. Would it help you to show the jury a
16 map of the chase, where it went?

17 A. Yes, ma'am.

18 SOLICITOR TAYLOR: I'm going to show
19 the witness, Your Honor, what's been marked
20 as State's Identification Number 3.

21 DIRECT EXAMINATION CONTNUED

22 BY SOLICITOR TAYLOR:

23 Q. Do you recognize this map, Sergeant?

24 A. I do.

25 Q. And can you tell the jury what we're

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1 looking at here, please?

2 A. This is North Rhett. This is the
3 North Rhett area.

4 This is Trident Street.

5 This is Commerce.

6 This is the area that we were originally
7 sent to. Down here is [REDACTED], this is our
8 incident location, down near this lot.

9 The suspect vehicle came off of Trident.

10 I intersected at this intersection. The
11 vehicle pursuit is the red line. We travel
12 down North Rhett. We took a right onto
13 Remount Road.

14 And right in this area right here, is
15 where the first -- the object was thrown from
16 the vehicle.

17 The suspect vehicle turned into this
18 driveway real quick, and quickly accelerated.
19 This is Chatman, up Chatham, through the
20 apartment complex, right onto Murray and
21 where the chase ended in [REDACTED] Murray.

22 Q. Thank you, sir. Sergeant, are the
23 Hanahan patrol vehicles equipped with a
24 video?

25 A. Yes, ma'am, they are.

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1 Q. And did you have a video working
2 that night?

3 A. I did.

4 SOLICITOR TAYLOR: Your Honor,
5 permission to approach.

6 THE COURT: You may show the
7 witness what's been previously marked as
8 State's Number 2.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR TAYLOR:

11 Q. Do you recognize that disk,
12 Sergeant?

13 A. I do, ma'am.

14 Q. And what is it?

15 A. That is the DVD from my dash cam
16 from my patrol vehicle.

17 Q. And how do you know that's on there?

18 A. Because I watched it and I initialed
19 it.

20 Q. Okay. Is that a fair and accurate
21 representation of what happened that evening?

22 A. Yes, ma'am.

23 SOLICITOR TAYLOR: Your Honor, at
24 this time, we'd move State's Number 2 into
25 evidence.

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1 MR. SCHWACKE: No objection.

2 THE COURT: Without objection.

3 SOLICITOR TAYLOR: And ask permission
4 to publish?

5 THE COURT: You may.

6 SOLICITOR TAYLOR: Thank you. And,
7 Your Honor, it's about ten-minute video. If
8 I could ask the witness to come down?

9 THE COURT: You're welcome if you
10 want to step down Sergeant.

11 SOLICITOR TAYLOR: Thank you.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR TAYLOR:

14 Q. (Video playing) -- Sergeant, on that
15 video at the point that you first encountered
16 the Defendant's vehicle, what street is that?

17 A. It's the intersection of North Rhett
18 and Trident Street.

19 Q. Are you familiar with Trident
20 Street?

21 A. I'm very familiar.

22 Q. Describe it for us?

23 A. It's a dead-end. It's a one-way-in,
24 one-way-out if you're in a vehicle. It's an
25 industrial park. There's not a place where a

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1 lot of civilians go to hang out, unless
2 you're a truck driver and you work in one of
3 those businesses.

4 Q. So a dead-end, no other way to get
5 out of Trident, except for off of North
6 Rhett?

7 A. That's correct.

8 Q. Between the time you got the correct
9 address, I think we heard it on the video, of
10 [REDACTED] Trident Street and the time that you
11 encountered the Defendant's vehicle pulling
12 off of Trident Street, do you know about how
13 long that was?

14 A. Maybe less than a minute.

15 Q. On the tape, at the end, Sergeant,
16 we saw you taking something out of the
17 Defendant's pockets. Do you remember if the
18 Defendant had anything in his possession when
19 you put him in custody?

20 A. I remember in one of his pants
21 pockets, I believe it was his left pant
22 pocket, I pulled two yellow rings out of his
23 pocket. And I placed them on the hood of the
24 car. It's kind of hard to see on there. But
25 there was two rings that was placed on the

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1 hood of my truck.

2 Q. And did one of the other officers
3 shine the light on it at one point?

4 A. Yeah. The other officer that was on
5 scene, that was Officer Scott. And he was
6 looking at them with his flashlight.

7 Q. Do you know what happened to those
8 rings?

9 A. I believe they were given to Officer
10 Ellwood.

11 MR. SCHWACKE: Speculation.

12 SOLICITOR TAYLOR: Just if he knows,
13 Your Honor.

14 THE COURT: Okay. He can say if
15 he does or doesn't know. He can't speculate.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR TAYLOR:

18 Q. Do you know what happened to them?

19 A. No, ma'am.

20 THE COURT: Okay. Thank you.

21 Q. Thank you, Sergeant. No further
22 questions.

23 CROSS EXAMINATION

24 BY MR. SCHWACKE:

25 Q. Officer Lanphere, are you the case

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- 1 agent on this?
- 2 A. Yes, sir, I am.
- 3 Q. So you're familiar with all the
- 4 items in the file?
- 5 A. As -- sure, yes, sir.
- 6 Q. Now, I don't want to make you say
- 7 something you don't want to say. Is that
- 8 right?
- 9 A. Not as familiar as I normally would
- 10 be on a case.
- 11 Q. Is there a reason for that?
- 12 A. Because I was not aware that I was
- 13 the case officer on this.
- 14 Q. Okay. Here you are in that
- 15 position. Are you aware -- do you have our
- 16 file?
- 17 A. No, I do not have a file.
- 18 Q. Did you review a file before you
- 19 came to testify?
- 20 A. I did.
- 21 Q. Were you aware of any photographs?
- 22 A. No.
- 23 Q. And there were none in the file that
- 24 you have with you?
- 25 A. That's correct. There's no photo-

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1 graphs that I'm aware of.

2 Q. You did go back to a location to try
3 to find an item that was discarded during the
4 chase?

5 A. That is correct.

6 Q. And that ended up -- you reviewed
7 your camera or video, found that location and
8 then you retrieved a silver object, and it
9 ended up being an Icehouse?

10 A. That's correct.

11 Q. And would that have been the only
12 item you would have observed being thrown
13 from that vehicle during the chase?

14 A. During the chase when we were on
15 Remount Road, I saw the silver object come
16 out of the passenger window. It was silver.
17 At the high speeds, it's kind of hard to tell
18 whether it's a gun or if it's a beer can
19 coming out. I know it's silver.

20 Being the only K-9 handler and knowing
21 what my dog at the time was capable of doing
22 I left when the pursuit ended, to go back to
23 that area, to do what's called an article
24 search, put the dog on the ground, tracks for
25 human odor, can basically source out where an

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1 item was discarded.

2 I decided not to use the dog at that time
3 because of some other circumstances that were
4 taking place in that area. But after I
5 reviewed my tape, I knew the exact location
6 where the item was thrown out. I was able to
7 find it relatively quickly. It was, I
8 believe it was a twenty-four ounce, Icehouse
9 can, a beer, still cold, still had alcohol
10 inside of it.

11 Q. And you charged my client, Mr. Mack,
12 with that offense of open container?

13 A. Yes, sir, I did.

14 Q. And he's been to court on that
15 already; correct?

16 A. He did, yes.

17 Q. Are you aware, from your review of
18 the file, of any other type of forensic work
19 that may have been on any item in this case?

20 A. No, sir.

21 MR. SCHWACKE: One moment, Your
22 Honor. Thank you. That's all the questions I
23 have.

24 SOLICITOR TAYLOR: No redirect, Your
25 Honor.

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1 THE COURT: All right. You may
2 step down, sir.

3 (WITNESS STEPS DOWN)

4 THE COURT: Does the State want to
5 call the next witness?

6 SOLICITOR TAYLOR: Yes, Your Honor.
7 The State calls Corporal Beaudoin.

8 (WITNESS TAKES STAND)

9 LANE BEAUDOIN, having been sworn to tell
10 the truth, and nothing but the truth,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR TAYLOR:

14 Q. Corporal, where do you work?

15 A. Hanahan Police Department.

16 Q. And how long have you been working
17 there?

18 A. Almost six years.

19 Q. What do you do for Hanahan?

20 A. Right now I'm a corporal, dayshift
21 supervisor.

22 Q. Are you on the road right now?

23 A. No.

24 Q. Is that why you're not in uniform?

25 A. Yes, ma'am.

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1. Q. Were you working in that capacity
2 back in January of 2013?

3 A. Yes, dayshift supervisor for that
4 day.

5 Q. What time does the dayshift get
6 over?

7 A. At that time, it ends at 6:00 at
8 night.

9 Q. Okay. And so you had worked the
10 dayshift on January 6th?

11 A. Uh-huh.

12 Q. And got off around 6:00?

13 A. I stayed a little later to do the
14 end of the shift paperwork for the weekend.

15 Q. Okay. Did you, at some point after
16 you had gotten off shift that evening, hear a
17 call come over the radio in regards to an
18 armed robbery?

19 A. Yes, ma'am, as I was leaving.

20 Q. And how did that come about?

21 A. It was dispatched out as possible
22 armed robbery, came in from a third-party
23 caller off of North Rhett near a commerce
24 area.

25 Q. Okay. And did you take any action

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1 based on that call?

2 A. Yes, ma'am. I went towards that
3 area. I'd just left the station and was
4 headed towards I-26 exit from Remount. So I
5 turned around and went towards that area.

6 Q. Is it unusual to respond to a call
7 when you're off duty?

8 A. No, ma'am.

9 Q. Did you get involved in a pursuit
10 relating to that call?

11 A. I was involved. And also I stayed
12 towards the back of it.

13 Q. Do you know how many officers were
14 involved?

15 A. At that time there was two. That's
16 why I was towards the end of it.

17 Q. Okay. Do you remember the first
18 time you saw the Defendant's vehicle?

19 A. Yes, ma'am.

20 Q. And where was that?

21 A. I had just turned onto Commerce and
22 turned around off of North Rhett, facing
23 Trident Street, when dispatch had come over
24 the radio, corrected the location of the stop
25 or the incident. And she advised us that it

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1 was off of Trident Street, not Commerce. And
2 as I turned around, she had also given the
3 suspect description of the vehicle, which was
4 in front of me, off of Trident Street.

5 Q. So between the time that you got the
6 corrected address, and the time that you saw
7 the Defendant's vehicle, about how long would
8 you say that was?

9 A. That was at the same time.

10 Q. Okay. And what was the description
11 that you had been given of the vehicle?

12 A. It was a bluish green, I believe she
13 said Chevy Silverado truck or GMC.

14 Q. Okay. And did that match the
15 description of the vehicle you encountered?

16 A. In front of me, there was a bluish
17 green truck, but due to the road and cars
18 coming in between, I couldn't tell if it was
19 a Chevy or a GMC.

20 Q. Could you tell that it was a pickup
21 truck?

22 A. It looked like a pickup truck.

23 Q. Okay. Did you see Sergeant Lanphere
24 activate his blue lights?

25 A. I did.

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1 A. Yes, ma'am.

2 Q. Based on that information, what did
3 you do?

4 A. I started walking the path of the
5 chase to attempt to locate maybe items that
6 had been tossed out of the vehicle.

7 Q. And I know you weren't in here, but
8 we watched the video. Describe the area for
9 us briefly where the pursuit ended.

10 A. Where it ended was a trailer park,
11 off of Murray. But from where it was, you
12 could easily access to a parking lot of an
13 apartment complex, and also cut back out to a
14 side street from over there, to end up back
15 towards Remount area.

16 Q. So you said that you started to walk
17 the path. Did you begin where the pursuit
18 ended?

19 A. Yes, ma'am.

20 Q. And while you were walking that
21 path, what were you doing?

22 A. I was checking underneath the bushes
23 and the trees, the roadways, to make sure
24 that none of the items were in the roadway.
25 And if I did locate something, I picked it

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1 up.

2 Q. What was the first item that you
3 located?

4 A. The weapon.

5 Q. And did you collect the weapon?

6 A. Yes, ma'am.

7 Q. Where was it located?

8 A. It was located in the Chatham Street
9 Apartments off of Murray Drive. And I
10 located it on one of the side, where they can
11 drive -- Not an actual parking space --
12 between the back and the front of the
13 apartment complex. It was in a bush.

14 Q. And was that a place where the
15 Defendant's vehicle had passed during that
16 pursuit?

17 A. Yes, ma'am.

18 Q. Do you have that here with you
19 today?

20 A. I do.

21 SOLICITOR TAYLOR: Your Honor, at
22 this time we'd ask for the weapon to be
23 marked as State's Number 4 and entered into
24 evidence.

25 MR. SCHWACKE: No objection.

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1 THE COURT: Thank you.

2 SOLICITOR TAYLOR: State's Exhibit

3 4.

4 (SO ENTERED AS STATE'S EXHIBIT 4)

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR TAYLOR:

7 Q. Corporal, I'm going to ask, if you
8 can, open that box and show the jury what's
9 contained inside that box.

10 A. (Witness complies).

11 Q. Now, at the time that you recovered
12 that weapon, was it in two pieces like that?

13 A. No, ma'am.

14 Q. Tell us how it was?

15 A. The barrel of the weapon was stick-
16 ing out of the weapon, but it was tilted. It
17 was removed for the safety of it. That way
18 it won't float around in the box and it's
19 secure.

20 Q. Okay. And I'm going to grab this
21 real quick and make sure everybody gets a
22 good view of it. Can you tell us Corporal,
23 is this a real gun?

24 A. It's a BB gun.

25 Q. And how do you know it's a BB gun if

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1 you just look at it?

2 A. You don't.

3 Q. Did you find anything else while you
4 were walking that pursuit path?

5 A. I did. I found some property,
6 money, keys, jewelry, and a flashlight also
7 walking that path.

8 Q. Okay. And all of these items were
9 found on the path that the Defendant had
10 driven?

11 A. Yes, ma'am.

12 Q. Do you remember exactly what jewelry
13 you found?

14 A. Not exactly, no, ma'am.

15 Q. Did you do a report in this case?

16 A. I did not supplement this one, no,
17 ma'am.

18 Q. Is it unusual for you not to do a
19 supplement?

20 A. It just depends. If the property's
21 returned to the owners or to the case
22 officer, they'll go ahead and document it.
23 If I'm actually physically giving it to them,
24 then I'll do my own.

25 Q. As you collected these items -- and,

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1 again, I'm sorry. Tell me what you found.

2 A. I found some jewelry, earrings, some
3 rings. And then I also had found the money,
4 a keychain with several keys on it and a
5 flashlight.

6 Q. Do you remember how much money you
7 found?

8 A. It was about twenty dollars (\$20).

9 Q. Okay. And were these items grouped
10 together, were they separate, how did you
11 find them?

12 A. No. I found them in separate
13 locations. Not all of it was together. One
14 thing would be in front of a house, on the
15 side of the street. Another would be a
16 couple houses down or a house down all
17 together.

18 Q. About how far from the end of the
19 pursuit did you walk and find all this stuff?

20 A. I walked from the actual location,
21 which was off of Murray, through the Chatham
22 Street Apartments, up Chatham Street. And
23 when I reached Remount Road, that's where the
24 last item was located.

25 Q. Do you remember what the last thing

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1 you found was?

2 A. It was the keychain.

3 Q. Okay. Did you have a camera with
4 you as you were walking the path?

5 A. I did not.

6 Q. So no pictures were taken?

7 A. I did not take any, no, ma'am.

8 Q. Okay. What did you do with them as
9 you collected the items as you collected it?

10 A. I carried them in my hands.

11 Q. When you got back, when you finished
12 the search, what did you do with the items?

13 A. I gave them to Corporal Ellwood.

14 Q. Did you take any pictures before you
15 turned them over?

16 A. No, I did not have a camera.

17 Q. Okay. Do you know what happened to
18 them after you gave them to Corporal Ellwood?

19 A. He gave what items were reported
20 stolen back to the victims, and the gun was
21 placed into evidence.

22 Q. Okay.

23 SOLICITOR TAYLOR: Nothing further.

24 CROSS EXAMINATION

25 BY MR. SCHWACKE:

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1 Q. So with regard to State's Exhibit
2 Number 4, is this something that would be on
3 the end of the barrel here?

4 A. It would be inside.

5 Q. Inside?

6 A. Yes, sir.

7 Q. So it would be a magazine?

8 A. Yes, sir.

9 Q. You have this, this is a BB gun,
10 correct?

11 A. Yes, sir.

12 Q. How does this gun operate?

13 A. Like a normal gun.

14 Q. You just shoot it?

15 A. Yes, sir.

16 Q. Is there a way to cock it?

17 A. I'm sure if you slid the lever back
18 it would ---

19 Q. Does it slide, though, do you know?

20 A. Yes, sir.

21 Q. This item was found where?

22 A. In Chatham Street Apartments.

23 Q. And if you were to go out there
24 today, would you know exactly where you found
25 it?

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1 A. Yes, sir.

2 Q. Even though you didn't do a report?

3 A. Yes, sir.

4 Q. You did not do a report?

5 A. No, I did not supplement this, but I
6 still know where I found it.

7 Q. Supplement/report, same thing;
8 correct?

9 A. Correct.

10 Q. So you did not do a report?

11 A. Correct.

12 Q. And I think you've been specific
13 about the way you've answered this question
14 about you did not take pictures?

15 A. No, sir.

16 Q. That means someone else took
17 pictures?

18 A. I'm not sure about that.

19 Q. You weren't out there when pictures
20 were taken?

21 A. No, sir. I left after we collected
22 all the items and then I left.

23 Q. And there's no way to document today
24 where those items were or eve they're related
25 to this case?

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1 A. I'm not aware of any.

2 Q. Were you asking for a camera to come
3 out there that night?

4 A. No, sir. I was just there to help.

5 Q. And they didn't instruct you on
6 camera to leave it there until they can get a
7 camera there to take pictures?

8 A. No, sir.

9 Q. Have you reviewed any of the videos
10 in this case?

11 A. Yes, sir.

12 Q. Did you review the video that was
13 involved by the second officer that has not
14 been shown to this jury?

15 A. Which second officer are you talking
16 about? We had several officers out there.

17 Q. Correct. Officer Wesley Scott?

18 A. No, I've not reviewed his.

19 Q. What was done with the item that's
20 been marked as State's Number 4?

21 A. It was placed into evidence.

22 Q. And put away until this trial?

23 A. Not exactly for this trial. We've
24 had it pulled out for the Solicitors, but
25 besides that, yes.

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1 Q. And you're a supervising officer?

2 A. Yes, sir.

3 Q. And does that come with a rank?

4 A. Yes, sir.

5 Q. What is the rank?

6 A. Corporal.

7 Q. Did you ask for any forensic work to
8 be done on this gun?

9 A. No, sir.

10 Q. Would that have helped identify
11 potentially if DNA or fingerprints were found
12 on that weapon, the source of that weapon?

13 A. I'm sure it could have.

14 Q. And it wasn't done?

15 A. No.

16 Q. Any other pictures that you don't
17 know about or no pictures were taken?

18 A. I do not know.

19 Q. And no report was written by you?

20 A. The only supplement I did was when I
21 served him with the warrants.

22 Q. And the purpose of a supplement and
23 documentation of photographs, is to help be
24 able to educate the jury when you get to this
25 part of a case; isn't that correct?

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1 A. Not necessarily.

2 Q. So you don't want to educate the
3 jury?

4 A. It's not just for the education,
5 whether it is or isn't for them. It's to
6 document in a report how things were located.

7 Q. And that's not been done ----

8 A. It has been done.

9 Q. --- in this case?

10 A. It's in the report that I located
11 the items.

12 Q. That's it. And that's all?

13 A. Yes, sir.

14 MR. SCHWACKE: That's all the
15 questions I have.

16 THE COURT: Anything further?

17 SOLICITOR TAYLOR: No redirect, Your
18 Honor.

19 THE COURT: Okay. You may step
20 down.

21 (WITNESS STEPS DOWN)

22 SOLICITOR TAYLOR: We have two
23 additional witnesses. Your Honor.

24 THE COURT: Okay. Ladies and
25 gentlemen of the jury, it is about eight

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1 minutes 'til five, and I think now is a good
2 time to break.

3 When you arrived this morning, you didn't
4 know you were going to be here all day. I
5 certainly understand and appreciate that.

6 I need to caution you, ladies and
7 gentlemen, when we break again tonight, that
8 you are not to discuss this case with anyone.
9 You're not to do any of your own independent
10 research. Additionally, if you are a social
11 website blogger or have a website, you're not
12 to post anything on there that states even
13 you are a juror. It invites comment and it
14 invites people to come seek you out. And,
15 again, it would be inappropriate.

16 Additionally, I have not had any media
17 requests but, again, out of an abundance of
18 caution, tomorrow morning if you pick up the
19 newspaper or turn on the news, anything on
20 the radio and hear anything about this case,
21 you're to turn it off and disregard it.

22 If there is something that's brought to
23 my attention that is out there, I am going to
24 ask you whether or not you looked at it or
25 talked about it, all right?

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1 Ladies and gentlemen, tomorrow I expect
2 to be able to hopefully finish up the trial
3 of this case. What I'm going to need to know
4 from you all tomorrow is if anyone has to
5 leave at a particular time tomorrow. We want
6 to begin at 9:30 unless that's a problem for
7 anyone, but I would like to get this trial
8 completed if at all possible tomorrow.

9 Madam Foreperson, if you would, just when
10 you break tonight, ask anyone if they have a
11 prior engagement, a specific time that they
12 have to be out, and let me know and I'll make
13 sure I accommodate you. If not, we intend on
14 pressing through and going ahead and finish-
15 ing up, all right?

16 Ladies and gentlemen, we appreciate your
17 attention and your patience today. Look
18 forward to seeing you all at 9:30. I will
19 tell you we will be on time tomorrow morning
20 at 9:30, so we look forward to seeing you
21 then. Thank you.

22 (JURY OUT @ 5:00 P.M.)

23 THE COURT: All right. Y'all
24 we'll go ahead and break for the evening. Is
25 there anything from either party before we

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1 recess?

2 SOLICITOR TAYLOR: I don't know if
3 you want to go ahead and ask the Defendant in
4 the morning before the jury comes in, if he
5 wants to take the stand or not. Other than
6 that, the State has nothing.

7 THE COURT: I think I'll wait
8 until after you rest, just to make sure he's
9 heard all the evidence before he makes that
10 decision. And I'm sure Mr. Schwacke would
11 like time again to discuss with him his
12 rights. We're going to give to it to the
13 jury tomorrow after -- like I just promised
14 them we are?

15 SOLICITOR TAYLOR: Oh, yes, ma'am.

16 THE COURT: Okay.

17 SOLICITOR TAYLOR: The two witnesses
18 in the morning are no longer than an hour.

19 MR. SCHWACKE: And he has
20 indicated previously, and I've talked with
21 him about this right to testify but at this
22 point it is not decision not to testify.

23 THE COURT: All right. Well,
24 certainly, overnight, sir. You have a right
25 to evaluate and determine that. And I think

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1 it's best if you have heard all the
2 evidence that the State has put up.

3 Are there any special requests to
4 charge or anything out of the unusual right
5 now?

6 SOLICITOR TAYLOR: No, Your Honor.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: No, Your Honor, it
9 looks like it's straight-on armed robbery
10 with possession.

11 SOLICITOR TAYLOR: Nothing,
12 other than the usual, Your Honor. I would
13 ask on the reasonable doubt charge, is it
14 just a standard ---

15 THE COURT: It's the standard.

16 SOLICITOR TAYLOR: Okay.

17 THE COURT: Yeah. Good night,
18 y'all. We'll see you in the morning.

19 MR. SCHWACKE: Thank you, Judge.

20 THE COURT: Okay. Good night.

21 SOLICITOR TAYLOR: Thank you, Your
22 Honor.

23 (COURT IN RECESS)

24 (TRANSCRIPT CONTINUED NEXT PAGE)

25

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1 MARCH 18, 2014 10:0 A.M.

2

3

(DEFENDANT PRESENT)

4

THE COURT: Is the State ready?

5

SOLICITOR TAYLOR: Yes, Your Honor.

6

THE COURT: Is the Defense ready?

7

MR. SCHWACKE: Yes, ma'am.

8

THE COURT: All right. Let's

9

bring the jury in.

10

(JURY IN @ 10:08 A.M.)

11

THE COURT: Good morning, ladies

12

and gentlemen.

13

JURORS: Good Morning.

14

THE COURT: Good to see you all.

15

AT this time, we're going to go ahead and

16

continue with the trial of this case.

17

Ms. Taylor, if you'll call your next

18

witness for this morning or Mr. Condon,

19

whomever.

20

SOLICITOR CONDON: The State Calls

21

Officer Ellwood.

22

THE COURT: Come on forward, sir.

23

(WITNESS TAKES STAND)

24

JONATHAN ELLWOOD, having been sworn to

25

tell the truth, and nothing but the truth,

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR CONDON:

4 Q. Good morning?

5 A. Good morning.

6 Q. Who are you employed by?

7 A. The Hanahan Police Department.

8 Q. And what is your job title and your
9 job duties?

10 A. My title is corporal. I work for a
11 patrol shift. I perform regular patrol
12 functions as well as working the K-9 Unit.

13 Q. And who do you work for?

14 A. Hanahan Police Department.

15 Q. Were you on duty on January 6th,
16 2013?

17 A. I was.

18 Q. And did you respond to an incident
19 regarding the Defendant, Joseph Mack?

20 A. I did.

21 Q. And what happened when you
22 responded?

23 A. We responded to a call for an armed
24 robbery in the area of Trident Street. There
25 was some confusion initially as to where the

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1 incident was actually occurring. We were
2 getting information in real time via tele-
3 phone and through dispatch.

4 Upon learning from them that the incident
5 was taking place on Trident Street, we --
6 several units were right there in the area of
7 North Rhett and Trident Street. We observed
8 a, kind of a metallic green, silvery type
9 truck coming down Trident Street.

10 I was actually in a, kind of in a back
11 position. I observed Sergeant Lanphere
12 attempt to initiate a traffic stop on that
13 vehicle. The vehicle fled from the scene.

14 I was not involved in the pursuit. I was
15 actually quite a ways back from it for kind
16 of making sure there were no cars coming up
17 on us.

18 As the pursuit turned right onto Remount
19 Road, I heard Sergeant Lanphere advise that
20 something had been thrown from the vehicle,
21 fearing that it was possibly the gun that was
22 used. I stopped on Remount Road, searched
23 the area in an attempt to locate the gun.
24 Did a brief search in the area where he had
25 stated that the item had come out. And then

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1 unable to locate any type of weapon, I then
2 returned to the incident location at [REDACTED]
3 Trident Street.

4 Q. And do you know what was located in
5 that area where that silver object was
6 thrown?

7 A. After the incident, once we had
8 somebody in custody, we went back and they
9 located a can of beer.

10 Q. So what happened after that?

11 A. I returned -- as I said, I went back
12 to the incident location. I met with the
13 three victims and attempted to, one,
14 ascertain if anybody was hurt. Once we
15 determined that nobody really needed any
16 medical attention, just kind of try to find
17 out what happened, start to get the details
18 of the incident that they called us about.

19 Q. And how did the victims appear when
20 you first arrived on scene?

21 A. They were very, very shaken up.
22 Everybody was obviously very emotional. I
23 mean, given what had just occurred.

24 I believe it was Mr. Blake, one of the
25 male victims that I spoken to was shaken up

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1 to the point of having tears in his eyes. It
2 was a mixture of probably anger and fear.
3 Just trying to process what was going on and
4 what had just happened to them, and maybe
5 even a little bit of shock and disbelief.

6 Q. And what did the victims tell you
7 had happened?

8 A. The victims stated that the -- I
9 believe it was the two male victims were
10 standing in the truck yard having a
11 conversation. It's not the best well-lit
12 area. You know, it's just a truck yard where
13 they parked trucks.

14 They observed that a pickup truck entered
15 the truck yard. Their statements were that a
16 black male approached them and said something
17 like, 'Hey, are y'all about to go on a run?'
18 At which point he, the subject, presents a
19 firearm. They described it as a black and
20 silver pistol. And at that point, pointed
21 the gun at them and started to demand their
22 property, went through their pockets.

23 At some point during that, Ms. Meyers,
24 the third victim, approached. He asked who
25 she was and ordered her at gunpoint as well.

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1 They reported that the subject kind of rifled
2 through their pockets, removing jewelry from
3 Ms. Meyers. There was some currency taken, a
4 couple of other items.

5 At which point they were ordered at
6 gunpoint to walk to a portion -- they were
7 between two trailers, tractor-trailers. They
8 were ordered kind of back towards the back
9 part of the lot, and told to look away while
10 he fled the area.

11 He left the area. They were told to
12 basically sit and wait and not do anything.

13 Q. And did you take a statement from
14 each of the victims?

15 A. I did.

16 Q. And can you go into detail -- and
17 you may need your incident report to refresh
18 your recollection -- what each victim
19 reported stolen?

20 A. I could go into detail with
21 specifics. I need to refresh my memory,
22 though. There were quite a few items.

23 SOLICITOR CONDON: Permission to
24 approach?

25 THE COURT: You may.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR CONDON:

3 Q. (Tenders copy of report to witness).

4 A. Thank you.

5 Q. What did Jackie Meyers report
6 stolen?

7 A. Ms. Meyers reported having stolen
8 twenty-one dollars (\$21) in U.S. Currency.
9 Two -- we would refer to them as yellow metal
10 bracelets. It's just a part of doing police
11 reports we refrain from using terms like gold
12 or silver until we know whether or not is it
13 real gold or is it fake gold. So actually
14 yellow metal, that could be gold. Two yellow
15 bracelets with beads on them, a pair of
16 yellow metal earrings, two other just
17 separate yellow metal earrings, and four
18 yellow metal rings that would be worn on the
19 hand.

20 Q. And what did the victim John Rhodan
21 report?

22 A. Initially, Mr. Rhodan had said that
23 he didn't think anything was taken, that his
24 pockets had just been rifled through. At
25 some point during the process, he realized

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1 that he did have a flashlight that was
2 missing. It was a red in color LED
3 flashlight, something they just keep in their
4 pocket.

5 Q. And what about the victim, Keith
6 Blake?

7 A. Mr. Blake reported that he had a key
8 ring that had a handful of keys on it,
9 approximately five keys and had a very
10 distinct Atlanta Falcons keychain on it.

11 Q. And were all these items recovered?

12 A. They were.

13 Q. And do you know who recovered those
14 items?

15 A. Some of the items -- I wasn't on
16 scene during the time of recovery, but some
17 of the items were recovered by Sergeant
18 Lanphere on scene, at the end of the pursuit
19 when he arrested the Defendant.

20 And several of the items were recovered
21 by Corporal Beaudoin, and there was another
22 officer, an officer came upon the scene, that
23 were recovered on the pathway of where the
24 pursuit took place.

25 Q. And what happened to these items

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1 after they were recovered?

2 A. Once all the items were recovered,
3 we then returned -- brought them back to [REDACTED]
4 Trident Street where the victims were at.
5 They were put on a table and the victims were
6 asked to identify them; you know, 'Is this
7 your property?' Once the items were
8 identified as, 'Yes, those are my rings.'
9 Or, 'Yes, that's my property', then they were
10 logged and returned back to the victims and
11 they signed a form stating they had received
12 their property back.

13 Q. So all the victims signed a form
14 stating they received their property?

15 A. Yes, sir.

16 Q. And were all the stolen items
17 recovered?

18 A. I believe so, yes, sir.

19 Q. And were there any additional items
20 that were brought over that no one claimed as
21 being stolen?

22 A. No, sir.

23 SOLICITOR CONDON: No further
24 questions.

25 CROSS-EXAMINATION

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1 BY MR. SCHWACKE:

2 Q. Officer Ellwood, what time was it
3 that you came into contact with the three
4 victims in this case?

5 A. I don't recall the exact time. I'd
6 have to read my incident report.

7 Q. The same incident report you just
8 reviewed?

9 A. Yes, sir.

10 Q. You don't have it with you?

11 A. No, sir.

12 Q. (Tenders report to witness).

13 A. Thank you. I didn't list the time
14 in my incident report.

15 Q. And what time did you take their
16 statements?

17 A. At what time of night?

18 Q. What time that night did you take
19 them?

20 A. I'm not sure. I didn't list that in
21 there.

22 Q. You didn't list that either?

23 A. (No verbal response).

24 Q. And you didn't put it on their
25 statements, on their form?

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1 A. I'd have to look at the statement.
2 I'm not sure if there's a time spot on there
3 or not.

4 Q. Would it refresh your memory to look
5 at their statements?

6 A. Certainly.

7 Q. (Tenders)

8 A. No, there's not a time.

9 Q. There's not a time, but you could
10 have noted that?

11 A. No, sir.

12 Q. But you could have, right?

13 A. Yes, sir.

14 Q. Where was the location that they
15 gave their statements?

16 A. It was at the incident location.

17 Q. Inside, outside?

18 A. They were taken outside in the truck
19 yard. Actually on the hood of my patrol car.

20 Q. Okay. So who all was present when
21 they're giving their statements?

22 A. I know that I was and I know that
23 they were. There may have been officers that
24 came and left the scene. I'm not a hundred
25 percent certain who all was there the entire

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1 time.

2 Q. Was there any video of this incident
3 that they were able to review?

4 A. There was the security footage from
5 the truck yard. We did actually review some
6 of that footage.

7 Q. So you did get inside the building
8 at some point?

9 A. Yes, sir.

10 Q. And who all would have been inside
11 the building?

12 A. At different points, I know that I
13 was in the building. The victims were in the
14 building, and there were some other folks
15 that work at the business there, but I'm not
16 sure of their names.

17 Q. What is your dispatch number, unit
18 number?

19 A. It's currently ten.

20 Q. What was it that night?

21 A. I'm not sure. I can't tell you with
22 the numbers I've had since I've been at the
23 department.

24 Q. Twenty-three?

25 A. I was twenty-three at one point,

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1 yes, sir.

2 Q. Do you know who six would be?

3 A. I believe at that point that might
4 have been Sergeant Valdez, but I'm not a
5 hundred percent positive. They change.
6 Every time people get promoted or they move
7 to different units it changes.

8 Q. But that night you're pretty sure
9 you were twenty-three?

10 A. I believe so, but I'm not a hundred
11 percent positive.

12 Q. Were you present when any of the
13 items were found?

14 A. I don't recall being present when
15 the items were found.

16 Q. What about a phone in the yard, on
17 the truck yard?

18 A. As regards to -- was a phone found?

19 Q. I'm asking you?

20 A. Oh, I don't recall a phone being
21 found, sir.

22 Q. Were any photographs made of any of
23 these items?

24 A. The recovered items?

25 Q. Yes?

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1 A. No, sir.

2 Q. Do you know who unit six is?

3 A. I believe that was Sergeant Valdez.

4 Q. And you don't recall being radioed
5 to not return any items until it had been
6 photographed and documented?

7 A. As far as you asking was I given an
8 order for that, I don't recall that, no, sir.

9 Q. So when were the items, the
10 recovered items brought back to the truck
11 yard?

12 A. At some point while we were doing
13 the paperwork and completing victim forms and
14 getting statements, other officers were
15 recovering the items. At some point during
16 that process, they were brought over. I
17 don't have a specific time, but it was that
18 evening while everybody was still on scene.

19 Q. And were they just placed the hood
20 of your car or how did this work?

21 A. No, sir, there was actually a white
22 plastic table inside the office. We sat the
23 items out and ask if this was identified,
24 what if any of those items were theirs.

25 Q. And other than what you wrote, there

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1 is no documentation of the items, no
2 photo-graphic representation, none of that
3 type of evidence in this case?

4 A. No, sir.

5 MR. SCHWACKE: One moment, Your
6 Honor.

7 CROSS EXAMINATION CONTINUED

8 BY MR. SCHWACKE:

9 Q. I asked you earlier about the phone.
10 Is that the first time you've heard of
11 anything regarding a cellphone out on the lot
12 that night?

13 A. As far as I recall, yes, sir.

14 Q. So none of the victims mention
15 anything about a phone?

16 A. About a phone being lost or stolen,
17 not that I recall.

18 Q. Okay.

19 MR. SCHWACKE: That's all I have.

20 SOLICITOR CONDON: No questions, Your
21 Honor.

22 THE COURT: You may step down,
23 sir.

24 WITNESS: Thank you.

25 (WITNESS STEPS DOWN)

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1 THE COURT: If the State would
2 call the next witness.

3 SOLICITOR CONDON: The State calls
4 Sergeant Valdez

5 (WITNESS TAKES STAND)

6 ORLANDO VALDEZ, having been duly sworn
7 to tell the truth, and nothing but the truth,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR CONDON:

11 Q. Good morning?

12 A. Good morning.

13 Q. Who do you work for and what's your
14 job title?

15 A. I work for the City of Hanahan
16 Police Department, I'm a sergeant.

17 Q. And what are some of your job
18 duties?

19 A. I am a night shift road supervisor.
20 I supervise a squad of anywhere between three
21 to four people underneath me on any given
22 shift for twelve hours a night.

23 Q. And did you respond to an incident
24 involving the Defendant, Joseph Mack, on
25 January 6th, 2013?

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1 A. I did.

2 Q. And where did you respond to?

3 A. The initial came to the area of
4 Commerce Circle. From Commerce Circle we
5 were given other information that it was
6 actually occurring on Trident Street.
7 During that response, a vehicle pursuit
8 initiated. I attempted to cutoff that
9 pursuit by going to Murray and Remount, at
10 which time I overshot the pursuit.

11 Q. And what happened after that?

12 A. After that, the vehicle collided
13 with a trailer, I believe, or a small camper
14 trailer in a mobile home lot on Murray Drive,
15 at which time I responded to there to assist
16 with what was -- with that incident.

17 And from there, I moved on to meeting
18 with the victims at [REDACTED] Trident Street.

19 Q. And what were the victims' names
20 that you met with?

21 A. Joseph (sic) Blake, John Rhodan and
22 Jackie Meyers.

23 Q. Would it be Keith Blake?

24 A. Keith Blake. I'm sorry.

25 Q. That's okay. And when you met with

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1 the victims back at the scene, what was their
2 demeanor?

3 A. They all appeared to be shaken up,
4 upset.

5 Q. And what happened after that, after
6 you first met with them?

7 A. After I initially met with the, I
8 asked if any of them were capable of
9 identifying the suspect, the person that had
10 robbed them? All three of them said that,
11 yeah, they got a good look at him and they
12 could.

13 And I asked if any of them would be
14 willing to accompany me to a wreck scene that
15 we had to see if that individual was possibly
16 the person who had robbed them. At which
17 time, Mr. Rhodan and Ms. Meyers volunteered.

18 Q. And did you determine that they had
19 a good recollection of the Defendant before
20 you took them?

21 A. I did.

22 Q. And did they have an opportunity to
23 observe the physical features of the
24 Defendant?

25 A. They did.

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1 Q. What instructions did you give to
2 the victims on the way to the possible
3 identification of the suspect?

4 A. I told them that 'when we get there,
5 you know, just take a look at the gentleman,
6 don't worry about anything that's going on
7 around, just take a look at the gentleman.
8 Tell me if it's him. And if you have like
9 absolute one hundred percent certainty, if
10 you're one hundred percent sure that that is
11 him, tell me that. If you have any shadow of
12 a doubt in your mind whatsoever, then tell me
13 you're not sure.'

14 Q. And what was the lighting like where
15 the suspect was?

16 A. There was a street light above, so
17 it was ---

18 Q. And how was he held at this time?

19 A. He was standing outside of a police
20 car with his back against the police car so
21 that the only thing visible were his, was his
22 front and his face, his facial features.

23 Q. And did either victim recognize the
24 Defendant, Joseph Mack, Jr.?

25 A. They both did.

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1 Q. What did they say?

2 A. They both said "that's him."

3 Q. How quickly did they recognize the
4 Defendant?

5 A. Almost immediately.

6 Q. How certain were they?

7 A. A hundred percent.

8 Q. Did they have any doubt?

9 A. None whatsoever. I asked them
10 again. I said, 'Are you absolutely one
11 hundred percent certain that that's him?'
12 And they both said yes.

13 Q. Is the man they identified present
14 in the courtroom?

15 A. He is.

16 Q. Could you identify him and point him
17 out?

18 A. Yes, sir, it's the Defendant sitting
19 right over there.

20 Q. Is that Joseph Mack, Jr.?

21 A. Yes, sir.

22 SOLICITOR CONDON: Let the record
23 reflect that Officer Valdez has identify the
24 Defendant.

25 THE COURT: Thank you.

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1 SOLICITOR CONDON: No further
2 questions.

3 CROSS EXAMINATION

4 BY MR. SCHWACKE:

5 Q. Officer Valdez, do you know your
6 radio call number that night, from that
7 night?

8 A. From that night, it was six.

9 Q. Six? And did you have a radio
10 communication at that time with Mr. Ellwood,
11 him asking whether or not it's okay to return
12 the materials to the victims?

13 A. I don't recall, but we may have had
14 that conversation.

15 Q. And the conversation would have
16 included to document those items by taking
17 pictures of them?

18 A. Normally, we would have had photo-
19 graphs taken. Yeah.

20 Q. And that's not been done?

21 A. Not to my knowledge.

22 MR. SCHWACKE: Thank you.

23 SOLICITOR CONDON: No further
24 questions, Your Honor.

25 THE COURT: All right. Solicitor?

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1 SOLICITOR CONDON: Nothing else, Your
2 Honor.

3 THE COURT: Thank you.

4 (WITNESS STEPS DOWN)

5 SOLICITOR TAYLOR: At this time, Your
6 Honor, the State rests.

7 THE COURT: All right. Ladies and
8 gentlemen of the jury, at this time the State
9 has rested their case. There is a matter of
10 law I need to take up with the attorneys. I
11 need to send you back to the jury room.

12 Again, ladies and gentlemen, do not
13 discuss this case at this time. It wouldn't
14 be appropriate to do so. We'll bring you
15 right back out here when we're finished. All
16 right. Thank you.

17 (JURY OUT @ 10:30 A.M.)

18 THE COURT: All right. Mr.
19 Schwacke?

20 MR. SCHWACKE: Thank you, Your
21 Honor. At this time, for the record, the
22 Defense would move for a directed verdict of
23 acquittal on the charges of armed robbery and
24 for possession of a violent crime --
25 possession of a weapon during the commission

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1 of a violent crime.

2 First, on the grounds that it is not a
3 deadly weapon. It is a BB gun. Also, that
4 the proof presented by the State at this
5 point does not rise to the level to withstand
6 a verdict for the record.

7 My motion for directed verdict is based
8 upon the testimony of the witnesses and the
9 officers, the lack of the evidence that's
10 been presented. So for those reasons, I
11 would ask for a directed verdict on the
12 charges.

13 THE COURT: The State?

14 SOLICITOR TAYLOR: Thank you, Your
15 Honor. Taking the evidence in the light most
16 favorable to the State, and with the
17 testimony as well as the weapon that's been
18 entered into evidence, that this either could
19 be considered a firearm or obviously looks,
20 as the victims testified that they believed
21 it to be a firearm. That's all that's
22 required for the statute. We believe we've
23 met the burden.

24 MR. SCHWACKE: Just to make sure
25 I -- may I?

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1 THE COURT: Certainly.

2 MR. SCHWACKE: No testing was
3 done on the weapon to actually connect it to
4 this case, other than the circumstantial
5 proof it was found along a pathway. And for
6 that reason, it doesn't rise to the level
7 sufficient to establish the State's case.

8 THE COURT: And that it's silver.
9 That I believe ---

10 MR. SCHWACKE: They said that
11 they didn't see the gun, that it was wrapped
12 up in his sleeve or partially obscured. They
13 thought that they saw a muzzle.

14 THE COURT: At least the muzzle
15 portion of it was silver. All right. Well,
16 respectfully, taken in the light most
17 favorable, obviously, to the non-moving
18 party, I do think there is evidence from
19 which this jury could deduce that, in fact,
20 this Defendant did arm rob and possess a
21 weapon during the commission of a violent
22 crime. That is sufficient to meet the
23 statute and requirement.

24 I understand you have three
25 witnesses; is that correct?

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1 MR. SCHWACKE: We do, Your Honor.
2 And we also need a moment at least to set up
3 our individual portion of our case.

4 THE COURT: Okay. Additionally, I
5 need to go through your client's rights with
6 me. You tell me when it's probably the best
7 point. Why don't we go ahead and take five
8 minutes. You set up your audio visual and
9 then I'll go through your client's rights
10 with him. Is that okay?

11 MR. SCHWACKE: That's fine.

12 THE COURT: Okay. Very good. All
13 right. We'll be at ease for just a few
14 minutes then.

15 (BRIEF RECESS)

16 (DEFENDANT PRESENT)

17 THE COURT: Rise, please. Mr.
18 Mack, I'm going to go ahead swear you in,
19 sir. Do you swear or affirm the testimony
20 you give be the truth so help you God?

21 DEFENDANT: Yes, ma'am.

22 THE COURT: Thank you. Mr.
23 Mack, at this point we are in our trial where
24 you could present your case. Obviously, your
25 lawyer is doing just that. Sir, also, I need

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1 to instruct you that according to the Fifth
2 Amendment you have the right to testify or
3 not testify in your own behalf.

4 Sir, I want to make sure you understand
5 that no person is compelled in any criminal
6 case to be a witness against themselves.

7 Sir, I need you to understand, though, if
8 you do choose to testify in this case, that
9 you will be subject to cross-examination just
10 as any other witness had.

11 And if you have any prior crimes of moral
12 turpitude, sir, those can and possibly could
13 be used against you.

14 I know we had the discussion, Ms.
15 Taylor, if I'm correct, that there were two
16 prior misdemeanors; is that correct?

17 SOLICITOR TAYLOR: There is a giving
18 false information conviction from 2004, Your
19 Honor, and a petit larceny from 2005.

20 THE COURT: Okay. All right.
21 So, sir, do you understand that if you
22 testify you can be questioned regarding those
23 convictions.

24 Sir, I just want to make sure you
25 understand that this decision to testify or

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1 not to testify is a personal decision. It's
2 a personal right of yours.

3 And while I fully expect you to have
4 spoken with both your attorneys about whether
5 or not you should testify in the trial of
6 this case, I want to make sure that you and
7 only you can make that decision and under-
8 stand -- understanding, I'm sorry, your
9 Constitutional Rights. Do you understand
10 that, sir?

11 DEFENDANT: Yes, ma'am.

12 THE COURT: I'm sorry. I feel a
13 little convoluted today in the way I'm saying
14 it. But long story short is this, again,
15 sir, you can testify. Have you had an
16 adequate amount of time to talk to your
17 attorneys and decide whether or not you want
18 to testify?

19 DEFENDANT: Yes, ma'am.

20 THE COURT: You have?

21 DEFENDANT: Yes, ma'am.

22 THE COURT: All right. And, sir,
23 do you wish to testify?

24 DEFENDANT: Yes, I do.

25 THE COURT: All right, sir. And

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1 I want to make sure that you knowingly
2 and intelligently have come to that decision;
3 is that correct, sir?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: You understand you're
6 certainly never required to testify; is that
7 correct?

8 DEFENDANT: Yes, ma'am.

9 THE COURT: All right, sir. I
10 appreciate that. You can go ahead and sit
11 down. I am comfortable you understand your
12 Fifth Amendment Rights.

13 DEFENDANT: Yes, ma'am.

14 THE COURT: Thank you.

15 MR. SCHWACKE: Thank you, Your
16 Honor. With regards to the prior record, I
17 just wanted to make sure I understand which
18 ones the State's relying on. He does have a
19 giving of false information. It looks like
20 his court date for that was October 2004.
21 What is the date of the other offense?

22 SOLICITOR TAYLOR: The petit larceny
23 court date was May 25th, 2012. It shows that
24 he pled guilty to that.

25 MR. SCHWACKE: And, Your Honor,

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1 that would make it, I think -- okay. All
2 right. Thank you, Your Honor.

3 THE COURT: Thank you. Okay. All
4 right. Bring the jury in.

5 (JURY IN @ 10:51 A.M.)

6 THE COURT: Welcome back, ladies
7 and gentlemen.

8 Mr. Schwacke, if you'd call your
9 first witness, sir?

10 MR. SCHWACKE: Thank you, Your
11 Honor. The Defense would call Mr. David
12 Warren.

13 (WITNESS TAKES STAND)

14 DAVID JAMES WARREN, having been sworn to
15 tell the truth, and nothing but the truth,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCHWACKE:

19 Q. Mr. Warren, where are you employed?

20 A. VRN Transportation.

21 Q. And that's a trucking company?

22 A. That's correct.

23 Q. And where is it located?

24 A. 1013 Trident Street.

25 Q. And that's in Hanahan?

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1 A. That's correct.

2 Q. How long have you been working
3 there?

4 A. Two and a half years.

5 Q. So you were working there on the
6 night of January 6th of 2013?

7 A. I was employed by not working at
8 that hour, yes.

9 Q. Correct. You eventually went into
10 work; correct?

11 A. That's correct.

12 Q. And you were asked at that point to
13 review some security information?

14 A. I was asked to show the footage of
15 the tape that we have for the cameras on the
16 yard; yes.

17 Q. And how many cameras are on that
18 yard?

19 A. About five.

20 Q. I'm going to show you what's been
21 marked at this point for identification as
22 Plaintiff's [sic] Exhibit Number 2. And just
23 ask you if you are familiar with this?

24 A. Yes.

25 Q. And what is this?

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1 A. Video footage of what was on our
2 cameras the night of the incident.

3 Q. And you have reviewed that video?

4 A. This morning, yes.

5 Q. And are those your initials?

6 A. Yes.

7 Q. And does it portray the events as
8 your equipment recorded them that night?

9 A. To the best of my recollection,
10 absolutely.

11 Q. Thank you.

12 MR. SCHWACKE: Your Honor, at
13 this time the State would move to introduce
14 -- I'm sorry -- the Defense would move to
15 introduce Exhibit Number 2.

16 SOLICITOR TAYLOR: No objection,
17 Your Honor.

18 THE COURT: Without objection.

19 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

20 MR. SCHWACKE: Your Honor, at
21 this time, we would like to publish to the
22 jury.

23 THE COURT: You may.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. SCHWACKE:

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1 Q. (Video playing) -- that is the video
2 that you were asked to review?

3 A. Yes, sir.

4 Q. Thank you. Answer any questions the
5 State may have.

6 SOLICITOR TAYLOR: The State has no
7 question of Mr. Warren.

8 THE COURT: All right. You may
9 step down, sir.

10 DEFENDANT: Thank you.

11 (WITNESS STEPS DOWN)

12 MR. SCHWACKE: May he be excused?

13 THE COURT: Any objection?

14 SOLICITOR TAYLOR: None, Your Honor.

15 THE COURT: You are excused, sir.

16 Thank you.

17 MR. SCHWACKE: The Defense would
18 call Ronnell Freeman.

19 (WITNESS TAKES STAND)

20 RONNELL FREEMAN, having been sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. SCHWACKE:

25 Q. Ms. Freeman, where are you employed?

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- 1 A. JMP Investigations.
- 2 Q. That's a private investigation firm?
- 3 A. Yes, it is.
- 4 Q. And how long have you been a private
- 5 investigator?
- 6 A. Approximately six and a half years.
- 7 Q. And prior to that, what did you do?
- 8 A. I worked for Charleston County as a
- 9 correction officer at the county jail.
- 10 Q. And are you contracted to work for
- 11 the defense of this case?
- 12 A. Yes, I am.
- 13 Q. And as part of that, did you become
- 14 familiar with the area where this incident
- 15 happened on Trident Street?
- 16 A. Yes.
- 17 Q. And as part of that, did you --
- 18 well, let me show you what's been marked for
- 19 identification as Defense Exhibit Number 3
- 20 and just ask if you are familiar with that?
- 21 A. Yes.
- 22 Q. And is that a prepared video that
- 23 shows Trident Street in Hanahan?
- 24 A. Yes, it is.
- 25 Q. And have you been able to review

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1 that?

2 A. Yes, I have.

3 Q. And does it fairly and accurately
4 portray that area?

5 A. Yes, it does.

6 MR. SCHWACKE: Your Honor, at
7 this time the State [sic] would move to
8 introduce -- the Defense would move to
9 introduce Defendant's Exhibit 3?

10 SOLICITOR TAYLOR: No objection, Your
11 Honor.

12 THE COURT: Without objection.

13 (SO ENTERED AS DEFENDANT'S EXHIBIT 3)

14 MR. SCHWACKE: Your Honor, we
15 would ask to publish this video.

16 DIRECT EXAMINATION CONTINUED

17 BY MR. SCHWACKE:

18 Q. (Video playing), which direction are
19 we heading, Ms. Freeman, at this time?

20 A. We are headed onto Trident Street.

21 Q. (Video playing), would that be
22 towards away from North Rhett?

23 A. That's away from North Rhett.

24 Q. (Video playing), and this would be
25 the incident location?

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1. A. Yes.

2. Q. (Video playing), there's an inter-
3. section. Where would that be?

4. A. You said it's an intersection?

5. Q. At the end of that it appeared to be
6. an intersection.

7. A. That would North Rhett and Remount.

8. Q. (Video playing), or Trident?

9. A. Trident and North Rhett.

10. Q. (Video playing), and that would be
11. North Rhett?

12. A. Correct.

13. Q. Thank you. Answer any questions the
14. State may have.

15. A. Yes, sir.

16. CROSS EXAMINATION

17. BY SOLICITOR TAYLOR:

18. Q. Ms. Freeman, do you remember what
19. day of the week that video was taken?

20. A. That video was taken approximately
21. -- I didn't take the video. Actually, David
22. did.

23. Q. Okay.

24. A. I reviewed it on yesterday.

25. Q. Do you know if it was a weekday?

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1 A. Was it a weekday? I believe it was.

2 Q. It wasn't a Sunday night at ten
3 o'clock, was it?

4 A. No.

5 Q. Okay. And then the only other
6 question I have for you, at the end of
7 Trident Street -- you said you're familiar
8 with the area?

9 A. Right.

10 Q. The end of Trident Street, is that a
11 dead-end street?

12 A. The end of it? Yes.

13 Q. Not North Rhett.

14 A. When you go down to the other side,
15 yes.

16 Q. And other than the businesses, there
17 aren't any side streets; right?

18 A. No.

19 Q. Okay. So the only way off of
20 Trident Street ---

21 A. Is back up.

22 Q. --- is North Rhett?

23 A. Correct.

24 Q. Okay. Thank you.

25 A. You're welcome.

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1 MR. SCHWACKE: No further
2 questions.

3 THE COURT: All right. You may
4 step down. Thank you.

5 (WITNESS STEPS DOWN)

6 MS. WHITE: The Defense would call
7 Spencer Clark.

8 (WITNESS TAKES STAND)

9 SPENCER CLARK, having been sworn to tell
10 the truth, and nothing but the truth,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. WHITE:

14 Q. Good morning, Mr. Clark.

15 A. Good morning.

16 Q. Could you please tell the jury what
17 your profession is?

18 A. I'm a residential contractor in the
19 State of South Carolina.

20 Q. And do you know Mr. Mack?

21 A. Yes, I do.

22 Q. And how do you know Mr. Mack?

23 A. I was doing a fire restoration job
24 in the year of 2012, started the end of July.
25 And by about November timeframe I was getting

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1 ready to do the drywall and start doing the
2 kitchen cabinets. And Mr. Mack stopped at
3 the house and wanted, looking for a job, so I
4 hired him to help me do some trim work, and
5 hired him to build some custom cabinets for
6 this job.

7 Q. Okay. And that's the first time you
8 had ever met Mr. Mack?

9 A. Yes, it is.

10 Q. And so you contracted him to build
11 those cabinets; correct?

12 A. Yes.

13 Q. And was he working for you on or
14 about January 2013?

15 A. He was.

16 Q. Okay. And was there some sort of
17 agreed fee or contract for him to do these
18 cabinets?

19 A. Yes, there was a contract drawn up,
20 I believe in the amount of about six thousand
21 five hundred (\$6,500) and the day in question
22 was the third installment I had given him.

23 Q. And so it was to be paid in
24 installment?

25 A. Yes.

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1 Q. Okay. And do you recall when you
2 paid him the last installment, approximately?

3 A. Approximately January 4th, 2013.

4 Q. And how much was that?

5 A. That was two thousand dollars
6 (\$2,000) cash.

7 Q. Okay. And was that the last
8 payment?

9 A. Yes.

10 Q. That was made?

11 A. Yes.

12 Q. No further questions. Please any
13 questions the State may have.

14 SOLICITOR TAYLOR: We have no
15 questions, Your Honor.

16 THE COURT: You may step down,
17 sir.

18 WITNESS: All right. Thank you.

19 MS. WHITE: May he be excused?

20 SOLICITOR TAYLOR: No objection.

21 THE COURT: You are excused, sir.
22 Thank you.

23 WITNESS: All right. Thank you.

24 (WITNESS STEPS DOWN)

25 MR. SCHWACKE: Your Honor, we

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1 have a matter we need to take outside the
2 presence of the jury.

3 THE COURT: Okay. Ladies and
4 gentlemen of the jury, at this time I'm going
5 to send you back to your jury room. I need
6 to remind you, do not discuss this case. It
7 wouldn't be appropriate to do so. We'll be
8 back with you very shortly. Thank you.

9 (JURY OUT @ 11:21 A.M.)

10 MR. SCHWACKE: I really don't
11 have anything to discuss but my client's
12 shackled and so before we call him to the
13 stand, I'd like to ask if he could be -- if
14 the shackles could be removed.

15 THE COURT: Thank you. Would you
16 (deputy) go ahead and undo him, please?

17 DEPUTY: (Complies).

18 THE COURT: All right. Okay.
19 Okay.

20 MR. SCHWACKE: Do you wish us to
21 have him to the stand before the jury comes
22 in?

23 THE COURT: Sure, that would be
24 fine. Mr. Mack, you may take the stand.

25 CLERK: Swear him in in front of

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1 the jury?

2 THE COURT: Yeah. The jury needs
3 to see him sworn in. Okay.

4 (WITNESS TAKES STAND)

5 THE COURT: Sir, you need to stand
6 there when the jury comes in. The clerk will
7 swear you in, give you the oath once the jury
8 is in. Would it be okay -- if one of y'all
9 can sit over here, that's be fine.

10 DEPUTY: Yes, ma'am.

11 THE COURT: You mind?

12 DEPUTY: No, ma'am, it's our stand
13 procedure.

14 THE COURT: Thank you, sir. I
15 appreciate it. All right. Let's bring the
16 jury in.

17 CLERK: Just a moment, Your Honor.

18 THE COURT: Okay.

19 CLERK: Ready. Thank you.

20 (JURY IN @ 11:23 A.M.)

21 THE COURT: I'm going to swear you
22 in, sir. Is that fine?

23 DEFENDANT: Yes, ma'am.

24 JOSEPH MACK, JR., having been sworn to
25 tell the truth, and nothing but the truth,

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SCHWACKE:

4 Q. You're Joseph Mack, Jr.?

5 A. Yes, sir.

6 Q. How old are you?

7 A. Forty-six (46).

8 Q. And where do you live?

9 A. [REDACTED] Shoals Road is my mailing
10 address.

11 Q. Where's Shoals Road, what county?

12 A. That's in Hollywood, South Carolina.

13 Q. So in Charleston County?

14 A. Yes, sir.

15 Q. Have you been in this area most of
16 your life?

17 A. Yes, sir.

18 Q. Are you married?

19 A. Yes, sir.

20 Q. And what's your wife's name?

21 A. Shantelle Mack.

22 Q. How long have y'all been together?

23 A. (Pause) -- she might kill me. About
24 two years. Two, going on three years.

25 Q. Do you have any children?

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1 A. Yes, sir.

2 Q. How many children?

3 A. Two.

4 Q. And what are their ages?

5 A. Twenty-two (22) and two (2).

6 Q. You say twenty-two (22) meaning...

7 A. Twenty-two (22) years old,

8 Alexandria Mack. And So [REDACTED] is two

9 (2). But she'll be two (2) in April coming.

10 Q. Okay. And what kind of work do you
11 do for a living?

12 A. I own my own company.

13 Q. What kind of company is it?

14 A. It's kitchen cabinets. I customize
15 kitchen cabinets. And there used to be a
16 time I also do, like additions on one of my
17 jobs. And the other one, I sell drugs.

18 Q. Now, let's talk about the first
19 business first, and then we'll get into the
20 second. Do you know Mr. Clark?

21 A. Yes.

22 Q. And tell us about that arrangement?

23 A. I was -- I had a contract already in
24 progress that I was doing on James Island for
25 Mr. James Pettigrew to do his kitchen, and

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1 Mr. Clark's kitchen at the same time. I
2 signed Mr. Clark's contract first. And then
3 during, like about a week into the kitchen,
4 Mr. Pettigrew called me and he wanted his
5 kitchen done before his wife passed. She was
6 due to die within a couple of months. And I
7 signed that contract also. So it had me at
8 two places at one time initially.

9 Q. But you were making money doing
10 construction work on cabinetry?

11 A. Yes, sir.

12 Q. Now, we're here about an incident
13 that happened on January of 2013?

14 A. Yes, sir.

15 Q. Did you have occasion to be at that
16 trucking lot?

17 A. Yes, sir.

18 Q. And what was the reason that you
19 were at that lot?

20 A. To deliver coke.

21 Q. How did you know to go there?

22 A. I was at a party just before going
23 to the truck yard. And a guy named Roland,
24 one of the guys that's in my zone, in my
25 area, he didn't have any. And apparently Ms.

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1 Jackie was his client. So he asked me if I
2 had any white on me. And I told him that I
3 got some white. You know, I mean, I thought
4 ---

5 Q. When you say "white," you mean?

6 A. Coke.

7 Q. And when you say "area," you mean?

8 A. Zone, area.

9 Q. A zone.

10 A. I'm affiliated with the Remount
11 Road Four-Way. It's just a tag name.

12 Q. So it's an area that you deal drugs?

13 A. Yes, sir.

14 Q. Okay.

15 A. It's an area where I deal drugs.

16 It's an area where I also work because one of
17 my jobs like was in that area. It just an
18 area where basically part of my life was
19 spent.

20 Q. So let's go back to this park. The
21 person that approaches you is "Butta"?

22 A. Roland approached Butta, Butta
23 approached me. Butta works for me.

24 Q. Okay. In which job?

25 A. He works for me in the cabinet

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1 business.

2 Q. Okay. All right. So they approach
3 you about what, cocaine?

4 A. Just Butta.

5 Q. Just Butta approaches you?

6 A. Uh-huh.

7 Q. And go on from there?

8 A. And he asked me if I still was
9 straight. I said, 'Yeah, I got a couple of
10 bags left.'

11 And he said Roland was looking for some
12 white, which I thought it was for Roland.

13 But it wasn't for Roland. He told me
14 that he had -- his people wanted some white.
15 So I asked him where they were at. He said
16 they were right around the corner. And I
17 said well, you know, I'm saying, 'Where they
18 at?'

19 But he wanted to go with me, and I don't
20 -- he's in my zone but I don't too much mix
21 with him. You know? We don't hang out every
22 day. In my zone, we don't trust everybody
23 that you hang out with or be around.

24 So I asked them, 'Where they at?' And he
25 told me where they at. I'm familiar with the

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1 whole Remount Road, North Rhett, basically
2 the whole North Charleston. And I told him
3 that 'I'll go ahead and handle that, because
4 I didn't need no two or a third party or
5 whatever to be involved.'

6 Q. What happens if you had a party?

7 A. Sir?

8 Q. What happens if you had somebody in
9 the middle there?

10 A. Him, I didn't know him like that.
11 But I know him to be a jacker. And being
12 that me and him we -- like I say, when you're
13 at the same area, at the barber shop and
14 whatnot, but we don't, we don't mix for me to
15 trust him like for him to be with me, period.

16 Q. So this party was in Hanahan or
17 North Charleston?

18 A. The party was on Larry Street.

19 Q. And where is that?

20 A. That's off of Attaway and Sumner,
21 the four-way. It's like a street away from
22 the store.

23 Q. Okay. Did you leave the party?

24 A. Yes, sir.

25 Q. And where did you go?

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1 A. I left the party and I went to Ms.
2 Sharon's house first to drop off a bag. And
3 then from Ms. Sharon's house, I went to the
4 Kangaroo.

5 Q. Which Kangaroo we talking about?

6 A. On the corner of North Rhett and
7 Remount Road.

8 Q. Okay. What did you do there?

9 A. I went and bought me a twenty-four
10 (24) ounce Bull. I took a twenty dollar bill
11 (\$20), I had four hundred dollars (\$400) in
12 my pocket. I took a twenty dollar bill and
13 went and bought me a dollar and twenty-four
14 cent (\$1.24) can Icehouse. Not Bull,
15 Icehouse. I do drink Bull too, but Icehouse
16 that day.

17 And after I left there, I proceeded to
18 take my money and put in the side of my door
19 in my truck because I didn't know who -- I
20 know it was a female I was going to meet, but
21 I didn't know who was going to be with her or
22 whatever, so I put my money there. And then
23 I proceeded on to Trident Street. From the
24 Kangaroo to Trident Street is less than a
25 quarter of a mile.

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1 Q. How did you know where to go?

2 A. Roland told me where to go.

3 Q. And what were the instructions he
4 had given you?

5 A. If I crossed the -- he said to turn
6 left off of Remount Road, and he said the
7 first street to the right.

8 Well, the first street is like a baseball
9 field. So actually it was the second street.

10 And that if I went past the railroad
11 tracks, I went too far. And to go down there
12 and I should see a female in a white car. He
13 didn't say Lexus or whatever, but I know it
14 was a Lexus after I got there.

15 Q. So you're driving down Trident
16 Street and what do you do?

17 A. I was driving down Trident Street
18 and I'm looking. I see no vehicles. I'm
19 like, 'where's this street going to?'

20 So as I got almost to the end, there was
21 a set of cars parked outside the gate. There
22 wasn't a white car. And once you get past
23 the set of cars -- I'm thinking it was like
24 four cars. Once you get past the four cars,
25 there's an entry gate. I passed the entry

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1 gate, looking for -- figuring that the white
2 car and they would be farther on down. Well,
3 as I passed the entry gate, there's some
4 trailers, maybe --- let me see, about six or
5 seven and a truck parked right along the
6 gate, inside the gate. And as I was looking
7 to my left, that's when I saw the white car
8 with the trunk up. And that's when I turned
9 around and went back inside the parking lot.

10 Q. And you've seen the video?

11 A. Yes, sir.

12 Q. And that's your truck?

13 A. That's my truck.

14 Q. And you're driving it?

15 A. Was my truck, (affirmative nod).

16 Q. So once you're on the lot, what
17 happens?

18 A. Once I got on the lot, I got out my
19 truck. I could see the white car, just like
20 it was my truck here and that wall in front
21 of me, the white car where it is, a trailer.
22 And there was a man at this truck. Not the
23 trailer park. He was at the truck. And I
24 saw him. And I proceeded to walk towards
25 him. And he saw me and he proceeded to meet

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1 me. In the process of us meeting ---

2 Q. All right. So you've been in here
3 and you've heard the testimony, you've seen
4 the victims. Which man are we talking about
5 that you approached?

6 A. That big dude, that guy right there,
7 Rhodan, Mr. Rhodan.

8 Q. Okay. All right. And what
9 happened?

10 A. And I walked up to him and I greeted
11 him, not knowing who he was, not looking for
12 him. And I said, 'what's going on?'

13 He said, 'nothing.'

14 I said, 'y'all headed out on a trip, on a
15 road trip?'

16 And he was like, he said 'yeah we're
17 getting ready for tomorrow.' But I'm pretty
18 sure he said, 'yeah, we headed out.' "We
19 headed out."

20 And I said, 'Who drives the white car?'
21 And he looked at me kind of funny. And I
22 asked him again. And I said, 'Who's the lady
23 that drives the white car?'

24 And then at the time of me talking to
25 him, that's when Dread, which is known --

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1 which he's known here as Mr. Blake. I saw
2 him at his truck. I believe that was his
3 truck, but he was at his truck, at -- by it,
4 standing by a truck. And he saw me. And me
5 and Mr. Rhodan was standing by each other
6 together. And Mr. -- you got to excuse me
7 because I don't -- I've never seen them
8 before and their names. I'm trying to
9 remember. Mr. Blake walked up towards me and
10 Rhodan. And Mr. Blake -- I asked Mr. Rhodan,
11 I said, 'Who is that?'

12 And he said, "Blake."

13 And I looked at him and, you know, he
14 just asked -- he asked Mr. Rhodan who was I?
15 Mr. Rhodan said 'he just came on the lot and
16 he's asking about the white car.'

17 Well, at this time, he was on the phone.
18 And I looked at him and I'm like ---

19 Q. How do you know he was on the phone?

20 A. He had a big headset on, like a --
21 he didn't have a Bluetooth like mine, like a
22 small Bluetooth. He had a headset that comes
23 around here, with a big earlobe cover and a
24 mic that comes out like this. And he was --
25 I could see him talking and hear him talking

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1 on the phone.

2 Q. And I'm like, 'Say, I know you.'

3 And he was like, "no."

4 I said, "Man, I know you."

5 He said, "You don't know me."

6 I said, "You know Little Nino?"

7 And he was like -- he paused. He was
8 like, 'man I don't know who you talking
9 about.'

10 I said, "Man, you know Little Nino." You
11 know, what I'm saying.

12 Q. Nino?

13 A. Nino is another drug dealer that I
14 would have to take you back to where Nino
15 fits into this with him and me. He's another
16 drug dealer that I know.

17 Q. So you're saying Mr. Blake knows
18 Nino.

19 A. He knows Nino.

20 Q. All right. And what's the
21 significance of whether he knows a person
22 named Nino or not?

23 A. Because about 2000 -- 2000 -- was it
24 '12 on that arrest record on him? It's 2012
25 where I was purchasing nine-zips and Nino was

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1 ---

2 Q. What is a zip?

3 A. Nine ounces.

4 Q. Of?

5 A. Coke.

6 Q. If I don't understand you, I don't
7 think they did too. So I'm going to be
8 asking you to explain what you're talking
9 about?

10 A. Nine ounces. It's twenty-grams in
11 a ounce. I been purchasing weight from Nino
12 for like a good three months. So I never,
13 never had to trust his packages or to look in
14 his packages.

15 Well, this particular day, it was a -- it
16 was a Friday. And me and AB were together
17 and we were at Master's Inn. And he said,
18 "Man, are your people straight?"

19 And I said, yeah, 'I'm about to call some
20 now.'

21 And he was 'man, like, man call them for
22 me. I said what you wanting. I said you put
23 your money together with my money.' So we
24 called O'neil and I told him what I wanted
25 and I told him what I wanted.

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1 And he said, 'Well, let me call you back.

2 I'm on the island. I'm on John's Island.'

3 I said, 'all right.' So he took a while.

4 So I call him back because it was a drug and

5 doing a drug at certain times, you got to get

6 what you can get, you understand what I'm

7 saying, so ---

8 Q. You have to buy when you have the

9 opportunity?

10 A. Yes.

11 Q. And?

12 A. There was very --- drugs was in the

13 area. I mean, a drug is like, if I'm a drug

14 dealer or she's a drug dealer then whatever

15 we can get our hands on to sell, we have to

16 get it because it's very, it's very rare or

17 very few places that you can get it because

18 someone's done got busted or it's just not a

19 good supply of drugs in the area.

20 Q. So connect me up with Mr. Blake on

21 this?

22 A. Well, when I, when he called me

23 back, he said 'meet me at McDonald's on

24 Ashley Phosphate.' So me and AB jumped in

25 the truck and we got to McDonald's before

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1 them. So I'm calling and calling and --
2 'Where you at? Where you at? Where you at?'
3 He said man, 'I'm coming. I'm coming.
4 I'm coming.'

5 So about a couple of minutes later after
6 I called him the third time he said he's in
7 the parking lot. Well, I was parked on the
8 side where -- there's a McDonald's on Ashley
9 Phosphate. There's a Bojangle's, if I'm not
10 mistaken, right next to it. And the other
11 side is a street. I guess it comes off the
12 Interstate or close to it or whatever.

13 But I was parked on the side where the
14 street was at. And I had to -- he said he
15 was in the parking lot, so I'm looking and I
16 didn't see him. And I didn't know what he
17 was driving. So I asked him what he's
18 driving. He said he was driving an
19 Expedition. So I went on the other side and
20 I backed in where my truck was facing -- the
21 back of my truck was facing Bojangles.

22 Q. And this is a 2012 incident you're
23 talking?

24 A. Yes, sir.

25 Q. All right. So ---

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1 A. This is how I connect me and Julio.

2 Q. All right. Is he there?

3 A. He'll be there when I finish,
4 because I haven't gotten in the truck yet.

5 Q. All right. Well, try to just get to
6 it.

7 A. All right. Well, to make a long
8 story short, when I got in the truck to get,
9 to make the deal, he was there.

10 Q. Who is "he?"

11 A. Blake. Slow Mo was there, Little
12 Nino and another guy was there. I jumped in
13 the back seat. And that's when we made the
14 exchange.

15 And after we made the exchange, when we
16 got back to the hotel room and set the block
17 on the table, I just spent -- I just spent
18 seven thousand eight hundred dollars (\$7,800)
19 out my pocket. And he put in his twelve
20 hundred dollars (\$1,200) to make it to where
21 we got nine ounces. And it was nine ounces
22 of nothing.

23 So we proceeded to look for them all
24 night. Couldn't find them. Couldn't find
25 them. Couldn't find them at all.

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1 And the first time I've seen anybody that
2 was involved in that transaction was January
3 6th, the night of this incident. And it was
4 him.

5 Q. So at this point you're saying
6 you're recognizing Mr. Blake as someone who
7 was involved in ripping you off in a prior
8 transaction?

9 A. Yes.

10 Q. So what do you do?

11 A. Me and Jackie got to talking and I
12 gave her, I gave her a bag because that's who
13 I came to see.

14 Q. And when you say "bag?"

15 A. A bag of one -- I had six bags. I
16 had four grams and I had two half a grams,
17 coke.

18 Q. Okay. With you that night?

19 A. Yes, sir.

20 Q. All right. So what happened?
21 You're taking to Jackie?

22 A. So I'm talking to her and I seen
23 Roland. And she asked me who am I. I said
24 he sent me over here. And so I said, 'You
25 ready? You straight?'

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1 She was like, 'what you got?'

2 And I showed her the -- I showed her a
3 half a gram and I showed her a gram.

4 And what she did, what really made things
5 heated, other than me and Mr. Blake here, you
6 know, going back and forth, you know, one of
7 the bags ripped. So I got upset, because
8 once you open something you pay for it. And
9 that's -- you want me to go on?

10 Q. All right. So, yeah, let's go.

11 A. So we went back and forth. I'm
12 like, I said, 'Well you can get the half a
13 gram, but a half a gram ---' -- usually runs,
14 if you're a hustler, you can get a half a
15 gram for twenty-five dollars (\$25). If
16 you're a user, it's fifty dollars (\$50). And
17 so ---

18 Q. If you're a what?

19 A. If you're a user it's fifty dollars
20 (\$50). So I told them, I said, 'Well you got
21 to pay for that.' She gave me, she gave me
22 -- for the half a gram, she gave me twenty-
23 four dollars (\$24). It wasn't no twenty-one
24 dollars (\$21). She gave twenty-four dollars
25 (\$24). And for -- she didn't have no more

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1 money on her. So she done ripped -- she
2 already ripped the bag. She missed and tore
3 the bag of the gram bag. So I want my money,
4 you know.

5 I said, 'You got to come up with
6 something. I said I'm going to be back your
7 way' because I was coming back to see Mr.
8 Blake.

9 So she said, 'Well, just hold these and
10 I'll come back' ---

11 And I'm like, 'Listen I'm going to be
12 back.' I said ---

13 Q. Just one second. Hold what?

14 A. She had -- she gave me three rings
15 at first and I put that in my pocket.

16 Q. When did she give you the rings?

17 A. She gave me the rings by the car.
18 We had done left there where we all met at.
19 Well, we didn't meet -- well, they met me
20 because I never went to none of them. All of
21 them came to me.

22 Q. So she had ripped the gram bag?

23 A. Uh-huh.

24 Q. Which cost what?

25 A. She was going to pay a hundred

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1 dollars for that.

2 Q. So she was -- originally you were
3 sent there again to do what?

4 A. To sell coke. Originally,
5 originally, it was going to be a second buy
6 because Roland asked me if I had -- how much
7 I had. And he asked if I had, like, a zip.

8 And I said -- looking at him like now,
9 this don't sound right because 'what you want
10 with a zip from me?' So I'm thinking --
11 that's why I didn't really take him with me
12 because that's too much coke to -- for him to
13 be in a transaction with me.

14 And when he told me it was a female I was
15 meeting, I felt a little different. A zip
16 runs anywhere from twelve hundred (\$1,200) to
17 sixteen hundred (\$1,600) dollars. And it's
18 sixteen if somebody has sixteen hundred
19 dollars (\$1,600).

20 But she didn't have the money to pay for
21 the gram. So that's what we got into, to pay
22 from the gram bag that she ripped. So that's
23 why we got into it.

24 But I never knew that Mr. Rhodan -- until
25 yesterday that he had something to do with

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1 it.

2 Q. So you come up on the lot. Mr.
3 Rhodan's the first person that you have any
4 kind of conversation?

5 A. Yes, sir.

6 Q. Mr. Blake then comes and you have a
7 conversation or at least you're accusing him
8 of being the person that was involved in
9 ripping you off?

10 A. Yes, sir.

11 Q. When does Ms. Meyers move into this?

12 A. Right up after he did, after Blake
13 did.

14 Q. Okay. And then the conversation
15 that you had with Ms. Meyers occurs where?

16 A. We -- the conversation I had with
17 all three of them occurred right by the
18 truck, right by -- I think it was a red
19 truck. A red truck if I'm not mistaken. But
20 the conversation moved towards the white car.
21 We walked towards the white car because
22 that's where she got the other stuff from.

23 Q. Okay. You said the trunk was open
24 when you got there?

25 A. Yeah. I'm pretty sure the trunk was

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1 open.

2 Q. What else about the car?

3 A. What else about the car?

4 Q. Yeah. Anything else about the car?

5 A. No. The trunk was open. There was
6 a bag in the trunk. If I'm not mistaken
7 there was a bag in the trunk. I don't know
8 that I looked in the trunk.

9 Q. So where are y'all at the time --
10 I'm trying to understand. The original sale
11 was going to be something that ---

12 A. With Jackie.

13 Q. --- cost twenty-five bucks (\$25)?

14 A. Right.

15 Q. And you found out what about the
16 twenty-five bucks?

17 A. I found -- I got that. I got the
18 twenty-four dollars (\$24).

19 Q. Okay.

20 A. But after she ripped the other bag
21 that, you know, I mean a thing on the street
22 is once you, once you open something or once
23 you pop something, then it's yours.

24 Q. So how were you talking -- what's
25 the conversation between you and her after

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1 the bag was torn?

2 A. She going to have to pay for that,
3 and she didn't have no more money on her.

4 Q. And so what happened?

5 A. I said, 'You got to give me
6 something.' You know, I'm not using no force
7 or nothing like that. Just letting you know
8 that you got to give me something, you know,
9 until, you know, how you going to pay for it.
10 And she said, she said, she asked me if I can
11 come right back. And that's when I said,
12 "oh, I'm coming back."

13 And she said, what's going on with you
14 and Blake?

15 I said 'you don't want nothing to do with
16 that.'

17 And then she gave me -- we went to the
18 car. And as we were at the car, me, Blake
19 and Rhodan was on the driver's side of the
20 car. Me and Blake stood back and forth.
21 Jackie was on the passenger's side of the
22 car, of the car as you can see on the video.
23 When she opened the door and reached in the
24 glove compartment, she gave me -- she didn't
25 give me like on the evidence, all that

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1 jewelry. I had three rings. She gave me a
2 bracelet and a pair of earrings to hold until
3 I come back and she would have the rest of
4 the money for that bag. And assuming if
5 everything was great then she was going to
6 buy more.

7 After that, I ask, I said, which one -- I
8 said, 'which one of these is Blake's truck?'
9 And she showed me Blake's truck. Out of all
10 the trucks, out of all the cars, out of
11 everything that was on that parking lot,
12 there was only two vehicles that I went into.
13 My vehicle that I came in and I went in Mr.
14 Blake's vehicle inside his truck.

15 Q. What did you do in his truck?

16 A. I was about to take his truck keys.

17 Q. His truck was running?

18 A. Yes, sir.

19 Q. All right. I've got to back you up
20 again.

21 A. Okay.

22 Q. Ms. Meyers ends up giving you, you
23 say twenty-four dollars?

24 A. Twenty-four dollars (\$24).

25 Q. Plus some rings?

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1 A. She gave me twenty-four dollars.

2 She gave me three rings. She gave me a
3 bracelet and two big earrings, two big
4 Nefertiti-like earrings, whatever.

5 Q. And what does she end up with
6 getting from you?

7 A. She end up getting the, half that
8 point five (.5) bag of coke. And the one
9 point zero (1.0) bag of coke.

10 Q. The one that broke?

11 A. Yes, sir. She was going to get her
12 stuff back when I get back, if she had the
13 money.

14 Q. Is that what a hold means?

15 A. Pawn.

16 Q. That's not the word you said?

17 A. Hold, pawn, any -- it's all the --
18 let me break it down to you. I mean, you go
19 into a pawn shop and you let them hold your
20 stuff and you come back with the money, the
21 same thing as with drugs. Sometime if you
22 fall short or if you don't have all the money
23 or whatever, then you either ask the person
24 to hold something for you. Or either the
25 person demands to hold something. And you

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1 just make that as change. And sometime it
2 ends up you don't get your stuff back.
3 Sometimes you do if you come forward. I
4 mean, it's just an exchange. And for -- to
5 hold, to hold until you come back with the
6 money or whatever.

7 Q. So while you're doing this with Ms.
8 Meyers at her vehicle, where are Mr. Rhodan
9 and Mr. Blake?

10 A. I had already told them to get out
11 my face. So they walked -- him and Blake and
12 -- Meyers made Rhodan walked off. They
13 didn't have any -- I told them they ain't got
14 nothing to do with this. Just like I told
15 Jackie she didn't have nothing to do with
16 what going on with me and Mr. Blake.

17 Q. All right. So at some point then
18 you go into Mr. Blake's truck?

19 A. I went in his truck.

20 Q. And then what did you do?

21 A. I was about to take his keys out his
22 truck. I mean, I mean, if I wanted to take
23 anything out of his truck, I mean, he'll find
24 out later. But I could have taken anything
25 out of his truck or Mr. Blake's truck, Mr.

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1 Rhodan's truck, and Ms. Meyers' truck and I
2 just didn't.

3 Q. And his was the only you one went
4 into?

5 A. His was the only truck I went into,
6 but it was three trucks running at the time.

7 Q. And then what do you do?

8 A. And then I changed my mind about
9 taking the keys because I said to myself by
10 the time I get from Trident to Larry and call
11 Buddy and them, then they should still be
12 there.

13 Q. And so where do you go?

14 A. I didn't make it far. I made it to
15 the intersection of North Rhett and Trident.

16 Q. And at that point, you're involved
17 in a police chase?

18 A. No, I don't call it no police chase?
19 I mean, at that point ---

20 Q. You watched the video. You don't
21 call that a police chase?

22 A. I mean, I call it a police chase but
23 the chases that I've seen, that's cupcakes to
24 it. I mean, but ---

25 Q. Well, there's no doubt you're guilty

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1 for failure to stop?

2 A. Yeah. I'm wrong for that. I'm
3 wrong for that. I had my reasons, but I'm
4 wrong for that. But as I came to the stop
5 sign -- and this is how I -- I didn't think
6 they were looking for me. Because when I
7 left out of his truck, I went to my truck and
8 I got in my truck. And I'm headed towards
9 North Rhett. I'm driving normal, not
10 speeding off like I'm come from some crime
11 scene. I got to the stop sign. And I'm like
12 -- I see an officer, the one that was driving
13 the Suburban. I could see in his truck and
14 he could see in my truck. And I'm like, like
15 this right here. So when he -- if they
16 wanted to stop me, they could have stopped me
17 point blank because the road comes to a T.
18 And in that T there are at least three cops
19 before I even got to the stop sign. They
20 could have stopped me. What they did was,
21 and I heard it on the -- I heard it -- the
22 officer that was in the Suburban said that I
23 was just waiting to see what he was going to
24 do. And when I saw him pull off, that's when
25 I went behind him. Well, when I pull off,

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1 they still were there. And then all of a
2 sudden, I seen the lights coming behind me.
3 And I'm like 'Whoa!'

4 Q. So you see the lights, you hear the
5 siren, you don't stop. You're guilty of
6 that?

7 A. I'm guilty, but I stopped at first,
8 but I'm guilty because I ---

9 Q. But you didn't come to a complete
10 stop?

11 A. No, I didn't come to a complete
12 stop. I was waiting to see what they were
13 going to do.

14 Q. All right. So this State's Exhibit
15 Number 4, have you seen that before?

16 A. No, sir. No, I haven't.

17 Q. Is that yours?

18 A. It was probably -- whoever found it,
19 it's probably somebody still looking for it.
20 That's a kid's gun.

21 Q. It's a what?

22 A. That looks like a kid's gun to me.

23 Q. Did the police ever come and take
24 any DNA swabs from you?

25 A. Police never done anything except

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1 told me that I was being charged with one arm
2 robbery at first. That's all they told me.

3 They didn't take no DNA swab.

4 They didn't take no fingerprints or
5 nothing.

6 They didn't do anything.

7 They didn't even give me my jewelry back.

8 Q. You had an open container of ---

9 A. Icehouse.

10 Q. --- Icehouse? And that was in your
11 truck at the time the police got behind you
12 with the blue light?

13 A. Yes, sir.

14 Q. Where was it in your truck?

15 A. In my -- my truck, it's a customized
16 truck with wood grain throughout the whole
17 thing, Mahogany, and it has two customized
18 cup holders. And it was in the cup holder.
19 I had lifted up and put the money under the
20 beer can and I put the beer can back.

21 Q. So you mentioned something a while
22 back about -- you talked about you could have
23 gone in their trucks and taken things. And
24 you said there was something with that you
25 wanted to discuss?

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1 A. Yes.

2 Q. And what was that?

3 A. That if I wanted to rob all three of
4 them, I could have robbed them because I know
5 everything about them. I know everything
6 about their business.

7 Q. All right. You've not met them but
8 you say you know everything about them?

9 A. Not about them but as far as truck
10 drivers.

11 Q. Okay. And how is that?

12 A. Because I'm a truck driver.

13 Q. Well, when were you a truck driver?

14 A. The year of -- let's see. My
15 daughter's twenty-two. I went to Charlotte
16 in somewhere near '89/'90 is when I became a
17 truck driver. I ran the forty-eight states
18 plus Canada.

19 Q. Is that a special type of truck
20 driver, different types?

21 A. Yeah. They're local.

22 Q. Local, there's another kind?

23 A. They run the southeast region. They
24 run South Carolina, Georgia, Florida,
25 Virginia, North Carolina, Tennessee.

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1 Q. Is there a name, though, for that
2 kind of trucker versus a local trucker?

3 A. Yeah, local.

4 Q. Okay.

5 A. They run wherever the containers --
6 whatever port they pull out of -- they've got
7 certain ports throughout the United States
8 and they run outta the Charleston Port.

9 The next port is Savannah, and the next
10 port is Wilmington.

11 And they run out of Charleston port and
12 they run in a region to where the import
13 comes in, to where they take it to dry land.

14 Q. All right. So you at some point in
15 your life had a commercial driver's license?

16 A. A lot of points in my life, a long
17 time.

18 Q. And what is it that, to you, makes
19 this fact important?

20 A. Because if I wanted to rob them just
21 like he stated, Mr. Blake stated yesterday
22 that he had seven hundred dollars in his
23 truck. Mr. Rhodan had stated that he had
24 sixteen hundred dollars, which I knew what
25 that was for. But if I wanted to rob them,

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1 it would be senseless because truck drivers
2 make good money but they very seldom keep
3 money on them.

4 Q. And why is that?

5 A. For the fear of being robbed. And I
6 know every spot of a truck. I know every
7 area of a truck, especially with your wallets
8 and stuff. You have to have a CDL license
9 and you have to have a physical card. All of
10 this is -- there's a law that whenever you're
11 in that truck or about to go on the road, you
12 have to have your credentials within arm's
13 reach of your truck seat.

14 You have to have your bill of lading.
15 Your bill of lading is another emergency
16 required credential. A bill of lading
17 describes what you're carrying in the back
18 of your truck, okay?

19 If you get into an accident, whatever
20 officer comes on the scene to that accident,
21 if you're unconscious in that truck, he has
22 to be able to reach in there, either on the
23 center console, your dashboard, inside of
24 your door. Some trucks, like he said that
25 his truck has a pouch that you can purchase

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1 from the truck stop that you put in
2 different stuff or behind it, anywhere you
3 can reach. He has to be able to get your
4 credentials. And in most cases anybody -
5 - even all of us in here, we keep our money
6 in our wallets or in our pocketbook. So
7 being that they were going on a trip, being
8 that I'm a truck driver and I know all of
9 those things, I wouldn't have a problem
10 finding their money or getting to their
11 money.

12 Q. And none of that kind of stuff was
13 alleged to have been taken in this case?

14 A. No, none of that.

15 MR. SCHWACKE: One moment, Your
16 Honor.

17 DIRECT EXAMINATION CONTINUED

18 BY MR. SCHWACKE:

19 Q. So on the night of January the 6th in
20 2013, did you rob anyone?

21 A. No, I didn't.

22 Q. You didn't rob Ms. Meyers?

23 A. No. Ms. Meyers gave me the jewelry
24 and twenty-four dollars (\$24).

25 Q. You didn't rob Mr. Rhodan?

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1 A. Didn't take anything from Mr.

2 Rhodan.

3 Q. You didn't rob Mr. Blake?

4 A. Didn't take anything from Mr. Blake.

5 Q. And that's not your gun?

6 A. No that kid probably still looking
7 for his gun. Wherever they found that gun
8 at, if it was my gun, just like she gave
9 everybody else their property, she should
10 have gave it to me if it was my gun.

11 Q. That's all the questions I have.
12 Thank you. Answer any questions the State
13 has.

14 A. Yes, sir.

15 CROSS EXAMINATION

16 BY SOLICITOR TAYLOR:

17 Q. Mr. Mack, you said that you're a
18 drug dealer, right?

19 A. Yes, ma'am.

20 Q. And you work in the zone?

21 A. Yes, ma'am.

22 Q. And that zone is called, I think you
23 said, the Remount Road Four-Way. Is that a
24 gang?

25 A. Ma'am?

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1 Q. Is it a gang?

2 A. It's not a gang.

3 Q. Okay. So you have other drug
4 dealers that work in the same zone as you?

5 A. Yeah, just like you got a zone where
6 you're -- you got other solicitors. It's
7 just like, you know ---

8 Q. But there's a name for it?

9 A. No, the name, the name is, the name
10 Four-Way is just a name that -- just like you
11 name Charleston, whoever invented Charleston
12 named it Charleston, because they founded
13 Charleston.

14 The Four-Way is a name that whoever grew
15 up in that area, that's the main spot, the
16 main attraction to where you got the barber
17 shop, you got the store, you the furniture
18 store, you got the church, all that's on that
19 four-way. And that's where everybody hang
20 out at.

21 Q. Okay. But you know the other drug
22 dealers that work in your zone?

23 A. I know the others ---

24 Q. You guys help each other out?

25 A. I don't help nobody out. I know the

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1 drug dealers that work in other zones also.

2 Q. Okay. How long you been dealing
3 drugs?

4 A. I probably got my first package when
5 I was about eighteen, nineteen.

6 Q. So almost thirty years?

7 A. Yes, ma'am.

8 Q. You've never been convicted of that
9 though, right?

10 A. No, ma'am.

11 Q. You do have some convictions?

12 A. Yes, ma'am.

13 Q. You have a conviction for a larceny
14 and a false information to police?

15 A. Yes, ma'am.

16 Q. Okay. But no drug convictions?

17 A. No, ma'am.

18 Q. Okay. Now, on this particular night
19 one of your fellow drug dealers had put you
20 on a lead, I guess, that somebody needed
21 drugs in your area?

22 A. Yeah. He didn't have it. He put me
23 on the lead.

24 Q. And you said you had six bags;
25 right?

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1 A. Yes, ma'am.

2 Q. Okay. So you go, and your testimony
3 is that you meet with Ms. Jackie?

4 A. Uh-huh.

5 Q. And she ripped one of your big bags?

6 A. Uh-huh.

7 Q. You need to say yes or no for the
8 court reporter?

9 A. Yes, ma'am. Yes, ma'am.

10 Q. But you sell her one of the smaller
11 bags?

12 A. That was the first purchase.

13 Q. Okay. So between the two bags, how
14 much of that, that she would have to pay?

15 A. It could be two different prices,
16 whatever price I set.

17 Q. You said earlier in your testimony
18 that she owed you ---

19 A. I said a hundred dollars (\$100). A
20 hundred dollars (\$100) for the one point zero
21 (1.0) bag

22 Q. Okay. And then she had paid you
23 twenty-four (\$24) for the smaller bag?

24 A. For the point five (.5).

25 Q. So she owed you a hundred dollars

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1 (\$100)?

2 A. Uh-huh.

3 Q. Yes or no, please?

4 A. Oh, yes.

5 Q. Okay. And instead of taking back
6 the smaller bag, so then she only owed you
7 seventy-five (\$75). You let her keep the
8 drugs and just said, I'll come back for the
9 hundred dollars (\$100)?

10 A. No, I didn't say I'll come back for
11 the hundred dollars (\$100). I was coming
12 back for Blake. But in the process if she
13 had the money when I get back, she would have
14 gotten her jewelry back.

15 Q. Okay. So you took, in exchange for
16 this hundred dollars she owed you ---

17 A. Yes, ma'am.

18 Q. --- you took a couple of rings, a
19 bracelet, some earrings?

20 A. I didn't take anything.

21 Q. I'm sorry. She gave you. That's
22 what you say?

23 A. Yes, ma'am.

24 Q. She gave it to you?

25 A. Yes, ma'am, in her statement ---

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1 Q. Did you know if it was real?

2 A. I'm from the streets, ma'am. I
3 mean, I can tell you that necklace you got on
4 is real from right here.

5 Q. So the jewelry that you say she gave
6 you was worth to you the hundred dollars?

7 A. It wasn't about the hundred dollars.
8 It was just about that, you know, I'm not
9 going to be played, you know. And I just
10 wanted my money. And I felt, I felt that
11 coming down here, I felt something was funny.
12 So ---

13 Q. Okay. Well, let's talk about that
14 because you say that you know Mr. Blake
15 because he was involved in ripping you off
16 back in 2006; right?

17 A. No, I didn't say '06.

18 Q. I'm sorry. What year was it?

19 A. 2012.

20 Q. That's my -- my apologies. So
21 sometime in the year before this incident
22 happened, Mr. Blake had been involved in
23 ripping you off?

24 A. Mr. Blake was in the vehicle. And
25 from my contacts and my dealers, Mr. Blake

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1 was a cousin or either a -- I say a relative
2 of Bobby Blake, who is one of the weight man.
3 And being that Mr. Blake was in that, that's
4 how I place him in that vehicle by seeing
5 him. And then also figuring out why Bobby
6 would send him.

7 Q. Okay. So Mr. Blake was present when
8 you got ripped off; is that fair to say?

9 A. Yeah. He was present. He was
10 present. He had something to do with it.

11 Q. So just the year before, you had
12 seen him while getting ripped off?

13 A. Uh-huh.

14 Q. But when you got to the truck yard
15 that night and you saw him, already thinking
16 something was weird, you didn't just turn
17 around and leave?

18 A. No, I did not.

19 Q. You didn't think, 'I'm about to get
20 ripped off again?'

21 A. I wasn't worrying about getting
22 ripped off again, because I wasn't dealing
23 with him. I was right in my zone. When I
24 got ripped off, I wasn't in my zone because
25 if something had happened, it wouldn't have

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1 been, you know ---

2 Q. Were you not worried about being
3 ripped off because you had a gun?

4 A. I didn't have a gun.

5 Q. So you deal drugs by yourself,
6 right?

7 A. (Affirmative nod).

8 Q. I think you said earlier you don't
9 take third parties with you?

10 A. I don't take people that I don't
11 affiliate with, that I don't hang with every
12 day on the street. I did not hang with
13 Roland like that.

14 Q. Okay. So you, on this instance and
15 I'm sure other instances, go and deal drugs
16 by yourself?

17 A. Yeah.

18 Q. Sometimes with people you don't
19 know?

20 A. Sometimes people I don't know.

21 Q. Lots of times probably at night?

22 A. Yes, ma'am.

23 Q. Lots of times probably in dark
24 places so that other people don't see?

25 A. Yes, ma'am.

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1 Q. But you don't take weapons with you?

2 A. No, ma'am.

3 Q. Okay. And you didn't have a weapon
4 with you that night?

5 A. No, ma'am.

6 Q. Okay. Even though you saw Mr. Blake
7 who had been involved in ripping you off
8 before and you were unarmed ---

9 A. Yes, ma'am.

10 Q. --- you didn't turn around and
11 leave?

12 A. No, ma'am, because I already had the
13 plan that I was going to do.

14 Q. Okay. So you continue on with this
15 deal, you say with Ms. Jackie?

16 A. Yes, ma'am.

17 Q. And, again, she gave you the twenty-
18 four dollars (\$24)?

19 A. Yes, ma'am.

20 Q. So you continued on with this deal,
21 you say, with Ms. Jackie?

22 A. Yes, ma'am.

23 Q. And, again, she gave you the twenty-
24 four dollars?

25 A. Yes, ma'am.

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1 Q. So she had already not paid you
2 enough. Right? Because you said it was
3 twenty-five (\$25)?

4 A. I mean, well, she was only lacking
5 twenty-five dollars (\$25) on the point five
6 (.5) bag.

7 Q. Okay. So she ---

8 A. I mean, she was only lacking one
9 dollar on the point five (.5) bag.

10 Q. Okay. And then she ripped the other
11 bag?

12 A. By accident, yeah.

13 Q. So owed you a hundred dollars
14 (\$100)?

15 A. Yes.

16 Q. And you took some -- she gave you --
17 I'm sorry. She gave you some of her jewelry
18 as a hold, I think you called it?

19 A. As a pawn, yes, ma'am.

20 Q. As a pawn?

21 A. Yes, ma'am.

22 Q. Okay. And then you said that you
23 were having words with Mr. Blake?

24 A. Me and Mr. Blake was having words
25 from the moment I noticed his face.

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1 Q. But you still went through with the
2 deal with Ms. Jackie?

3 A. Yeah.

4 Q. Okay. And then at some point you
5 tell Mr. Blake and Mr. Rhodan just to walk
6 off?

7 A. No. I didn't tell them to walk off.
8 I tell them to fly out my face.

9 Q. Okay. And they just went along with
10 it?

11 A. They just -- he just gradually moved
12 because, I mean, I guess he saw -- he saw
13 that I wasn't playing. And then if he
14 remembered the incident that night back in
15 2012, that he knows about me, that you know,
16 if I say something, you know, basically, it
17 gets done.

18 Q. Okay. So there are three of them,
19 right?

20 A. There's three of them.

21 Q. And there's one of you?

22 A. One of me.

23 Q. And you're unarmed?

24 A. Unarmed.

25 Q. You would agree with me that Mr.

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1 Blake's kind of a big guy; right?

2 A. Yes, ma'am.

3 Q. So if they wanted to start some-
4 thing, they probably could have started
5 something, don't you think?

6 A. I don't think Mr. Blake wanted to
7 start anything.

8 Q. So you tell Mr. Blake and Mr.
9 Rhodan, 'get out my face'?

10 A. I said, to "fly outta my face."
11 That's right.

12 Q. Okay. And then they walk off?

13 A. They walk off because they didn't
14 have nothing to do with what was going on,
15 which ---

16 Q. So they just leave you there with
17 Ms. Jackie?

18 A. Just left me there with Ms. Jackie.
19 It's on the video.

20 Q. Even though you were already upset
21 because she had ripped your bag?

22 A. I wasn't upset with Ms. Jackie.

23 Q. Okay. It didn't bother you that she
24 ripped the bag?

25 A. No, because I knew that she was

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1 going to cover it.

2 Q. How did you know that?

3 A. Because I asked her to cover it.

4 Q. But you don't know her; right?

5 A. I mean, most females they don't --
6 once they get what they got -- or I mean,
7 anybody, once they get what they got, they
8 not going to put up an argument. I mean, I
9 mean, money wasn't the issue.

10 Q. But you'd never met Ms. Jackie
11 before that?

12 A. Never met Ms. Jackie.

13 Q. Okay.

14 A. It's different with women.

15 Q. Okay. So they walk off and you're
16 still dealing with Ms. Jackie.

17 A. Uh-huh.

18 Q. And you say she gives you her
19 jewelry?

20 A. She give me -- she's already given
21 me the rings. And she went -- when we went
22 to the car while the three of us was on the
23 driver's side, she was in the passenger's
24 side, she reached in the glove compartment.
25 And you could see where she reached in the

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1 glove compartment and she gave me the
2 bracelet and the two earrings.

3 Q. Okay. So the two gentlemen walk
4 off; right?

5 A. Once again, "yes."

6 Q. And then you go and get in Mr.
7 Blake's truck?

8 A. No, I didn't go and get in Mr. Blake
9 truck. I had to find out if that was his
10 truck first. I asked Jackie and she showed,
11 she pointed and told me that was his truck.

12 Q. Okay. So after she pointed out ---

13 A. She wanted to know why. She wanted
14 to know why. And I said because I'm coming
15 back to see Mr. Blake.

16 Q. So after it was pointed out to you,
17 you go and get in Mr. Blake's truck?

18 A. Yes, ma'am.

19 Q. And he just lets you get in his
20 truck?

21 A. Mr. Blake didn't even see me get in
22 his truck. So all that stuff they said --
23 Mr. Blake didn't see me get in the truck.
24 Mr. Rhodan didn't see me get in the truck.
25 The only person that saw me go in that truck

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1 was Jackie.

2 Q. Okay. So it's your testimony that
3 Mr. Blake knew you because y'all had been
4 involved in this dealing the year before?

5 A. Yes, ma'am.

6 Q. He knew you were mad because you had
7 told him?

8 A. He, he, he kind of -- he probably --
9 he knew I was mad. But I don't know if he
10 was trying to figure out what I was talking
11 about or not. I mean it'd been a while and I
12 don't know if he recognized me, but I
13 recognized him right away.

14 Q. But y'all had words?

15 A. We had, we had ---

16 Q. And you told him to get out your
17 face?

18 A. At the end after I was trying to
19 deal with Ms. Jackie.

20 Q. So he just walked off and left his
21 truck running ---

22 A. Ma'am ---

23 Q. --- in an area where he couldn't see
24 it. That's your testimony?

25 A. His truck was running when I first

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1 came there. His truck was running when I
2 left there. So whatever he, as far as his
3 truck running, you got to take that up with
4 him.

5 Q. But when you told him to get out
6 your face, he didn't walk towards his truck,
7 did he?

8 A. No. He didn't walk -- him and Mr.
9 Rhodan -- him and Mr. --- Mr. Rhodan walked
10 together talking, but he was still on the
11 phone. He was talking to somebody on the
12 phone.

13 Q. Okay. So you didn't tell them where
14 to go in the yard?

15 A. I just told them to get out my face.

16 Q. They just chose to go to the back
17 part of the yard, away from where their
18 trucks were; that's your testimony?

19 A. No, that's your testimony. I didn't
20 tell them where to go. I just told them to
21 get out my face.

22 Q. So if you didn't tell them where to
23 go, then it was their choice to walk to where
24 they went?

25 A. Oh, yeah. It was their choice to

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1 walk where they wanted to walk.

2 Q. Okay. And to not get in their
3 trucks?

4 A. Ma'am ---

5 Q. The other way ---

6 A. Ma'am, ma'am, listen ---

7 Q. --- I showed on the video ---

8 A. Listen, listen, listen.

9 Q. You saw the video; right?

10 A. Let me explain something to you.
11 I didn't tell him to walk to his truck. I
12 didn't tell them to walk to the back yard.
13 I just told them I'm going to deal with him,
14 just "get outta my face".

15 Q. Okay.

16 A. So wherever, wherever, wherever he
17 went, as long as he didn't come towards me,
18 it wasn't no problem.

19 Q. When you went in his truck, were you
20 worried about him coming after you?

21 A. I was kind of trying to get the keys
22 and go, but I didn't take the keys again. I
23 just got out. The whole thing was for me to
24 come back to see Mr. Blake.

25 Q. So you didn't think when you went in

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1 Mr. Blake's truck, that he was going to come
2 confront you. You didn't think he didn't
3 have a problem with that?

4 A. I really, I really, kind of did.
5 But he looked like a big teddy bear so, you
6 know.

7 Q. And so that's why you ran? Because
8 on the end of the video you're running;
9 right?

10 A. No, that's not why I ran. If you
11 want to ask me -- if you want to know why I
12 ran, ask me why I ran. I'll tell you why I
13 ran.

14 Q. Okay. Why did you run?

15 A. I ran in order to get back in time
16 enough. That's why I didn't take the keys
17 out of his truck. I was going to take the
18 keys out of his truck. I wanted -- just like
19 I told you, out of all the vehicles in that
20 yard, that was running that had keys in it,
21 the only one vehicle I was concerned with --
22 and on the camera there's only one vehicle
23 that I went into, other than my vehicle, was
24 his vehicle. And my plan was to take his
25 keys so he could not leave that yard.

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1 Q. Okay.

2 A. You want me to finish?

3 Q. Oh, I'm sorry. I thought you had
4 finished, but please ---

5 A. And I changed my mind because, as I
6 said, that by the time I called Butta and
7 them, 'they can either meet me here or',
8 because the two of them were too big for me
9 to deal with by myself.

10 But I was coming back to find out where
11 -- he was going to tell me where Little Nino
12 was at. Because, I mean, seven thousand
13 eight hundred (\$7,800) it was, you know, it
14 just ain't no kind of money to just -- so
15 that really sparked the whole thing up for me
16 and him.

17 But I mean, I didn't have no intention of
18 taking nothing from none of them.

19 Q. Okay. So you were going to call
20 your buddies; right? That was your plan, you
21 were going to leave and go call them and then
22 to come back?

23 A. I was going to call Butta.

24 Q. Okay. Did you have a cellphone with
25 you?

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1 A. Yes, ma'am.

2 Q. And I think on the video we saw you
3 had a Bluetooth?

4 A. Yes, ma'am, a Jawbone.

5 Q. Okay. Before you got to the end of
6 Trident Street, had you called your friends?

7 A. No, I hadn't called them yet.

8 Q. So you were so worried about them
9 leaving that you were running to get to your
10 car to go make a phone call, but you drove
11 all the way down ---

12 A. I went running to get to my car to
13 make a phone call. If I wanted to make a
14 phone call, I could make a phone call before
15 I got to my truck, my car. And -- and the
16 reason why I didn't call yet because as I'm
17 coming, as I'm coming, I'm like where these
18 police lights coming from? That's why I
19 didn't get on the phone yet. And where I was
20 going at, by the time I got to where I was
21 going and got back, they wouldn't have been
22 able to leave.

23 Q. Okay. So you didn't start the phone
24 call as you were going back to your truck?

25 A. I never made the phone call.

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1 Q. Okay. But you got all the way down
2 Trident Street; right?

3 A. I got all the way down Trident
4 Street and farther.

5 Q. Okay. And you've agreed. You've
6 told your attorney you're guilty of failure
7 to stop for a blue light?

8 A. Yes, ma'am.

9 Q. Because you saw them and you didn't
10 stop?

11 A. They didn't stop me at first so I
12 kept on going. They had a right to stop me,
13 I knew that right off, do what they want to
14 do. I mean ---

15 Q. You saw the blue lights, though?

16 A. I saw the blue lights. They saw my
17 truck.

18 Q. And you saw them when they were
19 behind you, when the officer ---

20 A. I saw them, I saw, I saw them before
21 they were behind me. I saw them, I saw them
22 coming as I was coming towards Remount, as I
23 was coming towards Trident, I saw them on
24 North Rhett. They were at a, they were at a
25 standstill. I mean, if you're pursuing, if

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1 you pursing or you, or you, or you, or you
2 coming after somebody that, that you know
3 that done something and you got a, you got a
4 T right here. I'm blocking this T. And you
5 got three police cars here before I even get
6 to the stop sign, you should have had this
7 blocked off.

8 Q. So ---

9 A. So, so, so, with me thinking that
10 there ain't nothing wrong, not thinking that
11 one of them called the police on me falsely,
12 whatever they saying, I'm thinking that there
13 ain't nothing could, nothing wrong because
14 you not stopping, you not blocking me off.

15 Knowing that you looking for a robber and
16 you looking for my truck, you didn't block me
17 off? I should, I shouldn't even made it off
18 of Trident Street if it was that case.

19 Q. Okay. So it's the police officers'
20 fault that you ran from them?

21 A. No, it not the police officers fault
22 that I ran from them. But I'm saying if they
23 were pursuing me, they didn't even have to
24 pursue me because they had me blocked in.

25 Q. But you ---

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1 A. They let me, they let me, they let
2 me sat there, take my signal light and turn
3 right and make a right turn.

4 Q. But after you turned, they were
5 behind you; correct?

6 A. They were behind me.

7 Q. And there was an officer that pulled
8 up beside you; correct?

9 A. There was an officer beside me and
10 behind me.

11 Q. And you knew that they were trying
12 to pull you over; correct?

13 A. I don't know what they were trying
14 to do until I made the turn on Remount Road.

15 Q. Okay. So you didn't know that they
16 were trying to stop you, even though there's
17 an officer beside you and behind you?

18 A. I'm not being smart, but I thought
19 they was taking lunch at North Rhett and
20 Trident because they just sat there.

21 Q. Okay. So when you turned on Remount
22 Road, though, you knew they were trying to
23 stop you?

24 A. Yeah.

25 Q. And you didn't stop?

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1 A. Nope.

2 Q. What happened to the other bags of
3 coke that you had?

4 A. I threw it.

5 Q. Okay. Did you throw that with the
6 beer can, before the beer can?

7 A. No. I threw the beer can and -- I
8 threw the beer can before you get to the
9 park, which they thought was a gun. I threw
10 the beer can. Then after I turned I was, I
11 was trying to make it to Ms. Sharon's house
12 -- because of a reason I'll explain later
13 when we get to that part. And after that, I
14 turned, was going to make, I was going to
15 make a right turn on Chatham, but it wasn't
16 Chatham. It was the entrance of the park,
17 which I'd already threw the beer can. And
18 then when I turned on Chatham, I know Chatham
19 just like I know the back of my hand. I say
20 there's a chance for me to get rid of this
21 coke that I have because the bag had bust and
22 coke was already on my pants. And with the
23 earrings that was in the bag, the earrings
24 bust another one of the bags. I didn't want
25 to get caught with the coke. The beer, you

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1 know, but I didn't want to get caught with
2 the coke because I never had no kind of -- I
3 never been to prison. I never had a felony.
4 So that would have been the only thing that
5 they could have, that could have made things
6 worse. But apparently, other things did.

7 Q. So you threw the coke out?

8 A. I threw the coke out, but I grabbed
9 -- when I grabbed the bag, the other bags of
10 coke was in the bag with the jewelry. When I
11 grabbed the bag, I grabbed the corner of the
12 bag and flinged it out to my left.

13 Q. Okay.

14 A. And where, where, where that officer
15 should have found the other bags of coke, the
16 two earrings and a bracelet, she should have
17 found that just after you pass -- there's a
18 landscaping company on the corner and there's
19 a big pine tree and I threw it right in that
20 area. That's the only thing that she could
21 say that or anybody could say that came out
22 of my truck, that and that, the Icehouse can.

23 Q. So you didn't throw any other
24 bracelets?

25 A. Ma'am. I already told you I only

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1 had one bracelet.

2 Q. Okay. So I'm asking, you didn't
3 throw any other bracelets?

4 A. I mean if I had one bracelet, there
5 couldn't be another bracelet.

6 Q. And you didn't throw any other
7 earrings?

8 A. I throwed earrings, a set of
9 earrings.

10 Q. Did you throw any keys?

11 A. I didn't throw any keys.

12 Q. And you didn't throw a red flash-
13 light?

14 A. I didn't throw any red flashlight.

15 Q. And you certainly didn't throw that
16 gun because that's not yours?

17 A. Definitely.

18 Q. Okay. And then when you finally
19 stopped, when you hit the trailer, you jumped
20 out and ran; right?

21 A. No, I didn't jump out and ran. My
22 thing was to get out real quick and hit the
23 ground so that he wouldn't see the coke on my
24 pants and my shirt, like, you know.

25 Q. Okay.

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1 A. I didn't want him to see that
2 because if he had seen that, then that would
3 have been another thing.

4 Q. So when you left the truck yard---

5 A. Yes, ma'am.

6 Q. --- there hadn't been any problems
7 except for the ones that you and Mr. Blake
8 had exchanged?

9 A. What do you mean?

10 Q. You and Ms. Jackie didn't get in a
11 fight; right?

12 A. No, we didn't get in a fight.

13 Q. You and Mr. Rhodan didn't get in a
14 fight?

15 A. Mr. Rhodan basically -- I don't
16 know, I don't know if he -- I want to say
17 that they had that -- Mr. Rhodan, Mr. Rhodan
18 and Jackie, I want to say that because
19 they're going to buy a bigger package. And
20 it all comes together because you just don't
21 ride around with sixteen hundred dollars in
22 your car.

23 Q. But you and Mr. Rhodan hadn't gotten
24 into a fight?

25 A. No, they were looking at each other

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1 funny, not me.

2 Q. And you left?

3 A. Yes, ma'am.

4 Q. Right?

5 A. Yes, ma'am.

6 Q. And didn't have any reason to think
7 that they were going to call the police
8 because they'd just bought drugs?

9 A. Well, why would you call the police
10 if you going to buy drugs?

11 Q. That's a very good question.

12 SOLICITOR TAYLOR: Thank you, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. SCHWACKE: No further
16 questions.

17 THE COURT: All right. Anything
18 further?

19 MR. SCHWACKE: Your Honor, the
20 Defense rests.

21 THE COURT: Okay. Ladies and
22 gentlemen, it is about 12:25. The Defense
23 has now also rested their case. What we have
24 left to do is hear the arguments from the
25 lawyers and my charge on the law and we're

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1 going to send this case to you.

2 But I do think we need to go ahead and
3 take a little break for lunch. There are
4 some matters of law that we need to take up
5 with the attorneys at this time.

6 Ladies and gentlemen, if you are
7 amenable, I would like to take a little bit
8 shorter lunch today if at all possible. And
9 ask that you return at 1:30, where we'll go
10 ahead and then finish up the trial of this
11 case.

12 Ladies and gentlemen, I need to remind
13 you that while you have heard evidence in
14 this case or all the evidence in this case,
15 you haven't heard the closing arguments from
16 the lawyers. You haven't heard my charge on
17 the law. And, again, if would still be
18 inappropriate for you to discuss this case.

19 Ladies and gentlemen, I know it's a
20 little wet outside, but go get a quick bite
21 to eat, if you would. Come on back and we
22 look forward to seeing y'all at 1:30 back in
23 the jury room. Thank you.

24 (JURY OUT @ 12:25 P.M.)

25 THE COURT: All right. Mr. Mack,

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1 come on back down and take a seat.

2 (WITNESS STEPS DOWN)

3 MR. SCHWACKE: Your Honor, just
4 for the record, I renew my previous motions
5 made at the close of the State's case,

6 THE COURT: Okay.

7 SOLICITOR TAYLOR: We would make the
8 same argument and objections, Your Honor.

9 THE COURT: Okay. And as I ruled
10 last time, on the same basis, I do find that
11 there is evidence from which this jury could
12 determine that the Defendant committed the
13 armed robberies and possession of a weapon
14 during the commission of a violent crime.

15 Y'all do we need to talk about the
16 jury charge? I'm trying to get it printed
17 right now. Apparently -- it's printing now.
18 Just to tell you and go through what I
19 charge. I charge pretty standard, like all
20 Circuit Court Judges do. I think -- I know
21 Judge Dennis does a --- (pause).

22 SOLICITOR TAYLOR: A hybrid.

23 THE COURT: A hybrid? I think
24 sometimes -- all right.

25 SOLICITOR TAYLOR: Yes, ma'am.

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1 THE COURT: I charge pretty much
2 just your standard, you know, the charge that
3 arrest warrants and indictments are not
4 evidence; presumption of innocence;
5 reasonable doubt.

6 You asked me yesterday about charging the
7 duties of both sides. The duties of the jury
8 and the judge, 'you're the judge of the
9 facts, I'm the judge of the law.'

10 Direct and circumstantial evidence.

11 Credibility of the witnesses.

12 Of course, we're going to charge armed
13 robbery, possession of a weapon during the
14 commission of a violent crime, and failure to
15 stop for a blue light. Anything else?

16 SOLICITOR TAYLOR: Nothing from the
17 State, Your Honor.

18 MR. SCHWACKE: Your Honor, do you
19 charge on the circumstantial evidence.

20 THE COURT: It's really not that
21 different but that's what you want charged?

22 MR. SCHWACKE: Yes, ma'am.

23 THE COURT: Okay. All right.

24 MR. SCHWACKE: Your Honor, the
25 use of prior convictions for impeachment

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1 only.

2 THE COURT: For impeachment
3 purposes only? Okay.

4 We need to go ahead, and just correct me
5 if I'm wrong, what about the lesser-included
6 offense of just robbery?

7 MR. SCHWACKE: Your Honor,
8 because of the nature of the weapon, I would
9 ask that you charge the lesser-included
10 offense because it is not, in fact, a deadly
11 weapon.

12 I understand the State could prove or
13 argue that they feared it and that would be a
14 jury matter for them to make that
15 determination.

16 THE COURT: Right.

17 MR. SCHWACKE: Because of that, I
18 would ask you to also charge strong arm
19 robbery.

20 SOLICITOR TAYLOR: Your Honor, we
21 don't think strong arm robbery is appropriate
22 in this case based on the testimony. We will
23 object if the Defendant is requesting it.

24 THE COURT: Okay.

25 SOLICITOR TAYLOR: The State's

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1 position, Your Honor, would be that there's
2 no testimony. The Defense's own case, the
3 Defendant said that there was no robbery.
4 And there's certainly no testimony that would
5 indicate that a robbery took place without a
6 gun or what they reasonably believed to be a
7 gun. So I don't know how the jury could come
8 to that conclusion, since there was no
9 testimony to that effect. But ---

10 THE COURT: I do think strong arm
11 robbery would be appropriate because they
12 could find that while he did have the gun,
13 that it wasn't a deadly weapon.

14 SOLICITOR TAYLOR: Your Honor ---

15 THE COURT: If it's under armed
16 robbery, you have to prove that it could be
17 used as a deadly weapon. And when we're
18 talking about the other one -- we're talking
19 about possession of a weapon during the
20 commission of a violent crime. That one, I
21 think, doesn't have to even be operable.
22 They do -- it is a jury decision to determine
23 on the armed robbery whether or not -- I
24 mean, the charge is pretty -- I mean, it's
25 literally whether or not a BB gun is a deadly

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1 weapon would be a factual question for them
2 to determine.

3 SOLICITOR TAYLOR: Well, Your
4 Honor, the other portion of the armed robbery
5 statute only requires that a person
6 reasonably believes that -- a person present
7 during the commission of the robbery
8 reasonably believed to be a deadly weapon.
9 And the officer's own testimony -- the
10 representation of a deadly weapon. The
11 officer's own testimony was that you couldn't
12 tell, from just looking at it, that it was
13 not an actual gun. If it's a representation
14 of a deadly weapon, which I think -- I don't
15 think there's been any argument that it
16 doesn't looks like a gun or that they
17 believed it to be a deadly weapon, that's all
18 that's required under the armed robbery
19 statute, not that it actually is a deadly
20 weapon.

21 THE COURT: All right. Solicitor,
22 I'm going to charge the statute under armed
23 robbery. And I understand your argument is
24 there's no evidence put up that this was
25 anything other than a robbery with a gun.

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1 The Defendant's claiming it wasn't him, it
2 wasn't a robbery.

3 All right. Mr. Schwacke.

4 MR. SCHWACKE: Your Honor, I
5 would suggest there's other possible
6 alternatives that the jury -- they have the
7 benefit of my client's testimony. I would
8 argue that it's possible that the jury could
9 find that he, in fact, didn't pull a weapon
10 on them.

11 But by the nature of his approach to them
12 at the truck lot, I certainly think there's
13 an adequate record for the State to argue
14 that was somewhat aggressive towards them,
15 and there could have been fear of him alone
16 without a weapon.

17 THE COURT: Right.

18 MR. SCHWACKE: And that ---

19 THE COURT: Of course they can
20 believe everything, they could believe
21 everything the victims testified to, other
22 than the gun portion.

23 MR. SCHWACKE: Correct.

24 SOLICITOR TAYLOR1: Your Honor,
25 the State doesn't -- it's not a problem for

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1 us, Your Honor, to charge.

2 THE COURT: Okay.

3 SOLICITOR TAYLOR: We would ask for
4 the second part of the armed robbery statute,
5 the reasonable belief.

6 THE COURT: Okay. Okay. All
7 right. We're going to go ahead and -- All
8 right. Anything else, y'all need to put on
9 the record right now? It's time to grab some
10 lunch.

11 MR. SCHWACKE: Nothing else, Your
12 Honor.

13 THE COURT: Okay. All right.
14 Y'all, we'll go ahead and break. And if
15 y'all will just be back maybe about twenty-
16 five after, and we'll go ahead and just do
17 closings, okay?

18 (LUNCH RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: All Right. Ready to
21 go?

22 SOLICITOR TAYLOR: The State's ready,
23 Your Honor.

24 THE COURT: Are you ready? The
25 Defense ready?

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1 MR. SCHWACKE: Yes, Your Honor.

2 Yes, ma'am.

3 THE COURT: Let's go. Let's bring
4 the jury in.

5 (JURY IN @ 1:39 P.M.)

6 THE COURT: Welcome back, Madam
7 Foreperson, ladies and members of the jury.
8 At this time, you're going to go ahead and
9 hear the closing arguments from the
10 attorneys.

11 After that, I'm going to charge you the
12 law that's applicable to this case. And I'm
13 going to send it to you for your
14 deliberations, all right?

15 Ms. Taylor.

16 SOLICITOR TAYLOR: Thank you, Your
17 Honor.

18 Good afternoon, ladies and
19 gentlemen. I'm actually going to speak to
20 you twice this afternoon. I can't promise to
21 be brief, but I can promise that I will try.
22 Lawyers sometimes use a thousand words when a
23 few will do, but I will try not to do that.

24 The first thing I'm going to talk to you
25 about today is the law. And then I'm going

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1 to sit down and Mr. Schwacke is going to have
2 a chance to speak with you, and then I'll
3 come back up and just do a little quick
4 summary.

5 The Defendant, Joseph Mack, Jr., is
6 charged with three counts of armed robbery.
7 You heard that earlier.

8 And Mr. Condon told you in the opening
9 that armed robbery means the taking or
10 carrying away of the property of another
11 while armed with a deadly weapon, or while
12 armed with a representation of a deadly
13 weapon, or what a person reasonably believes
14 to be a deadly weapon.

15 What is not required in the statute is
16 that the property that's taken has any
17 specific monetary value.

18 He's charged with three counts, one for
19 each of the victims that has sat over here.

20 He's also charged with possession of a
21 weapon during a violent crime. What that
22 means is that he was in possession of a
23 firearm, or visibly displayed what appeared
24 to be a firearm, and has been convicted of a
25 violent crime. That's defined by statute as

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1 armed robbery.

2 A firearm is simply defined in the law as
3 any weapon which will or is designed to or
4 may be converted to expel a projectile.

5 The defendant is also charged with
6 failure to stop for a blue light. That means
7 driving a motor vehicle on a public street or
8 highway and you've been signaled by officers,
9 using blue lights or sirens to stop, and that
10 he did not stop.

11 Now, you're going to hear a lot of law
12 and definitions of terms of law also in the
13 Judge's charge to you. If anything I say is
14 different than what she tells you, listen to
15 her because she's the judge of the law.

16 But you're going to hear that the State's
17 burden is beyond a reasonable doubt. We
18 accept that burden.

19 A reasonable doubt is defined as such a
20 doubt which causes a reasonable person to
21 hesitate to act. That's a legal definition
22 if I have ever heard one in my life.

23 It's not all doubt. It doesn't have to
24 be all doubt because there are very few
25 things in life that we can know with absolute

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1 certainty. None of us were there.

2 But if you are firmly convinced that the
3 Defendant is guilty, then we have met our
4 burden and we have proven the Defendant
5 guilty beyond a reasonable doubt. Thank you.

6 THE COURT: Thank you. Mr.
7 Schwacke.

8 MR. SCHWACKE: Thank you, Your
9 Honor. Good afternoon. I told you yesterday
10 this was an important case for my client.
11 And we selected you to sit on this case, not
12 because you have any friends to reward or
13 enemies to punish. You're here to make a
14 decision.

15 And it doesn't require you to like my
16 client to make that decision. You may not
17 like him. You may not like what he does.
18 But that still means that you are able to
19 make a determination of his guilt or his
20 innocence in this case.

21 I'm going to talk some more about that
22 later because even in this instance one of
23 the victims has a bank fraud. So we're not
24 angels here.

25 We're here today to make a determination

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1 as to what happened on the night of January
2 the 6th last year.

3 Now, the Solicitor just gave you a slide
4 show about the law in this case as the Judge
5 is going to instruct you.

6 I'm going to ask this question: What is
7 it that makes a robbery a robbery?

8 I'm not referring to those definitions
9 right there. Because that's what you have
10 going on here, one's saying it was a robbery
11 and one's saying it was something
12 substantially different.

13 So what I ask you to start considering
14 is, first, what was stolen? Or what was
15 alleged to have been taken? And what was the
16 value of that item? We're talking twenty-
17 some-odd dollars (\$20), some jewelry, a
18 flashlight, keys.

19 And then you ask what wasn't taken?
20 Thousands of dollars in a bag in the trunk of
21 a car, keys to other trucks on the lot,
22 cellphones by which people could communicate
23 with other people and report what was going
24 on. Wouldn't a robber take those things?

25 What about the things, in this case,

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1 where a person who normally would be
2 committing a robbery would make some efforts
3 to conceal himself. Was there a mask worn or
4 anything covering the face?

5 Were there any gloves on which finger-
6 prints might have been able to be left? That
7 is one of the things that you need to
8 consider about what make a robbery a robbery.

9 The other thing that's really weird in
10 all of this is the testimony that this
11 happened at an isolated location, in an
12 industrial area, on a Sunday night, a quarter
13 of a mile, down the road from any major
14 highway area. Why would a person end up
15 there to commit a robbery?

16 Or does it make more sense that someone
17 would end up there to make a drug deal?

18 Because it requires him totally at random
19 to want to go down that road at that specific
20 time on the off-chance that he might catch
21 somebody on that lot that's normally locked
22 with a combination lock. That doesn't invite
23 somebody to come make a robbery. That's an
24 invitation to make a drug deal.

25 What motive does -- is there that Mr.

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1 Mack has to make this a robbery? He'd just
2 been paid more than two thousand dollars the
3 day before by his boss, who came in here and
4 told you he made that payment. He didn't
5 need that money. There was no motive to go
6 in there and rob anyone.

7 What I ask you to consider is that we're
8 not getting -- the State wants you to believe
9 that this is a weapon that's connected some-
10 how to Mr. Mack. And the only way they do
11 that is to say it was found on the side of
12 the road.

13 No testing was done to this weapon. We
14 live in a DNA world. We live in a time where
15 the C.S.I.-type shows have educated every one
16 of us. They do these things because they
17 know juries want to know, and because it is
18 good evidence. And now you should ask why
19 wasn't it done?

20 Because there is nothing other than this
21 being on the side of the road 'somewhere
22 near' where he may have driven. No officers
23 said they saw anything like that get tossed
24 out. The only item that an officer saw get
25 thrown out was a beer can that was found that

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1 was found and recovered. None of them saw
2 anything else coming from the car, the
3 windows of the car.

4 And then when they say they find things,
5 they make no attempt to have that evidence
6 photographed and entered into their case
7 file? So when the time came here today,
8 those witnesses could say, 'this is it.'
9 'This is mine. This is what he took. This
10 is what I got back.'

11 They didn't do it. That's what they
12 should have done if this was a robbery. And
13 unfortunately, that's not the only thing they
14 didn't want you to see. I'm sorry. An iPad,
15 it's more high tech than low tech but they
16 currently have those set up.

17 So what I'd like to do is first invite
18 you to go back, when you go back to jury is
19 to say, 'hey, we need to see this this video
20 that the State didn't want us to see again.'

21 Because they didn't introduce this into
22 evidence. We did. And the reason that we
23 introduced it was because it doesn't look
24 like a robbery. It looks anything but. As
25 you watch the reaction of people in this

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1 video across the period of time, there is
2 very little running. There is mostly just
3 kind of standing talking and walking and this
4 is after the time that the victims have said
5 that they've just been robbed.

6 And what you can watch with this, as you
7 move to certain areas and if you go into
8 about the six minute and forty-eight second
9 mark (6:48), when you'll see them move across
10 the trucks and the camera, this camera's not
11 blinking. It's taking everything down. And
12 as they walk across the camera here, you see
13 exactly who's not leading whom and who moves
14 to what side of what car. And the fact that
15 people are on opposite sides of this vehicle
16 that's parked behind the car.

17 And you'll be able to see eventually, as
18 the video progresses, that the two gentlemen
19 just wander off up here, while the woman is
20 still dealing with Mr. Mack over here.

21 And you'll see the car door flash open
22 and shut every so often in that section. I
23 invite you to have this played for you again
24 so you can see this.

25 And you will see these people don't act

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1 like they've been robbed. It shows some
2 concern at the end that -- because as the
3 video comes to an end, you'll see what
4 appears to be Mr. Blake looking across the
5 camera in this direction, with a phone to his
6 ear. All right. But, no, he doesn't have a
7 phone because it got taken away and thrown
8 across the lot. But the police didn't know
9 about it and he didn't tell the police about
10 that, but look at the video. And you will
11 see him clearly talking with someone.

12 And here you can see the two people
13 walking right here, off in this distance.
14 And you'll see how they, how they appear and
15 react to what they said, what they said
16 happened to them that night, which will not
17 reflect as if a robbery has been convicted.

18 The camera doesn't blink. And you have
19 the opportunity to take advantage of that in
20 your deliberations. And I invite you to
21 watch it again. To tie it in, not with the
22 testimony you heard from the victims, but
23 also tie it in with the testimony you heard
24 from my client.

25 Ladies and gentlemen, my client has come

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1 here today to put his trust in the system and
2 in you. He is not a great guy, but he is not
3 a robber. You may not like the fact that he
4 deals drugs. Unfortunately, there are people
5 in our society that are forced into that
6 situation, or decide to take it on for them-
7 selves. But I ask you to not hold that
8 against him because of what this really was
9 on this night.

10 He is guilty of failure to stop for a
11 blue light. And when I made my opening
12 statement to you, that's what I meant when I
13 said, things are not what they first seem.
14 Because now that you've heard all of the
15 testimony and you can watch the video, that
16 the State wanted to keep from you, you can
17 apply it to the evidence that you've heard.

18 You can apply it to the evidence that you
19 weren't give because the police did not do
20 their job that night in preserving evidence
21 that you should have been able to consider.
22 Such as they did not connect this gun to my
23 client.

24 Now, I'm going to talk a little bit about
25 the law here just for a second. Because the

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1 Judge is going to give you not only the
2 instruction on armed robbery, but the
3 instruction on something called strong armed
4 robbery. Strong armed robbery differs from
5 armed robbery in that it doesn't require the
6 proof of the use of a deadly weapon. It
7 requires the taking away of property of
8 another by means of force or intimidation.

9 Now, you got to observe my client. And
10 it's possible some of you have come away with
11 the impression, or maybe all of you, quite
12 frankly, that he could be a felon. That this
13 is something he's done before. So he may
14 sound harsh, he may sound threatening. He
15 may even appear to be harsh and threatening.
16 And in connection with a drug transaction,
17 may have had people turn things over to him.

18 So that is an alternative that you have
19 as you sit in the jury room, as you review
20 the evidence, the evidence that you have, the
21 evidence that you were not given, and the
22 evidence I invite you to look at again.

23 It's not an easy job that you have. I
24 thank you for coming here and doing this. I
25 hope that you're able to put aside, if you

have any, dislike for my client because of his second career. But I invite you to be fair and invite you to look at the evidence. And I invite you to find him not guilty of armed robbery. Thank you.

SOLICITOR TAYLOR: Thank you, Your Honor. Sometimes things are exactly what they appear to be.

Mr. Schwacke and his client want you to believe that because the Defendant was bad at committing a robbery that means he didn't do it. Nobody said he was a good robber. He got caught. Nobody said that it was good to go in without a mask or without gloves. Nobody said that he got all the stuff that they had. That's not what we're saying.

Mr. Schwacke wants you to believe that

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1 his client randomly drove down that road.
2 But you heard him testify that he was a truck
3 driver, been a truck driver forever. And you
4 heard the victims testify that it's not
5 unusual, in fact, it's very common for truck
6 drivers to carry large amounts of money.
7 Because when they're on the road, they might
8 have a flat tire or their truck might break
9 down. People don't always take checks or
10 credit cards.

11 So as a truck driver, he would know there
12 are truck drivers down there. He told you
13 he's familiar with that area. There are
14 truck yards down there and truckers carry
15 cash.

16 Now, he didn't get it all. That doesn't
17 mean he didn't do it. Mr. Schwacke said what
18 motive would he have to rob somebody because
19 he'd just been paid. Well, what motive did
20 he have to sell drugs if he'd just been paid?
21 If he didn't need the money, why is he
22 selling drugs? If he didn't need the money,
23 why is he robbing people? It's the same
24 thing.

25 He also wants to make a point of the fact

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1 that the police didn't see the gun being
2 thrown. That's right. They didn't. They
3 also didn't see the cocaine the Defendant
4 said he threw out of the car. But he,
5 himself, told you that he did that.

6 You know, this is a high-speed chase.
7 They're making turns, they're trying to stay
8 on their radio. They don't see everything.

9 But the Defendant's own words says that
10 he threw stuff out that they didn't see. So
11 why is it unreasonable to think that he threw
12 that gun out and they didn't see it?

13 I appreciate Mr. Schwacke thinking that
14 there's some conspiracy. There's not. It's
15 not that we tried to hide the video. We make
16 decisions all the time about what evidence to
17 put in. Some of it's just expedience. The
18 victims came up and told you what happened,
19 so we didn't play the video. But I'm glad
20 you got it. I'm with Mr. Schwacke. Go back
21 and watch it. Watch it over and over again.
22 Because what you will see on the video is
23 that everything happened exactly like those
24 three people told you it happened.

25 You will see where they're standing.

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1 You'll see where they walk. You'll see the
2 car door open and close. You'll see
3 everything that they told you happened.

4 You don't see the initial encounter,
5 which is one of the reasons we didn't show it
6 to you; because they're hidden between
7 trucks. But they tell you that the initial
8 incident happens between the trucks. That he
9 makes them walk over to the car. That he
10 makes them stand up against the fence. That
11 he's going through the car with Ms. Jackie.
12 You see all of that on the video.

13 And then you'll see that they all walk to
14 the back. Now, at some point it's only two
15 because one of them's hidden by a truck. But
16 when you get far enough out, you see the
17 third person back there with them. No reason
18 for them to walk back there unless they'd
19 been told to. Why would they go to the back
20 of the yard?

21 I wasn't trying to hide anything.

22 You have the video.

23 He also talked to you about strong armed
24 robbery. And that is a lesser-included of
25 armed robbery. It's not what he's charged

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1 with, but it's a lesser-included and you'll
2 be charged on that with the law.

3 But in this case I submit to you, ladies
4 and gentlemen, that strong armed robbery
5 doesn't really make sense. One guy against
6 three? Why would they give him their stuff
7 unless he had a gun? And they told you he
8 had a gun. And we recovered a gun, what
9 looks to be a gun. I mean, maybe I'm naive
10 but that looks like a gun to me. If some-
11 body's pointing that in the middle of the
12 night, it's reasonable to believe that
13 someone would think that's a gun.

14 And I'm going to run through testimony
15 very briefly, promise, as soon as our
16 equipment gets up. Sometimes it doesn't come
17 on very quick. I went through this already
18 with the law we talked about earlier.

19 So you heard from the three victims:
20 Mr. Rhodan, Ms. Meyers, and Mr. Blake.

21 They told you, he took by force with a
22 gun, jewelry, money, a flashlight and keys.
23 It was at gunpoint. That he told them, "keep
24 looking at me and I'll kill you."

25 They felt threatened. They believed he

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1 had a gun. Ms. Jackie told you that as she
2 walked away towards the back of the yard, she
3 thought she might get shot. Obviously, they
4 believed it was a gun.

5 And they all three told you they do not
6 know the Defendant. Don't know him but that
7 "he's the one that robbed us."

8 The officers told you about encountering
9 him on the street. You saw the pursuit
10 video. I won't belabor the point. Mr.
11 Schwacke has admitted that his client is
12 guilty of failure to stop for a blue light.

13 You heard from Corporal Beaudoin, who
14 told you that she participated in the chase.
15 She ended up at the end of the pursuit, got
16 radioed from another officer who was then
17 with the victims that, "Here's what was
18 stolen. Here's what we're looking for."
19 It's not just jewelry. 'We're looking for
20 twenty-one dollars. We're looking for a set
21 of keys that has an Atlanta Falcon keychain
22 on it and a miniature red flashlight", pretty
23 specific details. That's how she knew what
24 to look for because the victims had already
25 said, 'here's what he took.'

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1 So she walks the path, walks the path.
2 She finds that gun, which they want you to
3 believe is just laying there for no reason.
4 It's pretty coincidental that it's right
5 there, that it matches the description that
6 the victims had given. It's just a
7 coincidence that it's under the bushes right
8 where he drove past?

9 And they found four rings -- or two
10 rings, I'm sorry. They find two bracelets.
11 They find twenty-one dollars exactly. They
12 find a keychain with an Atlanta Falcons ring
13 on it and a red flashlight. They find
14 exactly what the victims told you he had
15 taken, all of it, except for the two other
16 rings. And those are found in his pocket.

17 Corporal Ellwood tells you that he went
18 and met with the victims. He's the one who
19 got the list of what was stolen, radioed it
20 back, how they knew what to look for. He
21 even gets the items from the officers who
22 recovered them. He takes them back to the
23 victims and lays it out on the table: "If
24 anything here that is not yours, let me
25 know." Every single thing they had said was

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1 stolen was recovered, everything, down to two
2 mismatched earrings.

3 Sergeant Valdez told you that he took Ms.
4 Meyers and Mr. Rhodan to go identify the
5 victim -- I mean, the defendant. They were
6 one hundred percent sure, immediately they
7 knew it was him.

8 Let's talk about our evidence:

9 We've got the video surveillance of the
10 truck yard.

11 We see the truck going onto the yard.

12 You see the man leave it.

13 The other video shows them altogether
14 being herded around the yard.

15 He's not walking like this --

16 (demonstrating). He's not. They didn't say
17 he was.

18 They said he had a gun and he was
19 pointing it at them. Originally, yes, like
20 this, but you can't see that part on the
21 video.

22 And then you see him while they're all on
23 the back of the yard go in Mr. Blake's truck
24 and then run, running and jumps in his truck
25 and peels out of that yard. He says it's to

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1 go call friends. 'I had a phone, I could
2 have called them from right there.'

3 Again, the video chase.

4 You heard about the identification by the
5 two victims. They're sure.

6 Rings, on his person. He told you that
7 the rings or the stuff he had taken from Ms.
8 Meyers was in the same bag with the cocaine
9 and he had thrown that out the window. But
10 he had those two rings on him. Two rings
11 that she says she didn't give him by choice.

12 And it just *so happens* that the same path
13 he drove, there was a red miniature
14 flashlight.

15 And there was that blue Flacon keychain
16 with five keys on it.

17 And there's all this other jewelry, down
18 to the beaded bracelet that she said he had
19 stolen.

20 And then there's a gun. The Defense
21 wants you to focus on the fact that the
22 officer didn't take photographs. They didn't
23 take photographs.

24 Wants you focus on the fact that there's
25 no fingerprints or DNA, that one of the

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1 officers didn't do a report.

2 Should they have taken pictures before
3 they gave it back to the victims? Of course,
4 they should have. They didn't. But that
5 didn't -- that doesn't mean he didn't take
6 it. They told you, 'here's what we said was
7 stolen.' And the officers said, 'here's what
8 we recovered.' And it matches perfectly.

9 So should they have taken pictures? Of
10 course, they should have. Everybody knows
11 that. But it doesn't mean that isn't what
12 was taken or that that wasn't what was
13 recovered.

14 Mr. Schwacke talked about *C.S.I.*
15 Well, *C.S.I.* is a television show, it's for
16 entertainment. I will tell you that this is
17 not *C.S.I.* Everything that gets collected
18 doesn't get DNA processed, doesn't get
19 fingerprinted. It's not possible for all of
20 it to.

21 But in this case, we don't need that.
22 You have three people who told you what
23 happened. Three people who told the police,
24 'here's what he stole.' And the police
25 recovered that exact stuff.

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1 What we do have is overwhelming identifi-
2 cation. We know we've got the right guy. He
3 himself admits he was there. We have the
4 rings that were found on him. We've got all
5 this stuff that's found on the exact path
6 that he drove, and he's caught at the end of
7 the scene.

8 This case actually is about reasonable
9 doubt because the word "reasonable" is
10 important here. What is a reasonable doubt?
11 The Defendant would have you believe that
12 this is a drug deal. That it's not even a
13 drug deal "gone bad", because his own
14 testimony is nothing went wrong. She tore a
15 bag. He thought she was going to pay for it.
16 Nobody's upset. Nobody's mad when he leaves.
17 Nothing's going bad.

18 He said he was leaving (to call) friends
19 -- he was leaving to call friends because he
20 was going to come back because he's mad at
21 Mr. Blake. But he's got the phone. Why is
22 he running? Why is he tearing out of that
23 yard? He's got a phone. If he wants to make
24 sure that Mr. Blake doesn't leave before he
25 gets back, stay right there and call his

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1 friends.

2 All of the victims, all three of them
3 told you that they, at this point, had their
4 commercial driver's license. Now, Mr.
5 Rhodan's has been suspended because he has
6 high blood pressure. It hasn't been
7 suspended because he's failed a drug test.
8 None of them ever failed a drug test. And
9 you know that because they say it's random.
10 'They will call us and say, you got to pee in
11 a cup today.' You can't hide that.

12 If Ms. Jackie's a drug user, how does she
13 still have her commercial driver's license,
14 because she has to get tested. And if you
15 fail a drug test, they told you, your license
16 gets yanked.

17 The Defendant wants you to believe that
18 Mr. Blake just so happened to be the same
19 person who was involved in some drug deal
20 gone bad the year before. But when he walks
21 up, even as he's seeing Mr. Blake, he
22 immediately recognizes him. And he already
23 had a bad feeling about this. He didn't
24 leave. He didn't think anything was wrong.
25 Everything's fine.

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1 He also said he didn't take anything from
2 Mr. Blake or Mr. Rhodan, except for -- we
3 know that the keys that Blake described were
4 found in the same area as the jewelry. We
5 know that red flashlight is found in the same
6 area as the jewelry. So what's reasonable?
7 Is it reasonable that they just happened to
8 say, 'let's see, what am I going to say he
9 took from me?' 'I know, "a miniature red
10 flashlight".' And they just so happen to
11 find it, right by the jewelry? Is it
12 reasonable that Mr. Blake said I'm going to
13 make up this thing about a key chain. It's
14 going to be Atlanta Falcons. It's going to
15 have five rings on it. And they find that
16 right by the jewelry? That's not reasonable.

17 Is it reasonable to believe that's not
18 the gun? It's found in the same area. It's
19 right there with the jewelry and the key ring
20 and the flashlight and the twenty-one dollars
21 (\$21) exactly. It's right there.

22 But ladies and gentlemen, even if you
23 don't think this is the gun, if the argument
24 about DNA and fingerprints gets to you, and
25 you don't think that that's the gun, the

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1 victims told you he had a gun. They told
2 you they were scared they were going to get
3 shot in the back.

4 You don't say, if you don't believe the
5 person has a gun, -- I know you all heard
6 this because it just happened right before
7 lunch, but I'm going to repeat it. Defendant
8 gets up here and tells you this story, "it's
9 a drug deal."

10 And I asked him, 'Did you have any reason
11 to believe when you left that they were going
12 to call the police?'

13 And his response, 'why would you call the
14 police if you just bought drugs?' That's a
15 really good question because there's no
16 reasonable answer to that.

17 That's his story, 'they bought drugs then
18 they called the police to say I robbed them.'

19 And it does not make sense, because
20 sometimes things are exactly what they seem
21 to be. This is not a drug deal. It doesn't
22 make sense that these victims would have
23 called the police to come out to them if they
24 had just bought drugs. Why do that?

25 It's not a drug deal. What it is is an

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1 armed robbery. This man, for whatever his
2 reasons were, went and he pulled a gun on
3 these three people and he took their property
4 from them. He had a gun when he did it. And
5 as he was leaving and he almost got caught,
6 he fled the police.

7 He's guilty of three counts of armed
8 robbery, of possession of a firearm during
9 the commission of a violent crime and a
10 failure to stop for a blue light. Thank you.

11 THE COURT: Thank you. Madam
12 foreperson, ladies and gentlemen of the jury,
13 you've followed very patiently and listened
14 very attentively to the presentation of the
15 evidence in this case and I want to thank you
16 for that.

17 It now becomes the duty of the trial
18 judge and the Constitution of this state to
19 charge and instruct you on the law that's
20 applicable to this case. And it's your duty
21 as jurors to accept and apply the law as the
22 Court will now state it to you.

23 As jurors, it is your exclusive duty to
24 decide all issues of fact in this case. You
25 must determine the effect, the value, the

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1 weight and the truth of the evidence.

2 But the State of South Carolina and the
3 Defendant, Mr. Mack, have the right to expect
4 that you will carefully consider and evaluate
5 the evidence and apply the law of the case to
6 the evidence. And by doing so, the State and
7 the Defendant will receive an obtain a fair
8 and impartial trial in this case.

9 Now, ladies and gentlemen, the State of
10 South Carolina by the bills of indictment in
11 this case charges the Defendant, Joseph Mack,
12 Jr., with three counts of armed robbery,
13 possession of a weapon during the commission
14 of a violent crime, and failure to stop for a
15 blue light.

16 Ladies and gentlemen, I remind you that
17 the fact the Defendant was arrested, charged
18 and indicted in this case is not evidence in
19 this case and cannot be considered by you as
20 evidence of guilt in this case. Nor does it
21 create any presumption or inference of guilt.
22 These indictments are simply the formal
23 written instruments which state the charges
24 that are made against the Defendant. It's
25 the formal document by which the case is

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1 brought into this courtroom.

2 Ladies and gentlemen, the Defendant in
3 this case, Mr. Mack, has pled not guilty to
4 these indictments and that plea puts the
5 burden on the State to prove the Defendant's
6 guilt beyond a reasonable doubt.

7 Ladies and gentlemen, a person charged
8 with committing a criminal offense in South
9 Carolina is never required to prove himself
10 innocent. I charge you that it's an
11 important rule of law that the Defendant in
12 a criminal trial, no matter what the
13 seriousness of the charges may be, will
14 always be presumed innocent of the crime for
15 which the indictment was issued unless guilt
16 has been proven by evidence satisfying you,
17 the jury, of that guilt beyond a reasonable
18 doubt.

19 Ladies and gentlemen, this presumption of
20 innocence does not end when you begin your
21 deliberations, but it accompanies the
22 Defendant throughout the trial until you
23 reach a verdict of guilt based on evidence
24 satisfying you of that guilt beyond a
25 reasonable doubt.

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1 Ladies and gentlemen, the presumption of
2 innocence is like a robe or righteousness
3 that is placed about the shoulders of the
4 Defendant And it remains with the Defendant
5 until it's been stripped from him by evidence
6 satisfying you, the jury, of the Defendant's
7 guilt beyond a reasonable doubt.

8 Ladies and gentlemen, the presumption of
9 innocence is not a mere legal theory. It's
10 not a legal phrase we use. It is a
11 substantial right to which every Defendant is
12 entitled unless you, the jury, are satisfied
13 from the evidence of the Defendant's guilt
14 beyond a reasonable doubt.

15 Now, as we said, the State has the burden
16 of proving the Defendant guilty beyond a
17 reasonable doubt.

18 And the term "reasonable doubt" must be
19 given its plain and ordinary meaning.
20 However, to the extent that I may define it
21 for you, reasonable doubt is the kind of
22 doubt that would cause a reasonable person
23 to hesitate to act in the most important of
24 their personal decisions.

25 Ladies and gentlemen, the Defendant is

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1 entitled to every reasonable doubt arising in
2 the case. If applying any issue of fact
3 essential to a conviction you have a
4 reasonable doubt as to how that issue should
5 be resolved, you must resolve that reasonable
6 doubt in favor of the Defendant.

7 Ladies and gentlemen, some of you may
8 have served as jurors in civil cases where
9 you were told that it was only necessary to
10 prove that a fact is more likely true than
11 not true. And that's called such as the
12 greater weight or what we call the pre-
13 ponderance of the evidence.

14 In criminal cases, the State's proof must
15 be more powerful than that. It must be
16 beyond a reasonable doubt.

17 Ladies and gentlemen, proof beyond a
18 reasonable doubt is proof that leaves you
19 firmly convinced of the Defendant's guilt.
20 Now, there are very few things in this world
21 that we know with absolute certainty.

22 And in criminal cases, the law does not
23 require proof that overcomes every possible
24 doubt. If based on your consideration of the
25 evidence you are firmly convinced that the

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1 Defendant is guilty of the crime charged, you
2 must find the Defendant guilty. If, on the
3 other hand, you think there is a real
4 possibility the Defendant is not guilty, you
5 must give the Defendant the benefit of the
6 doubt and find him not guilty.

7 Now, ladies and gentlemen, I remind you
8 that during this trial you and I have certain
9 duties to perform. As the trial judge, it's
10 my responsibility to preside over the trial
11 of the case. And I also have the duty to
12 rule on the admissibility of evidence that's
13 offered during a trial.

14 Ladies and gentlemen, you are to consider
15 only the competent evidence before you. You
16 are to consider only the testimony which has
17 been presented from the witness stand and any
18 other exhibits which were made a part of the
19 record in this case.

20 I have the additional duty to charge you
21 the law that's applicable to this case. As
22 the presiding judge, I'm the sole judge of
23 the law of this case.

24 And it's your duty as jurors to accept
25 and apply the law as I will now state it to

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1 you. If you have any idea as to what the law
2 is or what the law ought to be, and it does
3 not agree with you that I now tell you the
4 law in fact is, you must abandon this idea
5 because you are sworn to accept the law
6 exactly as I state it to you.

7 Ladies and gentlemen, every case tried in
8 this Court with a jury, the jury becomes the
9 sole and exclusive judge of the facts. A
10 trial judge cannot intimate, comment on, or
11 make any statement to a trial jury about the
12 facts of a case. Since you, the jury, are
13 the sole judge of the facts in this case,
14 you're not to infer from what I've said
15 during the progress of this trial, in ruling
16 upon the admissibility of evidence or
17 otherwise or anything that I say now to you
18 in my charge, that I have an opinion about
19 the facts of this case. The law does not
20 allow me to have an opinion as to the facts.

21 Ladies and gentlemen, this is a matter
22 solely for you, the jury, to determine. And
23 I remind you that it's your duty to determine
24 the effect, the value and the weight and the
25 truth of the evidence that's been presented

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1 during this trial.

2 Now, ladies and gentlemen, there are two
3 types of evidence which are generally
4 presented during a trial. Those are direct
5 evidence and circumstantial evidence:

6 Direct evidence directly proves the
7 existence of a fact and does not require
8 deduction.

9 Circumstantial evidence is proof of
10 a chain of facts and circumstances indicating
11 the existence of a fact.

12 Ladies and gentlemen, crimes may be
13 proven by circumstantial evidence. The law
14 makes absolutely no distinction between the
15 weight or value to be given to either direct
16 or circumstantial evidence. However, to the
17 extent the State relies on circumstantial
18 evidence, all of the circumstances must be
19 consistent with each other, and when taken
20 together, point conclusively to the guilt of
21 the accused beyond a reasonable doubt.

22 If these circumstances merely portray the
23 Defendant's behavior as suspicious, the proof
24 has failed.

25 Ladies and gentlemen, I remind you that

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1 the State has the burden of proving the
2 Defendant guilty beyond a reasonable doubt.
3 And this burden rests with the State
4 regardless of whether the State relies on
5 direct evidence, circumstantial evidence or
6 some combination of the two.

7 Ladies and gentlemen, it is your duty to
8 also determine the credibility of the
9 witnesses who have testified in this case.
10 And credibility simply means believability.
11 It becomes your duty as jurors to analyze and
12 to evaluate the evidence and determine which
13 evidence convinces you of its truth.

14 In determining the believability of a
15 witness who has testified in this case, you
16 may believe one witness over several
17 witnesses or several witnesses over one
18 witness.

19 You may believe a part of the testimony
20 of a witness and reject the remaining part of
21 the testimony of that same witness.

22 You may believe the testimony of a
23 witness in its entirety or reject the
24 testimony of a witness in its entirety.

25 You may consider whether any witness

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1 has exhibited to you any interest, bias,
2 prejudice, or other motive in this case. And
3 you can also consider the appearance and
4 manner of a witness while on the witness
5 stand.

6 Now, ladies and gentlemen, you have heard
7 evidence that the Defendant had been
8 convicted of a crime other than the one for
9 which the Defendant is now on trial. This
10 evidence may be considered by you if you
11 concluded it's true, only in deciding whether
12 the Defendant's testimony is believable and
13 for no other purpose.

14 You must not consider the Defendant's
15 prior record as any evidence of the
16 Defendant's guilt of the charge we are trying
17 here today.

18 Now, ladies and gentlemen, the Defendant
19 is charged with separate offenses in this
20 case and you must decide each separately.

21 To begin, the Defendant is charged with
22 three counts of armed robbery. In order to
23 prove the offense of armed robbery, the State
24 must first prove beyond a reasonable doubt
25 that the Defendant took personal property

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1 from the person or presence of another
2 person.

3 Ladies and gentlemen, property is in the
4 presence of a person if it is within that
5 person's reach, inspection, observation or
6 control. So that person could, if not over-
7 come with violence or prevented by fear, keep
8 possession of the property. The State must
9 also prove beyond a reasonable doubt that the
10 Defendant carried the property away intending
11 to permanently deprive the owner of the
12 property, and to keep the property for the
13 Defendant's own use.

14 Ladies and gentlemen, the slightest
15 removal of the property or the complete
16 possession of the property, even for an
17 instant by a Defendant, is sufficient to show
18 a taking and carrying away of the property.

19 Ladies and gentlemen, the taking and
20 carrying away of the property must have been
21 done with violence or by putting the owner of
22 the property in fear of violence.

23 And finally, the State must prove beyond
24 a reasonable doubt that the Defendant was
25 armed with a deadly weapon or by alleging,

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1 either by actions or words, that he was armed
2 while using a representation of a deadly
3 weapon or any object which a person presents
4 during the commission of a robbery,
5 reasonably believed to be a deadly weapon
6 during the robbery.

7 Ladies and gentlemen, the following are
8 just a few examples of instruments that may
9 be deadly weapons: a pistol, a shotgun, a
10 rifle, a dirk, a dagger, a knife, a
11 slingshot.

12 Ladies and gentlemen, a gun may be a
13 deadly weapon even if it is not operating.

14 Now, ladies and gentlemen, if you do not
15 find the Defendant guilty of armed robbery,
16 you may then consider whether the Defendant
17 committed the lesser-included offense of
18 strong arm robbery.

19 Ladies and gentlemen, in order to prove
20 strong arm robbery, the State must prove
21 beyond a reasonable doubt all of the elements
22 that I just explained to you pertaining to
23 armed robbery, except that the Defendant was
24 armed with a deadly weapon.

25 Now, ladies and gentlemen, the Defendant

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1 is also charged with possession of a weapon
2 during the commission of a violent crime.
3 The State must prove beyond a reasonable
4 doubt to prove this charge that the Defendant
5 was in possession of a firearm or visibly
6 displayed what appeared to be a firearm
7 during the commission of a violent crime.

8 A "firearm" means any machine gun,
9 automatic rifle, revolver, pistol, or any
10 weapon which will, is designed to, or may be
11 readily converted to expel a projectile.

12 Ladies and gentlemen, in order to find
13 the Defendant guilty of possession of a
14 weapon during the commission of a violent
15 crime, you must first find the Defendant
16 either guilty of committing or attempting
17 to commit a violent crime.

18 Ladies and gentlemen, armed robbery is
19 a violent crime. And the State must prove
20 beyond a reasonable doubt that the weapon
21 further advanced or helped in the commission
22 of the crime.

23 Now, lastly, ladies and gentlemen, the
24 Defendant is charged with failure to stop for
25 a blue light. In order to prove this

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1 offense, the State must prove beyond a
2 reasonable doubt that the Defendant was
3 driving a motor vehicle, that the Defendant
4 was driving a motor vehicle on a road, street
5 or highway of the State, that the Defendant
6 was signaled to stop by a law enforcement
7 vehicle by means of a siren or flashing
8 light, and that the Defendant did not stop.

9 In determining whether or not there are
10 mitigating circumstances which would justify
11 the defendant's failure to stop for the blue
12 light, you may consider actual road and
13 roadside conditions. Other conditions, such
14 as lighting or weather, officer, driver and
15 passenger safety and any other circumstances
16 you believe to reasonably mitigate the
17 alleged violation.

18 Ladies and gentlemen, an official signal
19 requiring a motorist to stop may be a siren
20 or flashing lights, but both are not
21 required.

22 Ladies and gentlemen, an attempt to
23 increase the speed of a vehicle or in some
24 other manner avoid the pursuing law
25 enforcement vehicle when signaled by a siren

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1 or flashing light may be considered as
2 evidence of failure to stop for a blue light.
3 However, any attempt to increase vehicle
4 speed is merely an evidentiary fact to be
5 taken into consideration by you, along with
6 all the other evidence in this case. And to
7 be given the weight that you, the jury,
8 decides it should receive.

9 Now, ladies and gentlemen, in this case
10 I have permitted you to take notes. Your
11 notes should only be used as aids to your own
12 memory, and should not be allowed to take
13 precedence over your independent memory of
14 facts. The notes are only for the juror's
15 personal use in refreshing recollection of
16 the evidence.

17 When in deliberations at the end of this
18 charge, if a juror who took notes about the
19 testimony of a witness conflicts with your
20 independent memory of that testimony, ladies
21 and gentlemen, you are to rely on your own
22 independent memory.

23 Ladies and gentlemen, some people are
24 better note takers than others, as you know.
25 And, again, it is only to aid you and assist

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1 you in your memory of the testimony and the
2 evidence here.

3 Ladies and gentlemen, those jurors who
4 did not take notes should rely on their
5 independent recollection of the evidence and
6 not be influenced by the fact that another
7 juror may be taking notes in this case.

8 Now, Mr. Foreperson and members of the
9 jury, as you retire to begin your delibera-
10 tions in this case, I want to express the
11 hope that you understand and are mindful of
12 the importance of your responsibility here
13 today. You're not called upon to serve as
14 jurors very often. And the proper
15 performance of that duty requires each of you
16 to reach the height of freeing your mind of
17 all improper influences.

18 Ladies and gentlemen, you and I are
19 acting for the community and that's why we
20 must see to it that this trial is fair and
21 the verdict is just.

22 Now, ladies and gentlemen, don't get the
23 idea that I'm trying to tell you how I think
24 you should decide this case because, again,
25 as I've already told you, under the laws of

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1 the State of South Carolina, you, the jury,
2 are the sole judge of all facts. And it
3 would be highly improper for me to influence
4 you in your performance of that duty.

5 However, ladies and gentlemen, I do want
6 to tell you that as the presiding judge of
7 this court, I am vitally concerned that
8 whatever verdict you reach will be the result
9 of you going back into your jury room and
10 confining your consideration to the evidence
11 and the law that you've heard here in this
12 courtroom, weighing it fairly and impartially
13 as I have every confidence you will.

14 Ladies and gentlemen, everyone is
15 entitled to justice in this case, both the
16 State and the Defense. You owe no support or
17 sympathy to anyone. The Court is of the
18 confirmed opinion that whatever verdict you
19 reach, it will be and shall represent truth
20 and justice for all parties involved.

21 Madam Foreperson, I remind you, your
22 verdict must be unanimous. It must be the
23 verdict of all twelve jurors. And to that
24 end, my law clerk, Caroline, has prepared a
25 verdict form. It has five questions on it,

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1 all of which you must answer. It simply has
2 the case caption and the warrant numbers.

3 And it ask the questions as to Indictment
4 2013-331 the charge of armed robbery "as to
5 Keith Blake, we, the jury, unanimously find
6 the Defendant, Joseph Mack, Jr." -- and it
7 says, check one, either guilty of armed
8 robbery, guilty of strong arm robbery or not
9 guilty.

10 It then goes through as to each of the
11 different alleged victims in this case.

12 Then ladies and gentlemen, on the fourth
13 question it says, as to indictment 2013-334,
14 the charge of failure to stop for a blue
15 light. We, the jury, unanimously find the
16 Defendant, Joseph Mack, Jr., again, either
17 guilty or not guilty.

18 And lastly, as to the charge of
19 possession of a weapon during the commission
20 of a violent crime, again, your choice is
21 guilty and not guilty.

22 Madam Foreperson, there is a place for
23 you to sign and date this form. When you
24 have completed your deliberations and reached
25 a verdict, I need you to knock on your jury

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1 room door. And we're going to accept you
2 back into the courtroom where we're going to
3 go ahead and publish your verdict. All
4 right.

5 Madam Foreperson, and members of the
6 jury, for the very last time, I am going to
7 send you back to your jury room. And I'm
8 going to tell you not to begin your
9 deliberations. If there's something further
10 the lawyers want me to charge you on the law,
11 I will bring you back in here and I will
12 charge you further.

13 If not, ladies and gentlemen, we're going
14 to send in the verdict form as well as the
15 other evidence that's been entered into the
16 record. And that will be your signal to
17 begin your deliberations.

18 Ladies and gentlemen, I also want to
19 point out that while you have seen my court
20 reporter take down everything that's been
21 said in this case, there is not yet a
22 transcript of the trial. What I can do if
23 you want testimony played back, is play back
24 an entire witness' testimony. So ladies and
25 gentlemen, if you do need that for some

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1 reason, you need to send in word by your
2 foreperson. We will bring you back out here
3 and we will cue it up.

4 But I will remind you, ladies and
5 gentlemen, I'm required if you ask for any
6 particular testimony, I have to play that
7 entire person's testimony, not just portions
8 of it. All right?

9 So with that said, ladies and gentlemen,
10 do not begin your deliberations until we send
11 you the actual verdict form and the evidence.
12 I appreciate your attention and we will be
13 with you shortly.

14 (JURY OUT @ 2:30 P.M.)

15 THE COURT: Any additions or
16 objections to the charge from the State?

17 SOLICITOR TAYLOR: No, Your Honor.

18 THE COURT: From the Defense?

19 MR. SCHWACKE: Your Honor, near
20 the end you made some reference to truth and
21 justice. And my understanding is the --
22 using "truth" has fallen into some disfavor
23 because the jury is actually not on a search
24 for the truth. They're looking for evidence
25 and proof of guilt beyond a reasonable doubt,

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1 which is not necessarily truth. And I didn't
2 get the exact context. It's just that when
3 you said that word, it just got my attention.

4 THE COURT: I'll tell you exactly
5 what I said. *"Everyone is entitled to*
6 *justice in this case, both the State and the*
7 *Defendant. You owe no support or sympathy to*
8 *anyone. The Court is of the confirmed*
9 *opinion that whatever verdict you reach will*
10 *represent truth and justice for all parties*
11 *involved."*

12 MR. SCHWACKE: Your Honor, I
13 don't have the case in front of me, but it
14 seems like that's fallen into disfavor. I
15 don't know how to cure that necessarily, but
16 ---

17 THE COURT: Well, you need to find
18 a case for me.

19 MR. SCHWACKE: Yes, ma'am.

20 THE COURT: The case is *State v.*
21 *Daniels.*

22 MR. SCHWACKE: Daniels?

23 THE COURT: Daniels.

24 MR. SCHWACKE: Your Honor, have
25 you got the cite on that?

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1 LAW CLERK: I've got it right
2 here. It's 737 S.E.2d 473.

3 MR. SCHWACKE: 470?

4 LAW CLERK: 473.

5 MR. SCHWACKE: 473.

6 THE COURT: The only thing -- I
7 see that the argument they're making is that
8 it's somehow burden shifting, although I
9 think that's quite tortured. But it appears
10 they all agree so -- (pause).

11 I can understand their being an objection
12 to the word "fairness", but I have a hard
13 time -- you know, we talk about the trial is
14 supposed to be a search for the truth. I
15 mean, I'm having a hard time with this
16 opinion that Pleicones wrote. And it's
17 actually pretty brief for him, quite frankly.

18 MR. SCHWACKE: I think they say
19 it's okay for us to argue that, but I don't
20 think they want the Court necessarily.

21 THE COURT: Oh, and I agree with
22 the word fairness but literally we talk about
23 truth and justice. I mean, how in goodness
24 sakes do you get around that?

25 MR. SCHWACKE: Apparently it's

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1 not favored to use ---

2 THE COURT: How do you get around
3 -- I don't see how you get around justice.
4 That just seems ridiculous. We refer to our
5 Supreme Court Judges as Justices, for
6 goodness sakes. So I think that sounds a
7 little tortured.

8 I see what they're -- I guess the argu-
9 ment would be is that by burden shifting
10 somehow the defendant has to prove his
11 innocence or truth, you know. And to find
12 the truth whatever it is. And I -- I also
13 find it quite curious that after they decided
14 this, but apparently they didn't realize the
15 trickle-down effect.

16 David, what do you suppose I do? I mean,
17 I can certainly bring them back in here and
18 say I want to make sure you all understand
19 that a defendant is presumed innocent,
20 obviously, of any and all charges. He is not
21 required to prove his innocence. No one is
22 even required to prove truly what happened.
23 The burden is on the State to prove this man
24 guilty of these offenses beyond a reasonable
25 doubt. I mean is that -- something along

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1 those lines or if you want to craft
2 something, I'm fine. I just don't need a lot
3 of time to pass between doing it.

4 MR. SCHWACKE: Well, Your Honor,
5 I ---

6 THE COURT: Well, I can tell you
7 this case could -- but if it's not -- it's
8 not as if for an appeal purpose it's going to
9 be a problem, although I am making a comment
10 on the record that it would have been nice
11 for us to get an email blast, considering
12 it's in our bench book. This is a 2012 case?
13 A '10 case? No, '12. It was a 2012 case.
14 So, again, I would agree that in that case
15 Tommy Russo used "fairness and truth and
16 justice", which is maybe a little more
17 problematic.

18 You tell me what you want, Mr. Schwacke.
19 I'll charge them whatever you want me to.

20 MR. SCHWACKE: Just one moment.

21 THE COURT: You got it.

22 MR. SCHWACKE: Your Honor, just
23 for the record I really believe that a
24 curative instruction might just draw undue
25 attention to the comment anyway. So I, we

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1 don't believe there's a way to craft it
2 without doing that. So if you could note our
3 objection on the record for that, although
4 we're not requesting a curative instruction.

5 THE COURT: All right. Well, as
6 much I am inclined to do one per your
7 objection, I truly believe that based on the
8 totality of the charge and the burdens set
9 out adequately, I think it more than covers
10 the presumption of innocence. The burden of
11 proof is on the State. And I think looking
12 at it in totality our Court of Appeals and
13 Supreme Court will more than find it
14 sufficient and that it did not burden shift
15 in any way, so. Yes, ma'am?

16 SOLICITOR TAYLOR: Your Honor, just
17 for the State's position. Based on the case
18 that Mr. Schwacke has cited, the State
19 believes that a curative instruction would be
20 appropriate, something along the lines of
21 nothing in the Court's instructions were
22 intended to shift the burden of proof. And,
23 again, talk about how the State has the
24 burden of proof and what that burden of proof
25 is. We certainly don't want to leave it at

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1 the point where it is if it's going to be
2 appealed or there is a chance of it being
3 overturned based on that one sentence. So we
4 would just -- that would be our position.

5 THE COURT: And, of course, I
6 would have to concern myself with that if I
7 listened to Mr. Schwacke and a strategic
8 decision whether or not it would be
9 overturned on PCR.

10 MR. SCHWACKE: And that's where
11 I ---

12 THE COURT: All right. I'm going
13 to follow your wishes, Mr. Schwacke and I'm
14 going to leave it as it is. I do think
15 taking and looking at the entire charge, I
16 certainly thought that a charge is eight and
17 a half pages long, presumption of innocence
18 and reasonable doubt takes two of those
19 pages.

20 So I am comfortable in the totality,
21 looking at the totality of the charge that
22 there was no burden shifting.

23 MR. SCHWACKE: Thank you, Your
24 Honor.

25 THE COURT: Okay. Let's go ahead

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1 and get the evidence together. Have y'all
2 looked at it? What are we going to do about
3 being able to play back those videos back
4 there?

5 MR. SCHWACKE: I believe they've

6 ---

7 SOLICITOR TAYLOR: We don't have a
8 clean laptop, Your Honor.

9 THE COURT: You don't?

10 SOLICITOR TAYLOR: It's got other
11 cases and it also has internet capability.

12 THE COURT: Okay. Madam Bailiff,
13 will you just instruct them if they want to
14 see the videos, they need to tell us which
15 ones and we'll bring them out and play them
16 for them, okay?

17 SOLICITOR TAYLOR: Should we
18 just hold them out here. That way if they
19 ask for them, cue them up?

20 THE COURT: They need to know that
21 they're there, though. So I think you'd
22 better give them to them.

23 (COUNSEL APPROVAL OF EXHIBITS)

24 THE COURT: All right. Y'all have
25 it. Everything is good?

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1 BAILIFF: We've got it. Thank
2 you.

3 (ALTERNATE EXCUSED @ 2:45 P.M.)

4 (JURY IN DELIBERATION @ 2:45 P.M.)

5 (COURT IN RECESS)

6 (NOTIFIED OF JURY QUESTION @ 3:50 P.M.)

7 (DEFENDANT PRESENT)

8 (JURY IN @ 3:50 P.M.)

9 THE COURT: We have a note from the
10 jury, they are requesting to view the
11 surveillance video again. So we are going to
12 bring them in to see that video.

13 (JURY OUT @ 4:12 P.M.)

14 (COURT IN RECESS)

15 (NOTIFICATION JURY QUESTION @ 4:55 P.M.)

16 (DEFENDANT PRESENT)

17 THE COURT: We have everyone in
18 the courtroom again for the record. The jury
19 has sent me a note with four questions on it.

20 The first question is, the jury would
21 like to see what the Judge said on what
22 constitutes armed robbery and strong arm
23 robbery. And with agreement between the
24 lawyers, back in chambers they both have
25 agreed to send in the charge, the written

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1 charge on armed robbery and strong arm
2 robbery.

3 Also, the jurors requested better
4 explanation of what a reasonable doubt is.
5 So we're going to send them back also, with
6 both sides' consent, the reasonable doubt
7 charge that I charged them.

8 They also have requested to see the
9 original statements on Blake, Meyers, and
10 Rhodan's receipt of property. And we agreed
11 in my note, I'm just going to put that these
12 property receipts were not entered into
13 evidence.

14 And number four, two jurors need to
15 use the phone. Is that possible? I said,
16 yes, but do not discuss the case. So, with
17 that said, my bailiffs will assist you. All
18 right. Any objection from the State?

19 SOLICITOR TAYLOR: No, Your Honor.

20 THE COURT: From the Defense?

21 MR. SCHWACKE: No, Your Honor.

22 THE COURT: Thank you, y'all. I'm
23 going to send the note back with them.

24 Obviously, we will get it marked and get it
25 back along with -- were you able to ---

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1 COURT REPORTER: Court's Exhibit
2 Number 2.

3 (SO MARKED AS COURT'S EXHIBIT 2)

4 THE COURT: Got it. Does anyone
5 have any objection to the bailiff letting
6 them know that if they are -- if they do
7 believe they're going to deliberate lengthy,
8 that we need about an hour and a half in
9 trying to order dinner if necessary? Does
10 anyone have a problem with that?

11 SOLICITOR TAYLOR: No, Your Honor.

12 MR. SCHWACKE: No, Your Honor.

13 THE COURT: Okay. All right. Is
14 that about right here?

15 CLERK: About an hour.

16 THE COURT: About an hour. All
17 right. We will be at-ease then y'all until
18 we hear back, okay?

19 SOLICITOR TAYLOR: Thank you.

20 THE COURT: Thank you.

21 (COURT IN RECESS)

22 (NOTIFICATION OF JURY QUESTION)

23 (DEFENDANT PRESENT)

24 THE COURT: We just need to put it
25 on the record just real quickly. The jury

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1 wants to hear the charge on possession of a
2 weapon during the commission of a violent
3 crime.

4 And I think you agreed on the other,
5 armed robbery, strong arm robbery, just to
6 send that portion of the charge back to the
7 jury; is that correct? From the State?

8 SOLICITOR TAYLOR: Yes, Your Honor.

9 THE COURT: From the Defense?

10 MR. SCHWACKE: It is.

11 THE COURT: And another juror
12 requested an Ibuprofen. All right.

13 SOLICITOR TAYLOR: Thank you, Judge.

14 THE COURT: Any objection from
15 anyone?

16 SOLICITOR TAYLOR: No, Your Honor.

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: All right. Well,
19 they're also ordering pizza for the jury and
20 they've indicated it'll take about an hour,
21 hour and a half to get it. So the jury's
22 aware of that. So I think we can all settle
23 in. If you all need to go grab something.

24 SOLICITOR TAYLOR: If I could take
25 just a moment.

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1 THE COURT: You're okay?

2 SOLICITOR TAYLOR: Yes, ma'am.

3 THE COURT: You okay. Y'all all
4 right. Well, you may want to send someone
5 out to grab some food, okay?

6 MR. SCHWACKE: We just want to
7 share in the Ibuprofen.

8 THE COURT: Okay. Well, anyway.
9 Carolina (law clerk) is going to bring you
10 this portion. Just that portion's the
11 charge.

12 (SO MARKED AS COURT'S EXHIBIT 3)

13 (COURT IN RECESS)

14 (NOTIFICATION OF JURY QUESTION 7:40 P.M.)

15 (DEFENDANT PRESENT)

16 THE COURT: I'm thinking now's a
17 good time for an Allen Charge, does anyone
18 else? Okay. All right. Give me one minute,
19 and then I'll ---

20 (SO MARKED AS COURT'S EXHIBIT 4)

21 THE COURT: Okay. Let's bring the
22 jury out.

23 (JURY IN 7:42 P.M.)

24 THE COURT: Welcome back, ladies
25 and gentlemen. Madam Foreperson, I received

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1 a note from you that ask me what happens when
2 the jury doesn't reach an agreement on all of
3 the indictments. You know, I'm going to give
4 you an additional charge to hopefully assist
5 you in that question and problem.

6 I want y'all to understand that it's --
7 when you even have to have two people agree
8 to something it's often difficult. And when
9 you request and require twelve people, of
10 course, it becomes that much more difficult
11 to reach a unanimous verdict.

12 Ladies and gentlemen, in those cases
13 absolute certainty cannot be reached or
14 expected. However, you have a duty to make
15 every reasonable effort to reach a unanimous
16 verdict on each of the indictments. Ladies
17 and gentlemen to do this, you need to consult
18 with one another. You need to talk to each
19 other. You need to express your views,
20 consider each other's views, and discuss the
21 evidence with the objective of reaching a
22 verdict, if you can do so without doing
23 violence to your own individual judgment.

24 Ladies and gentlemen, each of you must
25 decide this case for yourself, but do so only

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1 after discussion and in personal considera-
2 tion of the evidence in the case with your
3 fellow jurors.

4 Ladies and gentlemen, although the
5 verdict of the jury must be unanimous, every
6 one of you has the right to your opinion.
7 Again, no juror is expected to give up this
8 opinion based on reasoning satisfactory to
9 themselves merely for the purpose of being in
10 agreement. Ladies and gentlemen, the verdict
11 you agree to must be your own verdict, the
12 result of your own convictions. And, again,
13 you should not give up your firmly held
14 beliefs merely to be in agreement with your
15 fellow jurors.

16 Ladies and gentlemen, I remind you that
17 you are not advocates for one side or the
18 other. In the course of your deliberations,
19 please do not hesitate to reexamine your own
20 views and to change your opinion if you are
21 convinced you are wrong. But do not
22 surrender your honest convictions as to the
23 weight or the effect of the evidence solely
24 because the opinion of your fellow jurors is
25 contrary to your opinion, or for the mere

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1 purpose of returning a verdict, ladies and
2 gentlemen.

3 The goal is that this case be ended
4 without a single one of you doing violence to
5 your conscience. Again, it's your duty as a
6 juror to consult with one another, deliberate
7 with a view towards reaching an agreement.
8 Again, only if you can do so without doing
9 violence to your individual judgment.

10 Ladies and gentlemen, if you do not agree
11 on a verdict as to certain indictments in
12 this case, I have to, as to that charge,
13 declare what's called a mistrial. In that
14 case, it doesn't mean that anyone wins as to
15 that charge or anyone loses as to that
16 charge.

17 It basically means is that we will then
18 pull another jury and bring another twelve
19 people back here to consider that charge.
20 Ladies and gentlemen, the same lawyers will
21 come, the same parties will all be involved,
22 and they'll pretty much say all the same
23 things again. And I don't have any reason to
24 believe that twelve other people of this
25 county are in a better position to determine

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1 this case than you twelve here.

2 Ladies and gentlemen, with that said, I'm
3 going to ask that you go back to your jury
4 room and one more time try to reach a
5 unanimous verdict as to each of the
6 indictments.

7 Madam Foreperson, is there anything
8 further you need?

9 MADAM FOREPERSON: No, Your Honor.

10 THE COURT: Thank you. All right.
11 You're excused back to your jury room. Thank
12 you.

13 (JURY OUT 7:45 P.M.)

14 THE COURT: Okay. Any exceptions
15 or additions?

16 SOLICITOR TAYLOR: None from the
17 State, Your Honor.

18 MR. SCHWACKE: None from the
19 Defense.

20 THE COURT: All right. Y'all
21 we'll be at-ease until we hear from them,
22 okay?

23 SOLICITOR TAYLOR: Thank you, Your
24 Honor.

25 MR. SCHWACKE: Thank you, Your

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1 Honor.

2 (COURT IN RECESS)

3 (JURY NOTIFICATION 8:15 P.M.)

4 (DEFENDANT PRESENT)

5 THE COURT: Ladies and gentlemen,
6 It's my understanding that the jury has
7 reached a verdict. I'm going to please ask
8 if anyone can't contain themselves when the
9 verdict is read, that they remove themselves
10 at this time. It would be unfortunate, but I
11 will take you into custody if there's any
12 noise or any outburst. All right? (No
13 response). Go ahead and bring the jury in.

14 (JURY IN 8:15 P.M.)

15 THE COURT: Madam Foreperson, I
16 understand the jury's reached a verdict.

17 MADAM FOREPERSON: Yes, Your Honor.

18 THE COURT: Would you please hand
19 it to the bailiff.

20 MADAM FOREPERSON: (Tenders)

21 BAILIFF: (Tenders verdict form to
22 Judge)

23 THE COURT: (Upon review) -- Mr.
24 Mack, you'll rise, please, with your
25 attorneys.

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1 DEFENDANT: (Complies)

2 THE COURT: In the case of the
3 State of South Carolina versus Joseph Mack,
4 Jr., Defendant, as to indictment 2013-331,
5 the charge of armed robbery as to Keith
6 Blake. We, the jury, unanimously find the
7 Defendant, Joseph Mack, Jr., guilty of strong
8 arm robbery.

9 As to indictment 2013-332, the
10 charge of armed robbery as to Jacquelyn
11 Meyers. We, the jury, unanimously find the
12 Defendant, Joseph Mack, Jr., guilty of strong
13 arm robbery.

14 As to indictment 2013-333, the
15 charge of armed robbery as to John Rhodan.
16 We, the jury, unanimously find the Defendant,
17 Joseph Mack, Jr., guilty of strong arm
18 robbery.

19 As to indictment number 2013-334,
20 the charge of failure to stop for a blue
21 light. We, the jury, unanimously find the
22 Defendant, Joseph Mack, Jr., guilty.

23 As to indictment number 2013-333,
24 the charge of possession of a weapon during
25 the commission of a violent crime. We, the

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1 jury, unanimously find the Defendant, Joseph
2 Mack, Jr., not guilty.

3 Signed by our Foreperson and dated.

4 Ladies and gentlemen of the jury if this
5 is your verdict, will you please indicate by
6 raising your right hand.

7 (UNANIMOUS AFFIRMATIVE RESPONSE)

8 THE COURT: And all the jurors
9 have raised their hand.

10 Mr. Schwacke, would you like this
11 jury individually polled?

12 MR. SCHWACKE: Yes, Your Honor,
13 I'm sorry, for the record.

14 THE COURT: That's all right.

15 Ladies and gentlemen, when I state
16 your name, if you would just raise your hand
17 and I'm going to ask you if this is your
18 verdict. Please answer yes or no.

19 Then I will ask you, is this still your
20 verdict. Please answer yes or no.

21 All right. If you would like to go and
22 sit y'all, y'all can ---

23 Teresa Rodemacher.

24 JUROR NUMBER 124: (Raises hand)

25 THE COURT: Ma'am, is this your

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1 verdict?

2 JUROR NUMBER 124: Yes, ma'am.

3 THE COURT: Is this still your

4 verdict?

5 JUROR NUMBER 124: Yes, ma'am.

6 THE COURT: Shawn Abrams.

7 JUROR NUMBER 1: (Raises hand)

8 THE COURT: Sir, is this your

9 verdict?

10 JUROR NUMBER 1: Yes, ma'am.

11 THE COURT: Is this still your

12 verdict?

13 JUROR NUMBER 1: Yes, Your Honor.

14 THE COURT: Ms. Ellis?

15 JUROR NUMBER 179: (Raises hand)

16 THE COURT: Ma'am, is this your

17 verdict?

18 JUROR NUMBER 179: Yes, Your Honor.

19 THE COURT: Is this still your

20 verdict?

21 JUROR NUMBER 179: Yes, Your Honor.

22 THE COURT: Gamaliel Taylor.

23 JUROR NUMBER 152: (Raises hand).

24 THE COURT: Sir, is this your

25 verdict?

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1 JUROR NUMBER 152: Yes, Your Honor.

2 THE COURT: Is this still your
3 verdict?

4 JUROR NUMBER 152: Yes, Your Honor.

5 THE COURT: Christopher
6 McCullough.

7 JUROR NUMBER 98: (Raises hand)

8 THE COURT: Sir, is this your
9 verdict?

10 JUROR NUMBER 98: Yes, Your Honor.

11 THE COURT: Is this still your
12 verdict?

13 JUROR NUMBER 98: Yes, Your Honor.

14 THE COURT: Pauletoria Jones.

15 JUROR NUMBER 80: (Raises hand)

16 THE COURT: Is this your verdict?

17 JUROR NUMBER 80: Yes, Your Honor.

18 THE COURT: Is this still your
19 verdict?

20 JUROR NUMBER 80: Yes, Your Honor.

21 THE COURT: Ms. Manuel.

22 JUROR NUMBER 94: (Raises hand)

23 THE COURT: Is this your verdict?

24 JUROR NUMBER 94: Yes, Your Honor.

25 THE COURT: Is this still your

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1 verdict?

2 JUROR NUMBER 94: Yes, Your Honor.

3 THE COURT: Ms. Lawrence.

4 JUROR NUMBER 88: (Raises hand)

5 THE COURT: Is this your verdict?

6 JUROR NUMBER 88: Yes, Your Honor.

7 THE COURT: Is this still your

8 verdict?

9 JUROR NUMBER 88: Yes, Your Honor.

10 THE COURT: Ms. Taylor.

11 JUROR NUMBER 153: Yes, Your Honor.

12 THE COURT: Is this your verdict?

13 JUROR NUMBER 153: Yes, Your Honor.

14 THE COURT: Is this still your

15 verdict?

16 JUROR NUMBER 153: Yes, Your Honor.

17 THE COURT: Mr. Davis.

18 JUROR NUMBER 36: (Raises hand)

19 THE COURT: Sir, is this your

20 verdict?

21 JUROR NUMBER 36: Yes, Your Honor.

22 THE COURT: Is this still your

23 verdict?

24 JUROR NUMBER 36: Yes, Your Honor.

25 THE COURT: Mr. Fristoe.

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1 JUROR NUMBER 50: (Raises hand)

2 THE COURT: Sir, is this your
3 verdict?

4 JUROR NUMBER 50: Yes, Your Honor.

5 THE COURT: Is this still your
6 verdict?

7 JUROR NUMBER 50: Yes, Your Honor.

8 THE COURT: Ms. Rasque.

9 JUROR NUMBER 125: (Raises hand)

10 THE COURT: Is this your verdict?

11 JUROR NUMBER 125: Yes, ma'am.

12 THE COURT: Is it still your
13 verdict?

14 JUROR NUMBER 125: Yes, Your Honor.

15 THE COURT: Thank you.

16 Is there anything further required
17 of this jury?

18 MR. SCHWACKE: None, Your Honor.

19 THE COURT: Ladies and gentlemen,
20 as you know it is a very late hour and I
21 would like nothing more than to be able to
22 send you home, not return for the remainder
23 of the week, but I am unable to do that. We
24 are starting another jury trial in the
25 morning and I am going to need to have enough

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1 jurors to potentially be able to pull that
2 jury.

3 Ladies and gentlemen, we are going to
4 start back up at 9:30 tomorrow morning. If
5 anyone has an extreme problem when I release
6 you, I want you to go back and tell the
7 bailiffs and I'll come back and address it if
8 I can. We are just short of enough people to
9 be able to pull this second jury so I cannot
10 release you all.

11 So ladies and gentlemen, again, if you
12 are at all able to stay with us, the next
13 trial is expected to last no more than
14 through Thursday. We are going to begin in
15 the morning and we will finish Thursday, all
16 right? So with that said, ladies and
17 gentlemen, I appreciate the hard work you did
18 on this case.

19 I know these are not easy issues. People
20 rarely end up sitting in the position you've
21 been sitting in in the last two days. And,
22 again, we understand and appreciate how hard
23 you've worked. I've never seen such an
24 attentive jury. And I've been a Judge for
25 eight years and a lawyer for a lot longer

State of South Carolina v Joseph Mack, Jr.
Case No. 13-GS-08-0331 - Jury Trial of March 17-18, 2014
Victim Statements
Before The Honorable Carmen Mullin

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1 than that. And I know you've worked very
2 hard. We all want to thank you for that.

3 Ladies and gentlemen, we're going to make
4 sure you get escorted to your cars. I want
5 to make sure everyone gets home safely. And,
6 again, if anyone needs to discuss with me and
7 has a serious problem with coming back in the
8 morning, I need you to let me know, okay? I
9 appreciate it, y'all. You're excused.

10 (JURY DISMISSED)

11 SOLICITOR TAYLOR: Mr. Condon's gone
12 to get the sentencing sheet, Your Honor.

13 THE COURT: Thank you.

14 SOLICITOR TAYLOR: Can we meet on the
15 other case, Your Honor, and ---

16 THE COURT: And, of course, we can
17 do it in the morning as well.

18 I do have only one juror that has a
19 problem and I need to go check and see who
20 that is. And, again, were pretty sure,
21 weren't we yesterday of being able to do
22 fifteen strikes. Isn't that what we were
23 worried about? I think we were. All right.
24 I'm going to go deal with that person. I'll
25 just be right outside the door, okay.

State of South Carolina v Joseph Mack, Jr.
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1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 THE COURT: Mr. Schwacke, y'all
4 are free to stay right there, if y'all just
5 want to stand there.

6 MR. SCHWACKE: (Stands with
7 client)

8 THE COURT: All right. I have
9 heard the case. I know there's a criminal
10 record. And Mr. Schwacke is there anything
11 you would like to say on Mr. Mack's behalf,
12 from his family?

13 SOLICITOR TAYLOR: Your Honor,
14 I'm sorry to interrupt. The victims do not
15 wish to address the Court themselves.

16 THE COURT: Okay.

17 SOLICITOR TAYLOR: However, they
18 asked that I convey to you, Your Honor,
19 obviously we respect the jury's verdict but
20 this was an incident that put them in fear of
21 their life.

22 Mr. Blake told me while we were waiting
23 on the jury's verdict, that the next day he
24 actually went out and purchased a gun.

25 It still effects them daily as they do

State of South Carolina v Joseph Mack, Jr.
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Victim Statements
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1 their business on truck yards, driving by
2 themselves at night. They would and the
3 State would ask for the maximum.

4 THE COURT: All right. Mr.
5 Schwacke.

6 MR. SCHWACKE: Thank you, Your
7 Honor. You are aware of our record. You
8 heard the testimony by Mr. Mack. At times,
9 he has admitted skating on the outside of the
10 wall, but his record of offenses that he's
11 been convicted of, none of them are violent
12 offenses. The information that he provided
13 to the Court during his testimony today is
14 the exact same testimony he told our screener
15 within a month of his being arrested for this
16 offense. And that's been his position pretty
17 much consistently since.

18 Your Honor is aware that he has children.
19 He testified.

20 He has four hundred and thirty six days
21 (436) of time credit for this offense. He
22 does have a number of family members here.
23 And I understand he has an aunt, Vermeil
24 Doctor, that does wish to address the Court
25 on his behalf.

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1 THE COURT: Okay. I'm happy to
2 hear from her.

3 MS. DOCTOR: Good evening, Your
4 Honor.

5 THE COURT: Good evening. And,
6 ma'am, your name is Vermeil Doctor?

7 MS. DOCTOR: Vermeil Doctor.

8 THE COURT: Thank you, ma'am.

9 MS. DOCTOR: I just want to say
10 that I been here every day of this trial.

11 And from what I've heard and what I've
12 seen, and what I know of my nephew, I just
13 ask that you please take into consideration
14 he's not a violent person. He's never been a
15 violent person.

16 He's got a wife and a two-year-old child.
17 And I hope that you take that into considera-
18 tion also when you sentence him. Thank you.

19 THE COURT: Thank you, Ms. Doctor.

20 MR. SCHWACKE: Your Honor, Mr.
21 Mack has written something that he's asked me
22 to read to the Court. He just handed it to
23 me so we're testing out my bifocal contacts.
24 Another reference to us getting old. But
25 Your Honor he writes, (reading):

State of South Carolina v Joseph Mack, Jr.
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1 *"My gracious and loving Father has*
2 *put this on my heart to present these words.*
3 *This is to the Judge, the jury, the policemen*
4 *who I failed to stop for, and everyone who*
5 *took their time to be here against me or in*
6 *my support. I come before you right now to*
7 *apologize. Thank you God for forgiving me --*
8 *I have made many mistakes in my life. I take*
9 *the blame for it. You are a God of*
10 *forgiveness. I've already asked you to*
11 *forgive me. I make a commitment to dedicate*
12 *my life to you. I will obey and follow your*
13 *plans and purpose for me. Father, I know you*
14 *have forgiven me of all my wrongdoing. I ask*
15 *that you forgive my enemies and anyone I've*
16 *ever hurt in my life. And for myself, God*
17 *has helped me to understand that I can't*
18 *change the way things happen the date of*
19 *January the 6th. But I can change what*
20 *happens to my future. At the same time, I*
21 *surrender all of my bitterness and my low*
22 *self-esteem to you God and the people in the*
23 *sound of my voice. By the grace of God I was*
24 *placed in the Hill-Finklea Detention Center*
25 *and I gave that time of my imprisonment and*

State of South Carolina v Joseph Mack, Jr.
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SENTENCE

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Before The Honorable Carmen Mullin

1 done a self-inventory of my life. And I
2 also used that time to study that -- take up
3 courses from Emerson Bible College, which I
4 have maintained a ninety-five percent (95%)
5 average so far. I also have said a prayer
6 and made a personal commitment to God.
7 Instead of allowing this time to be
8 depression and despair, I gaze it as a
9 stepping stone. I also completed my Work
10 Keys Class and graduated. I've already ask
11 God for my release so that he can prepare me
12 to face society and my responsibility when I
13 am released as one who has learned his lesson
14 and benefitted from his mistakes in his life.
15 I have been taught that I can't go back to
16 the same environment. So I thank you, the
17 Judge and the jury and the people of this
18 court for giving me this opportunity to share
19 deserving blessings with a deserving God who
20 has been gracious to me. Most of all, thank
21 you, God, for loving and taking care of me
22 and looking beyond my thoughts to see my
23 needs. Thank you all."

24 Your Honor, we would ask that you be
25 as lenient as possible. I, again, this is a

State of South Carolina v Joseph Mack, Jr.
Case No. 13-GS-08-0331 - Jury Trial of March 17-18, 2014
SENTENCE

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Before The Honorable Carmen Mullin

1 person who's in his forties and without a
2 conviction for a violent offense. He is
3 working. He's trying to provide for a
4 family. And we thank Your Honor for any
5 consideration that you can give to those
6 things.

7 THE COURT: Anything further?

8 On indictment 2013-331 for strong
9 arm robbery, the sentence of this Court is
10 that you be committed to the Department of
11 Corrections for a period of fifteen (15)
12 years.

13 On indictment 2013-332 for strong
14 arm robbery, the sentence of this Court is
15 you be committed to the Department of
16 Corrections for a period of fifteen (15)
17 years.

18 On indictment 2013-333 for strong
19 arm robbery, the sentence of this Court is
20 you be committed to the Department of
21 Corrections for a period of fifteen (15)
22 years.

23 On indictment number 2013-330 for
24 failure to stop for a blue light, without
25 injury or death, the sentence of this Court

State of South Carolina v Joseph Mack, Jr.
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SENTENCE

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1 is you be committed to the Department of
2 Corrections for a period of three (3) years
3 to run consecutively to the other ones.

4 I'm giving you credit for the time you've
5 served. Good luck to you, Mr. Mack.

6 MR. SCHWACKE: Thank you.

7 SOLICITOR TAYLOR: Thank you, Your
8 Honor.

9 (CONCLUDED)

10

11

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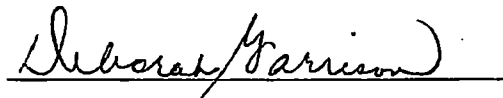
State of South Carolina v Joseph Mack, Jr.
Case No. 13-GS-08-0331 - Jury Trial of March 17-18, 2014
Certificate of Court Reporter
Before The Honorable Carmen Mullin

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CERTIFICATE OF COURT REPORTER

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 9th Judicial
Circuit, hereby certify that the foregoing is
a complete and accurate transcript of the
jury trial held in the within action on March
17th and 18th, 2014; before The Honorable
Carmen Mullin;

I further certify that I am neither
kin nor counsel to any of the parties and
have no interest in the outcome of this
action.



Deborah Garrison

Charleston, South Carolina

July 18, 2014

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Berkelley

Joseph Mack Jr. #359321
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-08-2874

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached to the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Ninth Judicial Circuit
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013GS0800330, Failure to stop for a blue light
 - (b) 2013 GS0800331, 332, 333, Armed Robbery
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3-18-14, Three (3) Years Consecutive, Infra.
 - (b) 3-18-14, Fifteen (15) Years

JM

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXXXX _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appealed Dismissed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 10-21-15 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2015 - UP - 495 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) State and Federal Constitutional Violations and
Violations of State and Federal Precedent
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Addendum to PCR
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) This is the first application after direct appeal.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. David Schwacke, Public Defender, P.O. Box 1687, Moncks Corner SC 29461
- ii. Lanellie Cantey Durant Appellate Defender, P.O. Box 11589, Columbia, SC 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- Vacation of the Conviction and Sentence
20. Are you now under sentence from any other court that you have not challenged?
- NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Joseph Mack

SWORN to and subscribed before me this 15th
day of December, 2015.

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

2015 DEC 22 PM 4:48
KERRY F. SHOWN
CLERK OF COURT
TREASSEL COUNTY, SC

01150

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
15th day of December, 2015.

Virginia Robinson
Notary Public

My Commission Expires: May 20, 2021

FILED
2015 DEC 22 PM 4:48
MARY P. BROWN
CLERK OF COURT
SPRINKLEY COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)JOSEPH MACK JR., # 359321)

Full name and prison number (if any) of Applicant)

Vs.)

THE STATE OF SOUTH CAROLINA)
RESPONDANT)

IN THE COURT OF COMMON PLEAS

2015-CP-08-2874

ADDENDUM TO POST

CONVICTION RELIEF APPLICATION

Comes now, the applicant, and for his grounds for relief, will show as follows:

Ground One:

(a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

1. That trial counsel's representation in trial was deficient in that his conduct undermined the proper functioning of the adversarial process, and as a result of the deficiency in performance, the applicant was irreparably prejudiced and denied a fair trial in which there is a reasonable probability that the outcome would have been different.

2. That the deprivation of effective assistance of trial counsel denied the applicant due process, equal protection of the law, and effective representation in violation of amendments six and fourteen of the United States Constitution and Article 1. Section three and fourteen of the South Carolina Constitution.

3. That the irreparable prejudice resulting from trial counsel's ineffectiveness is contrary to Federal precedent as delineated by Strickland vs. Washington, 104 S.Ct. 2052 (1984) and progeny.

Ground Two:

(b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

4. That Appellate Counsel was malfeasant and ineffective in research and preparation of the applicant's direct appeal by failing to provide any useful analysis, research and argue pertinent citations, of argue significant issues that were preserved by defense objections, and which were viable for appellate review. As a result and ramification, the applicant was irreparably prejudiced in his appeal, in which the outcome would have been diligently advocated for the applicant on direct review from his trial.

5. That the deprivation of effective assistance of appellate counsel denied the applicant his due process and statutory right to appeal, equal protection of the law, and effective representation in violation of amendments six and fourteen for the United States Constitution and Article 1. section three and fourteen of the South Carolina Constitution.

2015 DEC 22 PM 4:48
CLERK OF COURT
BERKELEY COUNTY, SC

6. That the irreparable damage to the applicant's appeal, and resultant prejudice from the appellate counsel's deficient performance, is contrary to federal precedent as delineated by Strickland vs. Washington, 104 S. CT. 2052 (1984) and progeny.

Ground Three:

(c) STATE AND FEDERAL CONSTITUTIONAL VIOLATION AND VIOLATIONS OF STATE AND FEDERAL PRECEDENT.

7. That the erroneous and prejudicial jury charge, which shifted the burden of proof, altered the jury's perception of the state's proof beyond a reasonable doubt, which denied the applicant a fair trial in violation of the sixth and fourteenth amendments of the United States Constitution, Article 1. section three and fourteen of the South Carolina Constitution, and state and federal precedent as delineated by Cage vs. Louisiana, 111 S. CT. 328 (1990) and State vs. Daniels, 737 S.E. 2d 473 (2012).

8. That the court's reference to "all parties involved" extended beyond the applicant and the state, and it included the alleged victims, which denied the applicant his right to a fair trial in violation of the sixth and fourteenth amendments of the United States Constitution, Article 1. section three and fourteen of the South Carolina Constitution and precedents, supra.

9. That the solicitor was the sole witness before the grand jury, as indicated by the record; the process was rubber stamped, and it is in violation of statutory law, state and federal precedents, and the fifth and fourteenth amendments of the United States Constitution.

10. That the jury commissioners did not select a random and methodical summarizing process as required by the sixth amendment of the United States Constitution and state statutory law, which denied the applicant a fair trial before an impartial jury.

11. That this addendum is not exclusive averments and the application is reserved for modifications and amendment as provided by rule 71.1, SCRCP, after the appointment of post conviction relief counsel.

Wherefore, the applicant prays for the appointment of PCR counsel, the relief that is requested, and for such other and further relief as the court deems just and equitable.

Dated: Dec 15, 2015

Ridgeland South Carolina

Respectfully submitted,

Joseph Mack Jr.

Joseph Mack Jr.
Ridgeland Corr, Inst.
P.O. Box 2039
Ridgeland, SC 29936

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2015-CP-08-2874
	)	
Joseph Mack, Jr., #359321,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed December 22, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Counsel failed to object or otherwise challenge the Applicant remaining in shackles throughout the duration of the jury trial.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

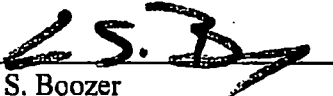
Columbia, South Carolina
 August 15, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2015-CP-08-2874
	)	
Joseph Mack, Jr., #359321,	)	
	)	
Applicant,	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Rutledge Johnson
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 August 15, 2016

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF BERKELEY)

CASE NO.: 2015-CP-10-2874

Joseph Mack, Jr., #359321)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

State of South Carolina)

Defendant.)

Plaintiff's Attorney:
Lance S. Boozer, Esquire, Bar No. _____
Address:
807 Gervais Street, Suite 203; Columbia, SC
29201
Phone: _____ Fax _____
E-mail: _____ Other: _____

Defendant's Attorney:
J. Rutledge Johnson, Bar No. 78871
Address:
PO Box 11549 Columbia, SC 29211-1549
Phone: 803-734-3737 Fax 803-734-4113
E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO**SECTION II: Motion/Order Type**

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 6, 2016

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Joseph Mack, Jr., #359321,

2015-CP-08-2874

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on December 22, 2015, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. Applicant was indicted by the February 2013 term of the Berkeley County Grand Jury for one (1) count of Failure to Stop for a Blue Light (2013-GS-08-00330), three (3) counts of Armed Robbery (2013-GS-08-00331, -00332, -00333), and one (1) count of Possession of a Weapon During the Commission of a Violent Crime (2013-GS-08-00334). David Schwake, Esquire, represented him. On March 17, 2014, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted for the count of Failure to Stop for a Blue Light. Applicant was found guilty of three (3) counts the lesser included offense of Strong Arm Robbery. Applicant was found not guilty for the count of Possession of a Weapon During the Commission of a Violent Crime. The Honorable Carmen T. Mullen sentenced the Applicant to confinement for fifteen (15) years for each count of Strong Arm Robbery and three (3) years for the

count of Failure to Stop for a Blue Light. The sentences run concurrently.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Mack, Op. No. 2015-UP-495 (filed on October 21, 2015). The Remittitur was issued on November 13, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel"
 - a. "Denied applicant due process, equal protection of the law, and effective representation in violation of amendments six and fourteen"
 - b. "The irreparable prejudice resulting from trial counsel's ineffectiveness is contrary to Federal precedent as delineated by Strickland vs. Washington, 104 S.C.T. 2052 (1984) and progeny."
2. "Ineffective Assistance of Appellate Counsel"
 - a. "Failure to provide useful analysis, research, and argue pertinent citations, of argue significant issues that were preserved by defense objections, and which were viable for appellate review. As a result and ramification, the applicant was irreparably prejudiced in his appeal, in which the outcome would have been diligently advocated for the applicant on direct review from his trial."
 - b. "Denied the applicant his due process and statutory right to appeal, equal protection of the law, and effective representation in violation of amendments six and fourteen."
 - c. "The irreparable damage to the applicant's appeal, and resultant prejudice from the appellate counsel's deficient performance, is contrary to federal precedent as delineated by Strickland vs. Washington, 104 S.C.T. 2052 (1984) and progeny."
3. "State and Federal Constitutional Violations and Violations of State and Federal Precedent"
 - a. "The erroneous and prejudicial jury charge, which shifted the burden of proof altered the jury's perception of the state's proof beyond a reasonable doubt, which denied the applicant a fair trial in violation of the sixth and fourteenth amendments."
 - b. "The Court's reference to "all parties involved" extended beyond the

applicant and the state, and it included the alleged victims, which denied the applicant his right to a fair trial in violation of the sixth and fourteenth amendments.

- c. "The solicitor was the sole witness before the grand jury, as indicated by the record; the process was rubber stamped, and it is in violation of statutory law, state and federal precedents and fifth and fourteenth amendments."
- d. "The jury commissioners did not select a random and methodical summarizing process as required by the sixth amendment of the United States Constitution and state statutory law, which denied the applicant a fair trial before an impartial jury."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's first allegation as alleging ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. Applicant

must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation. Sharper, Id.

V.

Applicant also alleges that he was denied due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

Applicant's third allegations raise a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective and whether Applicant's appellate counsel was ineffective.

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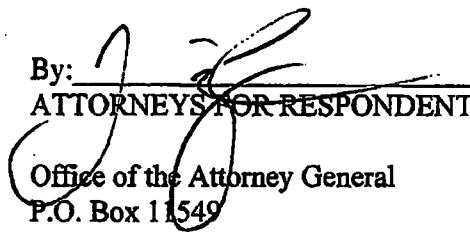
Respectfully submitted,

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By: 
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June 6, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2015-CP-08-2874
	)	
JOSEPH MACK, JR., #359321	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this 6th day of June, 2016.

Brianna Arnone
Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	DOCKET NO. 2015-CP-08-2874
	)	
	)	
JOSEPH MACK, JR.	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

April 18, 2017
Moncks Corner, S. Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Applicant

ALICIA OLIVE, ESQ.
Attorney for the State

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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PROCEEDINGS

MS. OLIVE: Thank you, Your Honor. May it please the court? This is Joseph Mack. It is 2015-CP-08-2874. Mr. Mack was indicted in February of 2013 for three counts of armed robbery, possession of a weapon during the commission of a violent crime, and failure to stop for a blue light. He was represented by David Schwacke.

On March 17, 2014 he proceeded to a jury trial pursuant to which he was found guilty of the lesser included charges of strong arm robbery and failure to stop for a blue light and found not guilty of possession of a weapon during the commission of a violent crime. Judge Mullen sentenced him to 15 years for each count of strong arm robbery and three years for the failure to stop for a blue light to run currently.

The notice of appeal was filed on his behalf and was perfected pursuant to Anders v California. The Court of Appeals dismissed his appeal pursuant to Anders in an unpublished opinion filed on October 21, 2015. The remittitur was issued on November 13, 2015. He filed his application for post conviction relief on December 22, 2015. And amended application for post conviction -- excuse me, a first amendment to the application was filed on August 15, 2016. Your Honor, in his application he sets forth an allegation of ineffective assistance of

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1 trial counsel, ineffective assistance of appellate
2 counsel as well as state and federal constitutional
3 violations. Your Honor, it's my understanding he is just
4 proceeding on allegations of ineffective assistance of
5 counsel today and I will -- and is not going forward on
6 any appellate counsel allegations today. I will turn it
7 over to Mr. Boozer at this time. Mr. Mack is present in
8 the courtroom and is represented by Mr. Boozer.

9 THE COURT: Thank you. Mr. Boozer?

10 MR. BOOZER: Thank you, Your Honor. May it please
11 the court? We'll go ahead and call Mr. Mack to the
12 stand.

13 THE COURT: All right.
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1 [Whereupon, Mr. Mack comes forward]
2 [Whereupon, the witness is duly sworn by the Clerk
3 of Court]
4 CLERK OF COURT: State your full name and spell
5 your last name for the record.
6 THE WITNESS: Joseph Mack, Jr., Mack M-A-C-K.
7 - - - - -
8 JOSEPH MACK, JR.
9 Having been first duly sworn,
10 Was examined and testified as follows:
11 DIRECT EXAMINATION
12 BY MR. BOOZER:
13 Q. Mr. Mack, how you doing today?
14 A. I'm doing okay.
15 Q. Okay. And do you know what it is that you are here
16 today?
17 A. Yes, sir.
18 Q. Okay. And why is that? What did you file to get
19 to court?
20 A. I filed a PCR.
21 Q. And do you understand what it is you are asking this
22 court to do for you?
23 A. A little. I'm not too...
24 Q. Okay. Well, let's talk about sort of what you and
25 I have discussed about what a PCR is and what a PCR

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1 isn't. You understand that the only thing this court can
2 do for you today is basically to grant you a new trial on
3 your original charges.

4 A. Right, right.

5 Q. Do you understand that ---

6 A. --- yes, I understand that.

7 Q. And just if you would, because we may have an issue
8 with it, wait until I get done with the question and then
9 you can respond because Madame Court Reporter needs to
10 take down everything, okay?

11 A. Okay.

12 Q. Tell me this. What are you currently incarcerated
13 for?

14 A. I'm currently incarcerated for strong arm robbery
15 and failure to stop for a blue light.

16 Q. Okay. What were your original charges?

17 A. Armed robbery; three counts of armed robbery,
18 failure to stop for a blue light, and possession of a
19 weapon during the commission of a violent crime.

20 Q. Okay. And you understand that you would go back to
21 trial on the charges that you are convicted of. That's
22 what you would go back to trial on, do you understand
23 that?

24 A. Yes, sir.

25 Q. What type of sentence did you receive at trial?

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1 A. I received the maximum sentence on strong armed
2 robbery fifteen years each -- I mean times three and
3 failure to stop for a blue light.
4 Q. Okay. What's your understanding of when your max
5 out date is?
6 A. 2021.
7 Q. 2021? So you've got about four years left on your
8 sentence?
9 A. Yes, sir.
10 Q. And you understand, and we've certainly discussed
11 this, but you understand that this court can't reduce
12 your time or if this court agrees with your PCR
13 application can't just let you out early or make you
14 parole eligible. Do you understand that?
15 A. Yes, sir.
16 Q. All right. And you also understand and we have
17 certainly discussed that there are certain risks and
18 benefits in moving forward and attempting to get a new
19 trial, one of which is if you're successful with your PCR
20 case there is always -- and you go back and have a new
21 trial there is always sort of a worst case scenario if
22 you were to be found guilty at trial that you could get
23 either more time than what you originally got or you
24 could receive more time than what you have left to serve
25 on your sentence, which you're telling us is about four

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1 years.
2 A. Yes, sir.
3 Q. Okay. And you understand that?
4 A. Yes, I do.
5 Q. Okay. And in understanding that is that still a
6 risk that you're willing to take?
7 A. Yes, I am.
8 Q. Okay. Is there anything else sort of about what
9 we're doing here today as far as what this court can do
10 for you that you're not clear on or that you need either
11 myself or His Honor to explain?
12 A. No, I'm pretty clear.
13 Q. Now who was your trial lawyer?
14 A. Judge Mullen.
15 Q. No, I'm sorry; who was your attorney? Who
16 represented you?
17 A. David Schwacke and Keshia White.
18 Q. Okay. And you've got a number of allegations but
19 let's kind of talk about sort of their representation or
20 Mr. Schwacke's representation of you and then we'll get
21 into your allegations. Did you hire Mr. Schwacke or was
22 he appointed to represent you?
23 A. He was appointed to represent me.
24 Q. Do you know when you were first arrested on the
25 charges?

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1 A. January 5, 2013.

2 Q. Okay. Do you know when Mr. Schwacke came onto your
3 case?

4 A. I can't recall the time or date. It was probably
5 about eight months after I was incarcerated, six to eight
6 months; something like that.

7 Q. Did you have anyone prior to that representing you?

8 A. I had someone that I was about to hire but they
9 pulled me in court three months earlier so therefore I
10 had to continue going with Mr. Schwacke.

11 Q. Okay. Do you know about how many times you met
12 with Mr. Schwacke prior to your trial?

13 A. About five times.

14 Q. Let me ask you this. Just kind of the general
15 overview what was it alleged that you had done? What was
16 the State saying that you did?

17 A. The State was saying that I robbed three people at
18 one time.

19 Q. And sort of explain to the court your side of it and
20 what it was that you -- the position that you took with
21 all this?

22 A. I was at a party and I went to -- a friend of mine
23 had a sale, a drug sale, and he didn't have any coke on
24 him at the time so he knew I kept a lot of coke. And he
25 asked me if I wanted to sell and I told him yes. And he

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1 gave me the name of the person that I was supposed to
2 meet. And I went, stopped at a store before I got to
3 them and purchased a can of Ice House.

4 And maybe three quarters of a mile away from the
5 store that's when I met up with one gentleman that was at
6 the place where I was supposed to meet them at asking
7 about the female that I was supposed to meet.

8 Then another gentleman walked up that I knew from a
9 prior drug sale that kind of turned this sale into the
10 reason why I'm in here because he was one of the ones
11 that took me for like 9,000 dollars a year and a half
12 prior to January the 5th.

13 And then I finally met the female that I came to
14 make the sale to. And it all just blew up into -- it
15 wasn't handled right because I got angry because of the
16 guy that I had encountered a year and a half prior to
17 this and the drug sale just went out of hand. But it
18 wasn't no robbery.

19 Q. Okay. So your version of this was that there
20 became a disagreement during the transaction?

21 A. Between me and Mr. Blake.

22 Q. Okay. But there was never any robbery or you never
23 had any intent to go and rob anyone?

24 A. No, I didn't.

25 Q. Okay. And did you testify at trial?

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1 A. I testified and the five cameras that was there
2 showed that I didn't even have a weapon on me.
3 Q. Okay. And sort of I know you gave sort of the
4 nutshell version of that story but is that consistent
5 with what you testified to at trial?
6 A. Yes, sir.
7 Q. Prior to your trial were there any plea offers that
8 were made?
9 A. Yes.
10 Q. Do you recall what those were?
11 A. The first one was I think it was fifteen years. And
12 I turned that down and then the Judge told me if you
13 don't take the 15 years then you're looking at 95 years
14 or whatever. And I told her I don't want the 95 or the
15 15 and so I took it to trial.
16 Q. Okay. And was that the only offer that was ever
17 made to you?
18 A. Yes, sir.
19 Q. And did you want a trial pretty much the whole time
20 in this case?
21 A. Yes, I did.
22 Q. And you still do?
23 A. Yes, I do.
24 Q. Okay. During your meetings with Mr. Schwacke what
25 sort of, what did y'all discuss?

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1 A. We discussed basically I explained myself about what
2 I had done and why I was there. And we discussed the
3 camera. Mostly we looked at that film so much time
4 during the time that he came to visit me and every time
5 we looked at it and I asked him I said what's your
6 opinion of this?

7 And he said well Mr. Mack I took this video into the
8 office and I had everybody look at this video and we
9 don't see a sign of armed robbery. We don't see a
10 robbery.

11 And basically every time he would come to see me
12 basically that's what we talked about; that video and
13 when did he think I'm going to trial. That's basically
14 about it.

15 Q. Did he offer any opinions on the case to you?

16 A. He offered -- when I found out when I was going to
17 trial, the date that I had and I called him and I talked
18 to him about the lawyer I was going to hire and he said
19 well, I know him and he's a pretty good lawyer.

20 But he said I don't know if you're going to have
21 enough time because when I found out that I was going
22 into court three months earlier and I talked to him just
23 before I was going to go into court.

24 And I just stuck with him because I wasn't going to
25 have enough time for my paid lawyer to even do the case

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1 because I was already on the docket I was told. So I
2 just went with Mr. Schwacke.

3 Q. Now let's kind of walk through your allegations that
4 you've alleged. Obviously, you filed your initial PCR
5 application and then we made an amendment together. So
6 let's kind of walk through those and have you explain
7 them.

8 In your first allegation you've got ineffective
9 assistance of trial counsel and you've alleged you were
10 denied your due process, equal protection, and effective
11 representation in violation of Amendments Six and
12 Fourteen and that you suffered prejudice as a result of
13 this. Sort of tell the court what you mean by that
14 particular allegation.

15 A. I felt that there was a lot of things in my case
16 that should have been -- that he should have objected to
17 as far as the evidence. There was no evidence present in
18 the courtroom as far as this weapon you found. You
19 didn't find no weapon on me.

20 During the dispatch -- you know when they're on the
21 radio while they were behind me they allege that I threw
22 a gun out the window. And then they came back and said
23 it wasn't a gun; it was a Ice House can, an off duty cop
24 saying that she found this evidence. It was a lot of
25 things that I just felt he should have objected to; me

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1 being shackled and handcuffed.

2 Q. And we'll get to that in a moment.

3 A. Okay.

4 Q. Okay. Anything you feel like he should have
5 objected to or you feel like falls under sort of that
6 category where you felt you were sort of denied your
7 constitutional rights. And we'll talk about the shackles
8 in a moment.

9 A. No, just basically what I explained. That and I
10 felt like he should have said something when the Judge
11 told the jury that she wants this to be over with. You
12 shouldn't put a time on me fighting for my freedom, you
13 know.

14 Q. Okay. Now sort of under that prong on page 375 of
15 the transcript do you recall your lawyer making some
16 statements in closing and this is on 375 beginning at
17 line 9.

18 [Reading] Now you've got to observe my client and
19 it's possible that some of you may have come away with
20 the impression, or maybe all of you quite frankly, that
21 he could be a felon; that this is something that he's
22 done before.

23 He may sound harsh, he may sound threatening. He
24 may even appear to be harsh and threatening and in
25 connection with a drug transaction may have had people

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1 turn things over to him. And then he goes on to say he
2 hopes that you all put that all aside and deliberate
3 about the case. Did you have any discussion with Mr.
4 Schwacke about that approach?

5 A. I'm thinking that's when he spoke to the jury.

6 Q. That's right.

7 A. I didn't have any discussion with him about that. I
8 think that was something he put together which I didn't
9 have a problem with it because it explained to the jury
10 that you might see me one way or this case might look
11 like -- hold on let me explain.

12 This case is about me as being an armed robber but
13 this case might take -- you've got to look at it a
14 different way. I think he was trying to explain that to
15 the jury.

16 Q. Were y'all sort of conceding you were selling drugs
17 to these people?

18 A. That's what I was doing.

19 Q. Exactly. By conceding I mean you were saying yes,
20 that's what we were doing.

21 A. Right.

22 Q. We were selling drugs; we weren't robbing them.

23 A. No. Me by myself I wasn't robbing nobody.

24 Q. All right. You've also got a claim that we
25 discussed a little bit sort of prior to your PCR is your

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1 ineffective assistance of your appellate counsel. Who
2 was your appellate lawyer?
3 A. Durant -- I think it was Mr. Durant.
4 Q. Was there what is called an Anders brief filed on
5 your behalf?
6 A. Uh Huh.
7 THE COURT REPORTER: Was that yes?
8 A. Yes, yes.
9 Q. [Mr. Boozer] Say yes or no when we say questions so
10 she can get it down. You understand that we're focusing
11 on really what your trial lawyer was doing or not doing
12 for you?
13 A. Yes.
14 Q. So that's an issue that we're not going to go
15 forward on?
16 A. Right, okay.
17 Q. You've also got an allegation that certain state and
18 federal constitutional violations occurred. And you
19 address that as an erroneous and prejudicial jury charge
20 which shifted the burden of proof, altered the jury's
21 perception of the State's proof beyond a reasonable
22 doubt, and then you complained about the reference to all
23 parties involved, and then a discussion of the right to a
24 fair trial. Is that one of your allegations?
25 A. Yes, sir.

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1 MR. BOOZER: Your Honor, just for the court's
2 information with regard to that allegation I'm
3 specifically looking at page 405 of the transcript, which
4 has the same numbers as the record on appeal, and
5 beginning at line 18.

6 Q. [Mr. Boozer] Mr. Mack, some of this we will discuss
7 with your lawyer when he takes the stand here in a moment
8 but during the jury instructions was there a certain
9 charge given on page 405 where the trial judge talks
10 about a fair and impartial verdict and acting for the
11 community. Do you recall that?

12 A. If I'm not -- I think that was an argument that -- I
13 don't know if that was part of the trial where he had to
14 take a moment to go look at the computer -- I recall it,
15 I recall that moment.

16 Q. Okay. And let's kind of talk about that a little
17 bit more. Like I said we'll get into this more with your
18 attorney.

19 At some point the jury made -- excuse me, the trial
20 judge made some jury instructions to the jury where the
21 Judge indicated to the jury that they were acting for the
22 community and that they were to be fair and impartial in
23 the case and everyone kind of deserved justice, is that
24 right?

25 A. Yes, sir.

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1 Q. And do you recall that, and I think you were just
2 referencing that but at some point your attorney, and I
3 believe this is on beginning at 410 or 409 your lawyer
4 actually raises to the court and says Judge, I think that
5 there is an issue with some of that language that you
6 just used. Do you recall that?

7 A. Yes, I do.

8 Q. Okay. And actually your lawyer was citing a case
9 called State v Daniels.

10 A. Yes.

11 Q. At that particular time were you having any
12 discussing with your attorney about what was sort of
13 going on?

14 A. He was explaining to me what happened at that moment
15 when the Judge used the word fair and impartial or truth
16 and something.

17 I know he argued that point and I think that was
18 when she took a moment and gave them enough time to go
19 look on the computer to pull up that argument.

20 Q. Do you recall --

21 MR. BOOZER: And Your Honor, for the court's
22 reference I'm looking at page 413.

23 Q. [Mr. Boozer] That there was a discussion of the
24 trial judge basically saying what do you want me to do.
25 And it's proposed how about a curative instruction where

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1 I tell the jury to disregard all that; that's not
2 correct. Do you recall that?
3 A. Yes, I recall that.
4 Q. And did you have any discussion with your lawyer
5 about what actions should be taken?
6 A. No, sir.
7 Q. Okay. Did he ---
8 A. --- he just ---
9 Q. --- consult with you at all about that?
10 A. No, sir.
11 Q. And so obviously your lawyer goes ahead and says
12 we're not going to request a curative. We look at it as
13 a whole and I think its fine. Do you recall that
14 happening?
15 A. I think if that's the part where she says you can
16 object to it -- it's hard to remember. I recall that
17 part but I wasn't instructed in no way or it wasn't
18 explained to me where I understood it from my lawyer.
19 Q. And that's fine but if it's in the transcript you
20 would just defer to whatever is in the transcript as far
21 as what was said?
22 A. Yes, sir.
23 Q. But you didn't have any conversations specifically
24 with your lawyer -- he didn't say Mr. Mack, here's the
25 issue, here's our options. Did he consult you at all

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1 about that?

2 A. No, sir.

3 Q. All right. You've also got an allegation that, and
4 this is your language that you are using, that the
5 Solicitor was the sole witness before the Grand Jury as
6 indicated by the record. The process was rubber stamped
7 and is in violation of the law.

8 And then you've also got an allegation that the Jury
9 Commissioner's didn't select a random and methodical
10 summarizing process as required by the Constitution and
11 state law. If you would explain what you mean by those
12 two allegations?

13 A. I don't understand like the way you're phrasing it.

14 Q. Sure. And I'm using your language from the
15 application but did you have any problems with the
16 indictments or the Grand Jury process or anything like
17 that?

18 A. I had problems because I felt that with me not
19 making a statement and me not being there at my what do
20 you call it, the hearing when you're arrested?

21 Q. Preliminary hearing?

22 A. Preliminary hearing. I felt like they made their
23 own judgment about me and the crime that they alleged me
24 to have committed.

25 Q. Okay. Did you have any discussions with your

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1 lawyer about the indictment or anything like that or that
2 process?

3 A. No, because by the time I got to see my lawyer I was
4 already indicted.

5 Q. Now you've also got an allegation that your lawyer
6 failed to object or otherwise challenge you being in
7 shackles throughout the trial.

8 Now tell the court a little bit that when you say in
9 shackles describe to the court sort of what you were
10 wearing and what you were in that day of trial or during
11 the trial.

12 A. I had on a suit and my ankles were shackled and my
13 hands were shackled.

14 Q. Explain a little bit in more detail. You're
15 shackled today obviously right?

16 A. The same way.

17 Q. Okay.

18 MR. BOOZER: Your Honor, can he stand up for a
19 moment?

20 THE COURT: Certainly.

21 Q. [Mr. Boozer] If you would please, stand up for me?

22 [Whereupon, the witness stands]

23 Q. Let's kind of describe what you have on. It looks
24 like you have on a waist chain?

25 A. Yes, sir.

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1 Q. And with that waist chain you have both wrists
2 shackled to that waist?
3 A. Yes, sir.
4 Q. And are you also wearing leg shackles?
5 A. Yes, I am.
6 Q. And the way that you're dressed today excluding the
7 SCDC uniform is that exactly how you were shackled
8 throughout the trial?
9 A. Yes, I was.
10 Q. Okay. And you're positive that you were wearing
11 the hand or the wrist chains?
12 A. Yes.
13 Q. Okay. You can go ahead and have a seat for me.
14 [Whereupon, the witness is seated]
15 Q. What were you wearing that day?
16 A. A two-piece blue pin-stripe suit.
17 Q. All right. And do you recall were you in that big
18 older courtroom that is in this building?
19 A. Yes, sir.
20 Q. Did you have any discussion prior to the trial about
21 why you were in these shackles?
22 A. I asked why I had to be shackled when I was even
23 though I had on -- I had on my suit and why I had to be
24 shackled and if I can remember it was that's something
25 that Hill Finklea does when I'm going to trial or

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1 whatever. I asked about it.

2 Q. Okay. When did they place those shackles on you?

3 A. When I got -- they placed the shackles on me when I
4 left the jail house and then I walked through the tunnel
5 with shackles on and I was in shackles up until I went
6 back to the jailhouse.

7 Q. All right. Did you ask your lawyer initially why
8 am I in these shackles?

9 A. We spoke about that and he brought it up. But I
10 felt I shouldn't have been in shackles. But they tried
11 to disguise it as much as they could.

12 Q. With your clothing and movements?

13 A. Right.

14 Q. Okay. And was there any sort of hearing that was
15 held about your need to be in shackles if you recall? I
16 mean there is not one reflected in the transcript.

17 A. I don't think it was a hearing. You're talking a
18 discussion between the Judge, the lawyer and me ---

19 Q. --- yes. Did the State come in and say this man
20 needs to be in shackles because he's dangerous and ---

21 A. --- there was no hearing.

22 Q. Okay. Had you had any involvement in any sort of
23 disruptive behavior or had you been a flight risk, or had
24 you tried to escape from jail in relation to these
25 charges?

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1 A. I have a breach of trust but I didn't have an
2 escape.

3 Q. All right. Now at some point in your trial --

4 MR. BOOZER: And Your Honor, for court's reference
5 I'm looking at page 292 of the transcript.

6 Q. [Mr. Boozer] Your lawyer while the jury is out --
7 and you testified in this case, right?

8 A. Yes, sir.

9 Q. Your lawyer says I really don't have anything to
10 discuss but my client's shackled and so before we call
11 him to the stand I'd like to ask if the shackles could be
12 removed.

13 The court says thank you. Would you, deputy go ahead
14 and undo him please. And the deputy it indicates
15 complied with that request. So at some point you were
16 unshackled to go and testify?

17 A. No, I was not unshackled. If I can recall what they
18 done was they brought me in -- they brought me in and
19 when it was time for me to testify they removed the jury
20 from the courtroom.

21 And then when they removed the jury that's when they
22 had me to walk up to the witness stand. And then they
23 sat me down and then they brought the jury back in.

24 Q. But you don't know if you were unshackled at that
25 point or not?

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1 A. No, I was not -- I don't recall being unshackled
2 because if I was unshackled they wouldn't have had to do
3 that type of motion. But I remember them doing that when
4 they placed me on the witness stand they asked the jury
5 to go back to the deliberating room.

6 And when the jury went out of the room that's when I
7 left where you're sitting and came into the box and then
8 that's when they brought the jury back in. If I can
9 recall that's what happened.

10 Q. All right. Let me ask you this. While you're
11 seated at -- were you seated at a table similar to this
12 table that I'm in front of ---

13 A. --- yes, I was ---

14 Q. --- over in that courtroom?

15 A. Yes, I was.

16 Q. And when the jury would enter or leave or when the
17 Judge would enter or leave would you and your lawyer
18 stand up or do you remember?

19 A. I think we stood up.

20 Q. Okay.

21 A. Yes, we stood up.

22 Q. Obviously, you're the one who says you were wearing
23 these shackles. Do you think that they were visible to
24 others in the courtroom?

25 A. Yes. Everybody I'm pretty sure in front of me even

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1 the -- the jury was right to the right of me. If you
2 notice a couple of times where I scratch because of an
3 itch or whatever I know they noticed the shackles on me.

4 Q. Were they metal like they are today?

5 A. Just like these [indicates].

6 Q. Just like this. Would they make noise?

7 A. Yes.

8 Q. Okay. Now obviously this is your day in court for
9 your PCR case. We've been through your PCR application
10 and your allegations and I think we've covered
11 everything.

12 But if there is something that we have not covered
13 or something that you want to bring to the court's
14 attention about your application or about your lawyer's
15 representation now would be the time to do that. Have we
16 covered everything?

17 A. Yes, we covered everything that me and you
18 discussed.

19 Q. Okay. If you would please answer any questions
20 that Madame Attorney General may have for you.

21 A. Okay.

22

23

24

25

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1 CROSS-EXAMINATION

2 BY MS. OLIVE:

3 Q. Good morning.

4 A. Good morning.

5 Q. You testified that when Mr. Boozer asked you to walk
6 through your allegations of ineffective assistance of
7 counsel you testified that you felt there were some
8 things in your case that he should have objected to. One
9 of those you said was that you had no weapon on you?

10 A. Yes, ma'am.

11 Q. But did your attorney not cross-examine those
12 officers who testified about the weapon?

13 A. Yes. He cross-examined the officers about that,
14 about the weapon and the evidence. He did cross-examine
15 them.

16 Q. And in fact he brought out or it came out at trial
17 and he emphasized at trial that it was a B-B gun, right;
18 the weapon was a B-B gun?

19 A. Yes, yes.

20 Q. And then you testified at trial, right?

21 A. I testified at trial about what?

22 Q. You testified at trial?

23 A. Yes, I testified at trial.

24 Q. And you testified that you didn't have a weapon?

25 A. Exactly.

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1 Q. And then the jury in fact found you guilty of strong
2 arm robbery versus armed robbery and found you not guilty
3 of possession of a deadly weapon.

4 A. Yes.

5 Q. And you testified today that your attorney did
6 object to the Judge's charge regarding being fair and
7 impartial?

8 A. Yes.

9 Q. And the Judge offered to give a curative instruction
10 but your attorney declined a curative instruction?

11 A. Yes.

12 Q. Because he didn't want to draw additional attention
13 to it?

14 A. Yes, ma'am.

15 Q. Were you incarcerated in 2007?

16 MR. BOOZER: Objection, Your Honor, to relevancy.

17 MS. OLIVE: It's relevant to whether he has any
18 previous escapes.

19 THE COURT: Go ahead.

20 A. Just like I explained to him I was incarcerated in
21 2007.

22 Q. [Ms. Olive] Okay. Did you have an escape on June
23 26, 2007?

24 A. No, ma'am. I didn't have an escape. Escape is when
25 you break a barrier. I didn't have an escape. I was

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1 released to go to one of my jobs. So I didn't have an
2 escape. Due to the situation of the child support money
3 that I had given somebody and they didn't pay it I didn't
4 come back.

5 Q. Have you reviewed the summary report that was
6 provided by the South Carolina Department of Corrections
7 that has your history while you've been incarcerated?

8 A. Are you talking about what was in my motion?

9 Q. Yes, it would have been -- it's included with the
10 PCR documents.

11 MR. BOOZER: Your Honor, may I confer with counsel
12 for one moment to see what she may be looking at?

13 THE COURT: All right.

14 [Whereupon, Mr. Boozer and Ms. Olive confer]

15 MS. OLIVE: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 [Whereupon, the witness is shown document]

18 Q. [Ms. Olive] Mr. Mack, I'm showing you this report
19 from the ---

20 A. --- no, I've never seen -- I mean just looking at
21 that I've never seen that type of report before.

22 Q. Do you see on here -- do you see where it reflects
23 an escape?

24 A. I've never seen that before though. I know what
25 happened but I've never seen that paperwork before.

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1 Q. Okay. Thank you.

2 MS. OLIVE: And Your Honor, for the record this is
3 part of your Judge's packet. It's the records from
4 South Carolina Department of Corrections.

5 Q. [Ms. Olive] Mr. Mack, are you positive that your
6 wrists were also shackled while you were seated at
7 counsel table?

8 A. Yes, ma'am.

9 Q. Was there any skirting around the table that you
10 were seated at?

11 A. No, ma'am. I mean the table was just like those
12 tables right there but.

13 Q. Was there a space on each side of the table or is it
14 solid like it is in front of this table [indicates]?

15 A. I can't remember about that part.

16 Q. So you're not positive whether the sides of the
17 table were covered such that the jury could not see your
18 ankles or wrists if they weren't covered ---

19 A. --- I don't think they were covered. I think they
20 was some type of mahogany table with the thick legs but
21 I'm pretty sure they weren't covered.

22 Q. And your attorney asked you if you thought that the
23 shackles were visible to anyone in the courtroom. Do you
24 know for certain whether the jury saw -- excuse me,
25 whether any member of the jury saw the shackles on you?

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1 A. Yes, there was one juror when I went to like -- if
2 you notice me I went to scratch and there was one juror
3 that I looked at when I was on testifying that saw the
4 shackles.

5 Q. While you were testifying?

6 A. I mean during the process of me testifying.

7 Q. Were the shackles not removed for your testimony?

8 A. The shackles were not removed because if the
9 shackles were removed like I stated then the jury would
10 never had to leave out of the courtroom. The jury was
11 removed from the courtroom so that they wouldn't see me
12 in shackles as I walked to the...

13 Q. Well, the jury would have had to be removed from the
14 courtroom so that they could remove your shackles,
15 correct?

16 A. No, ma'am. My shackles were never taken off me even
17 when I went to the holding cell when the jury had
18 questions during the deliberations. Any break in the
19 trial the jury was removed out of the room and then they
20 would remove me out of the room.

21 While the jury was in the deliberating room I was
22 placed in the holding cell and before the jury comes back
23 in I would come in first and then the jury.

24 But that process went on throughout my trial. So
25 they couldn't have taken it off because if it was off I

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1 wouldn't have had to go through that process.

2 Q. So your recollection is that you were shackled while
3 you testified?

4 A. Yes, ma'am.

5 Q. Would you be surprised if you were not shackled
6 while you testified?

7 A. I wouldn't be surprised because I was shackled. If
8 I can recall, it's been almost four years and I remember
9 being shackled.

10 MS. OLIVE: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 [Whereupon, the witness is shown document]

13 Q. [Ms. Olive] Mr. Mack, I'm referring to the trial
14 transcript. This is page 292 starting at line 10 where
15 your attorney asked that the shackles be removed and
16 specifically lines 15 through 17.

17 A. I was shackled.

18 Q. But would you disagree with me if the transcript
19 reflects ---

20 A. --- I disagree with the transcript because I was
21 shackled throughout my whole trial.

22 Q. So if you are incorrect in remembering that you were
23 shackled during your testimony could you be incorrect
24 that maybe you did not have wrist shackles on while you
25 were seated at counsel table?

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1 A. I had wrist shackles on and ankle shackles.
2 MS. OLIVE: Beg the court's indulgence.
3 [Whereupon, Ms. Olive reviews documents]
4 Q. [Ms. Olive] That's all the questions I have. Thank
5 you.
6 A. Thank you.
7 MR. BOOZER: No redirect, Your Honor.
8 THE COURT: Thank you. You may step down.
9 [Whereupon, the witness is excused and exits the
10 witness stand]
11 THE COURT: Call your next witness.
12 MR. BOOZER: No further witnesses on behalf of the
13 applicant.
14 THE COURT: Applicant rests.
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1 MS. OLIVE: Your Honor, the State would call David
2 Schwacke.
3 [Whereupon, Mr. Schwacke comes forward]
4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]
6 - - - - -
7 DAVID SCHWACKE,
8 Having been first duly sworn,
9 Was examined and testified as follows:
10 DIRECT EXAMINATION
11 BY MS. OLIVE:
12 Q. Good morning, Mr. Schwacke.
13 A. Good morning.
14 Q. Mr. Schwacke, I'm going to ask you just some general
15 questions about your representation and then I'll circle
16 back regarding the specific allegations that were raised.
17 How long have you been practicing law?
18 A. Since 1981.
19 Q. And how much of that has been criminal law?
20 A. Pretty much all of it.
21 Q. How did you come to be involved in Mr. Mack's case?
22 A. I was assigned his case after he had been arrested.
23 Q. Did you represent him at the time that he was -- he
24 had already been indicted by the time you started
25 representing him, is that correct?

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1 A. I first -- I believe he said he was arrested on
2 January 5th of 2013 and I would have seen -- my first
3 visit with him at the jail would have been February the
4 21st of 2013.

5 Q. So that was more than three or four months before
6 trial?

7 A. I don't have the trial date in front of me but I
8 would have seen him about ten times from when I first saw
9 him up until when we had the actual trial.

10 Q. The trial was March 17 through the 18th of 2014,
11 does that sound correct?

12 A. That's correct. That sounds correct.

13 Q. Did you make the decision to waive his preliminary
14 hearing do you recall?

15 A. I don't recall.

16 Q. Is that something that is often done in your office?

17 A. It is often done. I used to be more -- depending
18 upon whether or not I had the discovery there would be
19 times that I would waive more often than I do now.

20 So I don't know whether his was not held because it
21 had been indicted. I have bits and pieces of a file but
22 it's not his entire case file so there are some things
23 that I was not able to go and look up.

24 Q. Do you recall did you review the indictments when
25 you received those?

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1 A. I would have.

2 Q. Okay. Do you recall there being any issues with
3 the indictments?

4 A. I don't.

5 Q. Did you have any reason to challenge the
6 indictments?

7 A. No.

8 Q. You stated you met with him about ten times?

9 A. Yes.

10 Q. Did you file discovery in this case?

11 A. I did.

12 Q. Do you recall what you would have discussed with Mr.
13 Mack during your meetings with him?

14 A. We would have discussed the Rule 5 materials. I
15 would have given him a complete copy of everything that I
16 would have had. There were a number of videos in this
17 case. We had to watch those videos.

18 There were surveillance videos of the location where
19 this happened. There were a number of times we looked at
20 that. We would have discussed any witnesses that he
21 would have wanted to have had, any defense he wanted to
22 put up.

23 We did have witnesses that we called on his behalf
24 including himself. So those would have been the things
25 that would have been discussed in those meetings.

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1 Q. And do you recall did you in fact introduce one of
2 those videos at trial?

3 A. I did, yes.

4 Q. What was your strategy or theory going into trial?

5 A. In the discussions with him we obviously had the
6 videos from the failure to stop so we had kind of issues
7 to deal with arising out of that.

8 He had indicated the same thing as he sort of
9 mentioned today that he had been at a location earlier
10 that evening, somebody needed drugs and there were going
11 to be some transactions. So he said this was not a
12 robbery; I was supposed to sell them drugs.

13 One of the vehicles that were sort of involved in
14 this whole incident there was a large amount of cash in
15 it that wasn't taken. That was something else that he
16 wanted us to sort of emphasize.

17 So all of the different aspects of the case whether
18 he would want to testify himself we discussed that, how
19 his prior record might come into play if he decided he
20 was going to testify, other witnesses independent of
21 himself that would testify on his behalf.

22 And kind of the fact that we would have to lay this
23 out as a drug deal gone bad that has its own sort of
24 ramifications when you're dealing with a jury. So all of
25 that was discussed at those meetings.

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1 Q. And you brought all of those things out at trial?

2 A. Yes.

3 Q. With regard to the issue concerning the jury charge
4 and your argument under State v Daniels can you explain
5 why you chose not to pursue a curative instruction?

6 A. At that point I just thought the Judge bringing it
7 back up would bring too much undue influence on it if we
8 had a jury that we liked.

9 We had our testimony go pretty well I thought. We
10 tied it up pretty nicely in the closing argument. But I
11 felt it would just draw undue attention to it and we
12 would just move forward with the objection noted for the
13 record.

14 Q. For the record you did not represent Mr. Mack on
15 appeal correct?

16 A. Correct. I did file on behalf of him within the
17 timeframe.

18 Q. With regard to Mr. Mack's allegation that the fact
19 he was in shackles should have been objected to do you
20 recall whether the tables in the courtroom -- was he in
21 this courtroom?

22 A. We were in courtroom E next door in the historic
23 building.

24 Q. And are the counsel tables in that courtroom exactly
25 like these?

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1 A. No. They are sort of a deeper wood kind of table.
2 They have instead of where these have wood those have
3 black kind of material draping the sides and the portion
4 that faces towards the court and to the jury. That's on
5 both the tables for the attorneys.

6 The courtroom is set up a little bit differently now
7 because at the time there was the Grand Jury seating on
8 that other side.

9 But the two tables and the two tables where the
10 court reporter kind of sits at or places the evidence
11 that also has the black kind of draping.

12 Q. Do you recall how Mr. Mack was shackled that day or
13 during his trial?

14 A. Anytime he would have been in the courtroom he would
15 have had the leg irons on but he would not have had the
16 cuffs on. That's a policy -- judges have different
17 policies all the time.

18 When they come in there are discussions usually
19 between courtroom security and them to figure out. At
20 that point we might could object to it. If the Judge is
21 expressing a preference that is going to be with the
22 Judge; court security is going to do.

23 Q. At any time during the trial was the jury present in
24 the courtroom when Mr. Mack was brought into or out of
25 the courtroom wearing the shackles?

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1 A. He is always brought in ahead of the jurors coming
2 into the courtroom.

3 Q. Is it your recollection that the shackles were
4 removed when he provided his testimony at trial?

5 A. Well, that was I guess the reason I brought it up
6 was how did the Judge want to sort of deal with that
7 situation because sometimes they have the shackled
8 witness brought out and seated in the witness stand and
9 then the jury comes in. Or they just completely remove
10 them and allow them to walk from the table to the witness
11 stand.

12 Q. Do you recall what was done in this case?

13 A. I can't tell you. I will tell you that all we did
14 was make sure that they were never -- that the jury was
15 never exposed to him in the shackles.

16 Q. If I showed you the transcript of the trial would
17 that refresh your recollection?

18 MS. OLIVE: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 Q. [Ms. Olive] This is page 292 starting at line 10 and
21 going to line 17.

22 [Whereupon, the witness is shown document]

23 A. Okay. So those would have been the leg shackles as
24 there would not have been any hand shackles at that
25 point.

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1 Q. Do you believe the transcript accurately reflects
2 what took place?

3 A. I do.

4 Q. And did you feel you had adequate time to meet with
5 Mr. Mack prior to trial?

6 A. I did.

7 Q. And you stated that you had discussions about your
8 trial theory and your strategy at trial?

9 A. Right. Well, it was basically his strategy. We
10 just adopted it as ours.

11 Q. Okay. So he was in agreement with that strategy?

12 A. Right.

13 Q. Thank you. That's all the questions I have.
14 Please answer any questions from Mr. Boozer.

15 THE COURT: Cross-Examination?

16 MR. BOOZER: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. BOOZER:

3 Q. Mr. Schwacke, how you doing?

4 A. Good.

5 Q. I want to discuss a little bit more in detail with
6 you about sort of the shackles. Obviously, you've seen
7 the applicant today in court and that he is wearing the
8 wrist belly chain with the leg irons.

9 A. Right.

10 Q. Is that similar to how he was during the trial if
11 you recall?

12 A. I'm looking over at -- Lieutenant Hamilton was
13 probably in there and probably in charge of security that
14 day -- but he, in the courtroom he would have been
15 shackled at the legs but not at the hands and the wrists.

16 Again, movement would have been arranged where he
17 would not have walked out in any of those things while
18 the jurors were present.

19 Q. Do you recall specifically whether he had the wrist
20 shackles on or not?

21 A. I know just from all of my experience over there it
22 has never happened. There have always been no wrist hand
23 shackles when they are in front of the jury.. So it has
24 never happened while I've been involved with any trial
25 here.

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1 Q. But without a doubt he at least had on the leg
2 irons?
3 A. If he's -- yes, obviously he was because I asked for
4 those to be taken care of.
5 Q. And in viewing him today are they similar to the leg
6 irons he is wearing today?
7 A. Can he move back a little bit?
8 MR. BOOZER: Can he stand up please?
9 A. I'm going to say yes just from remembering earlier.
10 [Whereupon, the applicant stands]
11 A. Those would be similar, yes.
12 Q. [Mr. Boozer] Would they have been metal like that
13 with a chain?
14 A. Yes.
15 MR. BOOZER: Have a seat back for me.
16 [Whereupon, the applicant is seated]
17 Q. [Mr. Boozer] You hear the noise that they make.
18 Would they make that same noise?
19 A. We have to be very careful with them in the jury
20 selection stage when the Judge asks us to stand up and
21 introduce the people seated at our table and our client.
22 So we actually rehearse this with them so that they
23 know when we ask them to just stand and turn their body
24 without turning their legs.
25 Q. That's a little bit awkward isn't it?

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1 A. It gets -- as long as there is no sound the people
2 aren't thinking what's going on down there.

3 Q. But you would agree with me sitting here today you
4 can certainly hear his shackles as he moves around?

5 A. I heard them. But I actually asked him to move
6 forward so.

7 Q. Okay. What is the -- for Mr. Mack was there any
8 sort of particular reasoning to your knowledge or was
9 there any determination made by the trial court or -- I
10 guess this is a three part question -- or was there a
11 request by the Solicitor's office that he be shackled for
12 the trial?

13 A. No. The Solicitor doesn't make that suggestion. My
14 understanding of how it works is court security meets
15 with the Judge and the Judge instructs them how they want
16 them to deal with it.

17 That includes also where court security sits in
18 proximity to the client to the State's table; all to make
19 it look like this is not somebody who is going to get up
20 and run.

21 Q. Is that something, and I use the word peculiar, is
22 that something peculiar to Berkeley County or as far as
23 trials go?

24 A. It's been a long time since I've had trials anywhere
25 else but here but I don't -- I think it's each judge has

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1 their own sort of process in dealing with court security.

2 Q. Do you have any concerns sometimes I guess about
3 your client being in leg shackles?

4 A. We are concerned about the sound that they make so
5 that when they do stand at that point we ask them just to
6 limit movement.

7 Q. Why are you concerned?

8 A. Because we don't want them to know they are
9 shackled.

10 Q. Do you think that's prejudicial or can be
11 prejudicial to your client in the eyes of the jury?

12 A. It has the potential for that, yes.

13 Q. Because certainly as it's stated in numerous
14 openings or instructions is that he has this robe of
15 righteous placed on his shoulders yet ---

16 A. --- shackled at the feet, right; I understand that.

17 Q. And you were indicating earlier that you think the
18 process may be that security speaks with the Judge and
19 then there is a determination made if shackles are needed
20 or whatever?

21 A. That's my understanding of the way it works and I've
22 seen different judges do it different ways.

23 Q. Is that sort of a setting that you would like to be
24 privy to be present to hear what is being said since
25 they're talking about your client?

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1 A. Well, they're not talking about my client. They're
2 talking about courtroom security so I can't say that I'm
3 privy to those discussions.

4 Q. Now obviously as Madame Attorney General has asked
5 you earlier at some point you addressed with the court
6 the removing of the shackles for him to testify?

7 A. Correct.

8 Q. Let me ask you this. When either the Judge is
9 entering the courtroom or the jury is exiting and
10 entering do you and your client stand for those specific
11 instances?

12 A. Yes. That varies too whether it is just the Judge
13 or the Judge and the jury.

14 Q. Was that something you and Mr. Mack were standing
15 for at the time?

16 A. I'm sure at different points he would be standing.

17 Q. Do you know whether or not the jury would have seen
18 Mr. Mack in at least the leg shackles?

19 A. Not in the set up of the courtroom over there with
20 the tables with the draped cloth. What wouldn't have
21 been blocked by the drape -- I mean you would have to be
22 under the table essentially to be able to see.

23 Q. Do you think there was a possibility that they heard
24 the shackles?

25 A. I don't believe they would have.

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1 Q. But it's tough to say what they would have seen or
2 heard, is that fair to say?
3 A. Correct.
4 Q. So they could have?
5 A. They -- if they heard it it was a very minimal
6 noise.
7 Q. It's also ---
8 A. --- if you have one person standing up that's one
9 thing but when you have an entire courtroom full of
10 people standing up some of that sound is just not going
11 to be heard.
12 Q. It's also possible that they might have seen or
13 caught a glimpse of at least the leg shackles?
14 A. I don't believe they did ---
15 MS. OLIVE: --- Your Honor?
16 Q. [Mr. Boozer] If he were in wrist shackles they
17 certainly would have seen that?
18 A. Yes.
19 Q. Okay. Was there ever an issue brought up of a 2007
20 incident with Mr. Mack whether it was breach of trust or
21 whether it was labeled as apparently SCDC has it in its
22 record an escape to your knowledge?
23 A. I don't recall the escape issue coming up. We did
24 discuss his prior record for purposes of impeachment if
25 he testified and I thought that was in the paperwork

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1 listed as a breach of -- in the actual transcript I think
2 it's listed as a breach of trust.

3 Q. Right. But there was nothing done independently to
4 say that this guy -- he's a security risk?

5 A. I don't recall any discussion about an escape that
6 he was a security risk.

7 Q. I'm going to go back to the jury instructions that
8 came up and the issue that you brought to light before
9 the court. Have you ever reviewed the transcript
10 recently?

11 A. I just went back through that right when you were
12 raising it.

13 Q. Okay. Did you have time to look back through to
14 sort of what I was raising earlier? And you're welcome
15 to take a look at it if you need to again.

16 A. Because I might need to. First off one of my
17 shortcomings as a lawyer I can remember holdings of cases
18 far better than I can the actual names of the cases. So
19 I know in no place did I ever say the actual case name.

20 But yes, I did raise an issue. I was concerned
21 about potential burden shifting and so we talked about
22 that at length. I'm sure Ms. White and I had a quick
23 little side discussion with each other about what to do
24 but...

25 Q. Just looking back specifically at the transcript --

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1 MR. BOOZER: And Your Honor, I'm looking at page 4
2 of 5 of the transcript.

3 Q. [Mr. Boozer] Beginning at line 18 the court
4 instructs the jury: [Reading] Ladies and gentlemen you
5 and I are acting for the community and that's why we must
6 see to it that this trial is fair and the verdict is
7 just.

8 Now ladies and gentlemen don't get the idea I'm
9 trying to tell you how I think you should decide this
10 case because again as I've already told you under the law
11 of the state of South Carolina you, the jury, are the
12 sole judge of all facts. And it would be highly improper
13 of me to influence you in your performance of that duty.

14 However, ladies and gentlemen I do want to tell you
15 that as the presiding Judge of this court I am vitally
16 concerned that whatever verdict you reach will be the
17 result of you going back in your jury room and confining
18 your consideration to the evidence and the law that
19 you've heard here in this courtroom weighing it fairly
20 and impartially as I have every confidence you will.

21 Ladies and gentlemen everyone is entitled in this
22 case, both the State and the defense. You owe no support
23 or sympathy to anyone. The court is of the confirmed
24 opinion that whatever verdict you reach it will be and
25 shall represent truth and justice for all parties.

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1 Q. Is that sort of the area that you took exception to?

2 A. Yes.

3 Q. And you actually raised the issue. What discussion,
4 if any, did you have with Mr. Mack at that time?

5 A. Probably none.

6 Q. Was this more of a legal kind of deal -- something
7 that you needed to deal with legally?

8 A. That's the way I would look at that, yes.

9 Q. What are sort of the possible scenarios or actions
10 that you could have taken at that point?

11 A. Obviously, she -- there was an offer from the court
12 to form some type of curative instruction. That would
13 again raise up sort of the issue about again this
14 fairness aspect and this communal effort at conducting a
15 trial. She makes it sound like you and I are in this
16 together.

17 Again, I thought the trial had gone really well for
18 us. I thought we had picked a good jury. At that point
19 it could potentially raise an issue that if you can't
20 find a way to do a curative instruction then you risk
21 other factors at the last minute dealing with a trial and
22 whether or not you asked for at that point a mistrial
23 based on that language.

24 I liked what we had. I liked where we had gone with
25 the evidence. I liked the witnesses we had. I liked the

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1 way he testified because he made it very much real for
2 his view and the way he viewed the case and what it was
3 about.

4 It was about not a robbery but it was about a drug
5 deal and all these people were trying to testify and make
6 him out to be something that he wasn't. We had it all
7 where we wanted it. The only thing that happened there
8 is they concluded maybe some of that was true but not all
9 of it.

10 Q. Would you agree with me that this was not a case of
11 overwhelming evidence of guilt of the applicant by the
12 State?

13 MS. OLIVE: Your Honor, that calls for a legal
14 conclusion.

15 MR. BOOZER: He's a lawyer.

16 A. I don't mind answering it. I can't draw a legal
17 conclusion.

18 MR. BOOZER: Your Honor, that question is asked by
19 the State all the time on direct of their lawyer witness.

20 MS. OLIVE: I'll withdraw the objection, Your
21 Honor.

22 MR. BOOZER: Thank you, Your Honor.

23 A. Could you repeat the question?

24 Q. [Mr. Boozer] As a lawyer and in your experience
25 since 1981 I think is when you were practicing law was

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1 this a case in which you would categorize the State's
2 evidence as overwhelming as to the applicant?

3 A. Overwhelming as to identification. I mean certain
4 things you could break down, yes ---

5 Q. --- but overwhelming ---

6 A. --- as he testified I told him on a number of
7 occasions looking at those videos with him that this
8 looks like something else but it doesn't look like an
9 armed robbery.

10 The people are acting inconsistent with that.
11 They're not in fear. They're walking here and there and
12 having all these movements around on the video so, yes.

13 Q. And just to clarify all that you said it would be
14 overwhelming as to who he was, which he's not denying
15 that he was there.

16 A. Right.

17 Q. But you would not categorize the evidence as
18 overwhelming as overwhelming evidence that he committed
19 the crimes that the State is alleging he committed?

20 A. You've got to remember you had three victims that
21 testified. So you know it was an open shot all the way
22 around.

23 Q. And going back sort of to that jury charge where the
24 trial court instructs the jury you and I are acting for
25 the community. Do you think that there is an issue with

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1 you've got your whole defense is I'm a drug dealer? Do
2 you see that playing any sort of role in conflict with
3 that jury instruction?

4 A. If you narrow it down to that extent there is that
5 possibility.

6 Q. Okay. And obviously since I guess you made the
7 objection but there was really -- you didn't make a
8 motion for a mistrial, you didn't do the curative;
9 nothing that certainly would have been preserved for an
10 appellate review.

11 A. Right.

12 Q. Okay.

13 MR. BOOZER: Beg the court's indulgence, Your
14 Honor.

15 THE COURT: All right, sir.

16 [Whereupon, Mr. Boozer confers with his client]

17 Q. [Mr. Boozer] Mr. Schwacke, those are all the
18 questions I have. Thank you, sir.

19 THE COURT: Redirect?

20 MS. OLIVE: Brief redirect, Your Honor.

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Joseph Mack, Jr. v. State of S.C.

Post Conviction Relief Hearing-David Schwacke-Redirect Examination by Ms. Olive
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1 REDIRECT EXAMINATION

2 BY MS. OLIVE:

3 Q. Is there any -- do you have any specific
4 recollection of the jury hearing or seeing any shackles
5 during this trial?

6 A. I do not.

7 Q. And in declining the curative instruction did you
8 think there was a fair chance that the jury could come
9 back not guilty all together?

10 A. Well, obviously not because we admitted he was
11 guilty of the failure to stop. So it was never going to
12 be across the board no guilty verdict or not guilty
13 verdicts.

14 Q. As to the strong armed robbery or armed robbery?

15 A. Did I think they would come back as not guilty of
16 those?

17 Q. Right?

18 A. Obviously because I did request -- I made the
19 request for the strong armed robbery instructions so I
20 guess to that extent there was some belief that those
21 armed robberies would come back as something less. I'm
22 not sure if that's what you're asking.

23 Q. In declining the option for a curative instruction
24 were you more concerned with the outcome of trial or with
25 preserving the argument for ---

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1 A. --- outcome of trial.
2 Q. Okay. Thank you. That's all the questions I
3 have.
4 THE COURT: Mr. Boozer?
5 MR. BOOZER: Nothing further, Your Honor.
6 THE COURT: Thank you. You may step down.
7 THE WITNESS: Thank you, Judge.
8 [Whereupon, the witness is excused and exits the
9 witness stand]
10 THE COURT: Call your next witness.
11 MS. OLIVE: That's all from the State, Your Honor.
12 Thank you.
13 THE COURT: Anything in reply from the applicant?
14 MR. BOOZER: No, Your Honor.
15 THE COURT: I'll be glad to hear argument.
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CLOSING ARGUMENT

BY MR. BOOZER:

Thank you, Your Honor. May it please the court?
Your Honor, first I'd like to approach and I'm going to
do this a couple of times with some case law. The first
is a copy of State v Daniels. May I approach?

THE COURT: Sure.

[Whereupon, Mr. Boozer provides documents to the
court]

MR. BOOZER: And specifically I'd like to address
first the allegation that trial counsel was ineffective
and his action or inaction with regard to the jury
instruction. State v Daniels as I'm sure Your Honor is
familiar with is about that particular exact language.
And I would submit to the court that in this case that
language goes a little bit further as I've discussed with
counsel. And if it pleases the court if I could just
flip back through the transcript for a moment.

[Whereupon, Mr. Boozer reviews documents]

MR. BOOZER: We would submit this goes a little bit
further than that what was used in Daniels specifically
the Judge says now don't get any idea I'm trying to tell
you how to think. And then further on the trial court
indicates they are vitally concerned with whatever
verdict is reached. It goes on to state the fair and

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1 impartially and then that the court is of the confirmed
2 opinion that whatever verdict you reach it will be and
3 shall represent truth and justice for all parties.

4 Your Honor, the opinion in State v Daniels has
5 always for me it's a little bit odd because really the
6 first opinion is the concurring I guess opinion. And in
7 Chief Justice Toal's writing she goes on to state that in
8 the case of State v Daniels you do look at the charges as
9 a whole; that you look at the jury instruction as a whole
10 to determine if it's prejudicial.

11 In State v Daniels they looked at the charges as a
12 whole and they saw that there was overwhelming evidence
13 of his guilt so that there could be no prejudice. In
14 this instance as counsel indicated I don't think he could
15 go so far as to say that there was overwhelming evidence
16 of Mr. Mack's guilt. He did say that there was
17 overwhelming evidence of the identity of Mr. Mack, which
18 he admits that he was there but this was just a drug deal
19 gone wrong.

20 We think that that instruction was prejudicial in
21 his case especially when you look at that the jury should
22 be acting for the community when basically his whole
23 defense is he's an admitted drug dealer. I think the
24 conclusion that can be reached is you're acting for the
25 community if he's a drug dealer that's acting for the

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1 community to find him guilty. So I think Judge that
2 counsel was ineffective in the way that he approached the
3 jury instruction. He could have gone forward with the
4 curative or made a motion for a mistrial or something
5 like that but he didn't.

6 Your Honor, on the other issue that I would like to
7 address, and I'll bring copies if I may to the bench if I
8 may approach?

9 THE COURT: Sure.

10 [Whereupon, Mr. Boozer provides documents to the
11 court]

12 MR. BOOZER: Your Honor, I'm going to hand up three
13 cases and these all have to deal with shackles at trial.
14 Judge, the first case that I've handed up is a South
15 Carolina Supreme Court case which is James Tucker or
16 State v James Tucker. In this instance and it's a 1995
17 South Carolina Supreme Court case. In this instance they
18 kind of analyze about a defendant being restrained being
19 in the trial Judge's discretion. And the trial Judge is
20 to balance the prejudicial effect of shackling with the
21 consideration of courtroom decorum and security.

22 And specifically in this case of Tucker the
23 defendant had two prior convictions for escape and one
24 for attempted escape. He fled the state and was arrested
25 for resisting officers. The shackles in this one were

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1 not visible to the jury and throughout the trial the
2 Judge assured the appellant was sitting at defense table
3 or on the stand. The trial Judge it says took
4 precautions to minimize the effects of the restraints and
5 also offered a curative instruction to explain his
6 failure to stand when the Judge entered and exited the
7 courtroom.

8 The second case Judge that I will cite to you is a
9 U.S. Supreme Court case which is Deck v Missouri, and
10 that's a 2005 ---

11 THE COURT REPORTER: --- Deck?

12 MR. BOOZER: Deck, D-E-C-K, which again has to deal
13 with restraints. And in this the Supreme Court has said
14 that the Fifth and Fourteenth Amendments prohibits using
15 physical restraints visible to the jury absent a trial
16 court determination in the exercise of its discretion
17 that restraints are justified by a state interest
18 specific to the particular defendant on trial.

19 The third case I've handed up is a South Carolina
20 Court of Appeals case which is State v Kendall Green.
21 Your Honor in this case it just basically lays out the
22 ground work for making an analysis under both Tucker and
23 Deck. It acknowledges that we do abide by Deck and
24 Tucker. And specifically in this case, Your Honor, I
25 have not handed up any of the briefing in this case but

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1 out of curiosity looked up the briefs for background.
2 And in that case the lawyer objected to the defendant
3 being in shackles but the trial Judge went on to cite the
4 reasons of why we need to have this particular defendant
5 in shackles. And part of that, and this was the quote,
6 was his atrocious behavior in county jail.

7 Your Honor, you've obviously heard the testimony of
8 the applicant indicating it's uncontroverted he was in
9 leg restraints. There is some discrepancy about whether
10 he was in a waist chain along with wrist shackles. But
11 even if he were just in the leg chains I still think that
12 per these cases that there would need to be some
13 determination made. It appears from the testimony that
14 was taken they did take precautions to have him not be
15 viewable to the jury. But certainly as Your Honor has
16 probably heard you can hear him moving around with the
17 shackles on.

18 I think at the very least there should have been
19 some determination made why he needed to be in those
20 shackles. And Your Honor, I'll let the rest of his
21 allegations stand on the testimony and the PCR
22 application. But for those reasons we would respectfully
23 request that Your Honor grant his PCR application.

24 THE COURT: All right. Thank you.
25

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CLOSING ARGUMENTS

BY MS. OLIVE:

Thank you, Your Honor. May it please the court?
Your Honor, as an initial matter the State would argue that any claims presented today must be framed as ineffective assistance of counsel because of the way they are raised in the PCR.

Specifically with regard to the shackles and the jury instruction these allegations must be that counsel was ineffective for failing to object to the shackles or failing to ask that the shackles be removed throughout the entire trial and presumably -- well, for failing to object to the jury instruction.

With respect to the shackles, Your Honor I would ask the court find Mr. Mack's testimony that he was restrained at the wrists incredible particularly given that his testimony conflicts with the record in this case. And the testimony I'm referring to is his testimony that he -- that the shackles were not removed for him to testify.

Clearly, the record reflects they were removed for him to testify outside of the presence of the jury. Your Honor, we would argue there is no deficiency on behalf of counsel for not asking that the shackles be removed. He testified that there is no -- he has no specific

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1 recollection and certainly there is no indication in the
2 record that the jury saw or heard the shackles, therefore
3 there was no need for him to raise that issue. He was
4 shackled at the legs. He was seated at a table that was
5 skirted on all sides that the jury could not see.

6 The only reference to him standing would have been
7 while everyone else in the courtroom was standing as the
8 jury left the room or the Judge came into the courtroom
9 except in the jury selection process where he said they
10 were very careful; that he made sure that Mr. Mack was
11 very careful in standing up so that the leg irons could
12 not be heard. So it's our argument there was no need to
13 raise this objection.

14 Further all the cases that Mr. Boozer cited to are
15 direct appeal cases is my understanding. So I think the
16 analysis is a little bit different since we're here on
17 PCR and the question is whether counsel should have
18 objected and whether Mr. Mack was prejudiced by lack of
19 objection. And clearly there is no prejudice here
20 because there is no indication the jury ever saw or heard
21 the shackles in this case.

22 With regard to the jury instruction the fair and
23 impartial language that was admonished in State v Daniels
24 first the court in State v Daniels noted that no
25 constitutional error occurred but did caution the trial

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1 court against using that language in its instructions.
2 Mr. Schwacke did object to the jury instruction. The
3 court offered a curative instruction which would have
4 been the relief in that case and he declined the curative
5 instruction because as he testified he felt that the
6 trial had gone well for Mr. Mack.

7 He had obtained the lesser included -- the charge on
8 the lesser included of strong armed robbery and he
9 testified they had a good jury. He felt that Mr. Mack
10 testified well and so he declined the curative
11 instruction because he did not want to bring additional
12 attention that might have ultimately harmed Mr. Mack in
13 the jury's deliberations.

14 In addition the State would argue that Mr. Schwacke
15 did not give the definite opinion as to whether the
16 evidence was overwhelming. He did testify that three
17 victims testified against Mr. Mack. They all testified
18 that he had a weapon. Ultimately the jury found that he
19 did not have a weapon or did not have a deadly weapon.

20 In addition Mr. Schwacke did testify the evidence
21 was overwhelming as to identification. So it's our
22 position that there is no deficiency because Mr. --
23 because trial counsel did in fact object to the
24 instruction but declined the curative instruction because
25 he felt it would not benefit his client. In addition

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1 there is no prejudice because there was a sufficient
2 amount of evidence against Mr. Mack if not overwhelming
3 it would not have made a difference if the curative
4 instruction had been given in this case because it's our
5 position it would have been harmless beyond a reasonable
6 doubt. And that would be the State's position, Your
7 Honor. Thank you.

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Post Conviction Relief Hearing-Ruling by the Court
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1 THE COURT: Let me ask this question. I thought I
2 read through the transcript, read through most of the
3 transcript but I can't remember on the issue of the
4 amount of evidence. If I recall didn't the State present
5 evidence about certain jewelry being taken and certain
6 jewelry being found on the side of the road? But in
7 addition to that wasn't there some jewelry found on the
8 defendant himself?

9 MR. BOOZER: Your Honor, correct there was jewelry
10 found on him which I believe their response to that was
11 that that was part of the transaction for him to hold
12 jewelry from one of those folks as part of the
13 transaction. But yes, there was jewelry found on him.

14 THE COURT: His explanation was that it was --
15 okay.

16 MR. BOOZER: Correct.

17 THE COURT: That's what I missed. Okay. Mr.
18 Boozer the court agrees with the argument and the
19 position as stated by the Attorney General on these
20 matters and I don't know if I would say its overwhelming
21 evidence of his guilt; I don't know what he was convicted
22 of but it was certainly substantial evidence to support
23 the findings of the armed robbery and of course the
24 failure to stop. And I'll ask the Attorney General to
25 please prepare an order.

Joseph Mack, Jr. v State of S.C.
Post Conviction Relief Hearing-Ruling by the Court
April 18, 2017

1 MS. OLIVE: Thank you, Your Honor.
2 MR. BOOZER: Thank you, Your Honor.
3 *****END OF TRANSCRIPT OF RECORD*****
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Joseph Mack, Jr. v State of S.C.
Certificate of the Court Reporter
April 18, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Berkeley County, South
Carolina on the 18th day of April, 2017.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

June 6, 2017


Joyce C. Rueger, CVR-M
Court Reporter



COPY

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Joseph Mack, Jr., SCDC No. 359321,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2015-CP-08-2874

ORDER OF DISMISSAL

FILED
2017 JUL 24 PM 3:36
MARY P. BEOWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Joseph Mack, Jr. (Applicant) on December 22, 2015, alleging various claims of ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and state and federal constitutional violations. Respondent made its Return on June 6, 2016, requesting an evidentiary hearing be held. Thereafter, on August 15, 2016, Applicant, through counsel, filed an amended application. An evidentiary hearing was convened in the Berkeley County Court of Common Pleas on April 18, 2017, at the Berkeley County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Alicia Olive of the South Carolina Attorney General's Office. At the conclusion of the hearing, this Court denied the application from the bench. This order follows.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. During its February 2013 term of court, the Berkeley County Grand Jury indicted Applicant for three counts of armed robbery (2013-GS-08-0331, -0332, -0333), one count of failure to stop for a blue light (2013-GS-08-0330), and one count of possession of a weapon

during the commission of a violent crime (2013-GS-08-0334). David Schwacke, Esquire, of the Berkeley County Public Defender Office represented Applicant. The State was represented by Assistant Solicitors Colleen Dixon Taylor and Charles Condon. On March 17, 2014, Applicant proceeded to jury trial in the Berkeley County Court of General Sessions before the Honorable Carmen T. Mullen., circuit court judge. On March 18, 2014, the jury convicted Applicant as indicted for failure to stop for a blue light, for three counts of the lesser included offense of strong arm robbery, and acquitted Applicant of possession of a weapon during the commission of a violent crime. Judge Mullen sentenced Applicant to fifteen years' imprisonment for each count of strong arm robbery, all to be served concurrently, and to a consecutive three years' imprisonment for failure to stop for a blue light.

Applicant filed a timely notice of appeal and an appeal was perfected on Applicant's behalf by Appellate Defender LaNelle C. Durant of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Following the submission of an Anders¹ brief and Applicant's *pro se* brief, the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Joseph Mack, Jr., Op. No. 2015-UP-495 (Ct. App. filed Oct. 21, 2015). The Remittitur was returned to the circuit court on November 13, 2015.

ALLEGATIONS RAISED

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on allegations of ineffective assistance of trial counsel, ineffective assistance of appellate counsel, and state and federal constitutional violations and violations of state and federal precedent. In his amended application, Applicant alleged trial counsel was ineffective for "fail[ing] to object or to otherwise challenge the Applicant remaining in shackles throughout the

¹ Anders v. California, 386 U.S. 738 (1967).

duration of the jury trial.” At the evidentiary hearing, Applicant went forward solely on allegations against trial counsel.

SUMMARY OF EVIDENCE ADDUCED AT TRIAL

On the afternoon of January 6, 2013, Applicant drove a Green Chevrolet pickup truck into a truck yard in Hanahan. He approached three different truck drivers who were preparing their trucks for the trip the following day. First, Applicant approached John Rhodan and was friendly at first, then drew what the victims described as a pistol and robbed him. Applicant then did the same thing with Jackie Meyers, another truck driver who was the girlfriend of Rhodan, and took her jewelry. He then robbed Keith Blake who was the third driver and went into his truck. (Trial Tr. p. 112-113.)

Unbeknownst to Applicant, Keith Blake was on his Bluetooth during the robbery and asked the person on the other line to call the police for assistance. Law enforcement arrived very quickly. The victims provided a description of Applicant's vehicle and a BOLO for the vehicle went out to dispatch. Applicant's truck was spotted nearby and police activated their blue lights; Applicant did not stop. After a half mile chase, during which Applicant threw items from the vehicle, Applicant's vehicle crashed into a camper at a mobile home park. Applicant was apprehended, and charged with three counts of armed robbery, failure to stop for a blue light, and possession of a weapon during a crime of violence. (Trial Tr. p. 114, p. 220, p. 223).

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf. He testified he was arrested on January 5, 2013, following allegations he had robbed three people at gunpoint. (PCR Tr. p. 8-9). Applicant testified he had not robbed the people, but instead had been selling them cocaine when a dispute arose. (PCR Tr. p. 9-10). Applicant testified that he testified at trial and

explained to the jury this was a drug transaction that ended in a disagreement, not a robbery. (PCR Tr. p. 9-11, 27).

He testified trial counsel David Schwake (trial counsel) was appointed to represent him and he met with trial counsel five times prior to trial. (PCR Tr. p. 8-9). Applicant testified he and trial counsel discussed his version of events—this was a drug deal gone awry, not a robbery. (PCR Tr. p. 11-12). He testified they watched the various surveillance videos from the scene and trial counsel agreed it did not look like a robbery. (PCR Tr. p. 12). He testified trial counsel told him others in his office who had watched the videos also agreed it did not look like a robbery. (PCR Tr. p. 13). He testified trial counsel argued to the jury that this was a drug deal, not a robbery and he was in agreement with this argument. (PCR Tr. p. 14-15).

Applicant testified he was in wrist, waist, and ankle shackles throughout his trial and these were visible to the jury. (PCR Tr. p. 21-22). He testified he discussed his shackles with trial counsel and that they tried to conceal the shackles as much as possible. (PCR Tr. p. 23). He testified he had not been disruptive in jail and did not have any prior charges that would have warranted the need for shackles during his trial. (PCR Tr. p. 23-24). He denied having a prior escape charge that is reflected on his Department of Corrections records. (PCR Tr. p. 24, 28-30). Applicant denied his shackles were removed during his testimony and disputed the trial transcript references indicating his shackles were removed to allow him to testify. (PCR Tr. p. 24-25, 31-32). Applicant disputed that the table where he was seated had a curtain covering his legs. (PCR Tr. p. 30). Applicant testified his shackles were visible to the jury. (PCR Tr. p. 25-26).

Trial counsel took the stand next and testified he had been practicing criminal defense for more than thirty-five years. (PCR Tr. p. 34). He testified he was appointed to represent Applicant

shortly after his arrest and met with Applicant for the first time on February 21, 2013. (PCR Tr. p. 34-35). Trial counsel testified he met with Applicant ten times and reviewed all discovery materials with Applicant, including numerous videos. (PCR Tr. p. 36). He testified they discussed Applicant's version of events and potential witnesses. (PCR Tr. p. 36). He testified based on their discussions, the defense's theory was this was a drug deal that led to a dispute, not a robbery. (PCR Tr. p. 37). He testified discussing the ramifications of this defense, including implications from telling the jury Applicant was a drug dealer and Applicant wanted to pursue this defense despite the drawbacks. (PCR Tr. p. 37, 41).

Trial counsel testified he thought the trial went well and they had selected a good jury, and that based on this, he elected to forge a curative instruction to the trial court's improper jury instruction. (PCR Tr. p. 38, 50). Trial counsel also testified he believed a curative instruction would have highlighted the improper argument to the jury. (PCR Tr. p. 38, 50).

Trial counsel testified Applicant's trial was in courtroom E in the historic courthouse and the tables were draped with a black curtain that concealed the legs of those seated at the tables, including Applicant's legs. (PCR Tr. p. 38-39, 46). Trial counsel testified Applicant had on leg shackles during his trial but did not have on any wrist or waist shackles. (PCR Tr. p. 39). Trial counsel testified he is absolutely certain Applicant did not have on wrist shackles, as he has never seen a defendant tried in wrist shackles at the Berkeley County Courthouse. (PCR Tr. p. 42). Trial counsel testified the decision whether to have a defendant restrained and what type of restraints are used is determined by the trial judge and courtroom security, not the State or defense counsel. (PCR Tr. p. 39, 44-46). Trial counsel testified Applicant's leg shackles were never visible to the jury throughout the entirety of his trial. (PCR Tr. p. 40, 47). He testified Applicant's ankle shackles were removed at trial counsel's request before Applicant testified.



(PCR Tr. p. 40-41, 43). Trial counsel testified he does not think the jury heard any noise from the shackles either, as he rehearses moving to avoid making any noise with his clients in advance of trial. (PCR Tr. p. 43-44, 46).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds trial counsel's testimony credible and finds Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after



conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Capron v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action. Below are this Court's rulings in regards to each of Applicant's specific allegations of ineffective assistance of counsel:



Allegation—Trial counsel was ineffective for failing object or otherwise challenge Applicant remaining in shackles throughout the duration of the jury trial.

Applicant alleges trial counsel was ineffective for failing to object or otherwise challenge Applicant remaining in shackles throughout the duration of the jury trial. Applicant alleges he was shackled at the wrist, waist, and ankle, and that these onerous shackles were visible to the jury, thereby depriving him of his right to a fair trial.

Whether a defendant is tried in shackles is within the trial court's discretion. See Deck v. Missouri, 544 U.S. 622, 629, (2005) (holding the use of physical restraints visible to the jury are prohibited absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial); State v. Tucker, 320 S.C. 206, 209, 464 S.E.2d 105, 107 (1995) (providing that the trial judge is to balance the prejudicial effect of shackling with the considerations of courtroom decorum and security; whether a defendant is restrained during trial is within the trial judge's discretion; and the trial judge is the best equipped to decide the extent to which security measures should be adopted to prevent disruption of the trial, harm to those in the courtroom, escape of the accused, and prevention of other crimes). In the present case, the credible testimony and record reveals Applicant was tried in ankle shackles that were never visible to the jury.

During the evidentiary hearing, Applicant testified he was in wrist, waist, and ankle shackles throughout his trial, including when he testified before the jury. Trial counsel's testimony sharply refuted Applicant's version of events—counsel testified Applicant only had on ankle shackles (not wrist or waist shackles as Applicant alleged), which were out of the view of the jury during the entire trial due to a dark curtain that encompassed the table where Applicant sat throughout the trial. Trial counsel also testified Applicant's ankle shackles were removed



before he testified at counsel's request; this is confirmed by the trial transcript. See Trial Tr. p. 292. Furthermore, trial counsel testified he practiced with Applicant how Applicant should move before the jury to avoid making any sound with his shackles and he does not think the jury heard Applicant's shackles during trial.

As previously noted, this Court finds trial counsel's testimony credible and Applicant's testimony not credible. This is particularly relevant to this allegation, where the testimonies of Applicant and trial counsel are wholly contradictory. This Court agrees with trial counsel's version of events, which is supported by the record, and finds trial counsel performed effectively in ensuring his client received a fair trial. Trial counsel requested Applicant's ankle shackles be removed prior to his testimony before the jury and instructed Applicant how to move to reduce, if not remove, any possible noise caused by the ankle shackles. Moreover, this Court finds trial counsel properly did all he could to ensure Applicant had a fair trial despite the trial court's determination Applicant should be shackled by the ankle during his trial. Trial counsel's performance was reasonable and in accordance with professional standards. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, Applicant cannot satisfy his burden of establishing any prejudice from trial counsel's alleged deficient performance regarding his ankle shackles, as there is no "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Trial counsel's credible testimony and the record establish Applicant was not presented to the jury with any visible shackling or restrains, and therefore, Applicant cannot establish the result of the trial would have been different—that he would have been acquitted—but for trial counsel's failure to object to his ankle shackles. This Court finds this allegation must be denied and dismissed with prejudice.



Allegation—Trial counsel was ineffective for failing to request a curative instruction or move for a mistrial following the trial court's jury instruction

Applicant alleges trial counsel was ineffective for failing request a curative instruction or move for a mistrial after the following portion of the trial court's instruction which he alleges amounted to improper burden shifting. The specific portion of the trial court's instruction to the jury follows:

Ladies and gentlemen, you and I are acting for the community and that's why we must see to it that this trial is fair and the verdict is just.

Now, ladies and gentlemen, not get the idea that I'm trying to tell you how I think you should decide this case because, again, as I've already told you, under the laws of the State of South Carolina, you, the jury, are the sole judge of all facts. And it would be highly improper for me to influence you in your performance of that duty.

However, ladies and gentlemen, I do want to tell you that as the presiding judge of this court, I am vitally concerned that whatever verdict you reach will be the result of you going back into your jury room and confining your consideration to the evidence and the law that you've heard here in this courtroom, weighing it fairly and impartially as I have every confidence you will.

Ladies and gentlemen, everyone is entitled to justice in this case, both the State and the defense. You owe no support or sympathy to anyone. The Court is of confirmed opinion that whatever verdict you reach, it will be and shall represent truth and justice for all parties involved.

(Trial Tr. p. 405-06). Thereafter, the trial court continued with its jury charge, and following the conclusion of the trial court's instruction, trial counsel noted his objection to the aforementioned passage. (Trial Tr. p. 413). After a discussion with the trial court, declined a curative instruction, noting, "a curative instruction might just draw undue attention to the comment." (Trial Tr. p. 413-14). After further discussion with the State, the trial court found its charge as a whole

adequately covered the presumption of innocent and reasonable doubt, and therefore, did not impermissibly shift the burden to Applicant. (Trial Tr. p. 414-15).

Applicant argues the trial court's comments were improper and trial counsel's failure to request a curative instruction or move for a mistrial prejudiced him by depriving him of his right to a fair trial. In support of this allegation, he cites to State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012).

After reviewing the record in its entirety in conjunction with Daniels and other applicable case law, this Court finds this allegation must be denied and dismissed with prejudice. The trial court's instruction is a proper recitation of law when considered as a whole does not impermissibly shift the burden to Applicant or otherwise deprive him of a fair trial. See State v. Daniels, 401 S.C. 251, 260, 737 S.E.2d 473, 477-78 (2012) ("However, despite the trial court's mistake, the instruction as a whole properly conveyed the law to the jury and it is not reasonably likely that the jury acted in contravention of the reasonable doubt standard."); see also Aleksey, 343 S.C. 20, 29, 538 S.E.2d 248, 252-53 (2000) (finding reversal not required when the trial court's improper instructions were given in the context of witness credibility and not reasonable doubt)). Therefore, trial counsel performed in accordance with professional standards when electing not to receive a curative instruction or move for a mistrial.

Moreover, since the trial court's entire instruction was proper, a curative instruction would not have had any impact on the outcome of the trial and a motion for a mistrial would not have been granted. Applicant is unable to establish the result of his trial would have been different absent trial counsel's errors. This allegation must be denied and dismissed with prejudice.



CONCLUSION

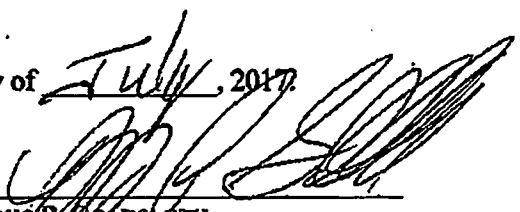
Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 14 day of July, 2017.


BROOKS P. GOLDSMITH
Presiding Judge
Ninth Judicial Circuit

 , South Carolina

CED2013-01-00059

WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

41974GE

DATE OF ARREST

January 6, 2013

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

02.06.13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800330

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

Vs

JOSEPH MACK JR

DOB: 1967-[REDACTED]

B/M

Indictment for

Fallure to Stop for a Blue Light

FILED

13 FEB -6 PM 12:04

CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

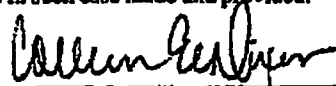
INDICTMENT

At a Court of General Sessions, convened on February 6, 2013 the Grand Jurors of Berkeley County present upon their oath:

Failure to Stop for a Blue Light

That Joseph Mack Jr did in Berkeley County, South Carolina, on or about January 6, 2013, while driving a motor vehicle on a road, street, or highway of the State, did knowingly, willfully, intentionally, and in the absence of mitigating circumstances, fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren to do so; all in violation of Section 56-5-750 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.



COLLEEN E DIXON
ASSISTANT SOLICITOR

CED2013-01-00059

WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

2013A0820300202

DATE OF ARREST

January 7, 2013

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 02.06.13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800331

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

Vs

JOSEPH MACK JR

DOB: 1967

B/M

Indictment for

Armed Robbery

JH

FILED

13 FEB -6 PM 12:05

MARY F. LINDEN
CLERK OF COURT
BERKELEY COUNTY, S.C.

JH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Session, convened on February 6, 2013 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

602
That Joseph Mack Jr did on or about January 3, 2013, in Berkeley County, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Keith Blake with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


COLLEEN E DIXON
ASSISTANT SOLICITOR

CED2013-01-00059

WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

2013A0820300203

DATE OF ARREST

January 7, 2013

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

02.06.13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800332

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

Vs

JOSEPH MACK JR

DOB: 1967- [REDACTED]

B/M

Indictment for

Armed Robbery

13 FEB -6 PM 12:04
MARY C. BILLYN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JFH

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Berkeley

VS.

Joseph Mack Jr

AKA:

Race: BLACK Sex: M Age: 46

DOB: SS#:

Address:

City, State, Zip: Hollywood, SC 29449-6118

DL#: SID#: SC00684564

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Strong Arm Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0800332

A/W#: 2013A0820300203

Date of Offense: 1/6/2013

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Taylor, Colleen E.

73731
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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ 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 PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL.

\$	
\$	
\$	100.00
\$	100.00
\$	12.00
\$	25.00
\$	500.00
\$	25.00
\$	150.00
\$	50.00
\$	40.00
\$	5.00
\$	3.90
\$	133.90

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

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2142
1-18-14

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

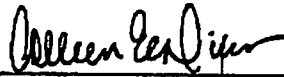
INDICTMENT

At a Court of General Sessions, convened on February 6, 2013 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That Joseph Mack Jr did on or about January 6, 2013, in Berkeley County, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Jacqueline Myers with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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



COLLEEN E DIXON
ASSISTANT SOLICITOR

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

ARREST WARRANT

2013A0820300203

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
HANAHAN

THE STATE

against

MACK, JOSEPH

Address: [REDACTED]

HOLLYWOOD SC 29449

Phone: 843-000-0000 SSN: [REDACTED]

Sex: M Race: B Height: 511 Weight: 220

State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0080600

Prosecuting Agency: HANAHAN POLICE

Prosecuting Officer: PFC. LANPHERE

Offense: ROBBERY WHILE ARMED WITH A

Offense Code:

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant Mack Joseph

on 1/7/2013

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

JUDGE REVELISE

1255 YEAMANS HALL ROAD

HANAHAN SC 29410

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
HANAHAN

AFFIDAVIT

I, Wanda,
Personally appeared before me the affiant
being duly sworn deposes and says that defendant MACK, JOSEPH
did within this county and state on 01/06/2013 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of HANAHAN)
in the following particulars:

DESCRIPTION OF OFFENSE:

ROBBERY WHILE ARMED WITH A DEADLY WEAPON - 16-11-330

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
That on January 6, 2013, while at [REDACTED] Trident Street, within the City of Hanahan, County of Berkeley, State of South Carolina, the
defendant, Joseph Mack, Jr., did violate section 16-11-330 of the South Carolina Code of Laws of 1976, as amended, Armed
Robbery, in that the defendant did willfully, unlawfully and feloniously take money and jewelry belonging to the victim, Jacqueline
Meyers, without her consent by placing her in fear for her safety while armed with a Walther PPK clone Crosman brand
compressed air pistol. This is true and believable based on statements provided by Meyers and two other victims and security
camera video footage from the business depicting the incident. All obtained during an active criminal investigation conducted by
Corporal T. Lanphere of the Hanahan Police Department. All against the peace and dignity of the State of South Carolina.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
HANAHAN

Affiant's Address 1255 YEAMANS HALL ROAD

HANAHAN SC 29410

Affiant's Telephone 843-576-5262

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/06/2013 defendant MACK, JOSEPH

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of HANAHAN) as set forth below:

DESCRIPTION OF OFFENSE:

ROBBERY WHILE ARMED WITH A DEADLY WEAPON - 16-11-330

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 1/7/13

Signature of Issuing Judge

Judge Code: 888

Judge's Address 1255 YEAMANS HALL ROAD

HANAHAN SC 29410

Judge's Telephone 843-576-5262

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

FILED
JAN - 8 PM 2:55
CLERK OF COURT
BERKELEY COUNTY, S.C.

CED2013-01-00059

WITNESSES

Hanahan Police Department

AGENCY CASE NUMBER

ARREST WARRANT NUMBER

2013A0820300204

DATE OF ARREST

January 7, 2013

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

02.06.13

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800333

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

February Term 2013

THE STATE

Vs

JOSEPH MACK JR

DOB: 1967-[REDACTED]

B/M

Indictment for

Armed Robbery

MAURY P. HICMAN
CLERK OF COURT
BERKELEY COUNTY, S.C.

13 FEB -6 PM 12: 05

FILED

JH

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on February 6, 2013 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That Joseph Mack Jr did on or about January 6, 2013, in Berkeley County, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of John Rhodan with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


COLLEEN E DIXON
ASSISTANT SOLICITOR