

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Honorable Robin B. Stilwell, Circuit Court Judge

DAVID W. CHILES, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000602

APPENDIX

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1 State of South Carolina
2 County of Greenville

In the Court of
General Sessions

3 State of South Carolina,)
4)
5)
6 -vs-)
7 David Wince Chiles, Jr.,)
8 and Precious Harris,)
9 Defendants.)
_____)

2012-GS-23-965
2012-GS-23-966
2012-GS-23-1727
2012-GS-23-3108

November 5, 2014
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Volume I
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B E F O R E:

The Honorable Alexander S. Macaulay, Judge;
and a jury

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

Jeff Weston, Assistant Solicitor
Attorney for the State

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Attorney for Defendant Chiles

Scott Robinson, Attorney at Law
Attorney for Defendant Harris

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

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E x h i b i t s

For the State:

| <u>Marked</u> | <u>Description</u> | <u>I.D.</u> | <u>Admitted</u> |
|---------------|--------------------|-------------|-----------------|
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For the Defendant Chiles:

| <u>Marked</u> | <u>Description</u> | <u>I.D.</u> | <u>Admitted</u> |
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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 11:12 a.m.)

4 THE COURT: State versus David Wince Chiles,
5 Junior, and Precious -- pronounciation, please?

6 THE DEFENDANT HARRIS: "Jacquetta."

7 THE COURT: Thank you, ma'am. Harris.

8 Is the State ready to proceed?

9 MR. WESTON: State is ready to proceed.

10 THE COURT: The defense, on behalf of Mr. Chiles?

11 MR. SMITH: Yes, your Honor.

12 THE COURT: Defense ready on behalf of Ms. Harris?

13 MR. ROBINSON: Yes, sir, Judge.

14 THE COURT: Very good. Ask the jury to join us.
15 We'll go ahead and qualify the panel for the trial in
16 this case and then strike the jury. We'll have 12, of
17 course, and one alternate.

18 And, Mr. Weston, listen carefully. The strikes
19 for the State, since we have two codefendants, is ten.
20 The strikes for the defense are a total of 20, ten
21 apiece. The strikes for the alternate will be two for
22 the defense, one for the State.

23 MR. WESTON: Yes, sir, your Honor. That's my
24 understanding.

25 THE COURT: Mr. Robinson, is that your

1 understanding, too?

2 MR. ROBINSON: It is, your Honor.

3 THE COURT: And yours, Mr. Smith?

4 MR. SMITH: It is, your Honor.

5 THE COURT: All right. Very good.

6 (WHEREUPON, State's Exhibit Numbers 1 - 7 were
7 marked for identification.)

8 (WHEREUPON, the jury came into open court at
9 approximately 11:26 a.m.)

10 THE COURT: Good morning, ladies and gentlemen.
11 My name is Alex Macaulay. I am one of the resident
12 circuit judges in the Tenth Circuit which includes
13 Anderson and Oconee County, is where I reside. I've
14 been assigned this week to Greenville County Court of
15 General Sessions for this one-week term.

16 General sessions court is sometimes called
17 criminal court. Its purpose is to resolve all
18 questions of alleged criminal conduct arising between
19 the State of South Carolina and the defendants in a
20 fashion which will ensure that justice under the law is
21 accomplished.

22 The trial of a case begins with the selection of a
23 jury. Both the State and the defendants are entitled
24 to jurors who will approach the case with an open mind.
25 The trial jury must be as free as humanly possible from

1 any bias, prejudice or sympathy for either side and
2 free from any preconceived ideas on the facts of the
3 case or the law of the case.

4 Therefore, certain questions will be asked of you,
5 the petit jury panel. The questions which will be
6 asked are designed to ensure each side a fair and
7 impartial jury. I might note further if any person
8 should talk with you or attempt to talk with you about
9 any case scheduled for this term of court, it would be
10 your solemn duty to immediately report that matter to
11 the Court.

12 We will now begin the selection of the trial jury.

13 Mr. Solicitor, if you would, please, call your
14 cases.

15 MR. WESTON: Yes, sir, your Honor.

16 The State would call the cases of the State versus
17 David Wince Chiles. Mr. Chiles is charged under
18 indictment number 2012-GS-23-965 with the offense of
19 conspiracy. Under indictment number 2012-GS-23-966
20 with the offenses of armed robbery and possession of a
21 weapon during commission of a violent crime.

22 The State would also call the case of the State
23 versus Precious J. Harris. Ms. Harris is charged under
24 indictment number 2012-GS-23-1727 with the offense of
25 conspiracy. She is also charged on the indictment

1 number 2012-GS-23-3108 with the offense of armed
2 robbery.

3 (Indictments handed up to the Court.)

4 THE COURT: Ladies and gentlemen of the petit jury
5 panel, please give me your attention. We're about to
6 try the case entitled the State of South Carolina
7 versus David Wince Chiles, Jr., and Precious Jacquetta
8 Harris. The State will be represented by Mr. Weston.

9 Mr. Weston, if you would, please, stand and
10 introduce yourself.

11 MR. WESTON: Ladies and gentlemen, my name is Jeff
12 Weston, and I'm a prosecutor with the Thirteenth
13 Circuit prosecutor's office.

14 THE COURT: Mr. Chiles will be represented by
15 Mr. Smith.

16 Mr. Smith, if you would stand, introduce yourself,
17 your law firm and your client.

18 MR. SMITH: My name is Marcus Smith. I'm a former
19 prosecutor and defense attorney here now. My office is
20 law offices of Marcus L. Smith down on the corner of
21 Church and Academy, right there where the Bi-Lo Center
22 is or the Wellness Center now. This is my client,
23 David Wince Chiles.

24 Please stand up.

25 THE COURT: Very good. Thank you very much.

1 Ms. Harris is represented by Mr. Robinson.

2 Mr. Robinson, if you would, please, stand,
3 introduce yourself and your client.

4 MR. ROBINSON: If it please the Court, good
5 morning. I'm Scott Robinson. I practice here in
6 Greenville, and this is my client, Precious Harris.

7 THE COURT: Now, ladies and gentlemen of the jury
8 panel, I now direct you to the following questions.

9 Is there any member of the jury panel related by
10 blood or marriage, now or formerly, close personal
11 friends or business associates of either the defendant,
12 David Wince Chiles, Jr., or the defendant, Precious
13 Jacquetta Harris? If so, please stand.

14 Any member of the jury panel related by blood or
15 marriage, now or formerly, close personal friend or
16 business associate of the defendant, David Wince
17 Chiles, Jr., or Precious Jacquetta Harris? If so,
18 please stand.

19 Is there any member of the jury panel a member of
20 the Grand Jury for Greenville County that found and
21 returned these indictments in the year 2012? If so,
22 please stand.

23 Now, I'm going to be reading a list of names of
24 potential witnesses. Now, these are witnesses who may
25 be called but do not have to be called during the trial

1 of the case. If they're in the courtroom, if -- I
2 think they're all standing that are in the courtroom.
3 If they will just raise their hand and step forward so
4 the jury can look upon you.

5 Jonathan Horne, the Greenville County Sheriff's
6 Office. Very good. Thank you.

7 Eric Allgood of the Greenville County Sheriff's
8 Office.

9 Jeremy Jones of the Greenville County Sheriff's
10 Office.

11 Michael Rainey of the Greenville County Sheriff's
12 Office.

13 Bennie Durham of the Greenville County Sheriff's
14 Office.

15 Deven Hoover of the Greenville County Sheriff's
16 Office.

17 Michael Fortner of the Greenville County Sheriff's
18 Office.

19 J. Derby.

20 Scotty Hill.

21 Joel Lomax or Noel Lomax.

22 Quinzell Davis.

23 Michael Culbertson. Thank you.

24 Michael Adams. Thank you.

25 Keith Williams.

1 Now, is there any member of the jury panel related
2 by blood or marriage now or formerly, or close personal
3 friends or business associates of: Jonathan Horne,
4 Eric Allgood, Jeremy Jones, Michael Rainey, Bennie
5 Durham, Deven Hoover, Michael Fortner, J. Derby, Scotty
6 Hill, Noel Lomax, Quinzell Davis, Michael Culbertson or
7 Michael Adams or Keith Williams, potential witnesses in
8 this case? If so, please stand at this time.

9 Yes, sir. We'll start on the front here. Yes,
10 sir, in the garnet shirt.

11 POTENTIAL JUROR: I personally know Quinzell
12 Davis.

13 THE COURT: That's Mr. Davis that you know?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: All right. Would that in any way
16 interfere with your ability to give both the State and
17 the defendants a fair and impartial trial in this case
18 if he was a witness?

19 POTENTIAL JUROR: No, sir.

20 THE COURT: Your name and number, please.

21 POTENTIAL JUROR: Charles Hayes, juror 84.

22 THE COURT: Thank you very much.

23 MR. SMITH: Judge, may we ask how he knows him?

24 THE COURT: All right.

25 Mr. Hayes, how do you know him?

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1 POTENTIAL JUROR: We just grew up together.

2 THE COURT: All right. Anything else?

3 MR. SMITH: No, your Honor.

4 THE COURT: Yes, sir. Your name and number?

5 POTENTIAL JUROR: James King, juror 105. I know
6 Pastor Bennie Durham.

7 THE COURT: Would that in any way interfere with
8 your ability to give the State and the defendant a fair
9 and impartial trial?

10 POTENTIAL JUROR: No.

11 THE COURT: How do you know him?

12 POTENTIAL JUROR: He is my pastor.

13 MR. SMITH: What was his number again, Judge? I'm
14 sorry.

15 POTENTIAL JUROR: 105.

16 MR. WESTON: Excuse me, your Honor. I believe
17 it's a different Bennie Durham.

18 THE COURT: Let's do this. I don't know if -- is
19 Bennie Durham here?

20 MR. DURHAM: I'm David Durham. I'm his son.

21 MR. WESTON: It should have been David Durham,
22 your Honor, instead of Bennie Durham on there.

23 THE COURT: Let's just say if it was David Durham,
24 would that, Mr. Hayes, would that in any way affect
25 your ability to give both the State and the defendant a

1 fair and impartial trial?

2 POTENTIAL JUROR: No, sir.

3 THE COURT: All right. But do you know -- his
4 father is the Bennie Durham that you know?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Very good. Thank you.

7 Thank you, Mr. Weston.

8 Any other questions from the defense?

9 MR. SMITH: Not as to that juror, your Honor.

10 THE COURT: All right.

11 Is there any member of the jury panel or members
12 of their immediate family who are members of or
13 contributors to any group which has as its primary
14 concern the promotion of law enforcement or victims'
15 rights? These groups would include but certainly would
16 not be limited to MADD, Mothers Against Drunk Driving,
17 SADD, Students Against Drunk Driving, or CAVE, Citizens
18 Against Violent Crime. If so, please stand.

19 Any member of the jury panel or members of their
20 immediate family who are members of or contributors to
21 any group which has as its primary concern the
22 promotion of law enforcement or victims' rights, if you
23 would please stand at this time.

24 Yes, ma'am. Your name, please, and number?

25 POTENTIAL JUROR: Janet Brooks, juror number 27,

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1 and a contributor to MADD.

2 THE COURT: Now, would that in any way interfere
3 with your ability to give both the State and the
4 defendants a fair and impartial trial?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Very good. Thank you, ma'am.

7 Yes, ma'am.

8 POTENTIAL JUROR: Kathleen Siegel, 154. My niece
9 is a police officer in New Jersey. I don't know
10 whether that -- and my brother-in-law was a police
11 officer in New Jersey.

12 THE COURT: All right. Would that in any way
13 interfere with your ability to give both the State and
14 the defendants a fair and impartial trial?

15 POTENTIAL JUROR: No.

16 THE COURT: Very good. Thank you, ma'am.

17 Yes, ma'am.

18 POTENTIAL JUROR: Krystal Manwaring, juror 144.
19 My brother is a police officer in Richland County.

20 THE COURT: Would that in any way interfere with
21 your ability to give both the State and the defendants
22 a fair and impartial trial?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: Very good.

25 We'll start on this end.

1 Yes, ma'am.

2 POTENTIAL JUROR: My name is Sherry McJunkin, 121,
3 and my son-in-law is an attorney.

4 THE COURT: All right. Would that in any way
5 interfere with your ability to give both the State and
6 the defendants a fair and impartial trial?

7 POTENTIAL JUROR: No, sir.

8 THE COURT: Very good. Thank you, ma'am.

9 Yes, ma'am.

10 POTENTIAL JUROR: I'm Amanda Chasteen, juror
11 number 37. My husband is an attorney here in
12 Greenville.

13 THE COURT: Would that in any way interfere with
14 your ability to give both the State and the defendants
15 a fair and impartial trial?

16 POTENTIAL JUROR: No.

17 THE COURT: Very good. Thank you, ma'am.

18 Yes, sir.

19 POTENTIAL JUROR: Brian Haskins, juror number 82,
20 and I'm an attorney here in Greenville.

21 THE COURT: All right. Would that in any way
22 interfere with your ability to give both the State and
23 the defendants a fair and impartial trial?

24 POTENTIAL JUROR: No, your Honor.

25 THE COURT: Very good. Thank you.

1 Now, listen carefully to this question. It's
2 going to be a series of questions, in fact. And if any
3 of the questions apply to you, I'll ask you to stand
4 and come forward individually so I might speak to you
5 privately.

6 Is there any member of the jury panel who is
7 unable to read, write or speak or understand the
8 English language? Is there any member of the jury
9 panel who is incapable by reason of physical or mental
10 infirmities to render efficient jury service? And,
11 also, is there any member of the jury panel, their
12 immediate families who have ever been a victim of
13 violent crime?

14 Now, I'm going through those questions the second
15 time, but only after I finish all three questions
16 should you stand, and then I'll ask you to come forward
17 individually so I might speak privately with you.

18 Any member of the jury panel who is unable to
19 read, write, speak or understand the English language?
20 Is there any member of the jury panel who is incapable
21 by reason of physical or mental infirmities to render
22 efficient jury service? Is there any member of the
23 jury panel or any member of their immediate family who
24 has ever been the victim of a violent crime?

25 Now if any of those questions -- if you have a

1 question about the questions themselves or if you think
2 the question might apply to you, I'd ask you to stand
3 at this time.

4 Could I have a bailiff, please.

5 Let them line up and we'll bring them forward one
6 at a time.

7 Thank you, ma'am.

8 Your name, please.

9 POTENTIAL JUROR: My name is Clifford Pritchard.

10 THE COURT: Yes, sir.

11 POTENTIAL JUROR: 41.

12 My son was the victim of an armed robbery about
13 six years ago.

14 THE COURT: Well, I'll ask you. Would that in any
15 way interfere with your ability to give both the State
16 and the defendants --

17 POTENTIAL JUROR: I don't think so.

18 THE COURT: I tell you, the reason I ask that
19 question is two-fold. Of course, the parties, the
20 State and the defendants, are entitled to a fair and
21 impartial jury. But more important, you did not ask to
22 be here.

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: And I don't want to put you in any
25 sort of situation that would compromise any principles

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1 or something by reason of your own experience or your
2 family's experience. I'm going to excuse you on the
3 trial of this case.

4 POTENTIAL JUROR: Okay.

5 THE COURT: Thank you, though.

6 Just stay with us, if you would, please.

7 Yes, sir. Your name, please.

8 POTENTIAL JUROR: Rick Worley, number 189. My
9 daughter was raped about two years ago.

10 THE COURT: Would that in any way interfere with
11 your ability to give both the State and the defendants
12 a fair and impartial trial?

13 POTENTIAL JUROR: No, sir. I don't think so.

14 THE COURT: All right. I'm going to let you stay.
15 Thank you.

16 Your name, please.

17 POTENTIAL JUROR: Mark Forthaus.

18 THE COURT: Number 67.

19 POTENTIAL JUROR: Yes, sir. My wife has actually
20 been a victim of a sexual incest.

21 THE COURT: Would that interfere with your ability
22 to give both the State and the defendant -- defendants
23 a fair and impartial trial?

24 POTENTIAL JUROR: Well, I will be honest with you.
25 A portion of it upsets me.

1 THE COURT: Well, that's the reason I ask the
2 question. Not only are the parties, the State and the
3 defendants, entitled to a fair and impartial trial --

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: -- you didn't ask to be here. So I
6 don't want to put you in any sort of situation that you
7 would have reservations compromising your principles.
8 So I'm going to excuse you in this trial.

9 POTENTIAL JUROR: I appreciate it. Thank you.

10 MR. WESTON: Was he excused, Judge?

11 THE COURT: Yes.

12 MR. WESTON: Okay.

13 THE COURT: Yes, ma'am. Your name, please.

14 POTENTIAL JUROR: Alesia Lowe.

15 MR. WESTON: What was the juror number?

16 POTENTIAL JUROR: 111. I was assaulted in 2009.

17 THE COURT: Would that -- physically?

18 POTENTIAL JUROR: Uh-huh.

19 THE COURT: Would that in any way interfere with
20 your ability to give both the State and the defendants
21 a fair and impartial trial?

22 POTENTIAL JUROR: No.

23 THE COURT: Very good. Thank you, ma'am.

24 POTENTIAL JUROR: Sit down?

25 THE COURT: Yes, ma'am. You can stay with us.

1 Thank you, ma'am.

2 Your number.

3 POTENTIAL JUROR: 166.

4 THE COURT: Yes, sir.

5 POTENTIAL JUROR: Yes, your Honor. My
6 mother-in-law just was forcibly broken into her house
7 two weeks go and attempted to be raped, beat up,
8 robbed. And I'm also a former police officer. I've
9 never asked, but I figure it's probably relevant.

10 THE COURT: I think it is, and I'm going to excuse
11 you on the trial of this case.

12 POTENTIAL JUROR: Thank you.

13 THE COURT: Thank you. Stay with us until I
14 excuse the jury.

15 POTENTIAL JUROR: Okay.

16 THE COURT: Thank you.

17 Yes, ma'am, name, please?

18 POTENTIAL JUROR: Janet Weigner, 181. My problem
19 is English. My first language is Spanish. I think I
20 can understand.

21 THE COURT: You think? Do you feel like you could
22 sit as a juror?

23 POTENTIAL JUROR: I feel like I can't understand
24 all of them, the way that they talk.

25 THE COURT: Do you not feel --

1 POTENTIAL JUROR: Yes, comfortable.

2 THE COURT: -- comfortable? Very good. That's
3 the reason I'm going to excuse you. As I have
4 explained to others, you didn't ask to be here, and I
5 don't want to do anything that would put you in a
6 situation that you might not feel comfortable.

7 POTENTIAL JUROR: Yes.

8 THE COURT: So I'm going to excuse you, but I want
9 to thank you for being here.

10 POTENTIAL JUROR: Thank you.

11 THE COURT: Thank you, ma'am.

12 Yes, sir.

13 POTENTIAL JUROR: 71. I guess I was a victim of
14 an armed robbery in high school at my place of
15 employment.

16 THE COURT: All right. Considering the charges in
17 this case, I'm going to excuse you in the trial of this
18 case, but I want to thank you for coming forward.

19 All right. Anyone else? Very good. Thank you.

20 (WHEREUPON, an off-the-record discussion was
21 held between the attorneys.)

22 THE COURT: There was one other specific question
23 I'd like to ask also.

24 Is there any member of the jury panel who has ever
25 been employed by the McDonald's restaurant food

1 service? If so, please stand.

2 Yes, sir. Your name, please?

3 POTENTIAL JUROR: Charles Ferguson, number 65.

4 THE COURT: All right. Would that in any way
5 interfere with your ability to give both the State and
6 the defendants a fair and impartial trial?

7 POTENTIAL JUROR: No, it would not.

8 THE COURT: Very good. Thank you, sir.

9 Anyone else?

10 Has any member of the panel formed or expressed an
11 opinion about this case? If so, please stand.

12 Is there any member of the panel aware of any
13 interest, bias or prejudice towards the defendants or
14 the State of South Carolina? If so, please stand.

15 Does any member of the jury panel know of any
16 reason why he or she could not give both the State of
17 South Carolina and the defendants a fair and impartial
18 trial? If so, please stand.

19 All right.

20 Any additional questions from the State?

21 MR. WESTON: No, sir, your Honor.

22 THE COURT: From the defendant --

23 MR. ROBINSON: No.

24 THE COURT: Excuse me, Defendant Harris?

25 MR. ROBINSON: No, sir, your Honor.

1 THE COURT: And the Defendant Chiles?

2 MR. SMITH: No, your Honor.

3 THE COURT: Very good. Thank you.

4 Ladies and gentlemen of the jury panel, the way we
5 select the jury in general sessions is different from
6 common pleas or civil court. In this case a computer
7 has randomly selected a list of your names that will be
8 used to be called by the clerk. And as I say, it's a
9 random selection. It's not in any sort of order at
10 all. And when your name is called, if you would,
11 please, come forward.

12 And where do you usually have them stand?

13 THE CLERK: In front of this podium right here.

14 THE COURT: If you would please stand there and
15 look back to the back of the courtroom towards both
16 counsel tables at that time. If you have anything with
17 you, if you will bring it forward with you at the time
18 your name is called.

19 All right. Madam Clerk, if would you please give
20 us a jury.

21 THE CLERK: All right.

22 Juror number 15, Suzanne Bender -- or Binder,
23 excuse me.

24 What says the State?

25 MR. WESTON: Present Ms. Binder, please.

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1 THE CLERK: What says Defendant Chiles -- excuse
2 me, Defendant Harris first?

3 Mr. Robinson, what says Defendant?

4 MR. ROBINSON: Madam Clerk, Mr. Smith is going to
5 do the strikes for us.

6 THE CLERK: Thank you very much.

7 MR. SMITH: We're going to agree or whatever and
8 I'll let you know.

9 THE CLERK: Thank you very much.

10 MR. SMITH: Present Ms. Bender -- Binder.

11 THE CLERK: If you will have a seat, please, in
12 the jury box.

13 Juror 37, Amanda Chasteen.

14 What says the State?

15 MR. WESTON: Present Ms. Chasteen, please.

16 MR. SMITH: Please excuse Ms. Chasteen from this
17 trial.

18 THE CLERK: All right, ma'am. Please take your
19 seat. You have been excused from this case.

20 Juror 111, Alesia Lowe.

21 What says the State?

22 MR. WESTON: Present Ms. Lowe, please.

23 THE CLERK: For the defendant?

24 MR. SMITH: Please excuse Ms. Lowe from the trial
25 of this case.

1 THE CLERK: All right, ma'am. Please take your
2 seat. You have been excused from this case.

3 Juror 80, Jonathan Harris.

4 What says the State?

5 MR. WESTON: Excuse Mr. Harris from this case,
6 please.

7 THE CLERK: All right, sir. Mr. Harris, you may
8 take your seat. You have been excused from this case.

9 Juror 196, Daniel Wingo.

10 What says the State?

11 MR. WESTON: Excuse Mr. Wingo from this case,
12 please.

13 THE CLERK: All right. Mr. Wingo, please have a
14 seat. You have been excused from this case.

15 Juror 27, Janet Brooks.

16 What says the State?

17 MR. WESTON: Present Ms. Brooks, please.

18 THE CLERK: What says the defendant?

19 MR. SMITH: Please excuse her from the trial of
20 this case, please.

21 THE CLERK: Please have a seat. You have been
22 excused from this case.

23 Juror 54, Forrest Dillard.

24 What says the State?

25 MR. WESTON: Present Mr. Dillard, please.

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1 THE CLERK: What says the defendant?

2 MR. ROBINSON: Please seat the juror.

3 THE CLERK: All right. Please have a seat in the
4 jury box.

5 Juror 143, David Robinson.

6 MR. SMITH: Judge, we're going to excuse juror 54.
7 I know Mr. Robinson said seat him, but we're going to
8 excuse him.

9 THE CLERK: All right. Beg your pardon.

10 Mr. Dillard, if would you, please.

11 THE COURT: Just for the record, as I understand
12 it, the defendants are combining their selection.

13 MR. SMITH: That was my understanding.

14 THE COURT: I just want to be sure for the record.

15 And this time Mr. Robinson spoke first, but now
16 you have agreed that number 54 would be struck?

17 MR. SMITH: Well, I don't know about an agreement,
18 but --

19 MR. ROBINSON: Yes, your Honor. I'm going to
20 defer to Mr. Smith.

21 MR. SMITH: I had not spoken with Mr. Robinson
22 yet.

23 THE COURT: All right. Well, anyway, let's
24 proceed. We'll see if something comes up. All right.
25 Thank you.

1 THE CLERK: That was 54. And the new juror is
2 143, David Robinson.

3 MR. WESTON: Thank you.

4 THE CLERK: And what says the State?

5 MR. WESTON: Present Mr. Robinson, please.

6 THE CLERK: What says the defendant?

7 MR. SMITH: Please seat Mr. Robinson.

8 THE CLERK: Mr. Robinson, please have a seat in
9 the jury box.

10 Juror 66, Cynthia Ford.

11 What says the State?

12 MR. WESTON: Present Ms. Ford, please.

13 THE CLERK: What says the defendants?

14 MR. SMITH: Please seat Ms. Ford, please.

15 THE CLERK: Ms. Ford, please have a seat in the
16 jury box.

17 Juror 191, Jennifer Brooks.

18 What says the State?

19 MR. WESTON: Present Ms. Brooks, please.

20 THE CLERK: What says the defendant?

21 MR. SMITH: Please excuse Ms. Brooks.

22 THE CLERK: All right, ma'am. Please be seated.
23 You have been excused from this case.

24 Juror 130, Matthew Moser.

25 What says the State?

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1 MR. WESTON: Please excuse Mr. Moser from this
2 trial, please.

3 THE CLERK: All right, sir. Please return to your
4 seat. You have been excused from this case.

5 Juror 142, Amanda Roberts.

6 What says the State?

7 MR. WESTON: Please excuse Ms. Roberts from this
8 case, please.

9 THE CLERK: All right, ma'am. Please return to
10 your seat. You have been excused from this case.

11 Juror 103, Anthony Kinas.

12 What says the State?

13 MR. WESTON: Present Mr. Kinas, please.

14 THE CLERK: What says the defendant?

15 MR. SMITH: Please excuse Mr. Kinas.

16 THE CLERK: All right, sir. Please return to your
17 seat. You have been excused from this case.

18 Juror 180, Douglas Webster.

19 What says the State?

20 MR. WESTON: Present Mr. Webster, please.

21 THE CLERK: What says the defendants?

22 MR. SMITH: Excuse Mr. Webster.

23 THE CLERK: All right, sir. Please take your
24 seat.

25 Juror 194, Barbara Jaby.

1 MR. WESTON: What was the name again?

2 THE CLERK: Barbara Jaby, J-a-b-y.

3 What says the State?

4 MR. WESTON: Present Ms. Jaby, please.

5 THE CLERK: What says the defendants?

6 MR. SMITH: Present Ms. Jaby.

7 THE CLERK: Ma'am, please have a seat in the jury

8 box.

9 Juror 93, Kevin Howard.

10 What says the State?

11 MR. WESTON: Present Mr. Howard, please.

12 THE CLERK: What says the defendants?

13 MR. SMITH: Please excuse Mr. Howard.

14 THE CLERK: All right, sir. Please return to your

15 seat. You have been excused from this case.

16 Juror 86, Lisa Henderson.

17 What says the State?

18 MR. WESTON: Present Ms. Henderson, please.

19 THE CLERK: What says the defendants?

20 MR. SMITH: Please excuse Ms. Henderson.

21 THE CLERK: All right, ma'am. Return to your

22 seat, please. You have been excused from this case.

23 Juror 90, William Hollis.

24 What says the State?

25 MR. WESTON: Present Mr. Hollis, please.

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1 THE CLERK: What says the defendants?

2 MR. SMITH: Please excuse Mr. Hollis.

3 THE CLERK: All right, sir. Please return to your
4 seat.

5 Juror number 1.

6 THE COURT: I might note that's ten, as I have it,
7 for the defendants. You will continue to strike
8 jointly; is that correct, Mr. Robinson?

9 MR. ROBINSON: It is, your Honor.

10 THE COURT: Mr. Smith?

11 MR. SMITH: Yes, your Honor.

12 THE COURT: Very good.

13 THE CLERK: This is juror 1, Tina Abshire.
14 What says the State?

15 MR. WESTON: Present Ms. Abshire, please.

16 THE CLERK: What says the defendants?

17 MR. SMITH: Please seat Ms. Abshire.

18 THE CLERK: Ma'am, please have a seat in the jury
19 box.

20 Juror 144, Krystal Manwaring.

21 What says the State?

22 MR. WESTON: Present Ms. Manwaring, please.

23 THE CLERK: What says the defendants?

24 MR. SMITH: Please excuse Ms. Manwaring.

25 THE CLERK: All right, ma'am. Please return to

1 your seat.

2 Juror 171, Andrew Townsend.

3 What says the State?

4 MR. WESTON: Present Mr. Townsend, please.

5 THE CLERK: What says the defendants?

6 MR. SMITH: Seat Mr. Townsend.

7 THE CLERK: Sir, please have a seat in the jury
8 box.

9 Juror 65, Charles Ferguson.

10 What says the State?

11 MR. WESTON: Present Mr. Ferguson, please.

12 THE CLERK: What says the defendants?

13 MR. SMITH: Please excuse Mr. Ferguson.

14 THE CLERK: All right, sir. You may return to
15 your seat.

16 Juror 189, Rick Worley.

17 What says the State?

18 MR. WESTON: Present Mr. Worley, please.

19 THE CLERK: What says the defendants?

20 MR. SMITH: Please excuse Mr. Worley.

21 THE CLERK: All right, sir. Have a seat.

22 Juror 14, Scott Bethel.

23 What says the State?

24 MR. WESTON: Present Mr. Bethel, please.

25 THE CLERK: What says the defendants?

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1 MR. SMITH: Excuse Mr. Bethel.

2 THE CLERK: Sir, please take your seat.

3 Juror 110, Kimberly Long.

4 What says the State?

5 MR. WESTON: Present Ms. Long, please.

6 THE CLERK: What says the defendants?

7 MR. SMITH: Please seat Ms. Long.

8 THE CLERK: Thank you. Ms. Long, please have a
9 seat in the jury box.

10 Juror 84, Charles Hayes.

11 What says the State?

12 MR. WESTON: Excuse Mr. Hayes from this jury,
13 please.

14 THE CLERK: All right, sir. Please be seated.

15 Juror 128, Philip Moore.

16 What says the State?

17 MR. WESTON: Present Mr. Moore, please.

18 THE CLERK: What says the defendants?

19 MR. SMITH: Seat Mr. Moore.

20 THE CLERK: Sir, please have a seat in the jury
21 box.

22 Juror 119, Tracey McGee.

23 What says the State?

24 MR. WESTON: Present Ms. McGee, please.

25 THE CLERK: What says the defendants?

1 MR. SMITH: Excuse Ms. McGee.

2 THE CLERK: All right, ma'am. Please take your
3 seat.

4 Juror 49, Larry Davis.

5 What says the State?

6 MR. WESTON: Excuse Mr. Davis, please.

7 THE CLERK: All right, sir. Please take your
8 seat.

9 Juror 29, Richard Bruce.

10 What says the State?

11 MR. WESTON: Present Mr. Bruce, please.

12 THE CLERK: What says the defendants?

13 MR. SMITH: Excuse Mr. Bruce.

14 THE CLERK: All right, sir. You may take your
15 seat.

16 Juror 105, James King.

17 What says the State?

18 MR. WESTON: Present Mr. King, please.

19 THE CLERK: What says the defendants?

20 MR. SMITH: Excuse Mr. King, please.

21 THE CLERK: All right, sir. Please take your
22 seat.

23 Juror number 3, Steven Aden.

24 What says the State?

25 MR. WESTON: Present Mr. Aden, please.

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1 THE CLERK: What says the defendants?

2 MR. SMITH: Present Mr. Aden.

3 THE CLERK: Sir, please take a seat in the jury
4 box.

5 Juror 154, Kathleen Siegel.

6 What says the State?

7 MR. WESTON: Present Ms. Siegel, please.

8 THE CLERK: What says the defendants?

9 MR. SMITH: Excuse Ms. Siegel.

10 THE CLERK: Ma'am, please take your seat.

11 Juror 155, Robert Simmons.

12 What says the State?

13 MR. WESTON: Present Mr. Simmons, please.

14 THE CLERK: What says the defendants?

15 MR. SMITH: Present Mr. Simmons.

16 THE CLERK: Mr. Simmons, please have a seat in the
17 jury box.

18 Juror number 5, William Anderson.

19 What says the State?

20 MR. WESTON: Present Mr. Anderson, please.

21 THE CLERK: What says the defendants?

22 MR. SMITH: Excuse Mr. Simmons, please -- I'm
23 sorry.

24 THE CLERK: Mr. Anderson.

25 MR. SMITH: Mr. Anderson. I'm sorry. Excuse

1 Mr. Anderson, please.

2 THE CLERK: You may have a seat, please.

3 Juror 23, Clint Breit.

4 What says the State?

5 MR. WESTON: Present Mr. Breit, please.

6 THE CLERK: What says the defendants?

7 MR. SMITH: Seat Mr. Breit.

8 THE CLERK: Sir, please have a seat in the jury

9 box.

10 Juror 82, Bryan Haskins.

11 What says the State?

12 MR. WESTON: Excuse Mr. Haskins, please.

13 THE CLERK: All right, sir. Be seated.

14 Juror 99, Kathy Jones.

15 What says the State?

16 MR. WESTON: Present Ms. Jones, please.

17 THE CLERK: What says the defendants?

18 MR. SMITH: Please swear her.

19 THE CLERK: Ms. Jones, please have a seat in the

20 jury box.

21 For alternate: 104, Dale King.

22 What says the State?

23 MR. WESTON: Present Ms. King, please.

24 THE CLERK: What says the defendant?

25 MR. SMITH: Please excuse Ms. King.

1 THE CLERK: All right, ma'am. Please take your
2 seat.

3 Juror 98, Maria Johnson.

4 What says the State?

5 MR. WESTON: Present Ms. Johnson, please.

6 THE CLERK: What says the defendants?

7 MR. SMITH: Please excuse Ms. Johnson.

8 THE CLERK: All right, ma'am. Please take a seat.

9 Juror 26, Donald Broeils.

10 What says the State?

11 MR. WESTON: Present Mr. Broeils, please.

12 THE CLERK: What says the defendants?

13 MR. SMITH: Are we doing one alternate or two
14 alternates?

15 THE COURT: One alternate. But you have already
16 exercised two of your strikes, so you have got two
17 more.

18 MR. SMITH: That's fine.

19 Please excuse Mr. Broeils.

20 THE CLERK: All right, sir. Please be seated.

21 Juror 121, Sherry McJunkin.

22 What says the State?

23 MR. WESTON: Present Ms. McJunkin, please.

24 THE CLERK: What says the defendants?

25 MR. SMITH: Please swear Ms. McJunkin.

1 THE CLERK: Ms. McJunkin, please have a seat in
2 the jury box.

3 THE COURT: Now, is there any reason from the
4 State that this jury cannot be sworn for the trial of
5 these cases?

6 MR. WESTON: No, sir, your Honor.

7 THE COURT: From the Defendant Chiles?

8 MR. SMITH: No, your Honor.

9 THE COURT: For the Defendant Harris?

10 MR. ROBINSON: No objection, Judge.

11 THE COURT: Very good. Ladies and gentlemen of
12 the jury panel -- by the way, I think I'm going to ask
13 Mr. Aden if you would be the foreman of the jury. So
14 when we come back to the courtroom, if you would sit on
15 the first seat in the front row just when we come back.
16 And, Ms. McJunkin, you are the alternate, so you will
17 always sit in that seat. Those are the only two
18 reserved seats, you might say, in the jury box.
19 Everybody else can sit wherever they want to as long as
20 they are in this end of the jury box. In other words,
21 there's one seat that's not going to be occupied on the
22 end. But those are the only two reserved seats.

23 Now, my instruction throughout the trial of the
24 case is that you're not to undertake discussion of this
25 case among yourselves or permit anybody to discuss it

1 with you, even among yourselves. So I'm going to ask
2 you, at this time I need to take up some matters with
3 the attorneys, and the balance of the jury to go with
4 the bailiff and she will show you the jury room that
5 you will be using during this trial. Just take a few
6 minutes. But when you come back, I'll give you some
7 more instructions.

8 Everyone else remain seated while the jury retires
9 from the courtroom.

10 (WHEREUPON, the jury exited the courtroom
11 at 12:27 p.m.)

12 THE COURT: Ladies and gentlemen of the jury panel
13 that were not selected on the trial of this case, I'm
14 going to excuse you for the balance of the day.
15 However, you need to call after 6:00 the telephone
16 number -- I think is it on the back of their card.

17 THE CLERK: It is.

18 THE COURT: So do y'all have your card and you
19 know where the telephone number is? All right. This
20 is an answering machine, and it will be on all night.
21 So in order to find out what needs to be done further
22 as far as your service is concerned, you will need to
23 call that number after 6 o'clock and it will be on all
24 night.

25 If you don't get through the first time, keep

1 calling. Unfortunately, if you don't get the message
2 from the machine you will have to be here at 10 o'clock
3 in the morning to get the information from the Court.
4 So I do, I look forward to working with you; however,
5 you will be excused for the balance of the day to call
6 back after 6 o'clock. Everybody have the number? If
7 somebody does not have the number, raise your hand.
8 Does everybody understand what to do? Call that number
9 after 6 o'clock and do what it says. Thank you very
10 much.

11 Everyone else remain seated while the jury
12 retires.

13 (WHEREUPON, the remainder of the jury pool exited
14 the courtroom at 12:30 p.m.)

15 THE COURT: All right. Y'all can go back into the
16 courtroom. As I said, what I'm going to do is bring
17 the jury back and excuse them for lunch, and then we'll
18 take up the motions before we go to lunch.

19 It's 12:35 now. What time do you think you would
20 want to start? I would say 2 o'clock or even 2:30.

21 MR. WESTON: 2 o'clock would be fine, your Honor.

22 THE COURT: All right. Mr. Robinson?

23 MR. ROBINSON: Yes, sir, that's fine.

24 MR. SMITH: I guess I wouldn't have any objection.
25 I don't know how long our motions are going to last,

1 but that would sound about right.

2 THE COURT: All right. Very good. So I'm going
3 to bring the jury back and excuse them until 2 o'clock,
4 and they will come back to the jury room. Of course as
5 soon as we are ready to proceed, we'll start the trial
6 of the case at that time. I will not swear the jury.
7 However, once I do swear the jury, then of course I
8 understand one of the clients is on bond; is that
9 right?

10 MR. ROBINSON: Yes, sir.

11 THE COURT: So that bond will be -- in other
12 words, bond will no longer be in effect once the jury is
13 sworn.

14 All right. With that, let's ask the jury to join
15 us, please.

16 MR. WESTON: While they're coming in, just a
17 question. Did you say you were going to take up the
18 motions before we went to lunch?

19 THE COURT: Right. It's 12:30. I'd rather do it
20 now so we know how much time we have got.

21 MR. WESTON: Yes, sir.

22 THE COURT: We'll just stand at ease. I
23 understand they're not quite ready to come back at this
24 time.

25 MR. SMITH: Judge, is it okay if my client goes to

1 the restroom real quick?

2 THE COURT: Yes.

3 (WHEREUPON, Defendant Chiles exited the
4 courtroom.)

5 (WHEREUPON, the jury came into open court at
6 approximately 12:34 p.m.)

7 THE COURT: I'm sorry. I need to take up
8 something with the attorneys before I give you your
9 instructions, so do you mind retiring to the jury room.
10 I'll call you out this time. All right. Very good.
11 Thank you.

12 Again, do not undertake discussion of the case
13 among yourselves in any way.

14 (WHEREUPON, the jury exited the courtroom
15 at 12:34 p.m.)

16 (WHEREUPON, Defendant Chiles entered the
17 courtroom.)

18 THE COURT: Mr. Bailiff, I'm sorry, but maybe we
19 need to wait until I ask you to bring them back.

20 All right. The defendant had left the courtroom
21 when the jury came in, and at the request, proper
22 request, of the attorney, Mr. Smith, I sent the jury
23 back out.

24 The defendant was, as I say, in the facility.
25 However, he was out of the courtroom at the time and

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1 nobody would know if he was in the hallway or somewhere
2 else. So with that, if there's nothing else, now he
3 has joined us again. I'll ask the jury to join us.
4 Mr. Weston anything you have.

5 MR. WESTON: No objection from the State, your
6 Honor.

7 THE COURT: Mr. Robinson?

8 MR. ROBINSON: No, sir.

9 THE COURT: Mr. Smith?

10 MR. SMITH: Ready to go, Judge.

11 THE COURT: Very good. Thank you.

12 Ask the jury to join us, please, sir.

13 THE COURT: Anything from the State before we
14 bring the jury back?

15 MR. WESTON: No, sir, your Honor.

16 THE COURT: From the Defendant Chiles?

17 MR. SMITH: No, sir, your Honor.

18 THE COURT: From the Defendant Harris?

19 MR. ROBINSON: No, your Honor.

20 THE COURT: Very well. Ask the jury to join us,
21 please.

22 (Whereupon, the jury came into open court at
23 approximately 12:39 p.m.)

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, we're going to take a break for

1 lunch at this time. I need to take up some matters
2 with the attorneys before we start the trial, and
3 rather than have you wait back here in the jury room,
4 I'm going to ask you to go to lunch. And let's be back
5 at 2 o'clock.

6 Of course if you're a little bit late, we can't
7 start without you. But the only thing is try to get
8 back at 2:00 and we'll try to be ready for you at that
9 time.

10 Again, my instructions throughout the trial of the
11 case is going to be, as I said earlier, not to discuss
12 it among yourselves or permit anybody to discuss it
13 with you. The reason for that is very simple. You
14 must make your decision in this case based on the
15 evidence -- solely upon the testimony, exhibits and
16 other evidence that's introduced in this courtroom.
17 And no one who is not sitting where you're sitting
18 right now will be with you in the jury room when you
19 retire to reach a verdict at the end of all the
20 testimony, evidence, the charge on the law, the
21 arguments of counsel when everything else has been
22 done. That is when you will finally have the case for
23 your decision.

24 But no one who has not heard anything will be back
25 there with you in the jury room when you do make your

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1 ultimate decision in this case has heard any of that or
2 seen any of it and they cannot help you. So,
3 therefore, only thing that could happen is they could
4 interfere with the proper resolution of the case. For
5 that reason I say do not discuss the case at all until
6 it's finally given to you at the end of the trial. Not
7 even personalities. Only, what is it, after you have
8 heard everything and have all that because you never
9 know what's going to be the most important part of the
10 case. Could be the first witness, the last witness,
11 the opening statements or closing arguments. So you
12 need to have an open mind throughout the trial.

13 So with that I will excuse you and the bailiff
14 will show you how to get back to the jury room after
15 lunch.

16 Everyone else remain seated while the jury retires
17 from the courtroom.

18 (WHEREUPON, the jury exited the courtroom
19 at 12:42 p.m.)

20 THE COURT: All right. Yes, sir, Mr. Smith.

21 MR. SMITH: Judge, do you want me to go ahead and
22 make my motion at this time?

23 THE COURT: Well, let's see. You have a motion
24 too, Mr. Weston?

25 MR. WESTON: Yes, your Honor. The State was going

1 to move to amend one of the indictments. I don't know
2 which one you want to hear first.

3 THE COURT: I want to hear -- we want to know what
4 we're going forward on.

5 MR. WESTON: Indictment number 2012-1727 -- I'm
6 sorry -- 3108 charges Precious Harris with the offense
7 of armed robbery. In the body of the indictment, the
8 second to last line, it says described as U.S. currency
9 from the personal presence of Michael Scott Culbertson,
10 an employee of McDonald's.

11 For purposes of clarification, your Honor, and for
12 purposes of this motion, the evidence will show what
13 she is alleged to be a part of an armed robbery of what
14 was the McDonald's. Mr. Culbertson was an employee of
15 the McDonald's. We do not want the jury to get the
16 impression that she was robbing Mr. Culbertson of his
17 personal funds.

18 THE COURT: Well, the only thing is the indictment
19 no longer goes back.

20 MR. WESTON: I just --

21 THE COURT: I mean the only thing that would be
22 relevant to the indictment, as I understand it, is that
23 McDonald's was the, quote, victim.

24 MR. WESTON: Exactly, your Honor. We just want to
25 make sure there was no variance issue.

1 THE COURT: Well, the thing is -- well, has anyone
2 raised that?

3 MR. WESTON: No, sir, your Honor. I just wanted
4 to make sure the record was clear.

5 THE COURT: Mr. Robinson, do you have anything to
6 say on that?

7 MR. ROBINSON: I have no objection.

8 THE COURT: Mr. Smith?

9 MR. SMITH: I have to defer to Mr. Robinson. It's
10 his client. I don't think I have standing.

11 THE COURT: In other words, I think it does
12 clarify. Has anybody suggested in any of these
13 proceedings that the actual victim was the employee,
14 Mr. Culbertson?

15 MR. WESTON: No, sir, your Honor. But in
16 reviewing this prior to trial, I just noticed --

17 THE COURT: Well, if nobody has raised the
18 question, then apparently there's no variance. You can
19 proceed on the whole thing. In fact, even the question
20 was asked if there's anybody been an employee of
21 McDonald's.

22 MR. WESTON: All right.

23 THE COURT: In fact, I don't even think we asked
24 about the defendant. Was the defendant on the witness
25 list? Not the defendant, but the victim --

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1 MR. WESTON: Yes, sir. Mr. Culbertson is an
2 employee of the McDonald's and was on the witness list.

3 THE COURT: So without objection I am going to
4 permit that amendment.

5 The only thing is it's going to be up to counsel
6 to make sure nothing comes in about the individual
7 being the victim of the crime, alleged crime.

8 MR. WESTON: Yes, sir.

9 MR. SMITH: So it's just being amended to say
10 McDonald's, and they're striking everything else.

11 THE COURT: Actually all you're doing is really
12 goods and monies.

13 MR. SMITH: Of McDonald's.

14 THE COURT: Right.

15 MR. WESTON: Yes, sir, your Honor. That's all
16 we're doing.

17 THE COURT: This is how the case will go to the
18 jury, if it goes.

19 MR. WESTON: Thank you, your Honor.

20 THE COURT: All right. Anything else?

21 MR. WESTON: Nothing from the State.

22 THE COURT: All right. With that amendment to
23 indictment number 2012-GS-23-3108, we will proceed on
24 both indictments with that amendment.

25 All right. Now, anything else from the State?

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1 MR. WESTON: No, sir, your Honor.

2 THE COURT: All right. Mr. Smith, do you have a
3 motion?

4 MR. SMITH: Yes, your Honor. I'll ask to make
5 this a Court's exhibit just for the thing. But if I
6 could get you to make a copy of it.

7 THE COURT: This will be marked as Defendant
8 Chiles' exhibit for identification.

9 (WHEREUPON, Defendant Chiles' Exhibit Number 1
10 was marked for identification.)

11 THE COURT: Any objection to it being admitted for
12 consideration by the Court? I'm talking about any
13 objection to its validity. In other words, it is what
14 it represents to be, not its import.

15 MR. WESTON: No, sir, your Honor. No objection.

16 THE COURT: So that will be marked as Defendant
17 Chiles' Exhibit Number 1 for identification.

18 MR. SMITH: Judge, what we have marked is a
19 statement by a person by the name of Starla Moss.
20 Looks like it's dated 1/28/14. It's actually written
21 on Greenville County Sheriff's Office victim's witness
22 statement and signed by her and witnessed by a couple
23 of people. And there's a couple of numbers out to the
24 right of that leading me to believe that it is a
25 statement that was taken --

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1 THE COURT: First of all, Mr. Smith was speaking,
2 but you have an objection.

3 MR. WESTON: Just an administrative manner, your
4 Honor. I didn't bring a copy of the statement in.
5 Once again, I don't want to attack the validity. I was
6 wondering if the clerk could make me a copy for the
7 purposes of this hearing.

8 MR. SMITH: Judge, as far as maybe a little
9 background for the record and for your Honor, there
10 were three individuals who were charged with this armed
11 robbery. You had Keith Williams, David Chiles and
12 Precious Harris.

13 Keith Williams has already pled guilty and is
14 serving time at the South Carolina Department of
15 Corrections. He was brought before the Court a while
16 back for trial and ended up pleading guilty. What I
17 have learned is that at some point he was charged, then
18 he was -- he met with his attorney, Alex Stalvey, who I
19 think it was July of 2013 had sat down with him and
20 recanted part of his statement, went through and they
21 sat down and they had drawn lines through what he said
22 his statement should have been or what was true, false,
23 of that nature.

24 He later pleads guilty. And this case has been on
25 the trial docket once or twice before. I have had the

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1 opportunity to talk to Mr. Williams. Mr. Williams told
2 me that he was recanting his statement of these things,
3 and I said where's the copy of the statement, and he
4 said that should be with my lawyer, Alex Stalvey. So
5 in the meantime I have gotten Alex Stalvey's file, and
6 I'm looking in his file for a statement from
7 Mr. Williams that has things redacted from it,
8 underlined, whatever, showing that that is what he says
9 was not true and here are the things that he says were
10 true.

11 I'm not really looking for anything else at that
12 time. I can't find anything. So I'm calling Alex
13 Stalvey saying, "Hey, where his statement?" He says,
14 "Mark, if it's not in my file, it's not in my file. I
15 don't know."

16 In the meantime the case was on the docket. It
17 was continued for a time, and then we realized it was
18 coming up for trial. So that's when I really started
19 preparing. And I already kind of prepared our case,
20 but I'm looking for anything that could help our case.
21 So I'm poring over all the files. I'm poring over Alex
22 Stalvey's file. I find a number of things like motions
23 and other things.

24 But in there I find Starla Moss' statement. And
25 that statement, as you see, it has it in there, and

1 what we've made an exhibit, it looks like it is a
2 statement from the Greenville County Sheriff's Office
3 on a victim witness statement. It does not have either
4 of our clients' names mentioned in it. But what it
5 does state basically is that Ms. Moss was with Keith
6 Williams on the night of the incident. So that coupled
7 with what I did not know at the time and now know as of
8 talking to Mr. Williams this morning, based upon what
9 he is saying that he is going to testify to, I believe
10 that we should have had this statement a long time ago.

11 THE COURT: Who do you think you should have had
12 it from?

13 MR. SMITH: I should have had it from the
14 Solicitor. The Solicitor, in our previous meeting with
15 your Honor, stated he had this the entire time.

16 THE COURT: But not in the file of this case.

17 MR. SMITH: Well, there are three codefendants.
18 They're all related.

19 THE COURT: One pled guilty. I mean, I've looked
20 at the indictment. I don't find Keith Williams on the
21 indictment.

22 MR. SMITH: He is a witness and he's on our
23 witness list.

24 THE COURT: Well, I didn't say -- well, we don't
25 put witnesses on there -- well, some of them. We have

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1 got Mr. Hoover on the indictment.

2 I don't find Mr. Williams mentioned at all in
3 either of the two indictments that we're going to trial
4 on.

5 MR. SMITH: He was part of the conspiracy. And
6 Mr. Weston -- Mr. Weston -- see, this is why I'm
7 telling you, giving you some background because this is
8 going to be developed at trial. Mr. Weston has
9 stated --

10 THE COURT: That's evidence. That's not, what is
11 it, anything that has to do with these two indictments.
12 I mean, you can go to the credibility of witnesses or
13 recanting and things like that if you want to, but I
14 don't see what the relevance is to these people.

15 I've looked at, and like you say, I've read
16 Defendant's Exhibit 1 for identification, and it only
17 speaks of something that allegedly happened last
18 Saturday. It's dated 1/28/14 at around 10:30 or
19 11 o'clock. And it speaks of Keith Williams, but it
20 doesn't say anything about either Ms. Harris or
21 Mr. Chiles.

22 MR. SMITH: Judge, what Mr. Weston has stated is
23 that he would intend to prove -- I think he mentioned
24 that he has the transcript from Keith Williams' guilty
25 plea. And then he talked about how he read everything

1 into the court, talking about the facts of case and how
2 all three of them conspired together to rob McDonald's.
3 They were all three --

4 THE COURT: That was -- he didn't plead to either
5 indictment numbers 2012-GS-23-3108 or 2012-GS-27965,
6 did he, or 966 or 1727?

7 MR. SMITH: Judge, he is serving time for armed
8 robbery, which is as a direct result of this incident.

9 THE COURT: Were those the indictments he pled to?
10 The indictments I have don't mention Keith Williams. I
11 have the original indictments.

12 I mean, it's a separate file, is it not,
13 Mr. Weston, in your office?

14 MR. WESTON: That's correct, your Honor.

15 THE COURT: You don't put all coconspirators on,
16 if they're not mentioned on the indictment --

17 MR. WESTON: Your Honor, it's a separate file. I
18 don't know whether you want me -- I can answer that
19 question.

20 THE COURT: Well, I'm just asking you right now,
21 I'm just --

22 MR. WESTON: No, sir. It is not -- it is a
23 separate file, your Honor.

24 THE COURT: All right.

25 MR. SMITH: Judge, it's all under the same case

1 number. I mean to say that it's a separate file --

2 THE COURT: Well, is it a separate file or is it
3 not? Does it have a different indictment number?

4 MR. SMITH: Every case has a different indictment
5 number, Judge.

6 THE COURT: There we go. All right. That's just
7 it. That's what I'm trying to say. You're not -- the
8 fact that there are other people involved in an
9 incident, each one is tried separately except when they
10 agree to do it as codefendants.

11 MR. SMITH: My point is this. If there is a
12 statement -- if there is a statement out there that
13 possibly could bring to light --

14 THE COURT: You can bring this statement up all
15 you want. All right. Now why haven't you done
16 something -- you said -- well, the statement was made
17 July 13th, 2014. You say it came to your attention
18 earlier, and that -- so that's sometime before July or
19 after July, and that this case has been continued
20 twice.

21 MR. SMITH: Just one time, Judge.

22 THE COURT: Well, you said twice on the docket,
23 continued and continued.

24 MR. SMITH: We weren't reached one time, I think.

25 THE COURT: What I want to know -- and you talked

1 to Williams, and he said he recanted his statement.
2 And I want to know why haven't you done something
3 before now?

4 MR. SMITH: When I spoke with Keith Williams the
5 last time he was here -- he's in the South Carolina
6 Department of Corrections. When I spoke with him the
7 last time, we had a specific conversation about some
8 specific things.

9 THE COURT: All right.

10 MR. SMITH: Nothing about the fact that he wasn't
11 even there when this happened. I know he pled guilty,
12 but --

13 THE COURT: Are you now accusing him of perjury?

14 MR. SMITH: I've talked with him, Judge. I'm not
15 making any accusations.

16 THE COURT: Well, what are you doing? I want to
17 know why you haven't done anything. I've looked back
18 at your Greenville County general sessions nonjury
19 terms. And on September 1, 2014, Judge Simmons had one
20 day the week of the 14th, I guess, and on
21 September 15th, 2014. That was split with Pickens.
22 But he had one day in Greenville. And then on
23 October 15, 2014, Judge Verdin had one day. And then
24 two days Judge Nettles, on the 16th and 17th. And then
25 on October 27th, 2014, Judge Miller had two days, the

1 28th and -- 27th and 28th. And then Judge Barber had
2 one day on the 31st. And this is the first time when
3 you bring this thing up?

4 MR. SMITH: Judge --

5 THE COURT: Excuse me. When did you talk to
6 Mr. Stalvey?

7 MR. SMITH: I talked to Mr. Stalvey, I'd have to
8 look back at my notes, but --

9 THE COURT: Just tell me.

10 MR. SMITH: I've had his file for a couple months.

11 THE COURT: You have had it for a couple of months
12 and you haven't said anything about it. You just
13 sprung it on us -- when I say us, I'm talking about
14 everybody trying to address this case.

15 MR. SMITH: It was irrelevant until I spoke to
16 Mr. Williams this morning and found out exactly what he
17 was going to say up on the witness stand. I did not
18 know exactly what he was going to say until I spoke to
19 him this morning.

20 THE COURT: Why didn't you?

21 MR. SMITH: I had no reason --

22 THE COURT: He apparently was available. I mean,
23 he is in the Department of Corrections.

24 MR. SMITH: When he was brought here --

25 THE COURT: I mean, he wasn't going anywhere, was

1 he?

2 MR. SMITH: I certainly hope not.

3 THE COURT: Well, that's just it. I mean, I don't
4 quite understand. Where is your prejudice? Other than
5 what you have created?

6 MR. SMITH: Judge, without knowing what --

7 THE COURT: By the way, is Mr. Williams here now
8 in Greenville County?

9 MR. WESTON: My understanding is he's downstairs,
10 your Honor. He was brought up this morning.

11 THE COURT: Are you going to use him for a
12 witness?

13 MR. WESTON: Yes, sir, your Honor.

14 THE COURT: Talk to him then. He's not your
15 client. But he was available apparently and you didn't
16 do anything about it.

17 MR. SMITH: I have talked with him.

18 THE COURT: Well, you can talk to him when he's
19 put on the stand. What are you going to talk to him
20 about? I mean, I really don't know other than this
21 statement. And you've got everything you've got as far
22 as discussing his statement with him. I mean, really
23 what more -- obviously you're moving for a continuance.
24 You want to stand on your feet?

25 MR. SMITH: Yes, your Honor.

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1 THE COURT: You're moving for a continuance.
2 What's the purpose of your continuance?

3 MR. SMITH: So that I can investigate this.

4 THE COURT: How much time do you need?

5 MR. SMITH: Based on what Mr. Weston has told me
6 earlier in counsel chambers -- or, excuse me, in
7 judge's chambers, if -- I could probably just call Alex
8 Stalvey and find out exactly what was happening.

9 THE COURT: Haven't you talked to Alex Stalvey
10 before?

11 MR. SMITH: Because I hadn't talked to his client
12 to see what his client was going to testify to until
13 today.

14 THE COURT: You had no idea that he had pled
15 guilty?

16 MR. SMITH: I knew he pled guilty.

17 THE COURT: You're talking about something he's
18 going to change his testimony.

19 MR. SMITH: He had already told me earlier that he
20 was going to change his testimony.

21 THE COURT: You didn't do anything about it?

22 MR. SMITH: Didn't have anything to do related to
23 this.

24 THE COURT: Well, that's what I'm saying. That is
25 exactly what I'm saying. It has nothing to do with the

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1 charges against the defendants other than as a witness.

2 MR. SMITH: Well --

3 THE COURT: I mean you said it yourself.

4 All right. Anything you want to say, Mr. Weston?

5 I mean, do you consent to the continuance?

6 MR. WESTON: No, sir, your Honor. As counsel has
7 indicated, this case has been on the docket at least
8 twice, I think three times. He has had this
9 information admitted by him in his possession for
10 almost two months. He just didn't see it until
11 apparently -- in fact, the fact that he talked to the
12 defendant is irrelevant. He's had that piece of paper
13 he says in his file in his possession for two months.
14 He just didn't look at it until last night. All he had
15 to do was read the -- the last time we were here, he
16 wanted a continuance to review the file. And he just
17 didn't look at that piece of paper until last night.
18 Whether it was relevant or not, he wouldn't have known.
19 If he would have just read it, he would have known
20 exactly what he's talking about this morning.

21 Finally, though, your Honor, in terms of
22 relevance, the discovery rules require that we give to
23 counsel evidence that is, first of all, relevant;
24 second, either exculpatory to defendants, exculpatory
25 evidence or evidence that we plan to admit at trial.

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1 Those are the only two requirements. We're not
2 required to give them every piece of paper we have,
3 just exculpatory evidence for the defendant or evidence
4 we plan to present at trial. That is Rule 5. Counsel
5 cannot in good faith say that this is either one of
6 those things.

7 THE COURT: Let's don't talk about good faith.
8 Let's just talk about what the rules require.

9 MR. WESTON: Your Honor, I would suggest, your
10 Honor, if you read that document, as you indicated it
11 does not mention his client or the other codefendant.
12 All it does is provide a proposed alibi for the
13 defendant who has already pled guilty. That was
14 withdrawn when he pled guilty. But it doesn't mention
15 that either of these defendants were with him --

16 THE COURT: It wasn't withdrawn. I guess you
17 could say it was --

18 MR. WESTON: Abandoned.

19 THE COURT: -- effectively recanted because he
20 pled that he was there.

21 MR. WESTON: Exactly, your Honor. So the State's
22 position with the continuance again is it simply would
23 just delay this one more time.

24 THE COURT: All right. Mr. Smith, what do you
25 say?

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1 MR. SMITH: I don't have anything further.

2 THE COURT: Mr. Robinson, anything you would like
3 to say?

4 MR. ROBINSON: No, your Honor. I join with the
5 motion for a continuance with Mr. Smith.

6 THE COURT: What's your grounds?

7 MR. ROBINSON: Well, he's my co-counsel in this
8 case, so --

9 THE COURT: Actually he's Mr. Chiles' counsel, not
10 a co-counsel.

11 MR. ROBINSON: Yes, your Honor. I have nothing to
12 add.

13 THE COURT: I'm just trying to sort all this out.
14 I'm going to have to deny the motion for continuance.

15 You can use the statement -- well, you have had
16 the statement, but you can use it as far as the
17 credibility of the witness, of course. And, of course,
18 it's not his statement. I guess the inconsistent
19 statement was his plea of guilty that really did that
20 in error, that he was, in fact, what is it, at some
21 place where they were dancing and later went to IHOP, I
22 think, rather than anywhere near where this alleged
23 event occurred.

24 All right. Good enough. Very good. Your motion
25 is noted for the record and my ruling.

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2012-GS-23-965 & 966

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1 MR. SMITH: Yes, sir.

2 THE COURT: All right. Anything else?

3 MR. ROBINSON: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. ROBINSON: Your Honor, I have two motions.

6 The first motion is a motion to sequester witnesses
7 except for the investigating officer. I don't think
8 that would prejudice either side in this case, but I'd
9 ask that any witnesses be sequestered and remain
10 outside, not talk about the case.

11 THE COURT: Do y'all have a place that you do
12 sequester witnesses?

13 MR. WESTON: Not formally. First of all, I have
14 no objection to that, and we don't have a formal place.

15 THE COURT: I mean, I just wondered if you had
16 someplace that they could be sequestered.

17 MR. WESTON: Normally, your Honor, we just have
18 the judge will admonish witnesses as they leave the
19 witness stand.

20 THE COURT: I'm going to admonish them before they
21 take the stand.

22 MR. WESTON: And, your Honor, the only other two
23 witnesses that I have are the officers and my four lay
24 witnesses. They'll be here at 2:00.

25 THE COURT: Before we start the trial, what I

1 do -- I'm going to grant the motion to sequester. But
2 when I do grant the motion to sequester, I let the
3 witnesses stay in the courtroom -- and I'll give them
4 instruction to this -- during the opening statements.
5 So, in other words, if either of the counsel want to
6 refer to one of the potential witnesses and they are
7 available, they can identify them for that purpose.

8 But once the first witness is called, then, what
9 is it, the witnesses will leave the courtroom and will
10 be called back as their time comes.

11 All right. Do you understand, Mr. Weston?

12 MR. WESTON: Yes, sir, your Honor.

13 THE COURT: Do you understand, Mr. Robinson?

14 MR. ROBINSON: I do.

15 THE COURT: In other words, they can stay in the
16 courtroom until both sides complete their opening
17 statements, and then -- of course you haven't notified
18 or noticed any witnesses, but the State will state to
19 them as I will, too, that, what is it, they are to
20 leave the courtroom.

21 Once I look at the State and I say, "Call your
22 first witness," then that's when they're supposed to
23 leave.

24 MR. WESTON: Yes, sir, your Honor.

25 THE COURT: So you let them know that over the

1 lunch.

2 MR. WESTON: Yes, sir, I will.

3 THE COURT: All right. Okay. Mr. Robinson.

4 MR. ROBINSON: The second motion --

5 THE COURT: Motion granted.

6 MR. ROBINSON: The second motion is a motion in
7 limine. Here's where the motion comes from. In the
8 discovery packet that we received from the State,
9 several of the lay witnesses were asked questions by
10 the investigating officers, and they have been asked as
11 far as whether it's an inside job, basically "inside
12 job." And I would ask the Court ask these witnesses to
13 be limited from stating that because I think under Rule
14 701, in terms of lay witnesses giving testimony like
15 that, I don't think they're qualified to be making a
16 statement like that, that is it's an inside job.

17 THE COURT: Who are the witnesses that would
18 proffer that?

19 MR. ROBINSON: If I'm reading the discovery
20 correctly, as far as the statements they gave us in
21 discovery, it would be Culbertson, Adams, Quinzell
22 Davis, and Noel Lomax.

23 THE COURT: These are employees?

24 MR. ROBINSON: Lomax was actually district
25 manager, I think, of McDonald's at the time, but I

1 would ask they be prohibited from being asked or saying
2 anything like it's an inside job. And I think under
3 Rule 701 they're not really qualified to give that kind
4 of an opinion as a layperson.

5 THE COURT: I understand.

6 All right, Mr. Smith. Now, Mr. Robinson, you sit
7 down.

8 I'm sorry, that's what the rules say. But it
9 helps the judge know who to look at and the court
10 reporter not to have two people talking.

11 MR. SMITH: Judge, the only thing I was going to
12 say, I would join in the motion and I would just add it
13 calls for speculation. They're making an assumption
14 and they're speculating.

15 THE COURT: Do you understand, Mr. Weston, they're
16 saying we don't want any sleuths out there solving a
17 crime.

18 MR. WESTON: Yes, sir, your Honor. I do not plan
19 to ask --

20 THE COURT: This isn't CSI.

21 MR. WESTON: I don't plan to ask any questions of
22 any of the witnesses with regard to whether that down
23 the road it's an inside job.

24 THE COURT: Well, let's do this. Let's recognize
25 you have got two conspiracies charged, two defendants

1 charged with conspiracy.

2 MR. WESTON: Yes, sir.

3 THE COURT: Unless you got somebody else charged
4 with conspiracy, it would be irrelevant, inside job.

5 MR. WESTON: This defendant was an employee of the
6 McDonald's and was there.

7 THE COURT: You can talk about that.

8 MR. WESTON: Yes, sir. They're going to talk
9 about -- nobody is going to talk about inside job.

10 THE COURT: All right. That's what I'm saying.
11 In other words, you have got somebody who is not -- if
12 it's somebody -- inside job relates to anybody who is
13 not charged with conspiracy would not be relevant.

14 MR. WESTON: Yes, sir.

15 Your Honor, the only other thing --

16 THE COURT: I would grant the motion in limine.

17 MR. ROBINSON: Thank you, Judge.

18 THE COURT: Of course, the only time, and you have
19 got to renew it if there is some proffer of that sort
20 of testimony.

21 MR. ROBINSON: I have no doubt that Mr. Weston
22 will caution the witnesses, obviously. But if it comes
23 to a point where there may be something like that
24 happening, I'll ask the Court to maybe proffer the
25 testimony first before they actually testify.

1 THE COURT: Okay.

2 MR. WESTON: Your Honor, the only other thing
3 along that same line, just since we are talking about
4 that, the three lay witnesses who were -- two of who
5 were employees that night and who knew Ms. Harris,
6 worked under her. She was a supervisor. They will
7 testify just actually to what happened. I'm not going
8 to ask them any questions about how she acted or if she
9 was suspicious or if they suspected anything like that.

10 Mr. Lomax, however, is a district manager. And
11 he's not going to talk about whether she was suspicious
12 or he suspected her or anything. But I do plan to ask
13 him questions concerning the protocols for a McDonald's
14 in terms of the circumstances that should be existing
15 when money is being taken from the safe, things like
16 locked doors, security systems, and whether those
17 things -- and the officer is going to testify
18 concerning things that were not done that night. But
19 he is going to testify, tell the jury what the normal
20 protocols are. But they won't point to her directly.

21 THE COURT: Any objection to that, Mr. Robinson?

22 MR. ROBINSON: I think that's great. I would
23 encourage that. I think that's great.

24 THE COURT: Any objection to that type of
25 testimony?

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1 MR. SMITH: No, your Honor.

2 THE COURT: All right. But if you're getting into
3 as far as the other lay witnesses who do not have
4 special knowledge or whatever of protocol, then of
5 course you would alert the Court so the proffer could
6 be taken out of the presence of the jury.

7 MR. WESTON: Yes, sir, your Honor. I promise I'm
8 not going to do that, but if it goes that way, I'll
9 alert the Court.

10 THE COURT: All right, Gentlemen. We have got 45
11 minutes.

12 Anything else, Mr. Robinson?

13 MR. ROBINSON: Your Honor, just on the record, I
14 want to make sure. We kind of bantered back and forth
15 here back in chambers and here. I have to tell the
16 Court I appreciate Mr. Weston and the staff. When I
17 had my diagnosis, they were very good about continuing
18 cases and that sort of thing. I just wanted to put
19 that on the record, that I appreciated Mr. Weston for
20 what he did.

21 THE COURT: Very good.

22 Mr. Smith, anything?

23 MR. SMITH: Nothing further, your Honor.

24 THE COURT: Very good. I'll see you back at
25 2 o'clock or as close to there as we can.

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1 (WHEREUPON, Lunch recess was taken from 1:11 p.m.
2 To 2:12 p.m.)

3 THE COURT: All right. We're back on the cases of
4 State of South Carolina versus Chiles and Harris.

5 Anything from the State before we proceed?

6 MR. WESTON: No, your Honor. I have spoken with
7 the lay witnesses concerning your admonitions to us
8 regarding the fact that they could stay in the trial
9 for openings. They would then have to leave. And that
10 each witness has been advised once they testify, they
11 have the right to stay, but if they go outside, they
12 are not to discuss their testimony with or what was any
13 of the proceedings in here with anybody who's out there
14 who possibly could be a witness.

15 My first few witnesses have indicated that they
16 would like to be relieved of their subpoena and allowed
17 to leave once they finish their testimony.

18 THE COURT: That would be up to the defendants.
19 We'll address that when the time comes.

20 Anything from Ms. Harris?

21 MR. ROBINSON: No, your Honor.

22 THE COURT: Mr. Chiles?

23 MR. SMITH: No, your Honor.

24 THE COURT: All right. Gentlemen, fortunately
25 they are people who are much better equipped to keep up

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1 with the record than I do. And after the hearing
2 earlier today, I was actually directed to the
3 conspiracy charges both in 2012-GS-23-965 and 1727,
4 which are separate conspiracy charges or indictments
5 against each of the individual defendants. And I --
6 don't you shake your head like that, Mr. Smith. If you
7 knew that, why didn't you tell me because I kept asking
8 you, is the name in any of the indictments.

9 MR. SMITH: No, your Honor.

10 THE COURT: Well, let's not worry about it because
11 the fact is in both Mr. Chiles' and Ms. Harris'
12 indictment for conspiracy, the co-conspirator is named
13 as Keith Williams.

14 Now what do you say about that, Mr. Smith?

15 MR. SMITH: Judge, the reason I was shaking my
16 head is I actually pulled it out to see who the
17 conspirator was and I actually showed Mr. Robinson.
18 But at that point we just made a decision if we were
19 going to renew the motion, we would renew it when Mr.
20 Williams took the witness stand and we aren't going to
21 belabor the Court anymore.

22 THE COURT: Is that right, Mr. Robinson?

23 MR. ROBINSON: That's correct.

24 THE COURT: Mr. Weston, anything you have to say?

25 MR. WESTON: Your Honor, in light of that and in

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1 light of your reasoning, part of the reasoning for
2 denying the motion earlier, the State would orally move
3 to amend both of those conspiracy indictments to
4 reflect --

5 THE COURT: You can't have a conspiracy without a
6 co-conspirator.

7 MR. WESTON: Your Honor, what I was going to say
8 was to reflect that they conspired with one or more
9 other individuals. You don't have to name a person.

10 THE COURT: I know that. I'm going to deny the
11 motion to amend the indictments as stated by the
12 Solicitor. The reason for that, of course, under the
13 current practice, we do not send the indictments back
14 to the jury so they don't know it. That's why we'll
15 always have a problem in conforming the indictments.

16 Yes, sir.

17 MR. SMITH: Well, Judge, in light of that, the
18 fact that you are going to do it that way and it's not
19 going to be mentioned, if it's not going to be amended,
20 then it seems to me the only thing that Mr. Weston
21 would be able to argue is that they conspired with --
22 well, at least my indictment says with Keith Williams,
23 that he wouldn't be able to say that these two
24 conspired with each other because it's not in the
25 indictment.

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1 THE COURT: Well, not necessarily because the law
2 of conspiracy is with one or more. And you do not
3 necessarily have to name who the individuals are as
4 long as you do establish that there was more than one
5 conspirator.

6 MR. SMITH: Well, Judge, just -- I understand your
7 ruling. I'm just saying that the indictment, the
8 actual indictment actually says, "Willfully and
9 unlawfully combined with Keith Williams for the purpose
10 of accomplishing an unlawful object or a lawful object
11 by unlawful means, to wit, armed robbery." It does not
12 say anything about any other conspirators or anything
13 else.

14 THE COURT: Well, they don't have to. I mean, if
15 you have the James Gang, you wouldn't have to name Cole
16 Younger and Frank and everybody. You'd only name one
17 or more people robbed a bank or tried to rob the banks
18 in Northfield.

19 MR. SMITH: Judge, I guess my point is if I'm
20 arguing my case and I'm going to point out the
21 indictment, the indictment alleges that they conspired
22 or he conspired with Keith Williams, my --

23 THE COURT: You can do that, but you do that at
24 your own peril. If they bring it up, you open the
25 door, particularly there.

1 What I'm saying is and my ruling this morning and
2 it continues to be so, that what Keith Williams did is
3 not relevant to what these defendants are charged in
4 the indictment. If he was still here, he would -- did
5 he plead to conspiracy?

6 MR. WESTON: Yes, sir, your Honor.

7 THE COURT: Well, then, that's, you know --

8 MR. SMITH: Judge, once again, and I'm not
9 renewing the motion at this time. You've already ruled
10 on that. I guess now my --

11 THE COURT: We're going to continue as presented
12 to the Grand Jury for Greenville County at a session
13 convened on April 24, 2012, on the two indictments.

14 MR. SMITH: Judge, for the record, obviously I
15 don't need any argument or anything, I just want to
16 state on the record that my position with David Chiles
17 is that the indictment for conspiracy says that he
18 conspired with Keith Williams. It does not say
19 anything in there about Precious Harris, and that would
20 be -- that our case would be limited to just those
21 facts, not anybody else, because it doesn't say
22 anything about that in the indictment. It wasn't
23 brought before the --

24 THE COURT: Now you have a bit of a problem there
25 because you've asked and apparently have agreed to try

1 the two defendants both charged individually on
2 separate indictments with conspiracy.

3 MR. SMITH: Once again, Judge, the indictment --

4 THE COURT: I think I understand where you're
5 going, but I don't understand what the destination is.
6 I mean I know you're going down the road but I'm not
7 sure where you want to get.

8 MR. SMITH: Well, the thing is this. He's not
9 charged with conspiracy with this person. He's charged
10 with conspiracy with Keith Williams. He was not -- he
11 was not indicted for conspiracy with her. He was
12 indicted for conspiracy with Keith Williams to commit
13 an armed robbery. And I believe their case would be
14 that these two conspired together to commit a robbery
15 against McDonald's since they're trying them together
16 as codefendants. And --

17 THE COURT: Well, now, that would have been a
18 motion to bifurcate if you don't think they should be
19 tried together. That's why I went through all the
20 different nonjury terms of court we have had, general
21 sessions. Because you knew that from the very first,
22 particularly if you were aware of what was in the
23 indictment like I was -- I wasn't until this morning.

24 MR. SMITH: Yes, sir.

25 THE COURT: All right. I understand. Your

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1 argument is made for the record, but I'm going to let
2 the -- I've denied the motion to amend and we'll go
3 forward on the indictments. I find the indictments are
4 sufficient to charge the conspiracy offense.

5 All right. Anything further from the State?

6 MR. WESTON: No, sir, your Honor.

7 THE COURT: Anything further from Mr. Chiles?

8 MR. ROBINSON: As to Ms. Harris, your Honor, no,
9 sir.

10 THE COURT: Anything further from Mr. Chiles?

11 MR. SMITH: No, your Honor.

12 THE COURT: Subject to all the motions made and
13 rulings of the Court, we will now proceed.

14 And, Madam Clerk, are you ready to swear?

15 THE CLERK: Yes, sir, I am.

16 THE COURT: Very good.

17 Ask the jury to join us, please.

18 (Whereupon, the jury came into open court at
19 approximately 2:22 p.m.)

20 THE COURT: Madam Clerk, if you would please swear
21 the jury.

22 THE CLERK: Yes.

23 Would you please stand and raise your hand for the
24 oath in this case. The proper response is "I will."

25 You shall well and truly try the case

1 2012-GS-23-3108, the State vs. Precious Jacquetta
2 Harris, indicted for armed robbery and 1727 for
3 conspiracy.

4 Also in the case 2012-GS-23-966, the State vs.
5 David Wince Chiles, Jr., indicted for armed robbery and
6 possession of a weapon during commission of a violent
7 crime and 0965 for conspiracy, and a true verdict
8 render according to the law and the evidence, so help
9 you God. I will?

10 (The jurors indicate in the affirmative.)

11 THE CLERK: Thank you. Please be seated.

12 THE COURT: Mr. Foreman, ladies and gentlemen of
13 the jury, I'm sure that each of you now fully
14 appreciates that this Court, the court of general
15 sessions for Greenville County, exists for the purpose
16 of resolving questions of alleged criminal conduct
17 arising between the State of South Carolina and the
18 defendants.

19 It is a guaranteed right of every citizen that a
20 charge of criminal conduct be presented in open court
21 according to certain rules of procedure. The State has
22 not only an equal right but the duty to present a
23 charge of criminal conduct in open court according to
24 the same rules of procedure.

25 Each of the parties therefore, both the State and

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1 the defendants, then have an equal right to the
2 opportunity of this proceeding and to have you as the
3 jury selected and now sworn for the trial of this case.

4 One of the most important aspects of your duty as
5 a jury lies essentially in the oath that you have now
6 taken to well and truly try and determine the facts of
7 this case. That oath in a very essential way says that
8 you are the sole judges of the facts in this case.

9 Obviously any case tried in court will involve a
10 question about what happened or how something came to
11 happen or whom, if anyone, did anything in a particular
12 occurrence or circumstance. From this point forward
13 then no one concerned with this trial has the right to
14 decide any question of fact in this trial or the truth
15 of it except you, the jury.

16 The facts -- the facts then are for your
17 resolution and your decision and yours alone. And
18 after you hear all of the evidence in the case, then it
19 will be your duty by your mutual and joint discussions
20 to determine the truth of this case by deciding the
21 weight and the believability of each part of the
22 evidence and by applying the law of the case as I give
23 it to you at the end of the trial.

24 Now, as trial judge, I am the judge of the law in
25 this case. It is also my responsibility, among other

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1 duties, to preside over this trial, to rule on the
2 admissibility of the evidence offered during the
3 progress of the trial and to state to you, the jury,
4 the law applicable to the case.

5 The Constitution of South Carolina mandates that
6 I, as the trial judge, cannot directly or indirectly
7 comment about the facts in this case. The process of a
8 verdict then is simply that you, the jury, first
9 determine what is the truth of the facts and then apply
10 to that true state of facts the principle of law
11 applicable, and by that process determine and report to
12 this Court your final verdict in this case speaking the
13 truth of the case as you determine it.

14 Now, I'll more fully and completely state to you
15 the principles of the law applicable to the issues in
16 this case before the case is submitted to you for your
17 decision. However, there are certain principles of law
18 applicable to the framework of every case in general
19 sessions court. And now in a very basic fashion I will
20 outline several of these basic principles to you for
21 your guidance.

22 The defendants have pled -- have entered a plea of
23 not guilty to all the charges contained in the
24 indictments. Now, the indictments in a case are not
25 evidence and is simply the written instrument that

1 contain the charge or charges against the defendants
2 and it serves as the formal document by which this case
3 is processed into this court.

4 A plea of not guilty places upon the State the
5 burden of proof in this case. As to what is meant by
6 the term "burden of proof," the defendants are presumed
7 in law innocent of all the charges contained in the
8 indictments. The burden of proof requires the State to
9 prove guilt beyond a reasonable doubt. Therefore,
10 consistent with that burden, the defendants or the
11 accused parties shall be presumed innocent. And that
12 presumption of innocence is sufficient to compel a
13 verdict of not guilty or a verdict of acquittal unless
14 you, the jury, concludes the State has sustained its
15 obligation to prove the defendants guilty beyond a
16 reasonable doubt.

17 Now, the term "reasonable doubt" means the kind of
18 doubt that would cause a reasonable person to hesitate
19 to act. Now, this case will be opened by the
20 Solicitor, after which the same opportunity will be
21 afforded to the defendants to make an individual or an
22 opening statement.

23 When all of the evidence has been received by the
24 Court, counsel for the State and counsel for the
25 defendants will state to you, the jury, their

1 respective positions after which the Court will more
2 fully state the applicable law in this case.

3 Obviously, all parts of the case are important.
4 You do not know which witness in a case will most
5 impress you therefore, whether the first witness or the
6 last witness, in reaching your final conclusion, you
7 will need the guidance of the judgment of the other
8 jurors. You will need to know the guidance of the
9 principles of law that will be stated to you by the
10 Court. For all these reasons, then, if we have any
11 periods of recess, when you retire to your jury room or
12 during an overnight or meal recess, I instruct you that
13 you must not undertake to discuss this case among
14 yourselves until the case is finally given to you for
15 your deliberation; nor are you to discuss this case
16 with anyone or permit anyone else to discuss this case
17 with you. If they should attempt to do so, you should
18 report them immediately.

19 You are now the sworn jurors of the Court of
20 General Sessions of Greenville County for the trial of
21 this case and no one stands to interfere with your duty
22 as such.

23 Now, the verdict in this case must be a unanimous
24 verdict of all 12 jurors. A few other things I need to
25 mention before we start. As I said earlier, although I

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1 am the only person who can tell you what the law is,
2 you and you alone are the only ones who can determine
3 the facts. I do not have the right to indicate how I
4 may feel about the evidence presented, and throughout
5 this trial my intention will be to act impartially
6 towards each party.

7 Second, from time to time an attorney will object
8 to some bit of testimony or evidence that the other
9 side is seeking to present. As in sports or business
10 or other structured activities, there are certain rules
11 that both sides must obey in presenting evidence.
12 These rules have a definite purpose. They ensure that
13 the information you receive is the most trustworthy and
14 reliable evidence available.

15 An objection is the procedure we use for an
16 attorney to call a possible violation of the rules to
17 the Court's attention, and for this reason you should
18 not hold an attorney's objection against his client,
19 nor should you conclude from my rulings on the
20 objection that you favor one side or the other.

21 Finally, I would ask that you pay closest
22 attention possible to the evidence presented to you. I
23 will ask that you do not take notes. If the note-taker
24 makes errors or makes an error, those notes can be more
25 detrimental than helpful during the deliberations. The

1 time tested system is for each of you to listen
2 carefully. And I'm sure each of you will do that.

3 Now, I suggest that you don't take notes. And the
4 reason for that is it's been my experience if we take a
5 note, we have a tendency to be -- look at the note, be
6 sure that we write down accurately -- that we're
7 writing down accurately what we think we hear, because
8 that's one of the problems with a note. You're not
9 having the original statement. You're writing down the
10 statement as you hear it which, as you will find out
11 perhaps in the trial of a case, we do not usually
12 accept hearsay, what you think you hear somebody say.

13 So what you do, and also when you're writing down
14 the note on your note, what you think you heard, you
15 sometimes look to be sure that you are making your
16 spellings correct or semantically or grammatically it's
17 correct. All of these things distract you from the
18 testimony or whatever the evidence being introduced in
19 the courtroom.

20 As I've said before and I will say again, that
21 your decision in this case must be based on the
22 testimony and evidence introduced in the courtroom and
23 not what somebody else might say. And if you have a
24 note, somebody in the jury has a note, then of course
25 they will say, "Well, I wrote it down." Well, what

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1 they write down is only as good as it accurately
2 represents what was said. Now, if you miss a word,
3 simple little word, it can change the meaning of what
4 is written down altogether. I use the word "not." In
5 other words, you miss the word "not" and you write the
6 statement down without the "not," then of course it's
7 entirely opposite of what was actually said or stated.
8 Or if you put it in, if you think you heard the word
9 "not." So, therefore, I say do not take notes but
10 concentrate on what's happening in the courtroom. And
11 if a question comes up as to what was actually said or
12 what was actually done, then do the same thing you're
13 going to do when you reach your verdict ultimately, and
14 that is discuss it. And then decide from the two. "I
15 was watching when it was done," or I was -- you know,
16 decide with a joint deliberation of all jurors as to
17 what -- where the truth is. And that, I would suggest,
18 I find more reliable than the note-taking.

19 Now, having said that, I do take notes. It's not
20 one of those things, "Do as I say rather than what I
21 do." But we have different purposes in this courtroom.
22 You and you alone are the only ones that can determine
23 the facts, the credibility, the believability, the
24 weight of the evidence, as we say.

25 So, therefore, I say you concentrate on what's

1 happening. However, I'm not concerned with the weight
2 or the believability of the evidence or anything of
3 that nature. I am just jotting down what is happening.
4 In other words, there are certain things that must
5 occur during the trial, and I'm just jotting down. The
6 significance of that is for you. The only thing I'm
7 doing is recording what does, as far as procedure is
8 concerned, occurs.

9 And with that, I will now recognize Mr. Weston for
10 his opening statement.

11 MR. WESTON: Thank you, your Honor. May it please
12 the Court.

13 THE COURT: Mr. Weston.

14 MR. WESTON: Ladies and gentlemen, let me
15 reintroduce myself. My name is Jeff Weston, and I'm a
16 prosecutor with the Thirteenth Circuit solicitor's
17 office. Seated at the prosecution table with me is
18 Evelyn Mitchell, trial partner and investigator in my
19 office. And seated next to her is Mr. Deven Hooper, an
20 investigator with the Greenville County Sheriff's
21 Office and the primary investigator assigned to this
22 particular case.

23 I would like to use my opening statement to
24 briefly do three things: Number one, tell you what
25 this case is about. Number two, tell you what we're

1 required and what we intend to prove. And, number
2 three, tell you how we're going to prove it.

3 This is a case about a common armed robbery, a
4 simple armed robbery by simple people who just didn't
5 think it through.

6 We are required to prove as to Precious Harris
7 that on the morning, early morning hours, a little
8 after 12:00 of June 26th of 2011, she is the manager,
9 late night manager, of the McDonald's on Old
10 Spartanburg Road in Greenville County who conspired
11 with the codefendant, David Chiles, and the third
12 person in this triangle of evil, a Keith Williams, who
13 is not before you, to rob the McDonald's. She was the
14 night manager.

15 The judge will instruct you on the law at the
16 conclusion of the case, but we're required to prove
17 that she conspired with them, that they entered into a
18 criminal conspiracy. And criminal conspiracy, and we
19 must prove, is the combination of two or more people
20 for the purpose of committing an unlawful act. In this
21 case an armed robbery.

22 As to Ms. Harris, she is also charged with armed
23 robbery. And in that regard we have to prove under the
24 law that she or others acting in concert with her took
25 something of value by force from a third party while

1 armed with a deadly weapon. And in this case the
2 evidence is going to be very clear. We're not going to
3 even try to prove that she had a gun. She didn't. She
4 was the inside person. But one of the things that his
5 Honor will you instruct you at the conclusion of this
6 case is that the hand of one is the hand of all when
7 you have a conspiracy.

8 So while we won't prove that she was armed, we
9 believe the evidence will convince you satisfactorily
10 that she's guilty of armed robbery because she
11 basically set this thing up and staged it.

12 As to David Chiles, same basic facts hold true.
13 He was one of the people, along with Keith Williams,
14 who robbed the McDonald's. He is charged with
15 conspiracy. And, once again, we will have to prove
16 that he, along with one other person, in this case
17 Precious Harris and/or Keith Williams, conspired to
18 commit an unlawful act, that being armed robbery.
19 That's conspiracy.

20 We have to prove that he's guilty of armed
21 robbery. In his case the evidence is going to be
22 clear. He had a gun, and he robbed the McDonald's at
23 gunpoint. Holding employees hostage -- not hostage,
24 but holding them at gunpoint while they robbed the
25 McDonald's. He and Keith Williams.

1 Let me give you the lay of the land so you'll
2 understand what's going on here. The evidence is going
3 to show Precious Harris and David Chiles were boyfriend
4 and girlfriend, living together at the time of this
5 robbery. The evidence is going to show that Keith
6 Williams, the other guy who came in, is the brother of
7 David Chiles. And the three of them established this,
8 as I said, triangle of evil to rob a McDonald's.
9 That's what we're required to prove.

10 Excuse me. And one other thing. With regard to
11 David Chiles, he is charged with possession of a weapon
12 during the commission of a violent crime. Under our
13 law, if you commit a violent crime, as his Honor will
14 instruct you at the conclusion of the case, armed
15 robbery is a violent crime as defined by our law. If
16 you are in possession of a weapon when you commit that
17 crime, that is a separate crime. Which is why Precious
18 Harris is not charged with that. Because there's no
19 indication that she had a gun because she was the
20 inside person. But he had a gun, so he is charged with
21 and we believe the evidence will show and that you
22 should find that he is guilty of possession of a weapon
23 during the commission of a crime, armed robbery and
24 conspiracy. With regard to Ms. Harris, it's simply
25 armed robbery and conspiracy.

1 And this is how we're going to prove it. You're
2 going to hear from the employees and the people who
3 were in the McDonald's that night, and they're going to
4 tell you that about on the morning of June 26th, a
5 little after midnight, between 12:00 and 12:30, they're
6 closing up the McDonald's. Ms. Harris is on duty as
7 the night manager.

8 And the two men came in with masks on with guns,
9 basically ordered them to pretty much freeze. One of
10 them went to the back where Ms. Harris was counting the
11 money. Keep in mind these men walked in through
12 unlocked doors as Ms. Harris had opened the safe and
13 had money laying out on the counter.

14 These employees and these three witnesses are
15 going to say they came back out with the money and
16 left. They're going to tell you, each of them, that
17 these men, what they're going to tell you is these men
18 were armed with guns, and they just robbed the
19 McDonald's of approximately \$1,200 and they left.

20 You're going to hear from Mr. Neal Lomax.
21 Mr. Neal Lomax is the district manager of McDonald's.
22 He's going to tell you a little bit about his training.
23 He's not going to qualify as an expert, but he's going
24 to tell you about his training as a McDonald's area
25 supervisor. He's going to tell you about his going to

1 McDonald's school in Chicago. We've all heard so much
2 about this McDonald's college. He's going to tell you
3 most importantly, though, about the protocols. That
4 every McDonald's has, whether you're in Hawaii or in
5 Greenville, about what you're supposed to do when
6 you're closing up the McDonald's in terms of counting
7 money, locking doors, security systems, that kind of
8 thing.

9 You're going to hear from the officers who came to
10 the scene that night. And I think you will find from
11 the testimony there were probably anywhere from ten to
12 15 officers there in total that night. You're only
13 going to hear from two or three of them because they're
14 just basically going to tell what you they did because
15 the robbers got away --

16 MR. ROBINSON: Your Honor, I'm going to object
17 here. He's interjecting testimony into the opening
18 statement.

19 THE COURT: All right. I'm going to sustain the
20 objection. Actually, an opening statement is just
21 simply to set forward the theory of the case and then,
22 what is it, any sort of defense or cause that you're
23 going to pursue.

24 Now, we don't have any testimony or evidence, so
25 the record is not complete. At the closing -- these

1 rules apply to both, what is it, the State and the
2 defendants. But at the closing of the case, then you
3 can make your argument, and of course you will still be
4 limited to what's in the record.

5 So let's move on now and just state what the
6 theory of your case is but not the testimony or
7 evidence that might, if it is admitted.

8 MR. WESTON: Yes, sir, your Honor.

9 After hearing from the officers -- I'm not going
10 to say anything about what they're going to testify to.
11 You will hear from the police officers who investigated
12 it. You will hear from Investigator Hooper and his
13 investigation. And, finally, you're going to hear from
14 Keith Williams, who, as I told you, is the
15 co-conspirator, who has already pled guilty and has
16 given a statement. He's going to testify about what
17 happened that night and who he -- at the conclusion of
18 this case, ladies and gentlemen, three things are going
19 to be true. You're going to be convinced beyond a
20 reasonable doubt: Number one, that an armed robbery
21 occurred. Number two, that Keith Williams, who pled
22 guilty already, was one of the people that committed
23 that armed robbery. And, number three, that these two
24 were involved with it. Thank you.

25 THE COURT: Mr. Robinson. Or let's see.

1 Mr. Smith, I think you are first.

2 MR. SMITH: That's fine.

3 Members of the jury, as you know, my name is Mark
4 Smith. I'm a defense attorney here in town and I
5 represent David Chiles.

6 As the judge stated earlier, we're here today
7 because both David Chiles and Precious Harris have both
8 said they're not guilty of this. And that's where
9 y'all come in because y'all are the triers of fact.
10 And what that means is y'all, all of y'all, bring in
11 your common sense, your different backgrounds, your
12 different areas, all of the things that y'all have and
13 are going to have to make a decision at the end of this
14 case as to what actually happened.

15 You're going to have to render a decision. It is
16 an important part of our American society, the job that
17 you have. It is something that you need to take
18 seriously. You need to listen to the evidence from the
19 witness stand so that you can judge who or what they're
20 testifying to, and you can decide after this case is
21 over.

22 The judge, like he says, is the judge of the law.
23 We may have some objections. He decides those things.
24 Y'all decide the ultimate fact of what actually
25 happened.

1 The State has the burden of proof. It's beyond a
2 reasonable doubt. That's not any doubt. That's not
3 all doubt, but that's a doubt that a reasonable person
4 would have. That's why you have to listen carefully to
5 the evidence, give it the weight that you believe it
6 should be weighed at and then make your decision.

7 In doing that, I'm going to ask that you listen to
8 all the evidence. So often people are easy to rush to
9 judgment without hearing all the facts. Don't do that.
10 You may not like the way one of our clients looks. The
11 way he's dressed or she's dressed. They may not be
12 looking at you. Well, you can't consider those things.

13 The only thing that you can consider is what comes
14 off this witness stand and what the people are
15 testifying to. And only after everybody has testified,
16 then you can go back in the jury room and collectively
17 talk about it and reach a unanimous decision, one that
18 you all can live with. And that's all we're asking
19 that you do today.

20 David Chiles has pled not guilty and he's asking
21 for y'all to do your job, listen to all the evidence.
22 We're going to be asking for a verdict of not guilty in
23 this case. You're going to hear the evidence, and once
24 you hear the evidence, you will know why we're asking
25 for a verdict of not guilty. Thank you.

1 THE COURT: Mr. Robinson.

2 MR. ROBINSON: May it please the Court.

3 Good afternoon. My name is Scott Robinson, and I
4 represent Precious Harris, who sits to my left. I want
5 to thank you on behalf of Precious and her family, who
6 are sitting beside us -- behind us, for being here
7 today.

8 And Mr. Smith very eloquently set out some of the
9 responsibilities that y'all may have in this case. And
10 to use your common sense, and you have probably all
11 heard that before, of course. And it's very difficult.
12 People don't realize how difficult it is to be a juror
13 because you're picked, and you have to stay here for a
14 period of time, listen to some attorneys and so forth
15 about stuff you know nothing about. But you have a
16 very important role, as Mr. Smith talked about and the
17 judge, because in this case you're deciding what the
18 facts are in this matter.

19 I just want to clarify some things in response to
20 Mr. Weston's opening. First, Precious was a shift
21 manager is what she was, a shift manager. She had an
22 assistant manager above her and a manager of the store
23 at that time.

24 Also, too, there were four shift managers at that
25 particular McDonald's at that time. And also as well

1 in terms of the doors that were open, that was the
2 responsibility --

3 MR. WESTON: Objection, your Honor. Same
4 objection they made against me.

5 THE COURT: I'm afraid so. Let's wait for the
6 case to develop the evidence.

7 MR. ROBINSON: Yes, your Honor. I apologize for
8 going overboard.

9 Anyway, I want to thank y'all for coming here
10 today, and I don't like to belabor a lot of points, but
11 you've heard this "beyond a reasonable doubt," and you
12 will hear it all throughout this whole case. This is
13 not a civil case where you would have something where
14 it's possibly maybe a little bit more so and so forth.

15 This is a criminal case. That means that you have
16 to find a person guilty by using the standard beyond a
17 reasonable doubt. And the judge will instruct you at
18 the end of this case what that means. And we'll show
19 you that my client, Precious Harris, is innocent, and
20 the State is not going to be able to prove her guilty
21 beyond a reasonable doubt. Thank you.

22 THE COURT: All right.

23 Mr. Solicitor, you may call your first witness.

24 MR. WESTON: Thank you, your Honor.

25 The State would call Michael Culbertson to the

1 stand.

2 MICHAEL CULBERTSON,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: Would you please state your name for
5 the record.

6 THE WITNESS: Michael Culbertson.

7 THE CLERK: Thank you.

8 DIRECT EXAMINATION

9 BY MR. WESTON:

10 Q Mr. Culbertson, where do you live?

11 A Near the Pavilion, Devonwood Court.

12 Q Is that here in Greenville?

13 A Yeah.

14 Q All right. And how old are you?

15 A 21.

16 Q Are you married?

17 A No.

18 Q Were you present on the morning of December 26th
19 of 2011 when the incident that brings us here today
20 occurred?

21 A Yes.

22 Q Why were you there?

23 A I was working at the McDonald's.

24 Q How long had you been working there, just
25 ballpark?

1 A I guess four months, something like that, yeah.

2 Q All right. And about what time did this happen,
3 just generally?

4 A 12:00, midnight.

5 Q And who all was working as you can remember at
6 that time -- that evening I mean?

7 A Quinzell, Precious, and me.

8 Q Ms. Harris seated right here?

9 A Yeah.

10 Q And Quinzell is Quinzell Davis; is that correct?

11 A Yes.

12 Q And were you three the only ones that were there
13 at that time that you can remember?

14 A Working there, yes.

15 Q What was your job title?

16 A I was a cashier. So, yeah.

17 Q What was Mr. Quinzell Davis' job title?

18 A I think he was a cook.

19 Q And what was Ms. Precious Harris' job title at the
20 time?

21 A She was the manager, the shift manager.

22 Q All right. Was she the person in charge?

23 A Yeah.

24 Q In terms of responsibilities, as a cashier, you
25 took money. If I come in and buy a hamburger, you took

1 my money and gave me change?

2 A Yes.

3 Q The cash register is right there?

4 A Uh-huh.

5 Q Were you responsible for the money that was taken
6 in at the back of the McDonald's?

7 A No.

8 Q What happened to the money in the cash registers,
9 what happened to that money as time goes by during the
10 day or night?

11 A I guess they take it to the back. I don't know
12 exactly.

13 Q So you don't have access to the back manager's
14 safe or the counting of the money in the back or
15 anything like that?

16 A No.

17 Q Have you been trained to do anything with that --

18 A No.

19 Q -- in your training when you came in?

20 A No.

21 Q All right. And whose responsibility would that
22 be?

23 MR. ROBINSON: Objection, your Honor. I think he
24 has to establish a foundation, if he has knowledge of
25 this.

1 THE COURT: Very good.

2 Restate your question.

3 MR. WESTON: I'll restate, your Honor.

4 BY MR. WESTON:

5 Q If you know, whose responsibility is it in that
6 McDonald's at that time to put the money into
7 safekeeping?

8 A Precious'.

9 Q Is that Precious Harris seated right there?

10 A Yes.

11 Q All right. And that was your understanding?

12 A That -- yeah. From what I know, yes.

13 Q Did you have that responsibility?

14 A No.

15 Q Or that authority?

16 A No.

17 Q All right. Tell the jury what happened, where you
18 were and what happened that night about 12:00 or 12:30,
19 whatever.

20 A Well, I had just gotten off work. I left through
21 one of the doors -- there's two doors -- and walked out
22 to the parking lot. I met with my friend, Mike. He
23 lived in the Polos, which is right behind that
24 McDonald's.

25 Q Polos is an apartment complex?

1 A Yeah, an apartment complex.

2 Q Excuse me one second.

3 MR. WESTON: I was going to turn the demonstrative
4 around. I've shown it to counsel, your Honor. I don't
5 know whether they have any objection to it or not.

6 THE COURT: Any objection to the use of the
7 demonstrative exhibit?

8 MR. SMITH: Not from our side.

9 THE COURT: All right. Very well.

10 BY MR. WESTON:

11 Q I'm going to ask you if would you step down a
12 moment just right here and show you -- do you recognize
13 this as an aerial view of the McDonald's?

14 A Yes.

15 Q All right. And if I -- I just want you to stand
16 there. I want you over here so the jury can see. Just
17 kind of point to what you were saying. You said you
18 had just come outside or something?

19 A Yeah.

20 Q First of all, point towards where Polo Apartments
21 are.

22 A That way.

23 Q And where is this McDonald's located, what street?

24 A Old Spartanburg Road.

25 Q Is that in Greenville County?

1 A Yes.

2 Q All right. Now, where -- show the jury the front
3 of the McDonald's.

4 A Right here.

5 Q Are there any other doors in or out of the
6 McDonald's? You don't have to be exact. We just want
7 to get a general idea.

8 A Right here and right here.

9 Q I assume that circular part around the back is the
10 drive-through?

11 A Yes.

12 Q Just like most McDonald's.

13 A Uh-huh.

14 Q Show the jury where you were coming out when this
15 incident took place.

16 A Right here.

17 Q And then tell the jury what happened.

18 A Well, I came out right here. My car was parked in
19 this area. And I was smoking a cigarette and I was
20 talking to my friend.

21 Q Who is your friend?

22 A Michael Adams.

23 Q And he was -- did he work at the McDonald's?

24 A No.

25 Q Was he there just to leave with you when you left?

1 A He was the one that lived in the Polos, so he
2 walked up there as I was getting off. We were going to
3 hang out.

4 Q All right. Show the jury again where y'all were
5 standing.

6 A About right here next to my car.

7 Q Tell the jury what happened next.

8 A Well, I saw two people run in this door, and they
9 jumped over the counter. And they had a gun, bag. And
10 I called the police or I started calling them. And
11 then pretty quickly, I guess less than a minute, they
12 jumped back over, ran out this door, and they went that
13 way. I never saw them again.

14 Q So you were -- were you in the McDonald's when
15 they came in?

16 A No. I was on this side. But the windows, you can
17 see into and through to the other side.

18 Q All right. And did you get a clear look at the
19 two men?

20 A Not really, no.

21 Q All right. Were you able to be sure it wasn't
22 three or four men or one man?

23 A It was two.

24 Q No doubt in your mind?

25 A Two.

1 Q You have to say "yes" or "no."

2 A Yes, it was two.

3 Q Did you see whether they were armed or not?

4 A Yes.

5 Q Tell the jury what they had and -- what each or
6 both of them had?

7 A They both had handguns.

8 Q And are you sure you saw handguns in their hands?

9 A Yes.

10 Q All right. About how long were they in the
11 McDonald's?

12 A Like I said, less than a minute. I mean,
13 everything kind of sped up because, you know, it was
14 pretty crazy. But, yeah. It was less than a minute.

15 Q Did you see what they did inside the McDonald's?

16 A No.

17 Q Or have you already described it?

18 A No, because they went back this way, and they had
19 jumped over the counter, and I was outside. I didn't
20 want to go in after I saw them go in, so I stayed
21 outside and called the police.

22 Q All right. And about a minute later you said they
23 came out. And which way did they go?

24 A This way.

25 Q Once they ran off -- step a little bit closer to

1 the picture. Just show the jury with your finger the
2 direction they ran off toward. I know at some point
3 you lost sight of them, obviously.

4 A Pretty much instantly.

5 Q Show the jury which way they went as far as you
6 could see. Just point to it. Use your finger to show.

7 A I mean -- yeah. They came out this door, and I
8 think they ran in this direction, back across the
9 parking lot.

10 Q All right. You can take your seat back again,
11 sir.

12 A Okay.

13 Q About how long before the police got there?

14 A It was within 20 minutes, I guess.

15 Q All right. And prior to the police getting there,
16 did you go inside?

17 A No.

18 Q Did you have any conversations with any of the
19 other employees? I'm assuming you and your friend were
20 kind of taken aback --

21 A Shocked, yeah.

22 Q -- and talked about how shocked, y'all were
23 shocked about this. Did you have any conversation with
24 Mr. Adams or Ms. Harris before the police got there?

25 A Yes.

1 Q Okay. And once the police got there -- was
2 anybody injured?

3 A I don't think so, no.

4 Q All right. And once the police got there, did you
5 talk to any police officers?

6 A Yes.

7 Q Did you tell them pretty much what you told us
8 today?

9 A Yes.

10 Q All right. And do you know what the sex of these
11 two people were, male or female?

12 A Male.

13 Q Do you know what race they were?

14 A African American.

15 Q Could you see their faces?

16 A No.

17 Q How would you describe their height and weight?
18 Not specifically, just build. How was their build?
19 Were they short, tall, medium?

20 A Pretty tall, I guess. And they were medium. They
21 weren't like fat or anything. They were average, I
22 guess.

23 Q Were their faces covered --

24 A Yes.

25 Q -- by either a mask or a hoodie or something like

1 that?

2 A Yeah.

3 Q And how did you know that they were African
4 American? You could see their hands and arms or what?

5 A Yeah, hands.

6 Q All right. After you talked to the police that
7 night, they just let you go? You went on home or
8 wherever you were going?

9 A Yeah.

10 Q At some point did you come to the law enforcement
11 center and give a statement to the police?

12 A Yes.

13 Q All right. And did you pretty much tell them the
14 same thing that you told us today?

15 MR. ROBINSON: Objection, your Honor. Bolstering.

16 THE COURT: I'm going to overrule the objection.

17 He can answer it.

18 BY MR. WESTON:

19 Q Did you pretty much tell them the same thing you
20 told us today?

21 A Yes, sir.

22 Q Now, I haven't asked you about every detail. Did
23 they ask you about every detail when you gave your
24 statement, or did they just ask you to give a statement
25 of what happened?

1 A I don't -- it is a long time ago. I don't really
2 remember exactly what all they asked me.

3 Q Right. And just to be clear, is it your testimony
4 that you were not able to recognize either of these two
5 individuals?

6 A Yes. I don't recognize -- no, I don't recognize
7 them.

8 Q You didn't see their faces?

9 A (Shaking head.)

10 Q And there was nothing about the way they limped or
11 ran or was peculiar about them that reminded you of
12 anybody else; is that correct?

13 A No.

14 Q All right. Thank you, sir. That's all I have.

15 THE COURT: Cross-exam.

16 MR. SMITH: Judge, each time do you want me to go
17 first and then Mr. Robinson; is that how you want us to
18 handle it?

19 THE COURT: Well, the indictments I think do have
20 your client first, so let's just follow that procedure.

21 MR. SMITH: All right. Thank you, Judge.

22 CROSS-EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Culbertson, you went outside. Was your shift
25 over?

1 A Yes.

2 Q Were you getting ready to leave or --

3 A Yes.

4 Q You were getting ready to leave?

5 A Yes.

6 Q You didn't have to go back in and do any more work
7 or anything?

8 A No.

9 Q So you were just kind of hanging around out back?

10 A I -- yes. I was smoking a cigarette. Then my
11 friend had, like I said, he walked over and we were
12 talking. And then I guess we were about to leave, and
13 I don't remember exactly what we were doing that night,
14 but, yeah.

15 Q Okay. So your work was completely over --

16 A I was clocked out.

17 Q -- and you could have just gone and everything?

18 A Clocked out, yeah.

19 Q You just walked out. All right. Let me ask you
20 something. When you walked out, did Ms. Harris know
21 that you were leaving?

22 A Yes.

23 Q Okay. Did you go back in the back and say, "Hey,
24 I'm gone, I'm leaving"?

25 A Yes.

1 Q And when you walked out, did you have to unlock
2 the door?

3 A No, it was unlocked.

4 Q And so you just walked out and nobody locked the
5 door after you. Well, what are you doing up until the
6 time that you leave?

7 A Cleaning -- you're talking about in the store?

8 Q Yeah.

9 A I guess cleaning. Yeah, cleaning the area, the
10 eating area, because that's what the cashiers do. So,
11 yeah.

12 Q So your job was to kind of clean the eating area.
13 That's the open area that's not behind the counter but
14 outside the counter?

15 A Yes. Yes.

16 Q So when you're cleaning, I'm sure I can just come
17 into that McDonald's and buy a hamburger if I want to?

18 A Yeah. Then I have to get back behind the counter
19 and sell it to you.

20 Q Even though you're cleaning in there, y'all are
21 still open?

22 A I think so, yeah.

23 Q Okay. What do you mean, you think so?

24 A I mean, I don't -- it depends on what day it is, I
25 guess. I don't think that one is 24/7, but.

1 Q Well, I mean, it was Saturday night that night --

2 A I think we closed at, I don't know, 12:00 or -- I
3 don't know.

4 Q Okay. Well, the reason I'm asking is if you're
5 cleaning, I mean, everything was -- money was being
6 collected and you had already taken the money back, I
7 would assume that the doors would be locked.

8 A They should have been, I guess. I don't know.

9 Q And whose responsibility is it to lock the door?

10 A (Indicating.)

11 Q You have never locked the door?

12 A I've never locked the door.

13 Q But you're leaving. How many people are supposed
14 to be in the McDonald's at the end of the night?

15 A It was just us three, me and --

16 Q Are you supposed -- I'm sorry.

17 A Me, Quinzell and Precious.

18 Q Are you supposed to stay in the McDonald's until
19 everybody is finished and then y'all all leave
20 together?

21 A No.

22 Q Okay. What about the doors? I mean, you just
23 left leaving the two of them there, and you didn't lock
24 the door, you didn't ask anybody to lock the door?

25 A I don't have a key. How am I supposed to lock it

1 from the outside?

2 Q Okay. So -- so nobody -- you didn't lock the
3 door, you don't have a key, and the doors weren't
4 locked before you left?

5 A No.

6 Q Okay. And you left after midnight, right?

7 A Yes.

8 Q Okay. Now, I'm going to ask you to step back down
9 here, if you will. You can take this black magic
10 marker. You said that you came out of a side of
11 McDonald's. Could you put -- there is a white roof on
12 top of McDonald's right there, right?

13 A Uh-huh.

14 Q Okay. And then there's like a little red outline.
15 Can you put D1 like on top of where the door would be
16 located where you came out. Just put a D1 right there
17 on the white part.

18 A (Witness complies.)

19 Q And the door on the opposite side, can you put a
20 D2.

21 A (Witness complies.)

22 Q All right. Now, you said your car -- just hold on
23 a minute because I'm going to ask you to continue doing
24 things.

25 Where did you say your car was parked?

1 A In this area. I don't remember exactly what
2 parking spot.

3 Q Can you just put a -- how about an "MC car," Mike
4 Culbertson car?

5 A Okay. (Witness complies.)

6 Q So where were you and this other Mike hanging out?

7 A Right next to my car.

8 Q Right next to your car? All right. So you came
9 out of D1?

10 A Yes.

11 Q Door one, and walked that way. And you said the
12 two individuals came in D2?

13 A Yes.

14 Q From where did they come from? Where was the
15 first time you saw these two individuals?

16 A Like I said, I mean as soon as I realized that
17 they were in the door. So they were, I guess, coming
18 from some -- I don't know where exactly they came from,
19 but they were inside the door when I first saw them.
20 They were walking in it, I guess.

21 Q We're in a trial. We can't make any assumptions
22 so I'm going to ask. How did you see them entering
23 into the door?

24 A I looked inside and I saw them.

25 Q When you say you looked inside, how were you

1 looking inside?

2 A I mean, I guess I was talking, smoking a
3 cigarette, and I looked over and saw them going in and
4 jumping over the counter. So that's when I --

5 Q There's windows right there, right?

6 A Yes. There's windows on both sides. So the whole
7 place is really windows. And this even had a window
8 over here, like the playground area.

9 Q So you said after -- they were only in there for
10 about a minute, then they ran away?

11 A Back out the door.

12 Q Back out the door. Which way did you say that
13 they went?

14 A Again, it was nighttime. I would assume over this
15 way because there's woods. The Polos are like back
16 here, but there's a little bit of woods in between.
17 Not very much woods, but -- and then there's like
18 another building back here, and it has a little
19 alleyway.

20 Q What's that building right next to the McDonald's
21 right there?

22 A Laundromat.

23 Q That's a laundromat?

24 A Yeah.

25 Q Is all this back behind the laundromat -- we're

1 talking the side where D2 is. Is all this parking
2 right here behind the laundromat?

3 A It not all parking there. Like I said, there's
4 an -- I don't know what it was back then, but I think
5 it's like a Rite-Aid now or something. There's like
6 another shopping center kind of thing right here, not a
7 very big one. And then behind it there is a little
8 alleyway, and then back behind that is the Polos.

9 Q So the Polos are this way?

10 A Yeah, in that area.

11 Q All right. But we do know that you were standing
12 right here beside your car?

13 A Yes.

14 Q And where you were standing, you didn't see them
15 run to the front?

16 A Not from what I saw, no.

17 Q You didn't see them come around to your side?

18 A No.

19 Q From what you could see, I guess your vision, you
20 couldn't -- there was just one area that they could
21 run?

22 A I saw them run out the door, basically, and I was
23 on the phone with the police. And that was basically
24 it.

25 Q All right. If you want to, please have a seat.

1 When -- I believe you stated that you immediately
2 called 911?

3 A Yes.

4 Q Ms. Harris exited the building. Where did she
5 come out of the building?

6 A The door that I came out, D1.

7 Q D1. She came out D1?

8 A Yes.

9 Q What was -- what did -- did she ask you anything?

10 MR. WESTON: Objection, your Honor. Calls for
11 hearsay.

12 THE COURT: Restate your question.

13 BY MR. SMITH:

14 Q Did Ms. Harris say anything to you?

15 A Yes.

16 THE COURT: Well, now, Ms. Harris is a party.

17 MR. SMITH: Yes, sir.

18 THE COURT: I'm going to overrule the objection.

19 MR. WESTON: Your Honor, if I may briefly be
20 heard.

21 THE COURT: Certainly.

22 MR. WESTON: She is -- it is a -- the only
23 admission by a codefendant that is allowable is a
24 statement against interest, not just any statement,
25 otherwise it's just hearsay. Statements --

1 THE COURT: Actually a statement by a party is
2 admissible if she's available and subject to
3 examination.

4 MR. WESTON: Which she is not, your Honor.

5 THE COURT: I understand.

6 MR. WESTON: Because she's a defendant.

7 THE COURT: I understand.

8 MR. WESTON: So unless it's a statement against
9 interest, it is just simply hearsay and it is not
10 admissible, just like any other statement from any
11 other person.

12 THE COURT: I'm going to overrule your objection.

13 MR. WESTON: Yes, sir, your Honor.

14 You may ask the question.

15 You may answer the question.

16 Noted for the record, though.

17 MR. WESTON: Thank you, your Honor.

18 BY MR. SMITH:

19 Q So what did Ms. Harris say?

20 A She asked if I was on the phone with the police,
21 and I said yes. And then she asked me if she can talk
22 to them. She -- I gave her my phone and she started
23 talking to them.

24 Q Okay. What was her -- what was she -- how was she
25 acting?

1 A Pretty shaken up. She was crying, you know. I
2 don't remember exactly what was said, but, you know,
3 she was crying and she was pretty, yeah, like shaken
4 up, like I said, yeah.

5 Q Scared?

6 A Yeah.

7 Q The two men, I think you've already stated you
8 didn't get a good look at them, right?

9 A No.

10 Q I mean, you couldn't pick them out as to anything?

11 A No.

12 Q As far as you know you have -- you don't know if
13 it is or is not --

14 A I don't know.

15 Q Okay.

16 Thank you. That's all I have.

17 THE COURT: Mr. Robinson.

18 MR. ROBINSON: May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. ROBINSON:

21 Q Mike, do you go by -- Mr. Culbertson, do you go by
22 Michael or Scott?

23 A Michael or Mike.

24 Q Michael, you've worked with Precious before that
25 day; isn't that correct?

1 A What?

2 Q You worked with Precious before that day, didn't
3 you, before that night?

4 A Yes.

5 Q Actually, how many days a week did you work with
6 her?

7 A Maybe two, three maybe.

8 Q She was the shift manager during those periods of
9 time?

10 A Yeah, sometimes.

11 Q And during that period of time at nighttime when
12 you guys were closing up, the doors were locked at
13 10:00; isn't that correct?

14 A Not always, no.

15 Q Why would they not be locked?

16 A I guess nobody locked them. I don't know.

17 Q Would that be -- so there were times when the
18 doors just weren't locked that you're aware of,
19 correct?

20 A Yes.

21 Q Now, did you have opportunity to see what she did
22 those other nights that you worked with her?

23 A No. I wasn't really paying attention.

24 Q But she was, when you worked with her those two or
25 three nights a week that you're talking about, you saw

1 her with the safe open several times, didn't you?

2 A Yes. Yeah.

3 Q So it wasn't uncommon for her to have the safe
4 open --

5 A No. No. I think --

6 Q -- while they were closing?

7 A I think they did that at the end of the night.

8 Q Sir?

9 A I think they counted the money or whatever every
10 night. I'm not exactly sure on the routine, but yeah.

11 Q Because that was the last shift that day, correct?

12 A Yeah, because we weren't a 24-hour one or that
13 wasn't one.

14 Q Now, you said that you left and went out to go
15 smoke a cigarette, correct?

16 A I was leaving -- yeah. I had clocked out. I was
17 leaving. I had done my shift. Yes, I was done for the
18 day.

19 Q And you said that you didn't tell anyone that you
20 were leaving, that you were going --

21 A No, I did. They knew. I mean...

22 Q Did you lock -- you didn't lock the door behind
23 you, did you?

24 A No. I don't have a key. How can I lock it from
25 the outside?

1 Q Okay. But no one else -- did you make sure that
2 it was locked? Did you like have someone follow you to
3 make sure it was locked that time of night?

4 A No.

5 Q So it was already unlocked when you left?

6 A Yes.

7 Q So someone must have unlocked it and you didn't
8 find it important to lock that door back up again, did
9 you?

10 A No.

11 Q Now, there's a camera at this location, too, isn't
12 there?

13 A I think so. I would say so, yeah. I'm not --

14 Q Now, are you -- you worked there for how many
15 months or days or years?

16 A Like three or four months.

17 Q Three or four months. And did you observe your
18 surroundings to see if there is a camera?

19 A Yeah, there is a camera over the register part, I
20 guess. I know there's one there, and I think there's
21 one in the manager's office.

22 Q And at the time those cameras were broken, weren't
23 they?

24 A I don't know.

25 MR. ROBINSON: Beg the Court's indulgence.

1 THE COURT: Certainly.

2 MR. ROBINSON: That's all I have. Thank you.

3 THE COURT: Re-exam.

4 MR. WESTON: Yes, sir, your Honor. Just one or
5 two questions.

6 REDIRECT EXAMINATION

7 BY MR. WESTON:

8 Q Mr. Culbertson, both counsel asked you about the
9 doors being locked.

10 A Yes.

11 Q Were the doors supposed to be locked at that time?

12 A I think so, yes.

13 Q And whose responsibility would that be?

14 A The manager.

15 Q And who was that that night?

16 A Precious.

17 Q Thank you, sir.

18 MR. WESTON: That's all I have.

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

20 MR. WESTON: Your Honor, the State would ask this
21 witness be allowed to be excused from his subpoena.

22 THE COURT: Any objection?

23 MR. SMITH: Not from our side.

24 MR. ROBINSON: No.

25 THE COURT: Without objection, you may be excused.

1 Thank you, sir.

2 MR. WESTON: Your Honor, the State would call
3 Mr. William Adams.

4 WILLIAM MICHAEL ADAMS,
5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE CLERK: Would you please state your name for
7 the record.

8 THE WITNESS: William Adams.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. WESTON:

12 Q Mr. Adams, where do you live?

13 A Right now I live on Circuit Street.

14 Q And how old are you, sir?

15 A 23.

16 THE COURT: Just a moment. If would you, please,
17 state your name for the record.

18 THE WITNESS: William Adams.

19 THE COURT: William Adams?

20 THE WITNESS: Well, Michael is my name, yeah, my
21 middle name. I go by Michael.

22 THE COURT: William Michael Adams, but you go by
23 Michael?

24 THE WITNESS: Uh-huh.

25 THE COURT: Thank you. Very good.

1 BY MR. WESTON:

2 Q Mr. Adams, are you married?

3 A No.

4 Q And do you know Mr. Culbertson?

5 A Yes, sir.

6 Q And how long have you known him, just generally?

7 A Since we was in high school, so yeah.

8 Q Did you have an occasion to be at the McDonald's
9 on the morning of June 26, 2011, when the incident that
10 gave rise to us coming here today took place?

11 A Yeah. I walked up there because I used to live
12 right behind there.

13 Q Why did you walk up there?

14 A Waited for him to get off work.

15 Q All right. Waiting for Mr. Culbertson to get off
16 work?

17 A Uh-huh.

18 Q And did you go into the McDonald's ever?

19 A No.

20 Q All right. When you got there, did you join up
21 with Mr. Culbertson?

22 A Yeah. When he got off work, he came out the door.

23 Q All right. And when he came out the door, did
24 y'all leave immediately or were y'all standing around
25 the parking lot?

1 A We were standing around the parking lot, and
2 then --

3 Q Tell the jury what happened when ya'll were
4 standing around the parking lot -- well, excuse me.
5 I'm sorry. I apologize.

6 Before you do that, if you will step down.
7 Looking at this, do you recognize this as an aerial
8 view of the McDonald's?

9 A Yes, sir.

10 Q Would you tell the jury -- now, you don't have the
11 microphone, so speak up so the juror way down at the
12 end can hear you.

13 Show the jury about where y'all were standing in
14 the parking lot.

15 A About right here by this door over here. There is
16 a door over here on this side.

17 Q All right. And did y'all see anything unusual?

18 A Yeah, saw two males.

19 Q Go back and have a seat up here.

20 A (Witness complies.)

21 Q You were saying you saw what?

22 A We seen two males run inside the store. I know I
23 saw some red. And it was like, had a silver gun kind
24 of like that, and went in and like robbed the place.

25 Q You said there were two of them?

1 A Yeah.

2 Q Are you sure it was two?

3 A Yes, sir.

4 Q And did each of them have a gun or just one of
5 them?

6 A Each of them.

7 Q All right. And how did they come in? Did they
8 run by y'all, the same door ya'll were at?

9 A No, they came in on the opposite side.

10 Q All right. When they came in, did y'all see them
11 through the window?

12 A We did. I saw them through the window because we
13 were standing right near his car, and I was looking
14 straight on, and then they came through the other door.

15 Q And what did you see them do when they came
16 inside?

17 A They ran in pretty quick. It was quick. And they
18 robbed the place, pulled a gun up and went by the
19 counter.

20 Q Did both of them go behind the counter?

21 A I think. I couldn't tell from there.

22 Q About how long were they in there?

23 A It was quick because I was like, "Did you see
24 that?" And he was like, "Yeah, I saw it." And there
25 was another guy over here parked waiting on another

1 customer -- I mean another coworker to get off work.
2 And we was like, "They just got robbed." And the guy
3 left. And me and Mike went around the other side of
4 the building. They were taking off. And we were going
5 to chase them, but we decided to make sure everybody
6 was okay. And then the manager and another coworker
7 came out.

8 Q Stop right there. You're going way down the road.
9 Let's kind of walk down this road a little bit.

10 At some point y'all went around to the other side?

11 A Uh-huh.

12 Q You have to say "yes" or "no" so the court
13 reporter --

14 A Yes, sir. Yeah, we went to the other side.

15 Q Had the two men already come back out of the
16 building?

17 A Yeah, they was already gone.

18 Q So you saw them come back over the counter and
19 leave?

20 A Yeah. Well, not technically, but they were --

21 Q Move back a little bit away from the microphone.
22 You're a little bit too close to it and you're kind of
23 blurring your voice a little bit. Try right there.

24 A All right.

25 Q You saw them go over the counter, go to the back?

1 A Yeah.

2 Q Now, and did you see them come back over the
3 counter?

4 A No.

5 Q Where were y'all?

6 A We were driving back around. They was taking off
7 while we was driving around.

8 Q Did you see the car they were in?

9 A No.

10 Q All right. And y'all didn't chase them?

11 A Huh-uh.

12 Q All right. Do you know whether -- you said this
13 already, but just to put it on the record, were they
14 men or women?

15 A Men.

16 Q Were you able to discern and determine that --

17 A Yes, sir.

18 Q -- from the distance you were?

19 A Uh-huh.

20 Q Were they black or white?

21 A Black.

22 Q How can you tell that?

23 A Well, actually, before the robbery happened, I was
24 like standing outside. And like it was like a hill
25 right there in front of McDonald's.

1 Q Kind of step back down and show us what you're
2 talking about.

3 Show the jury, point to where you are talking
4 about, the hill and whatever and where you're standing.

5 A I was over here. There wasn't like hardly anybody
6 at McDonald's, so I was just sitting there. I could
7 hear people over here talking. And like I saw one of
8 them. And it was like -- well, they're higher over
9 there. And I was like sitting here. And then when
10 Mike came out, I thought it was a curved up place
11 because you can tell if people were watching. And then
12 when Mike came out, they came around here.

13 Q All right. You can take your seat back again,
14 sir.

15 A (Witness complies.)

16 Q All right. Just for the record, did you know
17 either of these two men?

18 A No, sir.

19 Q Did they have anything covering their faces?

20 A Yeah, I saw some red when they was going inside.

21 Q All right. Like a hoodie or a mask or something?

22 A Yeah, like a mask and hoodie-type thing.

23 Q Did both of them have something covering their
24 face?

25 A Pretty sure. I thought I saw some white, too, at

1 the time, a little bit.

2 Q You mean the color white in the mask or hoodie?

3 A Yeah, but mostly red, too.

4 Q And was there anything about them that
5 distinguished them, the way they ran, one of them
6 limped or anything like that?

7 A Oh, I can't tell.

8 Q All right. And just for the record, you were not
9 able to -- wouldn't be able to identify either one of
10 them; is that correct?

11 A Huh-uh.

12 Q Did you have any interaction with them at all?

13 A Huh-uh.

14 Q They didn't say anything to you, didn't point the
15 gun at you?

16 A Huh-uh.

17 Q All right. Did you see them have anything else in
18 their hand other than the gun?

19 A No, sir.

20 Q All right. But are you sure that both of them had
21 guns?

22 A Uh-huh.

23 Q You have to say "yes" or "no."

24 A Yes, sir.

25 Q Thank you. That's all I have.

1 THE COURT: Cross-examine, Mr. Smith.

2 CROSS-EXAMINATION

3 BY MR. SMITH:

4 Q Mr. Adams, could you step back down again, please.

5 I'm going to hand you this magic marker. I've got
6 the cap off, so watch out for that. Could you just put
7 your name, like "Adams" on this poster where you were
8 standing with -- were you standing with --

9 A With Mike.

10 Q -- Mr. Culbertson?

11 A Uh-huh.

12 Q Could you just put down where you were standing
13 with Mr. Culbertson.

14 A It was like right here where the door is at.

15 Q Right where that little red car is right there?

16 A (Witness complies.)

17 Q All right. So just tell me what you wrote right
18 there so we will know for the record.

19 A "Adams."

20 Q You wrote "Adams" right there?

21 A Yeah. I was back between right here beside this
22 car. So I could see inside.

23 Q All right. So you were kind of between -- on this
24 thing there is a red car and another car next to the
25 place that's not really a parking spot --

1 A Uh-huh.

2 Q -- on that. All right.

3 Where you said you saw the two men standing
4 beforehand, where was that?

5 A Here.

6 Q Can you just put like -- can you just write "two
7 men" where you saw the two men standing.

8 A (Witness complies.)

9 Q All right. Now, that's out on -- that's almost
10 right next to Old Spartanburg Road?

11 A Uh-huh.

12 Q So there were two men. Were these the same two
13 men that actually entered into the McDonald's?

14 A Well, they looked like about the same height, to
15 be honest with you.

16 Q Okay. So it looked like the same two men?

17 A Uh-huh. Yes, sir.

18 Q Now, when they came out, you said you saw them run
19 away?

20 A Uh-huh.

21 Q Where did they run away towards?

22 A Towards the road here.

23 Q They ran towards the road right there. How did
24 you see them do that?

25 A Trying to think. Because it's been a while.

1 Q All right. Let me ask you something. Where is
2 the Spinx located?

3 A Oh, yeah. Over here.

4 Q The Spinx is -- so if you came out of the
5 McDonald's onto Old Spartanburg Road, you take a right?

6 A Uh-huh.

7 Q And the Spinx is like across the street?

8 A Yes, sir.

9 Q Okay.

10 A You go out here and go down the road a little bit,
11 and it will be on the left.

12 Q So you saw them run towards Old Spartanburg Road
13 and off to the right towards the Spinx station?

14 A Yeah, that's where --

15 Q Here you go. You can have a seat again.

16 A Okay.

17 Q You were standing there when I think two
18 individuals came running out of McDonald's after the
19 robbery?

20 A Uh-huh.

21 Q Who were the two people that came running out
22 after the robbery?

23 A Oh, I didn't know them.

24 Q You didn't know them?

25 A No.

1 Q Okay. Have you seen them here today?

2 A Well, they looked like about the same height as
3 the people.

4 Q I'm not talking about the people who robbed the
5 place. I'm talking about the two people who came out
6 of McDonald's that had worked there after they had just
7 gotten robbed.

8 A Oh, yeah, they're here today.

9 Q Do you know who they were?

10 A The manager and the coworker.

11 Q Okay. That would be Ms. Precious Harris and
12 Quinzell?

13 A Yes, sir.

14 Q Okay. Where did they -- which door did they come
15 out of?

16 A The same door that the people came running out of.

17 Q All right. So --

18 A It was on that side.

19 Q So you're standing here.

20 A Yeah.

21 Q You're telling me that the manager and Quinzell
22 came out of this door?

23 A Well, they came from right here. I'm pretty sure
24 they came from this door. But we drove around through
25 here, and they came out here. And then the manager,

1 she was like saying, "We just got robbed," and crying
2 and stuff.

3 Q So you were over here. Y'all drove around. And
4 that's when you saw them running this way?

5 A Yes, sir. And when they came out, they was like
6 crying.

7 Q And Mike Culbertson was with you?

8 A Uh-huh.

9 Q All right. And they came out. And what did you
10 say, they were what?

11 A She said they just got robbed and stuff like that.

12 Q What else did you say?

13 A She was like crying or something.

14 Q Okay. I mean, was she upset, distraught? I mean,
15 how would you term what she was?

16 A I don't know. I was like shocked at the moment,
17 too, to be honest with you.

18 Q Okay. All right. So if there is a door here
19 marked D2, they came out of D2, which would be the same
20 door that the two people that robbed the place came out
21 of?

22 A Yes, sir.

23 Q All right. If you don't mind, have a seat.

24 A (Witness complies.)

25 MR. SMITH: That's all I have, Judge.

1 THE COURT: Mr. Robinson.

2 MR. ROBINSON: I have no questions.

3 THE COURT: Re-exam?

4 MR. WESTON: No redirect for this witness.

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

6 MR. WESTON: State would ask this witness be
7 allowed to be excused from his subpoena.

8 MR. ROBINSON: No objection, your Honor.

9 THE COURT: Any objection?

10 MR. SMITH: No, your Honor.

11 THE COURT: Without objection, you may be excused.
12 Thank you, sir.

13 MR. WESTON: Your Honor, the State would call
14 Mr. Quinzell Davis.

15 QUINZELL DAVIS,

16 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

17 THE CLERK: Would you please state your name for
18 the record.

19 THE WITNESS: Quinzell Davis.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. WESTON:

23 Q Mr. Davis, where do you live?

24 A I live in Cherry Hill.

25 Q I'm sorry? What's your address?

1 A Happy Avenue.

2 Q And is that here in Greenville?

3 A Yes, sir.

4 Q And how old are you, sir?

5 A 26.

6 Q All right. Mr. Davis, were you employed at the
7 McDonald's on Old Spartanburg Road back in June of
8 2011?

9 A Yes, sir, I was.

10 Q And what was your job title? What did you do?

11 A I was like -- I washed dishes and cleaned up
12 before we close.

13 Q All right. And about how long -- how long had you
14 been there before June of 2011, before this incident
15 took place, just ballpark?

16 A Maybe like probably like six months to like a
17 year.

18 Q All right. And were you present on the night of
19 June 26th or into the morning of June 26th when the
20 incident took place?

21 A Yes, sir, I was.

22 Q All right. Can you tell the jury what other
23 employees were present at that time?

24 A It was me, Mike, and Precious Harris.

25 Q And Mike is Mike Culbertson?

1 A Mike Culbertson.

2 Q All right. What was Precious Harris' job title?

3 A She was the shift -- shift leader.

4 Q All right. Was she responsible for closing the
5 restaurant?

6 A Yes, sir.

7 Q Did you have keys to the doors?

8 A No, sir.

9 Q Do you know whether Precious Harris had keys to
10 the doors?

11 A Yes, she did.

12 Q Okay. And did you have any responsibility for
13 counting the money or depositing monies at that
14 McDonald's?

15 A No, sir.

16 Q Do you know whose responsibility that was?

17 A That was the shift leader's, Precious'.

18 Q All right. And the three of y'all were there that
19 night or into that morning. This is right after
20 12 o'clock, right?

21 A Yes, sir.

22 Q 12:00 a.m.?

23 A 12:00 a.m.

24 Q Tell the jury what you remember happening and how
25 it happened.

1 A We was trying to close. Me and Mike was going to
2 walk out, and I went into the back to go get my pizza,
3 and two dudes jumped over the counter. As I was coming
4 around the corner, two dudes jumped over the counter
5 and came towards me with the guns.

6 Q All right. And I'm going to show you what has
7 been marked as State's Exhibits 2, 3, 4, 5 and 6, and I
8 just want you to take a look at them. Just look
9 through them. Do you recognize those? Do you
10 recognize where that is?

11 A Yes, sir.

12 Q What do those pictures depict?

13 A McDonald's.

14 Q Is that the McDonald's that you were working at
15 that night?

16 A Yes, sir, it is.

17 Q All right. And do these pictures accurately
18 depict the way the McDonald's looked on June the 26th
19 of 2011?

20 A Yes, sir.

21 THE COURT: Can you identify them?

22 MR. WESTON: I'm sorry.

23 THE COURT: Have they been marked?

24 MR. WESTON: Yes, sir, they have been premarked.

25 THE COURT: Let's identify them.

1 MR. WESTON: I was going to -- I'm going to do
2 that. I'm sorry. I apologize, Judge. I was just
3 going to show them to defense counsel first.

4 MR. SMITH: Judge, we have already stipulated to
5 all the pictures. I thought we had stipulated. I
6 mean --

7 MR. WESTON: They had seen them, your Honor, but
8 for the record, I would offer State's Exhibit 2, 3, 4,
9 5 and 6 into the record.

10 THE COURT: Any objection?

11 MR. SMITH: No, your Honor.

12 MR. ROBINSON: No objection.

13 THE COURT: Without objection, State's Exhibit 2,
14 3, 4, 5 and 6 are admitted.

15 (WHEREUPON, State's Exhibit Numbers 2 through 6
16 were admitted into evidence.)

17 BY MR. WESTON:

18 Q While I've got you there, sir, let me just ask you
19 if you recognize what has been premarked for
20 identification purposes only at this point State's
21 Exhibit 1 and 7 and ask you, do you recognize those two
22 pictures and what they depict?

23 You have to say "yes" or "no."

24 A Yes, sir.

25 Q Do they depict basically different views on the

1 outside of the McDonald's from different areas, I mean,
2 different shots of that McDonald's?

3 A Yes, sir.

4 Q Is that the McDonald's that you were working at on
5 June the 26th, 2011?

6 A Yes, it is.

7 Q And do those pictures accurately depict exterior
8 views of the McDonald's from two different directions?

9 A Yes, sir.

10 MR. WESTON: Your Honor, the State would offer
11 State's Exhibits 1 and 7 into the record.

12 MR. ROBINSON: No objection, your Honor.

13 MR. SMITH: Once again, your Honor, we don't have
14 an objection. We stipulated to them all.

15 THE COURT: Without objection, State's Exhibit
16 number 1 and 7 are admitted.

17 (WHEREUPON, State's Exhibit Numbers 1 and 7 were
18 admitted into evidence.)

19 MR. WESTON: Thank you, your Honor.

20 BY MR. WESTON:

21 Q I want to ask you -- State's Exhibit Number 6, I'm
22 going to ask you about that first. Just to set it up,
23 because I think most of us have the same common
24 knowledge background.

25 Is that a picture of -- looking at this chart

1 here, sir, is that a picture, is that, the picture
2 you're holding, State's Exhibit 6, is that a picture
3 basically looking at the side that you would come up on
4 in the drive-thru?

5 A Yes, it is.

6 Q From the street, basically looking at the
7 drive-thru side?

8 A No. No, sir, it's not.

9 Q Okay. So you're saying that the street is out
10 here or the street is this way, the main street?

11 A The main street is this way.

12 Q That's what I'm saying. So is this picture taken
13 from the street looking as you come out through the
14 drive-thru?

15 A Yes, sir, it is.

16 Q Can you hold this up so the jury can see it? And
17 would you point if there is a door over there anywhere.
18 You don't have to be exact. The jury just -- turn it
19 this way so they can see it. No, over here. They want
20 to see it.

21 A Right here.

22 Q There is a door in here somewhere, okay. Now,
23 before we go any further, let me ask you this. I want
24 to make sure we get this acclimated correctly.

25 State's Exhibit Number 7, is that a picture of the

1 same door that you just pointed to on the side from
2 another angle?

3 A Yes, it is.

4 Q All right.

5 MR. WESTON: Your Honor, permission to publish to
6 the jury.

7 THE COURT: Certainly.

8 MR. WESTON: All right.

9 Thank you, your Honor.

10 Q The door on the side, if I come to the McDonald's
11 and I come around here and order at the drive-thru
12 thing here, this is where you order, somewhere back
13 here, and I come up here, this is where I pick up my
14 food; is that correct?

15 A Yes, sir.

16 Q Are the two pictures that I just gave the jury
17 basically pictures of this side of the McDonald's?

18 A Yes, sir.

19 Q Okay. Now, using that as a frame of reference,
20 where were you with regard to -- do you know which side
21 of the McDonald's that the two men came in on?

22 A On that side over here.

23 Q This side or this side?

24 A This side over here.

25 Q This side? As far as you know?

1 A As far as I know.

2 Q Where were you when they came in? Were you inside
3 or outside?

4 A Inside.

5 Q All right. Looking at these pictures here, could
6 you show the jury on any one of these about where you
7 were standing when they came in? Just tell me do any
8 of those pictures show where you were standing first.
9 Don't tell us where yet.

10 THE COURT: Let's do this. The three that you're
11 showing him, would you identify them.

12 MR. WESTON: Yes, sir. I apologize, your Honor.

13 Q State's Exhibit -- wait a minute before you say
14 anything. State's Exhibits 2, 3, 4 and 5 is what I'm
15 showing you.

16 THE COURT: Very good.

17 BY MR. WESTON:

18 Q Do any of those pictures show where you were
19 standing when the two men came in? Just about where
20 you were standing.

21 A I was behind the counter back here.

22 Q Okay. And would you hold this up for the jury to
23 see?

24 THE COURT: Which exhibit is that?

25 MR. WESTON: This is State's Exhibit Number 5.

1 Q I would like for you to hold that up for the jury
2 to see. And if you would turn it this way and point to
3 about where you were standing when they came in.

4 A Right here behind the counter.

5 Q From which side did they come in?

6 A They came from that side.

7 Q Okay. And when they came in, did they come into
8 the back or did they come into the front area?

9 A They came into the front area, jumped over the
10 counter.

11 MR. WESTON: Permission to publish State's
12 Exhibit 5 to the jury, your Honor.

13 THE COURT: Yes, sir.

14 BY MR. WESTON:

15 Q When they came in, were you on the customer side
16 or the employee side of the counter?

17 A I was on the employee side.

18 Q All right. And did they come across the counter?

19 A Yes, sir.

20 Q How did they get over the counter?

21 A They jumped over the counter.

22 Q And how many men were there?

23 A Two.

24 Q Let's get the preliminaries out of the way first.
25 Did you recognize either of the two men?

1 A No, sir.

2 Q Were they hooded or masked in any way?

3 A They had masks on.

4 Q Would you describe the masks as best you could.

5 A Like bandanas, red and white bandanas.

6 Q All right. And did they have guns?

7 A Yes, sir.

8 Q And did each of them have a gun?

9 A Yes, sir.

10 Q How close were you to them? I'm going to do it
11 this way. I'm not talking about where you were in the
12 place. I just want distance now, okay? I'm going to
13 start backing up, and I want you to tell me to stop
14 when I get to about how close they got to you at some
15 point. All right?

16 A Right here. Come a little closer. He was right
17 up on me.

18 Q All right. Did one or both of them point their
19 guns at you?

20 A Yes, sir.

21 Q And did they tell you to do anything?

22 A He told me like get down or he'll shoot.

23 Q Did you try to get out of the McDonald's?

24 A Yes. I was going to run out the window.

25 Q You can tell the jury. What did you try to do?

- 1 A I was going to jump out the window and run.
- 2 Q And what happened?
- 3 A He told me if I run, he was going to shoot.
- 4 Q That was one of the two men?
- 5 A Yes, sir, one of them.
- 6 Q Did both of them talk or just one of them spoke to
- 7 you?
- 8 A It was one that talked to me.
- 9 Q All right. Did both of them go to the back or did
- 10 either of them go to the back?
- 11 A One took me to the back and put me on the ground.
- 12 The other guy was up front.
- 13 Q And was anybody else in the back?
- 14 A No.
- 15 Q When you say "the back," did he take you back into
- 16 the office?
- 17 A No. It's past the office. It's where we wash
- 18 dishes at. It was all the way in the back.
- 19 Q Where was Ms. Harris during all of this?
- 20 A She was in the office.
- 21 Q Do you know what she was doing?
- 22 A No, sir. I ain't seen none of that. I was like
- 23 on the ground. She was in the office counting the safe
- 24 or whatnot.
- 25 Q All right. And --

1 MR. WESTON: Your Honor, before we go any further,
2 I would ask I be allowed to publish State's Exhibit 1,
3 2, 3 and 4 to the jury.

4 THE COURT: Certainly.

5 MR. WESTON: Thank you, your Honor.

6 BY MR. WESTON:

7 Q Just for the record, this is pretty much a
8 standard McDonald's, right? The layout is pretty much
9 like every other McDonald's in the United States?

10 A Yes, sir.

11 Q All right. So they had you lay down on the floor?

12 A Yes, sir.

13 Q And did you see or hear what else they were doing?

14 A No. I was -- like I laid down for a couple
15 minutes, and then one guy said, "It's time to go,
16 Brett." And then they left. This happened quick.

17 Q All right. Now, did you get up immediately or did
18 you stay there?

19 A I stayed there for a second until like, and
20 then -- I stayed there for like a minute or so until
21 they left. As soon as I got up, they was gone.

22 Q So I'm assuming you have no idea which way they
23 went?

24 A No, sir.

25 Q All right. And the first time -- is it your

1 testimony the first time you saw them, they were
2 already in the McDonald's?

3 A Yes, sir, they was already in there.

4 Q All right. I think I've asked you this before,
5 but just to be sure, were you able to identify either
6 one of those two men?

7 A No, sir.

8 Q All right. Were they males versus females?

9 A Yes, sir. It was males.

10 Q Were they black or white?

11 A Black guys.

12 Q And how would you describe their build?

13 A Two taller guys, I mean.

14 Q I'm sorry?

15 A Two taller guys.

16 Q Thank you, sir. Answer any questions counsel may
17 have for you.

18 THE COURT: Cross-exam.

19 MR. SMITH: Judge, I would, but I would like to
20 wait until the jury finishes looking at the pictures.

21 THE COURT: No problem with that at all.

22 (Jury reviewing exhibits.)

23 THE COURT: Thank you, ma'am.

24 All right. You may proceed.

25 CROSS-EXAMINATION

1 BY MR. SMITH:

2 Q Mr. Davis, when you ran out of the McDonald's
3 after the place was robbed, who did you run out with?

4 A Precious.

5 Q And which door did y'all go out, the one on the
6 drive-thru side or the one on the nondrive-thru side?

7 A We went out the one on the nondrive-thru side.

8 Q The nondrive-thru side. So y'all came out the
9 left-hand side. Well, looking at this picture here --

10 A No, we came out on the right side like --

11 Q Well, and that's what I want to ask you. Can you
12 step down here, please.

13 A Yes, sir.

14 Q If you don't mind stepping out, there is a D1
15 right here. Is that about where the left-hand -- I'll
16 say left-hand. Looking at this picture, the left-hand
17 side of McDonald's, is that about where the door was
18 where y'all came out?

19 A Yes, sir.

20 Q All right. And then there is a D2 here. Is that
21 about where the drive-thru side door would be,
22 thereabouts?

23 A Yeah. Yes, sir.

24 Q Okay. So you're saying you came out where D1 was
25 with Chris?

- 1 A No, we went out D2.
- 2 Q So you and Ms. Harris came out D2, right?
- 3 A Yeah.
- 4 Q I'm sorry. You have to answer out loud.
- 5 A Yes, sir.
- 6 Q You can't -- because she's got to take down
7 everything you say. Okay?
- 8 A Yes, sir.
- 9 Q When you came out, did you look for either of the
10 two guys?
- 11 A We looked around, everybody looked around, but we
12 ain't seen nothing.
- 13 Q You and Ms. Harris didn't see anything?
- 14 A Didn't see nothing.
- 15 Q All right. Okay. You can have a seat, if you
16 don't mind.
- 17 A (Witness complies.)
- 18 Q How was Ms. Harris reacting to all this?
- 19 A She was like -- she was shocked and scared. I
20 mean, she was kind of like shocked and scared, crying a
21 little bit.
- 22 Q All right. I mean, how you were reacting to this?
23 I mean --
- 24 A I mean, I was nervous. I mean a guy just put a
25 gun on me, so like I'm scared. It's over with, so I

1 was glad it's over with.

2 Q You had worked there for six months to a year?

3 A Yes, sir.

4 Q Did you always work the night shift?

5 A No, sir. I worked different shifts.

6 Q You worked different shifts. So you could work
7 during the day and everything?

8 A Yes, sir.

9 Q And so you were aware that the cameras in the
10 place weren't working, right?

11 A No, sir.

12 Q Well, I mean, had people not been in the
13 McDonald's working on the cameras and trying to fix the
14 cameras while you were working there?

15 A That, we don't pay attention to that type of
16 stuff. That's only for the managers, and they worry
17 about that, so.

18 Q You didn't know that the cameras weren't working?

19 A I don't pay attention to all that extra stuff.
20 Like I'm just an employee there, sir.

21 Q Okay. But, I mean, did you see people in there
22 working on the cameras and doing stuff while you were
23 working there?

24 A Not that I remember. It's been three years ago,
25 so not that I remember.

1 Q All right. And, lastly, I think you testified
2 that when it was -- when the two guys were getting
3 ready to leave, you said one of the guys made a
4 statement, "Time to go, Brett"?

5 A "Time to go, Brett," something like that.

6 Q "Time to go, Brett," right?

7 A (Nodding.)

8 Q I'm sorry. You can't nod. Or say "uh-huh" or
9 "huh-uh." She's got to take it down.

10 A Yes, sir.

11 Q So you said, "Time to go, Brett"?

12 A Yes, sir.

13 Q All right.

14 MR. SMITH: That's all I have, Judge.

15 THE COURT: Mr. Robinson.

16 MR. ROBINSON: May it please the Court.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q How do you pronounce your name?

20 A "Quinzell."

21 Q Is that a family name?

22 A A family name?

23 Q Yeah.

24 A I don't know where my mom got it from.

25 Q Quinzell, you worked there for -- how long did you

1 work there prior to this incident, do you remember?

2 A Maybe six months to a year.

3 Q Busy McDonald's?

4 A Pretty much, in the daytime.

5 Q I'm going to let you look at what's been marked
6 State's Number 7.

7 MR. ROBINSON: Judge, may I approach?

8 THE COURT: Yes, sir.

9 BY MR. ROBINSON:

10 Q This is what's been passed around to the jury as
11 State's Number 7. Do you recognize this door?

12 A Yes, sir, I do.

13 Q You do?

14 A Yes, sir.

15 Q Now, here's the question I've got. Look at that
16 door. I want you to explain to the jury. The outside
17 of that door has a key lock; is that right?

18 A Yes, sir, it does.

19 Q But the inside of the door, you can lock it from
20 the inside, can't you?

21 A Yes, sir, you can.

22 Q So actually when you go outside, the person that
23 goes outside, the person behind them can lock it when
24 they go outside, correct?

25 A Yes, sir, they can.

1 Q And that night, you went outside with Mike
2 Culbertson to either get a smoke or just to go outside;
3 is that right?

4 A No, sir. I was about to leave. I was getting
5 off. And Precious was in the office.

6 Q So let me rephrase that. So you were about to
7 leave. You went out behind Mike Culbertson. And then
8 you remembered you had a pizza inside, right?

9 A Yes, sir.

10 Q Now, you didn't tell Precious you were going to
11 leave or let her lock the door behind you, did you?

12 A I wasn't leaving. I was going to let Mike out,
13 but I came back in to get my pizza.

14 Q So you came back in. And you didn't lock the door
15 when you came back in, did you?

16 A No, sir.

17 Q And, in fact, you left the door unlocked and went
18 back to get your pizza and your stuff in the back,
19 right?

20 A I actually didn't never open the door. Mike was
21 actually leaving, and I was just going out with him.
22 My ride was outside already, so I was going out with
23 Mike, and I went back to go get my pizza. And as I was
24 coming back in around the corner, the two guys were
25 already in.

1 Q So, again, when you came back in after getting
2 your pizza, to go back in and get your pizza, you
3 didn't lock the door behind you, did you?

4 A No, sir, I didn't.

5 Q And if you had known something like this would
6 happen, you would have locked that door behind you,
7 wouldn't you, looking back?

8 A Well, maybe. I wouldn't, actually thinking about
9 nothing like that. Like it's not my job to lock the
10 door, it's the manager's job.

11 Q Wait a second. Okay. You're telling this jury --

12 MR. WESTON: Objection, your Honor. He cut him
13 off, didn't let him finish his answer.

14 MR. ROBINSON: Sorry.

15 THE COURT: Let's do that.

16 MR. ROBINSON: Go ahead.

17 THE WITNESS: Those type things, we don't -- the
18 employees really don't pay attention to locking the
19 doors. It's all the managers. And the manager has to
20 be on everything like locking the doors and everything.

21 BY MR. ROBINSON:

22 Q So you come back -- you go out with Mike
23 Culbertson. You come back in, knowing that you're
24 supposed to lock this door, and you don't lock this
25 door, do you?

1 A Um --

2 Q You could have locked that door behind you that
3 night, couldn't you?

4 A Actually, I don't remember, sir. Like it was
5 three years ago. But, I mean, all I remember is when
6 me and Mike was about to go out, I was going to get my
7 pizza, and two guys, they were there, and Precious was
8 in the office, so.

9 Q And when you left, when you came back in, you
10 didn't lock the door, did you?

11 A No, sir.

12 MR. ROBINSON: Thank you.

13 THE COURT: Re-exam.

14 MR. WESTON: Thank you, your Honor. Just a few
15 questions.

16 REDIRECT EXAMINATION

17 BY MR. WESTON:

18 Q Counsel asked you about the camera operation.

19 A Yes, sir.

20 Q Whose responsibility is it -- assuming the cameras
21 and the surveillance systems are broken, whose
22 responsibility is it to report and/or make sure that's
23 repaired?

24 A I'm guessing that's the manager's job because the
25 employees, we know nothing about the cameras and none

1 of that, none of the system.

2 Q Counsel kind of went fast through this. Mr. Smith
3 asked you about one of the people said something, "Time
4 to go," and he was saying, "Time to go, Brett." Did
5 you say he said that or something like that?

6 A Yes, sir. He said something like that.

7 Q All right. Do you know exactly what he said?

8 A No, sir, I don't. It's been three years ago.

9 Q Could he have been saying, "Time to go, Bro"?

10 A He could have been saying anything, but it's been
11 three years ago, so.

12 Q All right. Now, just to set the scene regarding
13 the last thing Mr. Robinson was asking you about, when
14 you left to go out behind Mr. Culbertson, was there
15 anybody else -- who else was in the place at that point
16 when you went out -- when you were going out, excuse
17 me?

18 A Precious was in there.

19 Q Was there anybody else in that place? If you had
20 kept going and not left your pizza in there, would
21 there have been anybody in there other than Precious
22 Harris?

23 A No, sir, there wouldn't.

24 Q And whose job is it to make sure the doors are
25 locked?

1 A It's the shift leader on duty's job.

2 Q And that would be who in this case?

3 A Precious.

4 Q And you didn't mean to leave your pizza in there,
5 did you?

6 A No, sir.

7 MR. ROBINSON: Your Honor, objection. Leading.

8 MR. WESTON: I apologize. I'll rephrase, your
9 Honor.

10 THE COURT: Let me explain that to the jury.

11 A leading question is a question that suggests an
12 answer. In other words, you ask the question and the
13 witness only has to say "yes" or "no." You cannot lead
14 your witness, in other words, the witnesses you call.

15 However, on cross-examination you can lead the
16 other side's witness. And, of course, this is a
17 State's witness called by Mr. Weston, and so therefore
18 he has to not ask a leading question. He has to ask a
19 question so we can hear the witness testify, not
20 Mr. Weston. But these rules apply to the State and
21 each of the defendants.

22 All right. You may proceed.

23 MR. WESTON: Thank you, sir.

24 BY MR. WESTON:

25 Q Once you were going out the door, assuming --

1 taking your pizza out of the mix for a moment, when you
2 went out the door and you were coming back in to get
3 your pizza, what did you find when you came back in the
4 door? Who else -- who was in there?

5 A The guys, they came like when I was -- I was
6 already in the back. Like I was behind the counter.
7 And then when I was coming, I was coming around the
8 corner going towards the door, the guys, they jumped
9 over the counter and came towards me.

10 Q And who else was in there other than the guys and
11 you who had just gone back to get a pizza?

12 A Precious.

13 Q Thank you, sir.

14 MR. WESTON: That's all I have.

15 RECCROSS-EXAMINATION

16 BY MR. SMITH:

17 Q Mr. Davis, just a couple of questions.

18 THE COURT: Wait a minute. That was redirect.

19 MR. SMITH: It was, Judge, but he brought up a
20 couple of things, and I thought I was able to recross
21 based on what he brought out.

22 THE COURT: Only if it was new. What did he bring
23 out that was new?

24 MR. SMITH: Well, what he brought out was
25 something that was said like Brett. Could he have said

1 something else.

2 THE COURT: Of course you asked him the question,
3 what he said.

4 MR. SMITH: And he said it was Brett when I asked
5 him.

6 THE COURT: He said it could have been anything
7 else. But we're not talking about that. That was
8 something that was brought out on cross-examination,
9 and on cross-examination he was limited to bring out
10 only that.

11 All right. Do you understand?

12 Mr. Foreman, ladies and gentlemen, why don't you
13 take a very short break right now and we'll come back.
14 I need to take up a matter of law with the attorneys.

15 Again, do not undertake discussion of the case
16 among yourselves in any way.

17 (WHEREUPON, the jury exited the courtroom
18 at 3:53 p.m.)

19 THE COURT: All right. Mr. Smith.

20 MR. SMITH: Well, Judge, it was not brought out on
21 direct, and I brought it out on cross-examination.

22 THE COURT: Well, you didn't have direct --

23 MR. SMITH: I -- I --

24 THE COURT: You --

25 MR. SMITH: Sorry.

1 THE COURT: No, you go ahead.

2 MR. SMITH: I didn't mean to interrupt your Honor.

3 THE COURT: No. Go ahead. I want to hear you.

4 MR. SMITH: Mr. Weston didn't bring it out on his
5 direct. I brought it out on cross-examination where he
6 said, I believe -- actually he did bring it out on
7 direct, your Honor, and I questioned him about it,
8 about, "You stated" --

9 THE COURT: Excuse me. No, I think he -- he did
10 bring something out, but it was not, what is it, clear.
11 I think, in fact, you said he brought out something --
12 you weren't sure, but you had your paper in your hand,
13 and you said, "I'm not sure about it," but you did say,
14 "One said something to the other one. What was it?"

15 MR. SMITH: My notes reflect that, yes, on his
16 direct, Mr. Davis stated that, "It was time to go,
17 Brett." On my cross-examination --

18 THE COURT: No, you didn't have "Brett." You just
19 said -- well, he didn't say "Brett." I think it was
20 unclear what he did say, at least in my recollection.

21 Go ahead. Go ahead. In other words, you knew
22 that he brought it out, and so you had that opportunity
23 to examine him on it and you did. And you got him to
24 say he said Brett, which was fine.

25 But he was also, since you brought it out on

1 cross-examination, and of course that's what the
2 examination rules provide is that he can only bring out
3 or take up on redirect matters that's brought out on
4 cross. And you can tie him to one statement. He was
5 trying to find out if the statement was not -- at some
6 point it's got to end.

7 MR. SMITH: Yes, sir. And I was hoping I would
8 end it.

9 THE COURT: Go ahead. What?

10 MR. SMITH: I said I was hoping I would end it.

11 THE COURT: That's just it. You had the
12 opportunity to, but, what is it, you didn't tie him
13 down to the -- you should have asked him, Well, it
14 could have been anything else, if you wanted to take
15 that chance. And he would say, No, no. This is what I
16 meant, what I said, what I heard.

17 MR. SMITH: Judge, may I put on the record --

18 THE COURT: Certainly. Please. Go ahead. Nobody
19 is trying to, what is it, limit you. Go ahead.

20 MR. SMITH: Well, here's the thing. I thought it
21 was settled after I sat down. But then when Mr. Weston
22 got up and said, Could it have been anything else that
23 he said, not Brett but Bro or anything else --

24 THE COURT: Why didn't you ask that question?

25 MR. SMITH: Excuse me?

1 THE COURT: Why didn't you ask that question and
2 then it would have been settled?

3 MR. SMITH: Because, according to his statement,
4 he says, "I don't know. It was three years ago."
5 According to his statement that was given back on 6/28
6 of 2011, two days after this incident, he has in his
7 statement that it says, "Come on, Brett. Let's go."
8 And he didn't say anything else, that it could be
9 anybody else or Bro or anything else. He has in his
10 statement, "Come on, Brett. Let's go." And -- and
11 this is the first time that I'm hearing that it could
12 have been something other than Brett.

13 THE COURT: Well, the thing is you knew that's
14 what he said. And if he said anything else, no matter
15 what that said, that's why you would bring it up, I
16 think it's 613, as an inconsistent statement. And you
17 had the opportunity to do it and you didn't do it.

18 MR. SMITH: It wasn't inconsistent until
19 Mr. Weston said, "Could he have said something else?"

20 THE COURT: Well, you could have asked that
21 question. If you thought he said Brett or he didn't
22 say Brett, then, what is it, you would have to ask him.
23 And you did not close the door on it, and so he said,
24 "Could it have been something else?"

25 MR. SMITH: And, Judge, I thought the door had

1 been closed when I asked him. He said, "Come on,
2 Brett." And the only time I have ever heard that it
3 could have been something else is when Mr. Weston asked
4 him --

5 THE COURT: You had it in your hand that three
6 years before he had said something else or he had said
7 that that's exactly what it was.

8 MR. SMITH: But, Judge, there's no reason to go
9 up, in my opinion.

10 THE COURT: Very good.

11 MR. SMITH: There's no reason for me to go up and
12 cross-examine him and hammer him on his statement when
13 he has just corroborated what he had said. And then
14 when Mr. Weston said, "Could it be something other than
15 that," that's the first time I've heard about it, so
16 now I want to go up and say, "On your statement three
17 years ago you said it was Brett. You didn't say it
18 could have been anything else or it sounded like
19 anything else. You said Brett. Does that refresh your
20 recollection now?"

21 THE COURT: Very well. I'm going to let you do
22 it. You have pretty much covered it if you want to I
23 think on 613.

24 MR. SMITH: Judge, that's the only question I'll
25 have for him.

1 THE COURT: Good. Because, as I say, the rules
2 provide for a direct examination, cross-examination,
3 and redirect only on matters brought out on cross. As
4 I heard it, he was not definite in his statement, and
5 you're right about that. But you didn't tie him down
6 to what he had said three years before.

7 Mr. Weston, wait. I've already got Mr. Smith
8 standing up. You can follow the same rules. All
9 right, now.

10 So, what is it, since you didn't tie him down to
11 it and Mr. Weston asked him about it, if that was all
12 he could have said, so he left it open, I'm going to
13 let you re-examine or cross-examine him on that one
14 question alone.

15 MR. SMITH: Thank you, your Honor.

16 THE COURT: Very good. All right. Thank you.

17 All right. Mr. Smith.

18 MR. SMITH: Yes, sir.

19 THE COURT: Finally I was able to find this. It's
20 amazing how you lose the rules occasionally. Rule
21 611(c) -- excuse me, (d), a witness -- re-examination
22 and recall. "A witness may be re-examined as to the
23 same matters to which he testified only in the
24 discretion of the Court. But without exception he may
25 be re-examined as to any matter brought out during

1 cross-examination."

2 Your cross-examination brought out a statement
3 that was heard by this witness. And he apparently did
4 not, what is it, or you heard him say what you wanted
5 to hear. But he, on cross-examination, Mr. Weston was
6 asking, "Are you sure that's the only thing that could
7 have been said?" And, now, you should have tied him
8 into it if there was any question about what he said in
9 light of the statements you had in your record. You
10 should have asked him at that time are you sure. And
11 if not, you should have said, Well, do you recall that
12 on a certain date that it was advised of the substance
13 of the statement at the time and place it was allegedly
14 made and the person to whom it was made, which would
15 have been 613.

16 Since you didn't do that, then all he was doing
17 was exploring whether or not it could have been the
18 only statement he made. Now I'm going to permit you to
19 do that. But please understand that's why you have the
20 rules.

21 MR. SMITH: Yes, sir.

22 THE COURT: In other words, if you don't shut the
23 door after it's been open, then he can go through it,
24 too. Do you understand?

25 MR. SMITH: Yes, sir.

1 THE COURT: All right.

2 Let's go ahead and let's finish with this witness.

3 Ask the jury to come back if they are ready.

4 (WHEREUPON, the jury came into open court at
5 approximately 4:05 p.m.)

6 THE COURT: All right. Let the record reflect the
7 jury and alternate are in the jury box.

8 Mr. Foreman, ladies and gentlemen of the jury, I
9 am going to permit the defense attorney to ask a
10 recross-examination question.

11 Go ahead.

12 MR. SMITH: Thank you, your Honor.

13 RECCROSS-EXAMINATION

14 BY MR. SMITH:

15 Q Mr. Davis, back on 6/28/11 you gave a statement to
16 Deputy Jones that stated, "Come on, Brett. It's time
17 to go"; is that right?

18 A Yes, sir, I did.

19 Q That was three years ago. You didn't say it could
20 have been anything else. It just said, "Come on,
21 Brett. It's time to go"; is that right?

22 A Yes, sir. I did say that at the time.

23 Q And that was three years ago?

24 A (Nodding.)

25 Q Correct?

1 A Yes, sir, it was.

2 MR. SMITH: Thank you, your Honor. That's all.

3 THE COURT: All right. Inasmuch as brought on
4 recross, you have an opportunity --

5 MR. WESTON: No, sir, your Honor. No recross.

6 THE COURT: All right. You may step down. Thank
7 you.

8 MR. WESTON: Your Honor, the State would ask this
9 witness be allowed to be excused from his subpoena.

10 MR. SMITH: No objection, your Honor.

11 THE COURT: All right. Without objection, you may
12 be excused.

13 All right. You may call your next witness.

14 MR. WESTON: Your Honor, the State would call
15 Officer Jonathan Horne.

16 THE CLERK: Officer Horne, please come forward.
17 Please place your left hand on the Bible and raise your
18 right hand.

19 **JONATHAN HORNE,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 THE CLERK: Would you please state your name for
22 the record.

23 THE WITNESS: Jonathan Horne.

24 THE CLERK: Thank you.

25 **DIRECT EXAMINATION**

1 BY MR. WESTON:

2 Q Officer Horne, I want to begin by stating the
3 obvious. By whom are you employed?

4 A The Greenville County Sheriff's Office.

5 Q And about how long have you been with the
6 sheriff's office?

7 A Almost six years.

8 Q All right. Did you have an occasion to respond
9 to -- about a little after midnight on June 26th of
10 2011 to this McDonald's on Old Spartanburg Highway?

11 A I did.

12 Q Is it Old Spartanburg Highway or Old Spartanburg
13 Road?

14 A Road.

15 Q Okay. And is that in Greenville County?

16 A Yes, sir, it is.

17 Q And what was the nature of the call that you got?

18 A Our dispatch center received a call from Michael
19 Culbertson about an armed robbery that was occurring at
20 the McDonald's.

21 Q So would you go there with blue lights flashing or
22 whatever? Was it high priority?

23 A I believe by the time the call came in, we got the
24 information it had already occurred, and the deputy was
25 already on scene.

1 Q All right. And just coming down -- if you could
2 step down to the large picture of McDonald's. Point to
3 the jury and just show them where you turned in. Is
4 that Old Spartanburg Road at the top there?

5 A Yes, sir. This would be Old Spartanburg Road
6 coming towards the McDonald's.

7 Q Can you just kind of use your finger to point how
8 you came in and about where you parked generally.

9 A I came in from Old Spartanburg Road and turned
10 up -- the front entrance would be here, and this would
11 be the McDonald's, and pulled in and parked kind of in
12 front of the store by these front parking spaces.

13 Q All right. You can take your seat, sir.

14 A (Witness complies.)

15 Q What did you do once you got there?

16 A When I arrived --

17 Q I apologize for interrupting you. I think you
18 said something I think I need to clarify.

19 When you got there, were you the first officer on
20 scene or do you recall another officer may have already
21 beat you there?

22 A My sergeant, Sergeant Allgood at the time, he was
23 already on scene.

24 Q All right. And was he outside or inside when you
25 got there?

1 A He was outside.

2 Q All right. And when you got out of your car, did
3 you first get debriefed with him or what did you do
4 first?

5 A When I first got there, he advised me that he was
6 informed by the employees that the suspects had already
7 left. And at that time I began speaking with the
8 employees who were on scene.

9 Q All right. And without getting into what they
10 told you, did they generally tell you what happened?

11 A Yes, sir, they did.

12 Q All right. And was there any indication that
13 there were any suspects still in the immediate area?

14 A No, sir, there wasn't.

15 Q And so what did y'all do from there, you and
16 Sergeant Allgood?

17 A We gave the -- basically the description that we
18 had to our dispatch so everyone could be -- could hear
19 it on the radio. Some other deputies arrived on scene
20 to attempt to set up what we call a perimeter around
21 the immediate area.

22 Q Tell the jury what that means, what they would
23 have been doing. When you say "immediate area," what
24 do you mean?

25 A That would mean that they would go to the nearest

1 intersections just up from the McDonald's. It would be
2 Old Spartanburg and Hudson Road and then back the other
3 way would be another intersection. Just in the
4 immediate area at some intersection with their blue
5 lights on. And the reason we do that is when we have a
6 canine come in and try to attempt to track when someone
7 flees on foot, we want to kind of attempt to contain
8 the suspects if they fled on foot.

9 Q Because the -- did the information you had
10 indicate how these suspects -- that the people
11 involved, the victims, knew how these suspects had left
12 the scene? I know they ran outside the door, but
13 beyond that, did the victims indicate that they knew
14 how they left the area?

15 A The only information they said is they saw them
16 run when they exited the front of the store, run toward
17 behind the McDonald's. And that would have been away
18 from Old Spartanburg Road.

19 Q All right. And --

20 A And they were on foot.

21 Q Was there any information that you had at that
22 time concerning a car or a description of a car?

23 A No, sir.

24 Q All right. And what would be the protocol with
25 regard to following up on them leaving on foot? What

1 would happen next? Start with what would happen next.

2 A We would request a deputy who had a canine dog to
3 come to the scene and attempt to track.

4 Q Did y'all do that in this case?

5 A Yes, sir, we did.

6 Q And so you basically -- were you involved with
7 that, Deputy?

8 A Just the only -- my involvement was when he
9 arrived there, I advised him what the employees had
10 told me and the basic description.

11 Q The general direction?

12 A The general direction of travel.

13 Q All right. And about how long were you on scene,
14 just ballpark?

15 A Before he arrived?

16 Q Before you left.

17 A Before I left the store?

18 Q Yes, sir.

19 A I believe I was there about two and a half hours
20 total.

21 Q And during that two and a half hours was one of
22 the things -- did y'all cordon off the McDonald's?

23 A Yes, sir, we did.

24 Q With the yellow tape stuff?

25 A I don't recall that we put up the yellow tape, but

1 I didn't allow anyone to go back into the McDonald's
2 except the forensics unit when he arrived.

3 Q I was going to ask you next. Did forensics
4 respond?

5 A Yes, sir, they did.

6 Q Did they take pictures of the McDonald's?

7 A Yes, sir, I know they took photographs of the
8 McDonald's.

9 Q These have already been introduced into evidence
10 and the jury has already seen them. You have seen
11 these pictures; is that correct?

12 A Yes, sir.

13 Q Are these the pictures -- were these taken by a
14 forensic technician?

15 A Yes, sir, they were.

16 Q All right. And would there be -- was there any
17 investigation with regard to fingerprints done?

18 A There might have been. I don't recall
19 specifically. That's -- generally an attempt is made
20 when forensics comes out.

21 Q Would that normally be the case in a retail
22 establishment?

23 A It would depend. It would be difficult.

24 Q Why would it be difficult?

25 A The number of customers in and out of the store

1 and the potential for people to touch the counter and
2 the door and various things like that.

3 Q All right. Was there any indication of blood or
4 sweat or any other evidence at the scene that you found
5 or that anybody found, forensics or any of the other
6 uniformed officers?

7 A Not that I'm aware of, no, sir.

8 Q And it wouldn't have been in your job to collect
9 any blood or sweat or something for purposes of DNA,
10 would it?

11 A No, sir.

12 Q But from your investigation during the two and a
13 half hours that you were there, did you see any of
14 those, any signs of any of that?

15 A No, sir, I didn't.

16 Q All right. About how many officers were on scene
17 altogether, do you think, during this whole two and a
18 half hours? Some may have come and left, but about how
19 many were there responding to this call including
20 forensics?

21 A The individuals that were in McDonald's, there
22 were six of us, and they combined with the units that
23 arrived to try to set up a perimeter around the general
24 vicinity. Probably up to 15 total.

25 Q All right. As a result of the initial --

1 generally y'all follow the protocol that law
2 enforcement would follow in this kind of a case?

3 A Yes, sir.

4 Q Were you able to develop any suspects at or near
5 the scene that night?

6 A No, sir.

7 Q All right. Thank you, sir.

8 MR. WESTON: I think that's all I have.

9 THE COURT: Cross-examination.

10 MR. SMITH: Judge, may I have just one moment to
11 confer with Mr. Robinson?

12 THE COURT: Sure.

13 (WHEREUPON, an off-the-record discussion was
14 held between Mr. Smith and Mr. Robinson.)

15 MR. SMITH: Judge, I don't have any questions.

16 THE COURT: Mr. Robinson.

17 CROSS-EXAMINATION

18 BY MR. ROBINSON:

19 Q Officer Horne, during your investigation that
20 night, you spoke to an individual that was a district
21 manager for McDonald's; is that correct? You've got
22 your report, I think, don't you?

23 A Yes, sir. I believe he was the district manager,
24 yes, sir.

25 Q Did he give you some information that night as far

1 as protocol and things of that nature?

2 A Yes, sir, he did.

3 Q That's all I have. Thank you.

4 THE COURT: Redirect.

5 MR. WESTON: No, sir, your Honor.

6 THE COURT: All right. You may step down. Thank
7 you, sir.

8 MR. WESTON: Your Honor, the State would ask this
9 witness be allowed to be excused from his subpoena.

10 MR. SMITH: No objection.

11 MR. ROBINSON: No objection.

12 THE COURT: Without objection, you may be excused.
13 Thank you, sir.

14 Call your next witness.

15 MR. WESTON: The State would call Officer David
16 Durham, your Honor.

17 THE CLERK: Sir, if you would, please come
18 forward. If you would please place your left hand on
19 the Bible and raise your right hand.

20 **DAVID DURHAM,**

21 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

22 THE CLERK: Please state your name for the record.

23 THE WITNESS: David Durham.

24 THE CLERK: Thank you.

25 **DIRECT EXAMINATION**

1 BY MR. WESTON:

2 Q Officer Durham, you're employed with the
3 Greenville County Sheriff's Office; is that correct?

4 A Yes, sir.

5 Q How long have you been with the sheriff's office?

6 A Since 2002.

7 Q And are you the dog guy?

8 A I was a canine handler at the time, that is
9 correct.

10 Q All right. And back in 2011?

11 A I started with the canine unit in 2009 and come
12 off in 2013.

13 Q Did you have an occasion to respond to the report
14 of an armed robbery at the McDonald's on Old
15 Spartanburg Road on June 26, 2011?

16 A Yes, sir.

17 Q And it was a little after midnight, in the
18 morning, so to speak?

19 A Yes, sir.

20 Q About what time did you get there generally?

21 A I would say in the neighborhood of about 12:45 in
22 the morning.

23 Q All right. And if you look there at that
24 demonstrative, it's a picture -- it's an aerial picture
25 of the McDonald's. Where did you come in? You come in

1 with a dog in your SUV or truck or whatever?

2 A Yes, sir.

3 Q What's your dog's name, by the way?

4 A Striker.

5 Q Go over there. Show the jury pretty much where
6 you pulled in off of Old Spartanburg Road and generally
7 where you parked your SUV.

8 A Yeah. I come off of Old Spartanburg Road right
9 here and come in the parking lot and parked about right
10 here.

11 Q All right. And I think that's a laundromat next
12 door there?

13 A Correct. Correct.

14 Q All right. And once you come in -- you can sit
15 back down. Well, yeah, go ahead and sit back down.
16 I'm going to ask you to stand up again in a moment.

17 Once you come in, what is the protocol? What do
18 you do because you don't know anything about what's
19 going at that point, do you?

20 A No. Usually another deputy requested or if I hear
21 it on the radio -- we're scanning different channels.
22 And I actually got requested by Master Deputy Raymond.
23 So I responded lights and sirens. And the protocol is
24 once I get on scene, I ask the deputies on scene -- I
25 get as much information as I can, suspect information,

1 if they were armed and the direction of travel so I can
2 have somewhere to start to track.

3 Q All right. And did you do that in this case?

4 A Yes, sir.

5 Q You got debriefed by one of the supervisors on
6 scene?

7 A By Master Deputy Raymond, yes, sir.

8 Q And you then get your dog out of the truck?

9 A Get my dog out of the truck, I attach a tracking
10 harness to him and a 20-foot lead, and I down him in
11 the parking lot and get ready to start a track.

12 Q Step back down to the McDonald's picture again. I
13 know you're not going to be able to go very far, but I
14 just want you to give the jury an idea of where you
15 started and where you went off picture, basically.

16 A Pulled my SUV about right here, get my dog out.
17 And I was told that the direction of travel was towards
18 Hudson Road, so I downed my dog right here. And that's
19 where I started to try to acquire the track.

20 Q And where did you go from there?

21 A What I do is I cast my dog. Since I don't have a
22 scent article, I have to cast him in the direction they
23 were traveling.

24 Q Excuse me, sir. When you say you don't have a
25 scent article, tell the jury what that means.

1 A A scent article means a hat, clothing, any kind of
2 article that I can go off of to get the scent. When we
3 don't have that, we go off what the deputies or
4 witnesses say where they took off running.

5 Q All right. So it's just sort of a blind trail, so
6 to speak?

7 A Yes, sir.

8 Q All right. So show the jury where you went kind
9 of.

10 A Okay. So I hooked my dog up on a tracking harness
11 on his lead. I down him right here, give him a command
12 to track. The dog starts tracking. I work the corners
13 and started tracking behind the business right here,
14 this little laundry thing.

15 Q All right. Once you went off picture there, where
16 did you go?

17 A Once my dog, once I give him the command to track,
18 we tracked behind the building. And once we got behind
19 the building, there was a couple getting in their car,
20 so my dog started air scenting right there. He didn't
21 really have anything beyond that, so I cast my dog
22 towards the Polos Apartments because that's where I was
23 told the last direction of travel was, and went down an
24 embankment and ended the track right there at the Polo
25 Apartments, didn't have anything from there.

1 Q All right, sir. And so you then basically just
2 backtracked back to the McDonald's?

3 A Once I -- once I stopped the track, I put my dog
4 on his -- took it off and put on his collar, off the
5 tracking harness, and walked my dog back to the SUV and
6 placed him in my patrol car.

7 Q All right. And at that point did you report to
8 the supervisor what you found or didn't find, in this
9 case?

10 A Master Deputy Raymond, he was on the tracking team
11 so he relayed that information. As far as my part, I
12 had nothing else -- no other involvement, put my dog in
13 the car and I left the scene.

14 Q Thank you, sir.

15 MR. WESTON: That's all I have.

16 THE COURT: Cross-examine.

17 CROSS-EXAMINATION

18 BY MR. SMITH:

19 Q Was that -- forgive me -- is it a tracking scent
20 or a scent article, what did you say it was?

21 A Yeah. When we get on scenes, a lot of times,
22 let's say if a suspect drops an article of clothing, we
23 will use that as a starting point. If we don't have
24 that, then we start the track where the suspect was
25 last seen running.

1 Q So if I dropped an article of clothing, the dog
2 sniffs that article of clothing, they've got something
3 they can smell, and then they can take off with that,
4 right?

5 A Correct.

6 Q So without something, you just go in a direction
7 that somebody says that they went?

8 A You go in a direction, but you got to understand a
9 human is all the time dropping skin rafts. So
10 regardless if I don't have a scent article, that dog is
11 going to pick up a human scent. He's trained in that.
12 He's not trained just to go wandering down in the woods
13 or whatever. He's going to pick up scent, scent
14 article like you said, or he's going to pick up your
15 scent rafts that come off your skin.

16 Q How do you know you're going off on the right --
17 with the right person or persons?

18 A Well, like I said, you got a scent article, you
19 definitely know. A perimeter is key in tracking, which
20 we had. And deputies arrived, I think, within minutes
21 on scene. And given the direction of travel, like I
22 say, without a scent article, you cast your dog in that
23 direction. He's going to pick up a track. If you
24 don't have a scent article, you do the best you can and
25 you cast your dog in a direction that we were told.

1 Q So if somebody else had been walking around that
2 area, I mean your dog Striker could have been tracking
3 them?

4 A It's a possibility.

5 Q I'm curious as to why you didn't head up Old
6 Spartanburg and go towards Spinx?

7 A Spinx?

8 Q Yeah. There is a Spinx station across the way up
9 there.

10 A Correct. The reason I didn't is because the
11 information that I received was I was told the suspects
12 were running behind the business towards the Polos.

13 Q So you weren't privy to the information that one
14 witness said that they ran towards the Polo Apartments
15 and another witness said that they went up towards
16 Spinx?

17 A I was told that they took off behind the business
18 towards the Polos Apartments towards Hudson.

19 Q So you never went the Spinx route, you just went
20 towards --

21 A I never cast my dog and tried in the front of the
22 store, no.

23 Q All right. But the bottom line is you didn't find
24 anything. And there wasn't any clothing -- I'm sorry.
25 You have to answer out loud.

1 A No.

2 Q Okay. And there weren't on the way down to the
3 Polo Apartments or anything like that, there wasn't --
4 there were no articles of clothing or anything like
5 that that you saw?

6 A None that I saw.

7 Q Nothing was dropped?

8 A Huh-uh.

9 Q All right. Okay. Thank you, Deputy.

10 MR. ROBINSON: I have no questions for this
11 witness, your Honor.

12 THE COURT: Re-exam.

13 MR. WESTON: Yes, sir, your Honor, just a couple
14 on redirect.

15 REDIRECT EXAMINATION

16 BY MR. WESTON:

17 Q Counsel asked you about how dogs would track
18 without this lead item. And you said something about
19 skin rads?

20 A Skin rafts. You constantly are emitting through
21 your head, or let's say a suspect, what we call a fear
22 scent, takes off running or whatever, emit odors. But
23 you're constantly dropping. I mean your skin is
24 dropping skin on the ground.

25 Q When you said that, I wanted to make sure the jury

1 is clear. Are those detectable by the naked eye in the
2 daytime? I know this is at night. But in the daytime,
3 could you or I just see those on the ground?

4 A No. A dog smells so much greater than we do, and
5 he is trained specifically for that.

6 Q So those skin rafts that you said a suspect would
7 drop in answer to counsel's question, they would not be
8 subject to DNA findings or anything like that? I
9 couldn't just go out as a forensic officer and just
10 find those rafts to use to go check DNA or anything,
11 could I?

12 A No, sir.

13 Q I just wanted to be clear on that. Thank you.

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

15 MR. WESTON: Your Honor, the State would ask this
16 witness be released from his subpoena.

17 MR. SMITH: No objection.

18 MR. ROBINSON: No objection.

19 THE COURT: Without objection, he may be released.

20 Be excused.

21 Call your next witness.

22 MR. WESTON: Thank you, your Honor. The State
23 would call Mr. Noel Lomax.

24 THE CLERK: Mr. Lomax, if you would please pause
25 at the end of the bench, place your left hand on the

1 Bible and raise your right hand.

2 NOEL LOMAX,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: Would you please state your name for
5 the record.

6 THE WITNESS: I'm Noel Lomax, area manager of
7 McDonald's Corporation.

8 DIRECT EXAMINATION

9 BY MR. WESTON:

10 Q Mr. Lomax, where do you live?

11 A Here in Greenville County.

12 Q All right. And how long have you been an area
13 manager -- was the term "area manager"?

14 A District manager, area manager, kind of the same
15 category.

16 Q What is the district?

17 A Greenville County.

18 Q Generally what's the geographic area for a
19 district, is it state, upstate?

20 A Well, upstate. Ten, eight stores.

21 Q All right. And how long have you been a district
22 or area manager for McDonald's?

23 A Thirteen years.

24 Q Prior to that did you work in the McDonald's
25 organization?

1 A I did not. I worked for another restaurant fast
2 food chain as that same position.

3 Q Have you, as part of your being an area manager,
4 district manager, I assume that there is a lot of
5 training that goes with that?

6 A Yes, sir.

7 Q Because you're dealing with franchise owners; is
8 that correct, on the local level?

9 A That's correct.

10 Q And those would be -- it might be me in
11 Greenville, somebody else in Spartanburg. And is part
12 of your job description to train those franchise owners
13 on a day-to-day or week-to-week or a supervisory kind
14 of basis?

15 A That's correct, yes, sir.

16 Q Do they go through training at some specific place
17 before they get a franchise?

18 A Well, yeah. We have a training that we
19 particularly designed for the owner/operator. It's
20 held at Hamburger University in Chicago.

21 Q Say that, again, because I'm curious just like I
22 know a lot of the jurors might be, where is that held?

23 A Hamburger University.

24 Q And that is -- a lot of people have heard about
25 this. I have heard a little bit about it. Is this a

1 school?

2 A It is.

3 Q And is it owned and operated by the McDonald's
4 Corporation nationally or internationally?

5 A Both, yes, sir.

6 Q And does it have a campus?

7 A Yeah. We have a 600-acre campus that entails
8 professors that teach, whether it be financial
9 documentation or things dealing with the restaurant
10 operation overall. And, again, that's courses that we
11 have there. So we do have professors there that teach
12 owner/operators and myself how to run the business.

13 Q And you've been there?

14 A Yes, sir.

15 Q I assume a number of times?

16 A Yes, sir.

17 Q Let's talk about security.

18 A Yes, sir.

19 Q Is that something that you were trained in?

20 A Yes, sir.

21 Q Let me just ask you this question, I guess. If
22 this were the security manual that I would get in my
23 training at the McDonald's Hamburger University in
24 Chicago, if I'm opening a franchise in Honolulu or if
25 I'm opening a franchise in Easley, South Carolina, do I

1 use that same training manual?

2 A Yes. At McDonald's Corporation, we have systems,
3 and that system will apply whether it be an
4 owner/operator or a corporate store. It's the same
5 system that applies to all the stores whether it be
6 franchise or corporate owned.

7 Q Let's talk about the supervisory roles of
8 employees. Well, excuse me. Let me step you out a
9 moment.

10 Does your district supervision include the
11 McDonald's on Old Spartanburg Highway today?

12 A Yes, sir.

13 Q All right. In June of 2011 were you a district
14 supervisor for McDonald's?

15 A I was.

16 Q Did your district supervision include that
17 McDonald's at that time?

18 A No, sir.

19 Q Okay. Just I want to be clear. How long have you
20 been a district supervisor over that McDonald's on Old
21 Spartanburg Road that the alleged robbery took place on
22 June 11th of 2011?

23 A About a year and a half.

24 Q All right. And so you were not called to the
25 scene or involved in the initial review by McDonald's

1 of this robbery?

2 A That's correct.

3 Q All right. Have you since that time reviewed the
4 records of the McDonald's, of this McDonald's, with
5 regard to this incident?

6 A Yes, sir.

7 Q All right. And you were getting ready to tell
8 us -- we were talking about security. And we were
9 talking about, I think, supervisory responsibility.

10 There's been talk of shift managers. What is a
11 shift manager?

12 A Well, basically a shift manager will be a manager
13 that controls the shift. Typically the way the layout
14 is in a McDonald's, you will have a GM or store
15 manager, followed by an assistant manager, and you
16 would have swing managers. Your swing managers run
17 most of the closing shift or mid shift would be 11:00
18 to 7:00. And the GM would actually work 7:00 to 5:00.
19 So speaking of a shift manager, they close at night.
20 They're there alone. They control that shift by
21 themselves as the night manager.

22 Q All right. Prior to being hired as a shift
23 manager, are they trained, not at Hamburger University,
24 I assume, but locally as to what -- are they given a
25 handbook and trained in the policies and procedures and

1 protocols --

2 A Yes.

3 Q -- of McDonald's?

4 A Yes. We have an orientation where it covers the
5 cash counting policies of the managers and all the way
6 down to the crew members, yes, sir.

7 Q And are there certain protocols that are followed
8 by every McDonald's -- that should be followed by every
9 McDonald's whether it's, once again, Honolulu, Hawaii
10 or Easley, South Carolina?

11 A Yes, sir.

12 Q Did you have an occasion to review the records
13 concerning the incident that took place on June 11th of
14 2011 -- June 26th of 2011, excuse me, at this
15 restaurant?

16 A Yes, sir.

17 Q From your review were you able to determine
18 whether all the protocols were followed regarding what
19 happened that night?

20 A Well, several protocols were not followed dealing
21 with the cash and depositing cash in the proper
22 location and having things out where they shouldn't be
23 out.

24 Q Let's talk about the cameras first. Were you able
25 to determine whether the cameras, in reviewing the

1 records, were operating that night or whether they
2 showed that they were repaired sometime after that or
3 what?

4 A They were repaired sometime after that.

5 Q All right. And were you able to determine about
6 how long they had been out?

7 A I think a week from the notes that I got that I
8 referred to as far as the cameras being broken in the
9 store.

10 Q All right. Under the protocols of the McDonald's,
11 is that acceptable?

12 A No, sir.

13 Q What is the proper protocol if a camera goes out?

14 A Typically, if a camera system goes out, we should
15 be notified by the manager that the camera system is
16 not working properly, and immediately we get those
17 things taken care of.

18 Q And assuming the cameras were out let's say the
19 day before this arrest -- this armed robbery, would
20 y'all have been -- would McDonald's have been notified?

21 A Yes.

22 MR. ROBINSON: Objection, your Honor. Calls for
23 speculation also facts not in evidence.

24 MR. WESTON: I'll rephrase, your Honor.

25 THE COURT: Rephrase it. Also be sure your

1 foundation is there.

2 BY MR. WESTON:

3 Q Assuming the surveillance cameras were out the day
4 before, what is the protocol as to how soon somebody
5 should have -- a report should have been made and
6 somebody should have been notified?

7 A Immediately. I mean that's what we -- again, it
8 should have been taken care of immediately.

9 Q All right. And in your review of the records, was
10 there any record of the surveillance cameras being out
11 prior to this armed robbery?

12 A No, sir.

13 Q The shift manager, how long would he or she have
14 been working before 12:00? If you're closing at 12:00
15 as shift manager, when would they have come on?

16 A Around 5:00, 4:00 to 5:00.

17 Q If they come on at 5:00 and those cameras are not
18 working, whose responsibility is it to notify someone?

19 A The shift manager.

20 Q Is there any record that the defendant notified
21 anybody about the cameras being out that night?

22 A No, sir.

23 Q Let's talk about counting money. Whose
24 responsibility is it -- how's the money done? I come
25 in to the counter. I pay you -- I'm using the Dollar

1 Menu, I'm sorry. I'm buying a dollar hamburger. I'm
2 giving you \$2. It's \$1.08 with tax, and you give me
3 back 92 cents. And you take my \$2 and it's put in the
4 register by the cash register guy. And all the money
5 goes there. At some point that gets kind of pulled.

6 Tell the jury what happens to that money or what,
7 from a protocol standpoint, what's supposed to happen
8 to those cash registers and tills when they get pulled
9 during the shift.

10 A What happens is once we actually complete the
11 shift or before the shift -- they've got one person
12 leaving the shift, we should have that manager go up
13 and pull that drawer, the cash reports. Pull the
14 drawer, take the cash back to the office, count the
15 money and secure the cash and put it back in the safe.

16 Q Let's talk about that safe. Is this a time
17 release safe or a time lock safe?

18 A It is not.

19 Q How is the safe secured? Is it a dial?

20 A No, sir. Here at McDonald's we have keys. It's
21 coded keys that each person has their own design code.
22 That way I can go back and track what time the safe was
23 opened, what time it was closed by that specific key
24 that they use.

25 Q It's not the same thing, but like a magnetic key

1 on hotel rooms. They can tell who opened it, what
2 door, what time this was used, what time it was opened
3 and closed, that kind of thing?

4 A Well, no. It's a little key that has a small disk
5 on it. And it goes inside a hole inside the safe.
6 It's a magnetic key that goes inside the hole. So that
7 would tell me, based on information if I want to go
8 back and pull, what time they opened the safe, what
9 time they closed the safe. I can pull the information
10 from my laptop.

11 Q What is the protocol for counting money at the end
12 of the night? If your store is closing at 12:00, how
13 does that work?

14 A The protocol is that basically all the doors
15 should be secured, for one. No one should be going in
16 and out the doors. And you go back and count the cash
17 and secure the cash inside the safe.

18 Q Is there any procedure or any policy about taking
19 the money outside out of the safe prior to locking
20 those doors?

21 A Actually, that should happen -- once the doors are
22 locked, you can count your deposit, enter your deposits
23 out of the computer, and secure the cash inside the
24 safe.

25 Q In your review of the records of this McDonald's

1 and that night, were the doors locked when the safe was
2 opened on that night?

3 A No, sir.

4 MR. ROBINSON: May it please the Court, I have an
5 objection, a matter to take up outside the presence of
6 the jury.

7 THE COURT: All right. Mr. Foreman, ladies and
8 gentlemen of the jury, if you will retire to the jury
9 room for a moment, I need to take up a matter of law
10 with the attorneys. Again, do not undertake the
11 discussion of the case among yourselves.

12 (WHEREUPON, the jury exited the courtroom
13 at 4:36 p.m.)

14 THE COURT: All right. State your motion.

15 MR. ROBINSON: Your Honor, at this time we'd make
16 a motion for a mistrial in this matter -- not a
17 mistrial, but I move -- Mr. Smith and I have not been
18 provided any reports or anything from this person or
19 anything about McDonald's' policies, what he found,
20 nothing from this guy. Nothing. Not one iota of
21 things. And he's talking about a report or reports
22 we've never seen.

23 THE COURT: All right.

24 Mr. Weston.

25 MR. WESTON: Your Honor, neither have I. I have

1 never asked him nor has he given me a report. And he
2 has been on the witness list the two prior times. He
3 has been available to them to go talk to him just like
4 I did. But I don't have any reports. I have seen no
5 reports. All I have had is just conversations with
6 him. So there's no documents for me to give them.

7 He is a third party. He is not under the power of
8 the State, so we can't make him give them documents
9 that we didn't ask him to give us. All he's doing is
10 testifying about policy, Judge.

11 THE COURT: All right.

12 Mr. Robinson.

13 MR. ROBINSON: Your Honor, that means -- this is
14 the true trial by ambush where you don't have to get
15 the reports to the defense attorney but you can talk to
16 this person and just put these reports in, talk about
17 these reports all day long, but we have no reports to
18 go by.

19 I think he should not be permitted to -- I'm
20 looking at the -- the reason I asked the officer about
21 if he had spoken to anybody, he spoke to the area
22 supervisor that gives a total different recollection
23 that this guy does as far as how long these cameras
24 have been broken.

25 THE COURT: Who is this?

1 MR. ROBINSON: This would have been Steven
2 Goodman. He was the area supervisor. And he says that
3 the cameras were inoperative for two weeks. This guy
4 says a day.

5 THE COURT: No, he didn't say that.

6 MR. ROBINSON: Or a week.

7 MR. WESTON: That's a mischaracterization of what
8 he said.

9 MR. SMITH: He testified to one week, Judge.

10 MR. ROBINSON: One week.

11 MR. SMITH: But Steve Goodman --

12 THE COURT: He said they had been repaired, should
13 have been within a week after the robbery.

14 MR. WESTON: That's my recollection of what he
15 said, your Honor.

16 THE COURT: In fact, I don't think he said he knew
17 when it was at all.

18 MR. SMITH: He testified --

19 THE COURT: He said if it had been that afternoon,
20 it should have been immediately reported.

21 MR. WESTON: Your Honor, if I may, he specifically
22 said --

23 THE COURT: Listen, I'm getting kind of confused
24 here. You sit down and let me finish with
25 Mr. Robinson.

1 MR. WESTON: Yes, sir, your Honor.

2 MR. ROBINSON: I'm just concerned that we never
3 got these records as far as any records at all.

4 THE COURT: Well, apparently you got some records.

5 MR. ROBINSON: I have a report from Mr. Horne that
6 he spoke to Steve Goodman about this.

7 THE COURT: Well, you didn't follow up on that?

8 MR. ROBINSON: We thought -- well, this person,
9 this individual, if he had brought his files with him,
10 we could have asked him about this.

11 THE COURT: Well, you could have subpoenaed them.

12 MR. ROBINSON: Well --

13 THE COURT: That's what we did. When you say it's
14 ambush, that's when you don't have any knowledge of the
15 witness or the testimony. But apparently you've got
16 evidence there of some reports.

17 MR. ROBINSON: Well, I will cross-examine him
18 about this, your Honor, of course.

19 THE COURT: Of course you will. Because that's
20 credibility. That's why we have lawyers and we have
21 arguments so you can attack the credibility. But as
22 far as a mistrial, I don't know if we can have that.

23 MR. ROBINSON: I withdraw that, your Honor.

24 THE COURT: Pardon?

25 MR. ROBINSON: I will withdraw that.

1 THE COURT: Very good.

2 MR. ROBINSON: And if you would also admonish this
3 particular witness to quit smiling and laughing while
4 we're doing motions and things, I'd appreciate that.

5 THE COURT: I'm sure he's not going to do that.

6 THE WITNESS: I didn't do that.

7 THE COURT: I say I'm sure you're not going to do
8 that.

9 THE WITNESS: I didn't.

10 THE COURT: I'm sure you're not going to do that;
11 do you understand?

12 THE WITNESS: I understand, sir.

13 THE COURT: Very good. Thank you. All right.
14 Let me ask you how much longer you've got with
15 this witness.

16 MR. WESTON: I have maybe one more question, your
17 Honor.

18 THE COURT: I'm looking at the clock on the wall,
19 trying to figure out how long we're going to go today
20 because usually I break about 5 o'clock, and I don't
21 like to take a witness beyond 5:00 -- take a new
22 witness and go beyond 5:00, but I will finish up a
23 witness beyond 5:00.

24 MR. WESTON: Your Honor, after this witness here,
25 and I will not ask him any more questions. My next

1 witness is the primary investigator. He's going to be
2 30, 45 minutes. At least 30 minutes with me.

3 THE COURT: I'm not going to split a witness'
4 testimony. We'll probably, when we finish with this
5 witness; considering the time, probably break.

6 MR. SMITH: Judge, I'm going to be very brief, if
7 I ask anything at all.

8 THE COURT: Well, the old clock is still running.
9 And it looks like it's gone from 15 to about 13 minutes
10 before.

11 MR. ROBINSON: I may take a little time with this
12 witness.

13 THE COURT: You're entitled. I'm just giving you
14 a certain, what is it, policy that I follow.

15 All right. Very good.

16 All right. Anything further, Mr. Weston?

17 MR. WESTON: No, sir, nothing from the State.

18 THE COURT: Mr. Smith -- I mean before we bring
19 the jury back.

20 MR. SMITH: Yes, sir. Nothing.

21 THE COURT: Mr. Robinson?

22 MR. ROBINSON: No, sir.

23 THE COURT: Very good. Ask the jury to join us,
24 please.

25 Hold the jury just for a second. We'll be right

1 there.

2 (WHEREUPON, a bench conference was held off the
3 record.)

4 THE COURT: All right. Let's see. You have
5 finished your direct, right?

6 MR. WESTON: I didn't get to say, "I have no
7 further questions," but I don't necessarily need to.

8 THE COURT: All right. Well, the reason I ask is
9 before the jury comes back, Mr. Robinson, you're going
10 to be examining the witness?

11 MR. ROBINSON: Yes.

12 THE COURT: Ask him the question you said that you
13 had.

14 MR. ROBINSON: May it please the Court.

15 THE COURT: Certainly.

16 VOIR DIRE EXAMINATION

17 BY MR. ROBINSON:

18 Q Sir, you had brought -- there has been an issue
19 regarding records in this case. And you have got a
20 briefcase in the first row there. Did you bring
21 records concerning this case with you today?

22 A No, I did not, sir.

23 Q So those records have nothing to do with this
24 case, correct?

25 A No, sir. It's a laptop bag, sir. I was working

1 before the case started.

2 Q Did you ever have records? Because you have been
3 talking about records in this matter. Do you have a
4 file with records in it regarding this incident?

5 A I never referred to records, sir. I don't have a
6 file with records.

7 Q So you -- when you're testifying about records,
8 you don't have any records?

9 A I just spoke of the policies that I know that
10 McDonald's follows with closing procedures in our
11 company, whether it be here or across state lines.

12 Q Did you bring those with you?

13 A No, sir.

14 Q Okay.

15 MR. ROBINSON: That's all I have, your Honor, as
16 far as for this purpose.

17 THE COURT: All right. Very good. We'll bring
18 the jury back and proceed.

19 Ask the jury to join us.

20 (WHEREUPON, the jury came into open court at
21 approximately 4:47 p.m.)

22 THE COURT: Let the record reflect the jury and
23 alternate are in the jury box.

24 Mr. Weston, you may proceed.

25 MR. WESTON: I have nothing further of this

1 witness.

2 THE COURT: All right. Mr. Smith?

3 MR. SMITH: Yes, your Honor.

4 CROSS-EXAMINATION

5 BY MR. SMITH:

6 Q Mr. Lomax, you stated that you were not the
7 district manager at the time that this incident
8 occurred, right?

9 A That's correct, sir.

10 Q Do you know, who was the district manager at this
11 time?

12 A Yes, sir.

13 Q Who was that?

14 A Steve Goodman.

15 Q All right. Do you know whether or not he
16 responded to the scene at that time?

17 A Yes.

18 Q All right. Is it possible that -- I think your
19 testimony was that the cameras had been out for at
20 least a week, or was it for one week?

21 A Well, I said that the cameras would have been
22 fixed for the next day if we had been notified that the
23 cameras did not work.

24 Q And I think you said that there were some records
25 that you reviewed that said that the cameras had been

1 out for a week. Or -- there was nothing -- what was
2 your testimony regarding that?

3 A I wasn't notified that the cameras -- I didn't see
4 any documentation that the cameras had been out for a
5 whole week is what I told you.

6 Q There were no documents showing that the cameras
7 were inoperable?

8 A That I knew of because I wasn't the district
9 manager at the store for that time. That wasn't my
10 store, sir. That was Steve Goodman's location. I got
11 this information because he left the company, and it
12 fell on my desk, sir. That's why I'm involved in this
13 whole ordeal.

14 Q Okay. Do you have a file for this case?

15 A I don't have a file, sir.

16 Q All right. Do you have records for this case?

17 A I don't have records with me for the case, sir.

18 Q Okay. Are there records that exist for this case?

19 A Well, I know we have records at our office as to
20 how much -- the cash that we lost, yes, sir.

21 Q So is it possible that these cameras could have
22 been out for a long period of time before they were
23 ever fixed?

24 A Sir, it wasn't my store at the time. I just -- I
25 don't know. It wasn't my store at the time. I didn't

1 control that store. I got this store after this guy
2 left.

3 Q So you're saying that the policy is that these
4 cameras, if they were broken, they should have been
5 fixed the very next day?

6 A That's correct, sir.

7 Q All right. Did your records reflect that the
8 cameras were fixed after this robbery?

9 A I didn't get any records saying that cameras --
10 I'm talking about our policy statement, sir. If the
11 cameras were down, they should be notified by the
12 manager to be fixed the following day.

13 Q So you don't know how long these cameras were down
14 for after the incident?

15 A No, sir.

16 Q Do you have any idea how long it took to fix these
17 cameras after the incident?

18 A It wasn't my store, sir.

19 Q Okay. So let me see if I've got this right. You
20 are here today testifying to what should take place in
21 a perfect world according to McDonald's' policies,
22 procedures and --

23 MR. WESTON: Objection, your Honor.

24 THE COURT: Just a moment. We don't need to
25 editorialize. You can do that in your closing

1 argument.

2 MR. WESTON: Thank you, your Honor.

3 BY MR. SMITH:

4 Q Is your testimony here today concerning just the
5 policies and procedures of McDonald's as they exist in
6 the manual?

7 A That's correct, sir.

8 Q You're not here testifying as to anything that
9 happened to the store around the dates of this
10 incident?

11 A Well, I do know from looking at things that some
12 of the cash deposits were broken in the store, sir,
13 based on what happened.

14 Q Some of the cash things that were --

15 A It's policies. Our security policies.

16 Q Okay. And what records are you looking at when
17 you review those -- how is it that you can make a
18 statement that it was broken when you don't have a file
19 to review to know what happened?

20 MR. WESTON: Objection. Your Honor, may we
21 approach? I apologize, your Honor, but I think there
22 is a matter the Court needs to take up.

23 MR. SMITH: Judge, if I...

24 THE COURT: All right. Again, I have to ask you
25 to retire to the jury room for a few moments so I can

1 take up some matters with the attorneys. Again, do not
2 undertake discussion of the case among yourselves in
3 any way. Thank you.

4 (WHEREUPON, the jury exited the courtroom
5 at 4:52 p.m.)

6 THE COURT: Yes, sir.

7 MR. SMITH: Judge, my point that I'm trying to
8 make is this. He has sat here and testified to all
9 these things and that he's reviewed all these -- from
10 his review of everything, all these things, all these
11 policies and procedures were violated.

12 THE COURT: That's why we have cross-examination.
13 You want to attack the credibility of his testimony by
14 examining what he doesn't have.

15 MR. SMITH: Exactly.

16 THE COURT: And you don't need to have the jury
17 run in and out. You're supposed to do that in front of
18 the jury.

19 MR. SMITH: I didn't ask for the jury to --

20 MR. WESTON: I did, your Honor.

21 THE COURT: Well, somebody did. The first time --
22 I know you did this time. I'm saying y'all are up and
23 down like, what is it, I don't know. I'm just sorry, I
24 don't know what you are. All right.

25 MR. WESTON: Your Honor, the objection to the

1 question, your Honor, basically what I was going to
2 say -- I heard it this morning two or three times. I
3 just heard someone in the audience as he asked a very
4 probing question say, "Thank you."

5 Basically I'm asking that the Court admonish these
6 people to quit talking out so that the jury can hear
7 them. And that was why I asked that the jury go out,
8 Judge. Because I heard her clearly say something -- it
9 was a female voice that said, as he asked a very
10 probing question, "Thank you."

11 THE COURT: Who asked what?

12 MR. WESTON: As Mr. Smith asked the witness that
13 probing question, this juror basically just commented
14 on it by saying, "Thank you." Like, "Yeah, that is a
15 good question. Ask him that." And I don't want the
16 jury to hear that, Judge.

17 MR. SMITH: He misstated, Judge, by saying a juror
18 made a comment. It was somebody in the courtroom.

19 THE COURT: I know what he meant because he's
20 pointing back there.

21 MR. WESTON: I'm not objecting to his question,
22 Judge.

23 THE COURT: All right. Well, listen, ladies and
24 gentlemen, all of us, this is an important matter and
25 it does not need to be, what is it, in any way taken

1 away from by off-side comments. You saw I even have to
2 sometimes admonish attorneys that if they want to make
3 argument or comment, to do it at a proper time. We
4 don't do it in the courtroom when we're trying to get
5 the testimony and evidence in.

6 All right. If anybody does, it's a very simple
7 method for me. It's called contempt of court. I can
8 either send you from the courtroom -- and that applies
9 to everybody except the bailiffs because I have to rely
10 on them to send them out.

11 But the thing is, if you do anything that disrupts
12 this trial, then I'm going to, what is it, take
13 appropriate action. It's called either being in
14 contempt of court which can be up to six months or,
15 what is it, just ask you to leave the courtroom. I
16 think if everybody wants to be here, I'm more than
17 happy, in fact I invite you to be here, but only on
18 good behavior.

19 All right. Not good behavior, appropriate
20 behavior. But good.

21 All right. Anything else?

22 MR. WESTON: That's it, your Honor.

23 THE COURT: All right. Mr. Smith?

24 MR. SMITH: Ready for the jury, Judge.

25 THE COURT: All right.

1 Ask the jury to join us.

2 (WHEREUPON, the jury came into open court at
3 approximately 4:57 p.m.)

4 THE COURT: All right. Let the record reflect the
5 jury and alternate are in the jury box.

6 All right. Mr. Foreman, ladies and gentlemen of
7 the jury, we will now proceed.

8 BY MR. SMITH:

9 Q Mr. Lomax, my notes reflect that you had stated
10 that the cameras were out for at least a week. Is that
11 what you testified to earlier?

12 A I stated the cameras -- if the cameras were broken
13 that day, they should have been repaired the following
14 day when notified by the manager.

15 Q So you did not testify earlier that the cameras
16 had been out for at least a week?

17 A I testified, sir, that the cameras were broken,
18 which should have been notified by the manager the
19 prior day so they could be repaired.

20 Q Sir, and just to make sure, you said if the
21 cameras were broken, they should have been notified and
22 fixed the next day?

23 A Well, we were not notified the cameras were
24 broken. If they were broken in the store, nobody told
25 us the cameras were broken, not working properly. We

1 were not notified.

2 Q All right. And that was the other thing. You
3 said there's no record of the cameras being out?

4 A I don't have a record of that, sir, no.

5 Q All right. And I thought your testimony was that
6 they were repaired after the incident or did I
7 misunderstand that? Or that they should have been
8 repaired after the incident?

9 A They were repaired after the incident, sir.

10 Q All right. So you -- so you know for a fact that
11 the cameras were repaired after the incident?

12 A Yes, sir.

13 Q All right. So if they were repaired after the
14 incident, that leads me to believe that you would have
15 known that they were not working at some period of
16 time, and that would be probably when the incident
17 occurred, right?

18 A Well, sir, again, like I told you before, that was
19 not my location. And after something like this
20 happened, the proper protocol is they come in, they fix
21 cameras, look at things. So I'm pretty sure they were
22 repaired after all this stuff happened.

23 Q All right. Do you have any records, anything
24 regarding this McDonald's and whether or not the
25 cameras were working, the protocols were not followed,

1 policies were broken, anything of that --

2 MR. WESTON: Objection, your Honor. It's a
3 compound -- a tri-compound question.

4 THE COURT: Well, I think -- I think what he's
5 trying to do is to determine the scope of the
6 information available he's basing his testimony on, and
7 I'm going to permit it.

8 Overruled.

9 MR. WESTON: All right, sir.

10 BY MR. SMITH:

11 Q Do you have anything in a file anywhere that talks
12 about this McDonald's and -- anything?

13 A Well, I know when we hire the managers, sir, they
14 go through a rigorous orientation process that talks
15 about cash handling procedures and safety procedures
16 that they actually sign.

17 Q Okay. Let me be a little more specific.
18 Regarding this incident, do you -- other than the
19 police reports and everything, do you have a file with
20 McDonald's regarding this incident?

21 A No.

22 Q All right. Have you reviewed anything other than
23 the police report regarding any McDonald's' policies,
24 procedures or anything that were not followed?

25 A Well, right in my handbook, sir, I can tell some

1 of the things were not followed by looking in the
2 handbook and what happened in the location. Yes,
3 clearly you can look at it and see that certain
4 policies were not followed in that situation.

5 Q Okay.

6 A Because you don't lose cash that way. If you
7 follow all the procedures, you don't lose cash.

8 Q So you don't know whether or not the cameras were
9 working that day or not, do you? I mean --

10 A Sir, I just told you the store was not my location
11 at the time. When Steve Goodman left --

12 THE COURT: Let's do this. Let's answer the
13 question and then you can explain your answer.

14 THE WITNESS: Okay.

15 THE COURT: Ask a simple question.

16 THE WITNESS: No, sir, is the answer.

17 BY MR. SMITH:

18 Q Okay. All right.

19 MR. SMITH: You know, Judge, I think I'm finished.

20 THE COURT: All right.

21 Mr. Robinson.

22 MR. ROBINSON: May it please the Court.

23 CROSS-EXAMINATION

24 BY MR. ROBINSON:

25 Q Sir, you testified a moment ago that Steve

1 Goodman, who was the manager before you, area manager
2 before you --

3 A Uh-huh.

4 Q -- plopped his file on your desk; is that correct?
5 Is that what he did? Isn't that what you testified to,
6 he plopped all his stuff on your desk? Isn't that
7 right?

8 A I took over the store at the time when he left.
9 That's the proper protocol. We have to have a district
10 manager for the location. So when he left, I took over
11 the store, yes.

12 Q And Steve Goodman was the area supervisor at the
13 time, correct?

14 A Yes.

15 Q Now, you had a chance -- you've said a minute ago
16 that you had an opportunity to look at the police
17 reports, correct?

18 A Yes.

19 Q As far as what Mr. Goodman -- as far as the
20 protocol that was not followed, correct?

21 A Yes, sir.

22 Q And you would agree with me that -- would you be
23 surprised -- excuse me. Let me rephrase that.

24 Would you be surprised if Mr. Goodman, if the
25 cameras, actually Mr. Goodman said that the cameras

1 were inoperative for two weeks?

2 MR. WESTON: Objection, your Honor.

3 THE WITNESS: I can't answer that, sir.

4 MR. WESTON: Objection, your Honor.

5 THE COURT: How's that?

6 MR. WESTON: He's basically testifying, putting
7 hearsay in --

8 THE COURT: Unfortunately he can testify because
9 it's cross-examination. And he's asking him if he has
10 any -- restate your question. I'm going to overrule
11 it, I think. Go ahead. Restate your question.

12 MR. ROBINSON: May it please the Court.

13 THE COURT: Listen to the question, Mr. Weston.

14 MR. WESTON: Yes, sir.

15 BY MR. ROBINSON:

16 Q You had the opportunity -- I'm just going to build
17 up to it, your Honor.

18 You had the opportunity to read the police report?

19 A Uh-huh.

20 Q And you went back, you said, to look at Steve
21 Goodman -- anything Steve Goodman did; is that right?

22 A Uh-huh.

23 Q And didn't Steve Goodman report that the cameras,
24 the surveillance cameras, were inoperative for two
25 weeks prior to the incident?

1 A If that's what the police report says, sir, yes.

2 Q Okay. And actually, too, he also reported that
3 there were several protocols --

4 MR. WESTON: Objection, your Honor.

5 MR. ROBINSON: -- that were not followed that
6 night?

7 THE COURT: Again, he can ask these questions.

8 MR. WESTON: Your Honor, could I please state my
9 reason for my objection?

10 THE COURT: Well, yes, if you will go ahead and do
11 it, please.

12 MR. WESTON: He has laid no foundation that this
13 man has seen anything that Steve Goodman told the
14 police. He answered the question, "If that's what he
15 told the police."

16 THE COURT: All he's got to say is, "I don't know
17 because I don't know what he told the police."

18 MR. WESTON: Well, he has to ask him does he have
19 any knowledge of it first, doesn't he, Judge?

20 THE COURT: It's cross-examination. That's for
21 you to, what is it, establish. If he says something
22 you're not interested in, you don't want them to hear,
23 then, what is it, you, on re-exam, you bring that out.

24 Now, the fact is we're on cross-examination, and
25 he has leeway, and he's talking about things that you

1 brought out on direct.

2 All right. Go ahead. Overruled.

3 MR. WESTON: Yes, sir, your Honor.

4 BY MR. ROBINSON:

5 Q So you had the opportunity to look at the police
6 reports from that night and Mr. Goodman's information,
7 correct?

8 A That's correct, sir.

9 Q You just testified to that. And one of the
10 protocols was that they violated -- the employees that
11 night had violated several safety protocols, correct?

12 A Based on what he said, yes, sir.

13 Q And, actually, that Michael -- who is Michael -- I
14 believe Michael Culbertson should not have left the
15 restaurant without letting someone know. Isn't that
16 also what was reported by Mr. Goodman?

17 A Yes.

18 Q So that -- when he, when Michael Culbertson
19 decided not -- when he decided to leave and didn't tell
20 anybody he was leaving, went out that locked door,
21 unlocked it, went out the door, he should have told
22 somebody he was leaving, shouldn't he?

23 A Um --

24 Q Yes or no?

25 A No, sir.

1 Q He shouldn't have told somebody he was leaving?

2 A The manager on duty, it's their responsibility to
3 make sure when people leave that store, they follow
4 them to the door and let the employees out.

5 Q So but what if the employee comes back in and
6 doesn't lock the door behind them?

7 MR. WESTON: Objection, your Honor. That calls
8 for speculation.

9 THE COURT: Well, can you answer the question?

10 THE WITNESS: Sir, again, our policy states
11 basically once the employee leaves the building, they
12 shouldn't come back in. And the manager walks them to
13 the door and walks them out to the parking lot and
14 secures the facility and comes back in.

15 BY MR. ROBINSON:

16 Q And that is -- so that is a policy which could
17 have been violated and the employee would have been
18 written up for that, correct?

19 A Yes, sir.

20 Q Is that what happens? That's the protocol?

21 A Yes, sir. I don't know what Steve did to them,
22 but that's what normally would happen.

23 Q And actually another policy that was broken was
24 that there should have been three employees remaining
25 in the store at any time; isn't that correct?

1 A That's not true, sir.

2 Q So Steve Goodman was incorrect? Are you saying --
3 you're saying --

4 MR. WESTON: Objection, your Honor. He's not laid
5 the foundation that he knows what Steve Goodman said.
6 He can't say was Steve Goodman correct. He doesn't
7 know what Steve Goodman said. You've got to ask him
8 about that first.

9 THE COURT: He can say that.

10 MR. WESTON: He asked, he said, "So Steve Goodman
11 was not correct?" He's not asked him -- he doesn't
12 know what Steve Goodman said.

13 THE COURT: That's what his answer should be.

14 MR. WESTON: All right, sir.

15 THE COURT: I'm sorry. Again, he's getting a lot
16 of information out there, but it's up to him to, what
17 is it, support it. If he can't support it, then you
18 can move to strike it.

19 Go ahead, Mr. Robinson.

20 MR. ROBINSON: Thank you, Judge.

21 Beg the Court's indulgence.

22 THE COURT: Certainly.

23 BY MR. ROBINSON:

24 Q Sir, do you know where Mr. Goodman is now, where
25 Steve Goodman is now?

1 A I have no idea, sir.

2 Q Do you know if he's available for this trial?

3 A I have no idea, sir.

4 MR. ROBINSON: One more second, your Honor. I
5 apologize.

6 THE COURT: Sure.

7 MR. ROBINSON: Last question, your Honor.

8 THE COURT: You can ask as many as you'd like,
9 sir.

10 MR. ROBINSON: Okay.

11 BY MR. ROBINSON:

12 Q That person, Ms. Precious Harris, one person is
13 not supposed to be left alone, is he or her? Supposed
14 to be more than one person there at one time, isn't
15 there, at nighttime?

16 A That's correct, sir.

17 Q So when those two employees left her there, that
18 was a breach of protocol, wasn't it?

19 A It was.

20 Q Okay. And when that employee left that door
21 unlocked, that was a breach of protocol, too, wasn't
22 it?

23 A It was.

24 Q Thank you.

25 MR. WESTON: Just two questions, your Honor.

1 THE COURT: Re-exam.

2 REDIRECT EXAMINATION

3 BY MR. WESTON:

4 Q Counsel's last two questions, when those two
5 employees left and Ms. Harris was there by herself, as
6 the shift supervisor, whose responsibility for breach
7 in protocol would that be, theirs or hers?

8 A It falls on the manager, sir.

9 Q When the employee went out the door and the door
10 was not locked behind him, whose responsibility for
11 following protocol or making sure that protocol was
12 followed would that be, the employee's or Ms. Harris'?

13 A The manager, sir.

14 Q And so what he said about -- why should there be
15 more than one employee at the store at all times,
16 especially when they're counting money?

17 A For safety reasons there should be two people in
18 the store, one manager, one employee.

19 Q Would she have known that?

20 A Yes, sir.

21 Q Would there be any reason for her to let everybody
22 go and leave her sitting in there by herself if she was
23 following policy?

24 A No, sir.

25 Q Would there be any legal reason?

1 A No, sir.

2 Q Thank you, sir.

3 THE COURT: All right. You may step down. Thank
4 you.

5 MR. WESTON: Your Honor, the State would ask this
6 witness be excused from his subpoena.

7 MR. SMITH: No objection.

8 THE COURT: Mr. Robinson.

9 MR. ROBINSON: One second, your Honor, if I could.

10 THE COURT: He's gone out the door. We need to
11 get him.

12 MR. ROBINSON: Your Honor, we'd like to keep him
13 on subpoena.

14 THE COURT: All right. He'll be subject to
15 recall.

16 Come in, please.

17 Mr. Weston, is the witness local?

18 MR. WESTON: Yes, your Honor.

19 THE COURT: All right. So he doesn't have to be
20 here, but he can be subject to recall so be sure you
21 stay in touch with the Solicitor.

22 MR. WESTON: We have your cell number?

23 THE WITNESS: Yes.

24 THE COURT: All right. Very good. Thank you very
25 much. Although you are excused today, you are subject

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1 to recall.

2 THE WITNESS: All right, sir.

3 THE COURT: Very good. Thank you, Mr. Lomax.

4 All right. Mr. Foreman, ladies and gentlemen of
5 the jury, I have explained to the attorneys that I have
6 a policy of usually trying to break about 5 o'clock.
7 The reason for that is from my experience, that we have
8 two lives, it seems. One starts early in the morning
9 and goes until 5 o'clock, and one begins at 5 o'clock.
10 And I'm talking about meetings, ball games and
11 everything else that we need to do. And that goes on
12 much later.

13 But for that reason, rather than take a witness
14 after 5 o'clock that might go too long or even before 5
15 o'clock might go beyond 5 o'clock, I do not take a
16 witness like that. Also because I don't want to split
17 a witness' testimony. I would rather hear everything
18 said at one time and have it for you to determine the
19 weight or the value of that testimony rather than have
20 time to reflect and things of that nature. All right.
21 For that reason I am going to, what is it, recess for
22 the day at this time.

23 Now, Mr. Foreman, this is going to be your first
24 duty. I'm going to ask you what time you would like to
25 start in the morning. I come from Oconee County, so

1 probably 9:30 would be the earliest I could get here.

2 But 9:30, 10 o'clock would be appropriate times.

3 So if you would just check -- or you can have
4 another time if it's later -- with your jury to find
5 out what time you would like to start in the morning.

6 JURY FOREMAN: Right now?

7 THE COURT: Yes, sir. Mr. Foreman, this is not a
8 unanimous verdict. It's a consensus.

9 JURY FOREMAN: 9:30.

10 THE COURT: All right. Very good.

11 Now, again, I usually tell juries that this is the
12 most difficult time that you will have in this trial
13 because you're going home, and you're going to be --
14 the first thing they're going to say is, "What are you
15 doing?" And you're going to say, "I've been drawn on a
16 jury." And they're going to say, "What's the case
17 about?" And you're going to say, "I can't tell you."
18 And they will say, "Why not?" And you're going to have
19 to tell them, "Because the judge said I can't talk
20 about it." And they're going to say, "That's
21 ridiculous," or something to that effect.

22 I think you do understand this case is important
23 to everybody involved, and it needs to be resolved in a
24 proper fashion. And no one who is not sitting in that
25 jury box with you, as I said earlier, or in that jury

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1 room with you when you finally have to make your
2 decision has heard the first bit of testimony or seen
3 the first exhibit or other evidence, so they cannot
4 help you in any way. They can only interfere with the
5 proper resolution of this case. And for that reason I
6 emphasize that you're not to discuss it or let anybody
7 discuss it with you.

8 If they don't understand it, I'll be here as close
9 to 9:30 as I can. Maybe not. I'll try to be here at
10 9:30 and I'll explain it to them. Very good. With
11 that, you're excused. I'll see you tomorrow morning at
12 9:30.

13 (WHEREUPON, the jury exited the courtroom
14 at 5:14 p.m.)

15 THE COURT: All right. Anything from the State?

16 MR. WESTON: Yes, your Honor, just briefly. We
17 have a -- as you heard, Keith Williams is here from the
18 Department of Corrections. He was brought up today.
19 We have a housing order to be able to put him in the
20 detention center tonight because they won't accept him
21 without an order.

22 THE COURT: Very good.

23 All right. Anything from -- Mr. Smith, anything
24 on behalf of --

25 MR. SMITH: Judge, I don't have anything except

1 maybe for Mr. Weston where it comes to this.

2 I don't have anything, Judge, then.

3 THE COURT: All right.

4 Mr. Robinson?

5 MR. ROBINSON: I don't, your Honor. The only
6 thing I would add -- it's not regarding the case, but
7 as far as my client, she's out on bond at this point.
8 She's appeared for court every time.

9 THE COURT: Mr. Weston.

10 MR. WESTON: I'm sorry, your Honor. I was talking
11 to the officer about the housing issue. I didn't hear
12 what he said.

13 THE COURT: Mr. Robinson he wants his client out.

14 MR. WESTON: No, sir. Your Honor, it's an armed
15 robbery. She's facing 30 years. And as you indicated
16 at the start, her bond is now resolved.

17 THE COURT: All right. One of the problems with a
18 bond, of course, is that it's a contract between three
19 parties, of course the defendant, the State and the
20 bonding company. And if I change any of the conditions
21 of the bond, then of course all three have to agree to
22 it. So I'm going to have to deny the request and
23 motion. So she will be taken into custody.

24 All right. I'll see you in the morning, 9:30.

25 (WHEREUPON, proceedings adjourned at 5:17 p.m.)

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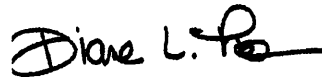
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 5th day of November 2014.

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February 18, 2015



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina

2 County of Greenville

In the Court of
General Sessions

3 State of South Carolina,)

4)

5)

6 -vs-)

7 David Wince Chiles, Jr.,)

8 and Precious Harris,)

9 Defendants.)

2012-GS-23-965
2012-GS-23-966
2012-GS-23-1727
2012-GS-23-3108

November 6, 2014
Transcript of Record
Volume II
Pages 228 - 420

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11

B E F O R E:

12

**The Honorable Alexander S. Macaulay, Judge;
and a jury**

14

15

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

16

**Jeff Weston, Assistant Solicitor
Attorney for the State**

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**Marcus Smith, Attorney at Law
Attorney for Defendant Chiles**

18

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**Scott Robinson, Attorney at Law
Attorney for Defendant Harris**

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21

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23

**Diane L. Thommes, RPR, CRR
Circuit Court Reporter**

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| <u>Marked</u> | <u>Description</u> | <u>I.D.</u> | <u>Admitted</u> |
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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:31 a.m.)

4 THE COURT: We're back on the cases of State
5 versus Chiles and Harris.

6 Is the State ready?

7 MR. WESTON: State is ready to proceed, your
8 Honor.

9 THE COURT: Mr. Chiles is ready?

10 MR. SMITH: Ready, your Honor.

11 THE COURT: And Ms. Harris?

12 MR. ROBINSON: Yes, your Honor.

13 THE COURT: Very good. I guess I need to make an
14 admonishment more than anything else, but it's my
15 understanding that when the attorneys were going
16 through the security downstairs, one of the jurors was
17 in line and heard a little bit from one of the
18 attorneys.

19 Now, as I understand it, the attorney recognized
20 or realized who she was and didn't say anything else.
21 However, we need to understand that jurors do --
22 they're not sequestered totally or completely. We have
23 to be careful about what we say outside of the
24 courtroom in what context.

25 Now, I haven't talked to the juror. I don't want

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1 to embarrass her, but I do want to -- I will eventually
2 thank her for bringing it to the Court's attention.

3 Now, is there anything from the State on that
4 matter?

5 MR. WESTON: No, sir, your Honor.

6 THE COURT: Mr. Chiles' attorney?

7 MR. SMITH: Well, your Honor, I immediately -- I
8 was talking downstairs with another attorney, Nihar
9 Patel, at the entryway, and we were just talking about
10 the trial in general, about how it was going and things
11 like that. We moved over to the line, and we were
12 about to -- he had asked me a question, and I said,
13 "Well," I started to look around. And I looked around
14 and I said, "I've got to find out whether there is a
15 juror around before I start talking about it." And the
16 woman in front of me said, "I recognize your voice.
17 That's me. There is a juror around." I said, "Okay,"
18 and that was it.

19 And then when we were coming up the steps, I
20 immediately saw Mr. Weston and I told him what had
21 happened and let him know. But we had not been talking
22 about anything in particular as far as facts or
23 anything about the case. I don't think she heard
24 anything.

25 THE COURT: Well, when she said that you, when you

1 realized who she was, that nothing else was said. It's
2 just one of those things, you just have to constantly
3 be aware.

4 MR. SMITH: Yes, your Honor. Which is why I
5 asked -- said, "I need to look around before I can say
6 anything to see if there is a juror around to talk to
7 you about it," and that's what I was doing.

8 THE COURT: Mr. Robinson, anything from you on the
9 matter?

10 MR. ROBINSON: I wasn't aware of it, but thank
11 you. Nothing else.

12 THE COURT: Very good. All right.

13 How many witnesses do you have today, Mr. Weston?

14 MR. WESTON: Your Honor, we have two witnesses
15 left, Investigator Hoover and the codefendant, who's
16 already pled guilty, Keith Williams. And I'm advised
17 by law enforcement that he is either en route or here,
18 but Investigator Hoover is the next witness. Should
19 take 30, 45 minutes.

20 THE COURT: Now, it's my understanding that the
21 defendants are not going to put up any testimony or
22 evidence. The reason I need to know is because
23 eventually, if they're not, I need to, of course,
24 advise them.

25 MR. SMITH: Judge, I'm going to ask him if you

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1 want one more minute.

2 THE COURT: All right.

3 (WHEREUPON, an off-the-record discussion was
4 held between Mr. Smith and Defendant Chiles.)

5 THE COURT: Yes, sir.

6 MR. SMITH: Judge, I have spoken with my client.

7 At this time he still does not wish to take the witness
8 stand, but we do reserve the right, obviously.

9 THE COURT: No question at all, but I was just
10 thinking usually I advise the defendants after the
11 close of the testimony so they will see what the full
12 case is from the State.

13 MR. SMITH: Yes, sir.

14 THE COURT: But I just want to be sure that both
15 of them, both defendants, were aware of their right to
16 testify or not to testify.

17 MR. ROBINSON: Yes, sir.

18 THE COURT: I will be advising them at the
19 appropriate time.

20 All right. Anything from the State?

21 MR. WESTON: No, sir, your Honor. State is ready
22 to proceed.

23 THE COURT: Anything from Ms. Harris?

24 MR. ROBINSON: No, sir, your Honor.

25 THE COURT: Mr. Chiles?

1 MR. SMITH: No, your Honor. We're ready.

2 THE COURT: Ask the State -- ask the jury to join
3 us, please.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:08 a.m.)

6 THE COURT: Let the record reflect the jury and
7 alternate are in the jury box.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 we'll now continue with the State's case. I recognize
10 the Solicitor, Mr. Weston, please, first witness.

11 MR. WESTON: Thank you, your Honor. May it please
12 the Court, your Honor.

13 The State would call Deven Hoover.

14 DEVEN HOOVER,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: Please state your name for the record.

17 THE WITNESS: Deven Hoover.

18 DIRECT EXAMINATION

19 BY MR. WESTON:

20 Q Investigator Hoover, with whom are you employed?

21 A The Greenville County Sheriff's Office.

22 Q And how long have you been with the sheriff's
23 office approximately?

24 A Between my eighth and ninth year.

25 Q What is your rank in the sheriff's office?

1 A Master deputy assigned to violent crimes
2 investigations, armed robbery unit.

3 Q Did you have an occasion to investigate the
4 incident that brings us to court here today?

5 A I did.

6 Q And did the incident occur on the morning of
7 June 26th of 2011 from the information you received?

8 A Yes, sir.

9 Q And when did you first get assigned this case?

10 A I don't remember if it was the next day, but it
11 could have been over the weekend. It would have been
12 like a Monday morning.

13 Q All right. And where did this take place?

14 A At a McDonald's located on Old Spartanburg Road
15 near Hudson Corners.

16 Q Is that here in Greenville County?

17 A Yes, it is.

18 Q Once you're assigned the case, what did you do
19 first?

20 A Generally speaking, especially with this case, our
21 first order of business is to get everybody involved
22 together and take some statements from them and try to
23 figure out if there was any pieces missed when
24 uniformed patrol responded.

25 Q When you say "everybody involved," you mean law

1 enforcement folks?

2 A No, just the witnesses, the victims.

3 Q All right. And did you review the forensic
4 reports and the investigative or the incident reports
5 of the officers who are on scene?

6 A Yes, sir.

7 Q All right. And after reviewing those reports,
8 what would be the next step?

9 A To call them in to get statements to make sure
10 that their statements can be corroborated.

11 Q When you say "them," you mean the witnesses?

12 A The witnesses, yes, sir.

13 Q Did you do that in this case?

14 A Yes, sir, I did.

15 Q All right. After doing that -- well, let's be
16 specific here. Do you remember what witnesses you
17 talked with initially?

18 A Initially Investigator Jones was actually
19 cross-training with me. And when we called the initial
20 witnesses in, I allowed him to take the statements from
21 them as, obviously, we were trying to train him how we
22 do things. But we began -- I can't remember who he
23 talked to first, but, obviously, we wanted to begin
24 with the people inside the store, the employees.

25 Q Would that have included Quinzell Davis?

1 A Yes, sir.

2 Q Would that have also included Mr. Culbertson?

3 A Yes, sir. Mr. Adams, I believe.

4 Q All right. Would that also have included the
5 manager, the night manager, Ms. Precious Harris?

6 A Yes.

7 Q Just to be clear, prior to being assigned this
8 case, have you ever had any dealings with Ms. Precious
9 Harris?

10 A No, sir.

11 Q Had she ever been either the subject of an
12 investigation or a witness in any other cases, best you
13 can remember?

14 A Nothing from me, no, sir.

15 Q You had no idea who she was?

16 A Not a clue.

17 Q All right. And was she brought in as part of the
18 initial interview process?

19 A Yes, sir.

20 Q Did she, in fact, give a statement?

21 A She did. She did.

22 Q All right. We'll come back to that. But let's
23 talk about the protocols first. Let's talk about DNA.

24 A Yes, sir.

25 Q Was there any effort to try to find some DNA in

1 this case and the efforts, the problems, and your
2 conclusions regarding that?

3 A I don't believe they tried to take any DNA. I
4 wasn't there at the scene that night. But typically
5 speaking to DNA, unless there was blood or some form of
6 bodily fluid, they probably wouldn't have. Due to the
7 fact that it's a restaurant and there's so many people
8 that come in and out of a restaurant, that it doesn't
9 really specify specifically for any DNA to be taken.

10 Q And from your investigation and review of the
11 reports and talking to the officers involved and
12 talking to the witnesses involved, was there any
13 indication that either of the suspects bled?

14 A No, sir.

15 Q Was there any indication that either of the
16 suspects left any mucus or sweat or anything like that
17 that would have led you down the DNA path?

18 A No, sir.

19 Q All right. The suspects, according to previous
20 testimony, left out of the door. Was there any
21 evidence concerning how they got away from the
22 restaurant after they went outside? Were there any
23 eyewitnesses or forensic evidence to indicate how they
24 made their escape long range?

25 A No, sir.

1 Q So you didn't know whether they got into a car,
2 went into an apartment, left on foot or what?

3 A No, sir. The best case scenario I had was the
4 witnesses who said they escaped on foot. That's all I
5 had to go on.

6 Q All right. What about fingerprints?

7 A They did take latent evidence from the scene.
8 However, I believe the only latent results we got were
9 actually of the manager, but that's to be expected.
10 There's nothing ground-breaking about that because she
11 works there, so obviously her fingerprints would be all
12 over the place.

13 Q All right. And, once again, who was the night
14 manager?

15 A Ms. Harris.

16 Q What about video footage? Did y'all try to get
17 video footage?

18 A We did --

19 Q Before we get to the restaurant -- I apologize for
20 the interruption. I'm sorry.

21 A Oh.

22 Q Let's not talk about the McDonald's for a moment.
23 Was there any attempt to check video surveillance
24 footage from any of the surrounding businesses?

25 A Yes, sir. I believe uniformed patrol even tried

1 as well, but I went out myself and drove around trying
2 to find video with no results whatsoever.

3 Q All right. Let's talk about the McDonald's
4 itself. What efforts were made to get the video feed
5 from the McDonald's that was robbed?

6 A From the get-go we were stonewalled with that. It
7 was not even available to us that night. There was no
8 video. According to the deputies on scene, they
9 relayed to me that it was a several-week issue that the
10 cameras had been inoperable, so obviously that evidence
11 was not there for us to gather.

12 Q You indicated you took such statements from the
13 people involved. Initially were Mr. Adams,
14 Mr. Culbertson and Mr. Davis, two of whom were
15 employees and one was a friend of an employee --

16 A Yes, sir.

17 Q -- and Ms. Harris, those were the only four people
18 that were interviewed or that were at the restaurant
19 and saw the perpetrators; is that your understanding?

20 A Yes, sir. That I'm familiar with, yes, sir.

21 Q Initially were they suspects, any of them?

22 A No.

23 Q Were they persons of interest?

24 A Yes, sir.

25 Q Why would they be persons of interest?

1 A Due to just in my experience of these types of
2 robberies where the video surveillance just happens to
3 not be working, the security violations that a store
4 manager who wasn't even there that night --

5 MR. SMITH: Objection, your Honor. Motion --

6 THE COURT: Again, do you understand -- well,
7 let's go ahead and see.

8 Mr. Foreman, ladies and gentlemen of the jury, I
9 need to ask you to retire to the jury room so I might
10 take up a matter of law with the attorneys.

11 Again, do not undertake the discussion of the case
12 among yourselves in any way.

13 (WHEREUPON, the jury exited the courtroom
14 at 10:17 a.m.)

15 THE COURT: All right. For the record, Mr. Smith,
16 state your objection.

17 MR. SMITH: Judge, it sounds like he's about to
18 get into, based upon his experience when there weren't
19 any cameras working or anything, it's going to sound
20 like it was an inside job when there's been no
21 testimony to show that anybody had anything to do with
22 making the cameras not work, that anybody knew that the
23 cameras were or were not working or anything of that
24 nature.

25 And I think there's got to be some foundation

1 to -- that has to be laid before he can get into
2 anything of that nature, just saying based on my
3 experience, you know, when cameras aren't working or
4 whatever, it's going to be an inside job. I don't know
5 if that's where he's going, but before he says it -- I
6 don't want to have to ask for a mistrial -- I had to
7 object before he got there.

8 THE COURT: You're doing exactly right.

9 Mr. Weston, of course, that was the basis of a
10 motion in limine that I suggested that you're doing it
11 correctly, we are now to proffer the testimony because
12 if he's trying to become a person of knowledge, it
13 won't necessarily mean an expert. I think even a
14 layperson can give his opinion if he's got specific
15 knowledge. Unless he is, though, he can only testify
16 to what he knows. And, of course, that includes what
17 was reported to him in the investigation.

18 Now, what do you plan to do?

19 MR. WESTON: Your Honor, the question that I asked
20 him was --

21 THE COURT: I understand. I heard the question.
22 But now it's not so much what you've asked. Where are
23 we going?

24 MR. WESTON: His answer, as I understand it, where
25 he was going was why he considered these four people --

1 not the defendant, Ms. Harris -- the four people who
2 were there persons of interest that he followed up on.
3 Not that he said it was an inside job. It was just
4 basically why he was following certain leads, Judge.
5 I'm not going any further than that --

6 THE COURT: Excuse me. Go ahead. If that's -- I
7 can understand. I think that would be appropriate.

8 MR. WESTON: And that was as far as I was going
9 with that, Judge.

10 THE COURT: Very good. All right. But we're not
11 qualifying -- unless you want to try to qualify him as
12 an expert on particular types of crimes or offenses.

13 MR. WESTON: No, sir, your Honor.

14 THE COURT: All right. Very good. So but
15 particularly I do want to avoid, since that's an
16 operative word or term, "inside job." I think it's all
17 right for him to testify, Mr. Weston, and that was his
18 testimony, if there was any people of interest, persons
19 of interest, and how he made that decision. I think
20 that's appropriate.

21 MR. WESTON: Thank you, your Honor.

22 THE COURT: All right. So but, again, with the
23 understanding if you think you're going to have to be
24 testifying as to, quote, an inside job or some other
25 theory, I would ask you to hesitate.

1 THE WITNESS: Yes, sir.

2 THE COURT: Until I can take it up with the
3 attorneys.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Anything else, Mr. Smith?

6 MR. SMITH: No, your Honor. That covered what my
7 concern was.

8 THE COURT: Mr. Robinson?

9 MR. ROBINSON: No, sir, your Honor.

10 THE COURT: Mr. Weston?

11 MR. WESTON: No, sir, your Honor.

12 THE COURT: Very good. Ask the jury to join us,
13 please.

14 (WHEREUPON, the jury came into open court at
15 approximately 10:22 a.m.)

16 THE COURT: All right. Again let the record
17 reflect the jury and the alternate are in the jury box.
18 Mr. Weston, you may proceed.

19 MR. WESTON: Thank you, your Honor.

20 BY MR. WESTON:

21 Q Did you meet with Ms. Precious Harris?

22 A Yes, sir, I did.

23 Q And do you remember when you met with her?

24 A I don't remember the exact date, no, sir, but it
25 was very shortly after I received the report.

1 Q Where did you meet with her? Where did you meet
2 with her?

3 A Where?

4 Q Yes, sir.

5 A I'm sorry. The law enforcement center downtown.

6 Q And was it just the basic follow-up interview?

7 A Yes, sir. It was very, very basic.

8 Q During the course of that interview did you have
9 an occasion to discuss her cell phone with her?

10 A I did.

11 Q Did you ask her could y'all download her cell
12 phone?

13 A I did.

14 Q Did she agree to that?

15 A Yes, sir.

16 Q Did she sign a consent to turn over her cell
17 phone?

18 A Yes, sir, she did.

19 Q Did you take her cell phone?

20 A Yes.

21 Q And did she indicate that that was a cell phone
22 she had during the time of the robbery?

23 A Yes, sir.

24 Q What did you do with the cell phone?

25 A I took it over to Investigator Rainey, and he did

1 a forensic download on the phone where it basically
2 just pulls the information off the phone.

3 Q When you say "information," you mean like call
4 log?

5 A Yes, sir, incoming, outgoing, text messages,
6 pictures. Anything that goes on that phone, it will
7 basically remember it and reflect it.

8 Q Did you review those records when they were turned
9 over to you?

10 A I did.

11 Q Excuse me one second. Was there any numbers of
12 interest?

13 MR. ROBINSON: Your Honor, objection. Hearsay and
14 also foundation in this matter.

15 THE COURT: Mr. Weston.

16 MR. WESTON: I just asked him were there any
17 numbers of interest to you. I don't know how that's
18 hearsay.

19 THE COURT: I'm going to overrule the objection.
20 You can answer the question.

21 THE WITNESS: Yes, sir.

22 BY MR. WESTON:

23 Q Was there a particular time frame that you were
24 looking at with regard to incoming or outgoing calls?

25 A Yes, sir, around -- obviously around the time of

1 the incident is what I was concerned with.

2 Q Around the time of the incident were there any
3 numbers that caught your attention?

4 A Yes, sir.

5 Q Were there any numbers that were shown more than
6 once around the time of the call?

7 A Yes, sir.

8 Q And was it more than one number or just one
9 number?

10 MR. ROBINSON: Objection, your Honor. Leading.

11 THE COURT: Not necessarily. It's just a part of
12 his report or his investigation. I'm going to overrule
13 the objection.

14 BY MR. WESTON:

15 Q Was it more than one number or just one number?

16 A One number.

17 Q Once you identified this one number, what did you
18 do next?

19 A I tried to contact or use the database that we
20 have to figure out what carrier that phone is
21 subscribed to.

22 Q Were you able to locate this subscriber?

23 A Yes, sir.

24 Q Were you able to identify the user of that number?

25 A I was.

1 MR. ROBINSON: Your Honor, objection. Hearsay and
2 foundation, your Honor, again.

3 THE COURT: Overruled.

4 MR. WESTON: Thank you, your Honor.

5 BY MR. WESTON:

6 Q Once you were able to identify the user of that
7 particular phone number, what did you do next?

8 A I went to find Keith Williams.

9 Q Prior to that moment, did you know the name Keith
10 Williams?

11 A No, sir, not personally, no.

12 Q Had you ever met Keith Williams?

13 A I had not.

14 Q Had you ever, as a part of your job, had an
15 occasion to investigate Keith Williams as a suspect in
16 any crime or a victim of a crime or a witness in a
17 crime?

18 A No, sir.

19 Q Did you have any idea of any relationship between
20 Keith Williams and anybody else in the world?

21 A No, sir.

22 Q Were you able to locate Keith Williams?

23 A I was.

24 Q How did you locate him?

25 A We -- I was able to get ahold of his probation

1 officer, and I met with him or called him and asked him
2 if he minded if I came in to a meeting and made contact
3 with him and tell him why I was there.

4 Q And did you in fact meet with Keith Williams?

5 A I did.

6 Q Do you remember when you met with Mr. Williams?

7 A No, sir, I don't remember the exact date. It was
8 about a month after the incident, I believe.

9 Q Do you have your case file with you?

10 A I do.

11 Q Would that -- would reviewing that refresh your
12 recollection as to when you met with Mr. Williams?

13 A It would, yes, sir.

14 Q All right.

15 A August 17th of 2011.

16 Q And where did you meet with Mr. Williams?

17 A At the probation office.

18 Q All right. And was there anybody else present --
19 was it in sort of a conference room or was it in a --
20 what type of room was it, environment was it?

21 A They had, I guess, their meeting -- whatever they
22 do in that other room I can't attest to, but they put
23 us in a very large conference area and --

24 MR. SMITH: Judge, I hate to interrupt. I want to
25 make an objection, but may we approach the bench?

1 THE COURT: Certainly. Let's do it on the side.

2 (WHEREUPON, a bench conference was held off the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 BY MR. WESTON:

6 Q Investigator Hoover, when you met with
7 Mr. Williams, did you advise him as to what you wanted
8 to talk to him about?

9 A Yes, sir.

10 Q And what did you tell him you wanted to talk
11 about?

12 A Told him I'd like to talk to him about an incident
13 that happened involving Ms. Harris.

14 Q And did Mr. Williams indicate to you that he knew
15 Ms. Harris?

16 A Yes, sir.

17 Q Who did he say Ms. Harris was in relationship to
18 him?

19 A His brother's girlfriend.

20 Q Did Mr. Williams -- did you tell him about
21 generally that you wanted to talk about the armed
22 robbery at the McDonald's?

23 A Yes, sir.

24 Q Did he initially admit to any involvement in that
25 robbery?

1 A No, sir. Initially he admitted, "Yeah, I heard of
2 that," something of that nature.

3 MR. SMITH: Judge, I'm going to object as to
4 hearsay.

5 MR. WESTON: Statement by a co-conspirator in
6 furtherance of the conspiracy, your Honor.

7 MR. SMITH: It's not -- sorry.

8 THE COURT: All right. I'm going to permit the
9 statement. Overrule the objection.

10 MR. WESTON: Thank you, your Honor.

11 BY MR. WESTON:

12 Q At some point did Mr. Williams acknowledge any
13 involvement in the armed robbery?

14 A Yes, sir.

15 Q Let's just go to the end of this.

16 A Yes, sir.

17 Q Did he admit to being one of the perpetrators?

18 A Yes, sir, he did.

19 Q At that point what did you do? Just kind of take
20 us step-by-step once he admitted his involvement that
21 he was one of the perpetrators of the armed robbery,
22 what did you do then?

23 A We took him into custody and Mirandized him,
24 obviously, and then took him down to the law
25 enforcement center to speak further with us.

1 Q And once you got into the law enforcement center,
2 was he interrogated further?

3 A Yes, sir. We interviewed him, and he was very
4 open.

5 Q And did he give a written statement?

6 A Yes, sir.

7 Q Did he admit his involvement in the armed robbery?

8 A Yes, sir, he did.

9 Q Now, prior to your taking his statement, did you
10 give him any details about the robbery?

11 A No, sir.

12 Q Prior to taking his statement, in your
13 conversation with him, did you give him any indication
14 of any information you had regarding Precious Harris
15 being the assistant manager at the McDonald's?

16 A No, sir, not that I recollect, no, sir.

17 Q Did he already know that?

18 A Yes, sir. Yes, sir.

19 MR. ROBINSON: Objection, your Honor. Calls for
20 speculation.

21 THE COURT: Again, I do sustain that objection
22 unless the witness knows how he would know that.

23 Restate your question.

24 MR. WESTON: Yes, sir, your Honor. I'll restate.

25 BY MR. WESTON:

1 Q As a part of his initial statements, admission to
2 you and in his written statement, did he tell you what
3 happened on the night of June the 26th, 2011 at the
4 McDonald's?

5 A Yes, sir.

6 Q Did he name the other people that were involved?

7 A Yes, sir.

8 Q Did he tell you their roles?

9 A Yes, sir.

10 Q Did he describe their relationships with him and
11 with each other?

12 A Yes, sir, he did.

13 Q Was he very specific?

14 A Yes, sir.

15 Q All right. Was his story consistent with the
16 accounts of the eyewitnesses?

17 A Yes, sir.

18 MR. ROBINSON: Objection, your Honor. Calls for
19 speculation again.

20 THE COURT: Overruled.

21 MR. WESTON: Thank you, your Honor.

22 BY MR. WESTON:

23 Q Did he indicate that there were two perpetrators,
24 him and one other person?

25 A Yes, sir.

1 Q Did he indicate that both of them had guns?

2 A He indicated that one of them had guns and that he
3 just wrapped his hand up to pretend it was a gun.

4 Q Did you find that surprising?

5 A Yes, sir, because that's not what the witnesses
6 had told us.

7 Q Was that the first time that kind of thing ever
8 happened in a statement --

9 A No, sir.

10 Q -- in your experience?

11 A No, sir. It's definitely self-serving, but it's
12 not the first time I've heard that.

13 Q Is it not uncommon for people -- is it pretty much
14 common for people who are confessing to crimes with
15 other people to minimize their involvement?

16 A Yes, sir.

17 MR. ROBINSON: Your Honor, objection. He's having
18 him testify as an expert or something like that.

19 THE COURT: He's not. He's talking about his own
20 experience. And even a layman can testify from his own
21 experience. Overruled.

22 MR. WESTON: Thank you, your Honor.

23 BY MR. WESTON:

24 Q After talking with Mr. Williams and getting his
25 admissions and then getting a written statement from

1 him, what did you do?

2 A We obtained arrest warrants for the two
3 codefendants.

4 Q That would be?

5 A Ms. Harris and Mr. Chiles.

6 Q All right. Thank you, sir.

7 That's all I have.

8 THE COURT: Cross-exam.

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q Investigator Hoover, you said I think that you had
12 been an officer for about eight or nine years?

13 A Yes, sir.

14 Q All right. And in those eight or nine years, how
15 many -- do you have to go to classes during the year or
16 over this period of time to do what you do?

17 A Yes, sir.

18 Q What kind of training do you have?

19 A Interview and interrogation courses. Obviously we
20 do a lot of in-house training, you know, with guys that
21 have been around doing it longer than I have. I try to
22 pay attention to that as well as sit in on interviews
23 and things like that.

24 Q Did you have to go to the academy to become a
25 police officer?

1 A Oh, yes, sir. Yes, sir.

2 Q During the year do you have to go through and get
3 so many hours of education --

4 A Yes, sir.

5 Q -- and classes and things?

6 A Yes, sir.

7 Q All right. You said that you went through
8 interrogation and interview-type classes. They teach
9 you techniques and things like that?

10 A Right. Yes, sir.

11 Q Okay. Techniques to try to get people to give
12 statements and stuff?

13 A Techniques to find the truth, yes, sir.

14 Q Okay. And so if you think you know something, one
15 of the things that they teach you is how to get
16 somebody to basically give you a statement and tell you
17 something?

18 A It's more of a class of communication.

19 Q Okay. You're the lead investigator on this case?

20 A Yes, sir.

21 Q And Mr. Weston has already said, I mean, there's
22 no fingerprints, there's nothing out there that -- no
23 DNA or anything like that, right?

24 A Yes, sir.

25 Q All right. Isn't it true that a footprint was

1 found on the countertop at the McDonald's that night?

2 A Yes, sir.

3 Q And a gel lift was taken by one of the forensics
4 officers and is in property in evidence at this time?

5 A Yes, sir.

6 Q And it was a footprint that -- tell us what it
7 was.

8 A It's a very vague shoe mark on a counter.

9 Q Okay. And you have seen it?

10 A I've seen the photographs of it. I have not taken
11 it out of property in evidence.

12 Q Did you attempt to find out what size shoe it was?

13 A No, sir. We don't have anything to compare it to,
14 so that was -- I wouldn't have gone that route.

15 Q What do you mean you didn't have anything to
16 compare it to?

17 A There is a measurement on the photo, but with a
18 generic shoe print that is very indefinite, with
19 nothing to compare it to, another shoe, something of
20 that nature, it's just an imprint.

21 Q This case is three years old, isn't it?

22 A Yes, sir.

23 Q And in the past three years has anybody thought to
24 maybe take a print or find out what size this shoe
25 print was and maybe compare it to one of the defendants

1 in this case?

2 A The shoe is so generic, I believe in my opinion,
3 which it looks like an Air Force 1 to me, but I can't
4 even tell what type of shoe it is. So I'd have to have
5 something definitive and definitive to make a match.

6 Q Well, let me just ask you this. Did you ever ask
7 Mr. Williams --

8 MR. WESTON: Objection, your Honor.

9 THE COURT: State your objection.

10 MR. WESTON: Your Honor, I think we need to do
11 this outside the presence of the jury.

12 THE COURT: All right.

13 Mr. Foreman, ladies and gentlemen of the jury, I'm
14 going to ask you to retire to the jury room so I can
15 take up a matter of law. Do not undertake the
16 discussion of the case among yourselves in any way.

17 (WHEREUPON, the jury exited the courtroom
18 at 10:39 a.m.)

19 THE COURT: All right. State your concerns,
20 Mr. Weston.

21 MR. WESTON: Your Honor, counsel asked and said,
22 "Did you ever ask Mr." -- I thought he meant
23 Mr. Chiles. If he says no because he exercised his
24 right against self-incrimination, both he and/or Mr.
25 Robinson are going to jump up and yell mistrial.

1 I mean, I don't think --

2 THE COURT: I'm not sure -- that's the thing I was
3 concerned about is not if they ask it. Of course
4 Ms. Harris might jump up, but he's not talking about
5 Ms. Harris at this time.

6 MR. SMITH: But I did say Mr. Williams.

7 THE COURT: Well, Mr. Williams, he's already
8 said -- he waived his rights, gave a statement.

9 MR. SMITH: But, I mean, I was not -- I understand
10 my client is the one that's on trial and has invoked
11 his right to remain silent.

12 THE COURT: He didn't have to invoke it. He
13 always has that right. That's a constitutional right.

14 MR. WESTON: Your Honor, if he wants to -- well, I
15 guess I'll be very specific. If he's going to ask
16 questions about what Mr. Williams said, that's fine.
17 I'll redirect and ask a bunch of questions about what
18 Mr. Williams said. I didn't do that, Judge, because
19 they were going to yell hearsay. But if they are going
20 to do that, I can do that on recross.

21 THE COURT: How about that. Forgive me. All
22 right.

23 Any other objection, comment or observation?

24 MR. WESTON: No, sir, your Honor.

25 THE COURT: All right. Well, then, Mr. Robinson,

1 anything you want to say?

2 MR. ROBINSON: I like to be silent, your Honor.

3 THE COURT: Pardon me?

4 MR. ROBINSON: I like to be very silent, your
5 Honor, when I have nothing to say.

6 THE COURT: All right. Anything else, Mr. Smith?

7 MR. SMITH: No, your Honor.

8 THE COURT: All right. Very good. Ask the jury
9 to join us, please.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:43 a.m.)

12 THE COURT: All right. Let the record reflect the
13 jury and alternate are in the jury box.

14 You may proceed, Mr. Smith.

15 MR. SMITH: Thank you, your Honor.

16 BY MR. SMITH:

17 Q Investigator, you had this footprint that's
18 sitting in property in evidence, right?

19 A Yes.

20 Q Isn't it possible to determine the size of the
21 foot that would go into that shoe?

22 A Should be. I'm not a forensics officer. I can't
23 attest to the type of impression that it was and how
24 they measure that. I can't testify to that.

25 Q But, I mean, should they not be able to at least

1 look at the shoe or the print and say, "Hey, this is --
2 this came from a size ten shoe"?

3 MR. WESTON: Objection, your Honor. Asked and
4 answered.

5 THE COURT: Well, let's go ahead and finish it up.

6 THE WITNESS: It appeared vague to me. I don't
7 know if that is one that they need -- that they say is
8 definitive enough to make a measurement off of. I
9 don't know.

10 BY MR. SMITH:

11 Q Okay. When the statements that were given, they
12 said he jumped over the counter?

13 A Yes.

14 Q So we know that that footprint came from one of
15 the people that went into the store?

16 A Most likely, yes.

17 Q Because they had already cleaned the place, right?

18 A I'm assuming. According to the testimony I heard
19 yesterday, yes, sir.

20 Q Okay. You know and people don't usually put
21 footprints on counters?

22 A Correct.

23 Q The cell phone that you say you took from
24 Ms. Harris?

25 A Yes, sir.

1 Q Did y'all get any text messages off that cell
2 phone?

3 A I would have to go back. I know there were text
4 messages on there, but none that I used for evidentiary
5 value, no, sir.

6 Q So there may have been some text messages, but
7 there's nothing that relates to this case?

8 A Not that I'm aware of, no, sir.

9 Q And the only thing that I believe that you say you
10 have are some numbers that have been gone back and
11 forth at this -- around this time?

12 A Yes, sir, before and after that general time
13 period.

14 Q And weren't there other numbers that were on the
15 phone as well that were around this period of time?

16 A Prior to those.

17 Q Prior to those?

18 A Yes, sir. I mean, there were other phone numbers
19 on the phone, yes, sir.

20 Q There were no other numbers that were in -- in
21 between the other --

22 A I can look and see, if you don't mind.

23 Q Can you refresh your recollection, please?

24 A The number that I'm looking at are call numbers
25 523 through 525, and there are three in sequence right

1 there in a row. I've only got that one page of phone
2 calls, but there are three right in a row. One of them
3 appears to be 27 seconds in duration, one is seven,
4 seven seconds duration, and one is two minutes and
5 55 seconds.

6 Q So 523 and 525 are the same number, right?

7 A Yes, sir.

8 Q And 524 is a different number, isn't it?

9 A Yes, sir.

10 Yes, sir. Yes, sir, it is split. Yes, sir.

11 Q All right. Now, you had two witnesses. One says
12 that the people went towards the Polo Apartments, the
13 rear of the store to the bottom; is that right?

14 A Yes, sir.

15 Q Now, it's not marked on this exhibit, but are the
16 Polo Apartments, if you're looking at this exhibit, are
17 the Polo Apartments down to the bottom right corner of
18 the exhibit that we've been marking on?

19 A Yes, sir, a little bit -- almost at a veer
20 straight, almost at a 90 that way.

21 Q So another witness said that the individuals ran
22 towards the Spinx station, which is up towards the
23 right-hand -- upper right-hand corner of the exhibit
24 that we've been talking about?

25 A Yes, sir.

1 Q I know we haven't marked on it, but I want to be
2 clear. Got to establish a record.

3 A Sure.

4 Q So what did you do -- I know you said you went
5 around trying to find video surveillance records. What
6 did you do to find video surveillance records?

7 A There -- that corner right there, there is a Spinx
8 there. There is another couple stores out here to the
9 side. And at the time -- I don't know if they do now
10 or not -- but at the time none of those had any video
11 that showed anything at all. These didn't have any
12 outside video, and the Spinx up there was just an
13 inside of the store. It didn't show anything going on
14 out there at all.

15 Q All right. So you did actually go to the Spinx
16 station to find out?

17 A Yes, sir. I went to a lot of businesses around
18 there.

19 Q Did you go around to the back -- was there
20 anything in the back back there?

21 A Back this way?

22 Q No, to the back towards the Polo Apartments.

23 A Yeah, I think there is another -- I think there's
24 some more stores there. It's hard to tell from the
25 aerial here, but I think there's more stores down to

1 the -- like a Chinese restaurant and stuff down there
2 to the back.

3 Q Okay.

4 MR. SMITH: Judge, if I may have one moment.

5 THE COURT: Certainly.

6 MR. SMITH: Judge, I think that's all I have at
7 this time.

8 THE COURT: Very good. All right.

9 Mr. Robinson.

10 MR. ROBINSON: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. ROBINSON:

13 Q Officer Hoover, you've got your case file, don't
14 you?

15 A Yes, sir.

16 Q Can you turn to the statement of Mr. Williams for
17 a second?

18 A To Mr. Williams?

19 Q Mr. Williams' statement.

20 A Yes, sir.

21 Q Okay. Are you at it yet?

22 A Yes, sir.

23 Q Now, that statement by Mr. Williams, that was
24 typed up by your office, wasn't it?

25 A Yes, sir, it was.

1 Q You actually have in your office, at that time you
2 had a recording device, a camera that would take a
3 video of that person, whoever it was, giving a
4 statement; is that correct?

5 A Not at this time.

6 Q Not at that time?

7 A Yes.

8 Q So you have no video or audio? Did you have a
9 tape recorder at that time --

10 A No, sir.

11 Q -- tape-recording this person?

12 A No, sir.

13 Q So you have no audio and no video at the time, and
14 you typed that statement, correct?

15 A Yes, sir.

16 Q Okay. The jury has nothing else except your typed
17 statement of Mr. Williams, correct? That's what you
18 have there?

19 A Well, from Mr. Williams.

20 Q But it's your typed statement?

21 A Yes.

22 Q You typed it out, correct?

23 A Yes, sir, I did.

24 Q And let's turn to Officer Horne's investigation.

25 As Mr. Smith stated or asked you about, you were the

1 lead investigator in this case, right?

2 A Yes.

3 Q Now, did you make attempts prior to today or
4 yesterday to locate Mr. Goodman?

5 A Yes, sir. I actually called him initially when --
6 after a couple of our interviews just to touch base
7 with him and gather some information mostly of the
8 security issues. I wanted to revisit some of that
9 stuff with him. But he never came in to provide a
10 written statement or anything like that. It was just
11 over the phone, you know, should we need to get ahold
12 of some of your policies and things like that, just
13 over-the-phone kind of stuff.

14 Q Regarding the trial yesterday and today, did you
15 try to get ahold of him?

16 A No, sir, I did not.

17 Q So there -- he was not available to come to trial,
18 to your knowledge, was he?

19 A Not to my knowledge.

20 Q Okay. Now, let's turn to Officer Horne's report.
21 And I want you to -- that would be page three of his
22 report, if you don't mind.

23 A Okay. I'm on it.

24 Q Okay. And let's look at the second paragraph.
25 Are you there?

1 A Yes, sir.

2 Q Okay. Now, you would agree with me, looking at
3 the report of Officer Horne, that Mr. Goodman stated
4 that --

5 MR. WESTON: Objection, your Honor.

6 THE COURT: What's your objection?

7 MR. WESTON: Your Honor, he is basically getting
8 ready to put hearsay in from his question about another
9 officer's report. He didn't take that report. He was
10 not present when those statements were made. He can't
11 attest to them.

12 MR. ROBINSON: It's an exception, your Honor.

13 THE COURT: I was curious. What exception are you
14 using?

15 MR. ROBINSON: It's the declared unavailable, your
16 Honor, in this case. That would be Mr. Goodman.

17 THE COURT: Mr. Goodman. So you're using another
18 investigator's report of Mr. Goodman's testimony?

19 MR. ROBINSON: Yes.

20 THE COURT: I'm going to overrule your objection.

21 You may proceed.

22 BY MR. ROBINSON:

23 Q Now, you would agree with me that from this report
24 Mr. Goodman indicated --

25 THE COURT: Just a moment. Have you seen that

1 report?

2 THE WITNESS: This report, the initial report?

3 THE COURT: Is that a part of your file?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Proceed.

6 MR. ROBINSON: Thank you, Judge.

7 BY MR. ROBINSON:

8 Q -- that he indicated that the camera, the security
9 camera in that store, had been inoperative for two
10 weeks and was not operating, was not working that
11 night, correct?

12 A Yes, sir.

13 Q He also indicated that there was a -- procedure
14 that was violated when -- this is going to be line four
15 or five -- that Michael, one of the witnesses, should
16 not have left the restaurant without letting someone
17 know; isn't that correct?

18 A Yes, sir, that is what it says.

19 Q Now, I want you to also -- let's go -- so we've
20 got from the report -- we've got from the report of
21 Detective Horne or Investigator Horne that the camera
22 had been broken for a period of time, correct?

23 A Yes, sir.

24 Q And also that there was a security matter breached
25 when that person -- when that witness left the store

1 without letting anyone know, correct?

2 A Correct.

3 Q So let's talk about Precious Harris for a second.

4 I think you testified on direct examination by

5 Mr. Weston that you had no prior dealings with her, you

6 have never met her before and so forth, correct?

7 A No, sir.

8 Q Okay. Now, you would admit that she was very

9 cooperative with you, correct?

10 A Yes, sir. She came in just like we asked.

11 Q Came in and so forth?

12 A Yes.

13 Q Okay. And in terms of these phone calls that you

14 talk about, you would acknowledge that you don't know

15 what these phone calls were about, do you?

16 A No, sir.

17 Q Now, in terms of the -- the -- Mrs. Harris, in

18 your investigation, you never -- did you -- you didn't

19 go to her or did you go to her place of residence to

20 see -- to investigate her house or anything like that?

21 A No. We called her to us.

22 Q Okay. Did you ever find any money on her or

23 anything like that, any bank accounts or things like

24 that to indicate she had any more money?

25 A No.

1 Q So there's no property or money from that incident
2 that you can connect with Ms. Harris, can you?

3 A No, sir.

4 MR. ROBINSON: Beg the Court's indulgence for just
5 one second.

6 THE COURT: Certainly.

7 MR. ROBINSON: That's all I have. Thank you, your
8 Honor.

9 THE COURT: All right.

10 Redirect.

11 MR. WESTON: Thank you, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. WESTON:

14 Q Let's begin, Investigator Hoover, with counsel's
15 questions to you about the other officer's report,
16 Jonathan Horne. Would you turn back to the page that
17 counsel pointed you to about the security violations.
18 I think it's a little bit incomplete.

19 A Okay.

20 Q Would you read the second paragraph that begins
21 with "Steve Goodman." Do you see that?

22 A The second paragraph?

23 Q Yeah. The same page you were on before, just the
24 second paragraph that begins with "Steve Goodman,
25 comma."

1 A Yes, sir.

2 Q All right. Would you go to line three, middle of
3 the paragraph -- middle of that line, period, where it
4 says, "He stated."

5 A Yes, sir.

6 Q Would you read that full sentence that Mr. Goodman
7 said.

8 A "He stated that the three employees at the
9 restaurant tonight violated a few safety procedures."

10 Q How many employees were, in addition to Quinzell
11 Davis and Mr. Cunningham (sic), who was the other
12 employee in there that night according to your
13 information?

14 A Ms. Harris.

15 Q Now, with regard to -- so he basically said all
16 three of them committed violations --

17 A Yes, sir.

18 Q -- not just Mr. Cunningham, by walking out the
19 door?

20 A That's right.

21 THE COURT: Just a minute. Cunningham or
22 Culbertson?

23 MR. WESTON: I'm sorry. Culbertson.

24 BY MR. WESTON:

25 Q Now, let's go back to the phone numbers counsel

1 asked you about. He said there were two numbers, and
2 then there was another separate number in the middle,
3 two calls that were divided by a separate call around
4 the time of the robbery. What was the telephone number
5 of the two calls?

6 A -2335. And it's split with one other number.

7 Q All right. And it's -2335?

8 A Yes, sir.

9 Q Thank you, sir. Now, final thing. Counsel said
10 to you -- I don't think I'm quoting exactly, but pretty
11 much Mr. Robinson said, "And Ms. Harris was
12 cooperative, wasn't she," and you said yes.

13 A (Nodding.)

14 Q Did you find that she was totally --

15 MR. SMITH: Judge, he just nodded. I think he
16 needs to answer out loud.

17 THE COURT: Oh, excuse me. I'm sorry. I missed
18 that. The court reporter is taking down the testimony,
19 so you have to speak, vocalize your responses.

20 THE WITNESS: Yes, sir.

21 BY MR. WESTON:

22 Q Is that what he said and what you said as you
23 recall in his cross-examination?

24 A Yes, sir.

25 Q Did you find that she was totally candid with you

1 about the workings of her cell phone?

2 A Not totally, no, sir.

3 Q How was she not candid with you, sir?

4 A She had mentioned to -- while she was speaking to
5 Investigator Jones, I was there with her, and she
6 mentioned that her phone was dead during this time
7 period, which didn't mean anything at that point to me
8 until I got these phone records back.

9 Q Did you find that her phone was, in fact, dead
10 during that time period?

11 A No, sir.

12 Q Was it operable according to the phone records?

13 A Yes, sir.

14 Q Thank you, sir.

15 Nothing further.

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

17 THE WITNESS: Thank you, your Honor.

18 THE COURT: All right. You may call your next
19 witness.

20 MR. WESTON: Your Honor, the State calls Mr. Keith
21 Williams.

22 KEITH WILLIAMS,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: Sir, would you please state your name
25 for the record.

1 THE WITNESS: Keith O'Brian Williams.

2 THE CLERK: Thank you, sir.

3 THE COURT: You may proceed.

4 MR. WESTON: Thank you, your Honor. May it please
5 the Court.

6 DIRECT EXAMINATION

7 BY MR. WESTON:

8 Q Mr. Williams, do you know David Chiles?

9 A Yes, I do.

10 Q How do you know him?

11 A That's my brother.

12 Q Do you know Precious Harris?

13 A Yes, I do.

14 Q How do you know her?

15 A It was my brother's girlfriend at the time.

16 Q At the time, you mean back in June of 2011?

17 A Right.

18 Q Were they living together?

19 A Right.

20 Q Did you rob the McDonald's on June 11th --

21 June 26, 2011?

22 A No, I didn't.

23 Q Do you deny that you participated in the robbery

24 on June 26th of 2011?

25 A Yes, I do.

1 Q Where are you presently living?

2 A Central Court.

3 Q What is that, a house?

4 A Trailer park.

5 Q Are you not right now in the Department of
6 Corrections, sir?

7 A Right.

8 Q So you're not living at that address you just
9 gave?

10 A Right.

11 Q Why did you lie about that?

12 A About what?

13 Q Where you live.

14 A Now?

15 Q Yes, sir, now.

16 A Well, yeah, I'm in SCDC, yeah. Yeah.

17 Q Why are you in the Department of Corrections, sir?

18 A Because I pled --

19 Q For what?

20 A For this charge, I pled guilty.

21 Q And why are you now saying you didn't do it?

22 A Because I never did. If my lawyer at the time
23 knew that Investigator Hoover did things unlegally
24 (sic), I would have never pled guilty.

25 Q All right. Let's just lay this out so everybody

1 understands where we are.

2 Okay. You were arrested on -- this took place in
3 June of 2011?

4 A Correct.

5 MR. WESTON: Your Honor, permission to treat the
6 witness as hostile.

7 THE COURT: Of course.

8 MR. WESTON: Thank you.

9 THE COURT: Unless there's some objection that
10 would say an inmate is friendly to the State.

11 MR. SMITH: No objection, your Honor.

12 THE COURT: Mr. Robinson?

13 MR. ROBINSON: (Shaking head.)

14 THE COURT: Let me explain to the jury the reason
15 that the motion has been made to declare the witness
16 hostile. I mentioned about leading questions. You
17 cannot lead your own witness. In other words, on
18 cross-examination of the other side's witnesses, you
19 may ask leading questions.

20 However, if a witness is for a particular reason
21 declared hostile to you, then, of course, you treat
22 them as if they were the other side's witness and you
23 can lead. So that was the reason the motion was made
24 and I granted it.

25 All right. You may proceed.

1 MR. WESTON: Thank you, your Honor. May it please
2 the Court.

3 BY MR. WESTON:

4 Q Do you remember giving a statement to Investigator
5 Hoover -- or, excuse me. I don't want to put words in
6 your mouth. Do you remember signing a statement in the
7 presence of Investigator Hoover in August, in fact on
8 August --

9 A 17th.

10 Q -- 17th of 2011?

11 A Right.

12 Q You remember that?

13 A Right.

14 Q You remember that statement?

15 A Right.

16 Q Do you remember what was in that statement?

17 A Right. I do.

18 Q And you remember telling Investigator Hoover that
19 you were -- that you drove your brother to the
20 McDonald's that Ms. Harris was the manager of on the
21 night of June 26th or the morning of June 26th?

22 A No.

23 Q You never told him that?

24 A No.

25 Q Do you remember telling Investigator Hoover that

1 your brother used your telephone at least twice to call
2 Ms. Harris to make sure that nobody else was still in
3 the restaurant? Do you remember telling him that?

4 A No, I didn't.

5 Q Do you remember telling Mr. Hoover -- let me ask
6 you this first. Is your brother's nickname Yank?

7 A Correct.

8 Q All right. Do you remember telling Investigator
9 Hoover, "Then Yank got out of the car and went to the
10 parking lot and came back"?

11 A No, I didn't tell him that.

12 Q Do you remember telling Investigator Hoover, "He
13 then got back in the car and called and said she was
14 fixing to leave but she told him no, not to leave yet"?

15 A I didn't tell him that either.

16 Q Do you remember telling Investigator Hoover, "We
17 waited and then she called back and asked us if we were
18 gone yet"?

19 A I didn't tell him that neither.

20 Q Do you remember telling Investigator Hoover, "Then
21 he got out of the car again," meaning Yank?

22 A Didn't tell him that neither.

23 Q Do you remember telling Investigator Hoover, "This
24 time I got out with him. We checked both sides and one
25 of the doors was open"?

1 A Definitely didn't tell him that.

2 Q Do you remember telling Investigator Hoover, "We
3 went up there, we went in, and I went in"?

4 A Didn't tell him that neither.

5 Q Do you remember telling Investigator Hoover, "He
6 went around the counter and was yelling, 'Put it in the
7 bag'"?

8 A Didn't tell him that neither.

9 Q Do you remember telling him, "I stayed at the cash
10 register"?

11 A Didn't tell him that neither.

12 Q Do you remember telling him then, "Yank went
13 around to the back to where Precious was. I saw him
14 with a gun, and it looked like a cap gun, and it was
15 black with a gray handle"?

16 A I didn't tell him that neither.

17 Q Do you remember telling him then, "I had my hand
18 wrapped up in my shirt"?

19 A I didn't tell him that neither.

20 Q Do you remember telling him, "I was wearing a
21 white shirt and a blue jean short"?

22 A I told him that.

23 Q So now this is August of 2017 (sic) --

24 A Right.

25 Q -- about an event in June of 2017 (sic)?

1 A Right.

2 Q Where did you tell him you were with these clothes
3 on?

4 A I told him I was at the club.

5 Q But you remember what you were wearing that night?

6 A Right.

7 Q And you were in the club with a white shirt,
8 T-shirt, and blue jean shorts?

9 A Uh-huh, and a red cap.

10 Q In the club?

11 A Right.

12 Q With blue jean shorts?

13 A Right.

14 Q Okay. Do you remember telling Investigator
15 Hoover, "I don't remember what Yank was wearing. We
16 were driving my car which is a silver Malibu"?

17 A I told him I drove a silver Malibu, but I told him
18 I ain't never knew what my brother had on because I
19 wasn't with my brother at that time.

20 Q Do you remember telling Investigator Hoover, "I
21 think they used the money to move out of Dixie, and he
22 bought some new stuff for Precious' little girl"?

23 A I didn't tell him that neither.

24 Can I ask you a question?

25 Q No, sir. I'm sorry. What I say is not evidence,

1 so I can't answer your questions. I apologize. You
2 just have to answer mine.

3 A All right.

4 Q That was in August of 2017 -- I'm sorry, August of
5 2011. Do you remember signing that statement?

6 A I do. I do.

7 Q And do you remember reading it before you signed
8 it?

9 A No.

10 Q Why did you sign it?

11 A Because I believed that Investigator Hoover,
12 whatever I was telling him at that time, that he was
13 putting it in the correct form.

14 Q Can you read?

15 A Definitely.

16 Q Let me ask you if you can read this line right
17 here. I'm not going to ask you to read it out loud.
18 Ask you can you read this line right here. Right here,
19 "I have." Starting with, "I have."

20 A I can read.

21 Q Is that your signature right there?

22 A Right.

23 Q What does that line say?

24 A "I have read the above statement and it is true
25 and correct as I best recall."

1 Q So why did you sign this if this is not true?

2 A Why did I sign it?

3 Q Yes, sir. You said you can read. You said -- you
4 signed a statement saying "I have read it." Now you're
5 saying -- you've pled guilty to it --

6 A I didn't -- I didn't -- I didn't --

7 Q Let me finish my question, sir, please. I'll let
8 you answer, I promise.

9 MR. SMITH: Judge, I object --

10 THE COURT: Gentlemen. Slow down.

11 MR. WESTON: Sorry, your Honor.

12 THE COURT: State your question. And once you
13 finish the question, the witness can answer. And if he
14 needs to explain his answer, he can do that, too.

15 MR. WESTON: Yes, sir. Thank you, your Honor.

16 THE COURT: Go ahead. State your question.

17 BY MR. WESTON:

18 Q You have signed this statement. You have
19 subsequently pled guilty to this, which we'll get to in
20 a minute. Why are you now saying you didn't read this
21 statement?

22 A Because Investigator Hoover just told me to sign
23 where I signed. He didn't tell me to read nothing. He
24 just told me to sign where I needed to sign and I did.

25 Q So did you know Investigator Hoover before this

1 date?

2 A No.

3 Q How would he know that your brother's nickname was
4 Yank unless you told him?

5 A I didn't know he didn't know my brother's name was
6 Yank.

7 Q No, it's in the statement. But you're saying this
8 is not your statement.

9 A Right.

10 Q How could he have possibly known that, sir?

11 A From the resources he said that he got from
12 Precious' phone.

13 Q How could he possibly have known that Precious and
14 Yank were living together if you didn't tell him that?

15 A I didn't tell him that. He told me --

16 Q It's in the statement, sir. How can he possibly
17 have known that if he never met you and he didn't know
18 them --

19 A He already -- he already knew them before he came
20 to me.

21 Q How do you know he knew them, sir?

22 A Because he told me that.

23 Q So he told you he knew these people and all this
24 is some big conspiracy to get you?

25 A Right.

- 1 Q And you walk right into it and pled guilty?
- 2 A No.
- 3 Q Didn't you plead guilty?
- 4 A I did.
- 5 Q Okay. We're going to get to that.
- 6 A All right.
- 7 Q How old are you, sir?
- 8 A 24.
- 9 Q And you can read and write?
- 10 A Right.
- 11 Q And you're not stupid?
- 12 A No.
- 13 Q And I'm not trying to be disrespectful. I want to
14 make sure we're all clear here.
- 15 A Right.
- 16 Q That was in August of 2011?
- 17 A Uh-huh.
- 18 Q You didn't have a lawyer then --
- 19 A No.
- 20 Q -- when you gave that statement?
- 21 A Right.
- 22 Q Then you got a lawyer. You got charged, and then
23 you got a lawyer?
- 24 A Right.
- 25 Q And on February 4th of 2014, a year and a half

1 later, you stood in a courtroom just like this one at a
2 podium just like this and pled guilty to armed robbery
3 and conspiracy, didn't you, sir?

4 A I did.

5 Q Was the judge in on this big conspiracy and the
6 court reporter and everybody? Why did you do that?

7 A Because, for once -- for one, my lawyer at the
8 time told me that he didn't have another defense. My
9 choice was to plead to ten years or go to -- proceed
10 with trial. But he felt like if I would have proceeded
11 with trial, I would get 20 years. So, therefore, why
12 would I take -- put myself in a situation and get more
13 time than they offer. I got two kids. So me doing the
14 least time, I'll do the least time, 18 years out of
15 20 years.

16 Q Do you remember when you pled guilty in front of
17 Judge John, you swore an oath to tell the truth that
18 morning, didn't you?

19 A I did.

20 Q And he asked you a number of questions about
21 whether the plea was voluntary and whether you had
22 enough time to talk to your lawyer and whether you were
23 pleading guilty because you were guilty, and you told
24 him yes, didn't you?

25 A I did. I did.

1 Q And when it was read into the record the facts of
2 the case which said that you conspired with Precious
3 Harris and your brother, David "Yank" Chiles, and that
4 y'all robbed the McDonald's together, and the judge
5 asked you -- and there is a transcript of it -- the
6 judge asked you is all of that true, what did you tell
7 him?

8 A Yes.

9 Q So I understand you say you're pleading guilty
10 because you've got a child and, "I had to take ten
11 years, and I didn't want to go to jail for longer,"
12 yadda, yadda, yadda. Why did you take them down with
13 you?

14 A I didn't take them down with me.

15 Q In court you could have told the judge, "I did it
16 and I'm pleading guilty but they didn't do it."

17 A You're right.

18 Q You took them down with you on the day of your
19 plea. Why did you do that, sir?

20 A I didn't take them down. My lawyer told me to
21 tell the judge yes to everything.

22 Q But you told -- I'm going to end this. You told
23 the judge they did it with you that day, didn't you?

24 A Yeah, I did.

25 Q And that's what this statement you signed said,

1 they did it with you, didn't it?

2 A It did. That's what the statement says.

3 Q But now you're saying you didn't rob the
4 McDonald's?

5 A I didn't.

6 Q And they didn't have nothing to do with it?

7 A Right.

8 Q Your brother and his girlfriend?

9 A Right.

10 Q Thank you, sir.

11 That's all I've got.

12 THE COURT: Mr. Smith.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q You're Keith Williams?

16 A Yes, sir.

17 Q And you are David Chiles' brother?

18 A Yes, sir.

19 Q Mr. Williams, I'm going to have some of the same
20 questions that Mr. Weston had for you. I mean, there
21 is a statement that you gave to Investigator Hoover; is
22 that right?

23 A Correct.

24 Q And is it your testimony here today that that
25 statement is incorrect?

1 A Correct.

2 Q There are some things in that statement that are
3 true?

4 A Correct.

5 Q And there are some things in there that are not
6 true?

7 A Correct.

8 Q And I know Mr. Weston went through a lot of the
9 things that you said were not true.

10 A Right.

11 Q In that statement, did it -- isn't it true that
12 you stated that Mr. Chiles --

13 A Uh-huh.

14 Q -- was using your phone to text Ms. Harris?

15 A Repeat that again.

16 Q In your statement, isn't it true that there is a
17 statement in there where you said that Mr. Chiles --

18 A Correct.

19 Q -- started to use your phone to text Ms. Harris?

20 A Right.

21 Q You pled guilty in February of 2014; is that
22 right?

23 A Correct.

24 Q You were arrested back around August of 2011?

25 A Correct.

1 Q So there was almost, what, two and a half to three
2 years had gone by before your guilty plea?

3 A Correct.

4 Q Did you have an attorney at that time?

5 A I did.

6 Q All right. During that time leading up to the
7 time you pled guilty -- not beforehand when you were
8 dealing with Investigator Hoover --

9 A Uh-huh.

10 Q -- but afterwards at some point you got an
11 attorney?

12 A Right. Right. Right. Right.

13 Q You had conversations with your attorney?

14 A I did.

15 Q And if I heard your testimony a few minutes ago,
16 you basically said something about you followed your
17 attorney's advice?

18 A Right.

19 Q What did your attorney advise you to do?

20 A Plead guilty.

21 MR. WESTON: Objection, your Honor.

22 THE COURT: What's your objection?

23 MR. WESTON: Hearsay.

24 THE COURT: I think it came out on examination, so
25 I'm going to -- that there was a communication between

1 the attorney.

2 MR. WESTON: Yes, sir, your Honor.

3 THE COURT: So I'm going to let him ask the
4 question.

5 Overruled.

6 BY MR. SMITH:

7 Q Well, your attorney advised you. What did he
8 advise you to do?

9 A Plead guilty.

10 Q And that was based on the evidence?

11 A Right.

12 Q Did you talk with your attorney --

13 A I did.

14 Q -- and tell him?

15 A I did.

16 Q Isn't it true that y'all met sometime in July of
17 2013?

18 A Yes, we did.

19 Q All right. And what did you tell him in July of
20 2013?

21 A I told him that my statement was illegally
22 detained (sic), that the confession should not even
23 have been supported as evidence.

24 Q And why were you telling him that then?

25 A Because at the time I didn't know that

1 Investigator Hoover was improperly arresting me --
2 arrested me for this charge.

3 Q So you thought there was some legal issues out
4 there?

5 A Right.

6 Q That there were some things that had been done
7 wrong?

8 A Right.

9 Q All right. So let me ask you this. Did you sit
10 down with your attorney in July of 2013 and go through
11 the statement and tell him the things that were wrong?

12 A I did. I did.

13 Q And even knowing this, you're saying your attorney
14 still advised you to plead guilty?

15 A Correct.

16 Q Isn't it true that somebody actually came forward
17 and gave a statement that you were actually in the club
18 with them on the night?

19 MR. WESTON: Objection, your Honor.

20 THE WITNESS: Correct.

21 THE COURT: State your objection.

22 MR. WESTON: He's testifying about a hearsay
23 statement, your Honor, in his question.

24 THE COURT: I'm curious about that statement.
25 What would this witness know about that statement?

1 MR. SMITH: Um, should we approach the bench,
2 Judge?

3 THE COURT: No. We're going to send the jury out.
4 Mr. Foreman, ladies and gentlemen of the jury, if
5 you would please retire to the --

6 MR. SMITH: I can just lay a foundation. That's
7 what I was trying to do.

8 THE COURT: That's what we're going do.
9 Do not discuss the case among yourselves in any
10 way.

11 (WHEREUPON, the jury exited the courtroom
12 at 11:21 a.m.)

13 THE COURT: All right. State your objection and
14 then we'll hear from Mr. Smith.

15 MR. WESTON: Your Honor, in his question he is
16 basically putting forth hearsay testimony of an alibi
17 when he has to call that witness. This witness cannot
18 testify about --

19 THE COURT: I understand. So yours is a straight
20 hearsay objection.

21 MR. WESTON: Yes, sir. He's testified about the
22 substance of someone else's statement.

23 THE COURT: Anything else other than his
24 statement?

25 MR. WESTON: No, sir, your Honor.

1 MR. SMITH: Judge, I don't vouch for that person's
2 credibility or anything else.

3 THE COURT: Whoa. Whoa. Whoa. Wait a minute.
4 Hearsay is when something is offered for the truth.
5 And so you're offering it for the truth that he was
6 somewhere else.

7 MR. SMITH: Judge, the only thing I'm offering it
8 for --

9 THE COURT: No, no. I don't know what -- I know
10 what you're doing. And that's one of the reasons we
11 have these rules against hearsay.

12 MR. SMITH: And that's what --

13 THE COURT: And if the person who wants to make
14 that statement that you're going to rely on to confuse
15 this jury with an alibi that was never raised, then
16 you're going to have to bring the individual in here
17 and have them testify.

18 MR. SMITH: Judge, one of the -- there is
19 something in the hearsay rules that says if it's
20 offered for the truth of the matter asserted. I'm not
21 saying it was offered for the truth of the matter
22 asserted or anything --

23 THE COURT: You're saying that he -- then you're
24 not saying he was at the club on that morning.

25 MR. SMITH: Only thing I'm saying is there was a

1 statement out there that somebody gave that he was not
2 there.

3 THE COURT: Well, how is that helpful to the jury?

4 MR. SMITH: Excuse me?

5 THE COURT: How is that helpful to the jury, that
6 there is a statement out there to anything? Might be a
7 statement out there that the moon is made of cheese.
8 Are you going to give that statement to the jury?

9 MR. SMITH: It's not relevant to this case, so no.

10 THE COURT: Well, I want to ask you what is
11 relevant to this case. This man has already pled
12 guilty.

13 MR. SMITH: Yes, sir.

14 THE COURT: And that would be inconsistent with an
15 alibi that if he had an alibi, he would have to give
16 them notice of the alibi. In other words, it has
17 nothing to do with this case. Unless you had the
18 person here so that Mr. Weston or the State could
19 cross-examine the witness just as Mr. Weston had to
20 cross-examine this gentleman.

21 MR. SMITH: Well, Judge, I thought earlier in your
22 ruling when I brought up this statement you had said
23 that Mr. Williams was not on trial here today, that
24 these two were here and that --

25 THE COURT: That's right.

1 MR. SMITH: -- and that that statement didn't have
2 anything to do with these two witnesses.

3 THE COURT: That's right. That's exactly right.

4 MR. SMITH: So there's no reason to bring her.

5 THE COURT: No, that's no reason to bring her
6 statement in. If you want to get the statement in,
7 bring her. I'm sorry. That's why we have rules that
8 say if somebody wants to offer something for the truth,
9 you have to bring the person in that's made the
10 statement, the declarant, not somebody that got a
11 written thing that says that was made by the declarant.

12 This gentleman has already said that you can't
13 believe statements. He signed a statement under oath
14 and he says it was incorrect. Now you want to give one
15 that we don't even have the person who gave the
16 statement here to say that it was correct.

17 MR. SMITH: Judge, the only thing I'm asking --

18 THE COURT: The only thing you're trying to do is
19 violate the rules, and I'm not going to permit it.

20 MR. SMITH: Judge, if I may just for the record.

21 THE COURT: Please, for the record.

22 MR. SMITH: Judge I'm not trying to violate the
23 rules. The only thing I'm trying to do is show that
24 the existence -- there was a statement that existed.
25 I'm not vouching for the truthfulness or whatever of

1 it. I'm saying --

2 THE COURT: Well, that's the truthfulness, isn't
3 it, that there is a statement that existed?

4 MR. SMITH: And there is a statement that exists.

5 THE COURT: What does it say? That's what you're
6 offering the statement for, otherwise it's a piece of
7 paper.

8 MR. SMITH: But as the rules say, Judge --

9 THE COURT: Go ahead. Finish your objection.
10 Unless you can get around truth and the declarant not
11 present, we have got a problem.

12 MR. SMITH: Well, the thing I'm saying is I'm not
13 offering it for the truth of the matter asserted. I'm
14 just offering it for the fact that there is a statement
15 out there. Whether it's true or not --

16 THE COURT: Well, the only thing the jury is
17 entitled to hear is the truth. Not some speculation or
18 conjecture or some, what is it, if this witness has
19 said something created out of whole cloth.

20 MR. SMITH: Judge, would it be permissible for me
21 to say something along the lines of, "There may have
22 been a -- there was a statement out there that may have
23 been helpful to you"?

24 THE COURT: No more than, "The moon is made out of
25 cheese."

1 MR. SMITH: Okay, Judge.

2 THE COURT: All right.

3 MR. SMITH: Thank you.

4 THE COURT: So let's just have truth in the case.

5 Now, this gentleman says he made a statement and
6 then he denied it. And it's going to be for the jury
7 to determine whether or not that's true, the statement
8 or his denial.

9 MR. SMITH: Yes, sir.

10 THE COURT: Okay. All right. So you're going on
11 to something else?

12 MR. SMITH: Yes, sir.

13 THE COURT: All right. Anything, Mr. Robinson,
14 anything from you?

15 MR. ROBINSON: No, sir.

16 THE COURT: All right. Very good.

17 Objection sustained.

18 MR. ROBINSON: Your Honor, may I get this -- this
19 is the statement that Mr. Weston was using with this
20 witness. Can I make a copy up here because I may ask
21 him some questions.

22 THE COURT: Sure.

23 MR. SMITH: And, Judge, while he's doing that, may
24 I just state for the record --

25 THE COURT: Why don't we take a short break right

1 now.

2 MR. SMITH: The only thing I wanted to do was say
3 that the statement we're talking about was the same
4 statement that we had a motion about earlier on. That
5 was the Starla Moss statement where I was asking for
6 that continuance based on that earlier on. I think
7 it's an exhibit.

8 THE COURT: Mark it as a defense exhibit for
9 identification.

10 MR. SMITH: I just needed to make that -- I think
11 it's already one. I just wanted to make that
12 clarification, that's the statement I was looking at.

13 THE COURT: Very good. Thank you. If nothing
14 else, we'll take a short break.

15 (WHEREUPON, recess taken from 11:27 a.m.
16 to 11:42 a.m.)

17 THE COURT: State ready to proceed?

18 MR. WESTON: Yes, your Honor.

19 THE COURT: Defendant Harris ready to proceed?

20 MR. ROBINSON: Yes, your Honor.

21 THE COURT: Defendant Chiles ready to proceed?

22 MR. SMITH: Yes, your Honor.

23 THE COURT: Let's invite the jury back.

24 MR. WESTON: Before the jury comes back, it occurs
25 to me -- I apologize, your Honor. I don't think I need

1 to call Investigator Hoover. I'm just going to put the
2 statement in on redirect through him. No need to call
3 Investigator Hoover.

4 THE COURT: You're fine.

5 That's another thing. We have prepared some
6 verdict forms.

7 Let's do ask the jury to join us.

8 Mr. Smith, we have prepared proposed verdict
9 forms.

10 MR. SMITH: Do you want me to take a look at them
11 and show them to other counsel?

12 (WHEREUPON, the jury came into open court at
13 approximately 11:45 a.m.)

14 THE COURT: All right. Let the record reflect the
15 jury and alternate are in the jury box.

16 All right. Mr. Smith, you may proceed with your
17 cross-exam.

18 BY MR. SMITH:

19 Q Mr. Williams, you've been testifying. Let me just
20 ask you a question. I mean, you gave this statement
21 that has been the subject of all this controversy.

22 A Right.

23 Q And there are some things in there that you stated
24 are true and some that you stated are not true?

25 A Correct.

1 Q Bottom line is this: Whether you had anything to
2 do with this or not, did David Chiles have anything to
3 do with this armed robbery at the McDonald's that we're
4 here for today?

5 A No, sir.

6 Q Did Precious Harris, as far as you know, have
7 anything to do with this armed robbery that we're here
8 for today?

9 A No, sir.

10 Q But you pled guilty to this in February of 2014.
11 I mean, this was -- this is like eight months ago?

12 A Correct.

13 Q What -- I mean, why -- why?

14 A Well, due to the fact that my lawyer said that my
15 statement was incriminating and there was no way around
16 it, and he didn't have no other proper defense for it,
17 my best bet was for me to plead guilty.

18 Q Your best bet was to plead guilty?

19 A Correct.

20 Q And were you hoping to get some benefit by going
21 ahead and pleading guilty?

22 A Not really. I really thought I was going to get
23 found not guilty, but at the same time when he told me
24 that there was no way around me -- no other defense for
25 me, my statement against, suppress anything, my best

1 bet would be to take the ten-year plea.

2 Q And so that's what you did?

3 A Correct.

4 Q If you had gone to trial, did you think you would
5 have gotten more time than ten years?

6 A From the advice of my attorney, yes.

7 Q The bottom line is today you're here and you're
8 saying that this statement is not correct?

9 A Correct.

10 Q So what do you say happened that night, if you
11 remember?

12 MR. WESTON: Objection, your Honor.

13 THE COURT: I'm going to overrule the objection.
14 You may proceed.

15 BY MR. SMITH:

16 Q What do you say happened that night?

17 A Well, I do recall that the day before this
18 incident happened, I did talk to my brother. He asked
19 me could I give him a ride someplace. I told him I
20 would. I agreed that I would.

21 So the day the incident happened, I talked to him,
22 and I told him, I mean, I'd give him a ride still. But
23 I never heard from him no more that day until later on
24 that night, around the incident happened. But by the
25 time the incident was occurring, I was in the club or

1 heading to the club.

2 Q And you didn't have anything to do with this
3 robbery yourself?

4 A Correct.

5 MR. SMITH: Judge, I think that's all I have.

6 THE COURT: Very well.

7 MR. ROBINSON: May it please the Court.

8 THE COURT: Certainly.

9 MR. SMITH: Judge, I tell you what, I do have one
10 or two other questions, if I may.

11 BY MR. SMITH:

12 Q What size shoe do you wear?

13 A Nine and a half.

14 Q Do you happen to know what size shoe your brother
15 wears?

16 A No idea.

17 Q Okay. Fine. Thanks.

18 THE COURT: All right. Now, Mr. Robinson.

19 MR. ROBINSON: May it please the Court.

20 THE COURT: Sir.

21 MR. ROBINSON: Thank you, your Honor. May I
22 approach?

23 THE COURT: Certainly.

24 CROSS-EXAMINATION

25 BY MR. ROBINSON:

1 Q Mr. Williams, you have had the opportunity to
2 listen to Mr. Weston and Mr. Smith about your statement
3 that you gave back in August of 2011. Do you remember
4 that?

5 A Correct.

6 Q Is this a copy of your statement?

7 A It is.

8 Q May I have this marked Defense Exhibit, for
9 identified purposes, only Number 1.

10 (WHEREUPON, Defendant's Exhibit Number 1
11 was marked for identification.)

12 BY MR. ROBINSON:

13 Q I want to let you look at what's been marked for
14 identification purposes only 1, for identification
15 purposes only. Now you have got a copy of that?

16 A Yes.

17 Q Now, this was typed out actually by Officer
18 Hoover, correct?

19 A Correct.

20 Q This was done at the sheriff's department; is that
21 correct?

22 A Correct.

23 Q And I think there was -- was there another officer
24 there, too, as well?

25 A At the time of the statement?

1 Q Yes.

2 A No.

3 Q Do you know if they recorded the statement?

4 A No, they didn't.

5 Q Okay. Now, let's look at the statement for a
6 second as far as what Officer Hoover typed out here.

7 Are you looking at it?

8 A Yes.

9 Q Okay. Now, let's look at -- there's no place in
10 this statement that says anything about an agreement
11 between you all regarding this incident, is there?

12 A Right.

13 Q And, in fact --

14 MR. WESTON: Objection, your Honor. The answer is
15 nonresponsive.

16 THE COURT: All right. Restate your question. I
17 wasn't sure if I understood the question.

18 MR. ROBINSON: I'm sorry, your Honor.

19 THE COURT: No. Please.

20 BY MR. ROBINSON:

21 Q Mr. Williams, in this statement that was typed out
22 by Officer Hoover, there isn't anything in this
23 statement that indicates that Ms. Harris, Precious
24 Harris, took part in any sort of agreement, is there?

25 A Right.

1 Q Okay. In fact, the person who pointed the gun in
2 this case pointed, in this statement, pointed the gun
3 at Ms. Harris, didn't they?

4 A Uh-huh.

5 Q And, in fact, the person in this statement was
6 yelling to Precious or whoever was in the store, "Put
7 it in the bag"; isn't that correct?

8 A Yes.

9 Q And this person, Yank -- this is on line, I think
10 it's 11 or 12 -- "Yank went around to the back" --

11 MR. WESTON: Objection, your Honor.

12 THE COURT: Beg your pardon. Excuse me. State
13 your objection.

14 MR. WESTON: If he's going to read from the
15 statement, your Honor, he has to put it in evidence.

16 THE COURT: No, sir. It hasn't been put in
17 evidence for you, and you can follow up with a proffer.

18 MR. WESTON: Yes, sir, your Honor.

19 THE COURT: Overruled. I mean it's not in
20 evidence as yet.

21 MR. WESTON: I think I would make the distinction,
22 your Honor, I was asking about an inconsistent
23 statement.

24 THE COURT: Isn't that the same statement?

25 MR. ROBINSON: Same statement.

1 MR. WESTON: But he's not asking if it was
2 inconsistent with any testimony he's given today.

3 THE COURT: He's not relying on that rule. He's
4 just asking about what you published to the jury.

5 MR. WESTON: Yes, sir, your Honor.

6 THE COURT: Overruled.

7 MR. ROBINSON: I forgot my question, your Honor.
8 I'm sorry.

9 THE COURT: Something about Yank, line 11.

10 BY MR. ROBINSON:

11 Q You would agree that when Yank went around to
12 where Precious was, you saw him with a gun; isn't that
13 right?

14 A Uh-huh.

15 MR. WESTON: Objection, your Honor.

16 MR. ROBINSON: I'll withdraw -- again, your
17 Honor --

18 THE COURT: Very good.

19 MR. ROBINSON: -- I'll withdraw the question. One
20 second, your Honor.

21 THE COURT: Certainly.

22 BY MR. ROBINSON:

23 Q Mr. Williams, you testified in response to
24 Mr. Weston's questioning about the relationship between
25 your brother and Ms. Harris. Do you remember that?

1 A Correct.

2 Q Now, your brother was also dating other women at
3 the time, wasn't he?

4 A Not that I can recall.

5 Q But you have no knowledge -- as far as being
6 boyfriend and girlfriend, you have no knowledge that
7 they were living together, do you?

8 A Huh-uh.

9 Q And would it surprise you they weren't living
10 together?

11 A Huh-uh.

12 MR. SMITH: Judge, if I can -- once again, the
13 witness has said "uh-huh" or "huh-uh," and he has to
14 answer out loud.

15 THE WITNESS: No. No. I'm sorry. I'm sorry.

16 THE COURT: Let's do this. Restate your question
17 and then he'll answer --

18 THE WITNESS: Yeah, yes or no.

19 THE COURT: Perfect. Right. Thank you, sir.

20 You may proceed.

21 BY MR. ROBINSON:

22 Q You have no personal knowledge as to whether they
23 were living together or not, do you?

24 A No.

25 Q Okay. And just to follow up -- and you have no

1 information -- you have no personal knowledge that your
2 brother was not dating other women as well at the time,
3 do you?

4 A Yes.

5 Q Okay.

6 MR. ROBINSON: That's all I have. Thank you.

7 THE COURT: All right.

8 Now, Mr. Weston.

9 REDIRECT EXAMINATION

10 BY MR. WESTON:

11 Q Mr. Williams, you are denying the substance of
12 this agreement with regard to the robbery -- of this
13 statement with regard to the robbery; is that correct?

14 A Yes.

15 Q All right. Just to be clear, you do agree that
16 this is your signature at the bottom here?

17 A Yes.

18 Q Is this your handwriting right here?

19 A Yes.

20 Q What does that say? Read it to the jury.

21 A "This is my statement" --

22 Q Hold on. Speak loudly and talk slowly.

23 A "This is my statement and it is true."

24 Q And that's what you wrote at the time you signed
25 the statement?

1 A Correct.

2 Q And this is the statement you signed on
3 August 17th of 2011; is that correct?

4 A Yes.

5 MR. WESTON: Your Honor, the State would offer
6 this as State's Exhibit 8.

7 THE COURT: All right.

8 MR. SMITH: No objection.

9 MR. ROBINSON: No objection.

10 THE COURT: Without objection, State's Exhibit
11 No. 8 is admitted.

12 (WHEREUPON, State's Exhibit Number 8 was admitted
13 into evidence.)

14 MR. WESTON: Permission to publish to the jury,
15 your Honor.

16 THE COURT: Certainly.

17 BY MR. WESTON:

18 Q Just one more question. A couple questions,
19 actually. Just now you said your brother Yank, your
20 brother David Chiles, was not living with Precious
21 Harris to your knowledge?

22 A To my knowledge.

23 Q When I asked you that 20 minutes ago and you said
24 yes, they were living together, were you lying?

25 A No, sir.

1 Q You can't remember the lies you are telling, can
2 you, sir?

3 A I don't tell stories.

4 Q Didn't you say --

5 MR. WESTON: I apologize, your Honor.

6 Q Didn't you say 20 minutes ago in answer to my
7 question, a simple question at the beginning of my
8 discourse with you, I said, "And they were living
9 together, weren't they?" And you said yes?

10 A I did.

11 Q So now why are you saying no in answer to your
12 brother's lawyer's question?

13 A Now that I can think about the situation, I know
14 that and my brother was basically running all over the
15 place.

16 Q But he asked you were they living together?

17 A Right.

18 Q And you said yes less than 30 minutes ago?

19 A From my knowledge. From my knowledge.

20 Q Right.

21 A Right.

22 Q And in answer to the question from your knowledge
23 in terms of his lawyer, you said no?

24 A Right.

25 Q You're trying to help him as best you can, aren't

1 you, sir?

2 A No. No. No. No.

3 Q You're trying to help your brother as best you
4 possibly can?

5 A My brother's innocent. And Ms. Harris is
6 innocent.

7 Q And you're innocent?

8 A Correct.

9 Q And your brother is just as innocent as you?

10 A Correct.

11 Q Thank you, sir.

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

13 All right. You may call your next witness.

14 MR. WESTON: Your Honor, the State rests.

15 THE COURT: All right.

16 Mr. Foreman, ladies and gentlemen of the jury, I
17 need to take up some matters with the attorneys, so I'm
18 going to have to ask you to retire from the courtroom.

19 Now, the State has rested, meaning the State has
20 completed its case-in-chief as far as testimony and
21 exhibits, so now we need to decide how we're going
22 forward from here.

23 So if you would, please, retire to the jury room
24 for a few minutes, and I'll -- probably won't be too
25 much longer -- and I'll bring you back and we'll decide

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1 how we will proceed.

2 THE COURT REPORTER: They have that exhibit. Do
3 we need to get that back?

4 THE COURT: Oh, yes, ma'am. We do. Can somebody
5 get it? Thank you.

6 (WHEREUPON, the jury exited the courtroom
7 at 12:00 p.m.)

8 THE COURT: Back on the record. The State has
9 rested. Is there anything else you've got -- you have
10 rested now, and I'm just asking is there anything else
11 you need to do?

12 MR. WESTON: No, sir, your Honor.

13 THE COURT: All right. Very good. Now, do we
14 have motions?

15 MR. SMITH: Judge, I guess we will have motions.
16 And then I was going to state I have talked with my
17 client about testifying, and he's still of the opinion
18 he is not going to testify.

19 THE COURT: And, Mr. Robinson, is your client --

20 MR. ROBINSON: Yes.

21 THE COURT: All right. She does not wish to
22 testify?

23 MR. ROBINSON: That's correct, your Honor.

24 THE COURT: All right. What we'll do, then, let
25 me go ahead and give the admonishments to or advice to

1 the defendants as to their right to testify or to not
2 testify. And then, what is it, we can let the jury
3 really go to lunch and then we can go to lunch and
4 gather our thoughts and all and come back. And if the
5 defendants do not wish to testify or put up any
6 evidence, then I know, Mr. Robinson, you had it marked
7 only for I.D., so you haven't put any evidence in. You
8 didn't want to put up any evidence.

9 MR. ROBINSON: That's correct.

10 THE COURT: But the point is we'll come back and
11 then we'll continue. But this is a good place for the
12 jury to break as well.

13 Now, but we need some more time than normal. And
14 it looks like it will probably be about 12:30 before
15 we're finished with my instructions to the defendants.
16 So would 2 o'clock be too early?

17 MR. WESTON: 2 o'clock would be fine with the
18 State.

19 THE COURT: Mr. Smith?

20 MR. SMITH: 2 o'clock is fine.

21 THE COURT: Mr. Robinson?

22 MR. ROBINSON: Yes, your Honor.

23 MR. SMITH: Judge, when you say 2 o'clock, you
24 want us here. But now I know we have some things to
25 take up like looking at the --

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1 THE COURT: Excuse me.

2 MR. SMITH: -- looking at the verdict sheets.

3 THE COURT: We're going to give you that before
4 lunch.

5 MR. SMITH: Okay.

6 THE COURT: Do you want to say 2:30? Let's do
7 this. Can we get back at 1:30? If we get out of here
8 by 12:30, if we finish up the preliminaries, and come
9 back, let's say, 1:45.

10 MR. WESTON: Yes, sir, your Honor.

11 THE COURT: 1:45, Mr. Robinson?

12 MR. ROBINSON: That sounds great, your Honor.

13 THE COURT: 1:45?

14 MR. SMITH: Yes, sir.

15 THE COURT: And ask the jury to come back at 2:15.

16 That gives us the time to get everything else ready.

17 All right. If there's nothing else, I'll bring
18 the jury back and release them for lunch.

19 Anything from the State?

20 MR. WESTON: No, sir, your Honor.

21 THE COURT: From Defendant Harris?

22 MR. ROBINSON: Your Honor, we'll do motions after
23 we get back?

24 THE COURT: Yes. We're just stopping. The State
25 is resting its case. We're going to take up motions

1 and also instructions to the defendants.

2 Mr. Smith?

3 MR. SMITH: Good to go, your Honor.

4 THE COURT: Very good. All right. Ask the jury
5 to join us, please.

6 (WHEREUPON, the jury came into open court at
7 approximately 12:05 p.m.)

8 THE COURT: All right. Mr. Foreman, ladies and
9 gentlemen of the jury, as I say, the State has rested,
10 but there's still some things I need to take up with
11 the attorneys before we proceed. And rather than keep
12 you back here, I'm going to suggest you go ahead and
13 take your lunch break now and come back at 2:15.

14 Now, that's two hours, but we've got to take up
15 some matters before we reconvene and continue with the
16 case. So, please, if you would, go to lunch, come back
17 at 2:15, and we'll complete the case at that time.

18 Again, do not undertake the discussion of the case
19 among yourselves in any way. With that, very good. If
20 you would please retire and be back at 2:15. Thank
21 you.

22 (WHEREUPON, the jury exited the courtroom
23 at 12:07 p.m.)

24 THE COURT: Just for the record, as we discussed,
25 we will be back at 1:45 to take up motions and anything.

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1 that we need to before we proceed with the trial.

2 Do you understand, Mr. Weston?

3 MR. WESTON: Yes, sir, your Honor.

4 THE COURT: Mr. Robinson?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: Mr. Smith?

7 MR. SMITH: Yes, sir.

8 THE COURT: Now, we're at that point where I need
9 to know whether or not the defendants are going to take
10 the stand or offer any evidence. I've been advised
11 that you have discussed with your clients whether or
12 not -- of their rights, but I do need to inform them or
13 advise them of those rights.

14 Mr. Robinson -- let's see.

15 Mr. Smith, as far as Mr. Chiles, have you
16 consulted with your client?

17 MR. SMITH: I have, your Honor.

18 THE COURT: And what's his wish?

19 MR. SMITH: For the record, we've consulted
20 numerous times about this, and he has always said that
21 he did not want to take the witness stand.

22 THE COURT: Mr. Robinson, have you consulted with
23 your client?

24 MR. ROBINSON: I have, your Honor.

25 THE COURT: What does Ms. Harris say?

1 MR. ROBINSON: Yes, your Honor. She has no prior
2 record, nothing impeachable, but she feels
3 strategically it's a good idea in this case. So same
4 thing, she's not going to testify.

5 THE COURT: Very good.

6 David Wince Chiles, Jr., if would you please stand
7 and raise your right hand.

8 (WHEREUPON, Defendant Chiles was sworn.)

9 THE COURT: Very good. Thank you, sir.

10 Ms. Precious Jacquetta Harris, if would you please
11 stand and raise your right hand.

12 (WHEREUPON, Defendant Harris was sworn.)

13 THE COURT: Mr. Chiles and Ms. Harris, at this
14 time I'm going to explain to you certain of your
15 rights. If you do not understand anything I say,
16 please let me know. If you want me to explain anything
17 in more detail, please let me know.

18 Do you understand this, Mr. Chiles?

19 DEFENDANT CHILES: Yes, sir.

20 THE COURT: Ms. Harris?

21 DEFENDANT HARRIS: Yes, sir.

22 THE COURT: We have now reached a stage of the
23 trial where you may present your defense. You have the
24 right to claim the protections given to you by the
25 Fifth Amendment to the Constitution of the United

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1 States.

2 This amendment states, in pertinent part, no
3 person shall be compelled in any criminal case to be a
4 witness against himself or herself.

5 Do you understand that, Mr. Chiles?

6 DEFENDANT CHILES: Yes, sir.

7 THE COURT: Ms. Harris?

8 DEFENDANT HARRIS: Yes.

9 THE COURT: This means that you cannot be required
10 to testify in this case. You have the right to testify
11 on your own behalf. However, no one can make you
12 testify. This is a personal right and no one can waive
13 this right except you.

14 Do you understand that, Mr. Chiles?

15 DEFENDANT CHILES: (Nodding.)

16 THE COURT: Do you understand that, Ms. Harris?

17 DEFENDANT HARRIS: Yes.

18 THE COURT: If you decide to testify, you will be
19 subject to the same rules that govern other witnesses.
20 You may be examined and cross-examined on any relevant
21 issue in this case.

22 In addition, if you have any convictions involving
23 dishonesty or false statement or for crimes punishable
24 by imprisonment for more than one year and this Court
25 determines that the probative value of admitting the

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1 evidence outweighs its prejudicial effect to you, the
2 Solicitor will be able to introduce your record to
3 attack your credibility.

4 Do you understand that, Mr. Chiles?

5 DEFENDANT CHILES: (Nodding).

6 THE COURT REPORTER: Is that a "yes"?

7 DEFENDANT CHILES: Yes.

8 THE COURT: Ms. Harris?

9 DEFENDANT HARRIS: Yes.

10 THE COURT: If you decide to testify, this
11 decision on your part must be freely, voluntarily and
12 intelligently made with the knowledge of the
13 protections given to you by the Fifth Amendment and the
14 consequences of your decision to testify.

15 If you decide not to testify, I will instruct the
16 jurors that they cannot give the fact that you did not
17 testify any consideration whatsoever and that there is
18 to be absolutely no prejudice to you because you did
19 not testify.

20 It is left entirely up to you whether or not you
21 testify. You may talk with your attorney, your family
22 and friends or anyone else, but the final decision will
23 be left entirely up to you.

24 And do you understand what I've explained to you,
25 Mr. Chiles?

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1 DEFENDANT CHILES: Yes, sir.

2 THE COURT: Ms. Harris?

3 DEFENDANT HARRIS: Yes.

4 THE COURT: Do you have any questions about what
5 I've explained to you, Mr. Chiles?

6 DEFENDANT CHILES: No, sir.

7 THE COURT: Ms. Harris?

8 DEFENDANT HARRIS: No, sir.

9 THE COURT: Very good.

10 Now, I'm going to wait until we come back, but I
11 want you to consider very carefully your right to
12 testify but also your right not to testify, and at that
13 time when we reconvene, then I will ask you your
14 decision.

15 Very good. As I say, I will be instructing the
16 jury, if you decide not to testify, they cannot
17 consider it against you in any fashion whatsoever or
18 even discuss it in the jury room.

19 Do you understand that, Mr. Chiles?

20 DEFENDANT CHILES: Yes, sir.

21 THE COURT: Ms. Harris?

22 DEFENDANT HARRIS: Yes.

23 THE COURT: Very good. All right. We'll recess
24 for lunch. Come back at 1:45.

25 Let me give you the verdict forms so you can look

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1 at them.

2 (WHEREUPON, lunch recess taken from 12:12 p.m.
3 to 1:49 p.m.)

4 THE COURT: Is the State ready to proceed?

5 MR. WESTON: Yes, sir, your Honor.

6 THE COURT: Is Defendant Chiles ready?

7 MR. SMITH: Yes, your Honor. And we do have a
8 couple of motions.

9 THE COURT: I just want to be sure we all start at
10 the same time.

11 Mr. Robinson, Defendant Harris ready?

12 MR. ROBINSON: Yes, your Honor.

13 THE COURT: All right. Now, anything further from
14 the State?

15 MR. WESTON: No, sir, your Honor.

16 THE COURT: All right.

17 Mr. Smith.

18 MR. SMITH: Judge, I would make a motion for a
19 directed verdict in this case. The evidence taken in
20 the light most favorable to the State I don't believe
21 would be enough to convict my client of the crimes
22 charged at this time.

23 I base that on a number of things, Judge, but
24 just -- the evidence as a whole, but specifically --
25 and, once again, Judge, I heard you talk to the jury

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1 about taking notes, and there is a lot of times I may
2 have been taking notes so I may have missed something.
3 But there's been a lot of testimony over the past two
4 days about an armed robbery that occurred. I don't
5 know that I heard anything from any witness that talked
6 about anything that was taken from McDonald's.

7 They talk about an armed robbery. They talk about
8 two men coming in the store and two men coming out of
9 the store, but I never heard anybody testify that, you
10 know, a certain amount of money was taken, hamburgers
11 were taken, French fries were taken or anything else.
12 I just don't remember that. So, you know, I'll defer
13 to the record, but, Judge, I don't believe they have
14 met their burden of proof to show that anything was
15 taken from McDonald's.

16 But even so, Judge, I don't believe that the
17 evidence in this case warrants enough to proceed, to go
18 forward based on the charges.

19 THE COURT: All right. Do you want to address
20 that? And that would be as to Mr. Chiles?

21 MR. SMITH: Yes, your Honor, as to Mr. Chiles.

22 MR. WESTON: Yes, your Honor. Specifically with
23 regard to the issue of the money taken, Mr. Lomax
24 specifically said \$1,200 was taken in his review of
25 this.

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1 Secondarily, your Honor, with regard to the
2 broader issue of the evidence not being sufficient,
3 there is testimony from a convicted codefendant that
4 these two defendants -- or there is evidence from a
5 convicted codefendant that these two defendants
6 conspired with him and committed the armed robbery,
7 which I think is sufficient for a jury to find them
8 guilty.

9 THE COURT: All right. I'll take both motions.
10 So, Mr. Robinson, on behalf of Defendant Harris.

11 MR. ROBINSON: I have a different way to --

12 THE COURT: Well, I'll take them separately.

13 MR. ROBINSON: I'd like to take it separately, if
14 I could.

15 THE COURT: All right. As far as Defendant
16 Chiles' motion for a directed verdict, of course I'm
17 governed by Rule 19 of the rules of criminal procedure.
18 In ruling on the motion, the trial judge shall consider
19 only the existence or nonexistence of evidence and not
20 its weight.

21 And there has been some testimony, as Mr. Weston
22 has said, that there was some funds taken from the
23 manager -- or was missing from the McDonald's' receipts
24 for that day and I think even from the safe as well, so
25 I do find that there is evidence.

1 As far as the weight of that evidence, I will
2 instruct the jury there is evidence to go forward and
3 obviously sufficient evidence that there was some --
4 something happened, I think it's been referred to as an
5 incident, on, was it, June 26, 2011, that even the
6 witness said that he wasn't there when the incident
7 went down. I think he was at the club. So the fact
8 that it's controverted does not necessarily mean that
9 there is not evidence, and for that proposition I will
10 refer you to *Hoxit vs. Michelin*, that even the one
11 witness controverts his own testimony is sufficient to
12 support a finding.

13 All right. Now, Mr. Robinson.

14 MR. ROBINSON: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. ROBINSON: Your Honor, there's a suspicion
17 here. There is innuendo here, but there's not enough
18 evidence in this case -- there's not evidence presented
19 by the State that would indicate that she was a hand in
20 this alleged hand of one, hand of all conspiracy.

21 And there's two parts to my argument, your Honor.
22 First, this is what the State has put forth in their
23 case-in-chief. They have put forth the fact that she
24 was a shift manager at McDonald's at the time. They
25 have put in the fact that she had employees. One of

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1 the employees walked out the door without locking it
2 behind him. One of the employees came back in to get a
3 pizza without locking it behind him and so forth. She
4 was the shift manager at the time. She had the safe
5 open.

6 One of the employees testified that this was
7 common practice for them because it was an
8 end-of-the-night shift. Okay. We have her as a shift
9 manager, fine. We also have the fact -- and this is
10 what Officer Hoover testified to -- that that camera
11 had been broken for at least two weeks and was broken
12 at the time.

13 Because she was a shift manager, they're
14 assuming -- they are putting out the assumption that
15 because she's a shift manager, she knew about all this
16 stuff.

17 Well, I went back and looked at the exhibit that
18 the State put forth through their witness, Keith
19 Williams. If you look -- when looking at this
20 statement, there's nothing in this statement that --
21 this is bereft of any indication of any conspiracy in
22 this matter. There's an indication as far as, "She's
23 got something for me." That's about it in this matter.

24 This -- if this is what they're going to rely on
25 in putting this case before a jury, your Honor, this is

1 not evidence. This is no evidence of any conspiracy
2 between Precious Harris, this individual Yank, or Keith
3 Williams. I think that -- I think suspicion is not
4 going to be enough to carry them to the point where
5 they can get this case to the jury.

6 So I think under the rules and under the case law,
7 a mere suspicion is not going to be enough to present
8 this case to the jury, and we believe -- I
9 believe we're entitled to a directed verdict on the
10 conspiracy charge.

11 THE COURT: Very well.

12 MR. WESTON: Thank you, your Honor. May it please
13 the Court.

14 Your Honor, going directly to the statement,
15 first, counsel is correct in terms of the line items he
16 read, but he neglected to read the items that confirmed
17 from the codefendant the phone calls between this
18 defendant using his phone to his brother in the car
19 with him about when they should come into the
20 restaurant or whether everybody had gone yet.

21 Also the fact that as soon as it was confirmed
22 that everyone was gone, they came in. His -- according
23 to the codefendant and his statement -- according to
24 the codefendant's statement, he robbed his girlfriend.
25 She then told the police afterwards she did not have

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1 any idea who this was, who these people were. She
2 basically lied to cover up the conspiracy.

3 And, your Honor, there is no requirement that the
4 conspiracy include -- that it be a conspiracy jointly
5 or a linear conspiracy. It could be a wheel
6 conspiracy. The fact that she had no conversation with
7 Keith Williams at the time does not mean she did not
8 conspire with her live-in boyfriend.

9 Based on that, your Honor -- and, finally, your
10 Honor, I think this puts it to bed. The codefendant
11 testified under oath that at his plea he admitted that
12 he conspired with both defendants. And he said that
13 today, he admitted that he said that at his plea, he
14 conspired with both defendants to rob McDonald's,
15 including Precious Harris.

16 That, once again, your Honor, when considering the
17 evidence in the light most favorable to the State is
18 not a mere suspicion. It is sufficient evidence for
19 the jury to find her guilty of conspiracy as well as
20 the other charges.

21 THE COURT: All right. Anything further,
22 Mr. Robinson?

23 MR. ROBINSON: No, sir, your Honor.

24 THE COURT: All right. Again, the Court's not
25 concerned about the weight of the evidence, just the

1 sufficiency of it as to whether or not there is any
2 evidence. And the Court does find that the evidence
3 here does rise above more than mere suspicion, that if
4 you believe the witnesses, one statement or the other
5 statement -- believe one of the statements of the
6 witness, Mr. Williams, that there was a conspiracy and
7 that there was participation by the manager,
8 Ms. Harris.

9 All right. Anything else?

10 MR. WESTON: Nothing from the State, your Honor.

11 THE COURT: All right. Mr. Smith?

12 MR. SMITH: Judge, I have had an opportunity to
13 review the verdict sheets, and we have no objection as
14 to the verdict sheets.

15 THE COURT: Mr. Robinson?

16 MR. ROBINSON: No, sir.

17 THE COURT: So there will be separate verdicts as
18 to each defendant, and each verdict will address only
19 those indictments against that defendant.

20 MR. SMITH: Correct, your Honor.

21 THE COURT: Very good. Is that your
22 understanding, too, Mr. Robinson, in reading the
23 verdict forms?

24 MR. ROBINSON: It is, your Honor.

25 And one thing I do want to just, in terms of the

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1 closings, your Honor, as far as Mr. Weston's closing in
2 this matter --

3 THE COURT: You're going to make him close on both
4 of them?

5 MR. ROBINSON: No, sir, your Honor. My concern is
6 this. He just made a statement about what this guy,
7 when he made a plea of guilty in this matter, okay.
8 Because he talked about that, when he went in front of
9 a judge and pled guilty and so forth. And I just want
10 to -- that transcript was not put into the record in
11 this case. And he can talk about it, but I don't want
12 him to go willy-nilly into all sorts of things in this
13 transcript that was not put into the record in this
14 matter.

15 MR. WESTON: Your Honor, I can assure the Court I
16 will only make reference to the fact that he pled
17 guilty to the charges of armed robbery and conspiracy.
18 I won't go into the specifics of exactly what was said.
19 I won't sort of extemporaneously start talking about
20 what was said in the plea allocution.

21 And, your Honor, the verdict form, for the record,
22 State has no objection.

23 THE COURT: Very good. All right. Inasmuch as
24 the State says it will not violate your concern, then
25 no reason to read it.

1 As far as the testimony or the defendants putting
2 up any evidence or testifying, has Mr. Chiles made a --

3 MR. SMITH: Judge, he has not changed his mind.
4 He is not going to testify.

5 THE COURT: All right. And as far as Ms. Harris?

6 MR. ROBINSON: Yes, sir, your Honor.

7 THE COURT: All right.

8 Mr. Chiles, if you would please stand.

9 Now, you're under oath still. I do not need to
10 reswear you. Do you understand that?

11 DEFENDANT CHILES: Yes, sir.

12 THE COURT: Now, have you discussed with your
13 lawyer whether or not you should testify or not?

14 DEFENDANT CHILES: Yes, sir.

15 THE COURT: Do you wish to talk to your lawyer
16 anymore at this time?

17 DEFENDANT CHILES: No, sir.

18 THE COURT: And have you been able to make up your
19 mind as to whether or not you wish to testify?

20 DEFENDANT CHILES: Yes, sir.

21 THE COURT: And what is your decision?

22 DEFENDANT CHILES: No, sir.

23 THE COURT: All right. Now, do you have any
24 question about your decision, the decision that you
25 made?

Motions

1 DEFENDANT CHILES: No, sir.

2 THE COURT: All right. I find that the decision
3 of the Defendant Chiles is freely, voluntarily,
4 knowingly and intelligently made not to testify.

5 Thank you, sir.

6 Ms. Harris, you understand you're still under
7 oath?

8 DEFENDANT HARRIS: Yes.

9 THE COURT: You don't have to be resworn.

10 DEFENDANT HARRIS: Okay.

11 THE COURT: Thank you.

12 Now, have you had a chance to talk to your lawyer
13 about whether you should testify or not testify?

14 DEFENDANT HARRIS: Yes.

15 THE COURT: Do you need any more time to talk to
16 your lawyer?

17 DEFENDANT HARRIS: No, sir.

18 THE COURT: Have you made up your mind as to
19 whether or not you wish to testify?

20 DEFENDANT HARRIS: Uh-huh. Yes.

21 THE COURT: And what do you wish to do?

22 DEFENDANT HARRIS: Not.

23 THE COURT: Not testify?

24 DEFENDANT HARRIS: Not testify.

25 THE COURT: Again, I find that the Defendant

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Charge Conference

1 Harris has freely, voluntarily, knowingly and
2 intelligently made a decision not to testify, to
3 exercise her constitutional right, but I will inform
4 the jury as to both parties, defendants -- both
5 parties, defendants, that that matter cannot be
6 considered by the jury in their deliberations in any
7 fashion.

8 I'll do that when -- again, what we will do is
9 ask, after we bring the jury back, I'll recognize,
10 let's see, Mr. Smith on behalf of Mr. Chiles as to
11 whether -- I will address you to say, "You may call
12 your first witness," then you will just advise the
13 Court as well as in front of the jury that the
14 Defendant Chiles rests.

15 MR. SMITH: That's right.

16 THE COURT: Same thing with Defendant Harris.
17 Do you understand, Mr. Robinson?

18 MR. ROBINSON: Yes, your Honor.

19 THE COURT: And then we'll go into argument.

20 Inasmuch as neither defendant put up any evidence
21 or testimony, other evidence, the State has the burden
22 of proof as well as opening and closing and one
23 argument. You open fully on the facts and the law.

24 Do you understand that, Mr. Weston?

25 MR. WESTON: Yes, sir, your Honor.

Charge Conference

1 THE COURT: Is that what your understanding is,
2 Mr. Smith?

3 MR. SMITH: Yes, your Honor.

4 THE COURT: All right. Now, how are we going to
5 do this? Are you going to -- I'll leave it up to the
6 State to decide if they want to do it separately if the
7 conspiracy is there and also the hand of one, hand of
8 all has also been interjected here.

9 So you're going to argue against both of them at
10 the same time?

11 MR. WESTON: Yes, sir, your Honor. I would just
12 rather present the initial argument against both and
13 sit down.

14 THE COURT: And each of the defendants respond?

15 MR. SMITH: Correct, your Honor.

16 THE COURT: Mr. Robinson?

17 MR. ROBINSON: Your Honor --

18 THE COURT: Let me go over the charges that I have
19 put together.

20 MR. SMITH: Judge, when we come in and we say that
21 we've rested and before we do that, are you going to
22 then talk to the jury about their right not to testify
23 and not wait until the charge?

24 THE COURT: Right. And I also might -- let's do
25 this. Yeah, I cover it twice. Once you rest and then

1 after the argument and the charge, I also reiterate
2 that charge in a more expansive form.

3 MR. SMITH: Yes, your Honor.

4 THE COURT: All right. The only thing is inasmuch
5 as you have not put up any evidence or whatever, you're
6 renewing your motions now at the close of the case for
7 directed verdict. And inasmuch as there is no other
8 evidence in the record other than what I ruled on in
9 the first, I am denying the motion at the close of the
10 case and the evidence as to both defendants, Mr. Chiles
11 and Ms. Harris.

12 MR. SMITH: You're correct, your Honor. We would
13 or I would renew that motion after we did this, but I
14 know in order to save time we're going to go ahead and
15 do it now.

16 THE COURT: We're doing it at this time. In other
17 words, we rested on the record but not in front of the
18 jury.

19 MR. SMITH: Correct.

20 THE COURT: And same thing with you, Mr. Robinson.
21 You've rested on the record but not in front of the
22 jury. I'm hearing your motions now and denying them
23 again as to both Mr. Chiles and Ms. Harris. But now
24 we'll go forward with the final argument subject to the
25 Court's previous rulings at the close of the State's

1 case and also the resting of the defense.

2 MR. ROBINSON: Your Honor, can I get one moment
3 to --

4 THE COURT: Certainly.

5 MR. ROBINSON: This is what it is. Mr. Weston
6 just made a blanket statement regarding what this
7 individual pled to. And I've been looking at the
8 transcript. A lot of it is what Mr. Weston said, not
9 what this individual said. I want to kind of, if I
10 could look at exactly what was testified to, I want to
11 make sure when he does his closing that he doesn't -- I
12 respect him --

13 THE COURT: We'll go off the record unless you
14 have something specifically --

15 MR. ROBINSON: That's off the record.

16 THE COURT: You and Mr. Weston get together and
17 see.

18 (WHEREUPON, an off-the-record discussion was
19 held between Mr. Robinson and Mr. Weston.)

20 MR. WESTON: Your Honor, what I've indicated to
21 counsel is that -- and I just sort of elaborated on
22 what I said a few minutes ago -- that during my
23 closing -- and I do understand counsel's concern given
24 that the transcript was not read into the record, the
25 allocution during the transcript was not put in the

1 record verbatim or given to the jury as an Exhibit, I
2 plan to limit my argument concerning Mr. Williams' plea
3 to simply saying that on whatever date he pled guilty
4 to armed robbery and conspiracy. That means that he
5 admitted to robbing, da, da, da, and that he conspired
6 with others or with at least one other, however they
7 would prefer I say it. That's all I'm going to say.
8 I'm not going to say who drove the car, who did this.
9 I'm not going to get into any of that with regard to
10 the circumstances surrounding his plea.

11 I'm going to do that in terms of the statement but
12 not the plea. I promise that's all I'm going to say
13 about the plea.

14 MR. ROBINSON: That's what I wanted, your Honor.
15 I'm satisfied.

16 THE COURT: All right. Gentlemen, just quickly
17 going over the charge, of course, it will be the
18 credibility charge. We have no expert witnesses. The
19 Court's instruction on law, presumption of innocence,
20 reasonable doubt. Now, I charge the Manning,
21 "Reasonable doubt is the kind of doubt that would cause
22 a reasonable person to hesitate to act." Now, if the
23 jury asks for further instructions, then I give them --
24 well, the *Victor v. Nebraska* charge which has been
25 adopted by our state in *State vs. Mahoney* and *State vs.*

1 Needs.

2 Then, of course, as I said, I will again instruct
3 the jury as to the -- that they cannot consider the
4 defendants' exercise of their rights not to testify.

5 Direct and circumstantial evidence. And then
6 criminal intent. Multiple charges. I go through each
7 one of the defendants as well as the charges against
8 each one of the defendants, and each one is a separate
9 and distinct and you must -- offense and you must
10 decide each indictment separately on the evidence and
11 the law uninfluenced by your decision as to any other
12 defendant -- any other indictment or any other
13 defendant. Defendants may be convicted or acquitted on
14 any or all of the offenses charged or they can be
15 acquitted on all or one. And, of course, multiple
16 defendants, that you may convict one and acquit the
17 other or you may acquit both or you may convict both.

18 Conspiracy, section 16-17410, it tracks the
19 language. And armed robbery, section 16-11330.
20 Possession of a weapon during the commission of or
21 attempt to commit a violent crime, section 16-23-490.
22 Hand of one is the hand of all. And reasonable doubt.
23 If you have a reasonable doubt of the defendant's guilt
24 after considering all the evidence on either indictment
25 or any indictment, then you must find the defendant not

1 guilty on that indictment. On the other hand, if you
2 have no reasonable doubt as to defendant's guilt after
3 considering all the evidence on any of the indictments,
4 then you must find the defendant guilty on that or
5 those indictments. And that will be the charge.

6 Anything from the State?

7 MR. WESTON: No, sir, your Honor.

8 THE COURT: From the Defendant Chiles?

9 MR. SMITH: No, your Honor.

10 THE COURT: Defendant Harris?

11 MR. ROBINSON: No, Judge.

12 THE COURT: Very well.

13 Ask the jury to join us, please.

14 MR. WESTON: Your Honor, given that there's going
15 to be three closing arguments, and I don't know this,
16 but as you know, I have been practicing for a long,
17 long time. Is there a possibility that we might do a
18 break after closing argument before charging? I
19 understand we can't go in and out. And while I'm fine
20 right now, I don't know how I may feel in 25 minutes
21 from now.

22 THE COURT: You mean a comfort break?

23 MR. WESTON: Yes, sir. Just about two or
24 three minutes.

25 THE COURT: After argument and before charge?

Charge Conference

1 MR. WESTON: Yes, sir.

2 THE COURT: All right. Any objection, Mr. Smith?

3 MR. SMITH: No objection, Judge. I think we can
4 just find out how everybody is feeling after we argue,
5 and if somebody needs one, then --

6 THE COURT: Very good. The charge is not going to
7 be that long.

8 Mr. Robinson?

9 MR. ROBINSON: No objection.

10 THE COURT: Okay.

11 MR. WESTON: Thank you, your Honor.

12 (WHEREUPON, the jury came into open court at
13 approximately 2:15 p.m.)

14 THE COURT: All right. Let the record reflect the
15 jury and alternate are in the jury box.

16 Mr. Foreman, ladies and gentlemen of the jury, you
17 will now proceed with the trial of the case, and I'll
18 recognize Mr. Smith on behalf of Mr. Chiles.

19 MR. SMITH: Judge, on behalf of Mr. Chiles, we
20 rest.

21 THE COURT: Now I'll recognize Mr. Robinson on
22 behalf of Ms. Harris.

23 MR. ROBINSON: On behalf of Ms. Harris, your
24 Honor, we rest as well.

25 THE COURT: Mr. Foreman, ladies and gentlemen of

1 the jury, a defendant has a constitutional right to
2 remain silent, to put up no evidence and require the
3 State to meet its burden of proof beyond a reasonable
4 doubt.

5 The assertion of the constitutional right not to
6 testify or present evidence must not be considered by
7 you in your deliberations. Under your oath you are to
8 draw no conclusion whatsoever from the fact that the
9 defendant, either defendant in this case, did not
10 testify or put up any evidence.

11 As I stated, the defendant and each of the
12 defendants is not required to prove their innocence or
13 his or her innocence, and the burden of proof remains
14 upon the State to prove the guilt of the defendant and
15 each defendant beyond a reasonable doubt as to all
16 counts in the indictments relative to those defendants.

17 All right. With that, I'll recognize Mr. Weston
18 for his closing argument.

19 MR. WESTON: Thank you, your Honor. May it please
20 the Court.

21 Ladies and gentlemen, you've heard all the
22 evidence, and in a few moments the case will be yours
23 to decide. At the conclusion of my remarks, counsel
24 for the defense will give you their closing argument.
25 And what we give you, the three of us, is not evidence.

1 It's just our view of the evidence and what we hope you
2 will do with the evidence.

3 You will take your instructions on the law from
4 Judge Macaulay. And at the conclusion of our remarks,
5 when he gives you instruction on the law, he's going to
6 tell you a lot of things about a lot of things.

7 There's some specific things I'd like you to pay
8 particular attention to, however. One is the question
9 of criminal intent, that the perpetrators of the crime
10 have to have the intent to commit that particular
11 crime. That's obviously an issue in this case because
12 if you recall at the beginning of this case, I told you
13 at the conclusion of the case three things would be
14 clear.

15 That an armed robbery occurred was the first one.
16 There's no question an armed robbery occurred. Two men
17 robbed the McDonald's on June 26th of 2011. You had
18 three independent witnesses who testified to that, that
19 they were both armed and came in. Quinzell Davis tried
20 to get out the window. They told him to get down on
21 the floor or they would kill him. And they took money,
22 approximately \$1,200. That's an armed robbery.

23 There's no question about their intent to do that.

24 His Honor will talk to you about reasonable doubt.
25 The State has the burden of proof. We have to prove

1 each element of every offense beyond a reasonable
2 doubt. Now, a reasonable doubt, in my opinion, and his
3 Honor will define reasonable doubt for you, but a
4 reasonable doubt is not an absolute doubt. It is not
5 the absolute that there is no possibility that there
6 could be any other conclusion.

7 It is a doubt that would cause a reasonably
8 prudent person firm in their conviction to hesitate to
9 act. Do not get hung up on, "I'm not absolutely sure."
10 You don't have to be absolutely sure. You have to be
11 sure to the point where you are comfortable saying this
12 defendant committed this crime. All of the elements of
13 this crime have been met as it relates to this
14 defendant. Of course you will evaluate each defendant
15 separately.

16 His Honor is going to talk to you about
17 credibility of witnesses. Ladies and gentlemen, it
18 don't get any more key than that in this case because
19 there is but no question the three lay witnesses who
20 got up here were telling the truth.

21 And they did not identify either of these
22 defendants. They gave you -- they provided you with no
23 evidence as to the guilt of either one of these two
24 people. All they did was establish two offenses --
25 excuse me, three offenses: One, that an armed robbery

1 occurred, as I said. And, number two, that there was a
2 conspiracy, the two people were acting together. At
3 least two.

4 And as I said at the outset, his Honor will tell
5 you that a conspiracy is defined as the agreement
6 between two or more people to accomplish an unlawful
7 act, period. He and I get together and decide we're
8 going to rob Bojangle's. We go in and rob it. Not
9 only did we rob it, we conspired to do it because we
10 agreed this is what we're going to do, and we're going
11 to accomplish an unlawful act, the robbery.

12 So the first three lay witnesses did not talk
13 about the guilt or innocence of the accused. There was
14 not a lot of cross-examination of them. Because as I
15 said, they didn't identify either one of these parties
16 as a perpetrator of the crime, but they did establish
17 the crimes. So their credibility is not in an issue
18 here.

19 One of them may have said, "We were standing
20 here," and the other one said, "We were standing here."
21 But it's been two years ago -- three years ago, almost.
22 And they were basically telling you as they remember
23 it. They were telling the truth. There's no question
24 about that.

25 The credibility issue, there's no question about

1 credibility of the law enforcement officers who came in
2 here. They just came and did their -- they did what we
3 pay them to do. They had almost ten to 15 police
4 officers out there. They had officers who were
5 tracking the area, the surrounding area, looking for
6 these guys. They had dog trackers out there tracking a
7 trail that led to nowhere.

8 They cordoned off the area. They separated the
9 witnesses, interviewed them, got their statements.
10 They took pictures. They did what we paid them to do.
11 There's no question about their credibility. And once
12 again, they gave you no evidence as to the guilt or
13 innocence of either of these defendants. They have got
14 no friends to reward, no enemies to punish in this
15 case. Just did their jobs.

16 Deven Hoover. He did what we pay him to do as an
17 investigator with the Greenville County Sheriff's
18 Office. He came in. He followed the protocols, he
19 followed the leads, and that led him to Keith Williams.
20 He confronted Keith Williams with the evidence against
21 him, that being the phone calls going back and forth
22 from his phone to Precious Harris right before the
23 robbery, and at some point Keith Williams confessed.

24 I'm going to get to Keith Williams in a minute,
25 but in order for Keith Williams' story to be true,

1 basically this man has to be a monster. He has to have
2 not only sacrificed Keith Williams and these two other
3 innocent people in addition to innocent Keith Williams,
4 who is doing jail time in the Department of Corrections
5 right now for a crime he didn't commit because of this
6 man, according to him. Not only did he do that, he let
7 the real robbers go. He quit looking for the real
8 robbers. Must be a monster. He is not. He is an
9 investigator with the Greenville County Sheriff's
10 Office, a trained professional who did what we pay him
11 to do. In order for you to find that Keith Williams is
12 telling the truth, you've got to find that this man did
13 something horrendous for no reason.

14 No. Ladies and gentlemen, credibility is only a
15 question when it comes to the 5,000-pound elephant in
16 the room, and that's Keith Williams. That is where
17 y'all got to sit down and listen -- that's why I want
18 you to listen to the judge talk about the definition or
19 his instruction on the law with regard to the
20 credibility of witnesses.

21 Who has friends to reward, or relatives and their
22 live-in girlfriends, or enemies to punish? He clearly
23 has friends to reward. He's trying to protect his
24 brother and his brother's live-in girlfriend. I'd take
25 a bullet for my brother. Most people would. I'm not

1 going to get on the stand and lie for him, but we all
2 know how close family is.

3 Were you surprised that he got up here and said,
4 "No, my brother had nothing to do with it." I'm
5 surprised he said he had nothing to do with it after he
6 pled guilty to it, but is it surprising he got up here
7 and said, "Listen, I'm already doing time. I'm not
8 going to bring my brother down. I'm going to say for
9 some reason that none of this stuff is true." Were you
10 surprised by that, that he said that? It's his
11 brother. What do you expect? He's trying to save his
12 brother and his brothers's live-in girlfriend.

13 With that backdrop, let's talk about the charges
14 for a moment. Both of these defendants are charged
15 with armed robbery. And assuming the evidence supports
16 the charge, we're asking you to find David Chiles came
17 into the McDonald's with a gun with Keith Williams with
18 a gun and robbed McDonald's. That's armed robbery.
19 They took \$1,200. Simple as that.

20 In order to find him guilty of possession of a
21 weapon during the commission of a crime, all you have
22 got to find is what I just said, and again, he had a
23 gun. He was in possession of a weapon when he
24 committed a violent crime.

25 His Honor will instruct you armed robbery is a

1 violent crime. So he's guilty of possession of a
2 weapon during the commission of a violent crime.

3 Conspiracy. You may hear some talk that there's
4 no evidence that Keith Williams talked to her or that
5 Keith Williams talked to him or the three of them sat
6 down and had a meeting. Is that necessary for
7 conspiracy, ladies and gentlemen?

8 There's two types of conspiracy. There's linear
9 conspiracy, where we're all together. And there is a
10 wheel conspiracy, where I say, "Listen, this is your
11 job. You do this. I'm going to call Bill and Bill is
12 going to do that." I then call Bill and Bill does that
13 and y'all commit a crime. Bill never talked to him.
14 That's what is called a wheel conspiracy. Everybody
15 doesn't have to sit down and meet like in some huddle
16 of a football game: Ready, okay, hut, go.

17 A conspiracy is simply an agreement by two or more
18 people to commit an unlawful act. The fact that
19 Precious Harris was calling David Chiles on Keith
20 Williams' phone, the fact that they were outside in
21 Keith Williams' car as he drove him there, the fact
22 that Keith Williams didn't go in the back and take the
23 money, that David Chiles is the one that went in the
24 back and took the money, that doesn't make Keith
25 Williams any less responsible, and that doesn't make it

1 any less of a conspiracy. All three of them are guilty
2 of conspiring to steal from the McDonald's. They don't
3 have to do all the same things, but they have to agree,
4 This is what we're doing. It's no question if you find
5 the evidence supports what we think it does, that there
6 was a conspiracy between the three of them.

7 Armed robbery as to Precious Harris. Very simple.
8 I'll concede first she didn't have a gun. There's no
9 evidence that she had a gun. She didn't need a gun.
10 She's the night manager. She's got the money. She
11 gives it to her boyfriend when he comes in the back.
12 She starts yelling and screaming, "Oh, please don't
13 hurt me. Don't hurt me. Don't hurt me. Take the
14 money."

15 His Honor will instruct you on an axiom of the law
16 that is very simple and clear: The hand of one is the
17 hand of all. He and I go into a bank and rob the bank.
18 He shoots the bank teller. If I'm with him, I'm guilty
19 of murder. That's not complicated because I knew he
20 had a gun and it's possible somebody would get killed.
21 The law says I'm guilty of murder even though I may not
22 have had a gun. The hand of one is the hand of all.

23 Just listen to his instruction which means if
24 there is an armed robbery and she was a part of it,
25 Precious Harris is guilty of armed robbery even though

1 she had no gun.

2 Now, with that backdrop, let's briefly look at the
3 evidence. It's easy to say their whole case is just
4 Keith Williams. No. Ladies and gentlemen, you don't
5 leave your common sense home when you come and serve on
6 a jury. What are the odds that robbers would come to
7 this McDonald's when the video system is out when there
8 is nobody in the McDonald's except the night manager?

9 Now, keep in mind Quinzell Davis was in there.
10 But remember what he said. "I had gone outside. I
11 went back in to get my pizza." If he had not gone back
12 to get that pizza, the only person in the restaurant is
13 Precious Harris when her live-in boyfriend and his
14 brother come in.

15 Remember the phone calls. And look at his
16 statement -- and you will have it back there with
17 you -- when he talks about, "Are they gone yet?" The
18 only reason Quinzell Davis was in that place is
19 because he went back in to get his pizza. Otherwise
20 there's nobody in there but the three of them.

21 What are the odds? Video is down, the doors are
22 unlocked when she takes the money out of the safe and
23 is counting the money. What are the odds that that
24 rule would be violated that night when these two guys
25 just happened to come in here? What are the odds that

1 strangers would do that? What are the odds, once
2 again, that nobody else would be in the restaurant but
3 them, but her?

4 What are the odds that Precious Harris' phone was
5 showing that she was calling Chris (sic) Williams'
6 phone two or three times right before the robbery?
7 What are the odds? And what are the odds then that
8 subsequently Keith Williams would confess and
9 corroborate everything I just said? Like I say, you
10 are going to have this back there with you.

11 Let's talk about Keith Williams for a moment. He
12 started out lying. I asked him a question, "Where are
13 you staying at right now?" And he gave some street
14 address and thought that was going to be the end of
15 that. And he had to finish his first answer by
16 acknowledging, "I'm in the Department of Corrections."
17 He wouldn't know the truth if it came up and knocked
18 him in the head.

19 He says he didn't do it and they didn't do it.
20 And he was adamant. They didn't do it. And he said
21 something about he was at a nightclub or something that
22 night. How in God's name would he know that they
23 didn't do it? How can he make that statement? But he
24 is just as sure he didn't do it as he is that they
25 didn't do it. How can that possibly be? Because he is

1 simply just covering for them, ladies and gentlemen.

2 The answers -- the true answer, if he didn't do
3 it, would have been, "I didn't do it, and I don't have
4 any reason to think they did it. I don't know whether
5 they did it or not. I was over here." But his answer
6 was, "I didn't do it and they didn't do it." He's
7 covering for his brother and his brother's live-in
8 girlfriend.

9 How does he explain the phone calls? He doesn't.
10 He explains his confession by saying for some reason
11 Deven Harris (sic) was out to get me, I guess get my
12 brother and get Precious Harris. Keep in mind Deven
13 Harris -- excuse me. I apologize, ladies and
14 gentlemen. I get a little confused.

15 This investigator told y'all long before Keith
16 Williams got on the witness stand, "I had never heard
17 of Keith Williams. I had never investigated him. I
18 had never come in contact with him as far as a witness
19 or a victim or anything. I had never heard of David
20 Chiles. I did not know David Chiles knew Precious
21 Harris. I did not know they lived together." How
22 could he possibly know those things and put those in
23 this statement unless Keith Williams told him? And in
24 this statement it sets out exactly who these people
25 are. How could he possibly know that unless he --

1 unless Investigator Hoover was told those things?

2 Two years after he gives this voluntary
3 confession -- and before I get to two years, let me
4 just make sure y'all notice. You see these little dot
5 things here you can't see from afar? They are KW's,
6 his initials, where he initialed every one of these
7 things as Investigator Hoover went over his rights with
8 him. He initialed the paragraph.

9 And at the bottom he initialed the whole thing.
10 Then he wrote and he admitted in his own words, "This
11 is my statement and it is true." How could he possibly
12 have gotten that young man to do that?

13 Almost two years later, in February of this year,
14 Keith Williams, in open court, in a courtroom just like
15 this, stood in front of a judge, swore an oath,
16 answered questions about the voluntariness of his plea,
17 whether he knew what he was doing and you're giving
18 your rights up, and are you pleading guilty because you
19 are guilty, all those things, and had a lawyer standing
20 next to him and pled guilty to armed robbery and
21 conspiracy as it relates to this acknowledgement. And
22 he comes in here and tells you, "I didn't do it and
23 they didn't do it."

24 What he didn't tell you, he didn't say -- and this
25 was February. It is now November. Did you hear him

1 say, "I'm appealing my sentence"? Did you hear him
2 say, "I've applied to the Innocence Project"? No. He
3 is simply a man in jail doing his time for the crime he
4 committed. And if he is guilty, they are guilty
5 because he says so.

6 But not just him, all the circumstances say so.
7 What are the odds that he would rob his brother's
8 live-in girlfriend? What are the odds he would rob his
9 brother's live-in girlfriend and name his brother as a
10 codefendant? God, he must hate his brother.

11 Ladies and gentlemen, there were a lot of miss --
12 a lot of evidence you don't have. There was a lot of
13 rigamarole made about the footprint, about DNA, about
14 nothing other than stuff that was explained by the
15 officers. Said, no, the footprint was a vague
16 footprint, outline of a footprint. Looked like it
17 might be an Air Force 1 but I don't know. We had
18 nothing to match it to. We didn't arrest these people
19 until months later. This is not CSI or one of those TV
20 shows. This is real life. This officer and these
21 officers did their jobs. They did an outstanding job.

22 Finally, ladies and gentlemen, the last thing that
23 Keith Williams said that should nail this for y'all,
24 that being simply -- and, first of all, I don't think
25 there's any question Keith Williams is guilty. The

1 circumstances surrounding what he did, the phone calls,
2 the relationship to these people, especially the
3 manager, the night manager of the McDonald's, the fact
4 that he admitted his crime in a confession, the fact
5 that he pled guilty to it and admitted he committed
6 armed robbery and conspiracy, the fact that he just
7 came in here and said, "I didn't do it. They didn't do
8 it," without any explanation. Why would you do those
9 things? Why did you name them then? What did you put
10 them in this thing for? There's no question Keith
11 Williams is guilty. And as he said in the last
12 statement before I sat down, they're as innocent as he
13 is.

14 Thank you.

15 THE COURT: Mr. Smith.

16 MR. SMITH: Yes, your Honor.

17 Members of the jury, we were all listening to the
18 same case. We always have different opinions as to the
19 evidence, and that's why we've got our system. And
20 rigamarole and CSI, you're right. This isn't CSI
21 because after an hour we would have been done with this
22 case and everybody would have gone to jail.

23 But the problem is this. This isn't CSI. Dad
24 gum, it should be. You didn't hear from one forensic
25 officer in this case. Mr. Weston said you heard a lot

1 of rigamarole talking about all the evidence and the
2 DNA. I agree we don't have DNA. Mr. Weston started
3 talking about DNA. So if it's not important, if mucus
4 or saliva and all that stuff isn't important, then why
5 bring it up? Because it is important. It is
6 important.

7 You know, you members of the jury, ya'll have got
8 a hard job. You've got to find that these two people,
9 these two innocent people, committed this crime or
10 these crimes beyond a reasonable doubt.

11 The judge is going to instruct you as to the law
12 in the case and what armed robbery and all that is.
13 I'm not going to waste my time or y'all's doing it.
14 He's going to instruct y'all as to that. He's going to
15 instruct ya'll as to what reasonable doubt is, too.
16 It's a doubt that would cause you to hesitate.

17 You know, is this the kind of evidence that we
18 want to convict people here in Greenville County or
19 anywhere in the United States on?

20 Mr. Weston brought up the Innocence Project. And
21 it's amazing that he did because it's just not what --
22 you can read about it in the paper and everything that
23 people give false confessions. Innocence Project comes
24 in. They take care of it. People are let out of jail
25 later on, 30 years down the road, because DNA matched.

1 They didn't have anything to do with the crime. And
2 we'll never know why people give false confessions or
3 why they say they did things and drag other people down
4 with them. But it happens.

5 And that's why you have something like the
6 Innocence Project out there. And the only reason I
7 think that Mr. Williams didn't say something about "I'm
8 appealing" or anything is because he never was asked
9 the question. To answer the question when you're up on
10 the witness stand, you've got to be asked a question.
11 And he never was asked.

12 So let's just go ahead. We're in it. Let's just
13 address Mr. Williams. There is a lot to talk about
14 with Mr. Williams. He testified that neither client
15 had anything to do with this. When I say "clients,"
16 I'm talking about my client, Mr. Chiles, or Ms. Harris.
17 I'm going to address both of them.

18 He said he did what his lawyer said. He talked
19 about that he took a ten-year plea because he didn't
20 really have any choice at that point. He didn't want
21 to go to trial and get 20 years, which is what his
22 lawyer told him he'd probably get. So why not just
23 take what he did. He made a mistake. Yes, he's 24,
24 but back then he was three years younger. He was
25 21 years old. Maybe even 20, depending on when his

1 birthday is.

2 You take somebody who is inexperienced versus
3 somebody who has had years of experience and training
4 and expertise, going to the classes, learning about
5 interrogation techniques and interviewing techniques
6 and could go to somebody, Hey, we know X, Y and Z. We
7 know this, this, this, and this. We know your number
8 was called. We know that you had something to do with
9 this. We know, you know, all these things. The next
10 thing you know, there is a signed statement.

11 Not only did they talk to him over here at this
12 one place, but then they take him down to the police
13 station and they question him down there. If you look
14 at his statement, parts of his statement aren't even
15 true.

16 Let's see here. They called. They started using
17 my phone to text. And then they called and then they
18 called some more. The evidence showed -- the evidence
19 showed that the only times the phone was used were
20 twice. Yes, they were around this incident, but they
21 were only called twice. And in between that time there
22 was even another phone call. Didn't have anything to
23 do with this or any of the other numbers. Two phone
24 calls.

25 They were texting left and right. Well, where are

1 the text messages? They have got her phone two days
2 later. It's in evidence. Officer, was there anything
3 in the text messages? Did you have any text messages?
4 Nothing to speak of.

5 You're right. If this was CSI, we probably
6 wouldn't even be here today. We have got a shoe print.
7 I'm sorry. What size is the shoe? What size is
8 Mr. Williams' footprint and what size is Mr. Chiles'
9 footprint? Well, maybe if we looked at the shoe print
10 and figured out what size it was -- I don't care if it
11 matches. Generally what size it is. Because if my
12 client has a size six shoe or a size 14 shoe, at least
13 you might have -- or Mr. Williams, you know, nine and a
14 half, at least you could say, "We found a nine and a
15 half shoe print on there," or, "We found a size six
16 shoe," or, "We found a size 14 shoe print." We don't
17 even have that. It's been three years.

18 And I'm going to tell you, in my opinion, and I'm
19 asserting that what happened is this. They got -- this
20 boy confessed, and they just stopped working on the
21 case. And that's it. Ooh, we got a confession. These
22 two did it. Let's go arrest them and, boom, that's it.
23 Nothing off her phone. Got all this evidence, but
24 we're not going to dot our I's and cross our T's
25 because we got a confession.

1 So why do we need anything else? And now, two and
2 a half years later, after the railroad goes pushing
3 through, you got Mr. Williams who has pled guilty
4 because he wanted to take a ten-year deal because he
5 screwed up by giving a statement in the first place
6 when he probably shouldn't have because he didn't have
7 anything to do with this because his lawyer told him
8 to.

9 And on my direct or, excuse me, my
10 cross-examination of him -- could have been a direct at
11 this point because at this point we don't know whose
12 witness he was -- "I told my lawyer in July of 2013
13 that I did not make that -- I mean these things were
14 not true." I went through and I told him what wasn't
15 true. It's not like he's coming in here today saying,
16 Oh, you know, all of a sudden, you know, "I didn't do
17 this." This was back in July. Way before he pled
18 guilty. But then the damage is done.

19 What do you do when you're a defendant? You've
20 got a choice to make. Our clients have made their
21 choice. They have sat here and said that they are not
22 guilty and the State has the burden of proof. Prove
23 your case. Prove that I'm guilty beyond a reasonable
24 doubt. Because Keith Williams, I don't begin to tell
25 you why he gave a statement saying what he said. I'm

1 no expert.

2 The characterization of this officer having to
3 have been a monster is completely false. You know,
4 here's the thing. Because I want to make sure you
5 understand something. You know, and that's why we
6 argue. And, look, we have got our training and we know
7 what we're doing. We have got to show -- you know,
8 we're trying, obviously, to persuade you to go with our
9 side. I mean, there's no secret about that. I mean,
10 that's what we do. But to do that, we have to point
11 out these things to make sure, Hey, wait a minute.
12 This is why we need to show you. This is why you ought
13 to look at this evidence and see this is what it is.

14 Because, as Mr. Weston said, he's not a monster.
15 Well, the bottom line is this. You don't have to find
16 that he's a monster. You don't have to say by saying
17 "No, we don't believe Keith Williams," that that man is
18 a monster. And I don't know if that was the intent,
19 but I'm just telling you, you don't have to say that.
20 That's not what it's about. We just don't know why
21 people give statements that aren't true, but it
22 happens, and it happened in this case.

23 You don't have to find that this officer was a
24 monster or did anything wrong to reach that conclusion.
25 If you're looking in the statement, he starts talking

1 about how or what was being talked about. He doesn't
2 know what Precious was saying because he wasn't on the
3 phone with Precious Harris.

4 Is it reasonable -- let's assume for a second,
5 let's assume for a second that that is or was at the
6 time Precious Harris' live-in boyfriend. Like
7 Mr. Weston said, you don't leave your common sense at
8 home when you come for jury duty. Is it reasonable to
9 assume that at some point, at some time that man, my
10 client, Mr. Chiles, had been to the McDonald's, had
11 come into the McDonald's before on other occasions? I
12 mean, is it reasonable to assume that your boyfriend,
13 girlfriend, spouse, whatever comes and visits you at
14 your work where other people are that might recognize
15 you later on down the road? I don't care whether
16 you've got a bandana around your face or not. You
17 know, your mannerisms, the way you dress, Oh, my gosh,
18 that's the coat that so-and-so wears. I know who that
19 guy is, just the mannerisms, what he looks like, just
20 hair, whatever.

21 There is a lot of things in this case. I'm going
22 to try not to take up too much more of your time, but
23 listen. Mr. Weston is right on certain things. You
24 have got a lot of witnesses who sat here and testified,
25 Well, I was here. No, we were here. Or, you know, we

1 both ran out that door, or we both ran out that door or
2 wherever they ran. One says they ran this way. The
3 people who committed this crime, they went up towards
4 the Spinx station. One says the Polo Apartments. They
5 were two black males. They were both tall. They had
6 bandanas on.

7 One of the good things about being on the jury is
8 you can observe the witnesses. And that's one of the
9 things that you can do. You saw Mr. Williams get up.
10 He's not that tall. Nobody recognized him, okay. But
11 what Quinzell Davis said, what Quinzell Davis said up
12 on the witness stand, Mr. Davis, they said what? One
13 of the boys or one of the men who came in and said --
14 or robbed the place said, "Come on, Brett. Let's go."
15 "Come on, Brett. Let's go." And on cross-examination
16 or redirect, Mr. Weston got up and he said, "Did he say
17 Bro?"

18 "Well, yeah."

19 On my recross -- three years ago, because he was
20 confused, you know. It's been three years. I don't
21 know. Three years ago he gave a statement to the
22 police officers, and three years ago he didn't say
23 anything about, "Oh, it could have been Bro," it could
24 have been this, it could have been that. The person in
25 the restaurant that was robbing the place said, "Come

1 on, Brett. Let's go." And that's the statement that
2 he gave to police officers.

3 And the reason it's so important is because when
4 Mr. Weston says, "Could it be Bro," because he wants
5 you to believe that they said Bro because David Chiles
6 and Keith Williams are brothers. "Come on, Brother."
7 But that ain't what he said. He said that the people
8 who were robbing the place said, "Come on, Brett.
9 Let's go."

10 Keith Williams' name isn't Brett. David Chiles'
11 name isn't Brett. And Precious Harris' name certainly
12 isn't Brett. And that's a mistake that these two armed
13 robbers made or at least one of them, calling somebody
14 by their name. Calling somebody by their name. "Come
15 on, Brett. Let's go."

16 Not even that, but when they leave and they go
17 running outside, all of the witnesses testified that
18 Precious Harris was scared. She was crying. She got
19 on the phone with 911 and was talking to 911 about
20 coming.

21 Look, the evidence, the evidence here, I mean, if
22 you want physical CSI-type evidence, you're obviously
23 not going to get it. People go in, they rob the place,
24 and there's no fingerprints. There's no evidence put
25 forth that anybody was wearing anything over their

1 hands or anything else, but they can't get
2 fingerprints.

3 If I'm going to jump over a counter, there's a
4 footprint, but yet we don't get any fingerprints. I'm
5 going to open up a door, and I don't get any
6 fingerprints. I've got a footprint, but I'm not
7 looking to see even what size it is. Maybe we can't
8 match the shoe, but at least we can say it's the same
9 size as somebody.

10 There's no guns. There's no money. There's no
11 text messages. Even though the phone is sitting in
12 property in evidence, you don't even have the phone.
13 You don't have the footprint. It's just sitting in
14 property in evidence.

15 The bottom line is this. You can consider all the
16 evidence that is before you today, but you can also
17 consider the lack of evidence to establish a reasonable
18 doubt. If you're looking at that evidence or lack of
19 evidence and that causes you to hesitate, then that is
20 reasonable doubt, and that would mean a not guilty
21 verdict for Ms. Harris and Mr. Chiles.

22 I ask you to consider that. We're asking you to
23 return a verdict of not guilty in this case. Thank
24 you.

25 THE COURT: Mr. Robinson.

1 MR. ROBINSON: May it please the Court.

2 Good afternoon again. Now, I've heard that y'all
3 can't hear me sometimes, and I'm going to do my best to
4 talk as loud as I can. I'm not really a big, loud
5 talker, but I'll try. All right. I'll tell you what.
6 If you think that I'm talking really low, just let out
7 a big yell and I can hear you.

8 I want to tell you I appreciate all of you coming
9 to the court, and I appreciate your time and so forth
10 in this matter. As I said at the beginning, this is a
11 very important case for my client but also to her
12 family as well.

13 Now, I think one thing that I think all of you may
14 have gleaned from Mr. Weston's closing statement of
15 this case is that you have got to watch out who your
16 friends are, you have got to watch out who you
17 associate with because if you associate with someone,
18 you must be guilty. Because what Mr. Weston is saying,
19 this hand of one, hand of all we're talking about, what
20 that means is if you make some phone calls to somebody
21 or you call someone or you say something to someone,
22 that that means you must be associated with anything
23 that they do. That's not the law.

24 There has to be, this hand of one, you have to
25 have a hand. You have to have something, some

1 agreement between people that this happened. Here's
2 what they have. They have pretty much innuendo.
3 Innuendo, suspicion. Maybe, possibly, could be, so
4 forth.

5 At the beginning of this case, I told y'all this
6 case is not about maybe, should be, possibly. It has
7 nothing to do with this case. This case also, if you
8 listen to Jeff Weston or Mr. Weston over there, this
9 case has nothing to do with I. We're not in Las Vegas
10 here. We're not trying to imply what are the odds of
11 this happening. That's not the law.

12 They have to be able to prove to you all beyond a
13 reasonable doubt that my client committed this crime,
14 conspiracy and armed robbery. In order for them to do
15 that, they have got to show an agreement and they can't
16 do it.

17 They can say, Well, she was a shift manager at
18 McDonald's when this happened and her boyfriend was
19 this person, his brother was this person. I want you
20 to look at the State's exhibit that they have which is
21 a statement of Mr. Williams. Look at that statement
22 and look at the different lines. You will see some
23 things said.

24 One of the things that the person said the brother
25 said was she says that she's got something for him.

1 She's got something for him. What does that mean? It
2 could mean food. It could mean a lot of other things,
3 too, as well. But, again, when you look at the case,
4 you have to look at it in terms of has the State proven
5 their case beyond a reasonable doubt.

6 I want to go back for a second to some of the
7 testimony in this case. The officer in this matter.
8 He testified that he spoke to or one of the officers
9 spoke to a Mr. Goodman. He was the area manager for
10 McDonald's at the time. He said there were several
11 violations, but he said specifically at the beginning,
12 the outset, that that camera in that location had been
13 broken for at least two weeks and was broken at the
14 time of this incident.

15 This had nothing to do with Precious Harris. She
16 was a shift manager. There was also testimony that
17 there was an assistant manager above her, other
18 managers above her, as well as a manager of the whole
19 store. In that two-week period of time, who was
20 responsible for repairing that? She had nothing to do
21 with the repair of that camera. She couldn't repair
22 that camera herself. She didn't have the authority as
23 a shift manager to repair a camera that would cost
24 money to this franchise.

25 The next thing he talked about was the violations

1 that happened. First he said the individual, Michael
2 Culbertson, who testified a little bit differently than
3 what Mr. Weston talked about. Mr. Culbertson was not
4 supposed to leave without telling someone. He left
5 without telling anyone in that store that he was
6 leaving. How would Precious Harris know, if she was in
7 the back of the store, how would she know he was
8 leaving? How would she know that?

9 Then you have the other individual, the other
10 employee. He leaves, too. They violated a rule. They
11 violated it, not Precious Harris. These folks violated
12 the rule. You saw the two of them come in here. These
13 are basically teenagers. Young people. They want to
14 smoke. They want to have their pizza and so forth.
15 They're not concerned that much with this McDonald's
16 because, as you heard them say, they were just
17 employees. It's not their responsibility.

18 But they left the doors unlocked. Precious Harris
19 didn't leave the doors unlocked. She didn't go and
20 unlock these doors for anybody. These doors lock from
21 the inside. And if you look at one of the exhibits,
22 Exhibit 7, it shows you what this door looked like.

23 The inside of that door, according to the
24 testimony, was a little lock that you turn back and
25 forth to lock it. That's what you have. All they had

1 to do when they left is tell the person they left, and
2 they could lock it behind them. They didn't do that.

3 And you also heard him talk about the fact that
4 Michael Culbertson, he was supposed to clean the grill.
5 And by the time the robbery happened, he would have
6 been there, too. That's not Precious Harris' fault
7 that he didn't do his job. But because she was a shift
8 leader or shift manager at this McDonald's, she must be
9 guilty. Come on. There's not one indicia of anything
10 that indicates that she got anything out of this.
11 Nothing.

12 The officer testified that he had no prior
13 experience with her. He didn't know who she was. They
14 didn't get anything from her place. They didn't search
15 her place, but they found no money. They didn't look
16 at her bank account, look at things like that to see if
17 she made some big purchase or something like that,
18 something for whatever. No, they didn't do that. They
19 didn't do anything like that. So they have nothing
20 that indicates that she got anything out of this whole
21 mess other than a huge headache from associating with
22 certain people.

23 But as I said before, association with someone is
24 not enough to prove a conspiracy. You have got to have
25 an agreement. If you don't have an agreement between

1 two or more people, you don't have conspiracy. Because
2 in Mr. Weston's world, if you listen to him, and he
3 did say -- I mean I'm glad he said this -- he said he
4 was confused for a moment there. I get that. I have
5 my own -- we all have our days when we're a little bit
6 confused and so forth.

7 This is a very important point. They haven't
8 proven a conspiracy. What they have shown is
9 association. In Mr. Weston's world, all of us are
10 going to have some problems because all of us at some
11 point meet people or associate with people. Come on.
12 If that's all there is to this, we should all be here
13 at that table over here. That's not the law.

14 And the judge in a minute is going to give you the
15 law in this case. And when you apply the law in this
16 case and you hold this table, this person, the State to
17 reasonable doubt, you will find that Ms. Harris is
18 innocent. She may have made bad choices in boyfriends
19 and people she associates with. We have all made
20 decisions or had problems with people we associate with
21 in our lives. But if you apply the law in this case,
22 she's innocent. You've got to have, for hand of all --
23 hand of -- we've heard this in the beginning of the
24 case. He trotted this out, this whole idea. Hand of
25 one, hand of all. He did it again in his closing

1 statement. But you've got to have a hand in this
2 thing. You can't just have a hand out here and say,
3 Well, she knew these guys and things like that, and she
4 was a shift leader so she must be part of it. That's
5 not the law.

6 I've noticed no one has gotten loud, so I'm
7 talking louder. Okay. But I want you to also look at
8 the exhibit of Mr. Williams in this case because he
9 uses that saying such and such. There's nothing in
10 there that indicates any sort of agreement or
11 conspiracy between Precious Harris and anybody.
12 Nothing. And everything that she did that night was,
13 according to Mr. Culbertson, normal. It was normal
14 during the closing at the end of the night for the
15 manager, the shift manager, to have the safe open
16 because there was going to be a deposit, to make a
17 deposit that night. According to Mr. Culbertson, who
18 was employed, that's just how it was.

19 But ask yourselves this, though. If this was some
20 big conspiracy or some whatever it is between these
21 people, why use a gun and why use masks to do this?
22 Why? You know this person. You aren't going to use
23 masks to cover faces.

24 In conclusion, there is a saying. It's a very
25 famous saying. And this is what the saying is. I want

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Jury Charge

1 you to just think about this saying. And it really
2 does ring true in this case. Injustice anywhere is
3 injustice everywhere.

4 This case is about injustice. This case is about
5 trying to fit association with somebody and phone calls
6 into this cubbyhole of hand of one, hand of all. They
7 don't have a hand. And what they're trying to do is
8 make it so that no one can associate with anyone in
9 this case and not be subject to being charged with a
10 crime.

11 So, ladies and gentlemen of the jury, I'm going to
12 stop, and my voice is kind of getting hoarse now
13 because I don't usually talk this loud. But I will
14 tell you, I thank you very much for your time, but I
15 ask you again, as Mr. Weston and Mr. Smith has said,
16 use your common sense and apply the law. And if you do
17 that, you will do justice and find Precious Harris not
18 guilty. Thank you.

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury, as jurors in this case you have certain
21 functions and responsibilities to perform which are
22 entirely separate and distinct from mine as a trial
23 judge.

24 I am prohibited by the Constitution of our
25 state from charging you on the facts of this case. I

Jury Charge

1 am also prohibited from discussing the facts of the
2 case with you in any way intimating what my feelings,
3 if any, are about the facts of case.

4 It is your responsibility and yours alone to pass
5 upon all issues of fact presented in the case. I would
6 therefore charge you that if during the course of the
7 trial you have been given or left with the impression
8 or feeling that I do have a personal opinion about the
9 facts of this case, I would specifically instruct you
10 to disregard that feeling or impression.

11 Moreover, you are the sole judges of what the
12 testimony was and not the argument of counsel. It is
13 also your duty and your duty alone to weigh and
14 testify -- to weigh and evaluate the testimony and
15 evidence in the case and to pass upon the credibility
16 or believability of the witnesses.

17 In this connection you have the right to believe
18 all that a witness tells you or disbelieve all that a
19 witness tells you. You have the right to believe a
20 part of what a witness tells you and to disbelieve a
21 part of what a witness tells you.

22 You have the right to take into consideration any
23 bias or prejudice or interest you feel a witness may
24 have in the case. I say this merely to emphasize the
25 weight that you see fit to give to the testimony and

1 the credibility of the witnesses as well as all the
2 issues of fact are for your sole determination.

3 As judges of the facts you are the sole judges of
4 the credibility, that is, the believability of the
5 witnesses who have testified in this case. In passing
6 upon their credibility you may take into consideration
7 many things such as the appearance and manner of the
8 witness on the stand sometimes referred to as the
9 demeanor of the witness. Was the witness forthright or
10 hesitant? Was the witness' testimony consistent or did
11 it contain discrepancies? What was the ability of the
12 witness to know the facts about which he or she
13 testified? Did the witness have a cause or a reason to
14 be biassed or prejudiced in favor of the testimony he
15 gave? Was the testimony of the witness corroborated or
16 made stronger by other testimony and evidence, or was
17 it made weaker or impeached by such other testimony and
18 evidence?

19 As jurors, you have the right to believe a small
20 portion of a witness' testimony and disregard the
21 larger or vice versa. You may believe all of a
22 witness' testimony or none. Most certainly you do not
23 determine the matter of credibility or believability by
24 counting up the number of witnesses who may have
25 testified on behalf of the parties.

Jury Charge

1 Throughout this entire process you have but one
2 single objective and that is to seek the truth
3 regardless from what witness' testimony it may have
4 come. And by the same Constitution and law which makes
5 you the finders of the facts and the evidence, as I
6 discussed with you, I am the judge, made the sole and
7 only instructor on the law. You must accept as correct
8 the law which I charge and apply it to the evidence as
9 you find it and reach a verdict. If I should make an
10 error in the law as I instruct it to you, there is
11 another time and place that error can be considered
12 and, if necessary, corrected. But for the purposes of
13 this case, you must obey the law as I charge it to you
14 to be the correct law.

15 Finally, I charge you that in this regard you, nor
16 for that matter I, should be concerned with what we
17 think the law ought to be, but rather what I charge you
18 the law to be.

19 Now, the defendants have pled not guilty to the
20 indictments, and that plea puts the burden on the State
21 to prove each defendant guilty of each count. The
22 person charged with committing a criminal offense in
23 South Carolina is never required to prove himself or
24 herself innocent.

25 I charge you that it is an important rule of the

Jury Charge

1 law that the defendant in a criminal trial no matter
2 what the seriousness of the charge may be will always
3 be presumed to be innocent of the crime for which the
4 indictments were issued unless guilt has been proven by
5 evidence satisfying you of the guilt beyond a
6 reasonable doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the
9 defendant throughout the trial until you reach a
10 verdict of guilt based upon evidence satisfying you of
11 that guilt beyond a reasonable doubt.

12 The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the
14 defendants which remains with the defendants until it
15 has been stripped from each defendant by evidence
16 satisfying you of the defendant's guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It's not just a legal phrase. It's a
20 substantial right to which every defendant is entitled
21 unless you, the jury, are satisfied from the evidence
22 of the defendant's guilt beyond a reasonable doubt.

23 What is a reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause
25 a reasonable person to hesitate to act. I instruct you

Jury Charge

1 and emphasize the fact -- that the fact that the
2 defendants did not testify or put up any evidence in
3 this case is not a factor to be considered by you in
4 any way in your deliberations and in your consideration
5 on the question of whether the State has proven
6 defendants are guilty or not guilty on all of the
7 charges or any of the charges in the indictments.

8 It must not be considered by you in any manner
9 whatsoever. A defendant has the constitutional right
10 to remain silent, and that exercise of that right must
11 not be considered by you in your deliberations. I
12 repeat, under your oath you are to draw no conclusions
13 whatsoever from the fact that the defendant in this
14 case or defendants in this case did not testify or
15 present evidence. The fact that the defendants did not
16 testify should not even be discussed by you in the jury
17 room.

18 The burden of proof, as I have stated to you, is
19 on the State. The defendants and each of them are not
20 required to prove their innocence from beyond -- or
21 they are not to prove -- they are not required to prove
22 their innocence. The burden of proof is on the State
23 to prove each defendant on each count in each
24 indictment guilty beyond a reasonable doubt.

25 Now, there are two types of evidence which are

Jury Charge

1 generally presented during a trial: Direct evidence
2 and circumstantial evidence. Direct evidence is the
3 testimony of a person that comes -- who claims to have
4 actual knowledge of a fact such as an eyewitness. It
5 is evidence that immediately establishes the main fact
6 to be proved and does not require deduction.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a
9 fact. It is evidence which immediately establishes
10 collateral facts from which the main fact may be
11 inferred.

12 Circumstantial evidence is based on inference and
13 not on personal knowledge or observation. Crimes may
14 be proven by circumstantial evidence. The law makes no
15 distinction between the weight or value to be given
16 either direct or circumstantial evidence. However, to
17 the extent the State relies on circumstantial evidence,
18 all of the circumstances must be consistent with each
19 other and when taken together point conclusively to the
20 guilt of the accused beyond a reasonable doubt.

21 These circumstances merely portray the defendants'
22 behavior as suspicion -- if these circumstances merely
23 portray the defendants' behavior as suspicious, the
24 proof has failed. The State has the burden of proving
25 the defendants' guilt beyond a reasonable doubt. The

Jury Charge

1 burden rests upon the State regardless of whether the
2 State relies on direct evidence or circumstantial
3 evidence or some combination of the two.

4 You should weigh all of the evidence in the case.
5 After weighing all of the evidence, if you are not
6 convinced of the guilt of the defendant on that
7 indictment or that count of the indictment beyond a
8 reasonable doubt, you must find the defendant not
9 guilty on that indictment and that count of the
10 indictment.

11 In order to establish criminal liability, criminal
12 intent is required. Criminal intent must be proved by
13 the State beyond a reasonable doubt. Criminal intent
14 is always a matter that must be determined by the jury
15 from the circumstances surrounding the situation.

16 There is no way to prove intent to a mathematical
17 certainty. There is no way medical science can dissect
18 a person's brain and determine what the person had in
19 mind, so the law says that criminal intent may be
20 inferred from the circumstances shown to have existed.

21 This is how you make a determination of whether or
22 not the element requiring intent is present. It is not
23 necessary to establish intent by direct and positive
24 evidence, but intent may be established by inference in
25 the same way as any other fact, by taking into

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1 consideration the acts of the parties and all of the
2 facts and circumstances of the case.

3 Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what the
5 defendant intended to do based on the circumstances
6 shown to have existed. Criminal intent is a state of
7 mind that operates jointly with an act or omission in
8 the commission of crime. Criminal intent is a mental
9 state.

10 Criminal liability is normally based upon the
11 concurrence of two factors: An evil, mean mind and an
12 evil-doing hand. Suspicion, however strong, is not
13 enough to sustain a conviction. The evidence presented
14 by the State must be substantial evidence that tends to
15 prove the guilt of the defendant beyond a reasonable
16 doubt.

17 Now, the indictments in this case charge both
18 defendants with conspiracy and armed robbery. And as
19 to the defendant David Wince Chiles, Jr., possession of
20 a weapon during the commission of a violent crime.

21 I remind you that the fact that a defendant was
22 arrested, charged and indicted in this case is not
23 evidence in this case and cannot be considered by you
24 as evidence of guilt of the defendant in this case or
25 either one of the defendants, nor does it create any

Jury Charge

1 presumption or inference of guilt.

2 These documents are simply the formal written
3 instruments which contain the charges made against the
4 defendants. It is a formal document by which this case
5 is brought into court.

6 Now, the indictments in this case allege several
7 different offenses against the defendants. As to the
8 defendant David Wince Chiles, Jr., the charges are:
9 Indictment number 2012-GS-23-965, conspiracy, and
10 indictment number 2012-GS-23-966, Count One, armed
11 robbery, and Count Two, possession of a weapon during
12 the commission of a violent crime.

13 As to the defendant Precious Jacquetta Harris, the
14 charges are: In indictment number 2012-GS-23-1 --
15 excuse me -- 1727, conspiracy, and indictment number
16 2012-GS-23-3108, armed robbery.

17 Each indictment charges a separate and distinct
18 offense. You must decide each indictment separately on
19 the evidence and the law applicable to it uninfluenced
20 by your decision as to any other indictment.
21 Defendants may be convicted or acquitted on any or all
22 of the offenses charged. You will be asked to write a
23 separate verdict of guilty or not guilty for each
24 indictment and each count of each indictment as to each
25 defendant.

1 I charge you that there are the two defendants in
2 this case, each of whom is charged with conspiracy and
3 armed robbery. Additionally, one defendant, David
4 Wince Chiles, Jr., is charged with possession of a
5 weapon during a violent crime. The case of
6 each defendant and evidence and the law concerning that
7 defendant should be considered separately and
8 individually. Your verdict does not have to be the
9 same for both defendants. The fact that you may find
10 one defendant guilty or not guilty should not control
11 your verdict as to the other defendant.

12 Where more than one person is charged with a
13 crime, if the evidence warrants it, you may convict one
14 and acquit the other, or you may acquit both or you may
15 convict both. It will depend upon your view of the
16 testimony and evidence. You must take each defendant
17 and consider the evidence as to that defendant and my
18 instructions to you on the law. You will then write a
19 separate verdict of guilty or not guilty to each
20 individual on each count of each indictment.

21 Now, the defendants are charged with conspiracy.
22 The State must prove beyond a reasonable doubt that the
23 defendants combined with one or more persons for the
24 purposes of committing an unlawful act or committing a
25 lawful act by unlawful means.

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1 There must be a mutual understanding, agreement of
2 common intention and plan. Mere passive knowledge of
3 or consent to the criminal conduct of another is not
4 enough to make a person a conspirator. There must be
5 guilty knowledge and participation.

6 Similarly, the mere fact that the defendants may
7 have associated with one another or met with another
8 person and discussed common aims and interests does not
9 necessarily establish the proof of existence of a
10 conspiracy although the defendants were involved in a
11 conspiracy.

12 On the other hand, it is not necessary that the
13 agreement be a formal one, that is, that it be in
14 writing, that the persons hold a meeting and expressly
15 state the terms of the common plan or that agreement be
16 stated in words between them. Agreement of -- excuse
17 me -- the agreement of a criminal conspiracy may come
18 into being through an implied mutual understanding.

19 Willful, intentional and knowing adoption by two
20 or more persons of a common plan is sufficient. No
21 overt act needs to be shown to establish a conspiracy.
22 A conspiracy may be shown by circumstances, evidence
23 and the conduct -- circumstantial evidence and the
24 conduct of the parties.

25 In order to convict the defendants of conspiracy,

Jury Charge

1 the State must prove beyond a reasonable doubt not only
2 that the defendants knew of the unlawful conduct but
3 the defendants agreed to combine with the other person
4 for the purpose of accomplishing the unlawful conduct.

5 Now, the defendants are charged also with armed
6 robbery. In order to prove the offense, the State must
7 first prove beyond a reasonable doubt that the
8 defendants took personal property from the person or
9 presence of another person. Now, that includes a
10 corporation.

11 Property is in the presence of a person if it is
12 within that person's reach, inspection, observation or
13 control so that the person could, if not overcome with
14 violence or prevented by fear, keep possession of the
15 property.

16 The State must also prove beyond a reasonable
17 doubt that the defendants carried the property away
18 intending to permanently deprive the owner of the
19 property and to keep the property for the defendants'
20 own use. The slightest removal of the property or the
21 complete possession of the property, even for an
22 instance, by the defendants is sufficient to show a
23 taking and carrying away of the property. The taking
24 and carrying away of the property must have been done
25 with violence or by putting the owner of property in

Jury Charge

1 fear of violence.

2 Finally, the State must prove beyond a reasonable
3 doubt the defendants were armed with a deadly weapon
4 during the robbery. A deadly weapon is any article,
5 instrument or substance that is likely to cause death
6 or great bodily harm. Whether an instrument has been
7 used as a deadly weapon depends on the facts and
8 circumstances of each case.

9 The following are examples of instruments which
10 may be deadly weapons: A pistol, shotgun, rifle, dirk,
11 dagger, knife, razor, fire bomb, and a gun may be a
12 deadly weapon even if it's not operating.

13 The defendant, David Wince Chiles, Jr., is charged
14 with possession of a weapon during the commission or
15 attempt to commit a violent crime. The State must
16 prove beyond a reasonable doubt the defendant was in
17 possession of a firearm or visibly displayed what
18 appeared to be a firearm during the commission of a
19 violent crime. A firearm means any machine gun,
20 automatic rifle, revolver, pistol, any weapon which is
21 designed to and may be readily converted to expel a
22 projectile.

23 In order to find the defendant guilty of
24 possession of a weapon during the commission of a
25 violent crime, you must first find the defendant guilty

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1 of either committing a violent crime or attempting to
2 commit a violent crime. Armed robbery is a violent
3 crime.

4 The State must prove beyond a reasonable doubt
5 that the weapon further advanced or helped in the
6 commission of the crime. Now, if a crime is committed
7 by two or more people who are acting together in
8 committing a crime, the act of one is the act of all.
9 A person who joins with another to commit an unlawful
10 act is criminally responsible for everything done by
11 the other person which happens as a probable or natural
12 consequence of the acts done in carrying out the common
13 plan and purpose.

14 For example, two people can be guilty of killing
15 another person when only one of the two had a gun.
16 There was only one bullet and only one of the two fired
17 the shot that caused the death. If two or more people
18 are together, acting together, assisting each other in
19 committing the offense, the act of one is the act of
20 all. Or as it's sometimes said, the hand of one is the
21 hand of all.

22 Prior knowledge that a crime is going to be
23 committed without more is not sufficient to make a
24 person guilty of that crime. Mere knowledge that
25 another person is going to commit a crime, even if the

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1 defendant is present when the crime is committed, is
2 not sufficient to convict the defendant as a principal.

3 The guilt as a principal is shown by actual or
4 constructive presence at the scene as a result of a
5 prior agreement or arrangement. Therefore, a finding
6 of a prior arranged plan or common scheme is necessary
7 for a finding of guilt as a principal.

8 The State must prove beyond a reasonable doubt by
9 competent evidence the theory -- excuse me. The State
10 must prove beyond a reasonable doubt by competent
11 evidence the theory of the hand of one is the hand of
12 all. A principal in a crime is one who either actually
13 commits the crime or is present aiding, abetting or
14 assisting in committing the crime.

15 When a person does an act in the presence of and
16 with the assistance of another, the act is done by
17 both. When two or more acting with a common plan or
18 intent are present at the commission of a crime, it
19 does not matter who actually commits the crime. All
20 are guilty. Hand of one is the hand of all. "Present
21 at the commission of the crime" means to be
22 sufficiently near to aid and abet and assist in the
23 commission of a crime.

24 However, mere presence at the scene of a crime is
25 not sufficient to convict one as a principal on the

1 theory of aiding and abetting. Intent is also a
2 necessary element, for there must have been a common
3 design or intent to commit the crime and the crime must
4 have been committed pursuant thereto with the person
5 aiding and abetting by some overt act.

6 "Intent" means intending the result which actually
7 occurs, not accidentally or involuntarily. Intent may
8 be shown by acts and conduct of the defendant and other
9 circumstances which may naturally and reasonably infer
10 intent. The State must prove these elements beyond a
11 reasonable doubt.

12 If you have a reasonable doubt of the defendants'
13 guilt or each of the defendants after considering or
14 either of the defendants after considering all the
15 evidence on either indictment, any of the counts in
16 those indictments, then you must find the defendant not
17 guilty on that indictment or that count.

18 On the other hand, if you have no reasonable doubt
19 as to the defendants' guilt after considering all the
20 evidence on either or both of the indictments as to
21 each of the defendants and the counts of those
22 indictments, you must find the defendant guilty on that
23 or those indictments and the counts of those
24 indictments.

25 Mr. Foreman, ladies and gentlemen, you have been

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1 selected as fair and impartial jurors, sworn to
2 impartially try and determine the facts of this case.
3 And when you comply with your oath to do so, then no
4 one will have the right to criticize your verdict and
5 you will have fully discharged your duty as jurors.

6 You should not be influenced by opinions or
7 expression of opinions, if any, which you may have
8 heard on the outside, but you will decide this case
9 according to the testimony that you have heard from the
10 lips of the sworn witnesses along with the other
11 evidence that may have been introduced.

12 As to those questions to which an objection was
13 sustained, you must not speculate as to what the answer
14 might have been or the reason for the objection. As I
15 said earlier, you are the judges of the facts in this
16 case, and you are to determine only if the defendant
17 and each of the defendants is guilty or not guilty
18 based on the testimony and evidence presented in the
19 trial and after applying the law as I have given it to
20 you.

21 If, from the evidence, you have a reasonable doubt
22 as to whether or not either of the defendants are --
23 whether or not the defendant is guilty, it is your duty
24 to acquit that defendant and write that, the two words
25 "not guilty," as to that indictment and that charge in

Jury Charge

1 the counts in those indictments.

2 Under the oath you took you swore to try this case
3 based only and solely on the testimony, evidence and
4 law presented and heard in this courtroom. It's your
5 duty to lay aside all bias or prejudice or sympathy you
6 may have in reaching your verdict. You have no friends
7 to reward or enemies to punish in this case.

8 I might note that the word "verdict" comes from
9 the Latin term "veredictum," which means "to speak the
10 truth." Abide by your oath and return a verdict which
11 speaks the truth.

12 Now, Mr. Foreman, ladies and gentlemen of the
13 jury, I have prepared two sets of verdict forms for
14 your use during the trial -- during your deliberations.

15 Madam Bailiff, could you give these to the
16 Foreman, please.

17 THE BAILIFF: Sure.

18 THE COURT: Thank you.

19 As you will notice, as to the State of South
20 Carolina versus David Wince Chiles, Jr., on indictments
21 number 2012-GS-23-965 and 966, the verdict form
22 provides on indictment number 2012-GS-23-965
23 conspiracy. And remember, as I mentioned earlier in
24 these proceedings, that whatever your verdict is must
25 be unanimous. That means all 12 of you must agree to

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1 that verdict.

2 And so on the indictment for conspiracy against
3 the defendant, David Wince Chiles, Jr., it is provided,
4 "We, the Jury, unanimously find on the indictment
5 number 2012-GS-23-965 that the defendant, David Wince
6 Chiles, Jr., is guilty of conspiracy" or "not guilty."

7 Then you go to the next page as to indictment
8 number 2012-GS-23-966, Count One, "We, the Jury, on
9 Count One, armed robbery, We, the Jury, unanimously
10 find on indictment number 2012-GS-23-966, Count One,
11 that the defendant, David Wince Chiles, is guilty of
12 armed robbery or not guilty." Again, whatever your
13 verdict is on that count of that indictment must be
14 unanimous.

15 Then Count Two of the indictment, possession of a
16 weapon during a violent crime: "We, the Jury,
17 unanimously find on indictment number 2012-GS-23-966,
18 Count Two, the defendant, David Wince Chiles, Jr., is
19 guilty of possession of a weapon during the commission
20 of a violent crime" or "not guilty."

21 Now, once you complete all of the verdicts on that
22 indictment, if you would then sign your name above the
23 line as provided.

24 Then the second verdict form is as to the State of
25 South Carolina versus Precious Jacquetta Harris,

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1 indictment number 2012-GS-23-1727 charging conspiracy.
2 And your verdict would be: "We, the Jury, unanimously
3 find on indictment number 2012-GS-23-1727 that the
4 defendant, Precious Jacquetta Harris, is" either guilty
5 of conspiracy or not guilty.

6 And then on the second indictment,
7 2012-GS-23-3108, armed robbery, your verdict would be:
8 "We, the Jury, unanimously find on the indictment
9 number 2012-GS-23-3108 that the defendant, Precious
10 Jacquetta Harris, is" either "guilty of armed robbery"
11 or "not guilty."

12 Again, it must be unanimous verdicts on each
13 indictment. And once the verdict form is completed as
14 to that defendant, then sign your name. And once you
15 complete that, if you would, get the verdict forms
16 back.

17 I'm going to ask you to retire to the jury room
18 one more time without beginning your deliberations.
19 But when the bailiff brings in the verdict forms and
20 all the exhibits that have been introduced and admitted
21 into evidence in this case, then you will commence your
22 deliberations.

23 Once you reach your verdicts as to all -- both
24 indictments -- all indictments and all counts of the
25 indictments as to each of the defendants, then you will

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1 knock on the door and we'll return you and receive your
2 verdicts.

3 And with that, I would ask you to retire to the
4 jury room one more time. Again, do not begin your
5 deliberations until I send in the verdict forms.

6 Madam Alternate, you get to stay with us.

7 But the 12 members of the jury, if they would,
8 please.

9 (WHEREUPON, the jury, with the exception of the
10 alternate juror, exited the courtroom
11 at 3:36 p.m.)

12 THE COURT: All right. Are there any exceptions
13 or requests from the State?

14 MR. WESTON: No, sir, your Honor.

15 THE COURT: From the Defendant Chiles?

16 MR. SMITH: No, your Honor.

17 THE COURT: From the Defendant Harris?

18 MR. ROBINSON: No, sir, your Honor.

19 THE COURT: Very good. All right. Look through
20 the exhibits and be sure that everything that's
21 supposed to go back does go back and nothing that is
22 not supposed to go back does not go back.

23 All right. We'll stand at ease while awaiting a
24 verdict.

25 MR. SMITH: Judge, the alternate.

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1 THE COURT: I'm sorry. I'll be right with you.

2 Y'all do check on your exhibits. And here's the
3 verdict forms, Mr. Bailiff.

4 MR. WESTON: State has no objection or problem
5 with the exhibits that are going to go back, your
6 Honor.

7 THE COURT: Is that correct, Mr. Robinson?

8 MR. ROBINSON: That's correct, Judge.

9 THE COURT: Be sure they understand to begin
10 deliberations, just knock on the door when they're
11 complete.

12 Wonderful. Thank you.

13 I think you understand why we have an alternate
14 because this case went over two days, and, of course,
15 something could have happened to one of them, and you
16 would slide into their place on the jury reaching their
17 verdict.

18 I know that it looks like I'm doing everything but
19 paying attention up here, but I have developed a
20 certain knack, I guess, for keeping up with what goes
21 on in the courtroom, and I noticed that throughout the
22 trial of this case you were very -- you paid very
23 careful and close attention to all of the testimony and
24 evidence, and I saw you responding sometimes to the
25 testimony and evidence. And so I'm confident if you

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1 did have to sit as a juror, you would have been an
2 excellent juror, and I wish there was something I could
3 do to thank you for your service.

4 Of course, Madam Clerk, that does complete their
5 service?

6 THE CLERK: Yes, it does.

7 THE COURT: Do you have anything for the juror?

8 THE CLERK: If she needs a statement, she can get
9 it from Judy downstairs.

10 THE COURT: Do you know where the clerk's office
11 is?

12 ALTERNATE JUROR: I've already got it.

13 THE COURT: That does complete your service. I do
14 want to thank you. I know you would have rather been
15 somewhere else than where you've been the last two
16 days.

17 ALTERNATE JUROR: No, I've learned a lot.

18 THE COURT: Well, wonderful. Thank you so much
19 because that's the one thing I would want to say, I
20 hope it has been of some benefit.

21 ALTERNATE JUROR: Yes.

22 THE COURT: Because we could not have the system
23 of justice we have without citizen participation.

24 ALTERNATE JUROR: Thank you.

25 THE COURT: Thank you, ma'am.

1 All right. As I said earlier, we stand at ease
2 awaiting a verdict.

3 By the way, I do want to thank all the attorneys
4 not only for their patience with the Court but also for
5 the very professional way y'all tried this case. I
6 don't think any of you left anything unturned, and I
7 want to thank you all for it. And that goes for the
8 State and each of the defendants and all that. I thank
9 you very much. All right.

10 We'll stand at ease awaiting a verdict.

11 (Court in recess, pending verdict, from 3:40 p.m.
12 to 5:13 p.m.)

13 THE COURT: Back on the record. The Court has
14 received a question from the jury. "Is the police
15 report evidence and can we have it?"

16 Mr. Weston.

17 MR. WESTON: Your Honor, my answer would be no and
18 no.

19 THE COURT: All right. Mr. Smith.

20 MR. SMITH: I would not disagree with Mr. Weston,
21 your Honor.

22 THE COURT: I understand. Mr. Robinson?

23 MR. ROBINSON: I do as well.

24 THE COURT: All right. Now, of course, I think
25 the actual investigative report is probably

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1 inadmissible because it does contain, obviously,
2 opinions and things of that nature and also the rule
3 prohibits investigative reports. So, no, it will not
4 be -- it's not admissible and would not be permitted to
5 go to the jury.

6 I can approach it in two ways: By giving them
7 that law that it's not admissible and cannot go to the
8 jury, or I can just say, "You have to try the case on
9 the evidence and exhibits that are submitted."

10 What do you say, Mr. Weston?

11 MR. WESTON: I would prefer, your Honor, that you
12 give them both, but I think we all agree that you give
13 them the second one.

14 MR. ROBINSON: Yes.

15 MR. SMITH: Judge, are you talking about bringing
16 the jury in and --

17 THE COURT: Well, I've got to bring them in,
18 right?

19 MR. SMITH: I -- I -- I guess my experience has
20 been just saying, look, they have got the evidence,
21 whatever has been presented, and that's it.

22 THE COURT: That's just it. That's why I'm asking
23 what would be the preference.

24 MR. ROBINSON: I would concur with Mr. Smith.

25 THE COURT: That sounds like Mr. Weston and y'all

1 are in agreement.

2 All right. Ask the jury to join us, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 5:20 p.m.)

5 THE COURT: All right. Let the record reflect the
6 jury is in the jury box.

7 Mr. Foreman, ladies and gentlemen of the jury, the
8 Court has been provided a question: "Is the police
9 report evidence and can we have it?"

10 Mr. Foreman, ladies and gentlemen of the jury, the
11 police report is not in evidence and as a separate
12 exhibit, and you must decide -- and the record is
13 closed now, so you must decide your verdicts on each of
14 these indictments and each count of the indictment
15 based on what is in evidence, what you have either by
16 way of testimony or exhibits that have been admitted.

17 JURY FOREMAN: We have all the evidence?

18 THE COURT: You have all of the evidence that has
19 been admitted. When I say all the evidence, I'm
20 talking about the exhibits.

21 JURY FOREMAN: Yes.

22 THE COURT: Now, the testimony can be replayed if
23 you want that or portions of it. Not the whole thing,
24 of course. But if you have some question about that.

25 JURY FOREMAN: No.

1 THE COURT: All right. Anything else? Very good.
2 Retire to the jury room and continue deliberations.

3 (WHEREUPON, the jury exited the courtroom
4 at 5:21 p.m.)

5 THE COURT: All right. Any exceptions or requests
6 from the State?

7 MR. WESTON: No, sir, your Honor.

8 THE COURT: From the Defendant Chiles?

9 MR. SMITH: No, your Honor.

10 THE COURT: From the Defendant Harris?

11 MR. ROBINSON: No, sir, your Honor.

12 THE COURT: Very good.

13 MR. SMITH: Nothing, your Honor. I just noticed
14 that one of the props that Mr. Weston was using was
15 still up there and I was going to ask -- I don't know
16 that it makes any difference at this point.

17 THE COURT: Well, the thing is I've already told
18 them they can't have it.

19 MR. WESTON: I'll take it back to my office now,
20 your Honor.

21 THE COURT: Or turn it around.

22 MR. WESTON: Yes, sir.

23 MR. SMITH: That's fine.

24 THE COURT: Either way.

25 (Court in recess, pending verdict, from 5:22 p.m.)

1 until 6:51 p.m.)

2 THE COURT: All right. We're back on the cases of
3 State versus Chiles and Harris. I understand the jury
4 has reached a verdict.

5 Is there anything from the State before we bring
6 the jury in?

7 MR. WESTON: No, sir, your Honor.

8 THE COURT: From the Defendant Harris?

9 MR. ROBINSON: No, sir, your Honor.

10 THE COURT: Defendant Chiles?

11 MR. SMITH: No, your Honor.

12 THE COURT: Inasmuch as we have had some interest
13 in this trial and obviously welcome any interest that
14 can be demonstrated but not demonstrated in a vocal way
15 but demonstrated in the sense of paying attention and
16 being aware of what is going on, but in this regard, as
17 I say, the Court cannot in any way abide any sort of
18 outburst or boisterous remarks regardless of what the
19 verdict is.

20 In the event that there is such an outburst, as I
21 mentioned the other day, the Court would consider that
22 contempt of its decorum and will fine the individual or
23 sentence them, as the case may be, to as much as six
24 months in jail as the circumstances deserve.

25 So with that admonition: No outburst, no response

Verdict

1 whatsoever to the jury, jury's verdict, if anybody has
2 any question about it and what they're going to do and
3 not do, leave the courtroom now.

4 Very well. Ask the jury to join us.

5 (WHEREUPON, the jury came into open court at
6 approximately 6:55 p.m.)

7 THE COURT: Mr. Foreman, I understand the jury has
8 reached verdicts in these cases.

9 JURY FOREMAN: Yes.

10 THE COURT: If you would, please, pass them up to
11 the bailiff.

12 Thank you.

13 THE COURT: State of South Carolina versus David
14 Wince Chiles, Jr., indictment number 2012-GS-23-965,
15 we, the Jury, unanimously find on indictment number
16 2012-GS-23-965 that the defendant, David Wince Chiles,
17 Jr., is guilty of conspiracy.

18 Indictment number 2012-GS-23-966, Count One, armed
19 robbery, we, the Jury, unanimously find on indictment
20 number 2012-GS-966, Count One, that the defendant,
21 David Wince Chiles, Jr., is guilty of armed robbery.

22 Indictment number 2012-GS-23-966, Count Two,
23 possession of a weapon during a violent crime, we, the
24 Jury, unanimously find on indictment number
25 2012-GS-966, Count Two, that the defendant, David Wince

1 Chiles, Jr., is guilty of possession of a weapon during
2 the commission of a violent crime. Signed, Steven G.
3 Aden.

4 Mr. Foreman, ladies and gentlemen of the jury, are
5 these your verdicts and are they still your verdicts in
6 the State of South Carolina versus David Wince Chiles,
7 Jr., as to each -- as to the indictments and each count
8 in each indictment? If so, indicate by raising your
9 right hand.

10 Very good. Let the record reflect that the jury
11 affirms its verdict.

12 State of South Carolina versus Precious Jacquetta
13 Harris, indictment number 2012-GS-23-1727, conspiracy,
14 we, the Jury, unanimously find on indictment number
15 2012-GS-23-1727 that the defendant, Precious Jacquetta
16 Harris, is not guilty.

17 Indictment number 2012-GS-23-3108, armed robbery,
18 we, the Jury, unanimously find on indictment number
19 2012-GS-23-3108 that the defendant, Precious Jacquetta
20 Harris, is not guilty. Signed, Steven Aden, Foreman,
21 Greenville, South Carolina, November 6, 2014.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 this is your verdict on both -- on these indictments,
24 as to both of these indictments, excuse me, and it's
25 still your verdicts, if so, indicate by raising your

1 right hand.

2 Very good. Let the record reflect --

3 (Outburst from gallery.)

4 THE COURT: Just ask them to leave, if you would,
5 please.

6 Let the record reflect that the jury does affirm
7 its verdicts in the cases of Precious Jacquetta Harris.

8 All right. Is there anything from the State
9 before I dismiss the jury?

10 MR. WESTON: No, sir, your Honor.

11 THE COURT: From the Defendant Chiles?

12 MR. SMITH: No, your Honor.

13 THE COURT: From the Defendant Harris?

14 MR. ROBINSON: No, sir, your Honor.

15 THE COURT: Mr. Foreman, ladies and gentlemen of
16 the jury, the Court is never interested in a verdict,
17 only how that verdict is reached. And I can assure you
18 that in this particular trial -- and it was a unique
19 trial, if you will forgive me, with codefendants and
20 the issues that were involved -- and also you might
21 give me at least patience with the Court, it looks like
22 I'm doing everything up here except paying attention.
23 But I did pay attention to the things that go on in the
24 courtroom, and one of the things that I am particularly
25 aware of is the attention that you, each of you, have

State of South Carolina vs. David Wince Chiles, Jr.
2012-GS-23-965 & 966

Verdict

1 given to the testimony, the evidence, the exhibits, the
2 argument by counsel and the proceedings we have had in
3 these two cases. And I am satisfied that you gave both
4 the State and the defendants, both defendants, a fair
5 and impartial trial in this case.

6 None of you asked to be here this week. There's
7 many places you would have rather been than where you
8 have been for the last two days, but I can assure you
9 our system of justice would not function if it did not
10 have citizen participation. And for that reason not
11 only is this Court but also the people of South
12 Carolina and in particular Greenville County are
13 indebted to you for your service.

14 I wish there was something I could do for you in
15 recognition of your service. Of course this will
16 conclude your service as jurors this week. But if you
17 remember when you were qualified on Monday, I think you
18 were asked the questions, how many of you served on a
19 jury in the last three years. At least you won't have
20 to serve for another three years. I do thank you for
21 your service. As I say, without citizen participation,
22 this system of justice would not be what it is.

23 And also I would suggest this to you or at least
24 mention it to you. Your verdict is something that was
25 reached by all 12 of you but in a unanimous way in each

1 of those verdicts. So, therefore, it's not the verdict
2 of any one of you, but the collective body as a jury.
3 So, therefore, none of you or any one of you have any
4 duty or responsibility to answer for that verdict.

5 In fact, if anybody should seek to find out about
6 how you reached your verdict or discuss the verdict
7 with you and you do not wish them to do that, then you
8 are to report them to the clerk of court and I'll take
9 the appropriate action because, as I say, you have
10 performed your duty as citizens, not in any other
11 personal way, and I thank you for it.

12 With that, I excuse you from your service in the
13 Court of General Sessions in Greenville County for this
14 week and for three years. Good luck to you all and
15 thank you again.

16 (WHEREUPON, the jury exited the courtroom
17 at 7:03 p.m.)

18 THE COURT: All right. In the matter of the State
19 of South Carolina versus Precious Jacquetta Harris, the
20 jury having found you not guilty on both indictments, I
21 hereby discharge you from your arrest and dismiss you.

22 MR. ROBINSON: Thank you, Judge.

23 THE COURT: All right. You may retire if you
24 would like. Good luck to you, ma'am.

25 MR. ROBINSON: Thank you, Judge.

State of South Carolina vs. David Wince Chiles, Jr.
2012-GS-23-965 & 966

Sentencing

1 THE COURT: In the matter of State of South
2 Carolina versus David Wince Chiles, Jr., is the State
3 ready to proceed?

4 MR. WESTON: Yes, sir, your Honor.

5 THE COURT: Is the defendant ready to proceed?

6 MR. SMITH: Yes, sir, your Honor.

7 THE COURT: If you would please come around.

8 All right. Mr. Solicitor, the defendant has been
9 convicted of conspiracy on indictment number
10 2012-GS-23-965, found guilty on that indictment, that
11 is indictment for conspiracy. I understand the maximum
12 sentence is not to be imprisoned more than \$5,000 -- of
13 course fined more than \$5,000 or imprisoned not more
14 than five years. But the fine must not be greater or
15 the sentence greater than five years.

16 And on indictment number -- let's see -- 966,
17 Count One, armed robbery, the maximum sentence on that
18 would be for a mandatory minimum term of not less than
19 ten years nor more than 30 years, no part of which may
20 be suspended or probation granted.

21 And possession of a weapon during a violent crime,
22 if convicted of that offense, you must be imprisoned
23 for five years in addition to the punishment provided
24 for the principal crime, mandatory five-year sentence
25 to run consecutively or concurrently.

Sentencing

1 Is that your understanding?

2 MR. WESTON: Yes, sir, your Honor.

3 THE COURT: Is that your understanding, Mr. Smith?

4 MR. SMITH: Yes, sir. It is mandatory unless a
5 longer mandatory minimum term is prescribed for the
6 violent crime, which is the armed robbery, which is the
7 ten years. So it's like you said, it can be concurrent
8 to the ten years or it can be consecutive or whatever
9 you --

10 THE COURT: After the ten years.

11 MR. SMITH: Yes.

12 THE COURT: Right.

13 MR. SMITH: Yes, sir.

14 THE COURT: All right. Very well. What's the
15 record of the defendant?

16 MR. WESTON: He has no prior record, your Honor.

17 THE COURT: Is there any recommendation?

18 MR. WESTON: No, sir, your Honor.

19 And just while I'm speaking, the victim obviously
20 is not here. They indicated that they did not wish to
21 be here for the outcome of the trial. We will advise
22 them, of course, of the outcome. And with regard to
23 jail time, your Honor, Mr. Smith and I have agreed that
24 he has been in the detention center since December the
25 either 11th or 30th of 2011. I'm not sure.

1 THE COURT: Let me ask you. Have you calculated
2 that or do I just leave it as to be determined by the
3 Department of Corrections?

4 MR. WESTON: I think that would be the appropriate
5 thing to do, your Honor.

6 THE COURT: All right. Do you have any problem
7 with that, Mr. Smith?

8 MR. SMITH: As long as they do it correctly,
9 Judge. For the record, can I say that I'm looking at a
10 supplemental report that shows that the date of arrest
11 or the warrant was served on December the 30th, 2011,
12 so credit for time served since that date is what we
13 would be asking for.

14 THE COURT: What I'll do, then, is I'll mark it to
15 be credit be given for time served from --

16 MR. SMITH: From December 30th, 2011.

17 MR. WESTON: Well, your Honor, I think it will be
18 more appropriate to let the Department of Corrections
19 calculate it because apparently there was some house
20 arrest at some point. He was released on house arrest.
21 I'm not sure how that calculates in.

22 MR. SMITH: Well, the statute says that you can
23 get credit for house arrest.

24 THE COURT: Well, the only problem with that, the
25 statute also says that if the Department of

Sentencing

1 Corrections, what is it, determined the credit for time
2 served to be calculated and applied by the State
3 Department of Corrections.

4 MR. SMITH: Okay.

5 THE COURT: I mean, if we're going to talk about
6 statutes.

7 MR. SMITH: Yes, sir. But, I mean, I guess what
8 I'm saying is --

9 THE COURT: In other words, if there is often,
10 what is it, if there is no question about it, the time
11 to be given credit for, of course, I accept the
12 agreed-to amount.

13 MR. SMITH: Yes, sir.

14 THE COURT: But here there seems to be some
15 questions about calculation of it, and inasmuch as the
16 statute provides for the calculations to be made and
17 applied by the State Department of Corrections, I'll
18 leave it for them to do.

19 MR. SMITH: As far as your Honor is concerned and
20 based on our agreement and just for the record, Judge,
21 just in case it comes up, you don't have any problem
22 with giving him credit for time served back to
23 December 30, 2011?

24 THE COURT: Of course I do because I understand
25 there's some question where that time was served and

1 under what conditions, and that's something for the
2 interpretation -- of course, Mr. Smith, you understand
3 according to *Shabazz*, it's a matter for the
4 administrative division of our courts, not general
5 sessions.

6 MR. SMITH: Yes, sir.

7 THE COURT: All right. So, in other words, I will
8 give -- do it according to the statute, give him credit
9 for time served pursuant to South Carolina Section
10 24-13-40 to be calculated and applied by the State
11 Department of Corrections on both indictments.

12 MR. SMITH: Thank you, your Honor.

13 THE COURT: Very good. All right. Anything else
14 from the State?

15 MR. WESTON: No, sir, your Honor.

16 THE COURT: All right. Mr. Smith?

17 MR. SMITH: Well, Judge, you know, we obviously
18 went through a two-day trial, and we may have to find
19 out if it was some sort of a compromise verdict where
20 one person was let go and the other one was convicted
21 or something of that nature, if anybody will talk to
22 us.

23 THE COURT: Well, the only thing is, that's
24 something by the rules you can't do.

25 MR. SMITH: Yes, sir.

1 THE COURT: If I'm not mistaken, I think it's rule
2 1011 or 12 that one of the things that you're
3 prohibited from doing is inquiring about the jury's
4 verdict.

5 MR. SMITH: You've heard the evidence. It's
6 possible they could have done that. But, the bottom
7 line is, I mean, my client has maintained his innocence
8 this entire time. Precious Harris did the same thing.
9 They found her not guilty. They found him guilty. You
10 judged the witnesses and seen how they testified. My
11 client has no prior record, Judge.

12 THE COURT: Well, let me find a little bit out
13 about the defendant. How old is he?

14 MR. SMITH: Go ahead and answer.

15 DEFENDANT CHILES: 21.

16 THE COURT: How far did he go in school?

17 You can answer, Mr. Chiles, if you would,
18 please -- well, you're still under oath. Do you
19 understand that?

20 DEFENDANT CHILES: (Nodding.)

21 THE COURT: You're shaking your head. Is that
22 saying that you understand you're still under oath and
23 you do not have to be resworn?

24 DEFENDANT CHILES: Yes, sir.

25 THE COURT: All right. How far have you gone in

1 school?

2 DEFENDANT CHILES: Eleventh.

3 THE COURT: Eleventh grade? What kind of work do
4 you do?

5 DEFENDANT CHILES: None.

6 THE COURT: Have you ever been employed?

7 DEFENDANT CHILES: No, sir.

8 THE COURT: All right. Are you married?

9 DEFENDANT CHILES: No, sir.

10 THE COURT: Do you have any children?

11 DEFENDANT CHILES: Yes, sir.

12 THE COURT: How many children?

13 DEFENDANT CHILES: One.

14 THE COURT: And who does your child live with?

15 DEFENDANT CHILES: The mom.

16 THE COURT: Do you contribute towards your son's
17 support?

18 DEFENDANT CHILES: I have.

19 THE COURT: Pardon?

20 DEFENDANT CHILES: I just had her.

21 THE COURT: All right. Do you do it voluntarily
22 or through court order?

23 MR. SMITH: Judge, what had happened was I think
24 he was -- he was put in the detention facility, had
25 gotten out on house arrest and then was put back in,

Sentencing

1 and he hasn't had an opportunity to support.

2 THE COURT: How old is your son?

3 DEFENDANT CHILES: She's a girl.

4 THE COURT: Oh, a girl. I thought you said he.

5 All right. I'm sorry. How old is your daughter?

6 DEFENDANT CHILES: Two months.

7 THE COURT: Oh, just two months. I see what you
8 mean.

9 MR. SMITH: Yes, sir.

10 THE COURT: But you're not under any court order
11 to support the daughter?

12 DEFENDANT CHILES: (Shaking head.)

13 THE COURT: In other words, any support that you
14 would do for your child, your daughter, would be
15 voluntary?

16 MR. SMITH: He's not under any order, Judge.

17 THE COURT: That's what I'm saying, it would be
18 voluntarily, if there was any.

19 MR. SMITH: That's correct.

20 THE COURT: And you went to the eleventh grade.

21 MR. SMITH: You have to answer out loud.

22 DEFENDANT CHILES: Yes, sir. Yes, sir.

23 THE COURT: But he has no record; is that correct?

24 MR. WESTON: That's correct, your Honor.

25 THE COURT: How about juvenile?

1 I mean, I'm just asking, do you know if there is a
2 juvenile record? Have you even looked? I don't want
3 to know what it was, I just want to know.

4 MR. WESTON: Yes, sir, your Honor. He does have a
5 juvenile record.

6 THE COURT: That's the only thing I want to know.
7 I don't need to know what it is because I'm not going
8 to consider it. I'm just curious. He's 21 and he
9 doesn't have -- no adult record?

10 MR. SMITH: Correct.

11 THE COURT: Very well.

12 Mr. Smith.

13 MR. SMITH: Well, Judge, you heard from his
14 brother who is 24 now, was 21 when this incident
15 happened. He would have been 18 when this incident
16 happened. Judge, the only thing -- there's not much I
17 can add as far as the facts and everything. We put
18 everything out there.

19 What I'm going to ask your Honor to do, take into
20 consideration his age, please. Take into consideration
21 the fact that he has been incarcerated pretty much this
22 entire time or on house arrest.

23 I know he went to trial. I know that the
24 mandatory minimum is ten years. He's very well aware
25 of that. He knows that he's going to have to serve

Sentencing

1 85 percent of that time if you gave him ten years. And
2 that's eight and a half years. And that's with good
3 time, if he even gets good time down there. Otherwise
4 he's got to serve the entire ten years. So he is aware
5 of that, but he has no adult record.

6 And I know that sometimes if people are -- if they
7 went ahead and pled guilty, they may be given credit
8 for standing up and saying something that they did. I
9 know his brother did the same thing and got ten years
10 and had a prior record. This young man does not have
11 any prior record. Maybe a juvenile thing, but as an
12 adult, he does not have a prior record.

13 Judge, I'm going to ask you to give him the
14 minimum, the ten years. I know that may be -- and it
15 may not be abnormal, but a lot of times -- it's just
16 such a harsh penalty. And it's a harsh crime. But the
17 fact that it is a mandatory minimum, ten to 30 years,
18 I'm going to ask you to give him the minimum based upon
19 his age and the evidence that you've heard here today.
20 That way it will give him a chance to learn, to get out
21 and still have a life, to still be able to see his
22 child while she's still a child, and to be productive.

23 THE COURT: Well, he says he hasn't done anything
24 since he dropped out of the eleventh grade.

25 MR. SMITH: Well -- and, Judge, he's going to be

1 incarcerated now. He'll still be able to get out at
2 some point, and that's what this is about is
3 rehabilitation and hopefully give him some skills, get
4 his GED while he's in there, and hopefully be
5 employable when he gets out.

6 THE COURT: Mr. Chiles, what do you have to say?

7 DEFENDANT CHILES: I have nothing to say, sir.

8 THE COURT: Well, there is a reason for mandatory
9 and minimum sentences.

10 Anything you have to say, Mr. Weston?

11 MR. WESTON: No, sir, your Honor.

12 THE COURT: I most certainly don't punish anybody
13 for exercising their right to a trial, and it's hard
14 enough to understand what to do when the offenses are
15 not so dangerous. Armed robbery. Grand larceny. And,
16 of course, the conspiracy to commit the armed robbery.

17 MR. SMITH: Judge, if I may, I would ask again --
18 and I didn't say this before so it wouldn't be again, I
19 don't guess, but I would ask that you run everything
20 concurrent with each other rather than consecutively.

21 THE COURT: Mr. Smith, are you appointed?

22 MR. SMITH: I was appointed, yes, sir.

23 THE COURT: All right. Is there anything else
24 from the State?

25 MR. WESTON: No, sir, your Honor.

Sentencing

1 THE COURT: Anything else on behalf of Mr. Chiles,
2 Mr. Smith?

3 MR. SMITH: No, your Honor.

4 THE COURT: Mr. Chiles, anything else you would
5 like to say?

6 DEFENDANT CHILES: No, sir.

7 THE COURT: Indictment number 2012-GS-23-966, it's
8 the sentence of the Court that the defendant, David
9 Wince Chiles, Jr., be committed to the State Department
10 of Corrections for a term of 15 years plus pay the
11 costs and assessments as applicable. Defendant be
12 given credit for time served pursuant to the law as
13 provided.

14 Special condition of probation -- excuse me --
15 special condition of the sentence he is to obtain his
16 GED, undergo drug and alcohol testing and treatment and
17 substance abuse counseling as directed. That was on
18 Count One, armed robbery.

19 Indictment number 2012-GS-23-966, Count Two,
20 possession of a weapon during a violent crime, it's the
21 sentence of the Court the defendant, David Wince
22 Chiles, Jr., be committed to the State Department of
23 Correction for a term of five years and payment of the
24 costs and assessments as applicable. Sentence to run
25 consecutive to the sentence on 2012-GS-23-966, Count

1 One.

2 Indictment number 2012-GS-23-965, it's the
3 sentence of the Court that the defendant, David Wince
4 Chiles, Jr., be committed to the State Department of
5 Corrections for a term of five years provided upon
6 payment of costs and assessments as applicable. The
7 balance is suspended with probation for five years.
8 Sentence to run concurrent to 2012-GS-23-966, and
9 defendant is to be given credit for time served
10 pursuant to laws made and provided.

11 Special condition is that he is to perform
12 240 hours public service employment during probation,
13 obtain his GED, and probation to be suspended while
14 serving an active sentence. Public service employment
15 is suspended while being -- public service suspended
16 while gainfully employed and to pay \$500 to the clerk
17 of court during probation. All right.

18 Good luck to you, sir.

19 MR. WESTON: Thank you, your Honor.

20 (WHEREUPON, proceedings concluded at 7:32 p.m.)

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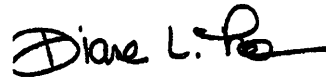
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 6th day of November 2014.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 18, 2015



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Greenville

In the Court of
General Sessions

3 State of South Carolina,)
4)
5)
6 -vs-)
7 David Wince Chiles, Jr.,)
and Precious Harris,)
8 Defendants.)
9 _____)

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2012-GS-23-1727
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B E F O R E:

The Honorable Alexander S. Macaulay, Judge;
and a jury

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

Jeff Weston, Assistant Solicitor
Attorney for the State

Marcus Smith, Attorney at Law
Attorney for Defendant Chiles

Scott Robinson, Attorney at Law
Attorney for Defendant Harris

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

State of South Carolina vs. David Wince Chiles, Jr.
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For the State:

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For the Defendant Harris:

| <u>Marked</u> | <u>Description</u> | <u>I.D.</u> | <u>Admitted</u> |
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25

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:31 a.m.)

4 THE COURT: We're back on the cases of State
5 versus Chiles and Harris.

6 Is the State ready?

7 MR. WESTON: State is ready to proceed, your
8 Honor.

9 THE COURT: Mr. Chiles is ready?

10 MR. SMITH: Ready, your Honor.

11 THE COURT: And Ms. Harris?

12 MR. ROBINSON: Yes, your Honor.

13 THE COURT: Very good. I guess I need to make an
14 admonishment more than anything else, but it's my
15 understanding that when the attorneys were going
16 through the security downstairs, one of the jurors was
17 in line and heard a little bit from one of the
18 attorneys.

19 Now, as I understand it, the attorney recognized
20 or realized who she was and didn't say anything else.
21 However, we need to understand that jurors do --
22 they're not sequestered totally or completely. We have
23 to be careful about what we say outside of the
24 courtroom in what context.

25 Now, I haven't talked to the juror. I don't want

1 to embarrass her, but I do want to -- I will eventually
2 thank her for bringing it to the Court's attention.

3 Now, is there anything from the State on that
4 matter?

5 MR. WESTON: No, sir, your Honor.

6 THE COURT: Mr. Chiles' attorney?

7 MR. SMITH: Well, your Honor, I immediately -- I
8 was talking downstairs with another attorney, Nihar
9 Patel, at the entryway, and we were just talking about
10 the trial in general, about how it was going and things
11 like that. We moved over to the line, and we were
12 about to -- he had asked me a question, and I said,
13 "Well," I started to look around. And I looked around
14 and I said, "I've got to find out whether there is a
15 juror around before I start talking about it." And the
16 woman in front of me said, "I recognize your voice.
17 That's me. There is a juror around." I said, "Okay,"
18 and that was it.

19 And then when we were coming up the steps, I
20 immediately saw Mr. Weston and I told him what had
21 happened and let him know. But we had not been talking
22 about anything in particular as far as facts or
23 anything about the case. I don't think she heard
24 anything.

25 THE COURT: Well, when she said that you, when you

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1 realized who she was, that nothing else was said. It's
2 just one of those things, you just have to constantly
3 be aware.

4 MR. SMITH: Yes, your Honor. Which is why I
5 asked -- said, "I need to look around before I can say
6 anything to see if there is a juror around to talk to
7 you about it," and that's what I was doing.

8 THE COURT: Mr. Robinson, anything from you on the
9 matter?

10 MR. ROBINSON: I wasn't aware of it, but thank
11 you. Nothing else.

12 THE COURT: Very good. All right.

13 How many witnesses do you have today, Mr. Weston?

14 MR. WESTON: Your Honor, we have two witnesses
15 left, Investigator Hoover and the codefendant, who's
16 already pled guilty, Keith Williams. And I'm advised
17 by law enforcement that he is either en route or here,
18 but Investigator Hoover is the next witness. Should
19 take 30, 45 minutes.

20 THE COURT: Now, it's my understanding that the
21 defendants are not going to put up any testimony or
22 evidence. The reason I need to know is because
23 eventually, if they're not, I need to, of course,
24 advise them.

25 MR. SMITH: Judge, I'm going to ask him if you

1 want one more minute.

2 THE COURT: All right.

3 (WHEREUPON, an off-the-record discussion was
4 held between Mr. Smith and Defendant Chiles.)

5 THE COURT: Yes, sir.

6 MR. SMITH: Judge, I have spoken with my client.

7 At this time he still does not wish to take the witness
8 stand, but we do reserve the right, obviously.

9 THE COURT: No question at all, but I was just
10 thinking usually I advise the defendants after the
11 close of the testimony so they will see what the full
12 case is from the State.

13 MR. SMITH: Yes, sir.

14 THE COURT: But I just want to be sure that both
15 of them, both defendants, were aware of their right to
16 testify or not to testify.

17 MR. ROBINSON: Yes, sir.

18 THE COURT: I will be advising them at the
19 appropriate time.

20 All right. Anything from the State?

21 MR. WESTON: No, sir, your Honor. State is ready
22 to proceed.

23 THE COURT: Anything from Ms. Harris?

24 MR. ROBINSON: No, sir, your Honor.

25 THE COURT: Mr. Chiles?

1 MR. SMITH: No, your Honor. We're ready.

2 THE COURT: Ask the State -- ask the jury to join
3 us, please.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:08 a.m.)

6 THE COURT: Let the record reflect the jury and
7 alternate are in the jury box.

8 Mr. Foreman, ladies and gentlemen of the jury,
9 we'll now continue with the State's case. I recognize
10 the Solicitor, Mr. Weston, please, first witness.

11 MR. WESTON: Thank you, your Honor. May it please
12 the Court, your Honor.

13 The State would call Deven Hoover.

14 DEVEN HOOVER,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: Please state your name for the record.

17 THE WITNESS: Deven Hoover.

18 DIRECT EXAMINATION

19 BY MR. WESTON:

20 Q Investigator Hoover, with whom are you employed?

21 A The Greenville County Sheriff's Office.

22 Q And how long have you been with the sheriff's
23 office approximately?

24 A Between my eighth and ninth year.

25 Q What is your rank in the sheriff's office?

1 A Master deputy assigned to violent crimes
2 investigations, armed robbery unit.

3 Q Did you have an occasion to investigate the
4 incident that brings us to court here today?

5 A I did.

6 Q And did the incident occur on the morning of
7 June 26th of 2011 from the information you received?

8 A Yes, sir.

9 Q And when did you first get assigned this case?

10 A I don't remember if it was the next day, but it
11 could have been over the weekend. It would have been
12 like a Monday morning.

13 Q All right. And where did this take place?

14 A At a McDonald's located on Old Spartanburg Road
15 near Hudson Corners.

16 Q Is that here in Greenville County?

17 A Yes, it is.

18 Q Once you're assigned the case, what did you do
19 first?

20 A Generally speaking, especially with this case, our
21 first order of business is to get everybody involved
22 together and take some statements from them and try to
23 figure out if there was any pieces missed when
24 uniformed patrol responded.

25 Q When you say "everybody involved," you mean law

1 enforcement folks?

2 A No, just the witnesses, the victims.

3 Q All right. And did you review the forensic
4 reports and the investigative or the incident reports
5 of the officers who are on scene?

6 A Yes, sir.

7 Q All right. And after reviewing those reports,
8 what would be the next step?

9 A To call them in to get statements to make sure
10 that their statements can be corroborated.

11 Q When you say "them," you mean the witnesses?

12 A The witnesses, yes, sir.

13 Q Did you do that in this case?

14 A Yes, sir, I did.

15 Q All right. After doing that -- well, let's be
16 specific here. Do you remember what witnesses you
17 talked with initially?

18 A Initially Investigator Jones was actually
19 cross-training with me. And when we called the initial
20 witnesses in, I allowed him to take the statements from
21 them as, obviously, we were trying to train him how we
22 do things. But we began -- I can't remember who he
23 talked to first, but, obviously, we wanted to begin
24 with the people inside the store, the employees.

25 Q Would that have included Quinzell Davis?

1 A Yes, sir.

2 Q Would that have also included Mr. Culbertson?

3 A Yes, sir. Mr. Adams, I believe.

4 Q All right. Would that also have included the
5 manager, the night manager, Ms. Precious Harris?

6 A Yes.

7 Q Just to be clear, prior to being assigned this
8 case, have you ever had any dealings with Ms. Precious
9 Harris?

10 A No, sir.

11 Q Had she ever been either the subject of an
12 investigation or a witness in any other cases, best you
13 can remember?

14 A Nothing from me, no, sir.

15 Q You had no idea who she was?

16 A Not a clue.

17 Q All right. And was she brought in as part of the
18 initial interview process?

19 A Yes, sir.

20 Q Did she, in fact, give a statement?

21 A She did. She did.

22 Q All right. We'll come back to that. But let's
23 talk about the protocols first. Let's talk about DNA.

24 A Yes, sir.

25 Q Was there any effort to try to find some DNA in

1 this case and the efforts, the problems, and your
2 conclusions regarding that?

3 A I don't believe they tried to take any DNA. I
4 wasn't there at the scene that night. But typically
5 speaking to DNA, unless there was blood or some form of
6 bodily fluid, they probably wouldn't have. Due to the
7 fact that it's a restaurant and there's so many people
8 that come in and out of a restaurant, that it doesn't
9 really specify specifically for any DNA to be taken.

10 Q And from your investigation and review of the
11 reports and talking to the officers involved and
12 talking to the witnesses involved, was there any
13 indication that either of the suspects bled?

14 A No, sir.

15 Q Was there any indication that either of the
16 suspects left any mucus or sweat or anything like that
17 that would have led you down the DNA path?

18 A No, sir.

19 Q All right. The suspects, according to previous
20 testimony, left out of the door. Was there any
21 evidence concerning how they got away from the
22 restaurant after they went outside? Were there any
23 eyewitnesses or forensic evidence to indicate how they
24 made their escape long range?

25 A No, sir.

1 Q So you didn't know whether they got into a car,
2 went into an apartment, left on foot or what?

3 A No, sir. The best case scenario I had was the
4 witnesses who said they escaped on foot. That's all I
5 had to go on.

6 Q All right. What about fingerprints?

7 A They did take latent evidence from the scene.
8 However, I believe the only latent results we got were
9 actually of the manager, but that's to be expected.
10 There's nothing ground-breaking about that because she
11 works there, so obviously her fingerprints would be all
12 over the place.

13 Q All right. And, once again, who was the night
14 manager?

15 A Ms. Harris.

16 Q What about video footage? Did y'all try to get
17 video footage?

18 A We did --

19 Q Before we get to the restaurant -- I apologize for
20 the interruption. I'm sorry.

21 A Oh.

22 Q Let's not talk about the McDonald's for a moment.
23 Was there any attempt to check video surveillance
24 footage from any of the surrounding businesses?

25 A Yes, sir. I believe uniformed patrol even tried

1 as well, but I went out myself and drove around trying
2 to find video with no results whatsoever.

3 Q All right. Let's talk about the McDonald's
4 itself. What efforts were made to get the video feed
5 from the McDonald's that was robbed?

6 A From the get-go we were stonewalled with that. It
7 was not even available to us that night. There was no
8 video. According to the deputies on scene, they
9 relayed to me that it was a several-week issue that the
10 cameras had been inoperable, so obviously that evidence
11 was not there for us to gather.

12 Q You indicated you took such statements from the
13 people involved. Initially were Mr. Adams,
14 Mr. Culbertson and Mr. Davis, two of whom were
15 employees and one was a friend of an employee --

16 A Yes, sir.

17 Q -- and Ms. Harris, those were the only four people
18 that were interviewed or that were at the restaurant
19 and saw the perpetrators; is that your understanding?

20 A Yes, sir. That I'm familiar with, yes, sir.

21 Q Initially were they suspects, any of them?

22 A No.

23 Q Were they persons of interest?

24 A Yes, sir.

25 Q Why would they be persons of interest?

1 A Due to just in my experience of these types of
2 robberies where the video surveillance just happens to
3 not be working, the security violations that a store
4 manager who wasn't even there that night --

5 MR. SMITH: Objection, your Honor. Motion --

6 THE COURT: Again, do you understand -- well,
7 let's go ahead and see.

8 Mr. Foreman, ladies and gentlemen of the jury, I
9 need to ask you to retire to the jury room so I might
10 take up a matter of law with the attorneys.

11 Again, do not undertake the discussion of the case
12 among yourselves in any way.

13 (WHEREUPON, the jury exited the courtroom
14 at 10:17 a.m.)

15 THE COURT: All right. For the record, Mr. Smith,
16 state your objection.

17 MR. SMITH: Judge, it sounds like he's about to
18 get into, based upon his experience when there weren't
19 any cameras working or anything, it's going to sound
20 like it was an inside job when there's been no
21 testimony to show that anybody had anything to do with
22 making the cameras not work, that anybody knew that the
23 cameras were or were not working or anything of that
24 nature.

25 And I think there's got to be some foundation

1 to -- that has to be laid before he can get into
2 anything of that nature, just saying based on my
3 experience, you know, when cameras aren't working or
4 whatever, it's going to be an inside job. I don't know
5 if that's where he's going, but before he says it -- I
6 don't want to have to ask for a mistrial -- I had to
7 object before he got there.

8 THE COURT: You're doing exactly right.

9 Mr. Weston, of course, that was the basis of a
10 motion in limine that I suggested that you're doing it
11 correctly, we are now to proffer the testimony because
12 if he's trying to become a person of knowledge, it
13 won't necessarily mean an expert. I think even a
14 layperson can give his opinion if he's got specific
15 knowledge. Unless he is, though, he can only testify
16 to what he knows. And, of course, that includes what
17 was reported to him in the investigation.

18 Now, what do you plan to do?

19 MR. WESTON: Your Honor, the question that I asked
20 him was --

21 THE COURT: I understand. I heard the question.
22 But now it's not so much what you've asked. Where are
23 we going?

24 MR. WESTON: His answer, as I understand it, where
25 he was going was why he considered these four people --

1 not the defendant, Ms. Harris -- the four people who
2 were there persons of interest that he followed up on.
3 Not that he said it was an inside job. It was just
4 basically why he was following certain leads, Judge.
5 I'm not going any further than that --

6 THE COURT: Excuse me. Go ahead. If that's -- I
7 can understand. I think that would be appropriate.

8 MR. WESTON: And that was as far as I was going
9 with that, Judge.

10 THE COURT: Very good. All right. But we're not
11 qualifying -- unless you want to try to qualify him as
12 an expert on particular types of crimes or offenses.

13 MR. WESTON: No, sir, your Honor.

14 THE COURT: All right. Very good. So but
15 particularly I do want to avoid, since that's an
16 operative word or term, "inside job." I think it's all
17 right for him to testify, Mr. Weston, and that was his
18 testimony, if there was any people of interest, persons
19 of interest, and how he made that decision. I think
20 that's appropriate.

21 MR. WESTON: Thank you, your Honor.

22 THE COURT: All right. So but, again, with the
23 understanding if you think you're going to have to be
24 testifying as to, quote, an inside job or some other
25 theory, I would ask you to hesitate.

State of South Carolina vs. David Wince Chiles, Jr.
2012-GS-23-965 & 966

Deven Hooper - Direct Exam by Mr. Weston

1 THE WITNESS: Yes, sir.

2 THE COURT: Until I can take it up with the
3 attorneys.

4 THE WITNESS: Yes, sir.

5 THE COURT: All right. Anything else, Mr. Smith?

6 MR. SMITH: No, your Honor. That covered what my
7 concern was.

8 THE COURT: Mr. Robinson?

9 MR. ROBINSON: No, sir, your Honor.

10 THE COURT: Mr. Weston?

11 MR. WESTON: No, sir, your Honor.

12 THE COURT: Very good. Ask the jury to join us,
13 please.

14 (WHEREUPON, the jury came into open court at
15 approximately 10:22 a.m.)

16 THE COURT: All right. Again let the record
17 reflect the jury and the alternate are in the jury box.

18 Mr. Weston, you may proceed.

19 MR. WESTON: Thank you, your Honor.

20 BY MR. WESTON:

21 Q Did you meet with Ms. Precious Harris?

22 A Yes, sir, I did.

23 Q And do you remember when you met with her?

24 A I don't remember the exact date, no, sir, but it
25 was very shortly after I received the report.

1 Q Where did you meet with her? Where did you meet
2 with her?

3 A Where?

4 Q Yes, sir.

5 A I'm sorry. The law enforcement center downtown.

6 Q And was it just the basic follow-up interview?

7 A Yes, sir. It was very, very basic.

8 Q During the course of that interview did you have
9 an occasion to discuss her cell phone with her?

10 A I did.

11 Q Did you ask her could y'all download her cell
12 phone?

13 A I did.

14 Q Did she agree to that?

15 A Yes, sir.

16 Q Did she sign a consent to turn over her cell
17 phone?

18 A Yes, sir, she did.

19 Q Did you take her cell phone?

20 A Yes.

21 Q And did she indicate that that was a cell phone
22 she had during the time of the robbery?

23 A Yes, sir.

24 Q What did you do with the cell phone?

25 A I took it over to Investigator Rainey, and he did

1 a forensic download on the phone where it basically
2 just pulls the information off the phone.

3 Q When you say "information," you mean like call
4 log?

5 A Yes, sir, incoming, outgoing, text messages,
6 pictures. Anything that goes on that phone, it will
7 basically remember it and reflect it.

8 Q Did you review those records when they were turned
9 over to you?

10 A I did.

11 Q Excuse me one second. Was there any numbers of
12 interest?

13 MR. ROBINSON: Your Honor, objection. Hearsay and
14 also foundation in this matter.

15 THE COURT: Mr. Weston.

16 MR. WESTON: I just asked him were there any
17 numbers of interest to you. I don't know how that's
18 hearsay.

19 THE COURT: I'm going to overrule the objection.
20 You can answer the question.

21 THE WITNESS: Yes, sir.

22 BY MR. WESTON:

23 Q Was there a particular time frame that you were
24 looking at with regard to incoming or outgoing calls?

25 A Yes, sir, around -- obviously around the time of

1 the incident is what I was concerned with.

2 Q Around the time of the incident were there any
3 numbers that caught your attention?

4 A Yes, sir.

5 Q Were there any numbers that were shown more than
6 once around the time of the call?

7 A Yes, sir.

8 Q And was it more than one number or just one
9 number?

10 MR. ROBINSON: Objection, your Honor. Leading.

11 THE COURT: Not necessarily. It's just a part of
12 his report or his investigation. I'm going to overrule
13 the objection.

14 BY MR. WESTON:

15 Q Was it more than one number or just one number?

16 A One number.

17 Q Once you identified this one number, what did you
18 do next?

19 A I tried to contact or use the database that we
20 have to figure out what carrier that phone is
21 subscribed to.

22 Q Were you able to locate this subscriber?

23 A Yes, sir.

24 Q Were you able to identify the user of that number?

25 A I was.

1 MR. ROBINSON: Your Honor, objection. Hearsay and
2 foundation, your Honor, again.

3 THE COURT: Overruled.

4 MR. WESTON: Thank you, your Honor.

5 BY MR. WESTON:

6 Q Once you were able to identify the user of that
7 particular phone number, what did you do next?

8 A I went to find Keith Williams.

9 Q Prior to that moment, did you know the name Keith
10 Williams?

11 A No, sir, not personally, no.

12 Q Had you ever met Keith Williams?

13 A I had not.

14 Q Had you ever, as a part of your job, had an
15 occasion to investigate Keith Williams as a suspect in
16 any crime or a victim of a crime or a witness in a
17 crime?

18 A No, sir.

19 Q Did you have any idea of any relationship between
20 Keith Williams and anybody else in the world?

21 A No, sir.

22 Q Were you able to locate Keith Williams?

23 A I was.

24 Q How did you locate him?

25 A We -- I was able to get ahold of his probation

1 officer, and I met with him or called him and asked him
2 if he minded if I came in to a meeting and made contact
3 with him and tell him why I was there.

4 Q And did you in fact meet with Keith Williams?

5 A I did.

6 Q Do you remember when you met with Mr. Williams?

7 A No, sir, I don't remember the exact date. It was
8 about a month after the incident, I believe.

9 Q Do you have your case file with you?

10 A I do.

11 Q Would that -- would reviewing that refresh your
12 recollection as to when you met with Mr. Williams?

13 A It would, yes, sir.

14 Q All right.

15 A August 17th of 2011.

16 Q And where did you meet with Mr. Williams?

17 A At the probation office.

18 Q All right. And was there anybody else present --
19 was it in sort of a conference room or was it in a --
20 what type of room was it, environment was it?

21 A They had, I guess, their meeting -- whatever they
22 do in that other room I can't attest to, but they put
23 us in a very large conference area and --

24 MR. SMITH: Judge, I hate to interrupt. I want to
25 make an objection, but may we approach the bench?

1 THE COURT: Certainly. Let's do it on the side.

2 (WHEREUPON, a bench conference was held off the
3 record in the presence of the jury, but out of the
4 hearing of the jury.)

5 BY MR. WESTON:

6 Q Investigator Hoover, when you met with
7 Mr. Williams, did you advise him as to what you wanted
8 to talk to him about?

9 A Yes, sir.

10 Q And what did you tell him you wanted to talk
11 about?

12 A Told him I'd like to talk to him about an incident
13 that happened involving Ms. Harris.

14 Q And did Mr. Williams indicate to you that he knew
15 Ms. Harris?

16 A Yes, sir.

17 Q Who did he say Ms. Harris was in relationship to
18 him?

19 A His brother's girlfriend.

20 Q Did Mr. Williams -- did you tell him about
21 generally that you wanted to talk about the armed
22 robbery at the McDonald's?

23 A Yes, sir.

24 Q Did he initially admit to any involvement in that
25 robbery?

1 A No, sir. Initially he admitted, "Yeah, I heard of
2 that," something of that nature.

3 MR. SMITH: Judge, I'm going to object as to
4 hearsay.

5 MR. WESTON: Statement by a co-conspirator in
6 furtherance of the conspiracy, your Honor.

7 MR. SMITH: It's not -- sorry.

8 THE COURT: All right. I'm going to permit the
9 statement. Overrule the objection.

10 MR. WESTON: Thank you, your Honor.

11 BY MR. WESTON:

12 Q At some point did Mr. Williams acknowledge any
13 involvement in the armed robbery?

14 A Yes, sir.

15 Q Let's just go to the end of this.

16 A Yes, sir.

17 Q Did he admit to being one of the perpetrators?

18 A Yes, sir, he did.

19 Q At that point what did you do? Just kind of take
20 us step-by-step once he admitted his involvement that
21 he was one of the perpetrators of the armed robbery,
22 what did you do then?

23 A We took him into custody and Mirandized him,
24 obviously, and then took him down to the law
25 enforcement center to speak further with us.

1 Q And once you got into the law enforcement center,
2 was he interrogated further?

3 A Yes, sir. We interviewed him, and he was very
4 open.

5 Q And did he give a written statement?

6 A Yes, sir.

7 Q Did he admit his involvement in the armed robbery?

8 A Yes, sir, he did.

9 Q Now, prior to your taking his statement, did you
10 give him any details about the robbery?

11 A No, sir.

12 Q Prior to taking his statement, in your
13 conversation with him, did you give him any indication
14 of any information you had regarding Precious Harris
15 being the assistant manager at the McDonald's?

16 A No, sir, not that I recollect, no, sir.

17 Q Did he already know that?

18 A Yes, sir. Yes, sir.

19 MR. ROBINSON: Objection, your Honor. Calls for
20 speculation.

21 THE COURT: Again, I do sustain that objection
22 unless the witness knows how he would know that.

23 Restate your question.

24 MR. WESTON: Yes, sir, your Honor. I'll restate.

25 BY MR. WESTON:

1 Q As a part of his initial statements, admission to
2 you and in his written statement, did he tell you what
3 happened on the night of June the 26th, 2011 at the
4 McDonald's?

5 A Yes, sir.

6 Q Did he name the other people that were involved?

7 A Yes, sir.

8 Q Did he tell you their roles?

9 A Yes, sir.

10 Q Did he describe their relationships with him and
11 with each other?

12 A Yes, sir, he did.

13 Q Was he very specific?

14 A Yes, sir.

15 Q All right. Was his story consistent with the
16 accounts of the eyewitnesses?

17 A Yes, sir.

18 MR. ROBINSON: Objection, your Honor. Calls for
19 speculation again.

20 THE COURT: Overruled.

21 MR. WESTON: Thank you, your Honor.

22 BY MR. WESTON:

23 Q Did he indicate that there were two perpetrators,
24 him and one other person?

25 A Yes, sir.

1 Q Did he indicate that both of them had guns?

2 A He indicated that one of them had guns and that he
3 just wrapped his hand up to pretend it was a gun.

4 Q Did you find that surprising?

5 A Yes, sir, because that's not what the witnesses
6 had told us.

7 Q Was that the first time that kind of thing ever
8 happened in a statement --

9 A No, sir.

10 Q -- in your experience?

11 A No, sir. It's definitely self-serving, but it's
12 not the first time I've heard that.

13 Q Is it not uncommon for people -- is it pretty much
14 common for people who are confessing to crimes with
15 other people to minimize their involvement?

16 A Yes, sir.

17 MR. ROBINSON: Your Honor, objection. He's having
18 him testify as an expert or something like that.

19 THE COURT: He's not. He's talking about his own
20 experience. And even a layman can testify from his own
21 experience. Overruled.

22 MR. WESTON: Thank you, your Honor.

23 BY MR. WESTON:

24 Q After talking with Mr. Williams and getting his
25 admissions and then getting a written statement from

1 him, what did you do?

2 A We obtained arrest warrants for the two
3 codefendants.

4 Q That would be?

5 A Ms. Harris and Mr. Chiles.

6 Q All right. Thank you, sir.

7 That's all I have.

8 THE COURT: Cross-exam.

9 CROSS-EXAMINATION

10 BY MR. SMITH:

11 Q Investigator Hoover, you said I think that you had
12 been an officer for about eight or nine years?

13 A Yes, sir.

14 Q All right. And in those eight or nine years, how
15 many -- do you have to go to classes during the year or
16 over this period of time to do what you do?

17 A Yes, sir.

18 Q What kind of training do you have?

19 A Interview and interrogation courses. Obviously we
20 do a lot of in-house training, you know, with guys that
21 have been around doing it longer than I have. I try to
22 pay attention to that as well as sit in on interviews
23 and things like that.

24 Q Did you have to go to the academy to become a
25 police officer?

1 A Oh, yes, sir. Yes, sir.

2 Q During the year do you have to go through and get
3 so many hours of education --

4 A Yes, sir.

5 Q -- and classes and things?

6 A Yes, sir.

7 Q All right. You said that you went through
8 interrogation and interview-type classes. They teach
9 you techniques and things like that?

10 A Right. Yes, sir.

11 Q Okay. Techniques to try to get people to give
12 statements and stuff?

13 A Techniques to find the truth, yes, sir.

14 Q Okay. And so if you think you know something, one
15 of the things that they teach you is how to get
16 somebody to basically give you a statement and tell you
17 something?

18 A It's more of a class of communication.

19 Q Okay. You're the lead investigator on this case?

20 A Yes, sir.

21 Q And Mr. Weston has already said, I mean, there's
22 no fingerprints, there's nothing out there that -- no
23 DNA or anything like that, right?

24 A Yes, sir.

25 Q All right. Isn't it true that a footprint was

1 found on the countertop at the McDonald's that night?

2 A Yes, sir.

3 Q And a gel lift was taken by one of the forensics
4 officers and is in property in evidence at this time?

5 A Yes, sir.

6 Q And it was a footprint that -- tell us what it
7 was.

8 A It's a very vague shoe mark on a counter.

9 Q Okay. And you have seen it?

10 A I've seen the photographs of it. I have not taken
11 it out of property in evidence.

12 Q Did you attempt to find out what size shoe it was?

13 A No, sir. We don't have anything to compare it to,
14 so that was -- I wouldn't have gone that route.

15 Q What do you mean you didn't have anything to
16 compare it to?

17 A There is a measurement on the photo, but with a
18 generic shoe print that is very indefinite, with
19 nothing to compare it to, another shoe, something of
20 that nature, it's just an imprint.

21 Q This case is three years old, isn't it?

22 A Yes, sir.

23 Q And in the past three years has anybody thought to
24 maybe take a print or find out what size this shoe
25 print was and maybe compare it to one of the defendants

1 in this case?

2 A The shoe is so generic, I believe in my opinion,
3 which it looks like an Air Force 1 to me, but I can't
4 even tell what type of shoe it is. So I'd have to have
5 something definitive and definitive to make a match.

6 Q Well, let me just ask you this. Did you ever ask
7 Mr. Williams --

8 MR. WESTON: Objection, your Honor.

9 THE COURT: State your objection.

10 MR. WESTON: Your Honor, I think we need to do
11 this outside the presence of the jury.

12 THE COURT: All right.

13 Mr. Foreman, ladies and gentlemen of the jury, I'm
14 going to ask you to retire to the jury room so I can
15 take up a matter of law. Do not undertake the
16 discussion of the case among yourselves in any way.

17 (WHEREUPON, the jury exited the courtroom
18 at 10:39 a.m.)

19 THE COURT: All right. State your concerns,
20 Mr. Weston.

21 MR. WESTON: Your Honor, counsel asked and said,
22 "Did you ever ask Mr." -- I thought he meant
23 Mr. Chiles. If he says no because he exercised his
24 right against self-incrimination, both he and/or Mr.
25 Robinson are going to jump up and yell mistrial.

1 I mean, I don't think --

2 THE COURT: I'm not sure -- that's the thing I was
3 concerned about is not if they ask it. Of course
4 Ms. Harris might jump up, but he's not talking about
5 Ms. Harris at this time.

6 MR. SMITH: But I did say Mr. Williams.

7 THE COURT: Well, Mr. Williams, he's already
8 said -- he waived his rights, gave a statement.

9 MR. SMITH: But, I mean, I was not -- I understand
10 my client is the one that's on trial and has invoked
11 his right to remain silent.

12 THE COURT: He didn't have to invoke it. He
13 always has that right. That's a constitutional right.

14 MR. WESTON: Your Honor, if he wants to -- well, I
15 guess I'll be very specific. If he's going to ask
16 questions about what Mr. Williams said, that's fine.
17 I'll redirect and ask a bunch of questions about what
18 Mr. Williams said. I didn't do that, Judge, because
19 they were going to yell hearsay. But if they are going
20 to do that, I can do that on recross.

21 THE COURT: How about that. Forgive me. All
22 right.

23 Any other objection, comment or observation?

24 MR. WESTON: No, sir, your Honor.

25 THE COURT: All right. Well, then, Mr. Robinson,

1 anything you want to say?

2 MR. ROBINSON: I like to be silent, your Honor.

3 THE COURT: Pardon me?

4 MR. ROBINSON: I like to be very silent, your
5 Honor, when I have nothing to say.

6 THE COURT: All right. Anything else, Mr. Smith?

7 MR. SMITH: No, your Honor.

8 THE COURT: All right. Very good. Ask the jury
9 to join us, please.

10 (WHEREUPON, the jury came into open court at
11 approximately 10:43 a.m.)

12 THE COURT: All right. Let the record reflect the
13 jury and alternate are in the jury box.

14 You may proceed, Mr. Smith.

15 MR. SMITH: Thank you, your Honor.

16 BY MR. SMITH:

17 Q Investigator, you had this footprint that's
18 sitting in property in evidence, right?

19 A Yes.

20 Q Isn't it possible to determine the size of the
21 foot that would go into that shoe?

22 A Should be. I'm not a forensics officer. I can't
23 attest to the type of impression that it was and how
24 they measure that. I can't testify to that.

25 Q But, I mean, should they not be able to at least

1 look at the shoe or the print and say, "Hey, this is --
2 this came from a size ten shoe"?

3 MR. WESTON: Objection, your Honor. Asked and
4 answered.

5 THE COURT: Well, let's go ahead and finish it up.

6 THE WITNESS: It appeared vague to me. I don't
7 know if that is one that they need -- that they say is
8 definitive enough to make a measurement off of. I
9 don't know.

10 BY MR. SMITH:

11 Q Okay. When the statements that were given, they
12 said he jumped over the counter?

13 A Yes.

14 Q So we know that that footprint came from one of
15 the people that went into the store?

16 A Most likely, yes.

17 Q Because they had already cleaned the place, right?

18 A I'm assuming. According to the testimony I heard
19 yesterday, yes, sir.

20 Q Okay. You know and people don't usually put
21 footprints on counters?

22 A Correct.

23 Q The cell phone that you say you took from
24 Ms. Harris?

25 A Yes, sir.

1 Q Did y'all get any text messages off that cell
2 phone?

3 A I would have to go back. I know there were text
4 messages on there, but none that I used for evidentiary
5 value, no, sir.

6 Q So there may have been some text messages, but
7 there's nothing that relates to this case?

8 A Not that I'm aware of, no, sir.

9 Q And the only thing that I believe that you say you
10 have are some numbers that have been gone back and
11 forth at this -- around this time?

12 A Yes, sir, before and after that general time
13 period.

14 Q And weren't there other numbers that were on the
15 phone as well that were around this period of time?

16 A Prior to those.

17 Q Prior to those?

18 A Yes, sir. I mean, there were other phone numbers
19 on the phone, yes, sir.

20 Q There were no other numbers that were in -- in
21 between the other --

22 A I can look and see, if you don't mind.

23 Q Can you refresh your recollection, please?

24 A The number that I'm looking at are call numbers
25 523 through 525, and there are three in sequence right

1 there in a row. I've only got that one page of phone
2 calls, but there are three right in a row. One of them
3 appears to be 27 seconds in duration, one is seven,
4 seven seconds duration, and one is two minutes and
5 55 seconds.

6 Q So 523 and 525 are the same number, right?

7 A Yes, sir.

8 Q And 524 is a different number, isn't it?

9 A Yes, sir.

10 Yes, sir. Yes, sir, it is split. Yes, sir.

11 Q All right. Now, you had two witnesses. One says
12 that the people went towards the Polo Apartments, the
13 rear of the store to the bottom; is that right?

14 A Yes, sir.

15 Q Now, it's not marked on this exhibit, but are the
16 Polo Apartments, if you're looking at this exhibit, are
17 the Polo Apartments down to the bottom right corner of
18 the exhibit that we've been marking on?

19 A Yes, sir, a little bit -- almost at a veer
20 straight, almost at a 90 that way.

21 Q So another witness said that the individuals ran
22 towards the Spinx station, which is up towards the
23 right-hand -- upper right-hand corner of the exhibit
24 that we've been talking about?

25 A Yes, sir.

1 Q I know we haven't marked on it, but I want to be
2 clear. Got to establish a record.

3 A Sure.

4 Q So what did you do -- I know you said you went
5 around trying to find video surveillance records. What
6 did you do to find video surveillance records?

7 A There -- that corner right there, there is a Spinx
8 there. There is another couple stores out here to the
9 side. And at the time -- I don't know if they do now
10 or not -- but at the time none of those had any video
11 that showed anything at all. These didn't have any
12 outside video, and the Spinx up there was just an
13 inside of the store. It didn't show anything going on
14 out there at all.

15 Q All right. So you did actually go to the Spinx
16 station to find out?

17 A Yes, sir. I went to a lot of businesses around
18 there.

19 Q Did you go around to the back -- was there
20 anything in the back back there?

21 A Back this way?

22 Q No, to the back towards the Polo Apartments.

23 A Yeah, I think there is another -- I think there's
24 some more stores there. It's hard to tell from the
25 aerial here, but I think there's more stores down to

1 the -- like a Chinese restaurant and stuff down there
2 to the back.

3 Q Okay.

4 MR. SMITH: Judge, if I may have one moment.

5 THE COURT: Certainly.

6 MR. SMITH: Judge, I think that's all I have at
7 this time.

8 THE COURT: Very good. All right.

9 Mr. Robinson.

10 MR. ROBINSON: Thank you, Judge.

11 CROSS-EXAMINATION

12 BY MR. ROBINSON:

13 Q Officer Hoover, you've got your case file, don't
14 you?

15 A Yes, sir.

16 Q Can you turn to the statement of Mr. Williams for
17 a second?

18 A To Mr. Williams?

19 Q Mr. Williams' statement.

20 A Yes, sir.

21 Q Okay. Are you at it yet?

22 A Yes, sir.

23 Q Now, that statement by Mr. Williams, that was
24 typed up by your office, wasn't it?

25 A Yes, sir, it was.

1 Q You actually have in your office, at that time you
2 had a recording device, a camera that would take a
3 video of that person, whoever it was, giving a
4 statement; is that correct?

5 A Not at this time.

6 Q Not at that time?

7 A Yes.

8 Q So you have no video or audio? Did you have a
9 tape recorder at that time --

10 A No, sir.

11 Q -- tape-recording this person?

12 A No, sir.

13 Q So you have no audio and no video at the time, and
14 you typed that statement, correct?

15 A Yes, sir.

16 Q Okay. The jury has nothing else except your typed
17 statement of Mr. Williams, correct? That's what you
18 have there?

19 A Well, from Mr. Williams.

20 Q But it's your typed statement?

21 A Yes.

22 Q You typed it out, correct?

23 A Yes, sir, I did.

24 Q And let's turn to Officer Horne's investigation.
25 As Mr. Smith stated or asked you about, you were the

1 lead investigator in this case, right?

2 A Yes.

3 Q Now, did you make attempts prior to today or
4 yesterday to locate Mr. Goodman?

5 A Yes, sir. I actually called him initially when --
6 after a couple of our interviews just to touch base
7 with him and gather some information mostly of the
8 security issues. I wanted to revisit some of that
9 stuff with him. But he never came in to provide a
10 written statement or anything like that. It was just
11 over the phone, you know, should we need to get ahold
12 of some of your policies and things like that, just
13 over-the-phone kind of stuff.

14 Q Regarding the trial yesterday and today, did you
15 try to get ahold of him?

16 A No, sir, I did not.

17 Q So there -- he was not available to come to trial,
18 to your knowledge, was he?

19 A Not to my knowledge.

20 Q Okay. Now, let's turn to Officer Horne's report.
21 And I want you to -- that would be page three of his
22 report, if you don't mind.

23 A Okay. I'm on it.

24 Q Okay. And let's look at the second paragraph.

25 Are you there?

1 A Yes, sir.

2 Q Okay. Now, you would agree with me, looking at
3 the report of Officer Horne, that Mr. Goodman stated
4 that --

5 MR. WESTON: Objection, your Honor.

6 THE COURT: What's your objection?

7 MR. WESTON: Your Honor, he is basically getting
8 ready to put hearsay in from his question about another
9 officer's report. He didn't take that report. He was
10 not present when those statements were made. He can't
11 attest to them.

12 MR. ROBINSON: It's an exception, your Honor.

13 THE COURT: I was curious. What exception are you
14 using?

15 MR. ROBINSON: It's the declared unavailable, your
16 Honor, in this case. That would be Mr. Goodman.

17 THE COURT: Mr. Goodman. So you're using another
18 investigator's report of Mr. Goodman's testimony?

19 MR. ROBINSON: Yes.

20 THE COURT: I'm going to overrule your objection.
21 You may proceed.

22 BY MR. ROBINSON:

23 Q Now, you would agree with me that from this report
24 Mr. Goodman indicated --

25 THE COURT: Just a moment. Have you seen that

1 report?

2 THE WITNESS: This report, the initial report?

3 THE COURT: Is that a part of your file?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. Proceed.

6 MR. ROBINSON: Thank you, Judge.

7 BY MR. ROBINSON:

8 Q -- that he indicated that the camera, the security
9 camera in that store, had been inoperative for two
10 weeks and was not operating, was not working that
11 night, correct?

12 A Yes, sir.

13 Q He also indicated that there was a -- procedure
14 that was violated when -- this is going to be line four
15 or five -- that Michael, one of the witnesses, should
16 not have left the restaurant without letting someone
17 know; isn't that correct?

18 A Yes, sir, that is what it says.

19 Q Now, I want you to also -- let's go -- so we've
20 got from the report -- we've got from the report of
21 Detective Horne or Investigator Horne that the camera
22 had been broken for a period of time, correct?

23 A Yes, sir.

24 Q And also that there was a security matter breached
25 when that person -- when that witness left the store

1 without letting anyone know, correct?

2 A Correct.

3 Q So let's talk about Precious Harris for a second.

4 I think you testified on direct examination by

5 Mr. Weston that you had no prior dealings with her, you

6 have never met her before and so forth, correct?

7 A No, sir.

8 Q Okay. Now, you would admit that she was very

9 cooperative with you, correct?

10 A Yes, sir. She came in just like we asked.

11 Q Came in and so forth?

12 A Yes.

13 Q Okay. And in terms of these phone calls that you

14 talk about, you would acknowledge that you don't know

15 what these phone calls were about, do you?

16 A No, sir.

17 Q Now, in terms of the -- the -- Mrs. Harris, in

18 your investigation, you never -- did you -- you didn't

19 go to her or did you go to her place of residence to

20 see -- to investigate her house or anything like that?

21 A No. We called her to us.

22 Q Okay. Did you ever find any money on her or

23 anything like that, any bank accounts or things like

24 that to indicate she had any more money?

25 A No.

1 Q So there's no property or money from that incident
2 that you can connect with Ms. Harris, can you?

3 A No, sir.

4 MR. ROBINSON: Beg the Court's indulgence for just
5 one second.

6 THE COURT: Certainly.

7 MR. ROBINSON: That's all I have. Thank you, your
8 Honor.

9 THE COURT: All right.
10 Redirect.

11 MR. WESTON: Thank you, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. WESTON:

14 Q Let's begin, Investigator Hoover, with counsel's
15 questions to you about the other officer's report,
16 Jonathan Horne. Would you turn back to the page that
17 counsel pointed you to about the security violations.
18 I think it's a little bit incomplete.

19 A Okay.

20 Q Would you read the second paragraph that begins
21 with "Steve Goodman." Do you see that?

22 A The second paragraph?

23 Q Yeah. The same page you were on before, just the
24 second paragraph that begins with "Steve Goodman,
25 comma."

1 A Yes, sir.

2 Q All right. Would you go to line three, middle of
3 the paragraph -- middle of that line, period, where it
4 says, "He stated."

5 A Yes, sir.

6 Q Would you read that full sentence that Mr. Goodman
7 said.

8 A "He stated that the three employees at the
9 restaurant tonight violated a few safety procedures."

10 Q How many employees were, in addition to Quinzell
11 Davis and Mr. Cunningham (sic), who was the other
12 employee in there that night according to your
13 information?

14 A Ms. Harris.

15 Q Now, with regard to -- so he basically said all
16 three of them committed violations --

17 A Yes, sir.

18 Q -- not just Mr. Cunningham, by walking out the
19 door?

20 A That's right.

21 THE COURT: Just a minute. Cunningham or
22 Culbertson?

23 MR. WESTON: I'm sorry. Culbertson.

24 BY MR. WESTON:

25 Q Now, let's go back to the phone numbers counsel

1 asked you about. He said there were two numbers, and
2 then there was another separate number in the middle,
3 two calls that were divided by a separate call around
4 the time of the robbery. What was the telephone number
5 of the two calls?

6 A -2335. And it's split with one other number.

7 Q All right. And it's -2335?

8 A Yes, sir.

9 Q Thank you, sir. Now, final thing. Counsel said
10 to you -- I don't think I'm quoting exactly, but pretty
11 much Mr. Robinson said, "And Ms. Harris was
12 cooperative, wasn't she," and you said yes.

13 A (Nodding.)

14 Q Did you find that she was totally --

15 MR. SMITH: Judge, he just nodded. I think he
16 needs to answer out loud.

17 THE COURT: Oh, excuse me. I'm sorry. I missed
18 that. The court reporter is taking down the testimony,
19 so you have to speak, vocalize your responses.

20 THE WITNESS: Yes, sir.

21 BY MR. WESTON:

22 Q Is that what he said and what you said as you
23 recall in his cross-examination?

24 A Yes, sir.

25 Q Did you find that she was totally candid with you

1 about the workings of her cell phone?

2 A Not totally, no, sir.

3 Q How was she not candid with you, sir?

4 A She had mentioned to -- while she was speaking to
5 Investigator Jones, I was there with her, and she
6 mentioned that her phone was dead during this time
7 period, which didn't mean anything at that point to me
8 until I got these phone records back.

9 Q Did you find that her phone was, in fact, dead
10 during that time period?

11 A No, sir.

12 Q Was it operable according to the phone records?

13 A Yes, sir.

14 Q Thank you, sir.

15 Nothing further.

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

17 THE WITNESS: Thank you, your Honor.

18 THE COURT: All right. You may call your next
19 witness.

20 MR. WESTON: Your Honor, the State calls Mr. Keith
21 Williams.

22 KEITH WILLIAMS,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: Sir, would you please state your name
25 for the record.

State of South Carolina vs. David Wince Chiles, Jr.
2012-GS-23-965 & 966

Keith Williams - Direct by Mr. Weston

1 THE WITNESS: Keith O'Brian Williams.

2 THE CLERK: Thank you, sir.

3 THE COURT: You may proceed.

4 MR. WESTON: Thank you, your Honor. May it please
5 the Court.

6 DIRECT EXAMINATION

7 BY MR. WESTON:

8 Q Mr. Williams, do you know David Chiles?

9 A Yes, I do.

10 Q How do you know him?

11 A That's my brother.

12 Q Do you know Precious Harris?

13 A Yes, I do.

14 Q How do you know her?

15 A It was my brother's girlfriend at the time.

16 Q At the time, you mean back in June of 2011?

17 A Right.

18 Q Were they living together?

19 A Right.

20 Q Did you rob the McDonald's on June 11th --
21 June 26, 2011?

22 A No, I didn't.

23 Q Do you deny that you participated in the robbery
24 on June 26th of 2011?

25 A Yes, I do.

State of South Carolina vs. David Wince Chiles, Jr.
2012-GS-23-965 & 966

Keith Williams - Direct by Mr. Weston

1 Q Where are you presently living?

2 A Central Court.

3 Q What is that, a house?

4 A Trailer park.

5 Q Are you not right now in the Department of
6 Corrections, sir?

7 A Right.

8 Q So you're not living at that address you just
9 gave?

10 A Right.

11 Q Why did you lie about that?

12 A About what?

13 Q Where you live.

14 A Now?

15 Q Yes, sir, now.

16 A Well, yeah, I'm in SCDC, yeah. Yeah.

17 Q Why are you in the Department of Corrections, sir?

18 A Because I pled --

19 Q For what?

20 A For this charge, I pled guilty.

21 Q And why are you now saying you didn't do it?

22 A Because I never did. If my lawyer at the time
23 knew that Investigator Hoover did things unlegally
24 (sic), I would have never pled guilty.

25 Q All right. Let's just lay this out so everybody

1 understands where we are.

2 Okay. You were arrested on -- this took place in
3 June of 2011?

4 A Correct.

5 MR. WESTON: Your Honor, permission to treat the
6 witness as hostile.

7 THE COURT: Of course.

8 MR. WESTON: Thank you.

9 THE COURT: Unless there's some objection that
10 would say an inmate is friendly to the State.

11 MR. SMITH: No objection, your Honor.

12 THE COURT: Mr. Robinson?

13 MR. ROBINSON: (Shaking head.)

14 THE COURT: Let me explain to the jury the reason
15 that the motion has been made to declare the witness
16 hostile. I mentioned about leading questions. You
17 cannot lead your own witness. In other words, on
18 cross-examination of the other side's witnesses, you
19 may ask leading questions.

20 However, if a witness is for a particular reason
21 declared hostile to you, then, of course, you treat
22 them as if they were the other side's witness and you
23 can lead. So that was the reason the motion was made
24 and I granted it.

25 All right. You may proceed.

1 MR. WESTON: Thank you, your Honor. May it please
2 the Court.

3 BY MR. WESTON:

4 Q Do you remember giving a statement to Investigator
5 Hoover -- or, excuse me. I don't want to put words in
6 your mouth. Do you remember signing a statement in the
7 presence of Investigator Hoover in August, in fact on
8 August --

9 A 17th.

10 Q -- 17th of 2011?

11 A Right.

12 Q You remember that?

13 A Right.

14 Q You remember that statement?

15 A Right.

16 Q Do you remember what was in that statement?

17 A Right. I do.

18 Q And you remember telling Investigator Hoover that
19 you were -- that you drove your brother to the
20 McDonald's that Ms. Harris was the manager of on the
21 night of June 26th or the morning of June 26th?

22 A No.

23 Q -- You never told him that?

24 A No.

25 Q Do you remember telling Investigator Hoover that

1 your brother used your telephone at least twice to call
2 Ms. Harris to make sure that nobody else was still in
3 the restaurant? Do you remember telling him that?

4 A No, I didn't.

5 Q Do you remember telling Mr. Hoover -- let me ask
6 you this first. Is your brother's nickname Yank?

7 A Correct.

8 Q All right. Do you remember telling Investigator
9 Hoover, "Then Yank got out of the car and went to the
10 parking lot and came back"?

11 A No, I didn't tell him that.

12 Q Do you remember telling Investigator Hoover, "He
13 then got back in the car and called and said she was
14 fixing to leave but she told him no, not to leave yet"?

15 A I didn't tell him that either.

16 Q Do you remember telling Investigator Hoover, "We
17 waited and then she called back and asked us if we were
18 gone yet"?

19 A I didn't tell him that neither.

20 Q Do you remember telling Investigator Hoover, "Then
21 he got out of the car again," meaning Yank?

22 A Didn't tell him that neither.

23 Q Do you remember telling Investigator Hoover, "This
24 time I got out with him. We checked both sides and one
25 of the doors was open"?

1 A Definitely didn't tell him that.

2 Q Do you remember telling Investigator Hoover, "We
3 went up there, we went in, and I went in"?

4 A Didn't tell him that neither.

5 Q Do you remember telling Investigator Hoover, "He
6 went around the counter and was yelling, 'Put it in the
7 bag'"?

8 A Didn't tell him that neither.

9 Q Do you remember telling him, "I stayed at the cash
10 register"?

11 A Didn't tell him that neither.

12 Q Do you remember telling him then, "Yank went
13 around to the back to where Precious was. I saw him
14 with a gun, and it looked like a cap gun, and it was
15 black with a gray handle"?

16 A I didn't tell him that neither.

17 Q Do you remember telling him then, "I had my hand
18 wrapped up in my shirt"?

19 A I didn't tell him that neither.

20 Q Do you remember telling him, "I was wearing a
21 white shirt and a blue jean short"?

22 A I told him that.

23 Q So now this is August of 2017 (sic) --

24 A Right.

25 Q -- about an event in June of 2017 (sic)?

1 A Right.

2 Q Where did you tell him you were with these clothes
3 on?

4 A I told him I was at the club.

5 Q But you remember what you were wearing that night?

6 A Right.

7 Q And you were in the club with a white shirt,
8 T-shirt, and blue jean shorts?

9 A Uh-huh, and a red cap.

10 Q In the club?

11 A Right.

12 Q With blue jean shorts?

13 A Right.

14 Q Okay. Do you remember telling Investigator
15 Hoover, "I don't remember what Yank was wearing. We
16 were driving my car which is a silver Malibu"?

17 A I told him I drove a silver Malibu, but I told him
18 I ain't never knew what my brother had on because I
19 wasn't with my brother at that time.

20 Q Do you remember telling Investigator Hoover, "I
21 think they used the money to move out of Dixie, and he
22 bought some new stuff for Precious' little girl"?

23 A I didn't tell him that neither.

24 Can I ask you a question?

25 Q No, sir. I'm sorry. What I say is not evidence,

1 so I can't answer your questions. I apologize. You
2 just have to answer mine.

3 A All right.

4 Q That was in August of 2017 -- I'm sorry, August of
5 2011. Do you remember signing that statement?

6 A I do. I do.

7 Q And do you remember reading it before you signed
8 it?

9 A No.

10 Q Why did you sign it?

11 A Because I believed that Investigator Hoover,
12 whatever I was telling him at that time, that he was
13 putting it in the correct form.

14 Q Can you read?

15 A Definitely.

16 Q Let me ask you if you can read this line right
17 here. I'm not going to ask you to read it out loud.
18 Ask you can you read this line right here. Right here,
19 "I have." Starting with, "I have."

20 A I can read.

21 Q Is that your signature right there?

22 A Right.

23 Q What does that line say?

24 A "I have read the above statement and it is true
25 and correct as I best recall."

1 Q So why did you sign this if this is not true?

2 A Why did I sign it?

3 Q Yes, sir. You said you can read. You said -- you
4 signed a statement saying "I have read it." Now you're
5 saying -- you've pled guilty to it --

6 A I didn't -- I didn't -- I didn't --

7 Q Let me finish my question, sir, please. I'll let
8 you answer, I promise.

9 MR. SMITH: Judge, I object --

10 THE COURT: Gentlemen. Slow down.

11 MR. WESTON: Sorry, your Honor.

12 THE COURT: State your question. And once you
13 finish the question, the witness can answer. And if he
14 needs to explain his answer, he can do that, too.

15 MR. WESTON: Yes, sir. Thank you, your Honor.

16 THE COURT: Go ahead. State your question.

17 BY MR. WESTON:

18 Q You have signed this statement. You have
19 subsequently pled guilty to this, which we'll get to in
20 a minute. Why are you now saying you didn't read this
21 statement?

22 A Because Investigator Hoover just told me to sign
23 where I signed. He didn't tell me to read nothing. He
24 just told me to sign where I needed to sign and I did.

25 Q So did you know Investigator Hoover before this

1 date?

2 A No.

3 Q How would he know that your brother's nickname was
4 Yank unless you told him?

5 A I didn't know he didn't know my brother's name was
6 Yank.

7 Q No, it's in the statement. But you're saying this
8 is not your statement.

9 A Right.

10 Q How could he have possibly known that, sir?

11 A From the resources he said that he got from
12 Precious' phone.

13 Q How could he possibly have known that Precious and
14 Yank were living together if you didn't tell him that?

15 A I didn't tell him that. He told me --

16 Q It's in the statement, sir. How can he possibly
17 have known that if he never met you and he didn't know
18 them --

19 A He already -- he already knew them before he came
20 to me.

21 Q How do you know he knew them, sir?

22 A Because he told me that.

23 Q So he told you he knew these people and all this
24 is some big conspiracy to get you?

25 A Right.

1 Q And you walk right into it and pled guilty?

2 A No.

3 Q Didn't you plead guilty?

4 A I did.

5 Q Okay. We're going to get to that.

6 A All right.

7 Q How old are you, sir?

8 A 24.

9 Q And you can read and write?

10 A Right.

11 Q And you're not stupid?

12 A No.

13 Q And I'm not trying to be disrespectful. I want to
14 make sure we're all clear here.

15 A Right.

16 Q That was in August of 2011?

17 A Uh-huh.

18 Q You didn't have a lawyer then --

19 A No.

20 Q -- when you gave that statement?

21 A Right.

22 Q Then you got a lawyer. You got charged, and then
23 you got a lawyer?

24 A Right.

25 Q And on February 4th of 2014, a year and a half

1 later, you stood in a courtroom just like this one at a
2 podium just like this and pled guilty to armed robbery
3 and conspiracy, didn't you, sir?

4 A I did.

5 Q Was the judge in on this big conspiracy and the
6 court reporter and everybody? Why did you do that?

7 A Because, for once -- for one, my lawyer at the
8 time told me that he didn't have another defense. My
9 choice was to plead to ten years or go to -- proceed
10 with trial. But he felt like if I would have proceeded
11 with trial, I would get 20 years. So, therefore, why
12 would I take -- put myself in a situation and get more
13 time than they offer. I got two kids. So me doing the
14 least time, I'll do the least time, 18 years out of
15 20 years.

16 Q Do you remember when you pled guilty in front of
17 Judge John, you swore an oath to tell the truth that
18 morning, didn't you?

19 A I did.

20 Q And he asked you a number of questions about
21 whether the plea was voluntary and whether you had
22 enough time to talk to your lawyer and whether you were
23 pleading guilty because you were guilty, and you told
24 him yes, didn't you?

25 A I did. I did.

1 Q And when it was read into the record the facts of
2 the case which said that you conspired with Precious
3 Harris and your brother, David "Yank" Chiles, and that
4 y'all robbed the McDonald's together, and the judge
5 asked you -- and there is a transcript of it -- the
6 judge asked you is all of that true, what did you tell
7 him?

8 A Yes.

9 Q So I understand you say you're pleading guilty
10 because you've got a child and, "I had to take ten
11 years, and I didn't want to go to jail for longer,"
12 yadda, yadda, yadda. Why did you take them down with
13 you?

14 A I didn't take them down with me.

15 Q In court you could have told the judge, "I did it
16 and I'm pleading guilty but they didn't do it."

17 A You're right.

18 Q You took them down with you on the day of your
19 plea. Why did you do that, sir?

20 A I didn't take them down. My lawyer told me to
21 tell the judge yes to everything.

22 Q But you told -- I'm going to end this. You told
23 the judge they did it with you that day, didn't you?

24 A Yeah, I did.

25 Q And that's what this statement you signed said,

1 they did it with you, didn't it?

2 A It did. That's what the statement says.

3 Q But now you're saying you didn't rob the
4 McDonald's?

5 A I didn't.

6 Q And they didn't have nothing to do with it?

7 A Right.

8 Q Your brother and his girlfriend?

9 A Right.

10 Q Thank you, sir.

11 That's all I've got.

12 THE COURT: Mr. Smith.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q You're Keith Williams?

16 A Yes, sir.

17 Q And you are David Chiles' brother?

18 A Yes, sir.

19 Q Mr. Williams, I'm going to have some of the same
20 questions that Mr. Weston had for you. I mean, there
21 is a statement that you gave to Investigator Hoover; is
22 that right?

23 A Correct.

24 Q And is it your testimony here today that that
25 statement is incorrect?

1 A Correct.

2 Q There are some things in that statement that are
3 true?

4 A Correct.

5 Q And there are some things in there that are not
6 true?

7 A Correct.

8 Q And I know Mr. Weston went through a lot of the
9 things that you said were not true.

10 A Right.

11 Q In that statement, did it -- isn't it true that
12 you stated that Mr. Chiles --

13 A Uh-huh.

14 Q -- was using your phone to text Ms. Harris?

15 A Repeat that again.

16 Q In your statement, isn't it true that there is a
17 statement in there where you said that Mr. Chiles --

18 A Correct.

19 Q -- started to use your phone to text Ms. Harris?

20 A Right.

21 Q You pled guilty in February of 2014; is that
22 right?

23 A Correct.

24 Q You were arrested back around August of 2011?

25 A Correct.

- 1 Q So there was almost, what, two and a half to three
2 years had gone by before your guilty plea?
- 3 A Correct.
- 4 Q Did you have an attorney at that time?
- 5 A I did.
- 6 Q All right. During that time leading up to the
7 time you pled guilty -- not beforehand when you were
8 dealing with Investigator Hoover --
- 9 A Uh-huh.
- 10 Q -- but afterwards at some point you got an
11 attorney?
- 12 A Right. Right. Right. Right.
- 13 Q You had conversations with your attorney?
- 14 A I did.
- 15 Q And if I heard your testimony a few minutes ago,
16 you basically said something about you followed your
17 attorney's advice?
- 18 A Right.
- 19 Q What did your attorney advise you to do?
- 20 A Plead guilty.
- 21 MR. WESTON: Objection, your Honor.
- 22 THE COURT: What's your objection?
- 23 MR. WESTON: Hearsay.
- 24 THE COURT: I think it came out on examination, so
25 I'm going to -- that there was a communication between

1 the attorney.

2 MR. WESTON: Yes, sir, your Honor.

3 THE COURT: So I'm going to let him ask the
4 question.

5 Overruled.

6 BY MR. SMITH:

7 Q Well, your attorney advised you. What did he
8 advise you to do?

9 A Plead guilty.

10 Q And that was based on the evidence?

11 A Right.

12 Q Did you talk with your attorney --

13 A I did.

14 Q -- and tell him?

15 A I did.

16 Q Isn't it true that y'all met sometime in July of
17 2013?

18 A Yes, we did.

19 Q All right. And what did you tell him in July of
20 2013?

21 A I told him that my statement was illegally
22 detained (sic), that the confession should not even
23 have been supported as evidence.

24 Q And why were you telling him that then?

25 A Because at the time I didn't know that

1 Investigator Hoover was improperly arresting me --
2 arrested me for this charge.

3 Q So you thought there was some legal issues out
4 there?

5 A Right.

6 Q That there were some things that had been done
7 wrong?

8 A Right.

9 Q All right. So let me ask you this. Did you sit
10 down with your attorney in July of 2013 and go through
11 the statement and tell him the things that were wrong?

12 A I did. I did.

13 Q And even knowing this, you're saying your attorney
14 still advised you to plead guilty?

15 A Correct.

16 Q Isn't it true that somebody actually came forward
17 and gave a statement that you were actually in the club
18 with them on the night?

19 MR. WESTON: Objection, your Honor.

20 THE WITNESS: Correct.

21 THE COURT: State your objection.

22 MR. WESTON: He's testifying about a hearsay
23 statement, your Honor, in his question.

24 THE COURT: I'm curious about that statement.
25 What would this witness know about that statement?

1 MR. SMITH: Um, should we approach the bench,
2 Judge?

3 THE COURT: No. We're going to send the jury out.
4 Mr. Foreman, ladies and gentlemen of the jury, if
5 you would please retire to the --

6 MR. SMITH: I can just lay a foundation. That's
7 what I was trying to do.

8 THE COURT: That's what we're going do.
9 Do not discuss the case among yourselves in any
10 way.

11 (WHEREUPON, the jury exited the courtroom
12 at 11:21 a.m.)

13 THE COURT: All right. State your objection and
14 then we'll hear from Mr. Smith.

15 MR. WESTON: Your Honor, in his question he is
16 basically putting forth hearsay testimony of an alibi
17 when he has to call that witness. This witness cannot
18 testify about --

19 THE COURT: I understand. So yours is a straight
20 hearsay objection.

21 MR. WESTON: Yes, sir. He's testified about the
22 substance of someone else's statement.

23 THE COURT: Anything else other than his
24 statement?

25 MR. WESTON: No, sir, your Honor.

1 MR. SMITH: Judge, I don't vouch for that person's
2 credibility or anything else.

3 THE COURT: Whoa. Whoa. Whoa. Wait a minute.
4 Hearsay is when something is offered for the truth.
5 And so you're offering it for the truth that he was
6 somewhere else.

7 MR. SMITH: Judge, the only thing I'm offering it
8 for --

9 THE COURT: No, no. I don't know what -- I know
10 what you're doing. And that's one of the reasons we
11 have these rules against hearsay.

12 MR. SMITH: And that's what --

13 THE COURT: And if the person who wants to make
14 that statement that you're going to rely on to confuse
15 this jury with an alibi that was never raised, then
16 you're going to have to bring the individual in here
17 and have them testify.

18 MR. SMITH: Judge, one of the -- there is
19 something in the hearsay rules that says if it's
20 offered for the truth of the matter asserted. I'm not
21 saying it was offered for the truth of the matter
22 asserted or anything --

23 THE COURT: You're saying that he -- then you're
24 not saying he was at the club on that morning.

25 MR. SMITH: Only thing I'm saying is there was a

1 statement out there that somebody gave that he was not
2 there.

3 THE COURT: Well, how is that helpful to the jury?

4 MR. SMITH: Excuse me?

5 THE COURT: How is that helpful to the jury, that
6 there is a statement out there to anything? Might be a
7 statement out there that the moon is made of cheese.
8 Are you going to give that statement to the jury?

9 MR. SMITH: It's not relevant to this case, so no.

10 THE COURT: Well, I want to ask you what is
11 relevant to this case. This man has already pled
12 guilty.

13 MR. SMITH: Yes, sir.

14 THE COURT: And that would be inconsistent with an
15 alibi that if he had an alibi, he would have to give
16 them notice of the alibi. In other words, it has
17 nothing to do with this case. Unless you had the
18 person here so that Mr. Weston or the State could
19 cross-examine the witness just as Mr. Weston had to
20 cross-examine this gentleman.

21 MR. SMITH: Well, Judge, I thought earlier in your
22 ruling when I brought up this statement you had said
23 that Mr. Williams was not on trial here today, that
24 these two were here and that --

25 THE COURT: That's right.

1 MR. SMITH: -- and that that statement didn't have
2 anything to do with these two witnesses.

3 THE COURT: That's right. That's exactly right.

4 MR. SMITH: So there's no reason to bring her.

5 THE COURT: No, that's no reason to bring her
6 statement in. If you want to get the statement in,
7 bring her. I'm sorry. That's why we have rules that
8 say if somebody wants to offer something for the truth,
9 you have to bring the person in that's made the
10 statement, the declarant, not somebody that got a
11 written thing that says that was made by the declarant.

12 This gentleman has already said that you can't
13 believe statements. He signed a statement under oath
14 and he says it was incorrect. Now you want to give one
15 that we don't even have the person who gave the
16 statement here to say that it was correct.

17 MR. SMITH: Judge, the only thing I'm asking --

18 THE COURT: The only thing you're trying to do is
19 violate the rules, and I'm not going to permit it.

20 MR. SMITH: Judge, if I may just for the record.

21 THE COURT: Please, for the record.

22 MR. SMITH: Judge I'm not trying to violate the
23 rules. The only thing I'm trying to do is show that
24 the existence -- there was a statement that existed.
25 I'm not vouching for the truthfulness or whatever of

1 it. I'm saying --

2 THE COURT: Well, that's the truthfulness, isn't
3 it, that there is a statement that existed?

4 MR. SMITH: And there is a statement that exists.

5 THE COURT: What does it say? That's what you're
6 offering the statement for, otherwise it's a piece of
7 paper.

8 MR. SMITH: But as the rules say, Judge --

9 THE COURT: Go ahead. Finish your objection.
10 Unless you can get around truth and the declarant not
11 present, we have got a problem.

12 MR. SMITH: Well, the thing I'm saying is I'm not
13 offering it for the truth of the matter asserted. I'm
14 just offering it for the fact that there is a statement
15 out there. Whether it's true or not --

16 THE COURT: Well, the only thing the jury is
17 entitled to hear is the truth. Not some speculation or
18 conjecture or some, what is it, if this witness has
19 said something created out of whole cloth.

20 MR. SMITH: Judge, would it be permissible for me
21 to say something along the lines of, "There may have
22 been a -- there was a statement out there that may have
23 been helpful to you"?

24 THE COURT: No more than, "The moon is made out of
25 cheese."

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Keith Williams - Cross-Exam by Mr. Smith

1 MR. SMITH: Okay, Judge.

2 THE COURT: All right.

3 MR. SMITH: Thank you.

4 THE COURT: So let's just have truth in the case.

5 Now, this gentleman says he made a statement and
6 then he denied it. And it's going to be for the jury
7 to determine whether or not that's true, the statement
8 or his denial.

9 MR. SMITH: Yes, sir.

10 THE COURT: Okay. All right. So you're going on
11 to something else?

12 MR. SMITH: Yes, sir.

13 THE COURT: All right. Anything, Mr. Robinson,
14 anything from you?

15 MR. ROBINSON: No, sir.

16 THE COURT: All right. Very good.

17 Objection sustained.

18 MR. ROBINSON: Your Honor, may I get this -- this
19 is the statement that Mr. Weston was using with this
20 witness. Can I make a copy up here because I may ask
21 him some questions.

22 THE COURT: Sure.

23 MR. SMITH: And, Judge, while he's doing that, may
24 I just state for the record --

25 THE COURT: Why don't we take a short break right

1 now.

2 MR. SMITH: The only thing I wanted to do was say
3 that the statement we're talking about was the same
4 statement that we had a motion about earlier on. That
5 was the Starla Moss statement where I was asking for
6 that continuance based on that earlier on. I think
7 it's an exhibit.

8 THE COURT: Mark it as a defense exhibit for
9 identification.

10 MR. SMITH: I just needed to make that -- I think
11 it's already one. I just wanted to make that
12 clarification, that's the statement I was looking at.

13 THE COURT: Very good. Thank you. If nothing
14 else, we'll take a short break.

15 (WHEREUPON, recess taken from 11:27 a.m.
16 to 11:42 a.m.)

17 THE COURT: State ready to proceed?

18 MR. WESTON: Yes, your Honor.

19 THE COURT: Defendant Harris ready to proceed?

20 MR. ROBINSON: Yes, your Honor.

21 THE COURT: Defendant Chiles ready to proceed?

22 MR. SMITH: Yes, your Honor.

23 THE COURT: Let's invite the jury back.

24 MR. WESTON: Before the jury comes back, it occurs
25 to me -- I apologize, your Honor. I don't think I need

1 to call Investigator Hoover. I'm just going to put the
2 statement in on redirect through him. No need to call
3 Investigator Hoover.

4 THE COURT: You're fine.

5 That's another thing. We have prepared some
6 verdict forms.

7 Let's do ask the jury to join us.

8 Mr. Smith, we have prepared proposed verdict
9 forms.

10 MR. SMITH: Do you want me to take a look at them
11 and show them to other counsel?

12 (WHEREUPON, the jury came into open court at
13 approximately 11:45 a.m.)

14 THE COURT: All right. Let the record reflect the
15 jury and alternate are in the jury box.

16 All right. Mr. Smith, you may proceed with your
17 cross-exam.

18 BY MR. SMITH:

19 Q Mr. Williams, you've been testifying. Let me just
20 ask you a question. I mean, you gave this statement
21 that has been the subject of all this controversy.

22 A Right.

23 Q And there are some things in there that you stated
24 are true and some that you stated are not true?

25 A Correct.

1 Q Bottom line is this: Whether you had anything to
2 do with this or not, did David Chiles have anything to
3 do with this armed robbery at the McDonald's that we're
4 here for today?

5 A No, sir.

6 Q Did Precious Harris, as far as you know, have
7 anything to do with this armed robbery that we're here
8 for today?

9 A No, sir.

10 Q But you pled guilty to this in February of 2014.
11 I mean, this was -- this is like eight months ago?

12 A Correct.

13 Q What -- I mean, why -- why?

14 A Well, due to the fact that my lawyer said that my
15 statement was incriminating and there was no way around
16 it, and he didn't have no other proper defense for it,
17 my best bet was for me to plead guilty.

18 Q Your best bet was to plead guilty?

19 A Correct.

20 Q And were you hoping to get some benefit by going
21 ahead and pleading guilty?

22 A Not really. I really thought I was going to get
23 found not guilty, but at the same time when he told me
24 that there was no way around me -- no other defense for
25 me, my statement against, suppress anything, my best

1 bet would be to take the ten-year plea.

2 Q And so that's what you did?

3 A Correct.

4 Q If you had gone to trial, did you think you would
5 have gotten more time than ten years?

6 A From the advice of my attorney, yes.

7 Q The bottom line is today you're here and you're
8 saying that this statement is not correct?

9 A Correct.

10 Q So what do you say happened that night, if you
11 remember?

12 MR. WESTON: Objection, your Honor.

13 THE COURT: I'm going to overrule the objection.

14 You may proceed.

15 BY MR. SMITH:

16 Q What do you say happened that night?

17 A Well, I do recall that the day before this
18 incident happened, I did talk to my brother. He asked
19 me could I give him a ride someplace. I told him I
20 would. I agreed that I would.

21 So the day the incident happened, I talked to him,
22 and I told him, I mean, I'd give him a ride still. But
23 I never heard from him no more that day until later on
24 that night, around the incident happened. But by the
25 time the incident was occurring, I was in the club or

1 heading to the club.

2 Q And you didn't have anything to do with this
3 robbery yourself?

4 A Correct.

5 MR. SMITH: Judge, I think that's all I have.

6 THE COURT: Very well.

7 MR. ROBINSON: May it please the Court.

8 THE COURT: Certainly.

9 MR. SMITH: Judge, I tell you what, I do have one
10 or two other questions, if I may.

11 BY MR. SMITH:

12 Q What size shoe do you wear?

13 A Nine and a half.

14 Q Do you happen to know what size shoe your brother
15 wears?

16 A No idea.

17 Q Okay. Fine. Thanks.

18 THE COURT: All right. Now, Mr. Robinson.

19 MR. ROBINSON: May it please the Court.

20 THE COURT: Sir.

21 MR. ROBINSON: Thank you, your Honor. May I
22 approach?

23 THE COURT: Certainly.

24 CROSS-EXAMINATION

25 BY MR. ROBINSON:

1 Q Mr. Williams, you have had the opportunity to
2 listen to Mr. Weston and Mr. Smith about your statement
3 that you gave back in August of 2011. Do you remember
4 that?

5 A Correct.

6 Q Is this a copy of your statement?

7 A It is.

8 Q May I have this marked Defense Exhibit, for
9 identified purposes, only Number 1.

10 (WHEREUPON, Defendant's Exhibit Number 1
11 was marked for identification.)

12 BY MR. ROBINSON:

13 Q I want to let you look at what's been marked for
14 identification purposes only 1, for identification
15 purposes only. Now you have got a copy of that?

16 A Yes.

17 Q Now, this was typed out actually by Officer
18 Hoover, correct?

19 A Correct.

20 Q This was done at the sheriff's department; is that
21 correct?

22 A Correct.

23 Q And I think there was -- was there another officer
24 there, too, as well?

25 A At the time of the statement?

1 Q Yes.

2 A No.

3 Q Do you know if they recorded the statement?

4 A No, they didn't.

5 Q Okay. Now, let's look at the statement for a
6 second as far as what Officer Hoover typed out here.

7 Are you looking at it?

8 A Yes.

9 Q Okay. Now, let's look at -- there's no place in
10 this statement that says anything about an agreement
11 between you all regarding this incident, is there?

12 A Right.

13 Q And, in fact --

14 MR. WESTON: Objection, your Honor. The answer is
15 nonresponsive.

16 THE COURT: All right. Restate your question. I
17 wasn't sure if I understood the question.

18 MR. ROBINSON: I'm sorry, your Honor.

19 THE COURT: No. Please.

20 BY MR. ROBINSON:

21 Q Mr. Williams, in this statement that was typed out
22 by Officer Hoover, there isn't anything in this
23 statement that indicates that Ms. Harris, Precious
24 Harris, took part in any sort of agreement, is there?

25 A Right.

1 Q Okay. In fact, the person who pointed the gun in
2 this case pointed, in this statement, pointed the gun
3 at Ms. Harris, didn't they?

4 A Uh-huh.

5 Q And, in fact, the person in this statement was
6 yelling to Precious or whoever was in the store, "Put
7 it in the bag"; isn't that correct?

8 A Yes.

9 Q And this person, Yank -- this is on line, I think
10 it's 11 or 12 -- "Yank went around to the back" --

11 MR. WESTON: Objection, your Honor.

12 THE COURT: Beg your pardon. Excuse me. State
13 your objection.

14 MR. WESTON: If he's going to read from the
15 statement, your Honor, he has to put it in evidence.

16 THE COURT: No, sir. It hasn't been put in
17 evidence for you, and you can follow up with a proffer.

18 MR. WESTON: Yes, sir, your Honor.

19 THE COURT: Overruled. I mean it's not in
20 evidence as yet.

21 MR. WESTON: I think I would make the distinction,
22 your Honor, I was asking about an inconsistent
23 statement.

24 THE COURT: Isn't that the same statement?

25 MR. ROBINSON: Same statement.

1 MR. WESTON: But he's not asking if it was
2 inconsistent with any testimony he's given today.

3 THE COURT: He's not relying on that rule. He's
4 just asking about what you published to the jury.

5 MR. WESTON: Yes, sir, your Honor.

6 THE COURT: Overruled.

7 MR. ROBINSON: I forgot my question, your Honor.
8 I'm sorry.

9 THE COURT: Something about Yank, line 11.

10 BY MR. ROBINSON:

11 Q You would agree that when Yank went around to
12 where Precious was, you saw him with a gun; isn't that
13 right?

14 A Uh-huh.

15 MR. WESTON: Objection, your Honor.

16 MR. ROBINSON: I'll withdraw -- again, your
17 Honor --

18 THE COURT: Very good.

19 MR. ROBINSON: -- I'll withdraw the question. One
20 second, your Honor.

21 THE COURT: Certainly.

22 BY MR. ROBINSON:

23 Q Mr. Williams, you testified in response to
24 Mr. Weston's questioning about the relationship between
25 your brother and Ms. Harris. Do you remember that?