

ORIGINAL

Volume I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

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JUL 30 2013

THE STATE,

SC Court of Appeals

RESPONDENT,

V.

RYAN CARL NEWMAN,

APPELLANT

Appellate Case No. 2012-212986

RECORD ON APPEAL

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SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT DATE SEPTEMBER 10-13, 2012.....	1
SENTENCING TRANSCRIPT DATED SEPTEMBER 14, 2012	787
IN-CHAMBERS SUPPLEMENT TO TRIAL RECORD DATED SEPTEMBER 14, 2012	830
COURT'S EXHIBIT #1 (DEFENDANT CLARK'S STATEMENT).....	841
COURT'S EXHIBIT #2 (PHOTOGRAPH).....	842
COURT'S EXHIBIT #3 (NOTE FROM THE JURY)	843
STATE'S EXHIBIT # 1 (GPS TRACKING MAP).....	844
STATE'S EXHIBIT #2 (GPS TRACKING MAP).....	845
STATE'S EXHIBIT #3 (PHOTOGRAPH).....	846
STATE'S EXHIBIT #4 (PHOTOGRAPH).....	847
STATE'S EXHIBIT #5 (PHOTOGRAPH).....	848
DEFENDANT NEWMAN'S EXHIBIT #1 (FACEBOOK PAGE).....	849
DEFENDANT NEWMAN'S EXHIBIT #2 (FACEBOOK PAGE)	852
DEFENDANT NEWMAN'S EXHIBIT #3 (FACEBOOK PAGE).....	855
DEFENDANT NEWMAN'S EXHIBIT #4 (DORCHESTER COUNTY RAP SHEET).....	857
INDICTMENTS AND SENTENCING SHEETS.....	858
CERTIFICATE OF COUNSEL.....	869

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) CASE NO.: 2011-GS-08-0453
 2011-GS-08-1671
 2011-GS-08-1672

THE STATE OF SOUTH CAROLINA)
)
)
 VS.)
)
)
 RYAN CARL NEWMAN and)
 JESSICA CLARK,)
)
 DEFENDANTS.)
 _____)

JURY TRIAL

VOLUME 1 OF 4

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on Monday, September 10, 2012, Commencing at 11:16 a.m.

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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	5
PRETRIAL MOTIONS	5
JURY VOIR DIRE	26
STRIKING OF THE JURY	78
<u>JACKSON V. DENNO</u> HEARING	
BRUCE ASHE	
Direct Examination by Ms. Cornwell	99
Cross-Examination by Mr. Biering	107
CATHY MARIE ADAMS	
Direct Examination by Mr. Biering	114
Cross-Examination by Ms. Cornwell	116
BRUCE ASHE	
Direct Examination by Mr. Biering	119
MOTION TO SUPPRESS - BY MR. SHELTON	131
MOTION TO SUPPRESS - BY MS. CORNWALL	143
CERTIFICATE OF COURT REPORTER	155

INDEX TO EXHIBITS

MARKED/ADMITTED

DEFENDANT CLARK'S EXHIBITS

Defendant Clark Exhibit Number 1
[Supplement Report]

119 / 120

COURT'S

Court's Exhibit Number 1
[Defendant Clark's Statement]

106 /

PROCEEDINGS

- - - - -

MOTION TO CONSOLIDATE

THE COURT: All right. You had a motion?

MR. BIERING: Yes, Your Honor. May it please
the Court.

Christopher Biering. I'm here -- I defend
Jessica Clark on these charges that have been brought
by the State.

Your Honor, my motion is to consolidate the
defendants, that have been charged in this action, for
purposes of trial. As the Court knows, obviously
there has been -- a continuance has been granted to
one of the defendants in this matter.

My motion is made primarily on the basis of
judicial economy. Your Honor, this case will most
likely involve a significant number of statements by a
significant number of people. The alleged victim in
this case, Mr. Andre Mendoza, a so-called entertainer
and promoter through So Caliente productions, has
approximately 448 facebook friends. Initially, as it
relates to picking a jury, we are going to have to go
through and determine the relationship --

And what I would tell you: in my research, Your
Honor, there are significant community relationships

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 and ties with his friends' list on facebook that link
2 back to people that I never would think they would
3 link back to. That's my first issue.

4 The second issue --

5 THE COURT: Well, what does a facebook have to
6 do with consolidation?

7 MR. BIERING: Your Honor, this case really is
8 going to deal a lot with facebook. We have well over
9 4,000 pages of facebook traffic between the alleged
10 victim, what we believe would also involve a
11 significant number by the alleged victim, of drug-
12 related matters, perusing the internet for sexual
13 relations. We've got a lot of things that we're going
14 to have to go through with this alleged victim.

15 The solicitor's, I don't think they would
16 disagree with this: this case, the facts of this
17 case, begin on facebook. Statements by the alleged
18 victim on facebook are certainly going to be major
19 components of this trial. We have what we believe to
20 be, based on the witness list provided to us today, a
21 significant amount of facebook traffic with some of
22 the alleged witnesses in this case.

23 There's a lot to be done in this case. From a
24 standpoint of judicial economy, it just doesn't make
25 sense to me that we would have to see this case take

1 up more than one term of Berkeley County's court time
2 and I would ask the Court to consolidate the
3 defendants for purposes of the trial.

4 I've seen the trial docket. The solicitor's
5 office has other items on their trial docket. I just
6 think it makes sense not to have to do the same thing
7 twice. And I would ask that the Court consider that
8 so that we don't, again, spend more than one term of
9 Berkeley County's very precious general sessions trial
10 time.

11 Thank you, Your Honor.

12 THE COURT: Mr. Shelton, do you --

13 MR. CHAD SHELTON: Your Honor, I join in --

14 THE COURT: -- do you join in that motion?

15 MR. CHAD SHELTON: For purposes of the record,
16 Steve Davis was the third attorney. There's three
17 codefendants. Steve Davis was the third attorney in
18 that case and he was granted a continuance earlier.
19 So for purposes of the record, that's the judicial
20 economy: a second trial.

21 THE COURT: Okay.

22 MR. CHAD SHELTON: There's no prejudice to the
23 State, Your Honor, to have them all together.

24 THE COURT: Solicitor Cornwell, what do you want
25 to do? I mean --

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Your Honor, the State is prepared
2 to go forward on these defendants. We don't think
3 that it's going to be a burden for Berkeley County.
4 We're consolidating two of them already, as opposed to
5 having three separate trials.

6 As far as the facebook matter goes -- I'm not
7 really sure whether that goes to consolidation --
8 we're going to object to calling out every name of the
9 facebook friends. I'm not sure that it's relevant to
10 call out the friends of everybody that everybody knows
11 in this case. As long as they don't know the victim
12 and/or the defendant I don't think that matters, as
13 far as the jury.

14 So Mr. Biering's concern about wasting time and
15 taking time to call out too many names, the State has
16 fifteen essential witnesses. I don't think that
17 that's going to be too burdensome for the County.

18 THE COURT: So you want to proceed with these
19 two and try -- I believe Mr. Davis' -- Tommy Weathers
20 separately?

21 MS. CORNWELL: Yes, sir.

22 THE COURT: Okay. All right. Motion denied.

23 MR. BIERING: Thank you, Your Honor.

24 THE COURT: All right. Any other motion before
25 we bring the jury in?

1 MR. CHAD SHELTON: Not prior to the jury.

2 THE COURT: What's all -- you're talking about
3 these questions in this facebook. Are you wanting me
4 to ask -- what are you wanting me to ask the jury
5 about the facebook? Have you or a member of your
6 family does business with what?

7 MR. BIERING: So Caliente Entertainment.

8 THE COURT: So Caliente Entertainment?

9 MR. BIERING: Yes, sir.

10 THE COURT: A member of your family friends with
11 Andre Mendoza on facebook or the So Caliente website?

12 MR. BIERING: Yes, Your Honor.

13 THE COURT: And then you've got a -- what is all
14 of this?

15 MR. BIERING: Your Honor, I think it's important
16 that we talk a little bit about facebook, at the
17 outset, as it relates to my request to include the
18 listing of these names.

19 I'm forty-two, Judge. I've got a sixteen-year-
20 old, and I will tell you that I'm on a daily losing
21 battle on the learning curve as it relates to social
22 media. I have a fourteen-year-old, as well, and I am
23 now joining that battlefield with him, as well.

24 But what I would say, Judge, is that we live in
25 a world today that is very different than the world

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 that I went to high school in and the world that I
2 lived in during college in my early-twenties years
3 where really all of the people that are involved in
4 this case reside. The defendants, the alleged victim,
5 they're all in that twenty-something crowd.

6 And, Judge, here's the reality of their life.
7 They --

8 THE COURT: Are you wanting me to call out all
9 these names that are listed in this -- I guess this is
10 -- whose facebook is this?

11 MR. BIERING: That is the alleged victim, Andre
12 Mendoza.

13 THE COURT: And you want me to call out all
14 these names to the jury?

15 MR. BIERING: I want to call out all of their
16 names and their employment that is listed because he
17 has an open facebook page -- he had an open facebook
18 page at the time of this alleged crime.

19 THE COURT: Well, the information you gave me,
20 all of them don't have where they work. Some of them
21 just say add friend.

22 MR. BIERING: I realize that, Your Honor. I
23 realize that some of them don't have all of the
24 information. But I would ask that each one of their
25 names be called out.

1 THE COURT: For what reason? I mean, you've got
2 the question are you or a member of your family
3 friends with Andre Mendoza or use his facebook.

4 I mean, if somebody stands up -- I don't
5 understand why -- what difference does it make
6 if there are some of these people on his facebook
7 and --

8 MR. BIERING: Let me give an example, Your
9 Honor --

10 THE COURT: -- and the jury does know them?

11 Now, if somebody on the jury is part of the
12 facebook, that's a different story. But to sit here
13 and go through eighteen pages of names, I'm just not
14 inclined to do that.

15 MR. BIERING: And I understand you're not,
16 Judge.

17 But here's the problem. The problem is this.
18 If you were to ask -- and I'm going to again use my
19 sixteen-year-old son as an example -- do I know a
20 specific person's name, I might say no. But here's
21 what parents do to peruse and monitor their children's
22 facebook activities -- and, quite candidly, what
23 spouses and girlfriends and boyfriends do to monitor
24 their significant other's facebook activity -- is they
25 go to these facebook pages and they do what they call

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 facebook stalking. That's what some people call it.
2 They click through to other people's facebook sites.

3 And what we've got here, Your Honor, is a
4 community on facebook that is very tied together, that
5 share information about their social activities, some
6 significantly problematic social activities, Your
7 Honor, and we've got to know if those points
8 intersect.

9 Yes, Your Honor, I'm asking that you call out
10 each of those individual names and their employment.

11 I'll tell you, Judge, I've limited what I was
12 going to request. What I was going to request was
13 going to go farther than that. It was going to go
14 to --

15 THE COURT: Well, you're having trouble getting
16 to this point.

17 MR. BIERING: I realize that, Judge.

18 THE COURT: So if you're going farther, I know
19 we're not going farther.

20 MR. BIERING: Well, what I would say is that So
21 Caliente apparently does a lot of productions through
22 the Market Street Saloon. And they bring women and
23 activities through the Market Street Saloon both --

24 THE COURT: What is the Market Street Saloon?

25 MR. BIERING: It is a social gathering site.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Counsel -- the codefendant says it's a restaurant. I
2 think it's a bar.

3 THE COURT: Well, where is it?

4 MR. BIERING: It's North Charleston, downtown.
5 It's a very --

6 THE COURT: Where in North Charleston?

7 MR. BIERING: Over by Northwoods Mall, but it's
8 not in the mall. It's not in --

9 It's not a part of Dillard's. I will say that,
10 Judge.

11 THE COURT: Market Street Saloon?

12 MR. BIERING: Yes, sir.

13 But I'm not going -- I'm not going to go that
14 far, but I think we've got to go this far.

15 THE COURT: What's the State's position?

16 MS. CORNWELL: Your Honor, the State's position
17 is that there is no reason to call out every friend of
18 somebody who knows somebody who knows somebody. We
19 would be here all day making every juror member list
20 out every friend and every person they've ever known
21 and comparing if they know somebody that knows
22 somebody that knows somebody.

23 I think the curative instruction is do you know
24 Andre Mendoza, do you or your family members know
25 Andre Mendoza, and are you friends with Andre Mendoza.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 That's the victim. You can ask the same for the
2 defendants in each matter. We don't need to go
3 through eighteen pages of facebook friends and then
4 eighteen pages of the defendants' facebook friends and
5 then eighteen more pages of the defendants' facebook
6 friends.

7 As long as the jury members don't know the
8 defendants and don't know the victim, I don't see
9 where it's relevant.

10 MR. BIERING: Judge, if I could respond to that
11 briefly and just put a visual aid here.

12 What I've got here: Judge, each of these black
13 binder books holds just one of them. And this is a
14 sampling from the facebook traffic, that Mr. Mendoza
15 has, that was provided to me by the State. This isn't
16 something that I've gone out and got. This is, you
17 know, from the State's evidence pack.

18 Each of these items involved an individual
19 person, a different person. These involve
20 transactions of drugs. They're going to call this
21 witness and we're going to challenge his credibility,
22 Your Honor, and what I don't want to do is I don't
23 want us to get into the midst of this trial and as I'm
24 going through, one of the juror members or two or
25 three, which is what really concerns me --

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 I mean, I had five -- I had five clients in the
2 jury panel today. We live in a small community. I
3 don't want to get halfway into this trial, Judge, and
4 waste this Court's time when we lose juror members
5 because they're related or know --

6 THE COURT: Well, that's just a chance we'll
7 probably have to take.

8 MR. BIERING: Yes, sir.

9 THE COURT: I'm not going to go through and call
10 out names of eighteen pages on someone's facebook.
11 Okay? I will ask them if they have ever used that
12 facebook belonging to Calando Mendoza [sic]. Okay?
13 And if anybody stands up, then we can go farther.

14 But I'm not going to -- I'm not going to start
15 this list of names. That's like getting the phone
16 list out and let's list the Berkeley County phone book
17 and see if any of those are your friends. I mean,
18 you're basically saying the same thing and I'm not
19 going to do that.

20 Now, I don't mind -- I don't mind posing some
21 questions to the jury to try to determine where -- if
22 they've used that website. If you want to pose me
23 some questions -- and I don't mind bringing them up in
24 private and talking to them if anybody stands. But
25 you know the facebook, you know what you want, so

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 you're going to have to write me some questions down
2 that I can ask the jury to see if anybody's been
3 involved in that website, that facebook, or go to the
4 Market Street Saloon. Okay? And I will do that. And
5 if anybody stands up, then we'll deal with it then.
6 But I'm just not going to start reading out names at
7 random, unless they're going to testify in this trial.

8 MR. BIERING: I do not want to further argue --

9 THE COURT: Now, if you want to sit down and --

10 MR. BIERING: For the record -- if I could put
11 one more thing on the record, Your Honor.

12 THE COURT: Okay. Go ahead.

13 MR. BIERING: The issue with facebook, as it
14 relates to what our request goes to, is that it
15 doesn't matter whether or not a person has personally
16 visited the site. If Mr. Mendoza or So Caliente's
17 website is an open website with ability for their
18 posts and comments to be seen by non-friends, then I
19 can look at my son's website. And if one of his
20 mutual friends, who also had an open website, open
21 facebook, and got a comment from them, we then link
22 those together and we still have a visual connection
23 with Mr. Mendoza.

24 Thank you, Your Honor. I understand the Court's
25 ruling.

1 THE COURT: And that's fine. And I'm willing to
2 ask that question if you'll get it prepared for me.
3 Okay? If anybody -- whatever you want to ask about
4 that website to the jury panel I will do, to see if
5 anybody has looked at it, anybody pulled it up on the
6 website on their computer. I'll ask all those
7 questions. It's sort of like asking who has bumper
8 stickers and what do they say.

9 I don't have any problem ask those questions,
10 but you're going to have to propose them. You know
11 what you want, so get me the questions together and
12 I'll ask them. But I'm not going to start reading out
13 a bunch of names at random.

14 I have no problem of delving into the question
15 of whether they've used this website and his facebook,
16 his open facebook, as you call it. And if anybody
17 has, I'll bring them up front and we'll question them
18 in detail.

19 Now, that's the best you're going to get out of
20 me this morning. So I suggest you sit down and write
21 out some questions for me.

22 MR. BIERING: Your Honor, I don't want to -- I
23 want to go ahead and just at this point say what my
24 question would be. My question is only --

25 THE COURT: Write them down for --

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. BIERING: -- the only way that I believe
2 that can happen is by reading of the names. So I
3 think the Court has already ruled on that. And if
4 you're not inclined to do that, I'm not going to
5 submit that again in writing to you because I think
6 that would be disrespectful for me to ask you the same
7 question over again.

8 THE COURT: I'm not going to read the names.
9 Anything about someone getting on that website and
10 viewing it, I'll ask. Okay? So sit down and get your
11 questions together for me.

12 MR. BIERING: I will. I'll write it. Thank
13 you, Your Honor.

14 THE COURT: All right. We'll take -- anything
15 else?

16 MR. CHAD SHELTON: Your Honor, one thing.

17 I hate to belabor the point. There are a couple
18 of witnesses that were provided this morning that were
19 not in any incident report. Apparently they're in the
20 facebook files, when I asked the solicitor about it.
21 Just those -- when you list the witness, whether they
22 know them, whether they're facebook friends with --

23 THE COURT: Well, write the question down and
24 I'll ask it. Okay?

25 MR. CHAD SHELTON: All right. Yes, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: That's what I'm sitting here telling
2 you. I'm just not going to call out 300 names. All
3 right? So we'll take a fifteen- or twenty-minute
4 break, write your questions down, and we'll review
5 them. Okay?

6 MR. CHAD SHELTON: Yes, sir.

7 MR. BIERING: We -- I do think we do agree --

8 THE COURT: Y'all keep wanting to argue about
9 names. I'm trying to help you --

10 MR. BIERING: Yes, sir.

11 THE COURT: -- so write your questions down and
12 I'll ask them.

13 We'll take about a fifteen- or twenty-minute
14 recess for you to get that done. Okay?

15 MR. BIERING: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. BIERING: I was just going to say --

18 THE COURT: Thank you very much.

19 MR. BIERING: -- we agree on two --

20 [Whereupon, a recess is taken from 11:33 a.m. to
21 12:14 p.m.]

22 THE COURT: All right. Would you bring us the
23 jury in, please.

24 Solicitor, have you got the indictments? Copies
25 of the indictments.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Yes, Your Honor. We've given --

2 THE COURT: Pardon?

3 MS. CORNWELL: Yes, Your Honor. We've given you
4 copies of the indictments.

5 THE COURT: Do you want them?

6 MS. CORNWELL: And I've got a copy, so I'm fine.
7 Thank you.

8 THE COURT: All right.

9 MS. CORNWELL: Your Honor, for purposes of the
10 record --

11 THE COURT: I'm sorry. What?

12 MS. CORNWELL: For purposes of the record, the
13 State consents that the strikes are ten and twenty
14 since there are two defendants.

15 THE COURT: All right.

16 [Off the record momentarily]

17 THE COURT: Let me see the attorneys up here,
18 please.

19 [Whereupon, a bench conference is held as
20 follows]

21 THE COURT: With the civil jury, we ain't
22 got enough jurors.

23 MS. CORNWELL: Okay.

24 THE COURT: So what we'll have to do is I'm
25 going to just tell them to come back at two

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 o'clock and by that time we'll have the civil
2 remaining and we'll have enough to move forward.
3 We've got enough, but I -- if nobody gets
4 excused.

5 I mean, if you've got -- y'all have got
6 thirty strikes. That's forty-two. If we get
7 two alternates, that's six. That's forty-eight.
8 And we don't have but forty-nine sitting out
9 there.

10 MS. CORNWELL: Okay. Just come back at two
11 o'clock?

12 THE COURT: So I'm going to just tell them
13 to come back at 2:00 and we'll get started at
14 that time because by then we'll have whatever --
15 Thirty -- we'll have another twenty-eight.

16 MS. CORNWELL: Okay.

17 THE COURT: So that will give us room to
18 wiggle.

19 MR. BIERING: Your Honor, there's one jury
20 member -- and I've informed the solicitor about
21 this the beginning of the day. Ms. Claudette
22 McCall, she is one of my clients. Her husband
23 is one of my clients. He's immediate past chief
24 operating officer at Santee Cooper.

25 I also was in a position of authority over

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 her. I was a chairman of the board of a
2 foundation at Saint John. She was the
3 headmaster there. I don't foresee any possible
4 way that she could serve on this panel.

5 THE COURT: No. I'm --

6 MR. BIERING: Could we maybe get her
7 home to her grandchild? She's got a little
8 two-year-old that she's supposed to be taking
9 care of, too. So --

10 THE COURT: Is she here or is she with --

11 MR. BIERING: She's here.

12 THE COURT: -- the civil side?

13 MR. BIERING: She's here.

14 THE COURT: Well, why don't I just tell
15 them not to come -- those two not to come back.

16 MR. BIERING: No, it's just one.

17 THE COURT: I'm going to excuse them for
18 cause.

19 MR. BIERING: Okay. Yes, sir.

20 THE COURT: What are their names?

21 MS. CORNWELL: Claudette McCall.

22 MR. BIERING: Claudette McCall.

23 THE COURT: Claudette McCall, will you come
24 forward.

25 Who's the other one?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: That's it.

2 MR. BIERING: That's all.

3 THE COURT: Ms. McCall. Is she the only
4 one?

5 MR. BIERING: Yes, sir. Yes, Your Honor.

6 THE COURT: I'm just going to excuse --

7 MS. CORNWELL: Thank you, Your Honor.

8 THE COURT: -- Ms. McCall.

9 [Whereupon, the Court and the clerk of
10 court confer]

11 [Whereupon, Ms. McCall comes forward]

12 THE COURT: Hello, Ms. McCall. The
13 attorney represents you. I'm going to excuse
14 you for cause. I just wanted to bring you up
15 here and tell you. Okay? So you're free to go.
16 Have you got your number to call in tonight?

17 MS. MCCALL: Yes.

18 THE COURT: Call that number after tonight
19 and there will be a phone message for the jury
20 panel. Just follow those instructions.

21 MS. MCCALL: Okay.

22 THE COURT: Okay?

23 MS. MCCALL: Uh-huh.

24 THE COURT: All right. Thank you.

25 [Whereupon, the bench conference concludes]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 [Whereupon, the jury panel enters the courtroom
2 at 12:16 p.m.]

3 THE COURT: All right. Ladies and gentlemen of
4 the jury panel, they are striking a civil jury and
5 they have pulled thirty jurors out of the entire group
6 and we may not have enough jurors to draw this
7 particular case that the solicitor is going to call,
8 primarily because there's two defendants that are
9 going to be tried together. So I'm afraid we don't
10 have enough jurors, so we're going to have to wait for
11 the remaining -- I guess the remaining twenty-eight --
12 I'm sorry -- eighteen to come back from the civil side
13 so we'll have enough jurors to draw this jury.

14 So what I'm going to do is excuse you and ask
15 you to come back -- it's 12:30. Be back here at two
16 o'clock. Hopefully, by that time a civil jury will be
17 drawn and we'll be ready to move forward. So be back
18 in the courtroom at two o'clock. Have a good lunch.

19 [Whereupon, the jury panel exits the courtroom
20 at 12:21 p.m.]

21 THE COURT: All right. Anything else we can
22 talk about that we need to talk about before --

23 MS. CORNWELL: Your Honor, just for scheduling
24 purposes, I think we've got some motions -- there are
25 some motions.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: I'm sorry. Come on up here so I
2 can --

3 [Whereupon, an off-the-record bench conference
4 is held in reference to scheduling]

5 THE COURT: All right. Thank you. See you at
6 two o'clock.

7 [Whereupon, a recess is taken from 12:23 p.m. to
8 1:57 p.m.]

9 THE BAILIFF: Are you ready for them now?

10 [Whereupon, the jury panel enters the courtroom
11 at 2:04 p.m.]

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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

JURY VOIR DIRE

THE COURT: All right. Ladies and gentlemen of the jury, the solicitor is going to call the case.

Solicitor, if you'll call your case, please.

MS. CORNWELL: Thank you, Your Honor.

The State calls Ryan Newman, indictment 2011-GS-08-0453, armed robbery; 2011-GS-08-1670, indictment for possession of a weapon during the commission of a violent crime; 2011-GS-08-1671, indictment for kidnaping; 2011-GS-08-1672, indictment for assault and battery in the first degree.

The State also calls Jessica Clark, indictment 2011-GS-08-0402, indictment for armed robbery; 2011-GS-08-1673, indictment for possession of a weapon during the commission of a violent crime; 2011-GS-08-1675, indictment for assault and battery in the first degree; 2011-GS-08-1674, indictment for kidnaping.

THE COURT: All right. Ladies and gentlemen of the jury panel, the State has called the case -- the two cases against the two defendants, Ryan Newman and Jessica Clark.

She read the indictment to you. The indictment in no way is any evidence of the defendants' innocence or guilt. It's merely the administrative process by which the defendants are brought before the Court.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 It's not for your consideration at all and any --
2 whether the State has proven their case beyond a
3 reasonable doubt or has not proven their case beyond a
4 reasonable doubt.

5 Now, the first thing I'm going to do is call out
6 a list of names and I'm going to ask you the same
7 question about each name. I'm going to ask you if
8 you're related by blood or marriage or do you know the
9 individual. And when I say blood or marriage, I'm
10 talking about prior marriages, divorce, or future
11 marriages if you have one of these witnesses you plan
12 on marrying. So I'm talking about past, present and
13 future marriage.

14 The first name is -- and if these individuals
15 are in the courtroom, please stand -- Andre Mendoza.

16 [Whereupon, Mr. Mendoza complies]

17 THE COURT: He is standing to your right. Thank
18 you, Mr. Mendoza.

19 Is anybody related by blood or marriage to Andre
20 Mendoza or does anybody know Andre Mendoza? If so,
21 please stand.

22 [Whereupon, there is no response]

23 THE COURT: The next name is Deputy Dennis
24 Wells. He's not in the courtroom. Is anybody related
25 by blood or marriage to Deputy Dennis Wells or does

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 anybody know Deputy Dennis Wells? If so, please
2 stand.

3 [Whereupon, there is no response]

4 THE COURT: The next name is Lieutenant Bruce
5 Ashe. Is anybody related by blood or marriage to
6 Bruce Ashe or does anybody know Bruce Ashe? If so,
7 please stand.

8 Yes, ma'am. The lady in the front row. What's
9 your name?

10 MS. HALL: Kelley Hall.

11 THE COURT: Do you know your number?

12 MS. HALL: 84.

13 THE COURT: 84. Yes, ma'am, Ms. Hall. How do
14 you know Bruce Ashe?

15 MS. HALL: He's good friends with my husband.

16 THE COURT: Good friends with your husband?

17 MS. HALL: Uh-huh.

18 THE COURT: How often do you see him?

19 MS. HALL: Whenever my husband sees him. I've
20 probably seen him maybe once or twice just this year.

21 THE COURT: Once or twice this year?

22 MS. HALL: Uh-huh.

23 THE COURT: All right. Would that cause you any
24 difficulty in sitting on this jury?

25 MS. HALL: No.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Can you sit that relationship aside
2 and be fair to both the State and the defendant?

3 MS. HALL: Yes, sir.

4 THE COURT: Can you base your decision-making on
5 the testimony you hear in the courtroom?

6 MS. HALL: Yes, sir.

7 THE COURT: And you don't think the relationship
8 between your husband and Mr. Bruce Ashe will interfere
9 with your decision-making?

10 MS. HALL: No.

11 THE COURT: All right. Thank you very much, Ms.
12 Hall, juror number 84.

13 Yes, ma'am? Your name?

14 MS. LAWRENCE: Dana Lawrence, 114.

15 THE COURT: Yes, ma'am. I think you came up
16 earlier and said you knew everybody.

17 MS. LAWRENCE: I worked over at the jail.

18 THE COURT: Pardon?

19 MS. LAWRENCE: I worked from -- with him at the
20 jail and stuff like that. I was just talking to him
21 out front a little while ago.

22 THE COURT: All right. How do you know
23 Lieutenant Bruce Ashe?

24 MS. LAWRENCE: When I worked at the jail,
25 working with him.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Are you still working at the jail?

2 MS. LAWRENCE: No. I do bail-bonds now.

3 THE COURT: Pardon?

4 MS. LAWRENCE: No, sir. I do bail-bonds, stay
5 on track for Berkeley County occasionally with GPS.

6 THE COURT: Okay. I believe you said you write
7 the bails; right?

8 MS. LAWRENCE: I write bail bonds and track them
9 through GPS.

10 THE COURT: Do you go on the bonds themselves?

11 MS. LAWRENCE: Occasionally, when they let me.

12 THE COURT: Okay. And would that cause you any
13 difficulty in sitting on this jury, Ms. Lawrence?

14 MS. LAWRENCE: I would think my ten years of
15 dealing with the inmates at the jail would probably
16 bias me on that one.

17 THE COURT: In which respect? For the State or
18 against the State?

19 MS. LAWRENCE: For the State.

20 THE COURT: Okay. I'll excuse you from service
21 on this jury. Okay?

22 MS. LAWRENCE: Okay.

23 THE COURT: You can have a seat. Just have a
24 seat.

25 All right. The next name is Sargent Jeremy

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Baker. Anybody related by blood or marriage, does
2 anybody know Jeremy Baker? If so, please stand.

3 [Whereupon, there is no response]

4 THE COURT: The next name is Larry Ballard.
5 Anybody know Larry Ballard? Anybody related by blood
6 or marriage? If so, please stand.

7 Yes, ma'am, juror --

8 MS. BURNEY: Juror number 204.

9 THE COURT: Amy Burnett -- Burney?

10 MS. BURNEY: Yes, sir.

11 THE COURT: How do you know --

12 MS. BURNEY: Larry Ballard, he works through a
13 bond company and I have actually been there and talked
14 to him, and I know Earnest Davis that also works with
15 him, and I know his family members.

16 THE COURT: How often do you see him?

17 MS. BURNEY: Not often at all.

18 THE COURT: Have you had business with him or --

19 MS. BURNEY: Yes, sir.

20 THE COURT: Okay. Would that cause you any
21 difficulty sitting on this jury?

22 MS. BURNEY: No, sir.

23 THE COURT: Would it impair your decision-making
24 process?

25 MS. BURNEY: No, sir.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Can you be fair to both the State
2 and the defendant?

3 MS. BURNEY: Yes, sir.

4 THE COURT: Can you base your decision on what
5 you hear in the courtroom?

6 MS. BURNEY: Yes, sir.

7 THE COURT: All right. Thank you so very much,
8 Ms. Burney, juror number 204.

9 MR. WRIGHT: Elton Wright, 201.

10 THE COURT: 201, Mr. Wright. How do you know
11 Mr. Ballard?

12 MR. WRIGHT: He's just a good friend. I grew up
13 with him.

14 THE COURT: How often do you see him?

15 MR. WRIGHT: Not very often lately.

16 THE COURT: Pardon?

17 MR. WRIGHT: Not very often lately.

18 THE COURT: All right. You say you grew up with
19 him. Went to school with him or --

20 MR. WRIGHT: Yeah, went to school with him.

21 THE COURT: Do you see him once a month or --

22 MR. WRIGHT: If that, yeah.

23 THE COURT: Do y'all go out together or you just
24 see him in passing?

25 MR. WRIGHT: Just in passing.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Would that cause you any difficulty
2 in sitting on this jury?

3 MR. WRIGHT: No, sir.

4 THE COURT: Can you set that relationship aside
5 and be fair to both the State and the defendant?

6 MR. WRIGHT: Yes, sir.

7 THE COURT: Thank you, Mr. Wright, juror number
8 201.

9 Yes, sir. Your name?

10 MR. JONES: Charles Jones, 105.

11 THE COURT: 105? Yes, sir, Mr. Jones.

12 MR. JONES: I also grew up with Larry.

13 THE COURT: How often do you see him?

14 MR. JONES: Highschool reunions. Every five
15 years, maybe.

16 THE COURT: Every five years?

17 MR. JONES: Maybe every five.

18 THE COURT: You only see him once every five
19 years?

20 MR. JONES: Occasionally I might see him out
21 somewhere, or if he shops in my store or something,
22 but not very often.

23 THE COURT: Okay. Can you set that relationship
24 aside?

25 MR. JONES: Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Can you be fair to both the State
2 and the defendant?

3 MR. JONES: Yes, sir.

4 THE COURT: All right. Thank you, Mr. Jones,
5 juror number 105.

6 The next name is Derrick Castle. Anybody
7 related by blood or marriage or does anybody know
8 Derrick Castle? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: The next name is Chelsea Arrowood.
11 Is anybody related by blood or marriage? Does anybody
12 know Chelsea Arrowood? If so, please stand.

13 [Whereupon, there is no response]

14 THE COURT: The next name is Luz Rodriguez.
15 Anybody related by blood or marriage? Does anybody
16 know Luz Rodriguez? If so, please stand.

17 Please stand, ma'am, and face the jury.

18 [Whereupon, Ms. Rodriguez complies]

19 THE COURT: She's standing to your right.

20 Thank you, Ms. Rodriguez.

21 Anybody related by blood or marriage, does
22 anybody know Ms. Rodriguez? If so, please stand.

23 [Whereupon, there is no response]

24 THE COURT: The next name is Anthony Espinal.
25 Is Anthony in the courtroom?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 [Whereupon, there is no response]

2 THE COURT: Is anybody related by blood or
3 marriage or does anybody know Anthony Espinal? If so,
4 please stand.

5 [Whereupon, there is no response]

6 THE COURT: The next name is Zavon Clayton.
7 Anybody related by blood or marriage, does anybody
8 know Zavon Clayton?

9 [Whereupon, there is no response]

10 THE COURT: The next name is Shane Newman.
11 Anybody related by blood or marriage, does anybody
12 know, Shane Newman? If so, please stand.

13 [Whereupon, there is no response]

14 THE COURT: The next name is Joey Hugh. Anybody
15 related by blood or marriage or does anybody know Joey
16 Hugh? If so, please stand.

17 [Whereupon, there is no response]

18 THE COURT: The next name is Shannon Goetz. Is
19 anybody related by blood or marriage, does anybody
20 know, Shannon Goetz? If so, please stand.

21 [Whereupon, there is no response]

22 THE COURT: The next name is John Burnett. Is
23 anybody related by blood or marriage or does anybody
24 know John Burnett? If so, please stand.

25 [Whereupon, there is no response]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Shannon Goetz is also known as
2 Shannon Marie, also known as Shannon Hugh. Does
3 anybody know Sharon [phonetic] Goetz by those last two
4 names? If so, please stand.

5 [Whereupon, there is no response]

6 THE COURT: All right. How many -- if any of
7 the jurors have an account with facebook, please
8 stand. Anybody that uses facebook, please stand.

9 All right. Out of the people that are standing
10 that use facebook, if you don't use facebook more than
11 four or five times a week -- or use it less than four
12 or five times a week, just have a seat.

13 All right. So the remaining group uses it more
14 than four or five times a week; is that correct?
15 Okay.

16 The people that have stood, all the people that
17 stood, are any of you familiar --

18 Y'all can have a seat.

19 Do you want their names? Do you want me to get
20 their names of the jurors that stood?

21 MS. CORNWELL: Not from the State, Your Honor.

22 THE COURT: I mean, I'll be glad for them to
23 call out their names if you want me to.

24 MR. BIERING: Your Honor, we'll proceed. And my
25 request would still stand as it relates to our

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 previous request.

2 Thank you, Your Honor.

3 THE COURT: All right. Are any of the people --
4 any members of the jury panel, especially the people
5 that stood that have a facebook account, familiar with
6 the So Caliente facebook page? If you're familiar
7 with So Caliente facebook page, please stand.

8 MR. BIERING: It's So Caliente.

9 THE COURT: I'm sorry. So Caliente. Excuse me.
10 So Caliente facebook page. If you're familiar
11 with that facebook page, please stand.

12 [Whereupon, there is no response]

13 THE COURT: If anybody is aware of the owner of
14 So Caliente facebook page, please stand.

15 [Whereupon, there is no response]

16 THE COURT: Is any member of the jury panel, or
17 a member of your family, friends or close
18 acquaintances view facebook pages or post the
19 following names. Andre Mendoza. If you've posted
20 anything on his facebook, please stand. I've already
21 covered So Caliente. Entertainment Savon? Latent?
22 Shannon Goetz? Shannon Main, Shannon Hugh? Voancy
23 Mendoza [phonetic]? Exodus Rough Riders, Nicole
24 Ortiz, Casey Fisher, Desiree Brannon -- or Barron,
25 Kelly Rule, Lauren Potts, Jonathan Espinal, Vanessa

1 Smith, or Tonalia Bose [phonetic].

2 If anybody has looked at any of their facebook
3 pages or posted anything on those facebook pages,
4 please stand.

5 [Whereupon, there is no response]

6 THE COURT: Has any member of the jury panel or
7 a member of your family attended a So Caliente
8 entertainment event? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: One example would be Latin Nights at
11 the Market Street Saloon. If anybody has attended any
12 of those entertainment functions at the Market Street
13 Saloon, please stand.

14 [Whereupon, there is no response]

15 THE COURT: Is there any member of the jury
16 panel that regularly attends or regularly goes to the
17 Market Street Saloon in North Charleston? If so,
18 please stand.

19 [Whereupon, there is no response]

20 THE COURT: Is there any member of the jury
21 panel or member of your immediate family work in law
22 enforcement, either presently or past? If so, please
23 stand.

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

25 MS. BELL: Holly Bell, number 13.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Number 13. Yes, ma'am. Who do you
2 know, Ms. Bell, that worked in law enforcement?

3 MS. BELL: My father is a retired police officer
4 with the City of Charleston.

5 THE COURT: Okay. How long?

6 MS. BELL: How long ago or how long --

7 THE COURT: How long ago. I'm sorry.

8 MS. BELL: Well, he's almost eighty years old,
9 so he's been retired.

10 THE COURT: Okay. Do you think that would cause
11 you any difficulty sitting on this jury?

12 MS. BELL: No, sir.

13 THE COURT: Would that change your decision-
14 making process?

15 MS. BELL: No, sir.

16 THE COURT: Can you be fair to both the State
17 and the defendant?

18 MS. BELL: Yes, sir.

19 THE COURT: All right. Thank you, Ms. Bell.
20 Yes, ma'am. The lady --

21 MS. HALL: My husband works for Berkeley County
22 Magistrate's Court --

23 THE COURT: What number?

24 MS. HALL: 84.

25 THE COURT: 84?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. HALL: Yes.

2 And he was with -- he was a Berkeley County
3 deputy.

4 THE COURT: For how long?

5 MS. HALL: Fourteen years.

6 THE COURT: Fourteen years? He doesn't work
7 there anymore?

8 MS. HALL: No.

9 THE COURT: All right. Would that cause you any
10 difficulty sitting on this jury?

11 MS. HALL: No, sir.

12 THE COURT: Can you be fair to both the State
13 and the defendant?

14 MS. HALL: Yes, sir.

15 THE COURT: All right. Thank you, Ms. Hall.
16 Juror number 84; is that correct?

17 MS. HALL: Yes.

18 THE COURT: Yes, ma'am?

19 MS. WHITAKER: Number 93 -- or, no. 193.

20 THE COURT: 193?

21 MS. WHITAKER: 193.

22 THE COURT: Okay. Yes, ma'am. Ms. Whitaker?

23 MS. WHITAKER: Yes, sir.

24 My husband is a federal corrections officer at
25 F.C.I. Williamsburg in Salters.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Okay. How long has he worked at the
2 detention center?

3 MS. WHITAKER: Since 2005.

4 THE COURT: Okay. Would that cause you any
5 problem, Ms. Whitaker, in sitting on this jury?

6 MS. WHITAKER: No, sir.

7 THE COURT: Do you have any preconceived notions
8 about innocence or guilts of the defendant?

9 MS. WHITAKER: No, sir.

10 THE COURT: And let me say this to the entire
11 jury panel. It's the State's responsibility or
12 obligation in a criminal case to prove the defendant
13 guilty beyond a reasonable doubt. The defendant never
14 has to prove their innocence. And I will go into the
15 meaning of reasonable doubt at a later time.

16 Thank you, Ms. Whitaker.

17 Yes, ma'am. Your name?

18 MS. FRIERSON: My number is 67. Brenda
19 Frierson.

20 THE COURT: What number?

21 MS. FRIERSON: 67.

22 THE COURT: 67. Yes, ma'am, Ms. Frierson.

23 MS. FRIERSON: My son-in-law is a highway patrol
24 for Georgetown County.

25 THE COURT: Okay. Would that cause you any

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 difficulty in sitting on this jury?

2 MS. FRIERSON: No, sir.

3 THE COURT: Can you be fair to both the State
4 and the defendant?

5 MS. FRIERSON: Yes, sir.

6 THE COURT: I didn't hear you.

7 MS. FRIERSON: I said it wouldn't.

8 THE COURT: All right. Thank you, Ms. Frierson.
9 Yes, ma'am?

10 MS. BENNETT: Number 14. Brienne Bennett.

11 THE COURT: 14. Yes, ma'am, Ms. Bennett.

12 MS. BENNETT: My grandfather was a magistrate
13 judge.

14 THE COURT: Okay. Would that cause you any
15 difficulty?

16 MS. BENNETT: No.

17 THE COURT: Can you be fair to both the State
18 and the defendant?

19 MS. BENNETT: Yes.

20 THE COURT: Thank you, Ms. Bennett.

21 Yes, sir? Or yes, ma'am?

22 MS. DAVIS: I'm 48, Shirley Davis.

23 THE COURT: 48.

24 MS. DAVIS: My son-in-law works for the North
25 Charleston Police Department.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: How long has he worked for them?

2 MS. DAVIS: Since he was in high school. Right
3 out of --

4 THE COURT: Since high school.

5 MS. DAVIS: -- high school.

6 THE COURT: Would that cause you any problems in
7 siting on this jury?

8 MS. DAVIS: No, sir.

9 THE COURT: Can you be fair to both the State
10 and the defendant?

11 MS. DAVIS: Yes, sir.

12 THE COURT: All right. Thank you, Ms. Davis,
13 juror number 48.

14 Yes, ma'am?

15 MS. SCHINE: 163.

16 THE COURT: 63?

17 MS. SCHINE: 163.

18 THE COURT: 163. Yes, ma'am. Is it Shine or
19 Shine?

20 MS. SCHINE: Schine.

21 THE COURT: Schine. Ms. Schine.

22 MS. SCHINE: I have a sister that worked for the
23 Charleston County jailhouse.

24 THE COURT: Okay.

25 MS. SCHINE: She just retired.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: She's retired?

2 MS. SCHINE: Yes.

3 THE COURT: Okay. Would that cause you any
4 problems in sitting on this jury, Ms. Schine?

5 MS. SCHINE: No.

6 THE COURT: Can you be fair to both the State
7 and the defendant?

8 MS. SCHINE: Yes, sir.

9 THE COURT: Thank you, ma'am.

10 Yes, sir?

11 MR. SMITH: My father is an officer on --

12 THE COURT: What's your name?

13 MR. SMITH: Oh. 174. Shad Smith.

14 THE COURT: What number?

15 MR. SMITH: 174.

16 THE COURT: 174. Shad Smith. Your father did
17 what, now?

18 MR. SMITH: He's an officer on the Naval Weapons
19 Station Base and he was a reserve officer for Meeting
20 Street [phonetic] for eight years.

21 THE COURT: Okay. Would that cause you any
22 difficulty in sitting on this jury, Mr. Smith?

23 MR. SMITH: Yes.

24 THE COURT: It would?

25 MR. SMITH: Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Okay. You want to come around up
2 front?

3 The lawyers can join me up here.

4 [Whereupon, Mr. Smith comes forward]

5 THE COURT: Put him right here where you can
6 hear him. If you would, Mr. Smith, just move right
7 over so this lady can -- right here. Right up here.

8 All right. What kind of problems would it cause
9 for you?

10 MR. SMITH: I just know how -- you know, from
11 when my father comes home from work how he says how
12 difficult it is, you know, to do everything and --

13 THE COURT: You don't think you could be fair?

14 MR. SMITH: No, sir.

15 THE COURT: Because of your experience with your
16 father.

17 MR. SMITH: Yes.

18 THE COURT: Okay. I'll excuse you, for cause,
19 on this jury. Okay? Go have a seat.

20 [Whereupon, the Court and the clerk of court
21 confer]

22 THE COURT: Yes, sir. Your name?

23 MR. ANDERSON: Number 5, Kenneth Anderson.

24 THE COURT: I'm sorry. I didn't hear the
25 number.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. ANDERSON: Number 5.

2 THE COURT: Yes, sir, Mr. Anderson.

3 MR. ANDERSON: My wife used to work for Berkeley
4 County, in '95 to 2001, at the sheriff's department.

5 THE COURT: What did she do at the sheriff's
6 department?

7 MR. ANDERSON: She worked over at the detention
8 center for a few years and then here next door.

9 THE COURT: Would that cause you any problems
10 sitting on this jury?

11 MR. ANDERSON: No, sir.

12 THE COURT: Can you be fair to both the State
13 and the defendant?

14 MR. ANDERSON: Yes, sir.

15 THE COURT: Okay. Thank you, Mr. Anderson.

16 Is any member of the jury panel or a member of
17 your immediate family a member of any group that is or
18 ever has been affiliated with or supports law
19 enforcement, such as MADD, which is Mothers Against
20 Drunk Driving; SADD, which is Students Against Drunk
21 Driving; CAV, which is Citizens Against Violence; PAR,
22 which is People Against Rape; or the Sheriff's
23 Association? If any member of the jury panel or your
24 immediate family are members or contribute money to
25 those organizations or similar types of organizations,

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 please stand.

2 Yes, ma'am. Your name?

3 MS. PEARCE: Ashley Pearce.

4 THE COURT: What number?

5 MS. PEARCE: 142.

6 THE COURT: 142. Which organization, Ms.
7 Pearce?

8 MS. PEARCE: I was a member of SADD in high
9 school for four years. I don't know if that counts,
10 but I wanted to stand up and let you know.

11 THE COURT: Are you still a member?

12 MS. PEARCE: No.

13 THE COURT: Okay. Since this -- would that
14 cause you any problems in sitting on this jury?

15 MS. PEARCE: No, sir.

16 THE COURT: Can you be fair to both the State
17 and defendant?

18 MS. PEARCE: Yes, sir.

19 THE COURT: All right. Thank you, Ms. Pearce.

20 MS. WHITAKER: 193, Whitaker.

21 My husband is a current member of the FOP.

22 THE COURT: Okay. You're still a current
23 member?

24 MS. WHITAKER: Yes, he is.

25 THE COURT: Pardon?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. WHITAKER: He is. I'm not.

2 THE COURT: He is. Okay.

3 Would that cause you any difficulty in sitting
4 on this jury?

5 MS. WHITAKER: No, sir.

6 THE COURT: Can you be fair to both the State
7 and the defendant?

8 MS. WHITAKER: Yes, sir.

9 THE COURT: All right. Thank you, ma'am.

10 Yes, ma'am. Your name?

11 MS. HOLLOWAY: Arlene Holloway, number 94.

12 THE COURT: Yes, ma'am, Ms. Holloway.

13 MS. HOLLOWAY: My husband donates money to the
14 sheriff.

15 THE COURT: Okay. Will that cause you any
16 problems with sitting on this jury?

17 MS. HOLLOWAY: No, sir.

18 THE COURT: Can you be fair to both the State
19 and the defendant?

20 MS. HOLLOWAY: Yes, sir.

21 THE COURT: Base your decision on the testimony
22 you hear in the courtroom?

23 MS. HOLLOWAY: Yes, sir.

24 THE COURT: Thank you, Ms. Holloway, juror
25 number 94.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Is there any member of the jury panel that would
2 tend to believe the testimony of a police officer or
3 government employee over that of a layperson? If you
4 believe that, please stand.

5 [Whereupon, there is no response]

6 THE COURT: Solicitor, if you'll stand and
7 introduce yourself, please.

8 MS. CORNWELL: I am Ashley Cornwell. I'm
9 sitting with my assistant, Ben -- assistant solicitor
10 Ben Shelton and our investigator, Tom Roston
11 [phonetic]. We're with the ninth circuit, which
12 encompasses Berkeley and Charleston County. The
13 elected solicitor for Berkeley and Charleston County
14 is Scarlett Wilson.

15 THE COURT: All right. Is there any member
16 of the jury panel have any dealings or close friends
17 with the solicitor's office or the solicitor dealing
18 with this case, either here or in Charleston -- excuse
19 me -- Berkeley or Charleston County? If so, please
20 stand.

21 Yes, ma'am. Your name?

22 MS. MORGA: Number 133, Rachel Morga.

23 THE COURT: Yes, ma'am, Ms. Morga. Who do you
24 know in the solicitor office?

25 MS. MORGA: Maryanne Askins. I worked with her

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 for a couple of years --

2 THE COURT: You know who, now?

3 MS. MORGA: Maryanne Askins.

4 THE COURT: Okay. And you worked with them?

5 MS. MORGA: [Indicates affirmatively]

6 THE COURT: In what capacity?

7 MS. MORGA: When she worked at Nelson Mullins

8 Riley and Scarborough --

9 THE COURT: Uh-huh.

10 MS. MORGA: -- I worked with her closely for a
11 couple of years.

12 THE COURT: Okay. In private practice; correct?

13 MS. MORGA: Yes. Yes.

14 THE COURT: Would that cause you any difficulty
15 in sitting on this jury?

16 MS. MORGA: No, sir.

17 THE COURT: Can you be fair to both the State
18 and the defendant?

19 MS. MORGA: Yes, sir.

20 THE COURT: All right. Thank you so very much.
21 Yes, sir?

22 MR. SUDDETH: Your Honor, Juror 176, James
23 Suddeth.

24 THE COURT: Yes, sir, Mr. Suddeth.

25 MR. SUDDETH: I know Scarlett. And I believe

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Reese Stedham is also with the solicitor's office.

2 THE COURT: Through your capacity as an
3 attorney?

4 MR. SUDDETH: Yes.

5 THE COURT: Do you do much criminal work?

6 MR. SUDDETH: No, sir. Just know them
7 through --

8 THE COURT: Who does -- anybody in your firm do
9 criminal work?

10 MR. SUDDETH: No, sir.

11 From time to time moderate, you know, traffic
12 cases, but nothing --

13 THE COURT: Okay. But do you know anybody here
14 in the Berkeley County solicitor's office?

15 MR. SUDDETH: I do not.

16 THE COURT: Okay. Mr. Suddeth, will that cause
17 you any difficulty sitting on this jury, since you
18 know Scarlett Wilson?

19 MR. SUDDETH: No, Your Honor.

20 THE COURT: All right. Can you be fair to both
21 the State and the defendant?

22 MR. SUDDETH: I can.

23 THE COURT: Thank you, Mr. Suddeth.

24 Will Mr. Newman please stand and face the jury.

25 [Whereupon, Mr. Newman complies]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Mr. Shelton, introduce yourself.

2 MR. CHAD SHELTON: I'm Chad Shelton, sitting
3 with me is Ms. Debbie Littlejohn, and I represent Ryan
4 Newman.

5 THE COURT: Okay. Thank you very much.

6 Is there anybody related by blood or marriage,
7 does anybody know Mr. Ryan Newman, please stand.

8 [Whereupon, there is no response]

9 THE COURT: If anybody has been represented by
10 Chad Shelton or very close friends with Chad Shelton,
11 please stand.

12 [Whereupon, there is no response]

13 THE COURT: All right. Ms. Ashley -- I'm sorry.
14 Jessica Clark, would you stand and face the
15 jury.

16 [Whereupon, Ms. Clark complies]

17 THE COURT: Mr. Biering, if you'll do the same,
18 please, and introduce yourself.

19 MR. BIERING: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. BIERING: Good afternoon, ladies and
22 gentlemen of the jury. My name is Christopher
23 Biering. I practice law here in Moncks Corner,
24 engaged in the private practice of law. I represent
25 Jessica Clark.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 My practice consists of what a lot of country
2 practices consist of, I represent people from the
3 cradle to the grave. I do adoption cases, right on up
4 to probate administration.

5 Thank you.

6 THE COURT: Thank you very much.

7 Is anybody related by blood or marriage or know
8 Jessica Clark? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Has anybody been represented by
11 Mr. Chris Biering or know him personally, close
12 friends with him, please stand.

13 Yes, sir. Your name?

14 MR. JONES: Charles Jones, 105.

15 THE COURT: 105. Yes, sir, Mr. Jones.

16 MR. JONES: Chris represented me in a civil
17 case.

18 THE COURT: How long ago?

19 MR. JONES: Five years.

20 THE COURT: Five years.

21 Do you have any bias or prejudice against him as
22 a result of that representation?

23 MR. JONES: No, sir.

24 THE COURT: Would that relationship cause you
25 any difficulty sitting on this jury?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. JONES: No, sir.

2 THE COURT: Can you be fair to both the State
3 and the defendant?

4 MR. JONES: Yes, sir.

5 THE COURT: Thank you very much.

6 Yes, ma'am?

7 MS. BRUNSON: Number 23, Cynthia Brunson.

8 THE COURT: 23. Ms. Brunson. Yes, ma'am?

9 MS. BRUNSON: Mr. Biering actually represents a
10 few of our family members currently, and then in the
11 past --

12 THE COURT: He's representing them currently?

13 MS. BRUNSON: Yes. I believe those cases are --

14 THE COURT: Are you involved in that?

15 MS. BRUNSON: I'm not.

16 THE COURT: What family members?

17 MS. BRUNSON: My father and my brother and then
18 one brother, other brother, who's --

19 THE COURT: Okay. Hold on just a second.

20 Your name?

21 MS. ROBERTS: My name is Karen Roberts. I'm

22 155. Mr. Biering made out my will about in 1995.

23 I've had no dealings with him since.

24 He was also in some court hearings when I worked
25 for Department of Social Services Adult Protective

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Services.

2 THE COURT: Okay. Would that cause you any
3 difficulty, Ms. Roberts, in making a decision in this
4 case?

5 MS. ROBERTS: No, sir.

6 THE COURT: Can you be fair to both the State
7 and the defendant?

8 MS. ROBERTS: Yes, sir.

9 THE COURT: Thank you.
10 Would you come around, please, ma'am, up front.

11 [Whereupon, Ms. Brunson comes forward]

12 THE COURT: Brunson? Is it Ms. Brunson?

13 MS. BRUNSON: Yes, sir.

14 THE COURT: Let me turn this off, if I can find
15 the right switch.

16 All right. What's it about, the lawsuit?

17 MS. BRUNSON: They were in a car accident.

18 THE COURT: Huh?

19 MS. BRUNSON: My family members were in a car
20 accident.

21 THE COURT: Car accident?

22 MS. BRUNSON: Uh-huh. And he's representing
23 them.

24 THE COURT: And this is your father and who
25 else?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. BRUNSON: And my -- two of my brothers'
2 attorney.

3 THE COURT: Two of your brothers.

4 MS. BRUNSON: Uh-huh.

5 THE COURT: Have you been involved in it at all?

6 MS. BRUNSON: I have not.

7 THE COURT: You just know what goes on?

8 MS. BRUNSON: I just -- right.

9 THE COURT: Have you been in his office with
10 your --

11 MS. BRUNSON: Never.

12 THE COURT: -- father and brother?

13 MS. BRUNSON: Never.

14 THE COURT: Talked to your father and brother
15 about it?

16 MS. BRUNSON: Yes.

17 THE COURT: Are they satisfied with his
18 representation so far?

19 MS. BRUNSON: No.

20 THE COURT: They're not?

21 MS. BRUNSON: No.

22 THE COURT: Okay. So how would that affect you
23 in sitting on this jury?

24 MS. BRUNSON: It has no bearing.

25 THE COURT: It would have no bearing at all?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. BRUNSON: Have no bearing at all. I can be
2 fair.

3 THE COURT: Okay. You think you can be fair to
4 both parties?

5 MS. BRUNSON: I do.

6 THE COURT: Can you set that relationship aside,
7 whether they're satisfied with him or not satisfied
8 with him?

9 MS. BRUNSON: Yes, sir.

10 THE COURT: Okay. Go have a seat.

11 MS. BRUNSON: Okay.

12 THE COURT: Do you want me to excuse her for
13 cause?

14 MR. BIERING: I want you to excuse her for
15 cause.

16 There's an ongoing -- we just filed a lawsuit on
17 behalf of one of them but there's a pending -- there's
18 a pending Medicare lien that we can't get resolved.
19 That's where the rub is at and --

20 THE COURT: They're angry. I'm going to excuse
21 her for cause.

22 MR. BIERING: I -- they don't want to pay
23 Medicare back and so --

24 THE COURT: I'm going to excuse her for cause.

25 MR. BIERING: Thank you, Judge. Appreciate it.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 [Whereupon, the Court and the clerk of court
2 confer]

3 THE COURT: Has any member of the jury panel or
4 your immediate family ever been falsely accused of any
5 particular crime? If so, please stand.

6 [Whereupon, there is no response]

7 THE COURT: Is any member of the jury panel or
8 close -- excuse me -- or family member been a victim
9 of any type of crime? And I'm not talking about
10 traffic tickets. Please stand.

11 MR. PEGA: Number 143, sir.

12 THE COURT: Number what?

13 MR. PEGA: 143.

14 THE COURT: 143. Is it Peega?

15 MR. PEGA: Pega.

16 THE COURT: Mr. Pega,, tell me about it.

17 MR. PEGA: Can I approach the bench, sir?

18 THE COURT: Pardon?

19 MR. PEGA: Can I approach the bench?

20 THE COURT: Yes. Just keep standing.

21 What's your name?

22 MR. MURRAY: William Murray, 138.

23 THE COURT: 138.

24 MR. MURRAY: Yeah. Just my son did a little
25 jail time for DUI years ago.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: How long ago was it?

2 MR. MURRAY: Three or four years ago.

3 THE COURT: Will that cause you any difficulty
4 in sitting on this jury, Mr. Murray?

5 MR. MURRAY: I don't believe so. No, sir.

6 THE COURT: Yes or no?

7 MR. MURRAY: No.

8 THE COURT: No.

9 You can be fair to both the State and the
10 defendant?

11 MR. MURRAY: I believe I can.

12 THE COURT: Okay. Thank you so very much, Mr.
13 Murray.

14 MR. MURRAY: You're welcome.

15 THE COURT: Yes, ma'am. The lady with the --

16 MS. ROBERTS: 155, Karen Roberts.

17 I was a victim of a stalker when I worked at
18 Department of Social Services eleven years ago. We
19 went to court a couple of times.

20 THE COURT: Was it a trial?

21 MS. ROBERTS: It was just a judge. Our -- the
22 city judge heard it.

23 THE COURT: Okay. It was in city court?

24 MS. ROBERTS: Yes, sir.

25 THE COURT: Will that affect you in sitting on

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 this jury?

2 MS. ROBERTS: No, sir.

3 THE COURT: Can you be fair to both parties?

4 MS. ROBERTS: Yes, sir.

5 THE COURT: All right. Thank you, Ms. Roberts.

6 Yes, ma'am?

7 MS. ANDERSON: Sara Anderson, number 6.

8 THE COURT: What number?

9 MS. ANDERSON: 6.

10 THE COURT: What did she say, Ollie?

11 THE CLERK OF COURT: 6. She said number 6.

12 THE COURT: Yes, ma'am, Ms. Anderson.

13 MS. ANDERSON: Yes. My uncle was murdered in
14 2003.

15 THE COURT: Who was?

16 MS. ANDERSON: My uncle.

17 THE COURT: Was murdered?

18 MS. ANDERSON: Yes.

19 THE COURT: Okay. You keep standing.

20 MS. ANDERSON: Okay.

21 THE COURT: Yes, sir?

22 MR. SUDDETH: 176, James Suddeth.

23 Our detached garage, my car was broken -- was
24 burglarized and broken into.

25 THE COURT: Was anybody ever arrested?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. SUDDETH: They were.

2 THE COURT: Were they tried or convicted? Or
3 what happened?

4 MR. SUDDETH: Fingerprints on my fishing rods.

5 THE COURT: Was anybody arrested?

6 MR. SUDDETH: Yes, sir.

7 THE COURT: What happened to the charges?

8 MR. SUDDETH: What happened?

9 THE COURT: Yes.

10 MR. SUDDETH: He was --

11 THE COURT: Pardon?

12 MR. SUDDETH: He was convicted.

13 THE COURT: Okay. Do you have any bias or
14 prejudice results of the way the solicitor handled the
15 case?

16 MR. SUDDETH: No, Your Honor.

17 THE COURT: Pardon?

18 MR. SUDDETH: No, Your Honor.

19 THE COURT: Have any bias or prejudice towards
20 defendants, in general, as the result of being a
21 victim of that crime?

22 MR. SUDDETH: No, Your Honor.

23 THE COURT: You can be fair to both parties?

24 MR. SUDDETH: I can.

25 THE COURT: All right. Thank you.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Yes, ma'am?

2 MS. SELLERS: 166. Pam Sellers.

3 THE COURT: Yes, ma'am.

4 MS. SELLERS: My youngest son is incarcerated at
5 this time.

6 THE COURT: When was he incarcerated?

7 MS. SELLERS: In June.

8 THE COURT: What's --

9 MS. SELLERS: This past June.

10 THE COURT: What's he incarcerated for?

11 MS. SELLERS: I don't know the legal terms, to
12 be honest with you. I don't know all the legal part
13 of it.

14 THE COURT: All right. How would that affect
15 you sitting on this jury?

16 MS. SELLERS: It wouldn't.

17 THE COURT: It would not? You could be fair?

18 MS. SELLERS: Yes, I could.

19 THE COURT: All right. Thank you, Ms. Suddeth.
20 Juror number 166.

21 MS. BELL: Holly Bell, number 13.

22 THE COURT: Yes, ma'am?

23 MS. BELL: My husband was -- he's got a pending
24 DUI first offense. He hasn't gone to court for it
25 yet.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Okay. Will that cause you any
2 difficulty in sitting on this jury?

3 MS. BELL: No, sir.

4 THE COURT: All right. Thank you very much.
5 The other two come around, please.

6 [Whereupon, Mr. Pega, juror number 143, comes
7 forward]

8 THE COURT: You pronounce it Pega?

9 MR. PEGA: Pega.

10 THE COURT: Mr. Pega, what did you want to tell
11 me?

12 MR. PEGA: Well, three months ago I had a house
13 invasion in my house -- and it ended up sending us to
14 the emergency room, my family and me. And I incurred
15 so much expense, too, to pay for the hospitalization.

16 THE COURT: Okay. How is that going to -- how
17 would that affect you in this case?

18 MR. PEGA: I'm too -- I'm still mad at what
19 happened to me.

20 THE COURT: I'm sure.

21 MR. PEGA: And --

22 THE COURT: I would be, too. You don't think
23 you can be fair?

24 MR. PEGA: I don't think I will be fair.

25 THE COURT: Okay. I appreciate you coming

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 forward. Okay?

2 MR. PEGA: I want to be honest with you, sir.

3 THE COURT: I understand. I appreciate you
4 being honest. I'll excuse you for this case. Okay?
5 You can go have a seat. Thank you so very much.

6 MR. PEGA: Thank you, sir.

7 THE COURT: Yes, ma'am? What number?

8 MS. ANDERSON: 6.

9 THE COURT: What?

10 MS. ANDERSON: 6.

11 THE COURT: 6.

12 MS. ANDERSON: Sara Anderson.

13 THE COURT: Yes, ma'am, Ms. Anderson.

14 MS. ANDERSON: My uncle was murdered, so you
15 wanted to see me.

16 THE COURT: How long ago?

17 MS. ANDERSON: 2003.

18 THE COURT: Were you -- how old were you then?

19 MS. ANDERSON: I was twenty-two.

20 THE COURT: Twenty-two.

21 Were you involved in it at all?

22 MS. ANDERSON: No, sir.

23 I went to the -- you know, to court and
24 everything. It was when the restaurant manager was
25 shot downtown at the Boathouse.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Was it a trial?
2 MS. ANDERSON: Uh-huh. Yes.
3 THE COURT: You sat through the trial?
4 MS. ANDERSON: I did.
5 THE COURT: Did you testify?
6 MS. ANDERSON: No, sir. Just watched.
7 THE COURT: What did the jury do?
8 MS. ANDERSON: I know they're in jail.
9 THE COURT: Pardon?
10 MS. ANDERSON: They're in jail for fifteen
11 years. That's what I know.
12 THE COURT: Okay. How long is he in jail for?
13 MS. ANDERSON: Fifteen years.
14 THE COURT: I'm sorry about your uncle.
15 The question I have is how would that affect you
16 sitting on this jury?
17 MS. ANDERSON: I'm not sure. I haven't done it.
18 THE COURT: I understand. But only you know
19 that. I can't read your mind.
20 MS. ANDERSON: I think I'll be okay.
21 THE COURT: Pardon?
22 MS. ANDERSON: I think I'll be fine.
23 THE COURT: You think you can set it aside?
24 MS. ANDERSON: Uh-huh. I can be fair.
25 THE COURT: You can be fair in this case?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. ANDERSON: Yes, sir.

2 THE COURT: Does the solicitor have any
3 questions?

4 MS. CORNWELL: No.

5 THE COURT: Solicitor?

6 From either one of the defendants?

7 MR. CHAD SHELTON: No.

8 MR. BIERING: No.

9 THE COURT: If you have a question, please --
10 But you think you can be fair --

11 MS. ANDERSON: I do.

12 THE COURT: -- and base your decision on what
13 you hear in the courtroom?

14 MS. ANDERSON: Uh-huh.

15 THE COURT: Can you set that prior trial aside?

16 MS. ANDERSON: Yes, sir.

17 THE COURT: Can you? Can you do that?

18 MS. ANDERSON: I think so.

19 THE COURT: All right. Go have a seat.

20 MS. ANDERSON: Thank you.

21 THE COURT: Any motions?

22 MS. CORNWELL: Not from the State, Your Honor.

23 MR. CHAD SHELTON: Your Honor, just for the
24 record, move for cause. She was clearly --

25 THE COURT: Overruled.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. CHAD SHELTON: -- emotional.

2 THE COURT: Okay. Thank you.

3 Has any member -- has any member of the jury
4 panel formed an opinion about the innocence or guilt
5 of the defendants in this case merely because of their
6 presence in the courtroom? If you have an opinion as
7 to the innocence or guilt, please stand.

8 [Whereupon, there is no response]

9 THE COURT: Is any member of the jury panel or a
10 member of your immediate family done business with So
11 Caliente Entertainment? If so, please stand.

12 [Whereupon, there is no response]

13 THE COURT: Is any member of the jury panel, or
14 member of your family, friends with Andre Mendoza on
15 facebook or the So Caliente website? If so, please
16 stand.

17 [Whereupon, there is no response]

18 THE COURT: Is any member of the jury panel
19 aware of any bias or prejudice towards either the
20 State or the defendant in this case? If so, please
21 stand.

22 [Whereupon, there is no response]

23 THE COURT: Does any member of the jury panel
24 know of any reason whatsoever why he or she cannot
25 serve as a juror in this case, with particular

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 emphasis being placed upon your ability to be fair and
2 impartial to either the State or the defendant? If
3 so, please stand.

4 [Whereupon, there is no response]

5 THE COURT: Has any member of the jury panel or
6 a member of their close family been prosecuted by the
7 solicitor's office here in Berkeley County or
8 Charleston County? If so, please stand.

9 [Whereupon, there is no response]

10 THE COURT: Does any member of the jury panel
11 know of any reason, personal or otherwise, as to why
12 they cannot serve on this jury? If so, please stand.

13 Yes, sir. You want to come around, please, sir?
14 What's your name?

15 MR. IRIZARRY: Juror 101.

16 [Whereupon, Rogelio Irizarry, juror number 101,
17 comes forward]

18 THE COURT: What's your number? 101?

19 MR. IRIZARRY: 101.

20 THE COURT: You said 101? Okay. You want to
21 come around?

22 MR. IRIZARRY: I just want to --

23 THE COURT: Hold on just a second. Just stand
24 right here.

25 MR. IRIZARRY: -- one of the attorney in the

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 back, the female, I just happened to notice that she's
2 one of my teacher at nights in college and I didn't
3 bring it up when you first mentioned the attorneys.

4 THE COURT: All right. One of the attorneys?
5 Which one?

6 MR. IRIZARRY: The one on the defendant's side.
7 The female.

8 THE COURT: Who?

9 MS. CORNWELL: Ms. Littlejohn.

10 THE COURT: Ms. Littlejohn?

11 MR. IRIZARRY: Yeah. She's --

12 THE COURT: How do you know Ms. Littlejohn?

13 MR. IRIZARRY: She's a teacher.

14 The last time -- she was one of my teacher. I
15 don't know if that -- I didn't bring it up with you.

16 THE COURT: Where is she -- where is she
17 teaching? TriCounty?

18 MS. CORNWELL: Limestone College.

19 THE COURT: Where?

20 MS. CORNWELL: Limestone College.

21 THE COURT: Limestone College.

22 Have you taken her courses?

23 MR. IRIZARRY: yes.

24 THE COURT: How many have you taken?

25 MR. IRIZARRY: One.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: One. What was the name of the
2 course?

3 MR. IRIZARRY: It was -- I can't recall. It was
4 three years ago. I can't recall the course.

5 THE COURT: What was it about?

6 MR. IRIZARRY: It was about a type of law, some
7 business -- in business.

8 THE COURT: All right. Law in business?

9 MR. IRIZARRY: Uh-huh.

10 THE COURT: Did you learn a lot?

11 MR. IRIZARRY: Not really.

12 THE COURT: Pardon?

13 MR. IRIZARRY: Not really.

14 THE COURT: Not really?

15 MR. IRIZARRY: No.

16 THE COURT: Do you have any bias or prejudice --

17 MR. IRIZARRY: No. No.

18 THE COURT: -- as a result of not learning
19 anything?

20 MR. IRIZARRY: No.

21 I didn't -- really, I wasn't -- I didn't learn a
22 lot.

23 THE COURT: Pardon?

24 MR. IRIZARRY: Learn a lot.

25 THE COURT: Well, you didn't pay attention, or

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10,, 2012

1 what?

2 MR. IRIZARRY: Probably.

3 THE COURT: Probably?

4 MR. IRIZARRY: Probably.

5 THE COURT: All right. Would that cause you any
6 difficulty in sitting on this jury?

7 MR. IRIZARRY: No, no.

8 I just haven't -- I didn't see her face and when
9 I saw her face, you already had passed the question so
10 I didn't want to bring it up.

11 THE COURT: I appreciate it. Thank you for
12 coming up. Okay? You can go have a seat. Thank you
13 very much.

14 MS. CORNWELL: Your Honor, just to point out,
15 juror 38 --

16 THE COURT: Pardon?

17 MS. CORNWELL: -- juror 38.

18 THE COURT: 38?

19 MS. CORNWELL: Uh-huh.

20 THE COURT: What about 38?

21 MS. CORNWELL: He went to school with one of our
22 law clerks.

23 THE COURT: He didn't stand.

24 MS. CORNWELL: He did not stand so -- and our
25 law clerk just made us aware of it.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Where is he?

2 MS. CORNWELL: 38. I'm not sure where he is.

3 THE COURT: Sade Chamberlain?

4 MS. CORNWELL: Yes, sir.

5 THE COURT: Sade Chamberlain, will you come
6 around, please. Mr. Chamberlain. It's a she. I'm
7 sorry. She went to school with your law clerk?

8 MS. CORNWELL: She went to school with the law
9 clerk. She was seen hugging him outside, so I just
10 wanted to bring --

11 THE COURT: So may not even know it. But I'll
12 ask her.

13 MS. CORNWELL: Well, she hugged him earlier, so
14 I think she did know him.

15 [Whereupon, Ms. Chamberlain comes forward]

16 THE COURT: Hey, Ms. Chamberlain.

17 MS. CHAMBERLAIN: Hey'.

18 THE COURT: Who do you know in the solicitor's
19 office?

20 MS. CHAMBERLAIN: Oh. He works in the
21 solicitor's office? I didn't -- I didn't know where
22 he worked. Eric Gibson.

23 THE COURT: How long have you known him?

24 MS. CHAMBERLAIN: Eight -- twelve years.

25 THE COURT: Twelve years?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CHAMBERLAIN: Since high school.

2 THE COURT: And you didn't know where he worked?

3 MS. CHAMBERLAIN: Well, we were not close
4 anymore. We graduated college, went our separate
5 ways. I know he went to law school but I didn't know
6 where he worked. I saw him up here. We said hello.
7 But --

8 THE COURT: Would that cause you any problems
9 sitting on this jury?

10 MS. CHAMBERLAIN: [Indicates negatively]

11 THE COURT: Do you think you can be fair?

12 MS. CHAMBERLAIN: Uh-huh.

13 THE COURT: Any questions from defense counsel?

14 MR. BIERING: [Indicates negatively]

15 MR. CHAD SHELTON: [Indicates negatively]

16 THE COURT: From the State?

17 MS. CORNWELL: Nothing, Your Honor.

18 THE COURT: Thank you so very much.

19 MS. CHAMBERLAIN: Thank you.

20 MS. CORNWELL: We just hired him last week so --

21 THE COURT: Pardon?

22 MS. CORNWELL: We just hired him last week so --

23 THE COURT: All right. Anything else?

24 MR. BIERING: Your Honor, I would just move to
25 have her excused. I think we have enough jurors to

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 pick this jury. There was a -- there was a hug in the
2 aisle between a member of the solicitor's office and a
3 potential juror and I think it has the appearance --
4 the potential appearance of impropriety. I don't
5 think -- it was not intended that way. But I think
6 out of an abundance of caution -- we should excuse her
7 for cause.

8 THE COURT: You want to excuse her for cause?

9 MS. CORNWELL: I think he can use one of his
10 strikes, Your Honor.

11 THE COURT: Huh?

12 MS. CORNWELL: He can use one of his strikes on
13 her if he's that concerned. I think she said she
14 could be fair. She didn't even know he worked for the
15 solicitor's office. She hasn't seen him in a while.

16 THE COURT: Well, if she hugged his neck, she
17 must be fairly familiar with him.

18 MR. CHAD SHELTON: If he sits over here on this
19 side during trial --

20 THE COURT: All right. I'll excuse her for
21 cause. Okay?

22 MR. BIERING: Thank you, Judge.

23 MS. CORNWELL: Thank you, Your Honor.

24 THE COURT: 38.

25 All right. Any further questions from the

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 State?

2 MS. CORNWELL: No, Your Honor.

3 THE COURT: Any further questions from the
4 defense?

5 MR. CHAD SHELTON: None, Your Honor.

6 MS. BURNEY: Your Honor, if I could speak with
7 you at the bench for a moment?

8 THE COURT: I'm sorry. What?

9 MS. BURNEY: Can I speak with you at the bench
10 for a moment?

11 THE COURT: Yes, ma'am, Ms. Burney. Come on
12 around.

13 [Whereupon, Ms. Burney, juror number 204, comes
14 forward]

15 THE COURT: Yes, ma'am. Move right over this
16 way.

17 MS. BURNEY: Okay.

18 THE COURT: Yes, ma'am?

19 MS. BURNEY: Yes, sir.

20 I was wondering how long this would take,
21 because I would have to be out of here by 4:00. I
22 have finals tonight at school and if I'm late, I can't
23 take them.

24 THE COURT: You're talking about tonight?
25 Today?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. BURNEY: Yes, sir.

2 THE COURT: You'll be -- I think we'll have you
3 done by 4:00.

4 MS. BURNEY: Okay. Just --

5 THE COURT: What time? You've got to be there
6 at 4:00?

7 MS. BURNEY: Six o'clock. I have to go to
8 Knightsville, get my stuff and go to school.

9 THE COURT: Okay. You've got to be there by
10 6:00?

11 MS. BURNEY: Yes, sir.

12 THE COURT: We'll have you out by 4:00. Okay?

13 MS. BURNEY: Thank you, sir.

14 THE COURT: All right, I think I just asked
15 you. Does the State have any further questions?

16 MS. CORNWELL: No, Your Honor.

17 THE COURT: Does the defense have any further
18 questions?

19 MR. CHAD SHELTON: No, Your Honor.

20 MR. BIERING: Your Honor, Defendant Clark: just
21 note for the record our previous request.

22 THE COURT: You're talking about the request to
23 read off the names off of facebook?

24 MR. BIERING: Yes, Your Honor.

25 THE COURT: All right. That's still denied.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. BIERING: Thank you, Your Honor.

2 THE COURT: Okay. One of them is Benjamin
3 Franklin.

4 MR. BIERING: Your Honor, can I -- can we
5 approach?

6 THE COURT: Yes, sir.,

7 [Whereupon, a bench conference is held as
8 follows]

9 MR. BIERING: Your Honor, I'm a member of
10 the bar and I've made a motion before the Court,
11 the Court has ruled, and I would ask that the
12 Court -- I respect the Court's ruling, but I
13 think it's demeaning to the defense and my
14 client for that comment --

15 THE COURT: I'll tell them -- I'll tell
16 them to disregard my statement. Okay?

17 MR. BIERING: Thank you, Your Honor.

18 [Whereupon, the bench conference concludes]

19 THE COURT: Please disregard my statement
20 about Benjamin Franklin.

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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

STRIKING OF THE JURY

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THE COURT: Is the State ready to strike?

MS. CORNWELL: Yes, Your Honor.

THE COURT: Is the defense ready to strike?

MR. CHAD SHELTON: Yes.

THE COURT: Pardon?

MR. CHAD SHELTON: Yes, Your Honor.

MR. BIERING: Defendant Clark is ready, Your Honor.

THE COURT: Whenever y'all can print it out.

[Off the record momentarily]

THE CLERK OF COURT: Is the State ready to proceed?

MS. CORNWELL: Yes, we are.

THE CLERK OF COURT: Is the defendants ready to proceed?

MR. CHAD SHELTON: Yes.

MR. BIERING: Defendant Clark is ready to proceed.

THE CLERK OF COURT: Thank you.

Ladies and gentlemen of the jury, as I call your name, please come forth and bring your personal belongings with you. If I say seat the jury, please have a seat in the jury box. If I say excuse the jury, please return to your original seating.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Juror 42, Michael Cook.
2 [Whereupon, Mr. Cook comes forward]
3 THE CLERK OF COURT: What says the State?
4 MS. CORNWELL: Please seat Mr. Cook.
5 THE CLERK OF COURT: What says Defendant Newman?
6 MR. CHAD SHELTON: Please seat Mr. Cook.
7 THE CLERK OF COURT: What says Defendant Clark?
8 MR. BIERING: Please seat Mr. Cook.
9 THE CLERK OF COURT: Seat the juror.
10 THE BAILIFF: This way, sir.
11 [Whereupon, Michael Cook, Juror Number 42, is
12 seat in the jury box as a juror]
13 THE CLERK OF COURT: Juror 187, Jennifer
14 Wagoner.
15 [Whereupon, Ms. Wagoner comes forward]
16 THE CLERK OF COURT: What says the State?
17 MS. CORNWELL: Please seat Ms. Wagoner.
18 THE CLERK OF COURT: What says the Defendant --
19 MR. CHAD SHELTON: Please seat --
20 THE CLERK OF COURT: -- Newman. I'm sorry.
21 Newman.
22 MR. CHAD SHELTON: Please seat Ms. Wagoner.
23 THE CLERK OF COURT: What says Defendant Clark?
24 MR. BIERING: Please seat the jury.
25 [Whereupon, Jennifer Wagoner, Juror Number 187,

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 is seated in the jury box as a juror]

2 THE CLERK OF COURT: Juror Number 75, Michael
3 Germanoff.

4 [Whereupon, Mr. Germanoff comes forward]

5 THE CLERK OF COURT: What says the State?

6 MS. CORNWELL: Please seat Mr. Germanoff.

7 THE CLERK OF COURT: What says Defendant Newman?

8 MR. CHAD SHELTON: Please seat Mr. Germanoff.

9 THE CLERK OF COURT: What says Defendant Clark?

10 MR. BIERING: Please seat Mr. Germanoff.

11 THE CLERK OF COURT: Seat the juror.

12 [Whereupon, Michael Germanoff, Juror Number 75,
13 is seated in the jury box as a juror]

14 THE CLERK OF COURT: Juror 129, Kirsis Cabrera-
15 Mobley.

16 [Whereupon, Ms. Cabrera-Mobley comes forward]

17 THE CLERK OF COURT: What says the State?

18 MS. CORNWELL: Please seat Ms. Mobley.

19 THE CLERK OF COURT: What says Defendant Newman?

20 MR. CHAD SHELTON: Please seat Ms. Mobley.

21 THE CLERK OF COURT: What says Defendant Clark?

22 MR. BIERING: Please seat Ms. Mobley.

23 THE CLERK OF COURT: Seat the juror.

24 [Whereupon, Kirsis Cabrera-Mobley, Juror Number
25 129, is seated in the jury box as a juror]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE CLERK OF COURT: Juror 48, Shirley T. Davis.

2 [Whereupon, Ms. Davis comes forward]

3 THE CLERK OF COURT: What says the State?

4 MS. CORNWELL: Please seat Ms. Davis.

5 THE CLERK OF COURT: What says Defendant Newman?

6 MR. CHAD SHELTON: Please seat Ms. Davis.

7 THE CLERK OF COURT: What says Defendant Clark?

8 MR. BIERING: Please excuse this juror.

9 THE CLERK OF COURT: Excuse the juror.

10 [Whereupon, Shirley Davis, Juror Number 48,
11 returns to the audience]

12 THE CLERK OF COURT: Juror 59, David Elkins.

13 [Whereupon, Mr. Elkins comes forward]

14 THE CLERK OF COURT: What says the State?

15 MS. CORNWELL: Please seat Mr. Elkins.

16 THE CLERK OF COURT: What says Defendant Newman?

17 MR. CHAD SHELTON: Please seat Mr. Elkins.

18 THE CLERK OF COURT: What says Defendant Clark?

19 MR. CHAD SHELTON: Please excuse this juror.

20 THE CLERK OF COURT: Excuse the juror.

21 [Whereupon, David Elkins, Juror Number 59,
22 returns to the audience]

23 THE CLERK OF COURT: Juror 204, Amy Burney.

24 [Whereupon, Ms. Burney comes forward]

25 THE CLERK OF COURT: What says the State?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Please excuse Ms. Burney.

2 THE CLERK OF COURT: Excuse the juror.

3 [Whereupon, Ms. Amy Burney, Juror Number 204,
4 returns to the audience]

5 THE CLERK OF COURT: Juror 135, Shannon Morris.

6 [Whereupon, Ms. Morris comes forward]

7 THE CLERK OF COURT: What says the State?

8 MS. CORNWELL: Please excuse Ms. Morris.

9 THE CLERK OF COURT: Excuse the juror.

10 [Whereupon, Shannon Morris, Juror Number 135,
11 returns to the audience]

12 THE CLERK OF COURT: Juror 100, Cora Hurst.

13 [Whereupon, Ms. Hurst comes forward]

14 THE CLERK OF COURT: What says the State?

15 MS. CORNWELL: Please seat Ms. Hurst.

16 THE CLERK OF COURT: What says Defendant Newman?

17 MR. CHAD SHELTON: Please excuse Ms. Hurst.

18 [Whereupon, Cora Hurst, Juror Number 100,
19 returns to the audience]

20 THE CLERK OF COURT: Juror 126, Cristie
21 McCormick.

22 [Whereupon, Ms. McCormick comes forward]

23 THE CLERK OF COURT: What says the State?

24 MS. CORNWELL: Please seat Ms. McCormick.

25 THE CLERK OF COURT: What says Defendant Newman?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. CHAD SHELTON: Please seat Ms. McCormick.
2 THE CLERK OF COURT: What says Defendant Clark?
3 MR. BIERING: Please excuse this juror.
4 THE CLERK OF COURT: Excuse the juror.
5 [Whereupon, Christie McCormick, Juror Number
6 126, returns to the audience]
7 THE CLERK OF COURT: Juror Number 5, Kenneth
8 Anderson.
9 [Whereupon, Mr. Anderson comes forward]
10 THE CLERK OF COURT: What says the State?
11 MS. CORNWELL: Please seat Mr. Anderson.
12 THE CLERK OF COURT: What says Defendant Newman?
13 MR. CHAD SHELTON: Please excuse Mr. Anderson.
14 THE CLERK OF COURT: Excuse the juror.
15 [Whereupon, Kenneth Anderson, Juror Number 5,
16 returns to the audience]
17 THE CLERK OF COURT: Juror 195, Rosie White.
18 [Whereupon, Ms. White comes forward]
19 THE CLERK OF COURT: What says the State?
20 MS. CORNWELL: Please seat Ms. White.
21 THE CLERK OF COURT: What says Defendant Newman?
22 MR. CHAD SHELTON: Please excuse Ms. White.
23 THE CLERK OF COURT: Excuse the juror.
24 [Whereupon, Rosie White, Juror Number 195,
25 returns to the audience]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE CLERK OF COURT: Juror 202, Henry Wright.
2 [Whereupon, Mr. Wright comes forward]
3 THE CLERK OF COURT: What says the State?
4 MS. CORNWELL: Please seat Mr. Wright.
5 THE CLERK OF COURT: What says Defendant Newman?
6 MR. CHAD SHELTON: Please seat Mr. Wright.
7 THE CLERK OF COURT: What says Defendant Clark?
8 MR. BIERING: Please seat the juror.
9 THE COURT: Seat the juror.
10 [Whereupon, Henry Wright, Juror Number 202, is
11 seated in the jury box as a juror]
12 THE CLERK OF COURT: Juror 94, Arlene Holloway.
13 [Whereupon, Ms. Holloway comes forward]
14 THE CLERK OF COURT: What says the State?
15 MS. CORNWELL: Please seat Ms. Holloway.
16 THE CLERK OF COURT: What says Defendant Newman?
17 MR. CHAD SHELTON: Please seat Ms. Holloway.
18 THE CLERK OF COURT: What says Defendant Clark?
19 MR. BIERING: Please seat the juror.
20 THE CLERK OF COURT: Seat the juror.
21 [Whereupon, Arlene Holloway, Juror Number 94 is
22 seated in the jury box as a juror]
23 THE CLERK OF COURT: Juror 12, Holly Bell.
24 [Whereupon, Ms. Bell comes forward]
25 THE CLERK OF COURT: What says the State?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Please seat Ms. Bell.

2 THE CLERK OF COURT: What says Defendant Newman?

3 MR. CHAD SHELTON: Please excuse Ms. Bell.

4 THE CLERK OF COURT: Excuse the juror.

5 [Whereupon, Holly Bell, Juror Number 12, returns
6 to the audience]

7 THE CLERK OF COURT: Juror 133, Rachel Morga.

8 [Whereupon, Rachel Morga comes forward]

9 THE CLERK OF COURT: What says the State?

10 MS. CORNWELL: Please seat Ms. Morga.

11 THE CLERK OF COURT: What says Defendant Newman?

12 MS. CORNWELL: Please seat Ms. Morga.

13 THE CLERK OF COURT: What says Defendant Clark?

14 MR. BIERING: Please seat this juror.

15 THE CLERK OF COURT: Seat the juror.

16 [Whereupon, Rachel Morga, Juror Number 133, is
17 seated in the jury box as a juror]

18 THE CLERK OF COURT: Juror 25, Nancy Bullis]

19 [Whereupon, Ms. Bullis comes forward]

20 THE CLERK OF COURT: What says the State?

21 MS. CORNWELL: Please seat Ms. Bullis.

22 THE CLERK OF COURT: What says Defendant Newman?

23 MR. CHAD SHELTON: Please excuse Ms. Bullis.

24 THE CLERK OF COURT: Excuse the jury.

25 [Whereupon, Nancy Bullis, Juror Number 25,

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 returns to the audience]

2 THE CLERK OF COURT: Juror 67, Brenda Frierson.

3 [Whereupon, Ms. Frierson comes forward]

4 THE CLERK OF COURT: What says the State?

5 MS. CORNWELL: Please seat Ms. Frierson.

6 THE CLERK OF COURT: What says Defendant Newman?

7 MR. CHAD SHELTON: Please excuse Ms. Frierson.

8 THE CLERK OF COURT: Excuse the juror.

9 [Whereupon, Brenda Frierson, Juror Number 67

10 returns to the audience]

11 THE CLERK OF COURT: Juror 138, William Murray.

12 [Whereupon, Mr. Murray comes forward]

13 THE CLERK OF COURT: What says the State?

14 MS. CORNWELL: Please excuse Mr. Murray.

15 THE CLERK OF COURT: Excuse the juror.

16 [Whereupon, William Murray, Juror Number 138,

17 returns to the audience]

18 THE CLERK OF COURT: Juror 193, Mary Whitaker.

19 [Whereupon, Ms. Whitaker comes forward]

20 THE CLERK OF COURT: What says the State?

21 MS. CORNWELL: Please seat Ms. Whitaker.

22 THE CLERK OF COURT: What says Defendant Newman?

23 MR. CHAD SHELTON: Beg the Court's indulgence.

24 [Whereupon, Mr. Chad Shelton and Ms. Littlejohn

25 confer]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. CHAD SHELTON: Please excuse this juror.

2 THE CLERK OF COURT: Excuse the juror.

3 [Whereupon, Mary Whitaker, Juror Number 193,
4 returns to the audience]

5 THE CLERK OF COURT: Juror 149, Raven Prioleau.

6 [Whereupon, Ms. Prioleau comes forward]

7 THE CLERK OF COURT: What says the State?

8 MS. CORNWELL: Please seat Ms. Prioleau.

9 THE CLERK OF COURT: What says Defendant Newman?

10 MR. CHAD SHELTON: Please seat Ms. Prioleau.

11 THE CLERK OF COURT: What says Defendant Clark?

12 MR. BIERING: Please excuse this juror.

13 THE CLERK OF COURT: Excuse the juror.

14 [Whereupon, Raven Prioleau, Juror Number 149,
15 returns to the audience]

16 THE CLERK OF COURT: Juror 71, Susan Gale.

17 [Whereupon, Ms. Gale comes forward]

18 THE CLERK OF COURT: What says the State?

19 MS. CORNWELL: Please seat Ms. Gale.

20 THE CLERK OF COURT: What says Defendant Newman?

21 MR. CHAD SHELTON: Please excuse Ms. Gale.

22 THE CLERK OF COURT: Excuse the juror.

23 [Whereupon, Susan Gale, Juror Number 71, returns
24 to the audience]

25 THE CLERK OF COURT: Juror 95, Alicia Holman.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 [Whereupon, Ms. Holman comes forward]

2 THE CLERK OF COURT: What says the State?

3 MS. CORNWELL: Please seat Ms. Holman.

4 THE CLERK OF COURT: What says Defendant Newman?

5 MR. CHAD SHELTON: Please seat Ms. Holman.

6 THE CLERK OF COURT: What says Defendant Clark?

7 MR. BIERING: Please excuse this juror.

8 THE CLERK OF COURT: Excuse the juror.

9 [Whereupon, Alicia Holman, Juror Number 95,
10 returns to the audience]

11 THE CLERK OF COURT: Juror 82, Carole Grinder.

12 MS. GRINDER: Grinder.

13 THE CLERK OF COURT: Grinder.

14 MS. GRINDER: Grinder, Long I. Grinder.

15 THE CLERK OF COURT: Okay.

16 [Whereupon, Ms. Grinder comes forward]

17 THE CLERK OF COURT: What says the State?

18 MS. CORNWELL: Please seat Ms. Grinder.

19 THE CLERK OF COURT: What says Defendant Newman?

20 MR. CHAD SHELTON: Please seat Ms. Grinder.

21 THE CLERK OF COURT: What says Defendant Clark?

22 MR. BIERING: Please seat the juror.

23 THE CLERK OF COURT: Seat the juror.

24 [Whereupon, Carole Grinder, Juror Number 82, is
25 seated in the jury box as a juror]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE CLERK OF COURT: Juror Number 3, Peggy
2 Aldrow.
3 [Whereupon, Ms. Aldrow comes forward]
4 THE CLERK OF COURT: What says the State?
5 MS. CORNWELL: Please seat Ms. Aldrow.
6 THE CLERK OF COURT: What says Defendant Newman?
7 MR. CHAD SHELTON: Please seat Ms. Aldrow.
8 THE CLERK OF COURT: What says Defendant Clark?
9 MR. BIERING: Please excuse this juror.
10 [Whereupon, Peggy Aldrow, Juror Number 3,
11 returns to the audience]
12 THE CLERK OF COURT: Juror 97, Christy Holmes.
13 [Whereupon, Ms. Holmes comes forward]
14 THE CLERK OF COURT: What says the State?
15 MS. CORNWELL: Please seat Ms. Holmes.
16 THE CLERK OF COURT: What says Defendant Newman?
17 MR. CHAD SHELTON: Please seat Ms. Holmes.
18 THE CLERK OF COURT: What says Defendant Clark?
19 MR. BIERING: Please seat the juror.
20 THE CLERK OF COURT: Seat the juror.
21 [Whereupon, Christy Holmes, Juror Number 97, is
22 seated in the jury box as a juror]
23 THE CLERK OF COURT: Juror 120, Amy Lopez.
24 [Whereupon, Ms. Lopez comes forward]
25 THE CLERK OF COURT: What says the State?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Please seat Ms. Lopez.
2 THE CLERK OF COURT: What says Defendant Newman?
3 MR. CHAD SHELTON: Please seat Ms. Lopez.
4 THE CLERK OF COURT: What says Defendant Clark?
5 MR. BIERING: Please seat the juror.
6 THE CLERK OF COURT: Seat the juror.
7 [Whereupon, Amy Lopez, Juror Number 120, is
8 seated in the jury box as a juror]
9 THE CLERK OF COURT: Juror 175, Thomas Snyder.
10 [Whereupon, Mr. Snyder comes forward]
11 THE CLERK OF COURT: What says the State?
12 MS. CORNWELL: Please seat Mr. Snyder.
13 THE CLERK OF COURT: What says Defendant Newman?
14 MR. CHAD SHELTON: Please seat Mr. Snyder.
15 THE CLERK OF COURT: What says Defendant Clark?
16 MR. BIERING: Please excuse the juror.
17 THE CLERK OF COURT: Excuse the juror.
18 [Whereupon, Thomas Snyder, Juror 175, returns to
19 the audience]
20 THE CLERK OF COURT: Juror 84, Kelly Hall.
21 [Whereupon, Ms. Hall comes forward]
22 THE CLERK OF COURT: What says the State?
23 MS. CORNWELL: Please seat Ms. Hall.
24 THE CLERK OF COURT: What says Defendant Newman?
25 MR. CHAD SHELTON: Please excuse Ms. Hall.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE CLERK OF COURT: Excuse the juror.

2 [Whereupon, Kelly Hall, Juror Number 84, returns
3 to the audience]

4 THE CLERK OF COURT: Showing nine strikes for
5 Newman.

6 Juror 47, Amelia Davis.

7 [Whereupon, Ms. Davis comes forward]

8 THE CLERK OF COURT: What says the State?

9 MS. CORNWELL: Please seat Ms. Davis.

10 THE CLERK OF COURT: What says Defendant Newman?

11 MR. CHAD SHELTON: Please seat Ms. Davis.

12 THE CLERK OF COURT: What says Defendant Clark?

13 MR. BIERING: Please seat the juror.

14 THE CLERK OF COURT: Seat the juror.

15 [Whereupon, Amelia Davis, Juror Number 47, is
16 seated in the jury box as a juror]

17 THE CLERK OF COURT: Juror 73, Rose Janet
18 Gathers.

19 [Whereupon, Ms. Gathers comes forward]

20 THE CLERK OF COURT: What says the State?

21 MS. CORNWELL: Please seat Ms. Gathers.

22 THE CLERK OF COURT: What says Defendant Newman?

23 MR. CHAD SHELTON: Please excuse Ms. Gathers.

24 THE CLERK OF COURT: Excuse the juror.

25 [Whereupon, Rose Janet Gathers, Juror Number 73,

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 returns to the audience]

2 THE CLERK OF COURT: Juror 76, Regina Gibbs.

3 [Whereupon, Ms. Gibbs comes forward]

4 THE CLERK OF COURT: What says the State?

5 MS. CORNWELL: Please seat Ms. Gibbs.

6 THE CLERK OF COURT: Any cause for challenge
7 from Defendant Newman?

8 MR. CHAD SHELTON: No.

9 THE CLERK OF COURT: What says Defendant Clark?

10 MR. BIERING: Please excuse this juror.

11 THE CLERK OF COURT: Excuse the juror.

12 [Whereupon, Regina Gibbs, Juror Number 76,
13 returns to the audience]

14 THE CLERK OF COURT: Juror 78, Gary Gist.

15 [Whereupon, Mr. Gist comes forward]

16 THE CLERK OF COURT: What says the State?

17 MS. CORNWELL: Please seat Mr. Gist.

18 THE CLERK OF COURT: Any cause for challenge
19 from Defendant Newman?

20 MR. CHAD SHELTON: No cause for challenge.

21 THE CLERK OF COURT: What says Defendant Clark?

22 MR. BIERING: Please seat the juror.

23 THE CLERK OF COURT: Seat the juror.

24 [Whereupon, Gary Gist, Juror Number 78, is
25 seated in the jury box as a juror]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Two alternates.

2 THE CLERK OF COURT: Alternate. Juror 205,
3 Kimberlee Ransom.

4 [Whereupon, Ms. Ransom comes forward]

5 THE CLERK OF COURT: What says the State?

6 MS. CORNWELL: Please seat Ms. Ransom.

7 THE CLERK OF COURT: What says Defendant Newman?

8 MR. CHAD SHELTON: Please seat Ms. Ransom.

9 THE CLERK OF COURT: What says Defendant Clark?

10 MR. BIERING: Please seat the juror.

11 THE CLERK OF COURT: Seat the juror.

12 [Whereupon, Kimberlee Ransom, Juror Number 205,
13 is seated in the jury box as an alternate juror]

14 THE CLERK OF COURT: Alternate 2. Juror 68,
15 Stacey Funderburk.

16 [Whereupon, Ms. Funderburk comes forward]

17 THE CLERK OF COURT: What says the State?

18 MS. CORNWELL: Please seat Ms. Funderburk.

19 THE CLERK OF COURT: What says Defendant Newman?

20 MR. CHAD SHELTON: Please seat Ms. Funderburk.

21 THE CLERK OF COURT: What says Defendant Clark?

22 MR. BIERING: Please seat the last alternate.

23 THE CLERK OF COURT: Seat the juror.

24 [Whereupon, Stacey Funderburk, Juror Number 68,
25 is seated in the jury box as an alternate juror]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: All right. Members of the jury, I'm
2 going to ask you to go to the jury room very briefly.
3 And please don't discuss the case.

4 If you'll follow the bailiffs, they'll show you
5 where to go.

6 [Whereupon, the jury exits the courtroom at
7 3:15 p.m.]

8 THE COURT: All right. Any motions from the
9 State, as far as drawing the jury?

10 MS. CORNWELL: None from the State, Your Honor.

11 THE COURT: Any from I guess Defendant Newman?

12 MR. CHAD SHELTON: None, Your Honor.

13 THE COURT: And from Defendant Clark, other than
14 what you've already made? Any new motions?

15 MR. BIERING: No, Your Honor.

16 THE COURT: And I'll recognize all previous
17 motions that defense have made. Okay?

18 MR. BIERING: Thank you, Your Honor.

19 THE COURT: But no new motions; right?

20 MR. BIERING: No new motions. Thank you.

21 [Whereupon, the Court and the clerk of court
22 confer]

23 THE COURT: All right. Ladies and gentlemen of
24 the jury panel, is there anybody that does not have
25 the number to call in on? If you don't have the

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 number, raise your hand.

2 All right. Call that number after six o'clock.
3 There will be a message for the jury panel. It may be
4 to call back tomorrow night, it may be report tomorrow
5 afternoon, but follow those instructions.

6 You're welcome to stay, but otherwise you're
7 free to go. Thank you so very much.

8 [Whereupon, the jury panel exits the courtroom
9 at 3:16 p.m.]

10 THE COURT: Would you bring us the jury, please.

11 [Off the record momentarily]

12 THE COURT: While the jury is coming in, can I
13 see the attorneys up here just a second, please.

14 [Whereupon, an off-the-record bench conference
15 is held in reference to scheduling]

16 [Whereupon, the jury enters the courtroom at
17 3:18 p.m.]

18 THE COURT: All right. Ladies and gentlemen of
19 the jury, please don't discuss the case amongst
20 yourselves. Don't get on the internet or the computer
21 or anything, or do any research about this case. I
22 want you to make a decision on what you hear in the
23 courtroom, not what somebody has put on the internet
24 on a blog or what the newspaper has reported when all
25 this allegedly occurred. It may be correct, it may

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 not be correct. You're going to make your decision on
2 what you hear in the courtroom, not what someone tells
3 you outside the courtroom.

4 Please don't discuss the case with your
5 girlfriend, your boyfriend, or anyone else.

6 Be back in the jury room at 9:30. When you come
7 to the courthouse, come straight to the jury room. If
8 you'll go with the bailiff, he'll show you where to
9 come tomorrow at 9:30. We'll get started at 9:30 in
10 the morning. Have a good evening. See you in the
11 morning.

12 [Whereupon, the jury exits the courtroom at
13 3:20 p.m.]

14 THE COURT: All right. Do y'all need a short
15 break before we start the -- what do y'all want to do
16 first?

17 MS. CORNWELL: Your Honor, the State is prepared
18 to go forward on the Jackson v. Denno, as well as the
19 motion to suppress.

20 The State is also going to file a motion in
21 limine to keep out any prior bad acts of the victim.

22 THE COURT: Okay. Why don't we take about a
23 five- or ten-minute break, or ten- or fifteen-minute
24 break, and we'll start the Jackson v. Denno and then
25 we'll go into your motions. Okay?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Yes, Your Honor.

2 MR. CHAD SHELTON: Yes, Your Honor. Thank you,
3 Your Honor.

4 THE COURT: All right. Thank you.

5 [Whereupon, a recess is taken from 3:21 p.m. to
6 3:35 p.m.]

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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

JACKSON V. DENNO HEARING

THE COURT: Okay.

MS. CORNWELL: The State calls Lieutenant Ashe.

[Whereupon, Mr. Ashe comes forward]

THE CLERK OF COURT: Please raise your right
hand. Place your left hand on the Bible.

[Whereupon, Mr. Ashe is duly sworn by the clerk
of court as follows: do you solemnly swear or affirm
the testimony you will give the Court in this matter
will be the truth, the whole truth, and nothing but
the truth, so help you God]

THE WITNESS: I do.

THE CLERK OF COURT: Please be seated.

[Whereupon, Mr. Ashe takes the witness stand]

THE CLERK OF COURT: State your full name.
Spell your last name for the record.

THE WITNESS: Yes, ma'am.

My name is Allen Bruce Ashe, Jr. The spelling
of my last name is A-S-H-E.,

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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 BRUCE ASHE,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. CORNWELL:

6 Q. Lieutenant Ashe, where are you employed?

7 A. I am an employee with the Berkeley County
8 Sheriff's Office.

9 Q. How long have you been employed by Berkeley
10 County Sheriff's Office?

11 A. Since 1991.

12 Q. And what is your current position and rank?

13 A. Currently assigned to the drug enforcement unit,
14 undercover, as a lieutenant.

15 Q. And prior to being a lieutenant in the narcotics
16 unit, what did you do?

17 A. I was assigned to the criminal enforcement
18 division as a sargent.

19 Q. And were you working in your capacity as a
20 sargent in the criminal investigations division on January
21 7th of 2011?

22 A. Yes, ma'am.

23 Q. And do you recall an incident involving Andre
24 Mendoza?

25 A. Yes, ma'am, I do.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Q. And did you have occasion to speak with the
2 defendant, Jessica Clark, regarding that incident?

3 A. Yes, ma'am, I did.

4 Q. And when did you speak with Ms. Clark?

5 A. The same day.

6 Q. And would that day --

7 A. Was January the 7th.

8 MR. BIERING: Your Honor, at this point I would
9 like to make a motion to sequester the witnesses.

10 THE COURT: Well, we're going to sequester both
11 sides if we do it, okay? Have you got any of your
12 witnesses in here? She's entitled to keep whoever she
13 wants in here as far as the police officer's
14 concerned, and the victim.

15 MS. CORNWELL: The victim is allowed to stay in
16 for the case.

17 THE COURT: Pardon?

18 MS. CORNWELL: It's the State's position that
19 the victim is allowed to stay in for the case.

20 THE COURT: And the victim. And the -- whoever
21 -- I'll let you keep your chief investigating officer.

22 MS. CORNWELL: That will be Mr. Ashe.

23 THE COURT: All right. Who needs to leave,
24 then?

25 MS. CORNWELL: The only people present are the

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 case investigator and the victim, Your Honor.

2 THE COURT: Where is the victim?

3 MS. CORNWELL: He's sitting --

4 THE COURT: Okay. All right.

5 MR. BIERING: Thank you, Your Honor.

6 THE COURT: I mean, we'll sequester them. But
7 let me say this to both of you. Please tell your
8 witnesses once they're sequestered out in the hall,
9 don't get off the witness stand and go out there and
10 tell the next witness what occurred. Okay? At the
11 appropriate time, just make sure you tell your
12 witnesses that.

13 MR. BIERING: And I do have a witness, Your
14 Honor. Ms. Cathy Adams.

15 THE COURT: Well, tell her to leave.

16 MR. BIERING: You can step outside.

17 [Whereupon, Ms. Adams, exits the courtroom]

18 MR. BIERING: Thank you, Your Honor.

19 THE COURT: Okay. Please proceed.

20 Q. [Ms. Cornwell] And how did you come in contact
21 with the Defendant Ms. Clark?

22 A. I contacted her by phone and she came to the
23 sheriff's office.

24 Q. And what prompted you to contact her by phone?

25 A. The defendant stated that he had witnessed her

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 car at the suspect's house the day after.

2 Q. Do you mean the victim?

3 A. The victim. Yes, sir [sic].

4 Q. And did she come in?

5 A. Yes, ma'am, she did. Her and her mother.

6 Q. And did you explain to her why you were meeting
7 with her?

8 A. Yes, ma'am, I did.

9 I explained to her that I was investigating an
10 armed robbery and --

11 Q. And did you read her her Miranda rights at that
12 time?

13 A. I did.

14 Q. And at that time did you read her Miranda rights
15 from a card, from a piece of paper, or did you recite them
16 from memory?

17 A. Verbally. Recited by memory, ma'am.

18 Q. And did Ms. Clark acknowledge those rights?

19 A. She did.

20 Q. And did she make any statements to you regarding
21 this incident?

22 A. Yes, ma'am, she did.

23 Q. What did she tell you regarding this incident?

24 A. Her story was similar to the victim's story.

25 The only thing separate -- or different was that she said

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 that she was being held at gunpoint by one of the
2 suspects. And the victim had provided that all three of
3 the suspects were beating him and had him at gunpoint
4 so --

5 Q. And did she tell you what happened after the
6 suspect had beaten and robbed Mr. Mendoza?

7 A. Yeah.

8 She advised that one of the suspects pointed a
9 gun at her, and told her to get in the back seat, and all
10 three suspects jumped in the car -- jumped in her car.

11 Q. And did they drive off at that time?

12 A. Yes, ma'am, they did, to an unknown location.

13 Q. Okay. And did Ms. Clark tell you anything that
14 happened after that?

15 A. She stated that they advised her not to tell no
16 one and that she had decided to drive to a friend's house,
17 which later identified as being one of the codefendants in
18 the case's house that spent the night with her.

19 Q. And did you ask Ms. Clark any other questions
20 regarding this incident?

21 A. Yes, ma'am, I did.

22 I asked her how come she didn't notify the
23 police and she stated that she was scared. And I asked
24 her, I said, well, what about the victim as she drove off,
25 Mr. Mendoza was -- he was laid on the ground, did she care

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 about his well-bearings. And, again, she didn't -- she
2 didn't have no good answer for that.

3 Q. And after speaking with Ms. Clark, what did you
4 do?

5 A. At that time I asked her to give me written
6 statements, which she did provide a statement and she
7 refused to talk anymore until she could consult with an
8 attorney.

9 THE COURT: Let me interrupt you. Is this a
10 witness that just walked in?

11 MS. CORNWELL: Yes, Your Honor.

12 Ms. Mendoza, I'm sorry. If you could step out
13 for a moment.

14 MS. MENDOZA: Sure.

15 MS. CORNWELL: Thank you.

16 [Whereupon, Ms. Mendoza exits the courtroom]

17 THE COURT: Okay. Go ahead.

18 MS. CORNWELL: I apologize, Lieutenant Ashe.

19 Q. [Ms. Cornwell] After speaking with Ms. Clark,
20 did you ask her any other questions once she told you that
21 she stayed at Mr. Newman's house?

22 A. I had asked her about whether she called 911 and
23 she stated -- she didn't give no good answer why. She
24 said she was scared.

25 And then I also asked her how come -- what about

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 the victim, Mr. Mendoza, who was left on a dirt road. And
2 she -- again, she didn't have no good answer for that,
3 either.

4 Q. At any time did you try to elicit a written
5 statement from the defendant?

6 A. I did. And she signed a -- saying she wasn't
7 going to talk anymore until she talked -- consulted with
8 an attorney.

9 Q. And on that defendant's statement, is there a
10 listing of her rights?

11 A. Yes, ma'am. And I had her initial each one of
12 the rights.

13 MS. CORNWELL: May I approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 Q. [Ms. Cornwell] I'm going to show you what the
16 State is going to mark as Court Exhibit 1. Do you
17 recognize that document?

18 A. Yes, ma'am.

19 It's the defendant's statement that I asked her
20 to fill out.

21 Q. And on that does it give each of her rights?

22 A. It does.

23 Q. And did she acknowledge each of those rights?

24 A. She did.

25 Q. When you spoke with her and she acknowledged

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 these rights, both before when she gave the oral statement
2 and after when she gave this written statement --

3 A. That's correct.

4 Q. -- and did she appear to understand her rights?

5 A. She did.

6 Q. Did she appear to be under the influence of any
7 drugs or alcohol at that time?

8 A. No, ma'am.

9 Q. Did she appear to be suffering from any mental
10 illness or defect at the time?

11 A. No, ma'am.

12 [Whereupon, Court's Exhibit Number 1 is marked
13 by the court reporter]

14 Q. [Ms. Cornwell] And after speaking with Ms.
15 Clark when she refused to give a statement, was Ms. Clark
16 free to leave?

17 A. Yes, ma'am, she was.

18 Q. At any point in time, did you take Ms. Clark
19 into custody?

20 A. No, I did not.

21 Q. Was she free to leave at any time?

22 A. Yes, ma'am.

23 She left -- her and her mother left the police
24 station.

25 Q. And after you spoke with Ms. Clark, what did you

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 do?

2 A. I advised them that I would wait until Monday
3 for a response from them, if they wanted to talk to me
4 or have their attorney talk to me.

5 I didn't get none, so I felt I had significant
6 evidence to obtain an arrest warrant for armed robbery
7 for Ms. Clark and the codefendants, two of the -- two of
8 the -- three other male codefendants.

9 Q. And is that the warrant you got out on January
10 11th?

11 A. That's correct.

12 Q. And that was several days after you spoke with
13 her?

14 A. That's correct. Yes, ma'am.

15 MS. CORNWELL: Nothing further, Your Honor.

16 THE COURT: Cross-examination.

17 MR. BIERING: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BIERING:

20 Q. Deputy Ashe, your rank again is?

21 A. Lieutenant.

22 Q. Lieutenant?

23 A. Yes, sir.

24 Q. And you've been on the force you said since
25 1991; is that correct?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 A. Yes, sir, that's correct.

2 Q. And can you tell me the training that you've
3 received through the years, beginning with your original
4 certification as a law enforcement officer?

5 A. I've been through a lot. I mean, I was with the
6 sheriff's office until 2007. I was ranked as a lieutenant
7 then. I had been assigned to the criminal enforcement
8 division one time before. I've been a member of the
9 Selective Enforcement Team. I have all traffic safety
10 classes, investigative, been to a narcotics command
11 school.

12 I mean, it -- it's pretty significant. I can't
13 remember all of them off the top of my head.

14 Q. From a standpoint of investigative training,
15 would you agree that documentation of your investigative
16 efforts is one of the primary focuses in any training for
17 any area of policing?

18 A. Yes.

19 Q. Would you agree that the who, what, where, when,
20 why and how, those are the kind of things that you have to
21 go through and make sure you document in your report?

22 A. Yes, sir.

23 Q. Do you have any handwritten notes as it would
24 relate to the events of January the 7th, 2011? Yes or no.

25 A. No.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Q. So your report would be limited to and would be
2 the incident report, supplemental report dated --
3 actually, dated January the 11th of 2011 regarding the
4 January the 7th, 2011 interview; is that correct?

5 A. Well, I did a supplemental on January the 7th
6 when I met with the victim, Mr. Mendoza, which was the day
7 after the initial report from the road deputy.

8 That -- I mean, is that the question?

9 Q. Do you have a copy of your supplemental report
10 dated January the 7th?

11 A. Yes, sir, I do.

12 Q. You have that with you?

13 A. Yes, sir.

14 [Whereupon, the witness reviews documents]

15 MR. BIERING: May I approach the witness, Your
16 Honor?

17 THE COURT: Yes, sir.

18 A. Oh. Let me stand corrected. It's dated on the
19 11th, but it's noted on the 7th. I'm sorry. I apologize.

20 Q. [Mr. Biering] Okay. So we're all on the same
21 sheet of music.

22 The report that we're dealing with is dated
23 January the 11th of 2011; correct?

24 A. Correct.

25 Q. And you have no written notes to support this

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 report; correct?

2 A. No, sir. What I do is I --

3 Q. Yes or no. Do you have any written notes --

4 A. No.

5 Q. -- to support this report?

6 Let's go to the first line of your report. Is
7 there a time documented in your report evidencing your
8 activities on January the 7th? Yes or no.

9 A. What do you mean?

10 Q. How do you document time, Lieutenant Ashe? Do
11 you document it in military time or in civilian time?

12 A. Military time.

13 Q. Do you see on your report dated January the
14 11th, 2011, any documentation of any military-time entry
15 of your endeavors that day?

16 A. No, sir.

17 Q. Would you agree that report takes up an entire
18 page?

19 A. Yes, sir. And on to a second page.

20 Q. Let's just worry about this page right here
21 right now. This takes up an entire page; correct?

22 A. Correct.

23 Q. And, actually, when you start talking about what
24 goes on to the next page, it looks like there's a date
25 entry for January the 11th of 2011. Would you agree with

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 that?

2 A. Correct.

3 Q. So what goes over into the next page is another
4 affair. That's for January the 11th. The events for
5 January the 7th are on this one page; correct?

6 A. The 7th, yes. And the 11th. Correct.

7 Q. Excluding the what is the beginning of another
8 paragraph in the last two lines, what is the last line in
9 your report on that full paragraph? The narrative. Can
10 you read that?

11 A. The last --

12 Q. The last line. The last --

13 A. Ms. Clark was offered a defendant's statement
14 form and she refused?

15 Q. Correct.

16 Now, if you move back, read the second-to-the-
17 last sentence in that paragraph.

18 A. Ms. Clark was read her Miranda warning prior to
19 any questions and she stated she understood.

20 Q. Thank you.

21 I just had an opportunity to speak to you out in
22 the hallway before this hearing.

23 You would agree that my client's mother was with
24 you during your questioning?

25 A. Correct. I remember her being there.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Q. And I want us to take some time and go through
2 that incident report.

3 Is there any statement of a time of your
4 questioning of my client? Yes or no.

5 A. I think there's a time on the defendant's
6 statement.

7 Q. I'm asking about this document --

8 A. No, there's --

9 Q. -- your report.

10 A. There's no hourly stamp on this paragraph, no.

11 Q. And you would agree that generally her statement
12 is basically a refusal to provide a statement; correct?

13 A. A written statement. Correct.

14 MR. BIERING: No further questions of this
15 witness at this time.

16 MS. CORNWELL: Nothing further from the State,
17 Your Honor.

18 THE COURT: Okay. Mr. Ashe, you may step down.
19 Thank you very much.

20 THE WITNESS: Thank you, Your Honor.

21 [Whereupon, Mr. Ashe exits the witness stand]

22 MR. BIERING: Your Honor, I would ask that he
23 now be excused from the courtroom.

24 THE COURT: I'm sorry. What?

25 MR. BIERING: I would ask that he now be excused

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 from the courtroom until the conclusion of the
2 hearing.

3 THE COURT: I think she's going to keep him in
4 here the whole trial.

5 MR. BIERING: Thank you, Your Honor.

6 THE COURT: Okay? Yes, ma'am.

7 MS. CORNWELL: Your Honor, the State rests.

8 THE COURT: All right. Are you going to put up
9 any testimony on the --

10 MR. BIERING: Your Honor, I call Cathy Marie
11 Adams to the stand.

12 THE COURT: Okay.

13 MR. BIERING: She's in the hall. If the
14 bailiffs would call her. Cathy Marie Adams.

15 [Whereupon, Ms. Adams comes forward]

16 THE CLERK OF COURT: Please raise your right
17 hand. Place your left hand on the Bible.

18 [Whereupon, Ms. Adams is duly sworn by the clerk
19 of court as follows: do you solemnly swear or affirm
20 the testimony you will give the Court in this matter
21 will be the truth, the whole truth, and nothing but
22 the truth, so help you God]

23 THE WITNESS: Yes, I do.

24 THE CLERK OF COURT: Please be seated.

25 [Whereupon, Ms. Adams takes the witness stand]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE CLERK OF COURT: State your full name and
2 spell your last name for the record.

3 THE WITNESS: My name is Cathy Adams. My last
4 name is spelled A-D-A-M-S.

5 MR. BIERING: May I proceed, Your Honor?

6 THE COURT: Yes, sir.

7 MR. BIERING: Thank you.

8 - - - - -

9 CATHY M. ADAMS,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. BIERING:

14 Q. Ms. Adams, seated at the table behind me is
15 Jessica Clark. Is Ms. Clark your daughter?

16 A. Yes, she is.

17 Q. Back in early January of 2011, were you with
18 your daughter when she was initially called to go to the
19 Berkeley County Sheriff's Department and meet with --

20 A. Yes, I was.

21 Q. -- and meet with Lieutenant Ashe?

22 A. Yes, I was.

23 Q. And were you present when they initially met?

24 A. Yes, I was.

25 Q. And did Lieutenant Ashe question your daughter

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 about the events relating to the matter that she's charged
2 with?

3 A. Yes, he did.

4 Q. And approximately how long do you think that
5 went on?

6 A. Anywhere from forty-five minutes to an hour, I
7 would say.

8 Q. At any point during that time frame, did
9 Lieutenant Ashe advise Jessica Clark of her rights not to
10 incriminate herself?

11 A. Not while I was in the room. He did have me
12 step outside.

13 Q. Was that at the conclusion of him questioning
14 her?

15 A. He had already questioned her.

16 He showed her a picture. It was of Ryan Newman.
17 And he asked her if she knew him and she said she did.
18 Then he asked her if she spent the night with him, and she
19 said no. He says, I have a witness that puts your car at
20 his house.

21 I was told to step out of the room, and I don't
22 know if he questioned her more. But I know she did have
23 to write a statement.

24 Q. Do you have any doubt in your mind that while
25 you were in the room and he questioned her regarding the

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 events of that previous day, that he did not advise her of
2 her rights?

3 A. I did not hear -- the only time she got advised
4 of her rights is when she got locked up, that I heard of.

5 Q. Approximately how long after you were asked to
6 leave the room did she come out?

7 A. Maybe ten minutes. It wasn't long at all.

8 MR. BIERING: Thank you. No further questions
9 of the witness.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION

12 BY MS. CORNWELL:

13 Q. Ms. Adams, how old is your daughter?

14 A. She'll be twenty-five this year.

15 Q. And she was above the age of eighteen when she
16 was --

17 A. Yes, ma'am.

18 Q. -- questioned?

19 And when Lieutenant Ashe called, you drove her
20 up to the police station?

21 A. Yes, I did.

22 Q. And when she walked in, was she ever placed in
23 handcuffs?

24 A. No, she was not.

25 Q. Were you allowed to leave at any time?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 A. I'm assuming I was. I mean, I wasn't told I had
2 to stay there.

3 Q. And was she allowed to leave at any time?

4 A. Yes, she was.

5 Q. And you stated that you never heard her rights
6 being given?

7 A. No, I did not.

8 Q. You understand this can be a very scary time
9 and --

10 A. Oh, I know. I was crying. I know.

11 But no rights were read to her other than when
12 she got handcuffed by another detective, which was a
13 woman.

14 Q. But that was not that day, was it?

15 A. No, it was not.

16 Q. You said that when you came up and brought her
17 over here crying, you were upset?

18 A. Oh, yes, because I knew nothing about this until
19 then.

20 Q. And being upset, is it possible that you may
21 have misheard or not heard something that could have
22 actually been said?

23 A. Probably so. But not the rights read to her.

24 Q. And after she was questioned, she was free to
25 leave?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 A. Yes.

2 Q. She was never placed into handcuffs and taken
3 into --

4 A. No.

5 Q. -- custody?

6 A. No.

7 MS. CORNWELL: Nothing further, Your Honor.

8 THE COURT: Okay. Any redirect?

9 MR. BIERING: Just a moment, Your Honor.

10 [Whereupon, Mr. Biering reviews documents]

11 MR. BIERING: Nothing of this witness, Your
12 Honor.

13 THE COURT: Okay. You may step down, Ms. Adams.
14 Thank you very much.

15 [Whereupon, Ms. Adams exits the witness stand]

16 MR. BIERING: Your Honor, I would re-call
17 Lieutenant Ashe.

18 THE COURT: You're going to re-call Lieutenant
19 Ashe?

20 MR. BIERING: Yes, Your Honor.

21 THE COURT: Mr. Ashe, if you'll come around.
22 You've already been sworn, please, sir. Take the
23 stand again.

24 THE WITNESS: Thank you, Your Honor.

25 [Whereupon, Mr. Ashe re-takes the witness stand]

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. BIERING: Your Honor, if I could approach
2 the witness?

3 THE COURT: Yes, sir.

4 - - - - -

5 BRUCE ASHE,

6 Having Been Previously Sworn,
7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MR. BIERING:

10 Q. Lieutenant Ashe, does that appear to be an
11 actual copy of the supplemental report that we discussed?

12 A. Yes, sir. One of my supplementals, yes, sir.

13 Q. And just take a moment with it. I just want to
14 make sure that it's a -- you don't have any objection to a
15 copy of that document.

16 MR. BIERING: I don't know if there's an
17 objection from the State.

18 A. It's the same.

19 MR. BIERING: Thank you. Your Honor, I would
20 move to admit as Defendant Clark's 1 for purposes of
21 this hearing only.

22 [Whereupon, Defendant Clark Exhibit Number 1 is
23 marked by the court reporter]

24 THE COURT: Any objection?

25 MS. CORNWELL: Nothing from the State, Your

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 Honor.

2 THE COURT: Okay.

3 [Whereupon, Defendant Clark Exhibit Number 1 is
4 admitted into evidence by the Court]

5 Q. [Mr. Biering] And, again, Deputy Ashe, you --
6 Lieutenant Ashe, you agree that the entire body of that
7 report, that paragraph, goes on and the only -- only in
8 the last two sentences is there an issue of a discussion
9 of Miranda rights? That's correct? Isn't that correct?

10 A. Correct.

11 Q. There's no other addressing of Miranda rights in
12 that report other than the second-to-the-last line of the
13 full paragraph; is that correct?

14 A. I believe so.

15 MR. BIERING: Apologies to the Court, Your
16 Honor.

17 Defendant's case --

18 [Off the record momentarily]

19 THE COURT: I'm sorry. Do you have anything you
20 want to ask on cross?

21 MS. CORNWELL: No, Your Honor, not from the
22 State.

23 THE COURT: Okay. You may step down, Lieutenant
24 Ashe. Thank you.

25 THE WITNESS: Thank you, Judge.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 [Whereupon, Lieutenant Ashe exits the witness
2 stand]

3 THE COURT: Do you have any other witnesses?

4 MR. BIERING: No, Your Honor.

5 THE COURT: Does the State have anything in
6 reply?

7 MS. CORNWELL: No, Your Honor. The State rests.

8 THE COURT: Okay.

9 MS. CORNWELL: Your Honor, for the Court, it's
10 the State's position that Ms. Clark was never in
11 custody.

12 Miranda is an issue with custody. Both Mr. Ashe
13 and Ms. Adams testified that she came in on her own
14 free will, voluntarily, she was able to leave at any
15 time, she was never placed in custody.

16 Detective Ashe did testify that he read her her
17 rights from memory. Prior to speaking with her, he
18 informed her that he was speaking with her about an
19 armed robbery that had occurred. He got oral
20 statements from her.

21 At that time, he asked her if she would wish to
22 give a written statement. He again advised her of her
23 rights the second time. At that time she signed an
24 initial beside each right, acknowledging that she
25 understood those rights. And then she wrote a

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 statement asking that she be allowed to speak to an
2 attorney. Once she asked to speak to an attorney,
3 Lieutenant Ashe ended all conversations with her and
4 Ms. Clark was free to go.

5 There's not a custody issue in this case. Her
6 Miranda rights were read to her and for that reason
7 the State submits that the statement should come in.

8 THE COURT: Well, hypothetically, assuming that
9 Ms. Adams is right, then there was no oral Miranda
10 rights.

11 What's the State's position?

12 MS. CORNWELL: Well, the State's position is
13 that Ms. Adams also testified that she was extremely
14 upset, she was crying. It's very possible that she
15 just didn't hear or understand the rights that were
16 given to her.

17 Lieutenant Ashe has testified that he's been in
18 law enforcement since 1991. He advised that he read
19 her her rights before he spoke with her.

20 Furthermore, again, she was not in custody at
21 any time. Her statement was freely and voluntarily
22 given. She could have left at any time. And
23 therefore it's the State's position that she --

24 THE COURT: Well, Miranda just applies when
25 they're in custody, I believe; is that correct?

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MS. CORNWELL: Correct, Your Honor.

2 THE COURT: Anything else?

3 MS. CORNWELL: No, Your Honor.

4 THE COURT: Be glad to hear you. And the two
5 questions I have is the custody issue. And the second
6 question I have is other than saying she was on the
7 scene and she was scared and they forced her into a
8 car, where has she confessed to anything other than
9 being she did -- she did admit to being on the scene
10 but she said she was forced to basically be there and
11 was forced in the car to leave there. So where has
12 she incriminated herself, is my question to you,
13 number one.

14 The second question -- we'll talk about the
15 custody issue after the first.

16 MR. BIERING: Okay.

17 THE COURT: It's not a -- it's a confession, so
18 to speak, other than the fact that she did put herself
19 at the crime scene. Now, that may be sufficient, but
20 I'm asking you the question.

21 MR. BIERING: Your Honor, I think the -- and
22 I'll just -- there's no hiding eight-ball that relates
23 to this issue --

24 THE COURT: I'm sorry. What?

25 MR. BIERING: There's no hiding eight-ball that

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 relates to what the issue is that we don't like.

2 And I think that our case would show that there
3 was never a statement that my client's -- that my
4 client stated that she was -- the she spent the night
5 at the residence of Newman. We don't think that
6 happened.

7 THE COURT: Well, Ms. Adams didn't testify as to
8 what was actually said. She just said there were no
9 Miranda rights.

10 MR. BIERING: I think --

11 THE COURT: I mean, I hadn't heard what she
12 would say was said.

13 MR. BIERING: And I understand that.

14 And I don't think necessarily this is the
15 appropriate arena for a challenging of the actual
16 facts in the statements. I think the question is,
17 here in this Court, was she advised of the right, is
18 there a custody issue --

19 THE COURT: In order to be advised of the
20 rights, you have to make some incriminating statement.
21 Where has she incriminated herself? She says she was
22 forced, if I heard it correctly. Tell me if I -- I
23 may have heard it wrong.

24 MR. BIERING: That's correct, Your Honor.

25 But the issue then goes to whether or not she

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 spent the night at the house. That's the -- that's
2 the other component.

3 THE COURT: Well, I mean, so is that a
4 confession? That's not a confession to -- let me see.
5 What all is she charged with? Armed robbery,
6 kidnaping, and possession of a pistol during the
7 commission of a crime. I mean, is that -- I don't see
8 where that's a confession to kidnaping and armed
9 robbery. Maybe I missed something.

10 MR. BIERING: Judge, it's the only component of
11 it that I don't really like.

12 THE COURT: Pardon? I know you don't.

13 MR. BIERING: It's the only component of it I
14 don't like.

15 THE COURT: I know you don't like it. But
16 there's a lot that's going to happen in the trial you
17 probably don't like.

18 MR. BIERING: Yes, Your Honor, it does.

19 THE COURT: I had an attorney one time: well,
20 Judge, they prejudiced me. Well, everything they did
21 is going to prejudice you.

22 MR. BIERING: I agree with that.

23 But, Judge, I do think that it goes to an issue
24 of a potential confession as relates to the element of
25 the crime and the theory that the State will present

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 as their case as it would relate to the issue of
2 custody.

3 THE COURT: Well, mere presence at a crime is
4 not a crime.

5 MR. BIERING: I agree with that one-hundred
6 percent, Judge.

7 THE COURT: And that's the only thing she's
8 confessed to, that I heard.

9 Tell me about the custody issue.

10 MR. BIERING: She was clearly a suspect in this
11 case when she was called to the Berkeley County
12 Sheriff's Department by Lieutenant Ashe.

13 THE COURT: Well, does the law say you've got to
14 give Miranda rights to suspects or you've got to give
15 Miranda rights when you're placed in custody -- a
16 suspect is placed in custody? Which is it?

17 MR. BIERING: My client has never been involved
18 in the criminal justice system in --

19 THE COURT: But she left --

20 MR. BIERING: -- the past.

21 THE COURT: But she left that day. She was not
22 arrested. She actually left and a warrant was issued
23 three days later --

24 MR. BIERING: She left --

25 THE COURT: Or four days later.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. BIERING: -- with the permission of the
2 solicitor.

3 THE COURT: The solicitor or the police officer?

4 MR. BIERING: I'm sorry. I'm sorry. The --

5 THE COURT: I don't think the solicitor was
6 there.

7 MR. BIERING: Lieutenant Ashe. Lieutenant Ashe.
8 I'm sorry.

9 THE COURT: Lieutenant Ashe.

10 MR. BIERING: She left with the permission of
11 Lieutenant Ashe.

12 THE COURT: Right. So she -- how could she be
13 in custody?

14 MR. BIERING: She could not not leave -- it's
15 our position she couldn't leave there until he gave
16 her permission to leave.

17 THE COURT: Okay.

18 MR. BIERING: That's our position.

19 THE COURT: Well, that's probably a good
20 position. But that doesn't mean he's got to give a
21 Miranda.

22 MR. BIERING: The other thing I think is
23 important, Judge: you know, when you look at the
24 weight of the evidence here, you've got a seasoned
25 officer with the sheriff's department. And the

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 reality is this. I mean, I've seen Lieutenant Ashe's
2 reports before. I've seen, you know, lots of incident
3 reports before. This lacks details. And but what it
4 does is it provides a chronology of the events that
5 day. And I think if the Court went back and listened
6 closely to his original testimony on direct by the
7 State, what he gave in his answer was discussion of
8 what he did. And then -- just like his report that
9 talks about the issue of Miranda.

10 We think it was custodial interrogation. We
11 think it was done without there being appropriate
12 advisement of rights and we would ask the Court to
13 exclude -- and I think there's two steps to this
14 exclusion. I think there's a -- certainly the written
15 statement where she said she didn't want to say
16 anything. But then there's the statement that she
17 made to Lieutenant Ashe. We would ask the Court to
18 exclude those statements. Thank you.

19 THE COURT: Mr. Shelton, anything you want to
20 add in this, or you don't have a dog in this fight?

21 MR. CHAD SHELTON: I don't have anything in
22 this, Your Honor.

23 THE COURT: Okay. Solicitor?

24 MS. CORNWELL: Your Honor, I believe we've
25 covered it. It's the State's position that she was

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 not in custody.

2 Even if the Court decides that she was in
3 custody, Miranda was given both before she gave an
4 oral statement. It was also given to her in writing
5 before she was -- or asked to give a written
6 statement.

7 And, again, Your Honor has kind of encroached on
8 there's really nothing that confessed -- that leads to
9 a confession in her statement. That's something the
10 State will have to link through other extemporaneous
11 [phonetic] evidence in regards to Mr. Biering's
12 concern regarding the lack of details in the report.

13 That's just one page of the report. The report
14 in total has a little bit more information that he was
15 able to go by.

16 But as far as the Denno goes, she was not in
17 custody and she was read her rights.

18 THE COURT: Okay. Thank you very much.

19 I'm going to find that the alleged statement
20 that was made was not a confession. It was merely
21 acknowledgment of being present at a crime scene,
22 which is not a crime, number one.

23 Number two, if, in fact, it is deemed a
24 confession, she was not in custody and Miranda rights
25 did not apply.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 And if it -- if she was in custody, I find that
2 she freely and voluntarily, without coercion, without
3 undue influence, without reward, without promise,
4 without the promise of leniency, without threat of
5 injury, without compulsion or inducement at any time,
6 and it was -- that the statement was a voluntary
7 product, unconstrained will of the defendant. Okay?

8 MS. CORNWELL: Thank you, Your Honor.
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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

MOTION TO SUPPRESS

1
2 THE COURT: All right. Now, Mr. Shelton, I
3 believe it's your turn; right?

4 MR. CHAD SHELTON: Yes, Your Honor.

5 THE COURT: I've read your memorandum -- or your
6 motion. I'll be glad to hear you.

7 MR. CHAD SHELTON: And I would ask that that be
8 incorporated in the record, Your Honor.

9 It's our position that the ankle monitor is
10 merely to cause prejudice and emotionally for the jury
11 to find Mr. Newman guilty of this charge, other than
12 the evidence of the -- based off the ankle monitor,
13 only, and not anything else, relevant to the elements
14 of the charge, Your Honor, of the offenses.

15 THE COURT: Let me ask you one question.

16 MR. CHAD SHELTON: Yes.

17 THE COURT: In your argument you put that it
18 would allow the jury to prejudge Newman based on his
19 prior record. Now, I understand it was a -- he was on
20 parol for YOA.

21 MR. CHAD SHELTON: Yes, Your Honor.

22 THE COURT: What were the charges?

23 MR. CHAD SHELTON: And it was -- and he was
24 actually up for a revocation of that YOA, so he was
25 out --

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Well, what was the original YOA
2 charge?

3 MR. CHAD SHELTON: Burglary in the second
4 degree.

5 THE COURT: Doing what?

6 MR. CHAD SHELTON: Burglary in the second
7 degree.

8 THE COURT: Burglary in the second degree?

9 MR. CHAD SHELTON: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. CHAD SHELTON: And it's my understanding who
12 the State has on the witness list of who is going to
13 come testify regarding the ankle monitor is the
14 bondsman and the bonding company that took part in the
15 ankle monitor. Right there, that's --

16 THE COURT: Well, was the ankle monitor on
17 because of the probation violation, or bond, or what?

18 MR. CHAD SHELTON: He was -- yes, Your Honor,
19 for the -- subject to the --

20 THE COURT: For the probation violation.

21 MR. CHAD SHELTON: -- YOA violation.

22 THE COURT: And was out on bond on that and they
23 put a monitor, GPS monitor, on him; is that correct?

24 MR. CHAD SHELTON: Yes. Yes. The bond for the
25 violation of parol.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 And we're willing to stipulate --

2 THE COURT: What I'm -- what I'm --

3 MR. CHAD SHELTON: -- that he was present at the
4 scene.

5 THE COURT: What I guess I'm struggle -- or
6 thinking about is his -- if -- his prior criminal
7 history was what? What did you say it was?

8 MR. CHAD SHELTON: A burglary second.

9 THE COURT: Burglary second. Wouldn't that --
10 if he takes the stand, he couldn't be impeached with
11 that?

12 MR. CHAD SHELTON: Absolutely. If he takes the
13 stand, yes, Your Honor.

14 THE COURT: I mean, he could be impeached with
15 that. So how does the ankle monitor affect that
16 issue?

17 MR. CHAD SHELTON: Yes, Your Honor. At the time
18 that the ankle monitor is going to be presented, he is
19 not taking the stand.

20 As Your Honor knows, he has the right not to
21 take the stand. If he puts his character into play,
22 then, yes, Your Honor, I think that there could be a
23 valid argument to the ankle monitor.

24 I would still argue that we are stipulating that
25 he is -- he was on-scene at that time. So that takes

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10,, 2012

1 away the need for the ankle monitor.

2 Mr. Mendoza is able to identify Mr. Newman in
3 other ways.

4 THE COURT: Wasn't that part of the
5 identification process? The ankle monitor?

6 MR. CHAD SHELTON: It was an afterthought, Your
7 Honor.

8 In his statements, he talks about him being
9 friends. And obviously his testimony of he being
10 friends, living with Mr. Newman, he recognized his
11 voice, he noticed the scar on his face. Your Honor,
12 it was an afterthought about the GPS monitor.

13 And in the initial report -- it was never
14 mentioned in the initial police officer's report, the
15 GPS monitor.

16 THE COURT: Okay. I interrupted you. Anything
17 else you want to tell me?

18 MR. CHAD SHELTON: Your Honor, I just think that
19 this is a classic 403 argument with the unfair
20 prejudice.

21 Yes, there's probative value, obviously. But we
22 are stipulating to the part that would be of probative
23 value. The extra part would be unfair to my client
24 and would allow the jury to judge my client based on
25 facts that are not in evidence, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Okay. Solicitor, why is an ankle
2 monitor essential to your case? He's going to
3 stipulate he was on the scene.

4 MS. CORNWELL: Yes, Your Honor.

5 THE COURT: Why is it essential?

6 MS. CORNWELL: It's essential because there were
7 multiple suspects on the scene. He was attacked by
8 three men. It goes to an element of the case where
9 Andre is going to testify that he knows that it was
10 Mr. Newman that was kicking him in the head while he
11 was laying on the ground because he was able to see
12 the ankle monitor as he was being kicked in the head.

13 So it goes to a critical element of the assault
14 and battery, places him, his identification, as the
15 actual person, not just one of three. Furthermore --

16 THE COURT: I thought you said he was his
17 roommate, he recognized his face and -- and he --

18 MS. CORNWELL: Your Honor --

19 THE COURT: -- recognized the voice and he
20 didn't have any question it was him.

21 MS. CORNWELL: No, sir.

22 THE COURT: Is that right or is that wrong?

23 MS. CORNWELL: Your Honor, it's a dark dirt
24 road. The victim --

25 THE COURT: Well, answer my question first and

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 then I'll listen to your argument.

2 MS. CORNWELL: He recognized the voice and then
3 he was able to confirm the voice by seeing the GPS
4 monitor on his ankle.

5 THE COURT: My question is did he recognize --
6 did he recognize Mr. Clark [sic] because of his voice,
7 because of his build, because he knew him, or did he
8 recognize him because of the ankle monitor --

9 MS. CORNWELL: Your Honor --

10 THE COURT: -- or did he find out about the
11 ankle monitor after the fact?

12 MS. CORNWELL: No, sir, Your Honor. He will
13 testify. He's here to testify, if you want to elicit
14 testimony from him, that he knew it was Mr. Newman
15 with the monitor. He then also recognized the voice.

16 Mr. Newman has a brother who is of similar age,
17 similar build, similar height, that has a similar-
18 sounding voice as well. He was also identified in
19 this. It was later found out that he was not a part
20 of this.

21 So the ankle monitor actually goes to the
22 identification of this person --

23 THE COURT: Well, how did he know he had an
24 ankle monitor?

25 MS. CORNWELL: Because he used to be his

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 roommate.

2 THE COURT: What?

3 MS. CORNWELL: He used to be his roommate and so
4 he was aware --

5 THE COURT: Well, was the ankle monitor on when
6 they were roommates?

7 MS. CORNWELL: Yes, Your Honor.

8 THE COURT: How long had it been on?

9 MS. CORNWELL: I'm not sure how long the ankle
10 monitor had been on. He was roommates with him for
11 about two months, Your Honor.

12 THE COURT: Okay. All right.

13 MS. CORNWELL: And it's the State's position
14 that it not only goes to identification, it goes to an
15 element of the crime in showing that it was this
16 actual suspect and not one of the other two or three
17 suspects that were there.

18 And it's -- I understand that the defense wants
19 to stipulate. It's the State's position that it's a
20 part of our case-in-chief and we get to prove that
21 evidence. It's more probative than prejudicial. I
22 understand that he's concerned about the bonding
23 company. The State will stipulate that we have
24 advised all of our witnesses not to mention that it's
25 a bonding company or anything other than a GPS monitor

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 company.

2 That can be taken in many different ways. As
3 Your Honor knows, GPS can be in things such as
4 watches, it can be in cell phones. So the fact that
5 there is a GPS that places him there is not
6 necessarily incriminating. It does not bring into
7 question his prior record. The State would not bring
8 into his prior record, nor the fact that it was a
9 bonding company.

10 The State will stipulate that we will just
11 elicit testimony that he was being monitored by a
12 monitoring company.

13 MR. CHAD SHELTON: Your Honor, well, one, I
14 think jury -- in the jury -- when the jury was being
15 picked, here was -- Mr. Ballard was mentioned as a
16 bondsman, so that's already out to the jury that
17 there's a bondsman witness in this case. So I don't
18 think that that would cure that.

19 Your Honor, in addition, the GPS is not on his
20 wrist, it's not in his cell phone, it's on his ankle.
21 That's why they want to try to put it in. So Your
22 Honor, not -- a normal jury member is not going to
23 have this ankle monitor -- and especially with the
24 media, everything goes in the newspaper -- they're
25 going to realize -- they're going to think that he's a

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 criminal, a bad person, just from that ankle monitor
2 and that is going to take away that cloak of
3 innocense, Your Honor. And I ask that that -- that
4 part of the ankle monitor not be allowed in.

5 And with the newspaper: Mr. Ballard was in the
6 newspaper yesterday. Or Sunday? Sunday newspaper --

7 THE COURT: Who was in the newspaper?

8 MR. CHAD SHELTON: It was the solicitor's office
9 is bringing -- in Charleston is bringing --

10 MS. LITTLEJOHN: Was challenging the GPS.

11 MR. CHAD SHELTON: Challenging the GPS monitor
12 on bonds --

13 THE COURT: Well, that was on the passive GPS, I
14 think, not the active GPS. I don't know. That's
15 neither here nor there.

16 MR. CHAD SHELTON: But it -- but it --

17 THE COURT: Well, what's that --

18 MR. CHAD SHELTON: Anyway, Your Honor --

19 THE COURT: -- got to do with this?

20 MR. CHAD SHELTON: -- it's in the media, it's --

21 MS. LITTLEJOHN: It's all over the media.

22 Mr. Ballard's name was mentioned in it, Your Honor.

23 MR. CHAD SHELTON: Ankle monitor is not the same
24 as a GPS on a watch. And she's specifically trying to
25 get the ankle in.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: All right. I'll be perfectly honest
2 with you. Until I hear the victim, Mr. Mendoza's,
3 testimony -- I'm going to have to listen to it and
4 make a determination whether it's essential to her
5 case or not essential. And I'm going to have to do
6 that in camera because, you know, she may tell me one
7 thing, you may tell me something else, and it may not
8 come out like that.

9 So the only thing I know to do is I'll take it
10 under advisement.

11 And when you get to the ankle-monitor issue,
12 solicitor, let me know, we'll send the jury out, and
13 I'll listen to it in camera and then make a ruling on
14 his motion to suppress the ankle monitor. Okay?

15 MS. CORNWELL: Thank you, Your Honor.

16 THE COURT: I just don't know what else I can
17 do. It's hard to make a decision on these in a vacuum
18 because y'all may think he's going to say one thing
19 and he says something else.

20 MR. CHAD SHELTON: Right. Yes, Your Honor. And
21 it may become more clear after opening.

22 THE COURT: Now, solicitor, since I've got it
23 under advisement, don't mention any ankle monitor in
24 opening statements tomorrow. Okay?

25 MS. CORNWELL: Yes, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 THE COURT: Okay?

2 MS. CORNWELL: Yes, Your Honor.

3 THE COURT: All right.

4 MS. CORNWELL: I believe we can elicit that
5 testimony. Mr. Mendoza is here.

6 THE COURT: I understand. But that may change.
7 Let me listen to the testimony of what transpired,
8 what he saw, what he knew and what he didn't know.
9 Okay?

10 I've just got questions about whether it's
11 essential to your case. And if it's not that
12 essential, yes, I think it is prejudicial under the
13 403 balancing act. Okay? So I'm going to have to
14 listen to that before I make a decision.

15 MS. CORNWELL: Can we agree that if the monitor
16 is not allowed in, that they're going to stipulate to
17 his being at the scene at the time?

18 THE COURT: He said he would do that, yes.

19 MR. CHAD SHELTON: Yes, sir.

20 MS. CORNWELL: So in my opening, can I state
21 that --

22 THE COURT: You can say that the defendant
23 acknowledges that he was present, yeah.

24 MS. CORNWELL: Okay. Thank you, Your Honor.

25 THE COURT: But just don't mention the monitor.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 That's all I'm saying. Say what you want, but just
2 don't mention any ankle monitor. Okay?

3 MS. CORNWELL: Yes, Your Honor.

4 MR. CHAD SHELTON: I'll say that, too, Your
5 Honor.

6 THE COURT: Okay.
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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

MOTION TO SUPPRESS

THE COURT: All right. Anything else?

MS. CORNWELL: Your Honor, the only other motion that the State would have is just on prior bad acts of the victim.

The victim's only prior conviction is a 2011 burglary in the third degree.

THE COURT: Burglary third?

MS. CORNWELL: Yes, Your Honor.

THE COURT: Okay.

MS. CORNWELL: That occurred after this incident. The conviction was after the incident. The actual incident took place prior to the incident.

The State would stipulate that it has -- the burglary third is not a crime of moral turpitude, it's not a crime of honesty, and therefore it's --

THE COURT: What's the max time on it?

MS. CORNWELL: It's a zero to five years.

THE COURT: Huh?

MS. CORNWELL: Zero to five years, Your Honor.

THE COURT: A year to five; right? So it doesn't qualify under convictions? I was trying to find the code section -- I mean, the statute real quick.

MS. CORNWELL: Only if its probative value is

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 more than its prejudicial value.

2 The State would stipulate that --

3 THE COURT: Well, you've always got a 403
4 balance, even if it applies --

5 Under time limit it says rule 403, if punishable
6 by death -- and it says if a crime is punishable by
7 death or imprisonment more than a year, it's
8 admissible unless it outweighs the prejudicial effect.

9 I mean, if it's more than a year, it's
10 admissible.

11 MS. CORNWELL: Yes, Your Honor.

12 We would argue that it's more prejudicial than
13 probative. There's no reason to bring it -- I think
14 he had a burglary third as it relates to an armed
15 robbery, kidnaping, assault and battery. It's just --
16 it would just be brought out to taint the jury as to
17 painting the victim as a bad person.

18 THE COURT: Well, I'm sure that's why they're
19 saying it. There's no doubt about it.

20 But the question is the rule allows it in.

21 MS. CORNWELL: I would say that it's more
22 prejudicial than probative and you should rule that it
23 should not be allowed in.

24 THE COURT: Well, there again, I guess I'll just
25 have to listen to the testimony at the time and make a

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 decision.

2 That's the only thing he has is that one crime?

3 MS. CORNWELL: Just the one burglary.

4 THE COURT: I assume y'all are planning on
5 bringing it out when he takes the witness stand on
6 cross? One of you?

7 MR. CHAD SHELTON: Absolutely, Your Honor.

8 THE COURT: What's your argument -- what's your
9 position on the 403 balancing act, which is part of --
10 which is part of 609(a)(1).

11 MR. CHAD SHELTON: Your Honor, it also goes to
12 bias -- bias, prejudice, or any motive to misrepresent
13 may be shown to impeach the witness either by
14 examination of the witness or by evidence otherwise
15 produced.

16 Your Honor, he was charged burg second and then
17 he becomes a victim and now he gets one-year
18 probation. So, Your Honor, I believe right there is
19 bias and reason to lie. And that's -- Your Honor,
20 that, in and of itself, is reason that it should be
21 allowed in.

22 THE COURT: Well, what do you plan on going into
23 other than the conviction?

24 I mean, if you ask him were you convicted of a
25 burglary third on such and such a date and he says

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 yes, that's the end of the ball game. Or are you
2 planning on going into more?

3 MR. CHAD SHELTON: Yes, Your Honor.

4 THE COURT: What do you plan on going into?

5 MR. CHAD SHELTON: I plan on going into what he
6 was originally charged with, what he could have been
7 charged with, which based off the incident reports is
8 a burglary in the first degree because there was a
9 mention of a gun. And after he became a victim, he
10 then was given one-year probation.

11 THE COURT: Well, you don't -- okay. Wasn't
12 there a recent case that just came down on the plea
13 bargaining issue, solicitor?

14 MS. CORNWELL: Yes, Your Honor.

15 THE COURT: What did it say?

16 MS. CORNWELL: I believe off the top of my head,
17 Your Honor, if any plea bargains are worked out or
18 negotiated and it --

19 THE COURT: And all that was admissible on
20 cross, I believe, isn't it?

21 MS. CORNWELL: On cross.

22 THE COURT: Yeah. But was --

23 MS. CORNWELL: But that was for codefendants,
24 Your Honor.

25 THE COURT: I understand.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 But was this -- was there any negotiation
2 involved in --

3 MS. CORNWELL: There was not, Your Honor --

4 THE COURT: -- plea bargaining involved in this?

5 MS. CORNWELL: There was not, Your Honor, not as
6 it relates to this case.

7 Actually, Mr. Shelton was the assistant
8 solicitor that handled that matter and he was -- he
9 didn't even -- he was not even involved in this case
10 until this week. Ms. Williams was going to sit with
11 me on this case, she got pulled away, so at the last
12 second he came on this case. He was in no way
13 involved in this case. He didn't even know that Mr.
14 Mendoza was a victim in my case. There were no
15 negotiations made on behalf of that victim for this
16 case.

17 It's my understanding that the victim in that
18 case requested PTI. It was a neighbor, a friend, and
19 there was a falling out and that's when the charges
20 were made. The victim asked for PTI. We can't put
21 PTI -- burglaries in PTI. So, in fact, he actually
22 got punished more than what the victim wanted him to
23 be punished for initially.

24 As far as what he was originally charged with, I
25 think that that is extremely prejudicial and goes

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 nothing towards what the rule states. The rule states
2 a conviction.

3 THE COURT: Well, he's not going to -- he's not
4 going to go into that. Okay?

5 MS. CORNWELL: Okay.

6 THE COURT: If he pled guilty to burglary third,
7 that's what he goes into. Not what he was charged
8 with.

9 MS. CORNWELL: But it's the State's position
10 that -- like I said, Mr. Shelton and I worked
11 extemporaneously on each of these cases. I wasn't
12 aware -- or he wasn't aware that I was working on a
13 case with Mr. Mendoza as a victim; I wasn't aware he
14 was working on a case where Mr. Mendoza was a
15 defendant. It had nothing to do with any negotiations
16 or any involvement in the case.

17 THE COURT: Okay. All right.

18 MR. CHAD SHELTON: Your Honor, it is the same
19 office.

20 THE COURT: I'm sorry. What?

21 MR. CHAD SHELTON: The same office and the
22 solicitor that's working on this case.

23 THE COURT: Well, I understand that.

24 But unless you've got -- unless it was something
25 to do with this case and you can prove that, I just

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 don't know why you should be allowed to go into it.

2 I'm going to allow you to ask him was he
3 convicted of such-and-such and such-and-such to date
4 and if he says yes, that's going to be the end of it.

5 MR. CHAD SHELTON: Well, Your Honor --

6 THE COURT: I'm not going to allow you to go
7 into what he was originally charged with.

8 Now, unless there was some -- you've got some
9 evidence that they said, hey, if you testify in this
10 case, we'll put you on probation in the other case.
11 And the solicitor just said that didn't happen.

12 I don't know how it should be allowed in this
13 case because all of the other cases involved plea
14 negotiations, codefendants, and people testifying at
15 trial on a particular crime of which they're charged
16 with. And under that scenario -- yeah, if that was
17 the scenario I would allow it.

18 MR. CHAD SHELTON: Your Honor, could I -- before
19 the decision is made, could I have a chance to review
20 case law on that?

21 THE COURT: Yeah. I'm not --

22 MR. CHAD SHELTON: I believe --

23 THE COURT: I'm just asking you questions and
24 telling you my thoughts so I don't blind-side you at
25 trial.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. CHAD SHELTON: I believe --

2 THE COURT: You can find whatever you want to
3 find. I'll give you an opportunity to change my mind.
4 I haven't made it up completely.

5 MR. CHAD SHELTON: And I believe it goes to what
6 his -- what his thinking would be if he -- why he
7 would want to continue to be a victim in this case.
8 Because it would help this case out. And so I will --
9 I will look into the case law about that.

10 THE COURT: Look deep. Okay?

11 MR. CHAD SHELTON: Yes, Your Honor.

12 THE COURT: All right. You were standing up.
13 What do you want to add? You're about to --

14 MR. BIERING: He covered it, Your Honor, so
15 there's no reason for me to say the same --

16 THE COURT: Pardon?

17 MR. BIERING: He covered the exact thing I
18 wanted to cover, so there's no reason for me to repeat
19 what he just said.

20 THE COURT: Okay.

21 MR. BIERING: Thank you.

22 THE COURT: All right. You were standing. What
23 do you want to add?

24 MR. BEN SHELTON: I just wanted to place on the
25 record exactly basically what Ashley said regarding

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 that previous incident.

2 If my memory serves me, I don't remember
3 anything about him being a victim. I don't remember
4 anything about this other case. What I remember is I
5 had a bunch of stack of files. When I first came to
6 the office, this is one of the cases I worked out was
7 a burglary second charge and I pled him to a burglary
8 third because he had no prior record. And the
9 recommendation was for probation. Not a specific time
10 of probation: for probation. And I can review those
11 notes and make sure that's correct before I go in
12 front of the Court and say -- just so -- I know that
13 it might not be germane to the whole hearing, but just
14 so the Court has all the information that it deems
15 necessary.

16 THE COURT: I mean, what I don't understand is
17 how can you sit there and say, hey, the State's going
18 to say, hey, friend, if you'll stay a victim because
19 we really want to prosecute this case, we'll cut you a
20 deal in your criminal case. I mean, I just -- that
21 doesn't -- I know they've got enough to do without
22 worrying about that kind of stuff.

23 I just don't see where what you said happened,
24 happened. It's just illogical. It's not logical that
25 it would happen.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. CHAD SHELTON: And I'll leave it at that.

2 THE COURT: I'll give you an opportunity to look
3 -- find us some cases.

4 MR. CHAD SHELTON: But one of my -- one of my
5 theories in the case was that he wasn't going to plan
6 on being a victim, Your Honor, at first. So that's
7 one of my theories in the case.

8 THE COURT: So your theory is that he trumped up
9 these charges so the solicitor has some work to do?

10 MR. CHAD SHELTON: That's one of my theories,
11 Your Honor.

12 THE COURT: Oh, okay. Like they don't have
13 enough to do?

14 MR. CHAD SHELTON: Well, not for -- for himself,
15 Your Honor. For himself.

16 THE COURT: Oh, okay.

17 MR. CHAD SHELTON: So that he could look --

18 THE COURT: So you think --

19 MR. CHAD SHELTON: -- as a victim.

20 THE COURT: You think if I've got a charge
21 against me and I run in the solicitor's office and
22 say, hey, I'm a victim in this case, y'all need to
23 prosecute it, if y'all prosecute it, then you can
24 reduce my charge -- does that make sense? Because
25 that's what you're telling me.

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. CHAD SHELTON: To make him look like a
2 better person, to look like a victim instead of a
3 horrible --

4 THE COURT: You think they're going to feel
5 sorry for him?

6 MR. CHAD SHELTON: Your Honor, it was reduced
7 from a possible burg first, because there was
8 allegations of guns, to burg third.

9 THE COURT: I'll give you the opportunity --

10 MR. CHAD SHELTON: I think it worked.

11 THE COURT: I'll give you the opportunity to
12 find me some cases. Okay?

13 MR. CHAD SHELTON: Yes, Your Honor.

14 THE COURT: Anything you want to add in light of
15 what I just said?

16 MR. BIERING: No, Your Honor.

17 THE COURT: Is that your theory, too?

18 MR. BIERING: I'll hold until tomorrow.

19 THE COURT: Pardon?

20 MR. BIERING: I was -- I've talked enough today.
21 I'll hold until tomorrow.

22 THE COURT: But do you think that's logical --

23 MR. BIERING: I've got a different theory --

24 THE COURT: -- that a victim is going to run in
25 and say, hey, I'm a victim so --

State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

1 MR. BIERING: Judge --

2 THE COURT: -- since I'm a victim, you've got to
3 reduce my charge from second to third?

4 MR. BIERING: Judge, I don't want --

5 THE COURT: That's ludicrous.

6 MR. BIERING: I don't want -- I don't want to
7 make comment -- I don't have to rule on his position,
8 so I don't want to make comment about that. I'll have
9 a position tomorrow when it's argued, Judge.

10 THE COURT: All right. Anything else before we
11 adjourn?

12 MS. CORNWELL: Nothing from the State, Your
13 Honor.

14 THE COURT: All right. We'll adjourn until 9:30
15 in the morning.

16 MR. BEN SHELTON: Thank you, Your Honor.

17 MR. BIERING: Thank ybu, Judge.

18 THE COURT: Thank you.

19 [JURY TRIAL ADJOURNS AT 4:30 P.M.]

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State v. Newman and Clark
Jury Trial - Volume 1 of 4
September 10, 2012

C E R T I F I C A T E

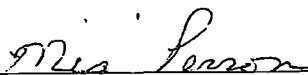
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, Jr., on Monday, September 10, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 25th day of December, 2012.


Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-155-

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF BERKELEY) CASE NO.: 2011-GS-08-0453
 2011-GS-08-1671
 2011-GS-08-1672

THE STATE OF SOUTH CAROLINA)
)
 VS.)
)
)
 RYAN CARL NEWMAN and)
 JESSICA CLARK,)
)
 DEFENDANTS.)
 _____)

JURY TRIAL

VOLUME 2 OF 4

held before the Honorable J.C. Nicholson, Jr.
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Berkeley County Courthouse
 Moncks Corner, South Carolina
 on Tuesday, September 11, 2012, Commencing at 9:36 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	162
OPENING STATEMENT BY MS. CORNWELL	170
OPENING STATEMENT BY MR. CHAD SHELTON	174
OPENING STATEMENT BY MR. BIERING	178
LUZ RODRIGUEZ	
Direct Examination by Ms. Cornwell	182
Cross-Examination by Mr. Chad Shelton	188
Cross-Examination by Mr. Biering	191
ANDRE MENDOZA	
Direct Examination by Ms. Cornwell	207
Proffer by Ms. Cornwell	215
Proffer by Mr. Chad Shelton	218
Proffer by Ms. Cornwell	221
Proffer by Mr. Chad Shelton	222
Continued Direct Examination by Ms. Cornwell	250
Cross-Examination by Mr. Chad Shelton	268
Proffer by Mr. Chad Shelton	284
Proffer by Mr. Chad Shelton	298
Proffer by Mr. Biering	304
Proffer by Ms. Cornwell	360
Continued Cross-Examination by Mr. Chad Shelton	362
Cross-Examination by Mr. Biering	379
CERTIFICATE OF COURT REPORTER	449

INDEX TO EXHIBITS

[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

DEFENDANT NEWMAN'S EXHIBITS

Defendant Newman's Exhibit Number 1 [Facebook Page]	274 / 369
Defendant Newman's Exhibit Number 2 [Facebook Page]	274 / 369
Defendant Newman's Exhibit Number 3 [Facebook Page]	274 / 369
Defendant Newman's Exhibit Number 4 [Dorchester County Rap Sheet]	367 /

INDEX TO EXHIBITS, continued

[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

DEFENDANT CLARK'S EXHIBITS

Defendant Clark's Exhibit Number 2 [Photograph and Document]	306 / 383
Defendant Clark's Exhibit Number 3 [Photograph and Document]	307 / 383
Defendant Clark's Exhibit Number 4 [Photograph and Document]	308 / 382
Defendant Clark's Exhibit Number 5 [Photograph and Document]	308 / 383
Defendant Clark's Exhibit Number 6 [E-mail Addresses]	322 / 383
Defendant Clark's Exhibit Number 7 [Facebook Page] - ID Only	385 /
Defendant Clark's Exhibit Number 8 [Facebook Page]	395 / 401
Defendant Clark's Exhibit Number 9 [Facebook Page] - Withdrawn	395 /
Defendant Clark's Exhibit Number 10 [Facebook Page] - ID Only	404 /
Defendant Clark's Exhibit Number 11 [Facebook Page] - ID Only	407 /
Defendant Clark's Exhibit Number 12 [Facebook Page] - ID Only	408 /
Defendant Clark's Exhibit Number 13 [Facebook Page] - ID Only	415 /

INDEX TO EXHIBITS, continued

[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

	MARKED/ADMITTED
Defendant Clark's Exhibit Number 14 [Facebook Page] - ID Only	433 /
Defendant Clark's Exhibit Number 15 [Facebook Page] - Withdrawn	433 /
Defendant Clark's Exhibit Number 16 [Group of Photographs] - ID Only	437 /
Defendant Clark's Exhibit Number 17 [Facebook Page] - ID Only	440 /

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

PROCEEDINGS

THE COURT: All right. Is the State ready to proceed?

MS. CORNWELL: Your Honor, just a couple of housekeeping things.

One, I notice the defense didn't give any list of potential witnesses that they were going to call, so we never called anybody out to the jury. Mr. Biering --

THE COURT: Well, I called some names out. I don't know if that was the witnesses.

MS. CORNWELL: I believe that those were all --

THE COURT: I called out Clayton, Hough and Goetz. But they were on your list, also.

MS. CORNWELL: I believe those were State's witnesses.

I know Mr. Biering during the Denno hearing placed a witness on the stand, Ms. Adams. She was not introduced to the jury.

Just if they were going to have any potential witnesses, I would ask that before we swear the jury that we introduce those potential witnesses to the jury members to make sure there's no knowledge or relationship between any of the jurors and potential defense witnesses.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Well, I don't know who the --
2 Who do y'all plan on calling? Is there
3 anybody's name, who I did not call out to the full
4 panel, that you're going to call? Because I had asked
5 for a witness list.

6 MR. CHAD SHELTON: Yes, Your Honor.

7 After some things that happened in the morning,
8 we decided to subpoena the State's investigator. His
9 name was mentioned to the jury --

10 THE COURT: Was his name called out?

11 MR. CHAD SHELTON: -- he stood up.

12 Ms. Cornwell introduced him to the jury, yes,
13 Your Honor. So he was --

14 THE COURT: Are you planning on using any
15 witnesses whose names I did not call out to the jury
16 full panel?

17 MR. CHAD SHELTON: None other than that person
18 that I -- that I subpoenaed, Your Honor.

19 I don't know if Mr. Biering has --

20 MR. BIERING: Your Honor, potentially, based on
21 the testimony of the lieutenant, it's possible that
22 Ms. Adams could be called to the stand.

23 THE COURT: It's what, now?

24 MR. BIERING: It's possible that Ms. Adams could
25 be called to the stand.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Well, why didn't y'all give me her
2 name when I asked for a witness list? Because you're
3 supposed to give me all potential witnesses so I can
4 at least ask the panel do they know them.

5 MR. BIERING: Your Honor, I didn't. And I --

6 THE COURT: Okay. Was that just a --

7 MR. BIERING: -- I apologize.

8 THE COURT: Was that just an error?

9 MR. BIERING: It was an error.

10 THE COURT: Okay. Well, if you do decide to
11 call her, I'll deal with it with this panel. Okay?

12 MR. BIERING: Thank you, Your Honor.

13 THE COURT: Okay. If you do decide to call her.

14 MR. BIERING: Thank you, Your Honor.

15 THE COURT: Okay. Anything else?

16 MS. CORNWELL: The State, we understand the
17 sequestration rule is in place. I was unaware that
18 Mr. Shelton was going to subpoena Mr. Roston
19 [phonetic], who is my investigator who's helped me out
20 with this trial, so we have decided to make Mr. Roston
21 [phonetic] our case agent.

22 THE COURT: Rather than Lieutenant Ashe?

23 MS. CORNWELL: Rather than Lieutenant Ashe, let
24 Lieutenant Roston [phonetic] stay in.

25 THE COURT: Okay. That's fine. That's fine.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MS. CORNWELL: Just briefly.

2 Yesterday when we were arguing motions, at one
3 point Ms. Littlejohn and Mr. Shelton both stood up to
4 argue motions. The State would just request that if
5 motions are going to be heard, one attorney do each
6 motion so we're not --

7 THE COURT: That's my discretion. I'll let all
8 three attorneys argue, if I so choose. Okay?

9 MS. CORNWELL: Thank you, Your Honor.

10 THE COURT: That's not a hard and fast rule.
11 That's strictly up to the Court's discretion. I know
12 the rules said only one attorney, but I think if I
13 decide I want to hear from all three, I'll ask all
14 three to hear [phonetic] us. Okay? So, no, I'm
15 not -- you're not going to bind me to that. Okay?

16 MS. CORNWELL: Thank you, Your Honor.

17 THE COURT: All right. Anything else?

18 MR. BIERING: Your Honor, just --

19 THE COURT: If I want to hear from any of them,
20 I'll ask them. Okay?

21 MS. CORNWELL: And the State understands that.

22 I would just ask that they speak individually,
23 one at a time, as opposed to at the same time.

24 THE COURT: Well, I don't have any problem with
25 that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MS. CORNWELL: That's all. That's the only
2 request that I'm making, Your Honor.

3 THE COURT: Okay. You're talking about not
4 interrupting.

5 MS. CORNWELL: Correct.

6 THE COURT: I'll deal with that, if they
7 interrupt. Okay?

8 MS. CORNWELL: Thank you, Your Honor.

9 MR. BIERING: Just, Your Honor, that our defense
10 is separate and independent from Mr. Newman's. And
11 certainly just point that out. I know that -- I know
12 that the State is not suggesting that somehow or other
13 only one person from the entire defense team will --

14 MS. CORNWELL: No.

15 THE COURT: No, she's not suggesting that.

16 MR. BIERING: Thank you.

17 THE COURT: I thought she was saying that I
18 couldn't let two or three of y'all make arguments on
19 motions or objections, but she's saying she doesn't
20 want y'all interrupting each other.

21 MR. BIERING: Thank you.

22 THE COURT: Correct?

23 MS. CORNWELL: Yes, Your Honor.

24 THE COURT: I misunderstood. I apologize.

25 MS. CORNWELL: That's okay. Thank you, Your

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11,, 2012

1 Honor.

2 MS. LITTLEJOHN: Yes, Your Honor, with regard to
3 the sequestration --

4 THE COURT: Well, first, anything else from the
5 State?

6 MS. CORNWELL: No, Your Honor.

7 THE COURT: Okay.

8 MS. LITTLEJOHN: Yes, Your Honor.

9 With regard to the sequestration motion:
10 yesterday when the State asked about the lead
11 investigator, Officer Ashe was allowed to remain in.
12 As your recall, he was in here. Everyone else who was
13 not was sequestered. By the actions that would
14 indicate, by allowing him to remain, that he was
15 designated by the State as the lead investigator.

16 THE COURT: Well, she's changed her mind now.
17 We haven't started the trial yet. Okay? Yesterday
18 was motions and she kept Ashe in here. She's going to
19 let her investigator remain. And that's fine. I
20 don't have a problem with that.

21 We haven't even started the trial yet, so
22 sequestration is really not an issue. Normally,
23 sequestration is about the jury. What's your problem?

24 MS. LITTLEJOHN: Well, we were just going to
25 ask, then, will it be Ashe and --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Ashe is being sequestered and she's
2 keeping her investigator in here, which I think she's
3 entitled to do.

4 MS. LITTLEJOHN: Okay. Thank you, Your Honor.

5 THE COURT: Okay? But Ashe will be sequestered.
6 Correct, solicitor?

7 MS. CORNWELL: Yes, Your Honor.

8 THE COURT: Are you asking me to bring Ashe in
9 and sequester her investigator? What are you asking
10 me to do?

11 MS. LITTLEJOHN: We were -- just wanted to make
12 clarification on that, since by the actions yesterday
13 it would appear that -- he was not sequestered
14 yesterday.

15 THE COURT: I understand. But he is now.

16 MS. LITTLEJOHN: Correct.

17 THE COURT: Okay? All right. Anything else
18 before we bring the jury?

19 MR. BIERING: Nothing from Defendant Clark, Your
20 Honor.

21 MR. CHAD SHELTON: Nothing from --

22 THE COURT: Okay. Bring us the jury, please.

23 [Whereupon, the jury enters the courtroom at
24 9:42 a.m.]

25 THE COURT: Let me see. Rachel Morga? Where

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 are you? I'm going to appoint you forelady. If
2 you'll swap seats, please, ma'am, with this gentleman.

3 MS. MORGA: Thank you.

4 THE COURT: Ms. Morga, if you'll always sit in
5 that chair as forelady. And the alternates I believe
6 are sitting down at the far end. The rest of you,
7 wherever you sit is up to you. Okay?

8 Madam Clerk, if you will swear the jury, please.

9 THE CLERK OF COURT: Madam Forelady and ladies
10 and gentlemen of the jury, please stand and raise your
11 right hands to be sworn.

12 [Whereupon, the jury is duly sworn by the clerk
13 of court as follows: you shall well and truly try and
14 true deliverance make between the State of South
15 Carolina and the defendant at the bar, whom you shall
16 have in charge, a true verdict render according to the
17 evidence, so help you God]

18 THE CLERK OF COURT: Say I do.

19 [Whereupon, jurors respond]

20 THE CLERK OF COURT: Please be seated.

21 THE COURT: Solicitor?

22 MS. CORNWELL: Thank you, Your Honor. May it
23 please the Court?

24 THE COURT: Yes, ma'am.

25 MS. CORNWELL: Counsel.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

OPENING STATEMENT

1
2 MS. CORNWELL: January 6th of 2011 is a night
3 that Luz Rodriguez will never forget. Because on that
4 night she kissed her son goodnight, and told him to
5 stay inside, and then went to bed. Several hours
6 later, she is awoken by a beating at the door. She
7 went to the door and she found her son in nothing but
8 his boxer shorts, beaten, crying, shivering, thirty-
9 degree weather.

10 It's a mother's worse nightmare. In her
11 opinion, her son could have been killed. And that's
12 because that defendant, Jessica Clark, sought her son
13 out online through facebook, arranged to meet him
14 under the promise of sex, drove him out on a dirt road
15 where that defendant [indicates] took a gun, pistol-
16 whipped him, beat him, stripped him naked, and robbed
17 him of his car keys, his wallet, his cell phone, and
18 all of his clothes. He then jumped in her car with
19 the rest of his friends and they drove off back to his
20 house, leaving the victim, Andre Mendoza, beaten,
21 bruised, naked, in the middle of January, in the
22 middle of the night, lying on the dirt road.

23 The defendants have been charged with armed
24 robbery, kidnaping, possession of a weapon during the
25 commission of a violent crime, and assault and battery

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 in the first degree. It's the State's burden of proof
2 to prove each and every element of each and every one
3 of those charges. And we will do that.

4 We will prove to you that when that defendant
5 lured Mr. Mendoza into her car under the promise of
6 sex, she kidnaped him. We will prove to you that when
7 that defendant drove him down that dirt road where
8 that other defendant was waiting and he put a gun to
9 the back of Mr. Mendoza's head and forced him to get
10 out of the car, he also kidnaped Mr. Mendoza.

11 You'll hear that when he hit him in the head
12 with a gun, and as he was laying on the ground
13 repeatedly kicking him, he committed assault and
14 battery second -- an assault and battery first.

15 And you will also hear that when he took his
16 keys, his wallet, his money and his clothes, he robbed
17 him.

18 The State is going to present testimony
19 regarding all those facts, and at the end of the day
20 you will be asked to find those defendants guilty.

21 The defense attorneys are going to get up here
22 and they're going to try to muddy the waters. They're
23 going to try to confuse you on the issues. Don't let
24 them do that. As long as you pay close attention to
25 the evidence and the testimony as it's presented to

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 you, I'm quite certain that you will agree that those
2 defendants committed these acts.

3 You're going to hear a lot of law, and the judge
4 is going to instruct you on the law at the end of
5 this, but there are a couple of things that I want you
6 to keep in mind when you're considering the law. The
7 most important thing is what's called the hand of one
8 is the hand of all. And what that means is that not
9 everybody involved has to do every element of every
10 crime involved, but if they're involved in some way,
11 if they're there, if they have helped aid and abet
12 that crime, then they are also guilty of the crime.

13 You're also going to hear about reasonable
14 doubt. Reasonable doubt is just that; it's a
15 reasonable doubt. But if you are clearly convinced
16 that these defendants did something, then there is no
17 reasonable doubt.

18 At the end of the day, I feel quite certain that
19 you are going to find that those defendants conspired
20 together to set up this victim, and by doing that they
21 committed an armed robbery, they committed a
22 kidnaping, they've committed an assault and battery in
23 the first degree and they've committed the crime of
24 possessing a firearm during the commission of a
25 violent crime.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Who would like to go first?

2 MR. CHAD SHELTON: I would, Your Honor.

3 THE COURT: Okay.

4 MR. CHAD SHELTON: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. CHAD SHELTON: Ms. Cornwell, Mr. Shelton.

7 THE COURT: Mr. Shelton, just excuse me just a
8 second.

9 Ladies and gentlemen of the jury, in this
10 particular case the defendants are being tried
11 together and each one will be -- have an attorney
12 representing them. Their cases will be separate and
13 you'll have to make a determination of innocence or
14 guilt on both defendants -- not together, but
15 independently of each other -- and what the State
16 proves against each defendant. You can find one
17 guilty, one -- or both guilty or both innocent or one
18 innocent and one guilty. That's strictly up to you.
19 But there are two defendants and you're going to have
20 to look at their cases as separate cases, even though
21 we are trying them together.

22 Please proceed.

23 MR. CHAD SHELTON: Thank you, Your Honor.

24 - - -

25 - - -

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11,, 2012

OPENING STATEMENT

1
2 MR. CHAD SHELTON: That's what I'm talking
3 about. I like that. Heard the Toby Keith song? Not
4 about a lookout, not about a hangout, it's about
5 tonight [phonetic].

6 I went to a small college up in northwest
7 Indiana. I was the first in my family to go to
8 college. My parents didn't go. And my brothers -- I
9 was the oldest of four brothers. So I didn't know
10 that college was actually a three-day weekend, Friday,
11 Saturday, Sunday. And so there were parties Thursday
12 night, Friday night, Saturday night.

13 Well, I made an error I probably didn't make the
14 rest of my four years and that was I got a nine
15 o'clock class on Friday morning. So the interesting
16 thing about nine o'clock class on Friday morning is
17 not as you're going but, as you're coming back, you
18 see on my dorm room -- we had to stay in our dorm
19 rooms for three years before we could live off campus.

20 In my dorm area, all boys, you see some females
21 leaving boys' rooms, clothes all messed up, and the
22 night-before hair all messed up. You see guys leaving
23 from the girls' dorms, same clothes from the night
24 before, hair is all messed up. I didn't understand
25 exactly what that was about. I was a little naive

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 still.

2 I played football and Saturday mornings we had
3 our breakfast. And I noticed that all the older guys
4 were sitting by the windows so in the morning when
5 we're having our breakfast, they could see the females
6 walking out, who was coming from where. Like I said,
7 it was a small college. You kind of knew everybody.
8 You kind of knew what -- who the people were when you
9 see the guys leaving. They called that the walk of
10 shame. And it's a complete double standard. Be
11 honest. I mean, the females were thought of as
12 somebody that was promiscuous. The males were given a
13 pat on the back, you know. .

14 So Andre had to complete a walk of shame. The
15 problem was, the difference is, Andre was not at
16 college. Andre was living with his mom. He shows up
17 in his underwear. He's got -- he's embarrassed. He's
18 in his underwear. His mom is there and his mom has to
19 let him in. So he's embarrassed.

20 To make things worse, the next day he goes to a
21 friend's house, the friend that pulled him out of the
22 car, and he sees the car of the person that he was
23 going to be with that night. So now the sex was never
24 ever going to happen. Now he's really embarrassed.

25 I don't know about y'all, but I've made some

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 things up when I've been embarrassed, really
2 embarrassed. I was trying to think of a good example.
3 The best I could have was middle school. Everybody's
4 hormones are raging in middle school, starting to like
5 girls, starting to like guys. And at my school we had
6 this thing where you go and pick Jane and Joe, kissing
7 in a tree, K-I-S-S-I-N-G, first comes love, first
8 comes marriage, then comes the baby carriage. Right?
9 Well, our friends -- my friends would do that a lot.
10 They would say that and they would throw in a girl's
11 name.

12 Well, the girls that really didn't -- were
13 friends or I didn't like as much, it didn't bother me.
14 But I remember the one time. Heather Ritz, that's her
15 name. They put her name in there. And I like her. I
16 liked her five years, six years. So they threw her
17 name in there. And she's standing there right there.
18 I'm embarrassed. And so what do I do? I go to the
19 extreme. No, I don't like her. No, no, no. Well, I
20 made something up. I lied.

21 You're going to hear some testimony from law
22 enforcement. Pay attention to what they did, what
23 they didn't do. You might hear some testimony about
24 how the State tried to build up this case.

25 This is an important case for Ryan. This is the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 most important day of his life. I's an important day
2 for his father, for his friends. Twelve people here
3 to make a decision. It's an important day for him.

4 I'm confident that when you hear the evidence
5 that's going to come from this stand right here,
6 whoever is testifying right here, that you'll find
7 that Ryan did not commit a crime, there was no crime,
8 and you'll find him not guilty.

9 Thank you.

10 THE COURT: Yes, sir.

11 MR. BIERING: Counsel. Your Honor.
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State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

OPENING STATEMENT

1
2 MR. BIERING: Ladies and gentlemen of the jury,
3 my name is Christopher Biering and I'm proud to
4 represent Jessica Clark. This is an important day for
5 her, and it's an important day for her two children,
6 and it's an important day for us really to start
7 looking into the different scenes that are involved in
8 this case.

9 If you really want to understand something,
10 you've got to understand the environment in which it
11 happened. The environment in which this case begins
12 is on facebook. I'm the father of two teenagers. I
13 battle facebook. Madam Solicitor talked about how the
14 origin of this case is in facebook. So if we really,
15 really are going to be allowed to understand what
16 transpired in this case, we're going to have to be
17 allowed into that cyber world of facebook of Andre
18 Mendoza. If we really want to understand what
19 transpired in this case, we are going to have to be
20 allowed into that cyber world, that facebook, of Andre
21 Mendoza.

22 The prosecution in this case has the burden of
23 proof beyond a reasonable doubt. Make no bones about
24 it. At the end of this case, we are going to ask you
25 to find Jessica Clark not guilty on all charges that

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 have been brought by the State.

2 I want you to look at the physical layout of
3 this courtroom. It's very important. There's a table
4 here for the prosecution and a table here for the
5 defense. But I need you to do me a favor. Throughout
6 this trial, I need you to draw an imaginary line right
7 here [indicates]. I might even get some tape and put
8 it there. Because there needs to be three tables
9 here. There needs to be three tables in this
10 courtroom because you've got to look at this case
11 separately, from the defense standpoint, for Jessica
12 Clark and Ryan Newman.

13 If we want to understand what happened on
14 January the 6th of 2011, we're going to have to begin
15 a few days before when Jessica Clark and Andre Mendoza
16 met on facebook. We're going to have to understand
17 that world that Andre Mendoza operated in on facebook.

18 Now, let me be clear about a couple of things.
19 We believe that without any question that the evidence
20 would show that Jessica Clark met Andre Mendoza on two
21 occasions. We don't believe there's any question
22 about that. We believe that the evidence will show
23 that on that second occasion, Andre Mendoza and
24 Jessica Clark desired two things together. We believe
25 that Andre Mendoza, and the testimony from the State's

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012.

1 witnesses will show, that their intent that night was
2 to purchase drugs and have sexual relations.

3 So I stand here and I talk about my client. But
4 that's the reality. The reality is we think the
5 evidence is going to show very clearly that somebody
6 went that night to purchase drugs and have sexual
7 relations. And, no, Andre Mendoza is not my client's
8 husband or the father of her children.

9 Something happened that night. It was very
10 different than the purchase of drugs and sexual
11 relations. You're going to hear, we believe, from the
12 officers that investigated this matter. You're going
13 to hear from Mr. Andre Mendoza. And I hope that you
14 get to know Mr. Andre Mendoza very well through this
15 trial, because if you don't get to know him you'll
16 never be able to understand clearly beyond a
17 reasonable doubt what transpired on January the 6th of
18 2011. If you do not get to know Andre Mendoza very
19 well, you will not be able to know beyond a reasonable
20 doubt what transpired January 6th of 2011.

21 Again, I'm going to ask you at the end of this
22 trial to find my client not guilty of all charges.
23 Thank you for your time, thank you for your attention.
24 And I hope that we get to peek into the world of
25 facebook of Andre Mendoza. Thank you.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Call your first witness, please.

2 MS. CORNWELL: Thank you, Your Honor.

3 The State calls Luz Rodriguez. Luz Rodriguez.

4 [Whereupon, Ms. Rodriguez comes forward]

5 THE CLERK OF COURT: Please raise your right
6 hand. Put your left hand on the Bible.

7 [Whereupon, Ms. Rodriguez is duly sworn by the
8 clerk of court as follows: the testimony you give the
9 Court in the trial of this case shall be the truth,
10 the whole truth, and nothing but the truth, so help
11 you God]

12 THE WITNESS: I do.

13 THE CLERK OF COURT: Please be seated.

14 [Whereupon, Ms. Rodriguez takes the witness
15 stand]

16 THE CLERK OF COURT: State your name and spell
17 your last name for the record.

18 THE WITNESS: My name is Luz Rodriguez.

19 R-O-D-R-I-G-U-E-Z.
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25

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 LUZ RODRIGUEZ,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MS. CORNWELL:

6 Q. Ms. Rodriguez, how old are you?

7 A. Fifty-one.

8 Q. Are you married?

9 A. No.

10 Q. Do you have any children?

11 A. Yes.

12 Q. Where do you live?

13 A. [REDACTED] Summerville, South Carolina,
14 29483.

15 Q. How long have you lived there?

16 A. Since '94.

17 Q. And who lives there with you, currently?

18 A. Me and my three boys.

19 Q. And what are their names?

20 A. Andre Mendoza, Philippe Aucontera, Jr.

21 [phonetic], Juan Madenc Gula [phonetic].

22 Q. And are you involved -- are you aware of one of
23 your son's being involved in an incident that occurred on
24 January the 6th, 2011?

25 A. Yes, ma'am.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Which son was that?

2 A. Andre Mendoza.

3 Q. And Andre is living with you now. At some
4 point, did Andre move out of your house?

5 A. Yes, ma'am.

6 Q. When did he move out?

7 A. It was in August of 2010.

8 Q. And do you know where he moved?

9 A. He moved in with a friend named Ryan.

10 Q. Do you know Ryan's last name?

11 A. Newman.

12 Q. And at some point, did you let him move back in
13 with you?

14 A. Yes, I did.

15 Q. And when did Andre move back in with you?

16 A. October, like the end of October, 2010.

17 Q. And why did Andre move back in with you?

18 A. He asked -- he told me that where he was staying
19 at he was afraid and that he wanted to come back home
20 because he wanted to change his way of being.

21 Q. And the incident that you recall on January the
22 6th, 2011, can you tell the jury what happened that night?

23 A. Yes.

24 That night we were watching TV, me and the three
25 boys. And I got tired. It was something about 11:30. I

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 usually watch the news. I told Andre -- the two boys went
2 to bed early, and I told Andre not to go out, stay home.
3 Andre say, no, mama, I'm not going out but I have a friend
4 that might come over. And I said, Andre, I don't want
5 nobody in the house. He says, we're going to be in the
6 driveway. So I said okay. I went in my bedroom like
7 always, turn on the TV, stay up and watch the news until I
8 fall asleep.

9 That night around -- you could say about 1:30,
10 my -- I heard something banging on the door and I see
11 Andre naked, with just boxers, beat up, crying. All I did
12 is like I opened the door and I looked at him, I got
13 shocked, and I sat down and started crying.

14 Q. And when he appeared on your doorstep, it was
15 the middle of January. Was it cold that night?

16 A. Freezing.

17 Q. And he didn't have a shirt on?

18 A. Nothing but a boxer. No socks. Nothing.

19 Q. Did he have his keys or wallet?

20 A. Nothing.

21 Q. What happened next?

22 A. After that, he asked me -- he asked for my phone
23 and he called the cops.

24 Q. And who responded?

25 A. 911.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Police and ambulance come that night?

2 A. Yes. EMS came that night.

3 Q. And did Andre receive any medical treatment?

4 A. At that moment there, yes.

5 But Andre wouldn't -- Andre didn't want to leave
6 the house, so they took him -- they just saw him there to
7 make sure that he was okay, because he had a bump in the
8 head.

9 Q. And let's go into that. What was his appearance
10 when he came home?

11 A. He was like scared. I mean, he was like dizzy,
12 you know, blurry, but he ran, you know.

13 Q. Did you see any physical injuries?

14 A. Yes.

15 His face was bruised. His arm was scraped. His
16 back was bruised just like he had been kicked.

17 Q. And after police and the ambulance left, what
18 happened?

19 A. Andre asked for the phone and I guess he called
20 someone.

21 Q. Did you leave the house at any time that night?

22 A. Yes.

23 Q. And where did you go?

24 A. It was four o'clock in the morning. I couldn't
25 go back to bed. And I found it so hard to believe that

1 this happened to Andre. And Andre said, mom, it ain't
2 going to happen. And I said, Andre, I can't sleep; I want
3 to go around where the boys live; I want to make sure that
4 girl was -- she wasn't involved.

5 When we went there -- he persisted not for me to
6 go because he said they were dangerous, the boys. I
7 couldn't believe they were that bad. I said, Andre, they
8 can't -- they can't do things like that.

9 So we went around the neighborhood. We got to
10 the corner. To the left-hand side of the houses, down the
11 road to the right, I saw the girl's parked -- burgundy
12 four-door was parked in the driveway.

13 Q. And whose car was that?

14 A. The young lady that took him out.

15 Q. How do you know that that was her car?

16 A. Because before they left, I was in my bedroom.
17 He knew I was still up. I peeked out the -- my blind slat
18 and I saw the car parked in my driveway on the side.

19 Q. What did you do after that?

20 A. We went back home.

21 Oh. I wanted to drive all the way in front of
22 the house but he told me no, that he was too scared to go
23 front of the house.

24 So we went back and we went where the incident
25 happened. He tried to see if he could find his phone, his

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 keys or wallet or something. And when he -- because he
2 was driving. When he drove me, I looked at the place
3 where the -- I said, they brought you here. He say, yeah,
4 this is where everything happened.

5 Q. And what kind of place was that?

6 A. It was a place where -- it's dark.

7 It's like a dark road behind College Park Road.
8 There's a church down the road. And it was dark. I mean,
9 nobody could hear you.

10 Q. And was he able to find any of his stuff on the
11 side of the road?

12 A. He found his shoes, his sneakers. He found
13 that. And after that, we didn't find anything else. We
14 went back home and went to bed. Or I try.

15 Q. Was he able to find his keys or his wallet or
16 his cell phone?

17 A. No, ma'am.

18 Q. After you went back home, did you have anymore
19 involvement in this case?

20 A. No.

21 MS. CORNWELL: Court's indulgence.

22 [Whereupon, Ms. Cornwell and Mr. Ben Shelton
23 confer]

24 MS. CORNWELL: Thank you, Ms. Rodriguez. Please
25 answer any questions defense counsel may have for you.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE WITNESS: Yes.

2 THE COURT: Cross-examination.

3 MR. CHAD SHELTON: Yes, Your Honor.

4 Hi, Ms. Rodriguez. How are you?

5 THE WITNESS: Hi.

6 CROSS-EXAMINATION

7 BY MR. CHAD SHELTON:

8 Q. You had mentioned that Andre was living with
9 you; correct?

10 A. Yes.

11 Q. And how old is Andre?,

12 A. At that time he -- right now he's twenty-eight.
13 That was about twenty-five.

14 Q. Twenty-six --

15 A. Twenty-six, yeah. Twenty --

16 Q. Twenty-six, twenty-seven?

17 A. Yeah.

18 Q. And he moved out in August of 2010?

19 A. Yes.

20 Q. And he moved back October of 2010?

21 A. Yes. The end of October.

22 Q. And the reasoning was he changed his way of
23 being?

24 A. He said he wanted to change his way of being and
25 that he was scared where he was staying at.

MIA PERRON, CVR-CM-M

-188-

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. And he moved out because he got in trouble with
2 the law?

3 A. No. He moved out because I wanted him out.

4 Q. Because he was stealing from you?

5 A. No.

6 Q. You told Andre not to go out that night?

7 A. Yes.

8 Q. He still did?

9 A. He still did.

10 Q. And you were present when the police showed up?

11 A. Yes.

12 Q. He didn't write a statement that night?

13 A. No. They just took pictures of him.

14 Q. And you were present when EMS showed up?

15 A. Yes.

16 Q. And he refused to go to the hospital?

17 A. Yes.

18 Q. And I think your testimony was that at 4:00 a.m.
19 was when he took you to --

20 A. I asked Andre that I wanted to go to Ryan's
21 home.

22 Q. But he -- he was driving?

23 A. Yes, Andre was driving.

24 Q. So he took you to Ryan's home?

25 A. Yes.

1 Q. So he knew it was Ryan right away?

2 A. Yes.

3 Q. And that's when he pointed out the burgundy
4 four-door car?

5 A. Yes. I saw it myself, too.

6 Q. But he was with you?

7 A. Yes.

8 Q. So he would have saw the car --

9 A. Yes.

10 Q. -- also?

11 And then you went out to the where -- to where
12 this took place?

13 A. Yes.

14 Q. And it was dark?

15 A. Yes. Very dark.

16 Q. It was a wooded area?

17 A. Yes.

18 Q. Did you have any flashlights or anything like
19 that?

20 A. Yes.

21 Q. And you said he found his sneakers?

22 A. He found his sneakers, yes.

23 Q. And Andre is still living with you now?

24 A. Yes.

25 Q. And he's changed his way of being?

1 A. A lot.

2 MR. CHAD SHELTON: No further questions.

3 MR. BIERING: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. BIERING:

7 Q. Ms. Rodriguez, you said he wanted to change his
8 way of being?

9 A. Uh-huh.

10 Q. So about how old was he when he moved out of
11 Ryan Newman's home?

12 A. I can't recall, but it's about a year back. He
13 was twenty-six, twenty-seven.

14 Q. So what were the things in his life that needed
15 to change? As a mother, what do you think?

16 A. He needed to stop hanging out with the wrong
17 crowd.

18 Q. Needed to stop hanging out with the wrong crowd?

19 A. Yes.

20 Q. Isn't it true he also needed to stop his
21 involvement in illicit drugs?

22 MS. CORNWELL: Objection, Your Honor.

23 THE COURT: What's your legal objection?

24 MS. CORNWELL: There's no foundation. There's
25 nothing to show that the victim has any illicit drug

1 use.

2 THE COURT: I'll sustain the objection, unless
3 you can lay some foundation of her knowledge.

4 MR. BIERING: Thank you.

5 Q. [Mr. Biering] Ms. Rodriguez, whenever you were
6 at home with your son, was he on facebook?

7 A. No.

8 Q. He didn't utilize facebook while he was living
9 with you?

10 A. Yes, he did.

11 Q. Does he continue to utilize facebook?

12 A. It's his phone because we don't have no computer
13 at home.

14 Q. Does it all on his telephone?

15 A. On his -- everything on his telephone.

16 Q. Have you ever found anything improper in your
17 son's room or clothes?

18 A. No.

19 Q. Have you ever seen any evidence of him being
20 intoxicated? Yes or no.

21 A. No.

22 Q. You've never seen any evidence of him being
23 intoxicated?

24 A. No.

25 Q. And he continues to reside in your home; is that

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 correct?

2 A. Yes.

3 Q. On January the 2nd, 2011, did he reside in your
4 home? Yes or no.

5 A. Yes.

6 Q. On October the 16th of 2011, did he reside in
7 your home? Yes or no.

8 A. Yes.

9 Q. On May the 27th of 2011, did he reside in your
10 home?

11 A. Yes.

12 Q. On August the 11th of 2011, did he reside in
13 your home?

14 A. Yes.

15 Q. December the 20th of 2011, did he reside in your
16 home?

17 A. Yes.

18 MS. CORNWELL: Objection, Your Honor. We've
19 established --

20 THE COURT: What's your legal objection?

21 MS. CORNWELL: Relevance. I think we've
22 established --

23 THE COURT: Overruled.

24 MR. BIERING: Thank you, Your Honor.

25 Q. [Mr. Biering] On November the 17th of 2011, did

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 he reside in your home?

2 A. Yes.

3 Q. On November the 21st of 2011, did he reside in
4 your home?

5 A. Yes.

6 Q. On November the 28th of 2011, did he reside in
7 your home?

8 A. Yes.

9 Q. On December the 29th of 2011, did he reside in
10 your home?

11 A. Yes.

12 Q. On March the 7th of 2011, did he reside in your
13 home?

14 A. Yes.

15 Q. May the 28th of 2011, did he reside in your
16 home?

17 A. Yes.

18 Q. August the 10th of 2011, did he reside in your
19 home?

20 A. I asked him to leave.

21 Q. In August of 2011 you asked him to leave?

22 A. Yeah.

23 We had an argument that day. I asked him to
24 leave.

25 Q. And what was that argument about?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. He wanted to have hangout in my house, friends,
2 and I -- I did not -- I allowed him [phonetic] to bring
3 people over.

4 Q. And what would go on when he would hang out when
5 he was at your house?

6 A. What would go on?

7 Q. Yes, ma'am.

8 A. They wanted to drink and hang out and I told him
9 no.

10 Q. On January the 23rd of 2012, did he reside in
11 your home?

12 A. Yes.

13 Q. Yes?

14 A. Yes.

15 Q. Yes or no. Are you aware of him being
16 prescribed OxyContin?

17 A. No.

18 Q. Yes or no. Are you aware of him being
19 prescribed I believe it's opanas?

20 A. No.

21 Q. I don't think this is possible. But, yes or no.
22 Are you aware of him being prescribed marijuana?

23 A. Yes.

24 Q. He's been prescribed marijuana?

25 A. Well, not prescribed, no. My son will use it.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Your son uses it?

2 A. We do use it, yeah.

3 Q. You use it?

4 A. Not me.

5 Q. Oh. Okay.

6 A. My son, he used to use it.

7 Q. He used to use it?

8 A. Yes.

9 Q. And when did he stop using marijuana?

10 A. He haven't.

11 Q. He hasn't?

12 A. No.

13 Q. And didn't you suggest a minute ago --

14 A. Excuse me?

15 Q. Didn't you suggest a minute ago that that really
16 wasn't going on?

17 A. It wasn't in my home.

18 Q. Not in your home. Okay.

19 Have you ever picked up his phone and his
20 facebook still be logged in?

21 A. I don't know how to get into facebook.

22 Q. Have you ever been to any of the events that
23 he -- well, let me back up.

24 Where is he employed?

25 A. He's not.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. He's not employed?

2 A. No. He does events with his brother.

3 Q. Okay. He does events for his brother?

4 A. Yes.

5 Q. And, you know, I kind of do cases for clients.

6 So he's not employed. He does events for his brother.

7 Does his brother give him money?

8 A. Yes.

9 Q. Yes?

10 A. Yes.

11 Q. Okay. And approximately how much money does his
12 brother give him a week?

13 A. I couldn't recall, because it depends on what
14 they make on that night.

15 Q. And what type of events do they do?

16 A. They do a Latin Night thing on Wednesday in King
17 Street Grill.

18 Q. Have you ever attended one of those events?

19 A. Yes.

20 Q. Have you attended more than one of those events?

21 A. No. Just one.

22 Q. You don't have any daughters; right?

23 A. Yes, I do.

24 Q. You do have a daughter?

25 A. Yes.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Your daughter is -- how old is your daughter?

2 A. My daughter is twenty-six. Twenty-five. I'm
3 sorry.

4 Q. Does she attend those events?

5 A. No. Sometimes.

6 Q. Sometimes?

7 A. Sometimes. But she don't go out.

8 Q. Would you be pleased, as a mother, to have your
9 daughter at those events?

10 A. She's young. She's not doing anything wrong.

11 Q. Do you know Vanessa Smith?

12 A. No.

13 Q. Do you know Ryan Walters?

14 A. No.

15 Q. Are you generally aware of the friends that your
16 son has?

17 A. No.

18 Q. You're not generally aware of his friends?

19 A. No.

20 I stay home. I just don't let him bring them
21 over.

22 Q. Ralphie Santiago [phonetic]? Yes or no.

23 A. Yes. My cousin.

24 Q. Your cousin?

25 A. [No response]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Are you aware of whether or not Ralphie Santiago
2 [phonetic] has a prescription for clonapin? Yes or no.

3 A. No.

4 Q. Lauren Potts [phonetic]. Yes or no. Do you
5 know her?

6 A. No.

7 Q. You do not know her?

8 A. No.

9 Q. Now, this name is somebody you ought to know.
10 Casey Fischer. Tell me about Casey Fischer.

11 A. Casey Fischer? That's -- that used to be my
12 son's girlfriend.

13 Q. So she would come to your house. Is that fair
14 to say?

15 A. No.

16 Q. She was not welcome at your house?

17 A. No.

18 Q. And why wasn't she welcome at your house?

19 A. I didn't like her.

20 Q. Didn't like her?

21 A. No.

22 Q. You know anything about her?

23 A. She was a bad-influence person for my son.

24 Q. A bad influence?

25 A. Uh-huh.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Are you aware of whether or not she had a
2 prescription for OxyContin? Yes or no.

3 A. No.

4 Q. Are you aware of your son offering her
5 OxyContin? Yes or no.

6 A. No.

7 Q. In July of 2011, July of 2011 -- well, let me
8 back up.

9 Do y'all have any family in Florida?

10 A. No.

11 Q. No?

12 A. [No response]

13 Q. One of my favorite songs has got a line in it,
14 it's a Jimmy Buffet song, everybody's got a cousin in
15 Miami. I used to love that song.

16 So in July of 2011, isn't it true that your son
17 traveled to Florida?

18 A. I wouldn't recall.

19 Q. You wouldn't recall?

20 A. No, I wouldn't recall. I can't -- I wouldn't
21 remember we did.

22 Q. Okay. So your son was living in your -- let me
23 make sure I understand. Your son was living in your house
24 in July of 2011; is that correct?

25 A. Yes.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. And you didn't want him to go out, you said, on
2 January the 6th, 2011?

3 A. Right.

4 Q. But on July the 13th, after what you've
5 described occurred, you don't even know if he went to
6 Florida; is that right?

7 A. No, I don't. You're correct.

8 Q. January the 12th of 2012, at any time did you
9 see your son operating an Infinity motor vehicle?

10 A. No.

11 Q. Does he own an Infinity?

12 A. No.

13 Q. Do any of his friends own an Infinity?

14 A. I wouldn't know.

15 Q. Have you had occasion to look at pictures of
16 your son on facebook? Yes or no.

17 A. No.

18 Q. You have never looked at pictures on --

19 A. No.

20 Q. How about looked at your -- well, what's the
21 name of the entertainment group that your son works with?
22 Or, I'm sorry. Not works with, but he does events for.
23 What's the name of that?

24 A. So Caliente.

25 Q. So Caliente.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes.

2 Q. Have you ever looked at the So Caliente website?

3 A. No.

4 Q. How about the facebook page?

5 A. I don't know how to work it.

6 Q. Have you seen any pictures of your son not on
7 January the 6th, but let's say a week after, say January
8 the 12th, January the 14th, 2011?

9 A. No.

10 Q. No?

11 A. [No response]

12 Q. Would you agree that in those days, those two to
13 three weeks after January the 6th of 2011, that a number
14 of pictures were taken of your son as he was out at events
15 and parties and things?

16 A. No.

17 MS. CORNWELL: Objection. Your Honor, at some
18 point there's got to be a relevancy issue.

19 THE COURT: Yeah. Let me see the attorneys up
20 here just a second.

21 [Whereupon, a bench conference is held as
22 follows]

23 THE COURT: I've given you a lot of leeway.
24 But, I mean, what's the relevancy of all this?

25 MR. BIERING: Your Honor, I'm laying --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: At some point you need to tie
2 it in --

3 MR. BIERING: I'm laying --

4 THE COURT: -- the witness doesn't know a
5 whole lot of anything.

6 MR. BIERING: And she --

7 THE COURT: What's the relevancy?

8 MR. BIERING: The relevance is that I'm
9 laying a foundation for the facebook materials.

10 THE COURT: Well --

11 MR. BIERING: Every single one of those
12 dates is a drug reference for a drug
13 transaction. Every single one of them.

14 THE COURT: Well, this witness says she
15 hasn't even been on facebook --

16 MR. BIERING: I understand.

17 THE COURT: -- so how is it --

18 MR. BIERING: I understand.

19 THE COURT: -- relevant to this witness?

20 MR. BIERING: But where he's at is
21 relevant.

22 And, Judge, here's the other thing, too.
23 She's laying a foundation for us on other items
24 of credibility, because here's what he's
25 admitted to. She has placed, I mean --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: I understand that --

2 MR. BIERING: -- she has placed him --

3 THE COURT: -- but how is it relevant as
4 to this witness?

5 MR. BIERING: It's not -- does not have to
6 be relevant to this witness. It can be a
7 foundational matter for further evidence.
8 That's where it's at. And it's foundational as
9 it relates to what we will present through the
10 other witness.

11 THE COURT: Well, I'll listen --

12 MS. CORNWELL: The victim is not on trial.

13 THE COURT: Pardon?

14 MS. CORNWELL: The victim is not on
15 trial --

16 THE COURT: I understand. I understand
17 that. But I'm just trying to figure out what
18 the relevancy of all this is.

19 MR. BIERING: Habit --

20 THE COURT: You may tie it up later --

21 MR. BIERING: Habit --

22 THE COURT: -- but you're getting awfully
23 far afield.

24 MR. BIERING: Habit, routine.

25 THE COURT: You're getting awful far

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 afield.

2 MR. BIERING: Thank you, Your Honor.

3 THE COURT: Okay?

4 MR. BIERING: Thank you, Your Honor.

5 [Whereupon, the bench conference concludes]

6 Q. [Mr. Biering] Isn't it true you've never given
7 a written statement in this case?

8 A. No.

9 MR. BIERING: Thank you.

10 THE WITNESS: You're welcome.

11 MS. CORNWELL: The State has no further
12 questions for this witness, Your Honor.

13 THE COURT: You may step down.

14 [Whereupon, Ms. Rodriguez is excused and exits
15 the witness stand]

16 THE COURT: Call your next witness, please.

17 MS. CORNWELL: The State calls Andre Mendoza.

18 [Whereupon, Mr. Mendoza comes forward]

19 THE COURT: Any objection if Ms. Rodriguez stays
20 in the courtroom? Or do you still want to have her
21 sequestered?

22 MR. CHAD SHELTON: No objection to her being --

23 THE COURT: Pardon?

24 MR. CHAD SHELTON: --•being released from
25 sequestration.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Okay. Thank you.

2 MR. BIERING: Your Honor, from Defendant Clark,
3 I think that just from a -- I think if we just
4 continue to -- I would request that we just continue
5 the sequestration just so that if there are any
6 additional matters later that there won't be any
7 issue.

8 THE COURT: Okay. Ms. Rodriguez, if you would
9 go out in the hall, please, 'ma'am.

10 [Whereupon, Ms. Rodriguez exits the courtroom]

11 THE CLERK OF COURT: Please raise your right
12 hand and place your left hand on the Bible.

13 [Whereupon, Mr. Mendoza is duly sworn by the
14 clerk of court as follows: do you solemnly swear or
15 affirm the testimony you will give the Court in the
16 trial of this case will be the truth, the whole truth,
17 and nothing but the truth, so help you God]

18 THE WITNESS: I do.

19 THE CLERK OF COURT: Please be seated.

20 [Whereupon, Mr. Mendoza takes the witness stand]

21 THE CLERK OF COURT: State your full name.
22 Spell your last name for the record.

23 THE WITNESS: My name is Andre Mendoza. It's
24 M-E-N-D-O-Z-A.

25 ANDRE MENDOZA,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Having Been First Duly Sworn,
2 was Examined and Testified as Follows:

3 DIRECT EXAMINATION

4 BY MS. CORNWELL:

5 Q. Mr. Mendoza, how old are you?

6 A. Twenty-eight years old.

7 Q. Are you married?

8 A. I'm married, but I've been separated for four or
9 five years.

10 Q. Do you have any children?

11 A. Yes, I do.

12 I have two. I have a boy and a girl.

13 Q. Where do you live?

14 A. [REDACTED]

15 Q. Who lives there with you?

16 A. Me, my mom, and my two little brothers.

17 Q. And do you know this defendant in the tie?

18 A. Yes, ma'am.

19 Q. What is his name?

20 A. Ryan Newman.

21 Q. Does he go by any other names?

22 A. Mack G.

23 Q. How do you know this defendant?

24 A. I used to live with him.

25 Q. And how long did you live with him?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. I'd say about a month and a half, two months.

2 Q. Okay. And when did you live with this
3 defendant?

4 A. It was around August, 2010.

5 Q. And who else lived with you and the defendant?

6 A. It was also his brother, Shane Newman, and
7 Timothy Weather -- Weather. He was also named as Teddy.
8 He's the other defendant.

9 Q. When did you move out of the defendant's house?

10 A. Around say late October, beginning of November,
11 of 2010.

12 Q. Why did you move out?

13 A. I just felt like that wasn't my -- like their
14 lifestyle wasn't my type of lifestyle.

15 Q. After you moved out, did you ever see the
16 defendant again?

17 A. Yes, ma'am.

18 Q. When did you see him?

19 A. The night of the armed robbery and the -- they
20 beat me up.

21 Q. Do you know the female sitting at the far end of
22 this table?

23 A. Yes, ma'am.

24 Q. What is her name?

25 A. Jessica Clark.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. How do you know Ms. Clark?

2 A. I met her through facebook.

3 Q. Who initiated contact between the two of you on
4 facebook?

5 A. She did.

6 Q. And how did that come about?

7 A. She sent me a message. And I asked her, how you
8 doing, who are you, do I know you. And she was like,
9 well, I think I went to high school with you. And I was
10 like, well, what high school did you go to. And she was
11 like, Stratford. And I was like, well, I don't recognize
12 you, I don't remember you.

13 And we just kept having a conversation. And she
14 asked me about my kids and how many kids I have and
15 everything.

16 Q. And how long before the armed robbery occurred
17 did she find you on facebook?

18 A. Couple of days.

19 Q. And the night that you were robbed, was that the
20 first time you saw this defendant?

21 A. Yes, ma'am.

22 Q. Did you have occasion to see her earlier in that
23 same day?

24 A. Yes, ma'am.

25 Q. Tell me about that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Well, earlier that day she called me and she
2 talk -- she was just texting me -- because we switched
3 numbers through facebook. She was texting me and she was
4 like -- I was like, what are you doing. She was like, I'm
5 on my lunch break, just left my job. She was like, I'm
6 going to my apartment. She used to live in Parkway.

7 And she told me that -- you know, we was talking
8 on the phone and she was like, man, I just locked my keys
9 in my car; I have no way to unlock my car. So I told her,
10 you know, I have a buddy of mine that knows how to get in
11 cars. And he was an older guy. And I asked him, I said,
12 I've got a friend of mine, you know, she locked her keys
13 in her car, will you come -- will we go to her place and,
14 you know, help her out. Because I just met her and I
15 thought she was a nice girl and everything.

16 So we went over there. You know, I met her the
17 first time. And we unlocked her keys to the car. And she
18 asked me what I was doing later that night. I told her I
19 was -- nothing, I was free, you know, I was free. And she
20 was like, well, I -- my grandparents' has my two kids
21 tonight; do you want to hang out and have a drink or two
22 or whatever. I said, fine. I was like, yeah, that's
23 fine; just pick me up whenever you get off of work.

24 Q. And did y'all meet up later that night?

25 A. Yes, ma'am.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Do you remember what day that was?

2 A. January -- it was in January of 2010.

3 Q. Okay. Was it 2010 or 2011?

4 A. 2011. It was one of those.

5 Q. And when you met up with Jessica, what were you
6 expecting to do that night?

7 A. Drink and have sex.

8 Q. And is that what she promised you?

9 A. Yes, ma'am.

10 Q. And tell the jury what happened when you met up
11 with Jessica.

12 A. Okay. That night she texted me and she was like
13 she was on her way to my house. She asked me if I had a
14 couple of dollars. I told her, yeah; for what. She was
15 saying, I needed some gas. I said, that's fine; you know,
16 I'll give you some gas. I gave her some gas money, gave
17 her a cigarette.

18 And she was like, do you know where to get any
19 weed. I said, no, around this time I don't know where to
20 get any weed. It was around one o'clock that night. She
21 was like, well, I've got a buddy of mine down the road
22 from your house who knows how we could get a little blunt
23 of weed that we could smoke and drink and, you know, enjoy
24 the night, whatever. So I said okay. I gave her a little
25 bit more money for that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 And we got in the car. We went down the road.
2 We left my neighborhood. We was going down College Park
3 Road. Soon as she made a left-hand turn down this dirt
4 road, she turned off her headlights. I'm asking her
5 what's going on. She said, no, don't worry, we're just
6 going to meet one of my home boys and that supposed to
7 be -- one of her home boys was supposed to buy a weed bag.

8 As soon as we went down that road, I had a
9 feeling something was not right so I put \$160 in my socks
10 that was mine because I felt something wasn't right.
11 Because when we went down that dirt road, soon as she hit
12 the light off I seen three males wearing all black and
13 they all had hoodies on. So I knew something was not
14 right, because she told me we was supposed to meet one
15 person.

16 We was going down that dirt road. I tried to
17 get out of the car. The car was locked. The windows was
18 locked. I couldn't get out of the car at all. As soon as
19 we got to where the three guys was at, I looked at her and
20 then she knew I seen Ryan -- I seen Ryan Newman. He walks
21 to the passenger side. He's pointing a gun at me. He's
22 telling me to get out of the car. I tell him I can't get
23 out of the car.

24 And so the back -- somehow, I don't know how,
25 the back window went down on my side. The back window

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 went down and as soon as the back window went down, I felt
2 there was a gun at the back of my head. As soon as I
3 turned around, I seen the gun in my face.

4 He's telling me to get out and I was telling
5 him, I can't get out, I can't get out. He opens the door.
6 He pistol-whips me. As soon as I get out of the car, I go
7 stumbling towards the ground.

8 Q. I'm going to stop you at this point.

9 MS. CORNWELL: Your Honor, may we take up a
10 matter of law with the Court?

11 THE COURT: Yes, ma'am. You want to come up
12 here --

13 MS. CORNWELL: Please.

14 THE COURT: -- or do you want to do it out of
15 the presence of the jury?

16 [Whereupon, a bench conference is held as
17 follows]

18 THE COURT: Are you going --

19 MS. CORNWELL: Your Honor, I think this
20 time --

21 THE COURT: -- into the ankle bracelet now?

22 MS. CORNWELL: Yes, Your Honor.

23 THE COURT: Okay.

24 [Whereupon, the bench conference concludes]

25 THE COURT: All right. Madam Forelady, ladies

1 and gentlemen of the jury, I'm going to ask you to go
2 to the jury room. And the reason I'm asking you to go
3 to the jury room, I have to take up a legal matter as
4 to whether some evidence is admissible or not
5 admissible.

6 During the course of the trial, I'm not
7 permitted to comment on the facts, so when I'm making
8 -- trying to make a decision on whether I'm going to
9 allow evidence in under the rules of evidence, I want
10 to be free to comment on the facts so I have to do it
11 out of your presence.

12 I'm not trying to hide anything from you. I'm
13 just obligated to make sure the evidence that comes
14 before you is admissible under our rules of evidence.

15 Our rules of evidence have evolved from England
16 into this country. They're designed to try to bring
17 you the most trustworthy testimony that we can bring
18 to you in the courtroom.

19 So if you'll go to the jury room, Madam Forelady
20 and members of the jury. Please don't discuss the
21 case amongst yourselves. I'll get you back just as
22 soon as I can.

23 [Whereupon, the jury exits the courtroom at
24 10:40 a.m.]

25 THE COURT: All right. I understand you're

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 going into the ankle bracelet at this time for me to
2 hear and make a decision on the motion to exclude
3 that, that was made yesterday; is that correct?

4 MS. CORNWELL: Yes, Your Honor.

5 THE COURT: All right. Please proceed.

6 - - - -

7 ANDRE MENDOZA

8 PROFFER

9 BY MS. CORNWELL:

10 Q. You just testified that Ryan Newman came up to
11 your window with a gun?

12 A. Yes.

13 Q. When he approached your window, were you able to
14 immediately identify that it was him?

15 A. No, ma'am.

16 Q. Tell the judge how you identified him.

17 A. Well, when he was talking to me, he was telling
18 me to get out of the car And so when I got out of the car,
19 I didn't know exactly who it was but soon as he -- when
20 they grabbed me and pistol-whipped me and threw me
21 to -- like when they pistol-whipped me, I kind of stumbled
22 towards like the back of her car. She was still on her
23 foot on her brake -- on her brake light, so that's how I
24 had only the light to see.

25 When they was pistol-whipping me -- when they

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 was pistol-whipping me, he was talking so much that I was
2 starting to recognize his voice even more and more and
3 more. But when I found out a hundred percent I was
4 positive is whenever he was kicking me. He had black
5 camouflage pants, right. He had them tied up like this
6 [indicates].

7 And as he was kicking me in my face, I seen his
8 monitor just coming at me, coming at me, coming at me, and
9 then I seen the red light blinking when he was kicking me.
10 So that's when I -- I knew a hundred percent that it was
11 Ryan Newman.

12 And then when I looked at the other two guys, I
13 knew it was Teddy because of -- Timothy Weather. I knew
14 it was them.

15 Q. And you stated that you lived with both Ryan and
16 Shane?

17 A. Yes, ma'am.

18 Q. Do Ryan and Shane have similar features?

19 A. No, ma'am.

20 Q. They don't really look alike?

21 A. No, ma'am.

22 Q. Do they sound alike?

23 A. No, ma'am.

24 Q. So the -- you stated that you heard his voice.
25 When you heard his voice, did you immediately know it was

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Ryan Newman's voice or did you just recognize that you
2 knew the voice?

3 A. I recognized the voice from somewhere. Because
4 I had just moved out of his house about a month.

5 Q. How are you definitely able to identify that it
6 was Ryan Newman?

7 A. He had a scar right here [indicates].

8 Q. But were you able to see that scar in the dark?

9 A. No.

10 The only time I saw the scar is whenever we was
11 by her trunk and she had her foot on the brake light.
12 That's how I knew it was definitely them.

13 Q. And when he was kicking you, how do you know it
14 was him that was kicking you and not somebody else kicking
15 you?

16 A. Because I was looking -- I had my head down like
17 this, when he had me on the ground and he was kicking me,
18 and I felt the monitor hitting me and I also seen the
19 monitor with the red blinking light he had.

20 MS. CORNWELL: Court's indulgence.

21 [Whereupon, Ms. Cornwell and Mr. Ben Shelton
22 confer]

23 Q. [Ms. Cornwell] And when you identified Mr.
24 Newman, did you identify him to the police?

25 A. Yes, ma'am.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. And did you let the police know that you
2 identified him through the GPS monitor?

3 A. No, ma'am. I mean, yeah. That was part of it,
4 yes.

5 Q. You told them that that was part of how you knew
6 it was him?

7 A. Yes, ma'am.

8 MS. CORNWELL: Nothing further, Your Honor.

9 MR. CHAD SHELTON: Your Honor --

10 THE COURT: Cross-examination.

11 MR. CHAD SHELTON: -- I'm happy to cross-examine
12 just on the ankle monitor.

13 THE COURT: That's what I'm giving you --

14 MR. CHAD SHELTON: Yes, Your Honor.

15 THE COURT: -- the opportunity to do.

16 MR. CHAD SHELTON: Yes, Your Honor.

17 - - - - -

18 PROFFER

19 BY MR. CHAD SHELTON:

20 Q. I believe your statement, Mr. Mendoza, was that
21 Ryan was the one that pistol-whipped you?

22 A. Yes, sir.

23 Q. Okay. And that was prior to the kicking?

24 A. Well, no.

25 At first whenever they was getting me out of the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 car, he pistol-whipped me.

2 As soon as I got out of the car he pistol-
3 whipped me, and then when I was walking towards the back
4 of the car he pistol-whipped me again.

5 Q. Okay.

6 A. And that's when his other friend, Teddy, came
7 from the other side, pistol-whipped me with his -- because
8 they had two guns -- pistol-whipped me with that gun.

9 And that's when I went stumbling and I fell to
10 the ground, because they kept telling me go to the -- get
11 to the ground, get to the ground. But I was just so
12 nervous and unconscious, I didn't drop to the ground so
13 they threw me to the ground.

14 Q. And it was based off his scar on his face for
15 you to be able to tell that was Ryan?

16 A. Yeah.

17 Q. And his voice?

18 A. Yes.

19 Q. You knew --

20 A. Yes.

21 Q. You knew Ryan?

22 A. Yes.

23 Q. You had been around him for a while?

24 A. Yeah.

25 Q. And Teddy is --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. His best friend --

2 Q. -- black? And Teddy is black?

3 A. Yes, sir.

4 Q. And Ryan is white?

5 A. Yes, sir.

6 Q. Correct?

7 Okay. And you told the police that he had a
8 scar?

9 A. Yes, sir.

10 Q. And you told the police that it was Ryan?

11 A. Yes, sir.

12 Q. Because of his voice?

13 A. And the ankle monitor.

14 Q. But part of it was the ankle monitor --

15 A. Yes, sir.

16 Q. -- but mostly because of his scar and his voice;
17 correct?

18 A. Yes.

19 And I had people from around the streets was
20 telling me that he had been looking for me. And I didn't
21 know why.

22 Q. And --

23 A. But it wasn't like -- it was like he wanted to
24 beat me up looking for me. It wasn't a talking and, you
25 know, have a conversation or nothing.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Okay. But prior to being kicked, you were
2 pistol-whipped by Ryan?

3 A. Yes, sir.

4 MR. CHAD SHELTON: No further questions, Your
5 Honor.

6 THE COURT: Cross-examination?

7 MR. BIERING: No questions for Defendant Clark
8 on this issue, Your Honor.

9 THE COURT: Any Redirect?

10 MS. CORNWELL: Yes, Your Honor.

11 - - - - -

12 PROFFER

13 BY MS. CORNWELL:

14 Q. Mr. Mendoza, did you misidentify any of the
15 people that you claimed had robbed you at the beginning?

16 A. One of them.

17 Q. And who was that?

18 A. Shane Newman.

19 Q. And you no longer believe that Shane Newman was
20 involved?

21 A. No, ma'am.

22 MS. CORNWELL: Okay. No further questions, Your
23 Honor.

24 MR. CHAD SHELTON: Just two follow-up on that,
25 Your Honor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

PROFFER

BY MR. CHAD SHELTON:

Q. Shane and Ryan have different voices is what you said; correct?

A. Yes, sir.

Q. And Shane and Ryan look different?

A. Yeah.

Shane had -- at the time, Shane had long hair but he had a braid hanging down.

Q. Okay. And Ryan has a scar --

A. Shaved head.

Q. -- and Shane doesn't have a scar?

A. No. Shaved head.

MR. CHAD SHELTON: Thank you.

MS. CORNWELL: Your Honor, at this time it's the State's position that the monitor not only goes to place him at the scene of the crime but it also shows that he was committing an act at the crime.

The defendant has stipulated and states in his motion that he'll stipulate he's there, but he also stipulates that he didn't do any of the things that he's being accused of, including the assault and battery and the armed robbery.

This defendant [sic] is going to testify that he

MIA PERRON, CVR-CM-M

-222-

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 knows that it was this defendant that was kicking him
2 in the face because the monitor was hitting him in the
3 face. He also goes on to say that he identified Ryan,
4 that while he recognized his voice he was able to one-
5 hundred percent put it together when he saw the
6 monitor on the ankle.

7 It goes to the identification and it also goes
8 to the crime.

9 I placed some case documents up there, some case
10 law up there, for you. In State v. Johnson the court
11 decided that --

12 THE COURT: Let me see. State v. Johnson?
13 Okay.

14 MS. CORNWELL: Yes, Your Honor.

15 That was a case where it's a murder, and there
16 was a purse involved in that case and that purse was
17 burned. There was a photograph that was found in that
18 case. The defense wanted to stipulate that they knew,
19 that they would admit, that that was the victim's
20 purse. The court decided that the State did not have
21 to stipulate to anything; that they were allowed to
22 prove their case with all matters of evidence.

23 THE COURT: Well, that's concerning a
24 photograph.

25 In this case we're talking about a monitor that

1 would insinuate that he was involved in some type of
2 criminal activity.

3 MS. CORNWELL: Your Honor, the State --

4 THE COURT: The photograph I don't think would
5 insinuate that. So the prejudicial value in this case
6 is different.

7 MS. CORNWELL: And as far as the prejudicial
8 value goes and the fact that a monitor may or may not
9 have insinuated that he has a criminal record, there's
10 also state law that --

11 THE COURT: Well, most people that aren't
12 involved in the criminal system don't have ankle
13 monitors. Do you know anybody that's not involved in
14 the criminal system that walks around with an ankle
15 monitor?

16 MS. CORNWELL: There are monitors for various
17 different things. They're not always criminal
18 related.

19 THE COURT: Well, please tell me one.

20 MS. CORNWELL: Well, there are scan bracelets
21 that will just monitor alcohol. That's not a related
22 -- criminal-related thing. There are GPS units that
23 are placed on children to see -- make sure that the
24 children are not -- is where they are. There's a lot
25 of different reasons monitors are placed.

State v. Newman And Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 The State's position is -- and Judge Dennis
2 decided, on a case in Charleston that was recently
3 upheld by the Court of Appeals, that a mug shot was
4 not overly prejudicial and did not indicate that a
5 defendant had a prior record.

6 There's also case law that states that a gun
7 found in a jail cell, on unrelated charges where those
8 charges that he was in the jail cell were eventually
9 dropped, did not predicate a prior record.

10 The State is willing to stipulate that we won't
11 say that it's a bond company, that it's a bond-
12 monitoring company, simply that it's a GPS monitoring
13 company. The State's position is that that's not
14 going to unduly prejudice them more than the probative
15 value of the fact that a monitor is hitting him in the
16 face and is part of the element of one of the crimes.

17 THE COURT: All right. Go back to the Garris
18 [phonetic] case, the Stevens [phonetic] case, and it
19 looks like the Chatham -- Chittam [phonetic] case.
20 What are those?

21 MS. CORNWELL: Yes, Your Honor.

22 The Garris [phonetic] case is a Court of Appeals
23 case, one I believe Judge Dennis was upheld -- I'm
24 sorry. The Garris [phonetic] case is the case where
25 the gun was found in the jail cell.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Okay.

2 MS. CORNWELL: In that case the Court went on to
3 say that the State could introduce that a gun was
4 found in a jail cell, even though he was in jail on
5 unrelated charges that were eventually dismissed. The
6 probative value outweighed the prejudicial value. The
7 fact that he -- it was found in a jail cell, he was in
8 jail on charges that were unrelated.

9 THE COURT: Okay.

10 MS. CORNWELL: The Chittam [phonetic] case, that
11 is a case where -- it's a stipulation case where the
12 Court determined that if proving an element of a case,
13 the State does not have to stipulate to anything.
14 That's actually dealing with burglary. There's no
15 prior burglaries. Come into a burglary first. The
16 Courts decided that the State could put in evidence,
17 even though it does go to show that he had a prior
18 record because that was an element of the case.

19 THE COURT: Prove a burglary first.

20 MS. CORNWELL: Correct.

21 And the State would say that this would all
22 prove --

23 THE COURT: Based on the fact that he had a
24 prior burglary record.

25 MS. CORNWELL: Based on that fact --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Right.

2 MS. CORNWELL: -- that they were still allowed
3 to get into that under the fact the probative value
4 outweighed --

5 THE COURT: Okay. All right. Right.

6 MS. CORNWELL: -- the prejudicial value.

7 The Stevens [phonetic] case is a case that Judge
8 Dennis was upheld on: that the mug shot would not
9 indicate that they have a prior record. The Court of
10 Appeals just upheld that on June the 27th of 2012.

11 It's the State's position that the monitor is
12 more probative than prejudicial. The Court can give a
13 curative instruction that the jury is not to read into
14 any preconceived notions of why a monitor is on a
15 person.

16 The State would stipulate that we will not go
17 into any prior record of why he was on a monitor or
18 any of that, only that he was on a GPS monitor that
19 places him at the scene of the crime, and not only
20 places him at the scene of the crime but places him
21 doing a wrongful act at the scene of the crime. It's
22 also an identifying factor.

23 Your Honor, this is part of the reason why GPS
24 monitors are placed on defendants is to ensure that
25 their whereabouts can be tracked and their actions can

1 be tracked. The State will not go into prior records,
2 we will not go into prior bad acts. We understand
3 that that's not allowed. But we should be able to put
4 into place that the GPS monitor was there, it places
5 him at the scene of the crime, it's used for
6 identification purposes.

7 And not only does it place him at the scene of
8 the crime, not only is it used for identification
9 purposes, it places him doing -- committing the crimes
10 at the scene of the crime, including kicking Mr.
11 Mendoza in the head, which is an element of assault
12 and battery.

13 There are multiple defendants that -- or
14 multiple suspects that were charged and arrested in
15 this case. If their position is that he was merely
16 present and didn't do any wrongdoing, then I believe
17 the State gets to put into evidence that he was doing
18 wrongdoing. The reason that we know that he was doing
19 wrongdoing is because that monitor is the one that was
20 kicking him. He wasn't merely standing by watching
21 this happen, he wasn't merely present at the scene,
22 but he was an active participant in this. And the way
23 we help prove that he's an active participate is
24 because the monitor was hitting the guy in the face,
25 hitting Mr. Mendoza in the face, while he was being

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 kicked.

2 THE COURT: All right. I was trying to listen
3 but you correct me if I'm wrong.

4 He's testified he recognized is voice because he
5 was rooming with him less, than a month before this
6 occurred, and he saw a scar on his face; is that
7 correct?

8 MS. CORNWELL: He did, testify to that, Your
9 Honor, yes.

10 THE COURT: So he identified him by those two
11 points of identification; is that correct?

12 MS. CORNWELL: Yes, Your Honor.

13 THE COURT: So that makes a positive
14 identification; correct?

15 MS. CORNWELL: I believe that the monitor --

16 THE COURT: Now, the third --

17 MS. CORNWELL: -- also corroborates --

18 THE COURT: -- the third question is I have not
19 heard anything from anybody, including this witness,
20 how he knew he had on an ankle monitor.

21 MS. CORNWELL: I'm not sure that -- I apologize,
22 Your Honor.

23 I can tell you how he knew he had an ankle
24 monitor on, but I didn't want to get into prior bad
25 acts or anything like that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Well, I understand.

2 But, I mean, I'm still sitting here wondering so
3 he had an ankle monitor and this guys says he had one.
4 How did he know he had it? I haven't heard anything
5 about that.

6 MS. CORNWELL: Mr. Mendoza, would you like to
7 tell him?

8 THE WITNESS: I used to live with him and I --
9 he used to always have to plug it up to charge it.
10 He had -- I guess he had a cord and he had to charge
11 it --

12 THE COURT: All right. So my --

13 THE WITNESS: -- and then he always had it
14 charged to monitor him.

15 THE COURT: So my question is during the
16 balancing between the prejudicial value versus the
17 probative value, all it does is bolster your
18 identification based upon the voice identification and
19 the scar at this point in time. Okay?

20 Now, if he gets on the witness stand and says,
21 hey, I didn't do the kicking, then I think at that
22 point in time it becomes very, very probative on
23 redirect.

24 MS. CORNWELL: And, Your Honor, in the defense's
25 motion they state they'll stipulate he was there but

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 he was not doing any wrong act --

2 THE COURT: I understand --

3 MS. CORNWELL: This goes to the element that --

4 THE COURT: I understand that --

5 MS. CORNWELL: -- he was doing the wrong act.

6 THE COURT: -- that's his stipulation. That's
7 what he wants to stipulate, instead of bringing in the
8 monitor.

9 Is that correct?

10 MR. CHAD SHELTON: Yes, Your Honor.

11 MS. CORNWELL: But the monitor is part of what
12 proves that he was also doing bad acts, because he was
13 kicking him with the ankle that had the monitor on it
14 and it goes to show that he wasn't merely present as
15 his motion wants to say.

16 THE COURT: Well, I'll have to agree with you.
17 It's probably essential to your charge of assault and
18 battery, but not necessarily armed robbery and
19 kidnaping.

20 MS. CORNWELL: But they're charged -- he's
21 facing all of those charges right now. So if we get
22 to prove the assault and battery charge, we need to
23 bring it in to prove the assault and battery charge
24 because he was kicking him with the ankle that had the
25 monitor on it.

1 THE COURT: Out of all the charges, I think
2 that's the only essential element that you need the
3 monitor for. Because he did testify he was kicking
4 with the leg that had the ankle monitor on.

5 MS. CORNWELL: Correct.

6 And the State has the burden of proof of proving
7 every element of every crime that's charged.

8 THE COURT: I've conceded the fact that I think
9 it's essential to the armed robbery, but I don't see
10 how it has anything to do with the kidnaping and the
11 armed robbery -- I mean, excuse me -- essential to the
12 assault and battery, because you've already identified
13 him. He's identified him by scar --

14 MS. CORNWELL: I'm not sure that I understand
15 what you're saying, Your Honor.

16 I can't separate the charges and --

17 THE COURT: I know you can't, but I can by
18 instruction to the jury.

19 MS. CORNWELL: Could you clarify and let me know
20 what your instruction to the jury would -- are you
21 going to --

22 THE COURT: That evidence only applies to the
23 assault and battery at this point in time.

24 I'll be glad to hear you.

25 MR. CHAD SHELTON: Well, I don't want to change

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 your mind, Your Honor, allowing -- not allowing the
2 ankle monitor in, but as it regards specifically just
3 to the assault and battery he also testified that he
4 knew Ryan hit him with the pistol. That in itself
5 would be for the assault and battery.

6 THE COURT: But he also testified he was on the
7 ground and he was kicking him with the leg that had
8 the ankle monitor.

9 MR. CHAD SHELTON: Right. Yes, Your Honor.

10 THE COURT: And that identifies the leg that he
11 was being kicked with on the assault and battery, is
12 my point.

13 MR. CHAD SHELTON: Right.

14 THE COURT: So why isn't that essential to the
15 State's case on that charge?

16 MR. CHAD SHELTON: They have other means to show
17 that he committed assault and battery in addition to
18 the --

19 THE COURT: Well, maybe and --

20 MR. CHAD SHELTON: -- ankle monitor involved.

21 THE COURT: -- and maybe not.

22 The pistol-whipping, yeah, but not the kicking.

23 MR. CHAD SHELTON: Well, the hand of one, hand
24 of all concept, also. He's involved with all of that
25 and there's kicking and that sort of thing going on.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 That's just to the assault and battery first. That
2 would be my argument.

3 THE COURT: All right. I'm sorry. Go ahead. I
4 didn't mean to --

5 MS. CORNWELL: I was going to ask if they were
6 going --

7 THE COURT: -- cut you off.

8 MS. CORNWELL: -- to stipulate --

9 THE COURT: I'm sorry. What?

10 MS. CORNWELL: Are they going to stipulate to
11 the pistol-whipping?

12 THE COURT: Do what?

13 MS. CORNWELL: Are they going to stipulate to
14 the pistol-whipping?

15 THE COURT: No, I don't think they're going to
16 stipulate to that. Okay? I don't think that's going
17 to happen. All right? It may surprise me. It may.
18 I don't know.

19 MR. CHAD SHELTON: For the record, no.

20 THE COURT: Okay.

21 MR. CHAD SHELTON: Your Honor, and I can
22 distinguish these cases if you want me to.

23 THE COURT: I understand. I don't think any of
24 these cases are really on this point because a mug
25 shot, a pistol and all that, in my opinion it doesn't

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 indicate prior criminal activity.

2 And I agree that there may be some very, very
3 limited GSP [phonetic] bracelets out there, for
4 children and other things. But most people think of
5 it as involving the criminal system.

6 MR. CHAD SHELTON: Thank you, Your Honor.

7 And the Stevens [phonetic] case is they put the
8 ID at issue, so --

9 THE COURT: I understand.

10 I don't think any of those cases are on this
11 point we're talking about today.

12 And, really, it's a balancing act between the
13 prejudice versus the probative value. I do think it
14 has -- let me see --

15 [Whereupon, the Court reviews documents]

16 THE COURT: All right. Mr. Shelton, referring
17 to I believe -- the case you gave me, The State v.
18 Bentley Collins [phonetic], Court of Appeals case,
19 probative means tending to prove or disprove.
20 Probative value is the measure of the importance of
21 the tendency [phonetic] to the outcome of the case.
22 It is the weight -- helping the trier of fact decide
23 the case. The more essential the evidence, the
24 greater its probative value.

25 As I said earlier, I think it's very probative.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 as to the assault and battery charge because that
2 identifies which of the three men was doing the
3 kicking, the one with the monitor, and I'm going to
4 allow it in as to that charge and instruct the jury
5 accordingly. I don't think it's admissible as to the
6 other two charges.

7 MS. CORNWELL: Thank you, Your Honor.

8 MR. CHAD SHELTON: Your Honor, I don't know how,
9 like the State said, that you separate it. If he's
10 still going to look as a criminal and his character is
11 coming into play --

12 THE COURT: Well, then, I won't give them any
13 probative -- I'll just allow it in, period, then. If
14 you don't want me to give a curative charge, I won't.

15 MR. CHAD SHELTON: Well, I think I need to ask
16 for a curative charge for the record.

17 THE COURT: I mean, I won't tell the jury that,
18 if you don't want me to.

19 MR. CHAD SHELTON: No, I think -- for purposes
20 of the record, I think I need to ask for a curative
21 charge.

22 THE COURT: Because I'm going to tell them it
23 only applies as to the assault and battery --

24 MR. CHAD SHELTON: But it -- I understand.

25 THE COURT: -- and they are to only consider it

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 as to the assault and battery charge.

2 MR. CHAD SHELTON: Yes. Yes, Your Honor.

3 THE COURT: I mean, if you don't want me to tell
4 them that, I won't.

5 MR. CHAD SHELTON: No. I --

6 THE COURT: Or if you want some time to think
7 about it, we'll take a short break.

8 MR. CHAD SHELTON: No. --

9 THE COURT: I need to take a short break anyhow.
10 Okay?

11 MR. CHAD SHELTON: I just -- my objection is I
12 don't think that that would cure the issues that --
13 the prejudicial value, Your Honor. I don't believe
14 that that curative instruction would cure that.

15 THE COURT: I don't know.

16 MR. CHAD SHELTON: And I don't know --

17 THE COURT: The Supreme Court says, every day,
18 curative charges work. I don't know if they do or
19 not. I haven't taken a pole on it.

20 MR. CHAD SHELTON: Yes, Your Honor.

21 THE COURT: Okay?

22 What's the State's position on a curative
23 charge?

24 MS. CORNWELL: The State doesn't object to the
25 curative charge, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Just for my edification, are we still
2 stipulating that he was at the scene? So we can't use
3 the GPS stuff, the coordinates and everything else?
4 We can just say that he had a monitor on his ankle and
5 that's how he was proved to be kicking? So he's still
6 going to stipulate to being there, so we don't have to
7 go into the GPS stuff?

8 THE COURT: If he wants to stipulate to that,
9 that's fine. If he doesn't, that's fine. Okay?

10 Y'all can talk about that during the break.
11 We'll take about a ten-minute break.

12 She's wanting to know are you going to still
13 stipulate that he was on the scene. If you aren't,
14 that's fine. I'm not trying to get you to stipulate
15 to anything. That's y'all's decision. Otherwise,
16 she's going to be bringing in the coordinates and
17 everything from the GPS monitor.

18 MR. CHAD SHELTON: I don't want to stipulate
19 that he was on scene and then this allows his prior
20 record to come in. I don't want to do that.

21 THE COURT: I don't think that's going to --

22 MR. CHAD SHELTON: Okay.

23 THE COURT: What's his prior record?

24 MR. CHAD SHELTON: Then I'm not going to
25 stipulate --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: What's his prior record? I don't
2 even -- that's right. You said it was burglary
3 second.

4 MR. CHAD SHELTON: Yes, Your Honor.

5 MS. CORNWELL: The State has no intention of
6 bringing that to light unless the defendant takes the
7 stand.

8 THE COURT: I'm sorry. What?

9 MS. CORNWELL: The State has no intention of
10 brining that out unless this defendant takes the
11 stand. And we'll approach that bridge when we cross
12 it --

13 MR. CHAD SHELTON: We're still not going to --

14 MS. CORNWELL: -- cross the bridge --

15 MR. CHAD SHELTON: -- not going to stipulate.

16 THE COURT: Well, y'all talk about it. I mean,
17 you may want to avoid the GPS monitor coming in, and
18 places him there, by stipulation. I don't know.
19 That's your choice.

20 MR. CHAD SHELTON: Yes, Your Honor.

21 I don't believe we're going to stipulate.

22 THE COURT: Pardon?

23 MR. CHAD SHELTON: I don't believe we're going
24 to stipulate, Your Honor.

25 THE COURT: Okay. All right. We'll take about

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 a ten-minute break.

2 MS. CORNWELL: Thank you, Your Honor.

3 THE COURT: Please don't discuss the case with
4 anybody. You may step down.

5 [Whereupon, Mr. Mendoza is excused and exits the
6 witness stand]

7 THE COURT: Anything else from the State while
8 the jury is still out?

9 MS. CORNWELL: Nothing from the State.

10 THE COURT: Anything else from the defendant?

11 MR. CHAD SHELTON: Your Honor, I don't know if
12 you wanted the bias and the prior charged. If we want
13 to get into that also, at this point in time, since --

14 THE COURT: What are you talking about, now?

15 MR. CHAD SHELTON: When she -- when the
16 solicitor is done with her direct, I'll get into
17 cross-examination. I would like to cross-examine the
18 victim on that prior --

19 THE COURT: On his prior criminal conviction?

20 MR. CHAD SHELTON: That prior charge. Yes, Your
21 Honor.

22 THE COURT: All right. And it was what, now? I
23 don't remember.

24 MR. CHAD SHELTON: Based on -- bias of the
25 burglary second --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: No. I mean, what was the charge,
2 the criminal charge.

3 MR. CHAD SHELTON: Burglary second was pending
4 at the time of the incident. He then pled to a burg
5 third and he received --

6 THE COURT: Burglary third.

7 MR. CHAD SHELTON: -- and he received a deal
8 from the solicitor's officer.

9 Yes, Your Honor. So I would like to get into
10 that.

11 THE COURT: I'll let you -- I'll let you go into
12 the burglary third conviction, okay, because that's
13 the one year. It's within ten years. I'll let you do
14 that.

15 MR. CHAD SHELTON: Will I be able to go into the
16 pending --

17 THE COURT: That's where you think --

18 MR. CHAD SHELTON: -- charge that --

19 THE COURT: -- that's where you think they
20 reduced it from burg first to burg third because he
21 was a victim in this case. That's your argument;
22 right?

23 MR. CHAD SHELTON: Well, Your Honor --

24 THE COURT: That's what we covered yesterday; is
25 that right?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. CHAD SHELTON: That's part of it, Your
2 Honor.

3 But, also, the case law -- I had a chance to
4 look at some case law. It's anything the jury could
5 draw inferences related to reliability is bias. And
6 if they -- the jury could draw an inference, Your
7 Honor, that he was given a deal because he was a
8 victim. And that's a reason for him to continue to
9 be a victim and why he continues to lie, Your Honor,
10 is -- to put it bluntly.

11 But the -- and I think Your Honor asked me to
12 look at whether there's a witness versus a
13 codefendant. And all the case law, it doesn't
14 separate them. It doesn't treat anything different.
15 It's all witness.

16 And the scope of the bias evidence -- I didn't
17 print this case off, I apologize, but it's quoted in
18 the other cases. State v. Brewington [phonetic]:
19 anything having a legitimate tendency to throw light
20 on the accuracy, truthfulness and sincerity of a
21 witness may be shown and considered in determining the
22 credit to be afforded the testimony.

23 THE COURT: Well, I understand. But it's
24 talking about prior plea bargainings, okay, and I just
25 don't think the victim, being a victim -- it didn't

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 have anything to do with plea bargaining.

2 MR. CHAD SHELTON: Well, he received a plea
3 bargain after he became a victim, Your Honor.

4 THE COURT: Well, I understand. But I don't
5 think that has anything to do with what these cases
6 refer to.

7 MR. CHAD SHELTON: Your Honor, respectfully, I
8 would disagree.

9 And my last point on the confrontational clause
10 -- because this is a very important witness to their
11 case -- as far as we're -- our argument is it didn't
12 happen, he's lying. And --

13 THE COURT: I understand.

14 MR. CHAD SHELTON: And so, Your Honor, he is the
15 only witness that's out there that is going to say
16 that he was beat up by these people. There's nobody
17 else, Your Honor. So I would say that this is a very
18 important witness that we would be able to go into any
19 bias-related activity -- or anything bias. And this
20 is the same prosecution office.

21 It's the State v. Jones the court held that
22 you're able to get into any information that the
23 prosecution -- let me be a little bit more articulate
24 here.

25 [Whereupon, Mr. Chad Shelton reviews documents]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. CHAD SHELTON: The history of the
2 prosecuting office's treatment to the witness.

3 THE COURT: I agree with that. But that's not
4 what we're talking about here.

5 MR. CHAD SHELTON: Well, Your Honor, in my --

6 THE COURT: I mean, we've got two different
7 police officers involved, we've got two different
8 cases. And how many years apart are they?

9 MR. BEN SHELTON: A year. Pled last -- excuse
10 me. Pled last November 3rd and it occurred a year
11 before this event.

12 THE COURT: I mean, something that occurred a
13 year ago.

14 MR. CHAD SHELTON: But it was --

15 THE COURT: I mean, it's not -- the same police
16 officer, didn't have anything to do with each other.

17 MR. CHAD SHELTON: It's the same prosecutor's
18 office, Your Honor.

19 THE COURT: Well, so what?

20 MR. CHAD SHELTON: The same prosecutor --

21 THE COURT: They prosecute all the cases.

22 MR. CHAD SHELTON: Well, I understand.

23 But the case in Jones makes a distinction
24 between other counties, other jurisdictions. But this
25 is the same jurisdiction and he's a victim in the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 prosecutor's office here and he gets a deal based off
2 his prior -- or his pending charge.

3 And State v. Mizell [phonetic] allows you to get
4 into current pending charges in the office. State v.
5 Sims gets into the unrelated criminal charge pending
6 in the office prosecuting a case regardless of the
7 presence of any plea deal.

8 MR. BIERING: Your Honor, if I could be heard at
9 the appropriate time.

10 [Whereupon, the Court reviews documents]

11 THE COURT: All right. The case you gave me,
12 State v. Jones, says: anything having the legitimate
13 tendency to throw light on the accuracy, truth --

14 My problem is your theory I don't think has a
15 whole lot of legitimate tendencies. But I understand
16 your argument.

17 You wanted to say something?

18 MR. BIERING: I just wanted to make sure that
19 I understand clearly what the judge's ruling is. If
20 you --

21 THE COURT: I haven't ruled yet.

22 MR. BIERING: Oh. I'm sorry. I thought you
23 were saying that we could go into the conviction.

24 THE COURT: I said you can go -- you can ask him
25 were you convicted on such-and-such date of such-and-

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 such charge. If he says yes, that's the end of it.

2 MR. BIERING: Yes, sir. If --

3 THE COURT: I ruled on that.

4 I still haven't ruled on the issue of the plea
5 bargain. I mean, I never heard of a plea bargain with
6 a victim, other --

7 MR. BIERING: Judge, I --

8 THE COURT: -- other than this case.

9 MR. BIERING: I'm not arguing --

10 THE COURT: I don't think it quantifies plea
11 bargaining.

12 MR. BIERING: I am not standing in support of
13 the argument as it relates to a plea bargain.

14 THE COURT: Well, what are you standing for?

15 MR. BIERING: I just wanted to clarify that we
16 could get into the conviction --

17 THE COURT: Oh, okay. All right.

18 MR. BIERING: Thank you, Judge.

19 THE COURT: Anything the State want to add?

20 MS. CORNWELL: [No response]

21 THE COURT: Bring a notepad up here, if you
22 would, Mr. Chapman, and come up here for a second.

23 Where is Mia? I can't see even the top of her
24 head in this courtroom.

25 I don't need this on the record.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT REPORTER: You don't? Okay.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 THE COURT: All right. Mr. Shelton, we had a
5 bench conference. And I'm going to allow you to ask
6 the one question after you bring out the conviction,
7 which: did the State give you any preferential
8 treatment with your criminal conviction because you
9 were a victim in this case. And that's as far as
10 we're going with it.

11 I think you wrote the question down; is that
12 correct?

13 MR. CHAD SHELTON: Yes, Your Honor.

14 THE COURT: I know you want to do more than
15 that. I know you want to go into the pending charges
16 at the time this occurred. But I'm not going into
17 that. You can go into the conviction and I'll allow
18 you to ask this one question.

19 MR. CHAD SHELTON: Yes, Your Honor.

20 THE COURT: Okay?

21 MR. CHAD SHELTON: Yes, Your Honor.

22 And for the record: the fact that this was a
23 pending charge and then it's resolved later on with
24 the same prosecuting office.

25 THE COURT: Right. I understand. I fully

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 understand your position. I just disagree with it.

2 MR. CHAD SHELTON: Yes, Your Honor.

3 THE COURT: Okay? Anything else before we bring
4 the jury?

5 MS. CORNWELL: Nothing from the State, Your
6 Honor.

7 MR. CHAD SHELTON: [No response]

8 MR. BIERING: [No response]

9 THE COURT: All right. Bring us the jury,
10 please.

11 We need our witness.

12 MS. CORNWELL: I'm sorry.

13 [Whereupon, Mr. Mendoza comes forward and
14 re-takes the witness stand]

15 [Whereupon, the jury enters the courtroom at
16 11:33 a.m.]

17 THE COURT: All right. Who would like to take
18 notes? If you would like to take notes, raise your
19 right hand.

20 [Whereupon, juror complies]

21 THE COURT: Just one person? All right. Give
22 that one person a notepad and pen.

23 Anyone else who would like to take notes? One
24 more. Are we going for three? Just two? Okay.

25 All right. The notepads: the clerk is going to

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 maintain control of the notepads during the trial. At
2 the end of the trial, I'll let you take them into the
3 courtroom [phonetic] with you. So if you would just
4 write your name inside the notepad and when you come
5 in the courtroom, retrieve your notepads.

6 [Off the record momentarily]

7 THE COURT: All right. While we were -- I was
8 listening to the arguments of the attorneys, the State
9 is going into an ankle monitor that was worn by one of
10 the alleged defendants in this case. I'm going to
11 allow the testimony about the ankle monitor. That
12 testimony only goes to the charge of assault and
13 battery. You are not to consider it in any other
14 charge, i.e., the kidnaping, the armed robbery or the
15 possession of a firearm during the commission of a
16 violent crime. Only as to the assault and battery for
17 identification purposes as who was doing the kicking.

18 Please proceed.

19 MR. CHAD SHELTON: Just for the record, a
20 continued --

21 THE COURT: Pardon?

22 MR. CHAD SHELTON: -- objection.

23 THE COURT: Objection. I understand you
24 objection. Overruled.

25 MR. CHAD SHELTON: Thank you, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Except as to the three charges,
2 kidnaping and the armed robbery and the pistol. I
3 sustain it as to those objections.

4 MR. CHAD SHELTON: Thank you, Your Honor.

5 THE COURT: You are not to consider this
6 evidence on any other charges except for the assault
7 and battery. For identification purposes only.

8 Please proceed.

9 MS. CORNWELL: Thank you, Your Honor.

10 Mr. Mendoza, I apologize. We got interrupted so
11 I'm going to take you back a little bit, just to get
12 us going again.

13 - - - - -

14 CONTINUED DIRECT EXAMINATION

15 BY MS. CORNWELL:

16 Q. I believe you had told us that this happened in
17 early January of 2011?

18 A. Yes, ma'am.

19 Q. Okay. And you stated that you met Ms. Clark on
20 facebook?

21 A. Yes, ma'am.

22 Q. The night before this happened or --

23 A. Yes, ma'am.

24 Q. -- or within a couple of days of this happening?

25 A. Yes, ma'am.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Will you tell the jury again what happened when
2 you met up with Ms. Clark that night.

3 A. She picked me up at my home. It was around
4 twelve o'clock, twelve -- it was around twelve -- between
5 twelve o'clock and 12:30 when she picked me up. I got in
6 the car. She was asking me if I wanted to buy some weed.
7 I told her I didn't know nobody at the time because it was
8 late and I didn't know nobody to get any weed from. She
9 told me she had a friend of hers that she knew where to
10 get a little blunts, five-dollar weed bag.

11 So we got in the car. We left. We went down
12 the road. It was on College Park Road. We went down this
13 dirt road. Soon as we went down the dirt road, she turned
14 off her lights. That's when I started to notice something
15 was going on and something was wrong, because it was a
16 real dark -- real-dark dirt road.

17 So I asked her what's going on, why you turning
18 your lights off like that. She was like, don't worry;
19 we're just going here to meet my friend of mines to get --
20 pick up some weed. I said okay.

21 So soon as we go down the dirt road -- like she
22 didn't turn the lights off automatically, like quick, but
23 soon as she got like halfway in the dirt road she turned
24 the lights off. I seen three guys wearing a hoodie. And
25 I was like, well, I thought we was supposed to meet only

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 one person; who are these other two guys that's with her
2 [phonetic]. And she's like, it's probably one of his
3 friends or something that's with him. I was like, okay.

4 So when we got to the -- when we stopped, the
5 lights and everything was off. Like I was saying, I was
6 trying to get out of the car because I felt something
7 wasn't right. So I was trying to get out the car. I
8 couldn't get out the car. The car was locked. The
9 windows was locked. Everything in the car was locked.
10 Couldn't get out unless it was from the outside. Somebody
11 had to let me out.

12 So as soon as we stopped, one guy came around
13 and pointed a gun at me through the window and was telling
14 me get out of the car, get out of the car, get out of the
15 car. I couldn't get out of the car. The back window on
16 the passenger side went down and I had a gun at the back
17 of my head. And he was still telling me to get out.

18 He was keep on talking and keep on talking. And
19 I was trying to think who it was. He kept talking, kept
20 talking. Finally, he got the gun at the back of my head.
21 He opens the door. As soon as I get out of the car, he
22 pistol-whipped me because he tries to tell me not to look
23 at him because they didn't have no mask or nothing on.
24 They just had a hoodie, wearing all black.

25 So when he pistol-whipped me, I went stumbling.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 I went stumbling towards the back seat of the -- I went
2 stumbling towards the back of the car. Jessica Clark had
3 her foot still on the brake. She was still in the
4 driver's seat. She was still in the car. She was never
5 taken out or nothing like that. So the brakes -- the
6 brake light's on.

7 They're there pistol-whipping me, pistol-
8 whipping me, telling me to drop on the ground. I was
9 unconscious. I don't know what was going on in my -- I
10 had so many things going on in my head. I thought I was
11 going to die, all kinds of stuff, so I didn't go to the
12 ground.

13 So I don't know. For some reason, I came -- I
14 realized just go to the ground, they're going to kill you.
15 So I went to the ground. Soon as I hit the ground, they
16 was telling me to empty everything out of my pockets. And
17 I told them I didn't have nothing. And when I -- whenever
18 -- they didn't believe me.

19 So I thought it was his brother, Shane Newman,
20 was the one who was emptying all the stuff out of my
21 pockets. And when he was emptying all the stuff out of my
22 pockets, they only found my keys, my phone, my wallet, and
23 that's it. They didn't find my money because I had my
24 money stashed into my shoe -- in my socks. So when they
25 was beating me, they didn't find no money. But they knew

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 I had money. Somehow -- I don't know how they knew I had
2 money. And they just wouldn't give up. They wanted the
3 money.

4 And they told me to take off all my clothes. I
5 was like, are you being serious. And they was like, yes,
6 take off all your clothes. I didn't want to take off my
7 clothes. His brother is the one who took my clothes off
8 of me. And when they took my clothes off of me, I got
9 back to the ground. Well, actually, I was still on the
10 ground when they was taking my clothes off.

11 And when they took my shirt and my pants off --
12 soon as they took my pants off, that's whenever -- when
13 they went like this, up, that's when all my money came
14 flying, because I had it in my socks and whenever they
15 took my pants off, both my legs went up in the air, that's
16 when all the money came out flying. And all the money was
17 everywhere on the floor [phonetic] and you could see them
18 picking up the money.

19 And they was -- actually, Ryan had the gun
20 pointed at me telling me not to look up. Teddy was also
21 kicking me on my ribs. Ryan was also kicking me too,
22 sometimes. It was on my ribs and on my face. And that's
23 when I felt the ankle monitor on his ankle. I already
24 knew the voice was familiar from someone, but I -- and
25 when I felt the ankle monitor hitting me on my face a

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 couple of times, I kind of looked because I felt it was
2 something hard. Thought I was getting hit by a gun, but I
3 wasn't. It was the ankle monitor.

4 He kicked me about three or four times. And
5 when I looked over, he had his pants -- he had black
6 camouflage pants. He had his pants -- you know how you
7 can tie your camouflage pants on the bottom. He had them
8 tied like this, and then he had them like this. But he
9 had his ankle monitor showing. •So that's how I knew.
10 When I heard his voice and then I looked at the ankle
11 monitor, I knew it was him.

12 And then when I looked at the other two guys,
13 his name is -- they call him by Teddy. He's real tall,
14 light-skinned, black male. I recognized his height. I
15 recognized his voice only a little bit, because he didn't
16 talk that much. I just recognized his voice only a
17 little.

18 After that happened, they both had their guns
19 pointed at me telling me don't look back, don't move. I
20 was still unconscious. I didn't look. I kind of looked a
21 little bit. Jessica never got out of the car, period.
22 They all -- Ryan got in the front seat and the other two
23 guys got in the back seat. They drove off like nothing
24 happened.

25 I was in my boxers, naked. I tried to look for

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 my phone on the ground. I couldn't find nothing to call
2 anybody. So I went -- I ran out of the dirt road. I seen
3 a car coming by. I stopped the car. I told him, hey,
4 look, I just been robbed, I just been jumped, I been beat
5 up, all kinds of stuff. He gave me a ride to my house. I
6 went home, banging on my door.

7 I was scared for my life. I could have been
8 dead. I'm not going to lie to you. They had me in a good
9 spot, perfect spot, where I could have been gone and
10 nobody would have known what happened.

11 So I go home, crying. I was shocked --

12 Q. I'm going to interrupt you for a second and go
13 back a little bit, if you don't mind.

14 You stated that somebody put a gun to your head.
15 Did you ever see the gun?

16 A. Yes, ma'am.

17 Q. And what kind of gun was it?

18 A. It looked like a .380 Highpoint.

19 Q. Okay. And let's go back to your identification
20 of the people. Who were you able to identify?

21 A. Ryan Newman.

22 Q. And how were you able to identify him?

23 A. Well, by his voice and by he has a scar right
24 here [indicates] on his face. Whenever we was towards the
25 back of the car, the brake light was still on, like I was

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 saying, and the red light was reflecting on his face and I
2 could see his face clear.

3 Q. And when you were being -- when you were on the
4 ground being kicked, how were you able to tell who was
5 kicking you?

6 A. Because I felt the ankle monitor. There was
7 only one person on my left side and there was two on my
8 right side when I was laying on the ground.

9 Q. How do you know the -- that the ankle monitor
10 was on Ryan?

11 A. Because it's on his foot and he was -- I was
12 getting kicked in the face with it.

13 Q. Okay. And how do you know that he had to wear
14 an ankle monitor?

15 A. Because I used to live with him and he used to
16 have to charge it up whenever it goes dead.

17 Q. And how certain -- I believe you said that you
18 identified Ryan, Teddy, and Ryan's brother Shane?

19 A. Yes, ma'am.

20 Q. How certain are you with those identifications?

21 A. Well, I was a hundred percent positive that it
22 was Ryan, Teddy, and Shane until I heard it was someone
23 else.

24 Q. So today do you still believe that it was Ryan,
25 Teddy, and Shane that attacked you?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes.

2 Q. Do you think it was all three of them still?

3 A. No. Not Shane. Shane Newman was not involved.

4 Q. So you originally identified three people. How
5 certain are you on all three of those people?

6 A. A hundred --

7 Q. How certain --

8 A. -- percent.

9 Q. -- are you that it was Ryan Newman?

10 A. A hundred percent sure.

11 Q. How certain are you that it was this guy that
12 you knew as Teddy?

13 A. I'm a hundred percent sure it was him.

14 Q. How certain are you that it was Shane Newman
15 that was going through your pockets?

16 A. At the time, I was a hundred percent.

17 Q. And now?

18 A. At all. I don't think --

19 Q. Now you don't think so at all --

20 A. -- he has nothing to do with it.

21 Q. Today, how certain are you that it was Ryan
22 Newman?

23 A. A hundred percent.

24 Q. And after this incident occurred and you went
25 home, what did you do?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. I called 911.

2 Q. And after you called 911, what happened?

3 A. About nine cop cars came, the fire department,
4 ambulance. They came and -- to my house and checked up on
5 me.

6 Q. How many officers did you talk to that specific
7 night?

8 A. One.

9 Q. And EMS, as well?

10 A. Yes, ma'am.

11 Q. Did you go to the hospital that night?

12 A. No, ma'am.

13 Q. Did people in the ambulance check you out?

14 A. Yes, ma'am.

15 Q. And did you file a police report that night?

16 A. No, ma'am. Or, I mean, yes, ma'am.

17 Q. You gave the police a statement that night?

18 A. Well, not that night but that morning.

19 Q. About what time was it when you called the
20 police?

21 A. It was about 1:30 or two o'clock.

22 Q. And did you immediately call the police when you
23 got home?

24 A. Yes, ma'am.

25 Q. Did you identify any of the suspects for the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 police that night?

2 A. Yes, ma'am.

3 Q. And did you give a written statement that night?

4 A. No, ma'am.

5 Q. Why did you not give a written statement that
6 night?

7 A. They told -- they didn't ask me. They didn't
8 tell me to. They told me to come the next morning, early
9 in the morning, and do a report.

10 Q. Was your head hurting at the time?

11 A. Yes, ma'am.

12 Q. Were you dizzy?

13 A. Yes, ma'am.

14 Q. You stated a couple of times that you were in
15 and out of consciousness. Now, did you completely lose
16 consciousness or were you just --

17 A. I was in and out --

18 Q. -- kind of dazed?

19 A. -- because I couldn't remember.

20 When they was asking me questions, I couldn't
21 really remember half -- like all the stuff that was what
22 happened.

23 Q. Okay. After you spoke to police that night,
24 what did you do?

25 A. I took a shower.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 My moms came up to me and was like, I can't
2 sleep. I was like, why; what's wrong. She was like, I
3 just can't believe this happened to you; I want to go
4 check if this girl really had something to do with it.
5 And I was like, mom, I don't want to go over there; I
6 mean, I -- these guys are dangerous; they got guns; I
7 mean, they will shoot at us if we go around there; I do
8 not want to go around there.

9 She was wanting to go real bad, real bad, and
10 she was going to go alone. I told her, no, I'm not going
11 to let you go alone; I know how these guys are; I'm not
12 letting you go home -- go over there alone; if something
13 happened to you -- no.

14 So we went. We got in the car and we drove
15 towards Ryan Newman's house and when we drove to his house
16 -- he lives in a cul-de-sac -- we seen Jessica Clark's car
17 sitting in the driveway. And I said, mom, that's her car,
18 that's her; you know, I'm telling you that she set me up,
19 she's the one who did it. And she was like, are you sure.
20 I said yes.

21 So we went back home. She wanted to drive over
22 to the house, like take a picture, but I told her I was --
23 I was like, no, I'm not putting your life in that
24 situation; I will not; I know how these guys are; they're
25 danger; I'm not doing it. So I stopped the car and I

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 reversed and we went back home.

2 I called the detective, told the detective the
3 vehicle who picked me up and took me or whatever, they're
4 at Ryan Newman's house right now. I didn't know his
5 address, I didn't know the house number, I didn't know
6 nothing. I just knew how to get there. And I told him,
7 if you want me to go, I'll take you there. But they said
8 that they was going to drive by and take a look at it and
9 investigate into it.

10 Q. Okay. What kind of car --

11 A. It was a --

12 Q. -- was Jessica driving?

13 A. -- burgundy Ford. It was a four-door.

14 Q. And what time was it when you drove by that
15 house?

16 A. It was about 3:30, four o'clock.

17 Q. And between going to -- between coming back from
18 your house -- did you make any other stops before you went
19 back to your house?

20 A. No, ma'am.

21 Q. Did you have occasion to go back to the incident
22 location?

23 A. Yes, ma'am.

24 Q. And when did you do that?

25 A. After we left Ryan's neighborhood.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. So before you went home that night, you went
2 back by?

3 A. Yes.

4 Q. And why did you go back out there?

5 A. See if I could find my birth certificate, my
6 wallet, my social -- because that's real important to
7 me -- my car keys, my cell phone. And that's about it.

8 Q. Were you able to find anything?

9 A. No, ma'am. The only thing I found was my shoes
10 in the ditch.

11 Q. And have you seen or spoken to the defendants
12 since this incident occurred?

13 A. No, ma'am.

14 Q. Did anybody ever call you or speak to you
15 regarding this incident?

16 A. No, ma'am. Well, they had a friend that came by
17 over to my house and they was telling me to talk to
18 someone on the phone and I --

19 MR. CHAD SHELTON: Objection, Your Honor.

20 THE COURT: I'll sustain the objection.

21 MR. CHAD SHELTON: Hearsay.

22 THE COURT: Don't testify to what someone else
23 said.

24 MS. CORNWELL: You can't tell the jury what
25 somebody else said.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. [Ms. Cornwell] But did you ever specifically
2 speak to any of the defendants after this occurred?

3 A. Yes, ma'am.

4 Q. Who did you speak to?

5 A. Ryan Newman.

6 Q. And when was this?

7 A. I'd say about two months ago.

8 Q. How did you speak to him?

9 A. One of his friends came to my house.

10 Q. And did you speak to him in person or did you
11 speak with him on the phone?

12 A. The phone.

13 Q. And how were you able to tell that it was him on
14 the phone?

15 A. Well, I didn't. She just handed me the phone
16 and was like, talk to this person.

17 Q. What did that person on the phone -- were you
18 able to identify who that person on the phone was?

19 A. Yeah. It was Ryan Newman.

20 Q. How do you know that it was Ryan Newman on the
21 phone?

22 A. I was talking to him.

23 Q. Did you recognize his voice?

24 A. His voice.

25 Q. Did he tell you it was him?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes.

2 Q. What did he say to you on the phone?

3 A. Telling me not to show up at court, the charges
4 would get dropped. But if I have to go to court, if I get
5 a subpoena to go to court, I have to go because if I don't
6 go they're going to put a warrant out for my arrest.

7 MS. CORNWELL: The Court's indulgence.

8 [Whereupon, Ms. Cornwell and Mr. Ben Shelton
9 confer]

10 Q. [Ms. Cornwell] Mr. Mendoza, I'm just going to
11 ask you a couple of questions about you.

12 You say you're twenty-six, twenty-seven years
13 old?

14 A. Twenty-eight.

15 Q. Twenty-eight. I'm sorry.

16 What high school did you go to?

17 A. Stratford High School.

18 Q. And have you ever gotten in any trouble with the
19 law?

20 A. One time.

21 Q. And what was that for?

22 A. It was a burglary charge.

23 Q. And what happened with that charge?

24 A. They offered me to plead.

25 It was second degree burglary. They said that

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 it would be a third degree burglary and they offered me a
2 year of probation.

3 Q. Okay. Is that why you moved out of your mom's
4 house?

5 A. Yes, ma'am.

6 Q. And why did you want to move back into your
7 mom's house?

8 A. Because where I was living at the time, it
9 wasn't -- I wasn't down with that kind of crowd and stuff
10 that they used to do, and I -- I was -- you know, I didn't
11 want to get into more trouble.

12 Q. What was the defendant's reaction when you moved
13 out?

14 A. He was mad.

15 Q. When you moved out?

16 A. Yeah. He was mad. He was pretty much out to
17 get me.

18 I had to lie to them and tell them I was doing
19 laundry, at my brother's house, to get away. And they
20 even offered to come get me, because they wanted me to
21 stay with them at their house.

22 Q. Do you think that that's why this incident
23 occurred?

24 A. No, ma'am.

25 Q. Why do you think this incident occurred?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. CHAD SHELTON: Objection, Your Honor.

2 THE COURT: What's your legal objection?

3 MR. CHAD SHELTON: Speculation.

4 THE COURT: Overruled. Go ahead.

5 Q. [Ms. Cornwell] Why do you think this incident
6 occurred?

7 A. I really don't know, because I have never done
8 nothing wrong to them.

9 MS. CORNWELL: Nothing further, Your Honor.

10 THE COURT: Cross-examination.

11 MR. CHAD SHELTON: Your Honor, could we approach
12 for one second.

13 THE COURT: I'm sorry? What?

14 MR. BEN SHELTON: May I approach one second?

15 THE COURT: Yes, sir.

16 [Whereupon, a bench conference is held as
17 follows:

18 MR. CHAD SHELTON: I think she opened the
19 door, so at least --

20 THE COURT: What, now?

21 MR. CHAD SHELTON: I'm sorry.

22 She opened the door. Can I at least ask
23 him he was faced with a burg second?

24 THE COURT: Uh-huh. [Indicates negatively]

25 MR. CHAD SHELTON: Okay.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Do what I said. Okay?

2 MR. CHAD SHELTON: Okay.

3 MS. CORNWELL: Thank you, Your Honor.

4 [Whereupon, the bench conference concludes]

5 MR. CHAD SHELTON: Mr. Mendoza, how are you
6 doing?

7 THE WITNESS: How are you doing?

8 CROSS-EXAMINATION

9 BY MR. CHAD SHELTON:

10 Q. I'm Chad. We've never met, have we?

11 A. No, sir.

12 Q. We've never talked about this case, have we?

13 A. No, sir.

14 Q. Okay. I believe you said that you pled guilty
15 to a burg third; right?

16 A. Yes, sir.

17 Q. You got one year of probation?

18 A. Yes, sir.

19 Q. Did the State give you any preferential
20 treatment --

21 A. No.

22 Q. -- with your criminal conviction because you
23 were a victim in this case?

24 A. No.

25 Q. But you're currently on probation?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. And you're aware of the terms and conditions of
3 probation?

4 MS. CORNWELL: Objection, Your Honor.

5 THE COURT: What's your legal objection?

6 MS. CORNWELL: Relevance. We established --

7 THE COURT: I'll sustain the objection. Let's
8 move on.

9 Q. [Mr. Chad Shelton] I believe your statement was
10 that you and Jessica were out to go get drugs?

11 A. No.

12 Q. Well, one of the reasons you were out --

13 A. Yeah.

14 Q. -- were to get drugs, in addition to having sex?

15 A. Uh-huh.

16 Q. And that was set up on facebook?

17 A. No. Actually, that was through text.

18 Q. Text messages?

19 A. Yes.

20 Q. And your statement, written statement -- you
21 wrote a statement in this case; correct?

22 A. Yes.

23 Q. And your written statement was that she was
24 talking about having sex and that she would use her mouth;
25 correct?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes.

2 Q. And you stated: that's what's up; I like that.

3 A. Yes.

4 Q. Do you use facebook?

5 A. Yes, sir.

6 Q. A lot?

7 A. Yes, sir.

8 Q. Do you use facebook to sell drugs?

9 A. No, sir.

10 Q. Do you know a Ryan Walters?

11 A. Yes, sir.

12 Q. Do you sell drugs to Ryan Walters?

13 A. I mean, in the past.

14 Q. So when it says, I have that green; hit me up if
15 you need some --

16 MS. CORNWELL: Objection, Your Honor.

17 THE COURT: I'm sorry. What?

18 MS. CORNWELL: Objection, Your Honor. It's
19 hearsay. Foundation.

20 THE COURT: I'm not sure where he's reading
21 from.

22 What is it you're reading from?

23 MR. CHAD SHELTON: Facebook pages, Your Honor.

24 THE COURT: Pardon?

25 MR. CHAD SHELTON: Facebook.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Whose facebook? I mean, if he can
2 identify it --

3 MR. CHAD SHELTON: His --

4 THE COURT: -- he can go into it.

5 MS. CORNWELL: Your Honor, may we approach?

6 THE COURT: Yes, ma'am.

7 [Whereupon, a bench conference is held as
8 follows]

9 THE COURT: I mean, if he can identify the
10 page and he did it, I'll let you go into it.
11 But if you're just pulling it out of the air,
12 I'm not. It's hearsay.

13 MS. CORNWELL: The State also has an issue
14 with the authentication of the records.

15 MR. BIERING: If they've got an
16 authentication issue, we've got a real issue,
17 because they provided it to us, Judge.

18 MS. CORNWELL: Your Honor, we --

19 THE COURT: I understand.

20 That's why I'm saying he's going to have to
21 identify it. Somebody has got to say it's
22 something that he knows about. There's got to
23 be some kind of authentication to it. I don't
24 think you need to bring the facebook people in
25 here. He's got to make an identification to it.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. CHAD SHELTON: Yes, sir.

2 THE COURT: Otherwise, it's -- I mean, who
3 said it?

4 MS. CORNWELL: And, Your Honor, the
5 authentication --

6 THE COURT: Who allegedly said it on
7 facebook?

8 MR. CHAD SHELTON: He did.

9 THE COURT: Well, let's see if he can
10 identify it.

11 MS. CORNWELL: Is it a conversation that he
12 had with somebody else?

13 THE COURT: If he can identify it, you can
14 go into it. Give it to him and let him see if
15 he can identify it.

16 MR. CHAD SHELTON: Yes, sir.

17 MS. CORNWELL: Your Honor, the State still
18 has an objection on the authentication issue, is
19 that with these facebook messages anybody can
20 log in as anybody, anybody can create an account
21 for anybody. So how are we going to
22 authenticate his account?

23 THE COURT: I agree with that. But if he
24 says, yes, I did this and I recognize it, then
25 it's authenticated. If he didn't, then I'm not

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 going into it.

2 MS. CORNWELL: Okay. Thank you, Your
3 Honor.

4 THE COURT: Okay?

5 MR. CHAD SHELTON: Thank you, Your Honor.

6 [Whereupon, the bench conference concludes]

7 Q. [Mr. Chad Shelton] Are you friends with Ryan
8 Walters on facebook?

9 A. Yes, sir.

10 Q. Have you sent messages back and forth between
11 yourself and Ryan Walters?

12 A. I don't remember.

13 Q. Would it help to refresh your memory to see a
14 printout of your conversation with Mr. Walters?

15 A. Yeah.

16 THE COURT: Show it to him. See if he
17 identifies it.

18 [Whereupon, Mr. Chad Shelton proffers documents
19 to the witness]

20 [Whereupon, the witness reviews documents]

21 A. I don't remember that conversation.

22 THE COURT: Mr. Shelton, do you have a whole
23 series of them? Just show them to him and ask can --
24 does he recognize it --

25 MR. CHAD SHELTON: I have -- I have two.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: -- does he recognize it.

2 MR. CHAD SHELTON: I have -- I specifically have
3 two.

4 THE WITNESS: I don't, Your Honor.

5 THE COURT: Hold on a second, please.

6 MR. CHAD SHELTON: Or three. I'm sorry.

7 THE COURT: I guess for identification, because
8 there will be more than one, let's mark them as
9 Defendant's --

10 How do you want to do it? How do you want to do
11 it, Mia?

12 THE COURT REPORTER: Defendant's Newman 1.

13 THE COURT: Defendant Newman Number 1? Okay.
14 Defendant Newman Number 1, 2 and 3, or whatever the
15 numbers are.

16 [Whereupon, Defendant Newman's Exhibit Number 1
17 is marked by the court reporter]

18 [Whereupon, Defendant Newman's Exhibit Number 2
19 is marked by the court reporter]

20 [Whereupon, Defendant Newman's Exhibit Number 3
21 is marked by the court reporter]

22 THE COURT REPORTER: It's 1, 2 and 3, Judge.

23 Q. [Mr. Chad Shelton] All right. You reviewed
24 Defendant's 1, 2, and 3 for identification.

25 [Whereupon, the witness reviews documents]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. I don't remember this -- none of this
2 conversation.

3 Q. [Mr. Chad Shelton] Okay. Well, you use
4 facebook; correct?

5 A. Yes.

6 Q. And you dispute your name on there, on there --

7 A. What do you mean?

8 Q. -- on those -- on that sheet of paper?

9 Your name is on that sheet of paper; correct?

10 MS. CORNWELL: Objection, Your Honor. He said
11 he doesn't remember the conversation.

12 THE COURT: Overruled.

13 Q. [Mr. Chad Shelton] Your name's on here;
14 correct?

15 A. Yes.

16 Q. And a Ryan Walters is on there; correct?

17 A. Yes.

18 Q. And you are friends with Ryan Walters on
19 facebook; correct?

20 A. Well, I don't -- I mean, we're friends but I
21 don't know him or see him like that.

22 Q. Okay. Do you remember using facebook May, 2011?
23 May 27th, 2011?

24 A. I probably have.

25 Q. Okay.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. I use my facebook every day.

2 Q. And so there's -- on facebook you have your own
3 password; correct?

4 A. Yes.

5 But my page has been hacked a couple of times
6 that I didn't -- that somebody actually got my password
7 and got into my account.

8 THE COURT: Mr. Mendoza, he didn't ask you that.
9 Answer his question. Okay? Listen to his question --

10 A. Say that again.

11 THE COURT: -- and answer it, please, sir.

12 Q. [Mr. Chad Shelton] You have a password to get
13 into your --

14 A. Yes, sir.

15 Q. -- facebook; correct?

16 A. Yes, sir.

17 Q. And you use facebook every day; correct?

18 A. Yes, sir.

19 Q. And you're friends with Ryan Walters; correct?

20 A. Yes.

21 Q. What's your phone number?

22 A. I don't have a cell phone.

23 Q. Did you have a cell phone number in May of 2011?

24 A. I haven't had a cell phone in about a year and a
25 half.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. So you've never gone by 843-566-4461?

2 A. No, sir.

3 [Whereupon, Mr. Chad Shelton and Ms. Littlejohn
4 confer]

5 THE COURT: Let me see the attorneys up here for
6 just a second.

7 [Whereupon, a bench conference is held as
8 follows]

9 THE COURT: I never have heard you ask him
10 can he identify those. He said he didn't
11 remember the conversation, but I never heard
12 whether you asked him that. Did you ask him
13 whether he can identify them?

14 MR. CHAD SHELTON: He said he didn't
15 remember.

16 THE COURT: He said he didn't remember the
17 conversation.

18 But does he -- can he identify those
19 facebook pages? Ask him the question and see
20 what he does.

21 Now, do you want to do this in camera?
22 Because I'm not going to -- if he can identify
23 them, that's fine. If he can't, that's fine,
24 too. But I'm not going to let him sit up there
25 and play games with you.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 I mean, he can either --

2 I haven't seen it. Where are they? Go get
3 them and let me see what we're looking at.

4 Do they self-authenticate?

5 MS. CORNWELL: No, Your Honor.

6 THE COURT: Huh?

7 MS. CORNWELL: No, Your Honor.

8 THE COURT: Okay.

9 MS. CORNWELL: The reason --

10 THE COURT: I mean, he's the author. He's
11 the recipient.

12 MR. CHAD SHELTON: Right.

13 MS. CORNWELL: Your Honor, this technology,
14 he's saying other people can get the password.
15 They can log in under your name. So they can
16 post things that say it's you posting them, but
17 it's not really you posting them. That's where
18 the authentication issue --

19 THE COURT: First of all, as to what --
20 these conversations --

21 MS. CORNWELL: It's the State's position --

22 THE COURT: -- and what do you think are
23 relevant, in these conversations, to this case?

24 MR. CHAD SHELTON: One is he's saying they
25 went --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

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THE COURT: Huh?

MR. CHAD SHELTON: -- went out to buy --

THE COURT: Without me having to read them
all.

MR. CHAD SHELTON: Right.

One he said that they went out to buy
marijuana.

THE COURT: Where?

MR. CHAD SHELTON: Well, in his testimony,
with Jessica that he went out to buy marijuana.

But my argument is that he didn't need to
buy marijuana, he's selling marijuana.

THE COURT: Because what?

MR. CHAD SHELTON: Because he's lying about
the going out to buy marijuana.

THE COURT: Where does it say that on here?
Now, I'm just asking you to show me where you're
talking about --

MS. CORNWELL: -- conversation that he had
other people -- have anything to do with this
incident.

THE COURT: Well, let's -- well, first of
all, I need to get past the authentication. I
mean, it's got his name as the recipient and as
author.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 I'm going to send the jury out and we'll
2 hash through this. Okay? Because I'm not going
3 to let him sit up and play silly games. He can
4 identify if it's got his name on it or not and
5 with -- go into the issue about hacking in.

6 We're going to have this as a continuing
7 problem; right? How many of these things are
8 y'all trying to go into?

9 MR. BIERING: Your Honor, I've got --

10 THE COURT: We're not going into all of
11 those, I promise you.

12 MR. BIERING: Your Honor, I've got an
13 entire sheet --

14 THE COURT: Pardon?

15 MR. BIERING: I've got an entire sheet of
16 his transactions.

17 THE COURT: Well, I don't mind you going
18 into these, if you can authenticate it properly.
19 I just don't want all this B.S. that's running
20 back and forth. If it's something relevant to
21 this case, fine. But if that's -- let's get
22 some excerpts. Do you understand what I'm
23 saying to you?

24 MR. BIERING: Oh, yeah. I can get some
25 redacting.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 But I've got -- I don't want to be
2 controlled by -- he's, a controlling witness. I
3 think that --

4 THE COURT: Well, you may very well be. I
5 mean, I don't know what this guy is going to
6 agree to and identify or not identify. Okay?

7 Now, if he doesn't identify it, the only
8 other choice you've got is to bring the other
9 party in and let them identify it, whoever the
10 other party in -- in the facebook conversation.

11 MR. BIERING: I would ask the opportunity
12 to actually be able to ask this witness on the
13 issue. That's all I'm asking.

14 THE COURT: Pardon?

15 MR. BIERING: I can address -- I can
16 address the authentication issue.

17 THE COURT: Well, let's address it.

18 How long -- you've got to go -- you've got
19 to go through all of those?

20 MR. BIERING: Got a while.

21 THE COURT: All right. Now, how long is
22 this going to take? It's 12:15 now. If I send
23 the jury to lunch now, when do you want me to
24 bring them back?

25 MR. BIERING: I'll go ahead and say also,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Judge --

2 THE COURT: Huh?

3 MR. BIERING: -- that on my cross-
4 examination, I'm going to have an issue that's
5 probably going to require us to leave the
6 courtroom and view some evidence, as well.
7 So --

8 THE COURT: Well, right now all I want to
9 deal with is the authentication. Somebody is
10 going to have to authenticate these documents.

11 MR. BIERING: I'll be happy to -- I think
12 it'll take about thirty minutes.

13 THE COURT: All right.

14 MS. CORNWELL: Break for lunch maybe 2:00,
15 2:30?

16 THE COURT: Pardon?

17 MS. CORNWELL: Break for lunch maybe 2:00,
18 2:30?

19 THE COURT: Yeah. I'm going to tell them
20 to come back at 2:30.

21 MS. CORNWELL: Thank you, Your Honor.

22 [Whereupon, the bench conference concludes]

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, apparently I'm going to have to make some
25 decisions on the legal issue of evidence on

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 authentication of documents. You just can't walk into
2 court and throw documents around to go into evidence.
3 Somebody has to identify those documents and so I'm
4 going to have to go through some documents and make a
5 decision.

6 We're going to be here for a while so I just
7 don't want y'all sitting in the jury room twiddling
8 your thumbs while you're waiting on us in here running
9 our mouths. So what I'm going to do, Madam Forelady
10 and members of the jury, is send you to lunch at this
11 time. And so if you'll be back in the -- and when we
12 finish, we'll go to lunch.

13 So if you'll be back in the jury room at 2:30,
14 hopefully we can get started at that time and
15 hopefully we'll have some of these problems ironed
16 out.

17 And I apologize, but this comes up basically in
18 every trial. It's just a question of how often it
19 comes up.

20 Have a good lunch and I'll see you at 2:30.
21 Please don't discuss the case with anyone.

22 [Whereupon, the jury exits the courtroom at
23 12:11 p.m.]

24 THE COURT: All right. Mr. Shelton?

25 MR. CHAD SHELTON: Your Honor --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Mr. Biering, why don't you
2 participate in this --

3 MR. CHAD SHELTON: -- I would prefer that
4 Mr. Biering --

5 THE COURT: Pardon?

6 MR. CHAD SHELTON: -- as far as the
7 authentication aspect to this, I would prefer that
8 Mr. Biering --

9 THE COURT: Well, first of all, how about let's
10 ask this gentleman does he -- can he identify those
11 documents. They have his name on it, can he identify
12 them. 1, 2, and 3. That's the first hurdle we've got
13 to get over.

14 MR. CHAD SHELTON: Your Honor, and it's not --
15 might be my fault, but I think Mr. Biering has more
16 documents that --

17 THE COURT: Well, that's fine. But right now
18 we're dealing with your Defendant's 1, 2 and 3.

19 - - - - -

20 PROFFER

21 BY MR. CHAD SHELTON:

22 Q. Mr. Mendoza, could you identify those documents?

23 A. What do you mean by identify it?

24 THE COURT: Can you identify them? Do you know
25 what they are?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE WITNESS: Yes, I know what they are.

2 THE COURT: Okay. He says he knows what they
3 are.

4 The next question: what are they.

5 Q. [Mr. Chad Shelton] Well, what are they?

6 A. This is just messages.

7 Q. Messages between yourself to Mr. Walters?

8 A. I don't remember these messages at all, but
9 they --

10 THE COURT: He didn't ask you if you remembered.
11 He said what are they. You said you can identify
12 them. Now the question is what are they.

13 Q. [Mr. Chad Shelton] That's messages between
14 yourself and Mr. Walters?

15 A. Yes.

16 THE COURT: What is the date? I mean, what's
17 the context and what's the date on them?

18 Q. [Mr. Chad Shelton] On May 5th, 2011, you asked
19 Mr. Walters: you need green.

20 Correct?

21 A. I don't remember that, no.

22 Q. What would be green?

23 A. Weed.

24 Q. Marijuana?

25 A. Yes.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: All right. Let me stop you right
2 there.

3 Are you wanting to offer these documents
4 themselves into evidence or just ask him questions
5 about them?

6 MR. CHAD SHELTON: I just want -- I just want to
7 ask him questions. I don't know what Mr. Biering --

8 THE COURT: All right. You just want to ask him
9 questions about the documents?

10 MR. CHAD SHELTON: Yes, Your Honor.

11 THE COURT: Okay. What's the State's position?
12 He said he can identify them. He said it's a
13 conversation between him and somebody, but he doesn't
14 remember the conversation. I think he can ask him
15 questions about the documents.

16 Now, whether they've been authenticated properly
17 as to go into evidence, I'm not addressing that issue
18 at this point in time.

19 MS. CORNWELL: Your Honor, the State's only
20 other objection is the relevancy of this matter. I
21 think it's a character assignation of the defendant --
22 or the victim. They're just trying to paint him in a
23 bad light.

24 THE COURT: I understand.

25 But the relevancy goes beyond what he's asking

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 him about the documents. My question: do you have
2 any difficulty with him asking questions about the
3 documents, since he has identified them. That's my
4 question to the State.

5 MS. CORNWELL: The State's issue is he's
6 identified -- he's acknowledged that those look like
7 messages between him and another person, but he's also
8 stated he doesn't remember that conversation. And as
9 we stated --

10 THE COURT: I understand that.

11 MS. CORNWELL: -- you have problems in hacking
12 the security of a system. So, yes, those could be
13 messages with his name on it but it doesn't
14 necessarily indicate he's given those messages -- or
15 that he is the author of those messages.

16 THE COURT: Okay.

17 MS. CORNWELL: So I believe that Mr. Shelton can
18 ask do you remember this conversation. But when he
19 says no, you can't go any further into it because at
20 that point he doesn't acknowledge the conversation.

21 THE COURT: All right. I'm going to allow him
22 to ask questions about the documents.

23 The question I have to you now, Mr. Shelton,
24 what's the relevancy of all this -- I haven't read the
25 conversation. What's the relevancy of all these

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 conversations? I'm sure they're just a lot of yakking
2 back and forth. So let's get to what's relevant in
3 this case, as far as redacting it --

4 MR. CHAD SHELTON: Well, Your Honor --

5 THE COURT: -- or excerpts or whatever you want
6 to do.

7 MR. CHAD SHELTON: Specifically, he's talking
8 about selling Mr. Walters drugs.

9 THE COURT: Well, he -- you asked him something
10 about green, or whatever the question was. What was
11 the question?

12 MR. CHAD SHELTON: Right.

13 You've got green; you need green.

14 THE COURT: And you asked him did that mean
15 marijuana and he said no.

16 MR. CHAD SHELTON: No. He said yes.

17 THE WITNESS: I said yes.

18 THE COURT: You said yes. Okay. All right.
19 You said yes. I'm sorry.

20 MR. CHAD SHELTON: And he -- and, specifically,
21 one part of Mr. Walters is he's on probation while
22 he's doing this. So it goes to the -- especially the
23 credibility of that, Your Honor.

24 He's placing his character into play by
25 testifying here today, Your Honor, in addition to his

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 mother saying --

2 THE COURT: Well, what's in these messages about
3 this crime that we're here to try today other than
4 just strictly a character assassination and, hey, he
5 was trying to sell Walters drugs?

6 MR. CHAD SHELTON: The allegation is that they
7 go to buy marijuana. And so he's selling marijuana.
8 He would have no reason to buy marijuana. I'm trying
9 to --

10 THE COURT: Well, what's the time frame, I mean,
11 with these messages versus the crime that occurred on
12 January the 7th, 2011? Was it --

13 MR. CHAD SHELTON: In addition --

14 THE COURT: -- before?

15 MR. CHAD SHELTON: In addition to his mom saying
16 that he's now not now a good person that -- since he's
17 gotten back to the home. So in addition to that
18 testimony, also.

19 THE COURT: Well, what's the time frame of these
20 alleged conversations on facebook?

21 MR. CHAD SHELTON: My specific ones -- I know
22 Mr. Biering has more. But my specific ones --

23 THE COURT: I'm not worried about him. I'm
24 worried about you --

25 MR. CHAD SHELTON: -- May 2011 was this one --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: -- and your case.

2 MR. CHAD SHELTON: -- that she was on --

3 THE COURT: What was the date?

4 MR. CHAD SHELTON: May of 2011.

5 THE COURT: All right. That was five months
6 after --

7 MR. CHAD SHELTON: November of 2011, I'm sorry,
8 when he actually --

9 THE COURT: November of 2011. So that was --

10 MR. CHAD SHELTON: A month after he was --

11 THE COURT: -- I guess nine, ten -- ten or
12 eleven months after the crime occurred. So what's the
13 relevancy of that?

14 MR. CHAD SHELTON: Well, that one was while he's
15 on probation.

16 THE COURT: So what?

17 MR. CHAD SHELTON: He's violating the law. He's
18 indicating -- Your Honor, I mean --

19 THE COURT: He's committed a bad act.

20 MR. CHAD SHELTON: Yeah. Yes, Your Honor. And
21 he's placing his character into evidence. His
22 character is on trial right now.

23 THE COURT: When did he place his character into
24 evidence?

25 MR. CHAD SHELTON: By testifying -- and I'm

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 trying to get to bias and to the truthfulness --

2 THE COURT: I'm trying to what?

3 MR. CHAD SHELTON: -- get to bias and to
4 truthfulness and completeness, and he's testifying to
5 breaking the law.

6 THE COURT: Well, tell me where he put -- you
7 said he put his character into issue. Tell me when he
8 put his character -- I haven't heard anybody come in
9 here and say he's got a reputation of truth and
10 voracity and it's good.

11 MR. CHAD SHELTON: His mother did, Your Honor,
12 specifically.

13 THE COURT: What did his mother say? She said
14 she didn't allow some of his friends in the house.

15 MR. CHAD SHELTON: He changed his way of
16 being --

17 THE COURT: I'm sorry. What, Mr. Shelton?

18 MR. CHAD SHELTON: I'm just -- I'm going through
19 here, Your Honor.

20 THE COURT: Okay.

21 [Whereupon, Mr. Chad Shelton reviews documents]

22 MR. CHAD SHELTON: She specifically stated: son
23 had used marijuana, hasn't stopped.

24 THE COURT: I think she testified he still uses
25 it, just not in her house. If I remember correctly

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 she said, yeah, he uses marijuana but not in my home.

2 [Whereupon, Mr. Chad Shelton reviews documents]

3 MR. CHAD SHELTON: Changed his way of being,
4 Your Honor. I believe that she was trying to paint
5 him in a great and better light, now that he's changed
6 his way of being.

7 THE COURT: All right. That's the only thing
8 she said, that he changed his way of being?

9 MR. CHAD SHELTON: Well, as to how she was
10 trying to -- he moved back in. And why did he move
11 back in? Because he changed his -- he's changed his
12 way of being.

13 And I believe I asked the specific question on
14 that -- that part, too, Your Honor.

15 THE COURT: Okay. So that's the reason you
16 think you can go into the marijuana on these alleged
17 facebook conversations?

18 MR. CHAD SHELTON: Yes, Your Honor. My
19 argument.

20 THE COURT: Your argument.

21 Anything else you want to tell me?

22 MR. CHAD SHELTON: No.

23 THE COURT: Is there any -- what else do you
24 want to go into on these facebook conversations on
25 Defendant's Exhibit 1, 2 and 3? Because a couple of

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 them are a couple of pages long.

2 MR. CHAD SHELTON: There's also -- I only
3 have -- I have another one where he was involved in a
4 fight, Your Honor.

5 THE COURT: In a fight?

6 MR. CHAD SHELTON: Yes, Your Honor.

7 THE COURT: Well, what would a fight have to do
8 with anything?

9 I mean, he's already admitted that he smokes
10 marijuana, he's already admitted he was trying to buy
11 marijuana that night, and his mama says he still uses
12 marijuana. How much more marijuana do you want him to
13 use? When does it get to the point of being
14 cumulative? It's already out to the jury.

15 MR. CHAD SHELTON: Right, Your Honor.

16 The fight issue I think could go to him getting
17 in fights, and that could be an explanation for types
18 of --

19 THE COURT: Him getting into fights?

20 MR. CHAD SHELTON: -- types of the injuries,
21 Your Honor.

22 THE COURT: Well, I didn't know -- let me see.

23 MR. CHAD SHELTON: And a fight with his family
24 member that he's now back together with.

25 THE COURT: Okay. So you want to go into the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 fight on facebook?

2 MR. CHAD SHELTON: Yes, sir.

3 THE COURT: Anything else?

4 MR. CHAD SHELTON: That's all. Well, other than
5 pictures. I have some --

6 THE COURT: I'm not talking about the other
7 Defendant Clark. I'm talking about your -- right now,
8 you.

9 MR. CHAD SHELTON: There are some pictures I
10 would like to get in, too.

11 THE COURT: What pictures?

12 MR. CHAD SHELTON: And he can authenticate that
13 through his -- through his acknowledgment that he took
14 those pictures, Your Honor. There's one of him
15 drinking alcohol.

16 THE COURT: Okay.

17 MR. CHAD SHELTON: And there's one where he
18 takes a -- there's a picture and they're able to
19 comment on the pictures.

20 THE COURT: Let me see the pictures so I'll know
21 what you're talking about, if you don't mind. Just
22 let me look at the pictures.

23 [Whereupon, Mr. Chad Shelton proffers documents
24 to the Court]

25 MR. CHAD SHELTON: And the alcohol is just --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 mine is a violation of probation.

2 THE COURT: What is this?

3 MR. CHAD SHELTON: You're able to make comments
4 on pictures, Your Honor.

5 MR. BIERING: Judge, I would ask that you
6 withhold a ruling, as relates to the admission of any
7 of these individual documents from a global
8 standpoint, without me having an opportunity to defend
9 my client and present these through the rules of
10 evidence.

11 THE COURT: I understand.

12 MR. BIERING: Thank you, Judge.

13 THE COURT: All right. So you want to go into
14 those pictures?

15 MR. CHAD SHELTON: At least this one picture,
16 yes, Your Honor. I can --

17 THE COURT: Which one?

18 MR. CHAD SHELTON: I can understand if you
19 want to throw this part out, based on prior
20 discussions. But at least this picture, Your Honor,
21 we think --

22 THE COURT: All right. Solicitor, what's your
23 position on the pictures?

24 MS. CORNWELL: Your Honor, our position on all
25 of this is it's a 404(b), the wrongs crimes [phonetic]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 bad act. It's a character assassination. It has
2 nothing to do with the crime and him being a victim of
3 this particular crime.

4 If he wants to bring out specific conduct
5 incidents -- that's rule 405 that says that specific
6 incidents of conduct cannot be brought in for
7 assassination of character.

8 All they're trying to do is make this -- taint
9 this victim in a bad light. They're assassinating his
10 character, which both 404(b) and 405 specifically
11 state that you cannot do that. 404(b) states that
12 evidence of other crimes, wrongs or acts are not
13 admissible to prove character of a person in order to
14 show act and the conformity therein. All they're
15 trying to do is paint this defendant in a bad light --
16 or this victim in a bad light.

17 As Your Honor has already stated, he's admitted
18 to using marijuana, he's admitted to smoking
19 marijuana, he's admitted that he's sold marijuana in
20 the past. I don't know how much further they can get
21 it in. It's sheerly [phonetic] an expedition in
22 making him look bad in front of the jury. There's no
23 relevance to this case, this matter, these charges.

24 And Mr. Shelton made that argument himself that
25 he's trying to show that he's a good person, he's

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 trying to show that he's not a good person, that he's
2 violated probation. None of that has any relevancy to
3 this matter. It's sheerly [phonetic] a character
4 assassination.

5 THE COURT: All right. Mr. Shelton, anything
6 else you want to add, before I listen to Mr. Biering's
7 argument, before I make a ruling?

8 MR. CHAD SHELTON: Well, as to the -- this
9 picture, Your Honor, and the comments --

10 THE COURT: Which one? Show me which one.

11 MR. CHAD SHELTON: This picture and the
12 comments: specifically the comments on there. He
13 states that he will get them back, the people that
14 took the pictures of this, Your Honor.

15 THE COURT: Who took the pictures?

16 MR. CHAD SHELTON: Well, I don't know.

17 THE COURT: Well, I mean, if --

18 MR. CHAD SHELTON: -- but it's posted on his
19 facebook page.

20 THE COURT: Unless it's these's defendants, what
21 relevance --

22 MR. CHAD SHELTON: He posted --

23 THE COURT: Unless it's these defendants that
24 took the picture, what's the relevancy of that?

25 MR. BIERING: Your Honor, I would like the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Court --

2 THE COURT: Hold on a second. I'll listen to
3 you in a minute before I rule. Okay?

4 MR. BIERING: The defendant was making hand
5 motions in the courtroom. I would ask the Court --

6 THE COURT: Who was he making hand motions to?

7 MR. BIERING: I'm sorry. The -- he was
8 acknowledging -- I guess he's testifying. I said
9 defendant. But alleged victim.

10 THE COURT: Okay.

11 MR. CHAD SHELTON: Propensity, Your Honor.

12 THE COURT: All right. Show him the pictures
13 and let's find out who he wrote the message to and
14 what the pictures all about, since we're in camera.

15 - - - - -

16 PROFFER

17 MR. CHAD SHELTON:

18 Q. Do you recognize that picture?

19 A. Yeah. That's me.

20 Q. And is that on your facebook page?

21 A. Yes, sir.

22 Q. And there are comments associated with that?

23 A. Yes, sir.

24 Q. And, specifically, did you ask -- or did you
25 make a statement that you got them back?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes.

2 MR. CHAD SHELTON: That's all.

3 THE COURT: I'm sorry. What did he say? I was
4 talking to my law clerk.

5 MR. CHAD SHELTON: Did he make a statement
6 saying that he was going to give them back.

7 THE COURT: To who? Getting him back?

8 THE WITNESS: This is towards my brother,
9 because me and my brother take -- when he's passed
10 out, I take a picture of him, he puts it on facebook.
11 He takes a picture of me. He got me when I was passed
12 out.

13 THE COURT: Said he was going to get back to his
14 brother. What does --

15 THE WITNESS: That's what I said, it was getting
16 back to my brother.

17 THE COURT: -- that have to do with the
18 defendants?

19 MR. CHAD SHELTON: It goes to a theory of my
20 case, Your Honor.

21 THE WITNESS: And if you go to my brother's
22 page, I've got pictures of him and I got him back.

23 THE COURT: Watch the -- you said it was about
24 your brother. I understand.

25 I mean, what does that have to do with this

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 case?

2 MR. CHAD SHELTON: It goes to a theory I have
3 with the case, Your Honor.

4 THE COURT: You may have maybe -- what's your
5 theory, as far as this picture is concerned?

6 MR. CHAD SHELTON: Your Honor, with all due
7 respect, I would rather not disclose a part of my
8 theory of my case.

9 THE COURT: Well, then, I see no relevancy of a
10 picture on the facebook, and comments, when he says
11 the comments and the "I'll get you back" go to his
12 brother and not these defendants. How can that be
13 relevant in this case?

14 MR. CHAD SHELTON: I have a propensity to get
15 persons back, Your Honor.

16 THE COURT: Well, get persons back? I mean -- I
17 mean, what does 404 say? What does it say? Have you
18 read it lately? I mean, what does it say? Do you
19 want me to read it to you?

20 MR. CHAD SHELTON: Your Honor, I believe his
21 character is in evidence.

22 [Whereupon, the Court reviews documents]

23 THE COURT: Okay. I don't think it would come
24 under 404. 405 is the only possible way it could even
25 be considered.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. CHAD SHELTON: Right.

2 An essential element of one of my defenses, Your
3 Honor.

4 THE COURT: Well, it says: in which evidence of
5 a character or a trait of character of a person is
6 admissible.

7 So what's in this case that would be -- go
8 towards his trait or his character? Generally, you're
9 talking about self-defense, -- I mean, 405 is generally
10 talking about general reputation, i.e., he's got a
11 propensity to violence, he's a peace-lover, or he's of
12 truthfulness.

13 It goes to the general reputation, not specific
14 instance of bad conduct, marijuana or otherwise.

15 MR. CHAD SHELTON: Propensity to get people
16 back, Your Honor. To pay them back.

17 THE COURT: So you're saying he's vindictive?

18 MR. CHAD SHELTON: Yes, Your Honor.

19 THE COURT: Is that a character trait? Huh?

20 MR. CHAD SHELTON: Yes, Your Honor.

21 THE COURT: Okay. So that's your position:
22 he's vindictive, so that's a character trait and you
23 can put it in under 405?

24 MR. CHAD SHELTON: Yes, sir.

25 THE COURT: I thought it had to do with the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 crimes charged, the character and reference of the
2 crimes charged --

3 Is that right or is that wrong? 405.

4 MR. CHAD SHELTON: It says element of --

5 THE COURT: -- not your theory of your case.

6 MR. CHAD SHELTON: -- charge, claim or defense.

7 THE COURT: [Reading] Proof may be made by
8 testimony, his reputation or by testimony, form of an
9 opinion on -- allowing to specific instance of
10 conduct.

11 [Whereupon, the Court reviews documents]

12 THE COURT: All right. Anything else, Mr.
13 Shelton, before I listen to Mr. Biering?

14 MR. CHAD SHELTON: No, Your Honor.

15 THE COURT: All right. Mr. Biering, I'll be
16 glad to hear you. I want to listen to you because I
17 think the same argument is going to apply to you.

18 MR. BIERING: Your Honor, I first have to
19 disagree with procedurally where I'm at on this
20 argument, because I think that we should be able to
21 have opportunity to present this evidence and lay the
22 appropriate foundation for its admission. That's my
23 first objection.

24 But I don't think that I should be controlled by
25 the methodology that someone who's in an opposite

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 position in the case -- his methodology, defense
2 strategy, we shouldn't be controlled on how he
3 presents his evidence. So that's my first position.

4 My second position is this, Your Honor. If --

5 THE COURT: Who's controlling it on how he
6 presents it?

7 MR. BIERING: I have not have an opportunity to
8 question this witness and lay a foundation,
9 appropriate foundation, for the admission of what I
10 think --

11 THE COURT: I thought that's what we were
12 getting ready to do.

13 MR. BIERING: Oh. I'm ready if you -- if the
14 Judge will let me, I'm --

15 THE COURT: I thought that's what we were
16 getting ready to do.

17 MR. BIERING: Thank you so much, Judge.

18 THE COURT: I said it's your turn.

19 MR. BIERING: I'm so excited I can't stand it,
20 Judge. Thank you.

21 THE COURT: I thought that's what we were doing.

22 MR. BIERING: I thought I was just going to get
23 to talk. I'm sorry.

24 THE COURT: Well, I'll listen to you if you want
25 to talk.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I don't. Most people who know me
2 say I talk too much.

3 THE COURT: I thought that's what we were going
4 to do. I was going to give you an opportunity to lay
5 whatever foundation you've got to lay to get whatever
6 you want into evidence --

7 MR. BIERING: Thank you.

8 THE COURT: -- while we're sitting here in
9 camera, so we don't have to do it later on.

10 MR. BIERING: Thank you, Judge.

11 - - - - -

12 PROFFER

13 BY MR. BIERING:

14 Q. Mr. Mendoza, you have a couple of e-mail
15 addresses; is that correct?

16 A. I have two.

17 Q. And those e-mail addresses are?

18 A. Andremendoza56@gmail.com. And I have an old one
19 that I haven't used for a couple of years. It's -- if I'm
20 not mistaken, I think it's nydrel418, yahoo.com.

21 Q. Okay. And would you agree that you've been on
22 facebook since at least back in May of 2011?

23 A. Yes.

24 Q. Do you know a Braxton Norvel [phonetic]?

25 A. No.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Okay. Do you know a Carla Pachado [phonetic]?

2 A. Say that again.

3 Q. Carla Pachado. Pachado.

4 A. Do you mean Crystal Pachado?

5 Q. Okay. Maybe so.

6 A. That's my sister.

7 Q. That's your sister?

8 A. Yes.

9 Q. Do you know Casey Fischer?

10 A. Yes. That's my ex-girlfriend.

11 Q. Nelson Pachado [phonetic]?

12 A. That's my brother on my stepdad's side.

13 Q. Nathan Fisch [phonetic]?

14 A. No, sir.

15 Q. Shannon Marie or Shanpon Hoff [phonetic]?

16 A. No, sir.

17 Q. Don't know -- don't know them?

18 A. [Indicates negatively]

19 MR. BIERING: May I approach the witness, Your
20 Honor?

21 THE COURT: Yes, sir.

22 MS. CORNWELL: Can I see it?

23 MR. BIERING: Oh. Sure. It's in your -- it's
24 in the discovery you provided to me.

25 [Whereupon, Mr. Biering and Ms. Cornwell confer]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Your Honor, I've utilized the --

2 MS. CORNWELL: That's fine. I just needed to
3 see what you were showing him.

4 MR. BIERING: Okay.

5 THE COURT: How about just getting them
6 marked --

7 MR. BIERING: Sure.

8 THE COURT: -- mark them so we'll know what
9 we're talking about.

10 MR. BIERING: Sure.

11 [Whereupon, Defendant Clark's Exhibit Number 2
12 is marked by the court reporter]

13 Q. [Mr. Biering] Let me show you what's been pre-
14 marked as Defendant's 2. Is that your picture?

15 A. Yes, sir.

16 Q. Did you take that picture of yourself?

17 A. Yes, sir.

18 Q. And do you regularly upload pictures to
19 facebook?

20 A. Yes, sir.

21 Q. You do?

22 A. [Indicates affirmatively]

23 MR. BIERING: Thank you.

24 If possible, Your Honor, this -- well, I -- if I
25 could pre-mark another item, Your Honor? Actually, I

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 would -- is it possible to join this with this one
2 document?

3 THE COURT: That's fine. Just mark it however
4 you want to mark it.

5 MR. BIERING: For the record, I'm attaching what
6 is itemized as page 9 of 598 to page 8 of 598. It was
7 the photograph that was just -- that was just
8 identified by the defendant [sic].

9 Q. [Mr. Biering] If you would again look at that
10 picture and the document attached to that.

11 [Whereupon, Mr. Biering and Ms. Cornwell confer]

12 Q. [Mr. Biering] Did you notice the date on the
13 back of that page?

14 A. No, I didn't.

15 Q. You didn't notice the date?

16 A. No, sir.

17 Q. Okay.

18 MR. BIERING: And mark this as Defendant's 3.

19 THE COURT REPORTER: Clark's 3.

20 MR. BIERING: Clark's 3. Thank you.

21 THE COURT REPORTER: Is that one page?

22 MR. BIERING: It's two pages.

23 [Whereupon, Defendant Clark's Exhibit Number 3
24 is marked by the court reporter]

25 MR. BIERING: If I can approach the witness,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Your Honor?

2 THE COURT: Yes, sir.

3 Q. [Mr. Biering] Is this your picture, Mr.
4 Mendoza?

5 A. Yes, sir.

6 Q. And do you know by your own knowledge whether or
7 not that picture was uploaded to facebook, as well?

8 A. Yes, sir.

9 Q. You've seen it on facebook?

10 A. Yes, sir.

11 [Whereupon, Mr. Biering and Ms. Cornwell confer]

12 [Whereupon, Defendant Clark's Exhibit Number 4
13 is marked by the court reporter]

14 [Whereupon, Defendant Clark's Exhibit Number 5
15 is marked by the court reporter]

16 Q. [Mr. Biering] This is Defendant Clark's 4, pre-
17 marked, and Defendant Clark's 5.

18 THE COURT: Has he identified all of them?

19 MR. BIERING: No, Your Honor, not these.

20 For the record, Defendant Clark's 5 is -- has
21 page numbers, listed at the bottom, page 14 of 598
22 through page 14, 15, 16, 17 -- I'm sorry -- 20, 21,
23 22, unable to read the page number, 24, and 25. Pre-
24 marked as Defendant's Exhibit 5.

25 May I approach the witness, Your Honor?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Yes, sir.

2 Q. [Mr. Biering] If you could look at those
3 photographs. Tell me if those are pictures of you.

4 [Whereupon, the witness reviews documents]

5 A. Yes, sir.

6 Q. [Mr. Biering] And have you had occasion to see
7 those on facebook, as well?

8 A. Yes, sir.

9 MR. BIERING: And, Your Honor, if I could hand
10 up to the defendant [sic] what's been pre-marked as
11 Defendant's Exhibit 4. It's a picture with a date at
12 the bottom of uploaded 2010/10/03.

13 Q. [Mr. Biering] Take a peek at those pictures.

14 [Whereupon, the witness reviews documents]

15 A. Yes, sir.

16 [Off the record momentarily]

17 A. Yeah, I do remember these pictures.

18 Q. [Mr. Biering] Okay. And you remember those
19 being uploaded through your facebook, as well?

20 A. Yes, sir.

21 Q. You would agree that there are a lot of pictures
22 you've uploaded to facebook; is that right?

23 A. Yes, because I'm a -- yes, sir, I'm -- I'm
24 sorry. Yes, sir. I'm a promoter.

25 Q. You're a promoter. Okay.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 And, I mean, I heard your mom say that -- you
2 know, that you use facebook on your telephone; is that
3 right?

4 A. Well, it's not an active telephone, but it's a
5 Sprint phone that has wifi. So I have internet but wifi.

6 Q. Okay. Well, let's take a peek at some of these
7 pictures and look through them together.

8 MR. BIERING: Your Honor, permission, if I
9 could, just to stand next to the witness so we can --
10 Counsel may want to come up, as well. It might
11 be easier.

12 THE COURT: I'm sorry. What, now?

13 MR. BIERING: If I can stand next to the witness
14 as I question him?

15 THE COURT: That's fine.

16 Solicitor, if you want to come join, feel free,
17 if that would help. It'll save him some exercise back
18 and forth.

19 MS. CORNWELL: He might want that exercise.

20 THE COURT: Pardon?

21 MS. CORNWELL: He might want the exercise. He
22 might --

23 THE COURT: He might need it, I don't know.

24 MR. BIERING: I probably do, Judge. But that's
25 a different -- that's for a different day.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. [Mr. Biering] If you could -- or you -- do you
2 search the internet?

3 A. Yeah.

4 Q. You do?

5 A. Yeah.

6 Q. Okay. So you're familiar with web sites and
7 pages and things of that nature; is that right?

8 A. Yeah.

9 Q. Okay. I want you to take a peek and look at the
10 http address on the front page of -- photo at the top of
11 Defendant's Exhibit 4, that stack.

12 [Whereupon, the witness reviews documents]

13 A. Is that it? I didn't understand you.

14 Q. [Mr. Biering] Okay. I'm going to direct your
15 attention to where it says http.

16 A. Uh-huh.

17 Q. Okay. And I want you to follow through that
18 address, if you could.

19 A. [No response]

20 Q. Do you see the address?

21 A. Yeah.

22 MS. CORNWELL: Are you asking him to read it out
23 loud?

24 MR. BIERING: No.

25 Q. [Mr. Biering] At the end of the -- I'm sorry --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 the middle of the second line there is a number set that
2 begins with 1000005. Can you read that number set?

3 A. This one?

4 Q. Yes, sir.

5 A. It's 100000504098721.

6 Q. 8721. Okay.

7 Now, if you could, we're going to turn to the
8 second page of this exhibit and we're going to again begin
9 at the http address and we're going to look again at that
10 same number set. Does that have the same number set
11 listed there?

12 A. Yes.

13 Q. As we turn over to the next page of the exhibit
14 and we look at the http address, is the same number set
15 there?

16 A. Yes.

17 Q. We continue on. Same number set?

18 A. Same numbers.

19 Q. And continuing to turn pages. I've turned.
20 Same number set?

21 A. Yes, sir.

22 Q. I turned pages again. Same number set?

23 A. Yes, sir.

24 Q. I continue to turn pages. There appears to be a
25 photograph of you with approximately 1, 2, 3, 4, 5, 6, 7,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 8, 9, 10, 11, 12 people flipping the bird. Do you -- is
2 the same number set there?

3 A. Yes.

4 Q. And that date on that picture is January the
5 14th, 2011; is that correct?

6 A. No, sir.

7 Q. It's not?

8 A. No.

9 Q. Oh. Okay.

10 A. That happened when I was like eighteen,
11 nineteen.

12 Q. That happened when you were eighteen? Okay?

13 A. I'm twenty-eight now.

14 Q. Was it uploaded on January the 11th -- January
15 14th of 2011?

16 A. Probably. I don't remember.

17 Q. Okay. Would you agree that it says uploaded, on
18 that page, with the date?

19 A. Yeah. But I don't agree that I uploaded that
20 page.

21 Q. All right. Next picture. Again, is the same
22 number set in the second page of the http line?

23 A. Uh-huh.

24 Q. I'll tell you what. Let's do this. Why don't
25 you flip through. We've gone through four. Why don't you

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 flip through 2, 3 and 5 and just confirm that the same
2 number set exists in the second line of the address.

3 [Whereupon, the witness reviews documents]

4 A. Yeah, they all -- they're all the same numbers.

5 Q. [Mr. Biering] They're all the same numbers?

6 A. Yes, sir.

7 Q. Were you aware that the solicitor's office had
8 received, pursuant to a subpoena issued to facebook, a
9 complete copy of your -- or, as what they represented, a
10 complete copy of your facebook account?

11 A. No, sir.

12 Q. You were not aware of that?

13 A. No, sir.

14 Q. You would agree in your initial direct
15 conversation -- I mean, testimony, which was very
16 conversational with the prosecutor, that you moved out of
17 Ryan Newman's house because -- this is what you said: not
18 down with that crowd and what they were doing.

19 You agree that you said that; right?

20 A. Yes, sir.

21 Q. Because you said you didn't want to be involved
22 in what they were involved in; is that right?

23 A. Yes, sir.

24 MR. BIERING: Your Honor, I've got a number of
25 things that go beyond the scope of the admission of

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 the documents.

2 I think I'm just going to approach a couple of
3 other things and then ask, from an admission
4 standpoint, to be able to move forward. I'm just
5 going to flip over randomly. I have found myself at
6 page 345 of 598.

7 Just for -- I'm not going to mark this, Your
8 Honor, but if I could, if I could approach the witness
9 and ask --

10 Q. [Mr. Biering] Can you identify again that same
11 number set --

12 THE COURT: Well, let me just ask you this. Is
13 it the same number on all of these documents?

14 THE WITNESS: They're all the same number.

15 THE COURT: I didn't ask you that.

16 THE WITNESS: Oh. I'm sorry.

17 THE COURT: I'm asking your attorney.

18 MR. BIERING: Your Honor, it's the same number
19 on --

20 THE COURT: Well, I just --

21 MR. BIERING: -- all the documents.

22 THE COURT: You can just put that in the record,
23 as an officer of the court, it's the same number. You
24 don't have to go through every document and ask him
25 that. If it's the same number, it's the same number.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Solicitor, do you dispute it's the same number?

2 MS. CORNWELL: On the pictures?

3 THE COURT: On all the documents.

4 MS. CORNWELL: If Mr. Biering will testify as an
5 officer of the Court that it's all the same number,
6 the State is happy with that.

7 THE COURT: Okay. All right.

8 MR. BIERING: I'll testify as an officer of the
9 Court it's all the same number, Judge.

10 THE COURT: I understand. I will accept that.
11 So we don't --

12 MR. BIERING: Thank you, Judge.

13 THE COURT: -- have to go through --

14 MR. BIERING: Thank you, Judge.

15 THE COURT: -- each document and get him to
16 identify it.

17 MR. BIERING: Thank you, Judge.

18 THE COURT: All right.

19 MR. BIERING: It's our position that he has
20 identified his facebook documents. They have
21 stipulated that I, as an officer of the Court --

22 THE COURT: Well, I understand you said it's the
23 same number. But nobody has tied that number into
24 him, that I've heard.

25 MR. BIERING: Your Honor, he's identified the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 photograph and he said that he's uploaded these
2 pictures.

3 THE COURT: Well, he also said that he didn't
4 upload that one picture that showed him shooting the
5 bird when he was eighteen. So, I mean --

6 MR. BIERING: Your Honor, his testimony was that
7 he didn't upload --

8 THE COURT: -- the hurdle --

9 MR. BIERING: -- it then.

10 THE COURT: -- hasn't been connected to the last
11 digit -- the 8721 to him, at this point in time, that
12 I've heard.

13 MR. BIERING: I'll be happy to go forward, Your
14 Honor.

15 THE COURT: I mean, is that correct or is that
16 incorrect?

17 MR. BIERING: I'll be happy to go forward.

18 THE COURT: Okay. I mean, I haven't seen that
19 hurdle crossed yet.

20 MS. CORNWELL: Your Honor, if I may?

21 THE COURT: Yes, ma'am.

22 MS. CORNWELL: The pictures -- in facebook you
23 can tag other people. So other people can upload
24 pictures, tag somebody, and --

25 THE COURT: I understand that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MS. CORNWELL: -- get that --

2 THE COURT: But I think --

3 MS. CORNWELL: -- so just because --

4 THE COURT: -- what you're trying --

5 MS. CORNWELL: -- the numbers are there --

6 THE COURT: -- to say is this 8721 is somebody's
7 account number; i.e., I assume you think it's his.

8 MS. CORNWELL: Yes, sir.

9 THE COURT: Is it his? Can we stipulate to
10 that? Then we can get on to the relevancy of all
11 this.

12 Right now all we're talking about is
13 authentication. I mean, if it's his account number,
14 it's his account number and let's move on, it's been
15 authenticated --

16 MS. CORNWELL: It does go to authentication --

17 THE COURT: -- irrespective of who uploaded it.

18 And then we'll get into each document he's going
19 to try to introduce.

20 MS. CORNWELL: Thank you, Your Honor.

21 THE COURT: Is it his account number? Is that
22 the account number y'all subpoenaed from facebook?

23 MS. CORNWELL: It's the account number that we
24 subpoenaed, but we can't be certain if that's actually
25 his account or whatever.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Well, how can you make that
2 determination?

3 MS. CORNWELL: I think that you would have to
4 get somebody from facebook to come in and authenticate
5 that, you know, they -- how they authenticate
6 accounts.

7 THE COURT: Does it show up on his computer when
8 he goes on facebook?

9 MS. CORNWELL: When you register on facebook --
10 all you have to do to register on facebook is give an
11 e-mail address and a password. It can be any e-mail
12 address. You can make up an e-mail address. You can
13 use --

14 THE COURT: Well, let me ask you --

15 MS. CORNWELL: -- I can make up a facebook page
16 for you and I can use judgenicholson@gmail.com. I can
17 make a password for you. I can put your picture up
18 there and I can -- I mean, 'I can create a facebook
19 message from you and perpetrate myself to be you
20 through all of those messages.

21 THE COURT: I understand that.

22 MR. BIERING: His e-mail addresses match, Your
23 Honor. That's the first page. I should have admitted
24 that into evidence. I'm very sorry I did not.

25 Those are the e-mail address he provided.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Before I gave him -- before I gave him any
2 information, I asked him what his e-mail addresses
3 were. He quoted verbatim those two e-mail addresses
4 that link. They're the door to the facebook.

5 THE COURT: I mean, I'm not saying it's going to
6 be admitted --

7 MS. CORNWELL: We'll stipulate to those --

8 THE COURT: -- into evidence.

9 And I understand what you're saying. But if
10 he's identified it as part -- through his e-mail
11 address, then I think we're sort of wasting time and
12 let's get on to what's important and whether -- what's
13 going to be admitted and what's not going to be
14 admitted.

15 MS. CORNWELL: Okay, Your Honor. The State is
16 fine with that.

17 THE COURT: I understand what you're saying --

18 MS. CORNWELL: I'm not trying --

19 THE COURT: -- he just told me the same thing.

20 He said he could go on and make -- and a lot of
21 it on facebook are probably fictitious names.

22 I don't know if I've got one or not. If I did,
23 it didn't come from me, I promise you. Okay?

24 MS. CORNWELL: Well, we'll let Mr. Biering --

25 THE COURT: I have never been on facebook in my

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 life. Don't anticipate doing it.

2 MS. CORNWELL: I think the bottom line is just
3 being the relevancy, Your Honor. It will --

4 THE COURT: I mean, that's the bottom line.
5 Right now we're wasting a lot of time on trying to
6 authenticate something that --

7 MS. CORNWELL: I'll agree that those are records
8 that we subpoenaed, and we assume that those are his.
9 But the relevancy issue is going to be an issue.

10 THE COURT: And that's the real issue.

11 MS. CORNWELL: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. BIERING: Just to clear -- just to close
14 that loop, because this other document has these e-
15 mail addresses on it, if I could get him to identify
16 those e-mail addresses as the ones he identified.

17 THE COURT: That's fine.

18 Q. [Mr. Biering] If you could, sir, are those
19 e-mail addresses that are listed -- about an inch or so
20 down on that page, are those e-mail addresses that you
21 originally identified without seeing any documents?

22 A. Yes, sir.

23 MR. BIERING: Thank you.

24 That's Defendant 6. Defendant Clark's 6.

25 [Whereupon, Defendant Clark's Exhibit Number 6

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 is marked by the court reporter]

2 THE COURT: As far as authentication is
3 concerned?

4 MR. BIERING: As far as authentication is
5 concerned, Your Honor.

6 And then I would ask that we be able to move on
7 to the second facebook page.

8 THE COURT: Well, as I told you earlier --

9 MR. BIERING: Yes, sir.

10 THE COURT: -- I don't know how many pages you
11 have there, but at some point in time you're going to
12 have to -- I'm sure all that stuff in there is not
13 relevant as to this case.

14 MR. BIERING: Yes, sir.

15 THE COURT: What excerpts out of that stack are
16 you planning on using?

17 MR. BIERING: This is very simple. The first --
18 I'll go back to the first stack and address that.

19 Your Honor, I've got 1, 2, 3, 4, 5, 6, 7, 8, 9,
20 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,
21 23, 24, 25 transactions on facebook that I would be
22 addressing.

23 THE COURT: Twenty-five?

24 MR. BIERING: Yes, sir. On that facebook page.

25 THE COURT: Have you shown them to the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 solicitor, the ones you are planning on trying to
2 introduce?

3 MR. BIERING: No, Your Honor, I have not.

4 THE COURT: Can you do that, please, sir?

5 MR. BIERING: I would be happy to. Your Honor

6 --

7 THE COURT: Mr. Shelton, have you already
8 introduced all the facebook you plan on introducing?

9 MR. CHAD SHELTON: Yes, Your Honor.

10 THE COURT: Defendant's Newman I think 1 through
11 5 or 1 through whatever the number was.

12 THE COURT REPORTER: 3.

13 THE COURT: What?

14 THE COURT REPORTER: 3.

15 THE COURT: 1 through 3. Is that correct?

16 MR. CHAD SHELTON: Yes, Your Honor. And then I
17 didn't mark the picture, though.

18 THE COURT: And the solicitor has those, has
19 seen those; right?

20 MR. CHAD SHELTON: Yeah. We could get those.

21 MR. BIERING: Your Honor, the only -- my only
22 caveat as it relates to that is my understanding is
23 this witness is on the witness stand and he can, from
24 this point forward, no longer consult with the
25 prosecutor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Well, I told him that before we took
2 the last break.

3 How about getting those documents, Mr. Shelton,
4 and show them to the solicitor.

5 MR. CHAD SHELTON: Yes, sir.

6 THE COURT: I mean, she may agree some of them
7 can come in. I don't know.

8 MR. BIERING: -- happy to do it.

9 MR. CHAD SHELTON: There's also the one on the
10 fight, so there should be --

11 THE COURT: Well, just give it to her. Whatever
12 you want in, give it to her and let her look at it.

13 THE WITNESS: Here you go.

14 THE COURT: I mean, she may agree she wants some
15 of them in. I don't know.

16 [Off the record momentarily]

17 [Whereupon, Mr. Biering and Ms. Cornwell confer]

18 MR. BIERING: Judge, I believe we're prepared to
19 move forward.

20 I don't think we are able to consent to the
21 individual items that we intend on addressing.

22 THE COURT: Okay.

23 MR. BIERING: I don't know if the Court wants to
24 go through those in camera, as well. I'll be happy to
25 do that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 I think that -- I think that -- from a time
2 standpoint, I think that -- I think they're consenting
3 that it's the facebook documentation that they
4 provided. The alleged victim has identified multiple
5 components of that and I am happy to continue on, Your
6 Honor, and do a sampling throughout the 598 pages of
7 his facebook material to continue to conform -- to
8 confirm that the tracking number is the same.

9 THE COURT: I'm not concerned --

10 MR. BIERING: Yes, sir.

11 THE COURT: -- about that.

12 I'm concerned about whether it's admissible or
13 not. So I don't know what y'all are going off -- you
14 said you had twenty-five and they have about six or
15 seven.

16 MR. BIERING: Yes, sir.

17 THE COURT: And that's what I want to address.

18 MS. CORNWELL: And I've seen what Defendant
19 Newman and Defendant Clark would like to introduce.

20 We'll stipulate that it's in his facebook and
21 the authentication of that.

22 And if you want to get in the conversations,
23 they can ask do you remember having this conversation.
24 If he doesn't remember, then he doesn't remember. If
25 he does, then he does, and they can go on from there.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 My issue is the relevancy in all of the
2 conversations they want to bring forward. They want
3 to bring forward conversations about drugs and about
4 things like that. He's established that, you know,
5 he's used marijuana, he's sold it in the past.

6 I think that what they're trying to go into is
7 just basically a character assassination of this
8 victim. And I think 404(b)' and 405 clearly state that
9 you can't put forth evidence sheerly [phonetic] to
10 assassinate the character of a victim.

11 THE COURT: Well, 404(a)(2) basically addresses
12 the issue if you -- if the victim or the defense has
13 put his character in issue, then they can address
14 that. So the question is has his character been
15 placed in issue. Maybe I'm -- I think that's the
16 issue that the Court has got to decide. Is that --

17 MR. BIERING: Your Honor --

18 THE COURT: -- correct or incorrect?

19 MR. BIERING: I think -- I -- yes, I would
20 agree. I do believe --

21 THE COURT: I mean, I think if it comes in, it's
22 going to have to come in under 404(a)(2), which is
23 when the victim and/or the defendant has put his
24 character in issue.

25 [Reading] Evidence of a pertinent trait or

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 character of the victim of the crime offered by an
2 accused.

3 That's when the victim has put his character in
4 issue, the way I understand it. And that codifies the
5 common law in South Carolina when they introduced the
6 rules of evidence.

7 Now, can y'all tell me any other rules of
8 evidence that you think it may come under?

9 MR. BIERING: Your Honor, I think that the -- I
10 do want to -- certainly want to address completely all
11 these issues on all the rules. But I do think that
12 406 --

13 THE COURT: Well, first of all, what -- do you
14 think it should come in under 404(a)(2), is my
15 question.

16 MR. BIERING: Your Honor, I think that in part
17 it is admissible under 404(a)(2).

18 THE COURT: All right. What other sections do
19 you think it comes under?

20 MR. BIERING: 404 -- 404(3)(b), second sentence.

21 THE COURT: 404 what?

22 MR. BIERING: (3)(b).

23 THE COURT: There's no (3)(b). There's a (3)
24 and there's a (b). There's a 404(a) and a 404(b).

25 MR. BIERING: I'm sorry. 404(a). I'm sorry.

1 404(b).

2 THE COURT: 404(b).

3 MR. BIERING: Second sentence: [reading] may be
4 admissible to show motive, identity, the existence of
5 a connection of a scheme or a plan, the absence of
6 mistake or accident, or intent.

7 I think that that also applies in this case,
8 based on what we're prepared to show through this
9 witness.

10 THE COURT: Well, generally that goes towards
11 defendants. I don't know of any cases that will allow
12 it in reference to a witness, in general, and
13 especially a victim.

14 Can you find one case that's ever addressed the
15 issue of common scheme, plan, motive, identity, absent
16 mistake or intent on a victim in a crime?

17 Generally, it's the State trying to bring in
18 prior bad acts under Lyle and this is just a
19 codification of Lyle.

20 MR. BIERING: Yes, Your Honor. I'm not prepared
21 to present a case on that.

22 I think that the other two issues -- I think
23 that 405, Rule 405, Rule 608(b), but also Rule 406,
24 would allow the admissibility --

25 THE COURT: You say 406?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Yes, sir.
2 THE COURT: Well, habit or routine practice?
3 MR. BIERING: Judge --
4 THE COURT: Well, okay. What else?
5 MR. BIERING: I wish -- I wish it was --
6 THE COURT: You say 406. What else?
7 MR. BIERING: 608(b).
8 THE COURT: 608(b)?
9 MR. BIERING: Yes, sir.
10 [Whereupon, the Court reviews documents]
11 MR. BIERING: The reality here, Your Honor, is
12 that he's placed --
13 THE COURT: Well, it says here: may not be
14 proved by extrinsic evidence.
15 I mean, that's just your bias and your
16 untruthfulness. I've allowed him to go into the
17 conviction on the issue of truthfulness. I've allowed
18 -- that goes to truthfulness and bias. I don't know
19 what that has to do with character, other than --
20 unless you want to put somebody up that says, hey,
21 he's -- his reputation in the community is he's a
22 liar --
23 MR. BIERING: Well, Your Honor, here --
24 THE COURT: -- or his propensity for truth and
25 voracity is bad.

1 MR. BIERING: Here's the reality, Judge. The
2 things that we're prepared to go into go into those
3 issues, and they are -- he is clearly, from a
4 documented standpoint, under certain contracts and
5 rules for purposes --

6 When we link it back, it goes back to what he's
7 really saying and what he has said. He said, I moved
8 out of Ryan Newman's house because I'm not down with
9 that crowd and what they were doing. His mom said he
10 moved back in because he didn't like what was going on
11 over here and he wanted to do better.

12 And what we've got, Judge, an act -- the
13 credibility of those two witnesses, as it relates to
14 what his activities are, started from January the 2nd
15 of 2011 immediately prior to this alleged victim my
16 client -- my client's been charged include, right on
17 up through the whole time he's on bond at the same
18 time he's accepted a plea from Mr. Shelton on a
19 burglary second charge where he gets one year
20 probation, after his probation charge, continuing
21 right on into 2012, Judge. It continues through the
22 entire amount of evidence that has been presented by
23 the State on his facebook.

24 The reality is, Judge, if we want the jury to
25 know what happened on January the 6th, they've got to

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 look into facebook. That's the reality. And I would
2 ask that the Court allow us to let the jury hear
3 what's going on in this case. Thank you, Judge.

4 THE COURT: Okay. Mr. Shelton?

5 MR. CHAD SHELTON: Well, I mean, specifically
6 he's trying to say that he's doing better, he's sold
7 marijuana in the past.

8 Well, that activity has not stopped, Your Honor,
9 and that's why we want to get into that activity --

10 THE COURT: Well, his mama has already gone into
11 it. She said he's still using marijuana. He
12 testified on the record he was selling and still using
13 marijuana.

14 MR. CHAD SHELTON: I'm sorry. Selling --

15 THE COURT: Is that right or is that wrong?

16 MR. CHAD SHELTON: Selling marijuana. I think
17 that that's a different level. It's definitely used
18 differently in our criminal system with punishment, as
19 opposed to a felony versus a misdemeanor, Your Honor.
20 He --

21 THE COURT: Well, what does that have to do with
22 his truthfulness and untruthfulness in a particular
23 trait of character?

24 MR. CHAD SHELTON: He's coming across as he's
25 being -- as once he left Ryan's house, he was good.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 And that's how it's coming across. And we want to
2 show a jury -- the jury that it's not.

3 THE COURT: I don't think he came across that
4 way. His mom said he still uses marijuana, except in
5 her house. He said he's still using it. And I think
6 he said he went to buy -- gave that woman some money
7 to buy it that night to go buy marijuana.

8 I don't remember if he said -- did he say he's
9 still selling it? I don't remember that.

10 MR. CHAD SHELTON: He said in the past.

11 THE COURT: Or if that -- if that question was
12 even asked.

13 MS. CORNWELL: I don't know that it's been
14 asked.

15 I think he said he used to sell marijuana in the
16 past.

17 THE COURT: Yeah. I don't think he said he was
18 selling it.

19 MR. CHAD SHELTON: Well, we -- and this --
20 that's what a lot of this goes into.

21 THE COURT: Well, I understand. It goes into
22 selling marijuana --

23 MR. CHAD SHELTON: And --

24 THE COURT: -- prior bad acts.

25 MR. CHAD SHELTON: -- I think that that's a

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 different level.

2 Obviously, using marijuana is against the law,
3 Your Honor. But in other states it's not. But
4 selling marijuana is, Your Honor -- is a different
5 level of using marijuana. And so I think he's placing
6 that truthfulness and we should be able to go through
7 that bias, Your Honor.

8 THE COURT: Well, let me see.

9 [Whereupon, the Court reviews documents]

10 THE COURT: Are everything you are offering, on
11 pages 1 through 3, concerning the sale of marijuana?
12 Is that correct?

13 MR. CHAD SHELTON: Yes, sir.

14 THE COURT: Mr. Shelton?

15 MR. CHAD SHELTON: Buying and --

16 THE COURT: All about selling marijuana?

17 MR. CHAD SHELTON: Yes, Your Honor.

18 THE COURT: All right. Mr. Biering, your pages
19 -- twenty-five transactions pages I guess on facebook,
20 what do they consist of? What are they about? I
21 haven't looked at them.

22 MR. BIERING: They consist of the sale of
23 marijuana, invitation to deliver marijuana, engage in
24 sexual acts with people he's not married to, which is
25 a crime in South Carolina. It involves the delivery

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 of OxyContin. It involved delivery of clonapin. It
2 involves a discussion regarding the conspiracy of a
3 theft of an Infinity. I think that's cumulatively
4 everything that it involves, Judge.

5 THE COURT: Okay.

6 MR. BIERING: And it expands --

7 THE COURT: I'm sorry. What?

8 MR. BIERING: It expands from before January the
9 6, 2011.

10 THE COURT: What's the time frame?

11 MR. BIERING: It spans prior to -- we're talking
12 about back in October of 2010.

13 THE COURT: All right. 2010 to when?

14 MR. BIERING: To January of 2012.

15 THE COURT: I think Mr. Shelton's went from
16 January up through November; right? I believe.

17 MR. BIERING: I'm sorry, Your Honor. I also
18 have to report it also involves -- because a number of
19 those items would involve violations of his current
20 probation. And there are also issues that involve
21 violation of his bond when he was out previously,
22 prior to --

23 THE COURT: Well, we're not going into bond --
24 we're not going into any probation violations and
25 we're not going into any bond violations. I'm going

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 to eliminate those right off the top of my head.

2 Okay?

3 MR. BIERING: Thank you, Judge.

4 THE COURT: Because I don't think that has
5 anything to do with it --

6 MR. BIERING: Thank you, Judge.

7 THE COURT: -- whether he violated probation or
8 didn't violate probation. Now, as far as the other
9 issues, that's a different story.

10 Solicitor, I'll be glad to hear you.

11 MS. CORNWELL: Your Honor --

12 THE COURT: Go ahead.. I'm sorry.

13 MS. CORNWELL: That's okay.

14 It's the State's position that, again, this is
15 sheerly [phonetic] a character assassination. The
16 victim has admitted to drugs -- to marijuana
17 purchasing. He's even admitted that he sold in the
18 past. Mr. Biering indicated that his records ended
19 January 2012. That was nine months ago. So he's
20 admitted, yes, I sold in the past. And records from
21 nine months ago corroborate that. He's been truthful.
22 He's told it. There's no relevancy to it. And it
23 goes nothing to the fact that he was robbed, kidnaped.
24 It has no relevance as to the matter at hand.

25 I just don't see where they get in under 404(b),

1 under 405 and 403. I don't see where they get into
2 assassinating his character. He's admitted everything
3 that they've asked him. Yes, he's used marijuana,
4 yes, he sold marijuana in the past, yes, he's done
5 that before.

6 But nine months ago is a long time. And if he
7 says that he's not selling anymore, I think that it
8 ends there. I don't see where the relevancy is and
9 how he's -- what he's doing now has anything to do
10 with the fact that these defendants set him up,
11 kidnaped him, robbed him, beat him, and used a gun.
12 There's no relevance to any of it, other than to
13 assassinate his character and try to make him look bad
14 in front of the jury.

15 MR. BIERING: Your Honor, if I could be heard in
16 brief response?

17 THE COURT: Yes, sir. I'm listening.

18 MR. BIERING: Her argument would be for me to
19 say that I come in with a client and somehow or
20 another my client should be in control of the
21 courtroom activities.

22 I'm a professional. Our position is he's a
23 professional. And he comes here today and he says
24 that, I wanted to be a changed man. He puts himself
25 out there. He puts all of this stuff out there. He's

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 the professional in this and I would like to show it,
2 Your Honor.

3 That's not a character assassination. That's
4 just asking the jury to see the reality of Andre
5 Mendoza's life that is documented and chronicled in
6 his autobiography on facebook that ends on in January
7 of 2012 because that's when the solicitor's office
8 subpoena ended.

9 THE COURT: My difficulty with your argument, as
10 far as 404(b), is when you're talking about prior bad
11 acts. All the case law lays out certain elements that
12 you have to look to to see if those prior bad acts are
13 admissible and they relate it back to the crime of
14 which the defendant is charged with. And they
15 commonly talk about the common elements, whether it's
16 sufficiently similar and whether it's clear and
17 convincing. So I'm just of the opinion 404(b) has no
18 meaning whatsoever when you're talking about witnesses
19 and the victim of the case, because they're all
20 related to defendant's prior bad acts and you relate
21 back to the crime he's charged with, and what bad acts
22 you're trying to get into, to make a determination
23 whether it's admissible.

24 Now, as far as 404(a)(2), as I said earlier, I
25 think it's a question of whether his character has

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 been placed in issue and whether you want to address
2 the character. Now, I haven't made my mind up on
3 that. But you're not really addressing his character,
4 even assuming he's put his character in issue. He
5 said he uses drugs, his mama says he uses marijuana,
6 so the only thing new you want to add from the
7 facebook is that he's selling drugs.

8 Now, I may allow that under the character issue.
9 Mr. Shelton read the issue as the vindictiveness as a
10 trait of character on that one particular e-mail.
11 That may be allowed under 404(a)(2), assuming he's put
12 his character in issue.

13 I just don't buy your argument about prior bad
14 acts. I don't think it's applicable in this fact
15 scenario.

16 Solicitor, do you want to address the character
17 in issue or whether you think it's been placed in
18 issue?

19 MS. CORNWELL: I don't think that the State has
20 placed his character in issue.

21 I don't believe that he's been untruthful in any
22 way and I don't think that they can show that he's
23 been untruthful in any way.

24 THE COURT: I mean, all they're wanting, from
25 what I see, is bolster what he's already said.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MS. CORNWELL: Yes, Your Honor. It's --

2 THE COURT: There's none of this in conflict
3 with what he said, other than possibly the sale. I
4 don't know if anybody has asked him whether he sells
5 marijuana or not.

6 MS. CORNWELL: He did testify that he used to
7 sell marijuana, Your Honor.

8 THE COURT: I mean, he testified --

9 MS. CORNWELL: So he testified that he sold --

10 THE COURT: -- to that. I mean --

11 MS. CORNWELL: -- it in the past, he --

12 THE COURT: -- so what are y'all doing, other
13 than bolstering what's already been said?

14 MR. CHAD SHELTON: He said used to, Your Honor.

15 And they're also making it light that he stopped
16 being a bad person when he moved out of Ryan's house
17 and used to --

18 THE COURT: Well, I don't -- it depends on how
19 you quantify a bad person. His mama said he [sic]
20 doesn't allow any of these people in his [sic] house
21 that she's [sic] associated with, she doesn't like
22 them, they're bad people but he's still associating
23 with them. She won't allow the marijuana in her
24 house.

25 MR. CHAD SHELTON: Right. Yes, Your Honor. And

1 she wasn't aware of the dates.

2 THE COURT: Right.

3 MR. CHAD SHELTON: And so, Your Honor, "used
4 to", that phrase is --

5 He's still doing it, Your Honor. That's our
6 argument.

7 THE COURT: And then you talk about character.
8 I mean, selling and buying and using marijuana is not
9 really a character trait under 404. I mean, it's not
10 a character trait.

11 I'm just trying to figure out a legitimate
12 section --

13 MR. BIERING: Your Honor --

14 THE COURT: -- y'all think it should come under.

15 Y'all have been throwing all these code sections
16 and I look and I -- I mean, the evidence sections, and
17 I look at them and I just don't see anything that
18 really matches up with the fact scenario we have here
19 today, other than just a straight character
20 assassination which the code -- I mean, the rules of
21 evidence prohibit.

22 MR. BIERING: Your Honor, our position is it's
23 not just a character assassination. It's not just a
24 fishing expedition into prior bad acts. It is a --

25 THE COURT: I don't think it's a fishing

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 expedition.

2 MR. BIERING: -- it is a delivery -- it is a
3 delivery to the jury of a picture of the initial scene
4 where the prosecutor's office says that this crime
5 began.

6 They started in their opening statement. They
7 said at the beginning that the opening scene of this
8 crime that they allege took place took place on
9 facebook.

10 We've got to paint a picture of the scene of the
11 alleged crime. They don't like the scene of the
12 alleged crime. If I was on their side, I wouldn't
13 like it, either.

14 THE COURT: Well, what do you have on the day in
15 question on the facebook, on the scene of the crime,
16 January the 7th, 2011? That's when the crime took
17 place.

18 MR. BIERING: Your Honor --

19 THE COURT: Do you have anything on January the
20 7th, 2011?

21 MS. CORNWELL: Your Honor --

22 MR. BIERING: Just like a field that you plow
23 corn in, the way that you look at that field is not
24 just about what happened on the day that you turned
25 the soil. It's about the snapshot of that field over

1 the year as you prepare the soil, as you turn the
2 soil, as you plant, as you harvest. If you want a
3 full picture of that field, you can't just look at
4 that one time.

5 Facebook is not just that one day --

6 THE COURT: Well, then --

7 MR. BIERING: -- there's more that's relevant
8 than that one day.

9 THE COURT: Well, then on your argument, it's
10 going to have to occur before the crime on January the
11 7th, 2011, if you want to plow that ground up to the
12 time of the crime to lay the crime scene, as you
13 referred to it.

14 MR. BIERING: Okay. Your Honor, I can do that.

15 And then he's placed -- he said, I wanted to
16 change and do something different. And what we've got
17 is a continued cycle of selling drugs and -- I've
18 argued fully, Your Honor.

19 It's our position -- and, further, I would just
20 go ahead and -- as I sit down, and state that it would
21 be our position that -- the continued position that we
22 should be able to address the other issues that we've
23 addressed --

24 THE COURT: Okay.

25 MR. BIERING: -- the Court's already ruled upon.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 It's very interesting that we're quibbling with
2 the solicitor's office as we protect drug transactions
3 in our county. Very interesting.

4 THE COURT: Okay.

5 MR. BIERING: Thank you, Judge.

6 MR. CHAD SHELTON: Your Honor, just one last
7 part --

8 THE COURT: Yes, sir.

9 MR. CHAD SHELTON: -- for the record.

10 It's very important. This person, Mr. Mendoza,
11 is the State's witness. It's very important that we
12 are allowed to confront the witness against all
13 evidence. And if we're not allowed to go into this,
14 our -- my objection from Mr. Newman would be on the
15 confrontation clause, Your Honor.

16 THE COURT: You objection is what? I'm sorry.

17 MR. CHAD SHELTON: Confrontation -- as part of
18 the confrontation clause, to be allowed to go into
19 this, because this is a witness. It goes to his
20 truthfulness, because they want the jury to believe
21 he's being truthful and we want to show the jury
22 obviously that he's not. And that's where this case
23 comes down to, Your Honor.

24 THE COURT: Well, where in these e-mails -- or
25 not e-mails, excuse me -- facebook conversations he's

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 been untruthful compared to what he has said here
2 today?

3 MR. CHAD SHELTON: Well, I think it's all --

4 THE COURT: Can you show --

5 MR. CHAD SHELTON: --, all the argument --

6 THE COURT: Can you show that to me?

7 MR. CHAD SHELTON: He said that he's continued
8 to -- he did it in the past and he's still doing it.

9 THE COURT: Well, he said that on direct.

10 So show me where he's been untruthful in any
11 facebook conversations you have. That's my point.

12 MR. CHAD SHELTON: That he was doing it in -- he
13 said in the past, Your Honor, and we wanted to --

14 THE COURT: Well, I may have missed it. Did he
15 say it was all in the past? His mom said he was still
16 using it.

17 MS. CORNWELL: Your Honor, he's admitted the
18 continuing use of marijuana.

19 THE COURT: I mean, I think he said he's still
20 using it, if I remember correctly.

21 MS. CORNWELL: He testified that he used to sell
22 it in the past.

23 THE COURT: So, I mean, my point is where is all
24 this facebook information you have that shows that
25 he's being untruthful? Because that's the issue.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 That's when you get into all this.

2 MR. BIERING: Your Honor, I can go to that --

3 THE COURT: I thought you -- okay.

4 MR. BIERING: I'm sorry.

5 But I can go to that issue of where he's
6 untruthful. I can --

7 THE COURT: Right. That's what I want to know.

8 MR. BIERING: Okay.

9 THE COURT: Show me a facebook where he's been
10 untruthful.

11 MR. BIERING: Okay. I've got -- we've got
12 facebook records that show, as he reports to females
13 that he wants to have relations with and do drugs
14 with, that he makes \$1,000 a week.

15 Then I have -- in that same time frame, we have
16 facebook traffic where he can't -- where he can't
17 provide any support for his two children and suggests
18 that maybe his wife's new man should provide support.

19 So I can go into some of those items.

20 I can go into other items of untruthfulness. If
21 we want to go the route of untruthfulness where he
22 runs these little circles with girls and I can -- I
23 can go that route. I can go probably a long time on
24 that issue.

25 If we just want to go through and explore his

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 untruthfulness on facebook, I can go all day.

2 THE COURT: All right.

3 MS. CORNWELL: Your Honor -- I'm sorry.

4 THE COURT: I'm sorry. Go ahead.

5 MS. CORNWELL: Maybe I misunderstood.

6 I thought that the rules of evidence and the
7 rules of the Court decided if he's being untruthful on
8 the stand. The State's position is he has been
9 completely truthful and forthcoming on the stand --

10 THE COURT: That's -- that's what I thought.

11 MS. CORNWELL: I mean, if there's case law that
12 states that you can show where he's been untruthful
13 outside of the Court, then I would love to see it.

14 But he's been completely truthful and
15 forthcoming on the stand, and I think that that's what
16 the rules of evidence -- that's what the courts have
17 decided.

18 So if they can show how he's been untruthful on
19 the stand, I would be happy to hear.

20 THE COURT: All right. Thank y'all very much.
21 We'll see you at 2:30.

22 MS. CORNWELL: Thank you, Your Honor.

23 THE COURT: Please don't discuss the case --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- with anybody during lunch.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE WITNESS: Yes, sir.

2 THE COURT: Solicitors, don't discuss the case
3 with --

4 MR. BEN SHELTON: Yes, sir, Your Honor.

5 THE COURT: -- with the victim during lunch.

6 Okay?

7 MR. BEN SHELTON: Yes, sir, Your Honor.

8 MS. CORNWELL: Thank you, Your Honor.

9 THE COURT: All right. Thank you very much.

10 [Whereupon, a recess is taken from 1:31 p.m. to
11 2:27 p.m.]

12 THE COURT: Please be seated.

13 MR. BIERING: Thank you, Your Honor.

14 THE COURT: All right. As far as the -- let me
15 just ask one question.

16 Where is the witness? Is he out in the hall?

17 MS. CORNWELL: He's right there.

18 THE COURT: Go out in the hall.

19 [Whereupon, Mr. Mendoza exits the courtroom]

20 THE COURT: I haven't looked at each one of
21 these, your twenty-five facebook and your --

22 I think I may have looked at your three.

23 I'm going to allow --

24 First of all, I want to ask the question has
25 anyone asked the defendant if he was still selling the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 drugs. Has that question been asked?

2 MR. CHAD SHELTON: I don't believe so.

3 MR. BIERING: Not from us.

4 THE COURT: Not by -- how about the State?

5 MS. CORNWELL: The State asked him -- he stated
6 on the record that he used to sell drugs.

7 THE COURT: Pardon?

8 MS. CORNWELL: He stated on the record that he
9 used to sell drugs.

10 THE COURT: That he used to sell drugs.

11 Has anyone asked him if he's still selling
12 drugs?

13 MS. CORNWELL: I don't believe that question has
14 been asked, Your Honor.

15 THE COURT: All right. I'm going to allow
16 whatever facebook you have that would indicate that he
17 is selling drugs, okay --

18 MR. BIERING: Okay, Your Honor.

19 THE COURT: -- as a specific act as a character
20 trait -- as an element of your defense. Okay? As an
21 element of your defense, I'm going to allow that since
22 he's brought out the fact that he used to sell and he
23 uses and his mom says he still uses. I think that
24 issue has been brought out and I think you're entitled
25 to address that.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 As far as the rest of them, I'll be happy to
2 take a look at them if somebody will hand them to me.

3 But for right now, that's my ruling just on
4 the -- any of these facebook messages, that indicate
5 that he is selling drugs, I will allow in for the
6 reason I just stated on the record.

7 MS. CORNWELL: And, Ybur Honor, just for the
8 record, how far are you going to allow them to go
9 back? The State's position is their records indicate
10 --

11 THE COURT: I'm going to allow them to go back
12 from the time of -- not before, because he said he
13 used to.

14 MS. CORNWELL: Yes, sir.

15 THE COURT: From the time of the incident on
16 January the 7th, 2011, up until now.

17 MS. CORNWELL: And the only issue with that is
18 the witness might not understand that question. If he
19 used to sell it back in March of this year, that's --
20 used to selling, to him, is not current.

21 THE COURT: Well, then, that's fine. Then let's
22 bring him in and lets clarify that issue. Okay?
23 That's one reason I sent him out. I didn't want him
24 to hear this conversation we're having.

25 MS. CORNWELL: Okay.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: I don't have any problem if you want
2 to clarify some of these issues in camera real quick.
3 Okay?

4 Yes, sir?

5 MR. BIERING: Your Honor, thank you for the
6 Court's ruling.

7 I have one specific act on January the 2nd of
8 2011 that I think is contemporaneous to the event.

9 THE COURT: All right. I'll allow that. That's
10 close enough --

11 MR. BIERING: Thank you.

12 THE COURT: -- in time. Okay?

13 MR. BIERING: Thank you, Your Honor.

14 THE COURT: What other element -- what other
15 times do you have?

16 MR. BIERING: It just -- it's a continuation
17 from that point right on up until the end of the
18 facebook records, which is January of 2012.

19 THE COURT: Are all twenty-five about the
20 selling of drugs or do they involve other matters?

21 MR. BIERING: They're all about the sale of
22 drugs except for the one issue about the discussions
23 that involved --

24 THE COURT: I know there's other stuff on this.
25 Before this goes to the jury --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Yes, sir.

2 THE COURT: -- I'm going to get it redacted. Do
3 you understand?

4 MR. BIERING: Yes, sir, Your Honor.

5 I will not go into the -- and I think your --
6 your ruling is that I would only be limited to the
7 drug issues, not the car-theft issue?

8 THE COURT: Right.

9 MR. BIERING: Thank you.

10 THE COURT: All the other issues are out, as far
11 as I'm concerned.

12 MR. BIERING: Thank you, Judge.

13 THE COURT: Okay? Now, solicitor, as far as
14 establishing a time frame, we can do it one of two
15 ways. I'll let you go talk to him and get a time
16 frame and state it on the record or we can call him as
17 a witness and establish a time frame. Whichever you
18 prefer. It's your witness. I'm going to let you do
19 that.

20 MS. CORNWELL: Your Honor, if you'll allow me to
21 put him on the stand, I'll ask him --

22 THE COURT: I'll allow you to put him on the
23 stand and ask him --

24 MS. CORNWELL: -- a couple of questions.

25 THE COURT: -- questions as to the time frame of

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 the sale of the drugs.

2 MS. CORNWELL: Okay.

3 THE COURT: Because I think you're correct. If
4 I'm going to allow it in, we need to set a time frame.

5 MR. CHAD SHELTON: Your Honor, and there's
6 another issue after the facebook stuff.

7 THE COURT: I'm sorry. What?

8 MR. CHAD SHELTON: There's one other issue after
9 we get done with the facebook stuff.

10 THE COURT: What?

11 MR. CHAD SHELTON: The victim, Mr. Mendoza,
12 testified that the only time he's ever been in trouble
13 was the burglary in the first degree.

14 MS. CORNWELL: Third degree.

15 MR. CHAD SHELTON: Third degree. I'm sorry.
16 Sorry. I apologize. Burglary in the third degree.

17 I do have a faxed copy of a Dorchester County
18 magistrate where he pled guilty to grand larceny
19 valued 1,000 to less than 5,000, was the original
20 charge he pled guilty to, under 1,000, for time
21 served.

22 THE COURT: It had to be petty larceny, not
23 grand larceny, in the magistrate's court. Had to be
24 petty larceny.

25 MR. CHAD SHELTON: Well, it does say larceny,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 value one --

2 THE COURT: Well, if it's grand larceny, it
3 would be in circuit court, it wouldn't be in
4 magistrate's court.

5 MR. CHAD SHELTON: Right. Exactly, Your Honor.

6 But I believe he's charged -- petty larceny is
7 what he pled to. But this does say --

8 THE COURT: He pled guilty --

9 MR. CHAD SHELTON: -- the disposition says --

10 THE COURT: -- to petty larceny?

11 MR. CHAD SHELTON: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. CHAD SHELTON: And I would like to at least
14 ask him about that.

15 THE COURT: When was this?

16 MR. CHAD SHELTON: The disposition date was
17 November of 2010.

18 THE COURT: 2010?

19 MR. CHAD SHELTON: Yes, sir.

20 THE COURT: Okay. So it's within ten years.

21 MR. CHAD SHELTON: Yes, sir. Month --

22 THE COURT: It's not --

23 MR. CHAD SHELTON: Month -- month --

24 THE COURT: -- it's less than a year --

25 MR. CHAD SHELTON: Right.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: -- so it's going to go to whether it
2 goes to I guess moral turpitude.

3 I would assume petty larceny, stealing, would go
4 to moral turpitude unless the solicitor wants to argue
5 different.

6 MS. CORNWELL: And the State's not arguing with
7 that.

8 I do want to clarify for the Court we pulled his
9 rap sheet. It's not on his rap sheet. We --

10 THE COURT: Well, have you looked at this? Is
11 it a proper document?

12 MS. CORNWELL: I have looked at it. It's not --
13 I mean, it's got a seal, but it's a faxed copy so it's
14 not a true and certified copy.

15 And to all candor with the Court, the victim did
16 advise me of this in one of our prior meetings. He
17 told me that he doesn't remember pleading or anything,
18 that he then got picked up on his burglary charge. He
19 got thirty days time served because he had been in the
20 detention center for over the thirty days. And I
21 advised him that it's not on his rap sheet and all he
22 had to testify to were the criminal convictions that
23 were on his rap sheets. So --

24 THE COURT: This doesn't show on his rap sheet?

25 MS. CORNWELL: It does not show on his rap

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 sheet, Your Honor. I had a copy, and I believe my
2 investigator has still got a copy.

3 But the only thing on his rap sheet, Your Honor,
4 is the burglary.

5 [Whereupon, Ms. Cornwell proffers documents to
6 the Court]

7 THE COURT: I don't need to look at it.

8 MS. CORNWELL: Okay.

9 THE COURT: If you tell me it's the only thing
10 on there, I'll take your --

11 MS. CORNWELL: It's the only thing on it.

12 THE COURT: -- I'll take your word for it.

13 MS. CORNWELL: So, you know, I understand that
14 they can ask him about it and if he agrees to it, then
15 he agrees to it, that's fine. I just don't want them
16 to be able to use that as though he was being
17 untruthful, because I was the one that advised him
18 that, you know, when talking about his prior record he
19 only had to talk about what was on the rap sheet.

20 THE COURT: Why isn't it on his rap sheet? I
21 mean, what -- I mean, it should be, if it's actually a
22 plea.

23 What do you have? Let me see what you've got
24 you're holding there.

25 [Whereupon, Mr. Chad Shelton proffers documents

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 to the Court]

2 MR. CHAD SHELTON: And I hesitate using the
3 Dorchester County public index, but it says it was
4 remanded to magistrate's court. So I don't know if he
5 was arrested. I don't know the specifics about that.

6 All -- once I saw that on the Dorchester County
7 public index, I asked Dorchester County Summary Court
8 to send a certified copy and we got that through fax,
9 Your Honor.

10 THE COURT: Well, let me ask you this, now. Was
11 this plea in conjunction with the burglary third --

12 MR. BEN SHELTON: This is the first I've ever
13 heard of it --

14 THE COURT: -- at the same time?

15 MR. BEN SHELTON: -- so it might be around the
16 same time. I haven't even seen the sheet. I don't
17 know when it was.

18 MR. CHAD SHELTON: It's Dorchester County, so it
19 would be separate.

20 THE COURT: 11/12/2009, and the disposition date
21 was 11/3/2010.

22 MR. BEN SHELTON: The other plea occurred a year
23 later --

24 THE COURT: Okay. So it couldn't have happened
25 in conjunction with your plea.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BEN SHELTON: Correct.

2 THE COURT: Occasionally, it happens where you
3 dispose of a case --

4 MR. BEN SHELTON: Right.

5 THE COURT: Solicitor, I mean, he's got a true
6 copy of it from the records in Dorchester County. I
7 mean, I think that's probably sufficient.

8 MS. CORNWELL: And I'm not saying that he can't
9 introduce it. He can introduce it. I just --

10 Like I say, I wanted to advise the Court that
11 it's possible that the reason that he didn't testify
12 is that I told him that the only thing he had to
13 testify to was -- I didn't want him to get into his
14 prior bad acts that weren't convictions.

15 THE COURT: Right.

16 MS. CORNWELL: I advised him to only admit to
17 what was on his rap sheet, which was the burglary
18 third degree.

19 THE COURT: Well, I understand. But I'm going
20 to let him go into it.

21 MS. CORNWELL: And that's -- I just didn't want
22 him to think that he was being untruthful on the
23 stand, because I don't think he actually meant to be
24 untruthful.

25 THE COURT: I don't think that at all. I take

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 your explanation for it.

2 MS. CORNWELL: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. BIERING: I would be open to a stipulation
5 by the prosecution. If they want to stipulate and put
6 a stipulation in front of the jury that she had
7 advised him not to testify about that because it
8 wasn't on the rap sheet, I'm comfortable with that.

9 THE COURT: Are you comfortable with that?

10 MS. CORNWELL: Your Honor, I don't have an issue
11 with that.

12 THE COURT: Pardon?

13 MS. CORNWELL: I don't have an issue with that,
14 Your Honor.

15 THE COURT: You don't want to do that?

16 MS. CORNWELL: I don't have an issue. I'm okay
17 with that. I don't have an issue with that.

18 THE COURT: All right. Do you want to do the
19 stipulation?

20 MS. CORNWELL: I can do the stipulation for the
21 jury. I can actually probably address it on redirect.

22 THE COURT: Well, if we're going to do a
23 stipulation, do y'all want me to do the stipulation or
24 do y'all --

25 MS. CORNWELL: Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: -- want to do it? It doesn't matter
2 to me.

3 MS. CORNWELL: If you want to do the stipulation
4 and let the jury know that this witness previously
5 testified that his prior conviction was a burglary in
6 the third degree, the State is willing to submit to
7 you --

8 THE COURT: All right. I'll do that at the
9 appropriate time, okay, as far as stipulation of the
10 parties.

11 All right. Anything else before we bring the
12 jury?

13 MS. CORNWELL: And I'll write that out for you,
14 what -- the stipulation.

15 THE COURT: Okay. If you would.
16 Anything else before we bring the jury?

17 MR. BIERING: No, Your Honor.

18 MS. CORNWELL: Do you want to bring him in on --
19 as far as establishing the time frame of selling?

20 THE COURT: Yeah. Either that or you can go
21 talk to him and tell me what the time frame is. I
22 don't -- either one.

23 MS. CORNWELL: I can do that.

24 THE COURT: Bring him on in. We've got to have
25 him before the jury gets here.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I would feel more comfortable
2 establishing the time line on the record, Your Honor,
3 and not --

4 THE COURT: Okay. Bring him in and we'll
5 establish a time line.

6 I'm going to let the solicitor do that. Okay?

7 MR. BIERING: I understand, Your Honor. Thank
8 you.

9 [Whereupon, Mr. Mendoza re-takes the witness
10 stand]

11 - - - - -

12 PROFFER

13 BY MS. CORNWELL:

14 Q. Andre, you've previously testified that you used
15 to sell marijuana; is that correct?

16 A. Yes, ma'am.

17 Q. When was the last time you sold marijuana?

18 A. About two years, three years.

19 Q. That was the last time you sold marijuana?

20 A. It's been a while, but I -- it's probably been
21 longer than that but --

22 Q. And what is your understanding of selling
23 marijuana?

24 A. What do you mean? I don't understand.

25 Q. When you are meeting up with your friends and

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 you exchange things, do you consider that selling
2 marijuana?

3 A. [No response]

4 Q. When was the last time you have given somebody
5 marijuana?

6 A. About five years ago. It's been a while.

7 Q. The last time you gave somebody marijuana was
8 five years ago?

9 A. Yeah. It's been a while. I haven't sold
10 marijuana in a while.

11 Q. Have you just given somebody -- without taking
12 money, have you just given somebody marijuana before?

13 A. Yes.

14 Q. Okay. When was the last time you gave somebody
15 marijuana?

16 A. Oh. I haven't -- I never give anybody marijuana
17 because --

18 Q. Well, you said you used to sell marijuana and
19 you said that you and your friends exchange marijuana and
20 give marijuana. When was the last time you gave marijuana
21 to somebody? that you went and exchanged marijuana with
22 somebody?

23 A. About two years ago.

24 MS. CORNWELL: Okay.

25 THE COURT: Okay. Thank you very much.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Anything else before we bring the jury?

2 MS. CORNWELL: No, Your Honor.

3 MR. BIERING: No, Your Honor.

4 MR. CHAD SHELTON: No, Your Honor.

5 THE COURT: All right. Bring us the jury,
6 please, ma'am.

7 [Off the record momentarily]

8 [Whereupon, the jury enters the courtroom at
9 2:43 p.m.]

10 THE COURT: Mr. Shelton.

11 MR. CHAD SHELTON: Trying to -- trying to
12 remember where we were, Mr. Mendoza.

13 THE WITNESS: Yes, sir.

14 - - - - -

15 ANDRE MENDOZA,

16 Having Been Previously Sworn,
17 was Examined and Testified as Follows:

18 CONTINUED CROSS-EXAMINATION

19 BY MR. CHAD SHELTON:

20 Q. I believe we were talking about facebook;
21 correct?

22 A. Yes, sir.

23 Q. I'm giving you what's been marked as Defendant's
24 Exhibits 1, 2 and 3. And review those for me.

25 [Whereupon, the witness reviews documents]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. [Mr. Chad Shelton] There's a conversation with
3 a Mr. Walters and yourself; correct?

4 A. Yes, sir.

5 Q. And you know a Mr. Walters; correct?

6 A. Yes.

7 Q. You are facebook friends with Mr. Walters;
8 correct?

9 A. Yes.

10 Q. And those records would indicate that you sold
11 Mr. Walters marijuana; correct?

12 A. Yes. In the past.

13 Q. Well, the dates on those facebook records are
14 May of 2011; correct?

15 A. Yes, sir.

16 Q. And direct your attention to the bottom of that
17 first page with Mr. Walters. It's November of 2011.

18 A. All the way at the bottom?

19 Q. The bottom of the page with Mr. Walters.
20 [Whereupon, the witness reviews documents]

21 A. Yes, sir.

22 Q. [Mr. Chad Shelton] And the top of the second
23 page with Mr. Walters. November 21st, 2011, you agreed to
24 bring him marijuana; correct?

25 A. Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Then we get to Ms. Smith on Defendant's Exhibit
2 Number 2. Do you know --

3 THE COURT: Was the first one Number 1 you were
4 talking about?

5 MR. CHAD SHELTON: Yes. Yes, it was.

6 THE COURT: Walters? Okay.

7 Q. [Mr. Chad Shelton] And for Ms. Smith,
8 Defendant's Exhibit 2. Do you know Ms. Smith?

9 A. No, sir.

10 Q. You don't know Ms. Smith?

11 A. [No response]

12 Q. Is she a facebook friend of yours?

13 A. Yes, sir.

14 Q. And those conversations indicate that you sold
15 her marijuana; correct?

16 A. No, sir.

17 Q. Does it say Andre Mendoza?

18 A. Yes, sir.

19 Q. Does it say a Vanessa Smith?

20 A. Yes, sir.

21 Q. And based off those conversations, Andre Mendoza
22 is selling Vanessa Smith marijuana?

23 [Whereupon, the witness reviews documents]

24 A. Just what I see, it just say can you help me.

25 Well, she was telling me can you help me, if I

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 could help her, find some.

2 Q. [Mr. Chad Shelton] Some bud for the weekend?

3 A. Yes. Yes, sir.

4 Q. And that's marijuana; correct?

5 A. Yes, sir.

6 Q. Then she says any exotic or just regular;

7 correct?

8 A. Yes, sir.

9 Q. And then you indicate, some lines down, when you
10 want it.

11 A. Yes, sir.

12 Q. And then she indicates, by Friday and then asks,
13 is it regular or exotic.

14 Correct?

15 A. Yes.

16 Q. And then you indicate tonight, when.

17 A. Yes, sir.

18 Q. And this is all August of 2011; correct?

19 A. Yes, sir.

20 Q. And you tell her, exotic; what you want; how
21 much.

22 A. Say that again.

23 Q. And then a couple of lines down you say exotic;
24 what you want; how much.

25 A. Yes.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. And then go to the next page. Ms. Smith says,
2 if regular, I'll take a quarter.

3 A. Yes, sir.

4 Q. And then your response is, I got quarter; only,
5 though, one ten.

6 Correct?

7 A. Yes, sir.

8 Q. So you're selling Ms. Smith marijuana; correct?

9 A. Yes, sir.

10 Q. Let's go to Defense's Exhibit 3, Ms. Driggers.
11 You know Ms. Driggers; correct?

12 A. No. Well, I know her through a friend -- my
13 ex-friends.

14 Q. She's a -- facebook page?

15 A. Yeah.

16 Q. Okay. And you sell her marijuana; correct?

17 A. Yes.

18 Q. I think you testified earlier that you've never
19 been in trouble with the law; correct?

20 A. No, sir.

21 Q. Or the only time you've been in trouble with the
22 law was the burglary in the third degree; correct?

23 A. Yes, sir.

24 Q. But isn't it true that you --

25 MS. CORNWELL: Your Honor, I believe this is

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 what we discussed earlier.

2 THE COURT: I'm sorry. What?

3 MS. CORNWELL: I believe this is what we
4 discussed earlier, as far as the stipulation from the
5 State and the instruction that you were going to give
6 the jury.

7 THE COURT: Okay. You've got it written out,
8 you said?

9 Go ahead. I'll give it to them. Go ahead with
10 your questions. Okay? Show him what -- show him what
11 you're talking about.

12 [Whereupon, Defendant Newman's Exhibit Number 4
13 is marked by the court reporter]

14 Q. [Mr. Chad Shelton] Show you what's been marked
15 as Defendant's Exhibit 4. Isn't it true you've been
16 convicted of a petty larceny?

17 A. Yes, sir.

18 Q. In Dorchester Magistrate's Court?

19 A. Yes, sir.

20 THE COURT: All right. Ladies and gentlemen of
21 the jury panel, this particular conviction for petty
22 larceny did not show up on this gentleman's what they
23 refer to as a rap sheet. And the prosecutor, before,
24 when she was talking to the witness, which happens in
25 every case -- lawyers talk to the witness before they

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 put them on the witness stand -- had told him that he
2 wasn't going to have to testify about any convictions
3 except the ones on his rap sheet.

4 For some reason, this particular petty larceny
5 charge did not show up on the rap sheet. It wasn't
6 that he was hiding anything from you. It wasn't on
7 the rap sheet at the time. It's still not on the rap
8 sheet. I can't explain that to you.

9 Please proceed.

10 MS. CORNWELL: Thank you, Your Honor.

11 MR. CHAD SHELTON: Thank you, Your Honor.

12 Q. [Mr. Chad Shelton] And you testified --

13 THE COURT: And, ladies and gentlemen -- I'm
14 sorry.

15 That's a stipulation between the parties. And
16 it's basically -- the evidence that you are to
17 consider in this trial: testimony, sworn testimony on
18 the witness stand, and stipulation of parties, and
19 possibly prior deposition sworn testimony is the way
20 that the evidence is brought to you. And this is a
21 stipulation between the parties, so please consider it
22 as an actual fact.

23 Please proceed.

24 Q. [Mr. Chad Shelton] You testified earlier that
25 after the incident, you went to Ryan's house and then --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. -- you went to where this incident took place;
3 correct?

4 A. Yes, sir.

5 Q. And it was still three o'clock, four o'clock, in
6 that --

7 A. Three o'clock, 3:30. .

8 Q. And --

9 THE COURT: Before we get too far down the line,
10 Defendant's Exhibit 1, 2, and 3 is admitted with
11 objections --

12 MS. CORNWELL: None --

13 THE COURT: You have no objection to 1, 2 and 3?

14 MS. CORNWELL: No, Your Honor.

15 THE COURT: All right. Defendant's 1, 2 and 3
16 admitted without objection.

17 MR. BIERING: Defendant Clark does not object,
18 either, Your Honor.

19 THE COURT: Pardon?

20 MR. BIERING: Defendant Clark does not object,
21 either, Your Honor.

22 THE COURT: Okay.

23 [Whereupon, Defendant Newman's Exhibit Number 1
24 is admitted into evidence by the Court]

25 [Whereupon, Defendant Newman's Exhibit Number 2

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 is admitted into evidence by the Court]

2 [Whereupon, Defendant Newman's Exhibit Number 3

3 is admitted into evidence by the Court]

4 MR. CHAD SHELTON: One second.

5 [Whereupon, Mr. Chad Shelton reviews documents]

6 Q. [Mr. Chad Shelton] So you went out to where the
7 incident took place; correct?

8 A. Yes, sir.

9 Q. And that's where I think you testified you found
10 your sneakers?

11 A. Yes, sir.

12 Q. That's not too far from where you're living, was
13 it?

14 A. No, sir.

15 Q. It was maybe about a mile?

16 A. About a mile and a half.

17 Q. You're familiar with Mapquest?

18 A. Yes, sir.

19 Q. Would it be helpful to see that to see how
20 long -- a little less than a mile and a half, maybe?

21 A. Yeah, I guess.

22 Q. But not a mile?

23 A. Yes, sir.

24 Q. You agree to that?

25 A. Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. And it was dark?

2 A. Yeah. It was midnight. It was around 1:00.

3 Q. Is there trees, wood -- wooded area?

4 A. Yes.

5 Q. So no lights, no street lamps?

6 A. No.

7 Q. But you knew the area; correct?

8 A. Yes, sir.

9 Q. You went to Stratford High School. It's right
10 there next to Stratford High School, too; correct?

11 A. No, it's not.

12 Q. About a mile or two. It's closer than here;
13 correct?

14 A. Yes.

15 Q. So it's that area? Stratford High School? The
16 Barbeque Place? Reese's Barbeque?

17 A. What barbeque place?

18 Q. Isn't there a barbeque place down -- across the
19 street?

20 A. Oh. Where it happened?

21 Q. Yes.

22 A. Yes, sir. Yes, sir.

23 Q. And it's College Park Road?

24 A. Yes, sir.

25 Q. And Stratford is off College Park Road? Near

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 College Park Road?

2 A. Yeah. It's near College Park Road.

3 Q. The Food Lion is right there, Stratford, and
4 about maybe a mile, not even a mile down the road, is
5 where this incident was; correct?

6 A. It was the opposite side. It was closer towards
7 the Hot Spot and the Music In Motion and the skating rink
8 and all that.

9 Q. Right. Right. Right there in that area.

10 So you -- and you're -- and where you live is
11 actually between Stratford High School and this incident;
12 correct?

13 A. Yes, sir.

14 Q. You've traveled that road many times?

15 A. Yeah, I've been down the -- on College Park,
16 yes, sir.

17 Q. You're very familiar with that area?

18 A. Yes, sir. I've been here since '94.

19 Q. Right.

20 A. I've been in the same --

21 Q. Same -- same residence?

22 A. Yes, sir.

23 Q. And you recognized Ryan?

24 A. Yes, sir.

25 Q. His scar?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. His voice?

3 A. Yes, sir.

4 Q. Y'all were friends?

5 A. Yes, sir.

6 Q. You lived with him?

7 A. Yes, sir.

8 Q. You knew exactly where he lived?

9 A. Yes, sir.

10 Q. EMS also came out on the scene; correct?

11 A. Yes, sir.

12 Q. And it was important to tell them everything
13 that happened?

14 A. Yes, sir.

15 Q. Because they were relying on what you had to
16 say --

17 A. Yes, sir.

18 Q. -- in diagnosing and helping you out?

19 A. Yes, sir.

20 Q. I think that's when you indicated what? that you
21 were dizzy?

22 A. Yes, sir. Dizzy, headache.

23 Q. And that was also the reason you couldn't write
24 a statement; correct?

25 A. Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. No problems driving off to the house, Ryan's
2 house, afterward; correct?

3 A. Yes, sir.

4 Q. Made sure to tell EMS that you were stripped of
5 all your clothes, didn't you?

6 A. Yeah.

7 Q. You made sure to tell the police that you were
8 stripped of all your clothes, didn't you?

9 A. Yes, sir.

10 Q. And it was an Officer Wells that you talked to
11 in the beginning?

12 A. I believe so.

13 Q. And it was important to tell the police
14 everything that happened?

15 A. Yes, sir.

16 Q. Because you wanted it to be as accurate as
17 possible; correct?

18 A. Yes, sir.

19 Q. You never told the police officers that your
20 cell phone was taken, did you?

21 A. Yes, sir.

22 Q. Have you reviewed your statement?

23 A. No, sir.

24 Q. You didn't write it in your statement, did you?

25 A. Huh?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. You didn't write in your statement that your
2 cell phone was taken?

3 A. I don't remember if I did.

4 Q. Would it help to refresh your memory if you
5 reviewed your statement?

6 A. Yes.

7 [Whereupon, Mr. Chad Shelton proffers documents
8 to the witness]

9 [Whereupon, the witness reviews documents]

10 A. No, sir.

11 Q. [Mr. Chad Shelton] You didn't write in your
12 statement about the cell phone, did you?

13 A. No, sir.

14 Q. You wrote this statement January 7th?

15 A. Yes, sir.

16 Q. This happened January, 5th into January 6th;
17 correct?

18 A. I believe so.

19 Q. You met with police?

20 A. The same morning.

21 Q. That morning.

22 A. [Indicates affirmatively]

23 Q. You then went to Ryan's house?

24 A. No, sir.

25 Q. You drove by Ryan's house with your mother?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11,, 2012

1 A. Yeah. That was around four o'clock in the
2 morning.

3 Q. Okay. After you met with police?

4 A. When they came to my house, yes, sir.

5 Q. You then wait a day. The next day you go and
6 write your statement?

7 A. No. I went the same day and wrote the
8 statement, I believe, sir.

9 Q. Okay. Well, you wrote the statement on the 7th.
10 The night -- I'm not trying to trick you up. All right?
11 The night of the 5th into the 6th; right?

12 A. It was the 5th, at midnight, when she called me.

13 Q. Right.

14 And so the next day is the 6th. On the morning
15 of the 6th --

16 A. Yes, sir.

17 Q. -- was when you went to the police?

18 A. Yes, sir.

19 Q. The morning of the 6th, about three o'clock,
20 four o'clock, is when you went to Ryan's house?

21 A. In the morning?

22 Q. Yes.

23 A. Yes.

24 Q. And then the next day, the 7th, is when you
25 wrote your statement?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir, that's when.

2 Q. Okay. And you went to the police station with
3 your cousin?

4 A. Yes, sir.

5 Q. And remember him discussing about text messages?

6 A. Yes, sir.

7 Q. And you were receiving text messages?

8 A. Yes, sir.

9 Q. You've never received anything as far as your
10 wallet, your keys, or your clothes, have you?

11 A. No, I haven't received none of that.

12 Q. So the police didn't find anything?

13 A. No, sir.

14 Q. And you gave three names?

15 A. Yes, sir.

16 Q. And you -- four names, I guess. Jessica Clark?

17 A. Yes, sir.

18 Q. You also gave Ryan Newman's name?

19 A. Yes, sir.

20 Q. You gave a Teddy?

21 A. Yes, sir.

22 Q. And you don't know if that's Timmy Weathers,
23 Tommy Weathers? You're not sure of that name?

24 A. It was Tommy Weather.

25 Q. Okay. He's not on trial here today?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. No, sir.

2 Q. And you gave Shane Newman?

3 A. Yes, sir.

4 Q. He's not on trial today?

5 A. No, sir.

6 Q. You're pretty confident with those people;
7 correct?

8 A. Well, I'm pretty sure. Ryan Newman,
9 Teddy, and Jessica Clark. But not Shane Newman.

10 Q. But that night, you were a hundred percent sure
11 that it was Shane?

12 A. Yes, sir.

13 Q. And you know now that Shane's case has been
14 dismissed; correct?

15 A. Yes, sir.

16 Q. That's why he's not here today on trial?

17 A. I guess.

18 MR. CHAD SHELTON: Thank you. No further
19 questions.

20 THE COURT: Cross-examination from Defendant
21 Clark.

22 MR. BIERING: Thank you, Your Honor.

23 Your Honor, with consent of counsel, for the
24 ease of the Court's administration as we present
25 items, I've got a copy of the documents that we're

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 going through.

2 THE COURT: That's 1 through 25?

3 MR. BIERING: Your Honor, it's the entire --
4 it's the entire record. I'll pull out each individual
5 item, and there'll be a reference to the page number.

6 THE COURT: Just give me the ones you're going
7 to pull out. I don't want to see them all.

8 MR. BIERING: I can do that, Your Honor.

9 THE COURT: Okay. Just the ones you're going to
10 put into evidence, I'm concerned with.

11 MR. BIERING: Thank you, Your Honor.

12 [Off the record momentarily]

13 MR. BIERING: Good afternoon, Mr. Mendoza.

14 CROSS-EXAMINATION

15 BY MR. BIERING:

16 Q. Before we go into facebook: you would agree
17 that at no time have you alleged that my client struck you
18 on January the 6th. Wouldn't you agree with that?

19 A. Say that again.

20 Q. No -- at no time my client struck you or hit you
21 on January the 6th?

22 A. No, sir.

23 Q. You would agree with that?

24 A. Yes.

25 Q. Would you also agree that you willingly got into

1 the vehicle with her that night? Yes or no.

2 A. Yes.

3 Q. Would you agree that your desire that night was
4 for the consumption of marijuana and sexual relations with
5 my client?

6 A. Yes, sir.

7 Q. Thank you.

8 I think you've previously testified, and you
9 would also agree, that you first met my client on facebook
10 in early January; is that correct?

11 A. Yes, sir.

12 Q. You would also agree that you lived with
13 Mr. Ryan Newman up and through about a month prior to this
14 event; is that correct?

15 A. Yes, sir.

16 Q. Mr. Mendoza, is there a stipulation that's been
17 presented before the Court that Madam Solicitor advised
18 you that you did not have to testify about the conviction
19 for larceny in Dorchester County? Is that correct?

20 A. Yes.

21 Q. And other than that issue, is there anything
22 else that she told you that you didn't have to testify
23 about today in Court?

24 A. No, sir.

25 Q. Mr. Mendoza, I want to --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: If I could approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 Q. [Mr. Biering] I would like to present to you
5 what's been pre-marked as Defendant's Exhibit -- Defendant
6 Clark's Exhibit 4. Take a moment and review that exhibit.

7 [Whereupon, the witness reviews documents]

8 Q. [Mr. Biering] Are each of those items that are
9 in that cumulative exhibit pictures? Are those pictures
10 of you? Pictures of you in each of those?

11 A. Yes, sir.

12 Q. And would you agree those are pictures of you
13 that have been posted to your facebook page?

14 A. Yes, sir.

15 Q. If I could refer your attention to the second
16 line of the http address. There appears to be some
17 internet address that you could -- it would link back. Do
18 you see in each of those pictures a set of numbers that
19 begins with 1000 and ends with 8721?

20 [Whereupon, the witness reviews documents]

21 A. Yes, sir.

22 Q. [Mr. Biering] Mr. Mendoza, isn't it true that
23 these are -- these are pictures from your facebook page?

24 A. Say that again.

25 Q. Isn't it true that these are pictures from your

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 facebook page?

2 A. Yes.

3 MR. BIERING: Your Honor, I would move to admit
4 Defendant's 4, Defendant Clark's 4, into evidence.
5 Permission to publish to the jury.

6 THE COURT: Any objection?

7 MS. CORNWELL: No objection, Your Honor.

8 THE COURT: All right. Admitted without
9 objection.

10 MR. BIERING: Thank you, Your Honor.

11 [Whereupon, Defendant Clark's Exhibit Number 4
12 is admitted into evidence by the Court]

13 Q. [Mr. Biering] Mr. Mendoza, I'm going to
14 approach you with what's been pre-marked as Defendant's
15 Exhibit 2, Defendant's Exhibit 3, Defendant's Exhibit 5,
16 Defendant Clark's Exhibit, and also Defendant's Exhibit 6.

17 If you could, Mr. Mendoza, take a moment and
18 review those documents.

19 [Whereupon, the witness reviews documents]

20 THE COURT: What number is that? What numbers?

21 MR. BIERING: I'm sorry, Your Honor. There are
22 so many, I can't remember.

23 [Whereupon, Mr. Biering reviews documents]

24 MR. BIERING: 6, 5, 3 and 2.

25 THE COURT: 2, 3 and 5?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: And 6.

2 THE COURT: Okay. Solicitor, do you have any
3 objection to 2, 3, 5 and 6?

4 MS. CORNWELL: No, Your Honor.

5 THE COURT: All right. 2, 5 and 6 [phonetic]
6 admitted without objection.

7 [Whereupon, Defendant Clark's Exhibit Number 2
8 is admitted into evidence by the Court]

9 [Whereupon, Defendant Clark's Exhibit Number 3
10 is admitted into evidence by the Court]

11 [Whereupon, Defendant Clark's Exhibit Number 5
12 is admitted into evidence by the Court]

13 [Whereupon, Defendant Clark's Exhibit Number 6
14 is admitted into evidence by the Court]

15 MR. BIERING: Permission to publish to the jury,
16 Your Honor.

17 THE COURT: Yes, sir, if that's what you want to
18 do.

19 MR. BIERING: Thank you, Your Honor.

20 A. That's all me.

21 Q. [Mr. Biering] They're all yours?

22 A. That's all me.

23 Q. Would you agree that after having an opportunity
24 to review facebook documents that it appears that that
25 number, that 100 and then there are some intervening

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 numbers and ends in 8721, that that is a number associated
2 with your facebook account?

3 A. I guess. I mean, I don't know. I didn't -- I
4 don't know nothing about it, I guess.

5 Q. Would you agree that -- first, go ahead and tell
6 us what your e-mail addresses are. You have two of them;
7 correct?

8 A. Yes. It's andremendoza56@Gmail.com. And I have
9 one that's nytreyl418@Yahoo.com.

10 Q. And wouldn't you agree that those e-mail
11 addresses show on the -- on the top of the long list of
12 names at the beginning of that -- the documents that we
13 have linked to your facebook?

14 A. Yes, sir.

15 Q. On -- have you previously testified that it had
16 been -- well, you testified a number of different things.
17 At one point you testified -- isn't it true that you
18 testified it had been two years' since you had sold drugs?
19 Is that correct?

20 A. Yes, sir.

21 Q. And that's actually not true, is it?

22 A. No. That is true.

23 Q. That's true?

24 A. Yeah.

25 Q. Okay. On January the 2nd of 2011, would you

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 agree that you were a facebook user?

2 A. Yes.

3 Q. Would you agree that -- well, first, let's talk
4 about your drug use before we -- let's strike that
5 previous question.

6 Would you agree that you've offered to deliver
7 drugs, other than marijuana, to people?

8 A. No, sir.

9 Q. You would not -- you would not agree to that?

10 A. No, sir.

11 Q. Would you agree that you have offered to deliver
12 OC-40, which is a reference for OxyContin 40 milligrams,
13 to people?

14 A. No, sir.

15 MR. BIERING: Your Honor, I would like to
16 pre-mark pages 535 through 536 Defendant's, I believe,
17 8.

18 THE COURT REPORTER: 7.

19 MR. BIERING: 7. Defendant Clark's 7.

20 [Whereupon, Defendant Clark's Exhibit Number 7
21 is marked by the court reporter]

22 MR. BIERING: I'm sorry, Your Honor. I gave up
23 my other copy. I've got to get to that point.

24 [Whereupon, Mr. Biering reviews documents]

25 MR. BIERING: If I could approach the witness,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Your Honor?

2 THE COURT: Yes, sir.

3 Q. [Mr. Biering] If you could look a few lines
4 down, sir, in the line that says author. And do you see
5 the number that we consistently seem to see? The 1000,
6 intervening numbers, and then ending with 8721.

7 A. Yes, sir.

8 Q. And if you could review that document, do you
9 see that you can -- that's still consistently listed as
10 the author of these communications? Do you agree with
11 that?

12 A. Yes, sir. Yes, sir.

13 Q. If you look at 12/31, communication beginning at
14 12/31, moving forward into the next page, into January the
15 2nd, wouldn't you agree that you began --

16 Well, actually, I'll tell you what. If you
17 could go to the sent line, 2010/12/31, with that
18 identifying author number --

19 MR. BIERING: I apologize. It's getting -- it's
20 getting boring, Judge, but it's just -- we just have
21 to go through it.

22 THE COURT: Why don't you just point it out to
23 him --

24 MR. BIERING: Sure. I would love to.

25 THE COURT: If you would go stand beside him --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Sure. I'll be happy to.

2 THE COURT: -- and point it out to him.

3 A. Here you go.

4 Q. [Mr. Biering] All right. You've got it?

5 A. No, I don't got it.

6 Q. You don't have it. Okay. Read what you say
7 there.

8 MS. CORNWELL: Objection, Your Honor. He's
9 allowed --

10 THE COURT: What's your legal objection?

11 MS. CORNWELL: He's allowed to refresh
12 recollections on conversations he's had. He can't
13 have him read records into a -- into evidence. He can
14 refresh his recollection and ask him questions based
15 on his recollection of a conversation.

16 That's not a business document. It's not a
17 business record. He can't just read it into the
18 record.

19 THE COURT: Okay. I'll sustain the objection.

20 But show him what line you --

21 MR. BIERING: I have, Your Honor.

22 THE COURT: -- and then ask him questions about
23 it --

24 MR. BIERING: Can we approach, Your Honor?

25 THE COURT: -- rather than reading it. Okay?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 If you want to offer it into evidence, that's a
2 different story. But right now it's not in evidence.

3 MR. BIERING: Yes, Your Honor.

4 THE COURT: And she's correct. So ask him
5 whatever question you want to ask him.

6 Q. [Mr. Biering] Isn't it true that as -- with
7 author line there, 1000, and the intervening numbers --
8 I'm just going to start saying 8721; we'll just refer to
9 the last four digits -- that you, as the author, say: I
10 got me a 40 and I try to get up with you but you ain't
11 messed me back. I guess you with John Cubble [phonetic]
12 up having fun. I try, buddy. I give up, man.

13 Do you agree?

14 A. I don't remember this.

15 Q. You don't remember that conversation?

16 A. No, sir.

17 Q. Well, let's move on into January the 1st of
18 2011. Would you agree that the author line listed there
19 is 8721?

20 A. Can you show me?

21 Q. Sure.

22 [Whereupon, Mr. Biering and the witness confer]

23 Q. [Mr. Biering] Would you agree that the author
24 line is 8721?

25 A. Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Would you agree, and do you recall, the
2 statement that you made --

3 MR. BIERING: Excuse me, ladies and gentlemen.

4 Q. [Mr. Biering] -- that fuck up. I got you a
5 forty. Need you. Can't hit me up. Now I see how it is.
6 And I got paid today for -- to do a job. But I want you
7 to play me to get f'd up with other -- excuse me, again --
8 nigger, we planned this.

9 You don't recall that conversation?

10 A. No, sir.

11 Q. You would agree that the reference to forty on
12 the street is OxyContin, wouldn't you?

13 A. Say that again.

14 Q. That the reference to the number is a reference
15 to the OxyContin --

16 A. No.

17 Q. -- milligram? You wouldn't agree to that?

18 A. No.

19 Q. You would agree that the author line
20 consistently is the 8721; is that correct?

21 A. Yes, sir.

22 Q. And you've previously testified that the
23 documents that have been admitted and published to the
24 jury are consistent with your facebook page; is that
25 correct?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 MR. BIERING: Move to admit this as Defendant's

3 8. 7. I'm sorry. 7. It's already marked.

4 MS. CORNWELL: Your Honor, I'm going to object.

5 He hasn't authenticated that. He said that he
6 doesn't remember having any of those conversations.

7 MR. BIERING: Your Honor, if they're talking
8 about authentication, it's the documents they provided
9 me from their subpoena to facebook.

10 THE COURT: I think we've already authenticated
11 it when we went through it.

12 Now, on the relevancy of it, I'll be glad to --
13 number one, I haven't -- you just handed me one page.
14 I haven't read what you're looking at.

15 MS. CORNWELL: Your Honor, I would disagree with
16 authentication --

17 THE COURT: What's your legal objection?

18 MS. CORNWELL: That they have not been
19 authenticated.

20 We agreed that they were requested from the
21 State, but nobody -- he can't remember that
22 conversation. And with the potential for hacking and
23 things like that, I don't think that we've
24 authenticated that he's given those messages and so
25 I'm not sure how we can introduce them into evidence

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 when they're not -- they haven't been authenticated by
2 being authored by this defendant -- victim.

3 THE COURT: All right. Let me see the attorneys
4 up here just a second.

5 MR. BIERING: Yes, Your Honor.

6 [Whereupon, a bench conference is held as
7 follows]

8 THE COURT: Now, if he doesn't remember the
9 conversation on that, I think she's probably
10 right if he says he didn't remember the
11 conversation.

12 MR. BIERING: Your Honor, you stated and
13 already ruled that you believed --

14 THE COURT: I believe that the
15 authentication --

16 MR. BIERING: -- that these are
17 authenticated.

18 THE COURT: -- based upon the 8721 came
19 from his website. But now he says he doesn't
20 remember it.

21 Now, if you want to lay some foundation on
22 whether or not he had those type of
23 conversations or whatever you want to ask him or
24 would he -- I mean, I don't know how you --
25 because I think you're going to have to lay some

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 type of conversation that he may have done it.

2 And the reason I say that is: from what I
3 understand about this facebook, you could get on
4 the facebook page --

5 MR. BIERING: Your Honor --

6 THE COURT: -- if it's an open facebook.

7 MR. BIERING: No, sir, that's not true.
8 That is not true.

9 THE COURT: Well, if it was an open
10 facebook --

11 MR. BIERING: No. If it was an open
12 facebook, someone can post on -- post a comment.

13 But these have author lines. The author
14 line links back to him. This is not --

15 THE COURT: It links back to his facebook
16 page --

17 MR. BIERING: No, not just linked --

18 THE COURT: -- not necessarily to him.

19 MR. BIERING: No, sir. That's not how --

20 MS. CORNWELL: Anybody that has his
21 password can go on his facebook page.

22 THE COURT: What I'm saying, it links back
23 to his page, yes, and his --

24 MR. BIERING: It's not like that, Your
25 Honor. It's not like -- it's not just a

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 question of that there's a page and people go
2 and make open posts. Each post has an
3 identifier and it shows -- for example, there's
4 a picture --

5 THE COURT: I understand that. There's no
6 question that it came from his website -- I
7 mean, excuse me -- his e-mail address and it was
8 his -- posted on his account. I don't think
9 there's any question about that. Okay? I'll
10 concede that. And that's why I said we didn't
11 have to go any further on authenticating, as far
12 as the account is concerned.

13 Now the problem is did he do it. He says
14 he doesn't remember. Now --

15 MR. BIERING: I'll just keep going until --

16 THE COURT: Now, what you need to do is
17 say, look, I'm showing --

18 And the reason I say that is say, look, I'm
19 showing -- did anybody else use the website, et
20 cetera, et cetera, et cetera, and I may let it
21 in later. But right at this point in time I'm
22 not, based on that reason. Do you understand?

23 MR. BIERING: Thank you, Your Honor.

24 THE COURT: All right.

25 MS. CORNWELL: Thank you, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 [Whereupon, the bench conference concludes]

2 Q. [Mr. Biering] Mr. Mendoza, do you have any
3 documentation of ever complaining that your facebook has
4 been hacked by anyone? Yes or no.

5 A. Yes.

6 Q. You have documentation of that?

7 A. No.

8 Q. And would you agree that you consistently used
9 facebook through the year, calendar year, 2011?

10 A. Yes.

11 Q. Would you -- could you point to any specific
12 point on your facebook where there has been a hacking?
13 Yes or no.

14 A. Yes.

15 Q. What date?

16 A. I don't exactly remember what date it was. I
17 just know I tried to log in and I couldn't and I had to go
18 through a lot of things to it.

19 Q. And did you delete anything from the facebook?

20 A. No, sir.

21 The only thing I did is change my password and
22 e-mail because my e-mail -- I mean, my page has been
23 hacked so I had to change my new -- my old e-mail to my
24 new e-mail. Now it's andremendoza, because my old one got
25 hacked.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Yeah, your old -- so -- okay. So you've
2 actually -- so you've got another facebook page, right,
3 because --

4 A. No.

5 Q. -- your old one got hacked?

6 A. I have only one.

7 Q. You only have one facebook page?

8 A. [Indicates affirmatively]

9 Q. Do you do things for So Caliente Entertainment?

10 A. Yes, sir.

11 Q. And isn't it true that you have a second
12 facebook through So Caliente Entertainment?

13 A. No, sir.

14 Q. That's not true?

15 A. No, sir.

16 MR. BIERING: I would like to pre-mark this as
17 Defendant's --

18 THE COURT REPORTER: 8.

19 MR. BIERING: -- 8. Defendant Clark's 8 and
20 Defendant Clark's 9.

21 [Whereupon, Defendant Clark's Exhibit Number 8
22 is marked by the court reporter]

23 [Whereupon, Defendant Clark's Exhibit Number 9
24 is marked by the court reporter]

25 MR. BIERING: If I could approach the witness,

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Your Honor.

2 Q. [Mr. Biering] Hand to you --

3 THE COURT: Yes, sir.

4 Q. [Mr. Biering] -- what's been pre-marked as
5 Defendant's 8. If you could, sir -- I'm going to point
6 out to you here. Looks like a nice logo for So Caliente
7 Entertainment and then it's got a name there. Can you
8 read that name?

9 A. Andre Mendoza.

10 Q. With the nickname of?

11 A. Drey.

12 Q. That's your nickname; right?

13 A. Yes, sir.

14 Q. Okay. So you've got another facebook; correct?

15 A. No. This is that page.

16 Q. That's the same page?

17 A. It's all the same page.

18 And we've got a -- and we've also got a business
19 page that is linked with our page, is because we're
20 employees and my brother is the manager of this company so
21 he put a business page up. When you go into this, this is
22 a business page.

23 Q. So that's a business page?

24 A. Yes.

25 Q. Okay.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. And this right here is my facebook page. But
2 this is our business card. And on facebook, they upgrade
3 their system so you can make a background wall thing. So
4 I made my brother's business thing a background wall. If
5 you're familiar with facebook, you'll understand the
6 upgrades they do on the system. And that's my flyer that
7 I had for that event that week. And I'm just a promoter.

8 Q. Well, flip through those pages and tell me if
9 that's pages from your current facebook, whatever page it
10 is.

11 [Whereupon, the witness reviews documents]

12 A. This is -- this is my facebook page.

13 Q. [Mr. Biering] That's your facebook page?

14 A. Yes, sir.

15 MR. BIERING: I would move to admit this as
16 Defendant's 8.

17 THE COURT: Let the State look at it and see --

18 MR. BIERING: Sure.

19 THE COURT: -- if they have any objections.

20 [Whereupon, Ms. Cornwell reviews documents]

21 MS. CORNWELL: Your Honor, we would object to
22 having this admitted into evidence.

23 He's admitted that it's on his facebook page,
24 but there are a lot of extraneous things in this
25 document and in these documents that have nothing to

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 do with this case, nothing to do with this trial.

2 We would argue the relevancy as to all these
3 messages. He's admitted that this is his facebook
4 page. So if he wants to question him on the facebook
5 page that's fine, but as far as admitting his entire
6 history --

7 THE COURT: What all is in it? Let me take a
8 look at it. Do you have a copy of it?

9 MR. BIERING: No, sir. That's the only copy
10 I've got.

11 THE COURT: That's the only copy you've got?

12 MR. BIERING: Yes, sir. But I don't mind.

13 [Whereupon, Mr. Biering proffers documents to
14 the Court]

15 [Whereupon, the Court reviews documents]

16 [Whereupon, a bench conference is held]

17 MR. BIERING: I think Madam Solicitor will
18 agree to this next one I would move to admit --

19 THE COURT: This isn't what you gave me
20 earlier.

21 MR. BIERING: Yes, sir.

22 THE COURT: These pictures --

23 MR. BIERING: No. No, sir, that's
24 different. No, that's a different --

25 MS. CORNWELL: These are different

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 conversations that he's had with different
2 people --

3 THE COURT: Different conversations.

4 MS. CORNWELL: -- completely --

5 [Whereupon, the Court reviews documents]

6 THE COURT: I mean, I've already said we
7 could go into anything on the drugs.

8 MR. BIERING: Okay. And, Your Honor, the
9 reasons I --

10 THE COURT: -- but I guess I can sit here
11 and edit this, if you want to. But I'm just not
12 letting it in point blank, in toto, except as to
13 the drugs.

14 Now, if there's anything else in here you
15 think is relevant in the conversation, I'll
16 listen to you.

17 MR. BIERING: I will save it for later,
18 because I think there's -- I think there's
19 another facebook page. I mean, I think --

20 THE COURT: I mean, I'm just --

21 MR. BIERING: -- there's a similar facebook
22 page. I think it's a --

23 THE COURT: -- not going to let it in
24 without looking at what all of these
25 conversations say.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I'm not presenting it for the
2 truth of the matter asserted listed in there.
3 I'm only presenting it for evidence of the other
4 facebook page.

5 THE COURT: Well, you didn't --

6 MR. BIERING: It's a business facebook
7 page.

8 THE COURT: -- put this front page.

9 MR. BIERING: It's a business page.

10 THE COURT: Just put that front page in.

11 MR. BIERING: I'm comfortable with that.

12 THE COURT: I mean, I don't have a problem
13 with the front page. What I've got a problem
14 with is going through all these conversations.

15 MR. BIERING: I'm comfortable with that.

16 THE COURT: Okay.

17 MS. CORNWELL: That's fine.

18 But I think he's established that's the
19 same business page, so I have an objection to
20 trying to put the second business page --

21 THE COURT: Well, you can -- you can clear
22 that up on redirect.

23 MS. CORNWELL: Thank you, Your Honor.

24 [Whereupon, the bench conference concludes]

25 MR. BIERING: If I understand, the Court's

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 ruling is that we'll admit the first page of the --

2 THE COURT: Yes, sir.

3 MR. BIERING: -- So Caliente page.

4 THE COURT: Have you got any objections to this
5 front page of So Caliente?

6 MS. CORNWELL: No, Your Honor.

7 [Whereupon, Defendant Clark's Exhibit Number 8
8 is admitted into evidence by the Court]

9 Q. [Mr. Biering] And would you agree that -- well,
10 let me approach, give you -- show you what's Defendant's
11 Exhibit 9. It's the -- appears to be the friends outline
12 from the So Caliente page.

13 A. These are friends from my page.

14 Q. Those are friends from your page?

15 A. Yes.

16 And that -- my brother has a business page.
17 That is his So Caliente business.

18 Q. Would you agree those are your friends?

19 A. Yeah, these are all my friends.

20 MR. BIERING: Okay. I would move to admit that
21 as Defendant's 9.

22 MS. CORNWELL: Your Honor, this is the State's
23 same objection of relevancy.

24 THE COURT: Does it have conversations after
25 that?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I'm sorry, Your Honor?

2 THE COURT: Is that packet -- is that just
3 pictures? Or what is it?

4 MR. BIERING: These are pictures and names, Your
5 Honor.

6 THE COURT: Does it have any conversations?

7 MR. BIERING: No conversations.

8 MS. CORNWELL: Your Honor, it's simply his list
9 of friends, and I don't see how his list of friends is
10 relevant to this matter in any way.

11 MR. BIERING: I'll withdraw and move on, Judge.

12 THE COURT: I mean, what's the relevancy of --

13 MR. BIERING: I'm just going to withdraw it and
14 move on, Judge. I've got -- I've got a bunch to go
15 through and it's not -- it's not as important --

16 THE COURT: I mean, if you'll give me a valid
17 reason for it being relevant, I'll listen to you.

18 MR. BIERING: I think it's relevant, but I think
19 that we can go through it on the other issue. And I
20 don't want to continue to take up the Court's time.

21 If the State wants to object to it, we'll move
22 on.

23 THE COURT: All right.

24 Q. [Mr. Biering] So on 5/27 of 2011, would you
25 agree that you were a facebook user?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. And on 5/27, 2011, I think it's already been
3 discussed that you agreed that you had had a conversation
4 with a Ryan Walters on facebook; is that correct?

5 A. Yes, sir.

6 Q. And you agreed that there was a discussion about
7 drugs in that instance; is that correct?

8 A. Yes, sir.

9 MR. BIERING: Your Honor, I believe that --

10 THE COURT: That's already in evidence.

11 MR. BIERING: That's already in evidence.

12 Q. [Mr. Biering] Then let's move on to August the
13 11th. These are -- it's not in the -- not in any
14 particular order.

15 August the 11th of 2011. Isn't it true that on
16 August the 11th, 2011, you had a conversation with Vanessa
17 Smith?

18 A. Yes, sir.

19 Q. About the delivery of drugs?

20 A. Yes, sir.

21 Q. And you did that on facebook?

22 A. [No response]

23 Q. Yes, sir? No, sir?

24 A. Yes, sir.

25 Q. Yes, sir? Thank you.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 All right. So if we go on to Jonathan Espinal.
2 Who is that?

3 A. That's my cousin.

4 Q. Would you agree that on May 27th of 2011, you
5 had a conversation on facebook with him about drugs?

6 A. No, sir.

7 Q. You would not agree to that?

8 A. No, sir.

9 [Whereupon, a bench conference is held as
10 follows]

11 THE COURT: Show me where you're talking
12 about, if you would.

13 [Whereupon, the Court reviews documents]

14 MR. BIERING: I'm sorry about the size,
15 Your Honor.

16 THE COURT: Okay. Thank you.

17 [Whereupon, the bench conference concludes]

18 MR. BIERING: Mark this Defendant's 10.

19 [Whereupon, Defendant Clark's Exhibit Number 10
20 is marked by the court reporter]

21 THE COURT: Yes, sir? What did you get it
22 marked?

23 MR. BIERING: I'm sorry, Your Honor?

24 THE COURT: That will be number what?

25 MR. BIERING: 10.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Number 10?

2 MR. BIERING: Yes, sir.

3 THE COURT: Okay. Defendant's Number 10.

4 MR. BIERING: If I could approach the witness,
5 Your Honor?

6 THE COURT: Yes, sir.

7 Q. [Mr. Biering] Let's look about halfway down --
8 let's look about halfway down the second page. Here it
9 says author, with a tag of 8721, we continue to identify
10 with you. In fact, on this wouldn't you agree that that's
11 even got your name beside it here? Is that correct?

12 A. Yes, sir.

13 Q. And as author, would you agree that this
14 conversation says, no, you need green.

15 Correct?

16 A. Yes.

17 Q. Correct?

18 A. Yes, sir. But I don't recall this conversation.

19 Q. You don't recall this conversation?

20 A. No, sir.

21 It says my name, and the number matches, but I
22 do not recall this conversation. I don't remember.

23 Q. Well, you know Jonathan Espinal; right?

24 A. Yes. He's my cousin.

25 Q. He's your cousin?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. Do you recall Jonathan getting mad at you?

3 A. No, sir.

4 Q. You don't recall Jonathan getting mad at you for
5 telling his mom that he got arrested?

6 A. No, sir.

7 Q. Don't recall him saying just keep your mouth
8 shut --

9 MS. CORNWELL: Objection, Your Honor.

10 THE COURT: Overruled. Go ahead.

11 Q. [Mr. Biering] Don't recall that conversation?

12 A. No, sir.

13 Q. Do you recall on 11/18 of 2011 it appears, as
14 author, you say: I've got some good-ass good.

15 Do you recall that?

16 A. No, sir.

17 MS. CORNWELL: Objection, Your Honor.

18 He's already said he don't remember the
19 conversation. It's been --

20 MR. BIERING: This is --

21 MS. CORNWELL: -- asked and answered.

22 MR. BIERING: This is a --

23 THE COURT: Over --

24 MR. BIERING: -- this is a new --

25 THE COURT: -- over --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: -- new conversation.

2 THE COURT: Overruled.

3 MR. BIERING: Thank you, Your Honor.

4 Q. [Mr. Biering] Then, as author, moving on down
5 to 11/22 of 2011, you say: what your number. I got some
6 good shit.

7 You don't recall that conversation, either, do
8 you?

9 A. No, sir.

10 Q. Do you recall a conversation -- actually, let's
11 go -- let's just go to page 463.

12 MR. BIERING: I would like to pre-mark this as
13 Defendant's 11.

14 [Whereupon, Defendant Clark's Exhibit Number 11
15 is marked by the court reporter]

16 MR. BIERING: If I could approach the witness,
17 Your Honor?

18 THE COURT: Yes, sir.

19 Q. [Mr. Biering] 12/4/2011. You still agree that
20 you're a facebook user at that point; correct?

21 A. Yes, sir.

22 Q. You're still a facebook user today; right?

23 A. Yes, sir.

24 Q. Okay. So having a conversation with what
25 appears to be Brandy Schaeffer [phonetic]. Do you recall

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 the conversation where it appears that you're the author
2 of 12/4/2011 and you say: man, roll a blunt.

3 A. No, sir.

4 Q. You don't recall that?

5 A. No, sir.

6 Q. Do you recall being told that there wasn't
7 enough to roll a blunt that day?

8 A. No, sir.

9 Q. Do you recall saying: don't have a lot of
10 green, just a bowl or two.

11 Don't recall that conversation, either?

12 A. No, sir.

13 Q. Brandy Schaeffer [phonetic]. Do you recall
14 Brandy Schaeffer?

15 A. I don't know who that is.

16 Q. Don't even know who that is?

17 A. No.

18 Q. You don't -- just take a peak, though. Let's
19 make sure that it's still 8721 on all of those different
20 lines there with that corresponding number. You would
21 agree with them still -- that's still 8721 there, wouldn't
22 you?

23 A. Yes, sir.

24 [Whereupon, Defendant Clark's Exhibit Number 12
25 is marked by the court reporter]

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: If I could approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 Q. [Mr. Biering] Nathan Fish. Do you know Nathan
5 Fish?

6 A. No, sir.

7 Q. Don't know Nathan Fish?

8 A. [No response]

9 Q. Do you recall having a conversation with -- with
10 someone about getting them --

11 Before I ask this question: you're not a
12 licensed physician; right?

13 A. No, sir.

14 Q. Okay. And you're not a licensed pharmacist;
15 right?

16 A. No, sir.

17 Q. Okay. Just wanted to make sure of that.

18 So do you recall having a conversation on
19 December the 2nd with someone looking for aderal?

20 A. No, sir.

21 Q. If you could, if I could refer your attention
22 about halfway down that page. Again, do you see that 8721
23 tag consistently throughout the facebook conversation?

24 A. Yes, sir.

25 Q. On December the 29th, 2011, do you recall a

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 conversation where you asked Mr. Fish: how much you want,
2 though. I have to call my boy in the hood.

3 A. No, sir.

4 Q. You don't recall that conversation?

5 A. No, sir.

6 Q. Do you recall a conversation where Mr. Fish then
7 says: my dog can even call his home boy.

8 Do you recall that conversation?

9 A. No, sir.

10 Q. Do you recall a conversation with Ralphie
11 Santiago [phonetic]?

12 A. No, sir.

13 [Whereupon, Mr. Biering and Ms. Cornwell confer]

14 MR. BIERING: Your Honor, my intent was that
15 these two additional pages were going to be attached
16 to that exhibit, as well? They flow.

17 THE COURT: Which one, now?

18 MR. BIERING: There are two additional pages,
19 pages 413 --

20 THE COURT: You're going to attach them to which
21 exhibit?

22 MR. BIERING: I'm sorry. To Exhibit 12.

23 THE COURT: That's fine.

24 MR. BIERING: Thank you.

25 THE COURT: Attach it.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. [Mr. Biering] Do you recall, in early December
2 of 2011, having a conversation with Ralphie Santiago
3 [phonetic] --

4 A. No.

5 Q. -- about purchase or the acquisition of
6 clonapin?

7 A. No, sir.

8 Q. If I could, if I could refer your attention to
9 this entry here that has author Andre Mendoza, again, the
10 tag line 8721, with all those, you know, introductory
11 numbers, where it says: 'yo, ask your dad if he's looking
12 for some clonapin.

13 Don't recall that conversation?

14 A. No, sir.

15 Q. Do you know a Kelly Elizabeth Rowel [phonetic]?

16 A. No, sir.

17 [Whereupon, Mr. Biering reviews documents]

18 Q. [Mr. Biering] Kelly Elizabeth Rowel [phonetic]:
19 you say you don't -- you just don't recall a Kelly
20 Elizabeth Rowel; is that right?

21 A. Yes.

22 MR. BIERING: If I could approach, Your Honor?
23 There's just too much to mark. I just --

24 THE COURT: What number?

25 MR. BIERING: It's the whole conversation. It

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 goes on for about fifteen pages.

2 THE COURT: What number?

3 MR. BIERING: I'm sorry?

4 THE COURT: What number are you marking?

5 MR. BIERING: I haven't marked it yet.

6 THE COURT: Oh. Okay.

7 THE COURT REPORTER: It will be 13.

8 MR. BIERING: It'll be 13, Your Honor.

9 MS. CORNWELL: Your Honor, may we approach?

10 THE COURT: Yes, ma'am.

11 [Whereupon, a bench conference is held]

12 THE COURT: Yes, ma'am?

13 MS. CORNWELL: At what point does this
14 become commutative? I mean, he --

15 THE COURT: I'm sorry?

16 MS. CORNWELL: At what point does this
17 become commutative? He's --

18 THE COURT: I was sort of thinking the same
19 thing.

20 MR. BIERING: Your Honor, this is a little
21 different. This is a little different because
22 he says that he -- he doesn't recall this
23 conversation. He says he doesn't recall it.
24 This goes on for fifteen pages, so I'm entering
25 into a new realm with this.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: This is what?

2 MR. BIERING: This goes on for fifteen
3 pages. I'm entering into a new realm as it
4 relates to this conversation. He says he
5 doesn't recall this conversation. It kind of
6 goes -- it attacks the --

7 THE COURT: What did he ask for in this?

8 MR. BIERING: I can't --

9 THE COURT: It's about drugs?

10 MR. BIERING: Yes, sir. Yes, sir.

11 THE COURT: What, it's just B.S. talking --

12 MR. BIERING: No, sir.

13 MS. CORNWELL: He's --

14 THE COURT: At some point in time, we do
15 get commutative.

16 MR. BIERING: I agree with that.

17 THE COURT: Why don't you find a
18 conversation he remembers?

19 MR. BIERING: I have culled -- I have
20 culled a good bit, and I'm about done. I've
21 culled --

22 MS. CORNWELL: Your Honor, just for
23 purposes -- Mr. Mendoza has testified. If he
24 wants to ask if the defendant [sic] wants to
25 look over the conversation if he remembers it, I

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 have no objection to him reading in the record.

2 But if he doesn't know -- he's getting it
3 in in a backdoor way.

4 THE COURT: Well, and we can put all this
5 on the record when the jury is out. But my
6 understanding, as far as the account number,
7 what was it? 8721?

8 MR. BIERING: Yes, sir.

9 THE COURT: I would say that that's
10 authenticated, as far as the facebook account is
11 concerned. But my position is unless he can
12 identify the conversation, I'm not going to put
13 the document into evidence.

14 But since it is his account, I think he can
15 ask questions about it. There's a difference
16 between asking questions and putting it into
17 evidence. And that's what he's doing and I
18 think he can do that, since I've already said it
19 is his account. Okay?

20 MS. CORNWELL: Okay.

21 THE COURT: We can put all this on the
22 record at the appropriate time, okay, for the
23 record.

24 MS. CORNWELL: I just ask at some point put
25 an end to this, because it is becoming

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 commutative.

2 THE COURT: I'm sorry. What?

3 MS. CORNWELL: I would just ask at some
4 point we draw the line where it becomes
5 commutative --

6 THE COURT: Well, I'm getting close to the
7 line.

8 MS. CORNWELL: -- and the relevancy.

9 THE COURT: I'm getting close to the line
10 real quick. Okay?

11 MS. CORNWELL: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. BIERING: I'm about there, Judge.

14 THE COURT: Huh?

15 MR. BIERING: I'm about done, too. So --

16 [Whereupon, the bench conference concludes]

17 MR. BIERING: We're going to pre-mark it as
18 Defendant's?

19 THE COURT REPORTER: 13.

20 MR. BIERING: 13.

21 [Whereupon, Defendant Clark's Exhibit Number 13
22 is marked by the court reporter]

23 Q. [Mr. Biering] You say you have no recollection
24 of having a conversation with Kelly Elizabeth Rowel
25 [phonetic]; is that correct?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 A. Yes, sir.

2 Q. I would ask that you count the number --

3 Well, first, let's do this. I would ask that
4 you review the facebook pages that are before you and
5 confirm that it has two names on it: Andre Elizabeth
6 Rowel -- I'm sorry -- Andre Mendoza, Kelly Elizabeth Rowel
7 [phonetic], as recipients and authors throughout that
8 page.

9 A. Yes, sir.

10 Q. And just flip on through. Let's make sure all
11 the pages, that we're talking about the same thing.

12 [Whereupon, the witness reviews documents]

13 A. You want me to look at all these numbers?

14 Q. [Mr. Biering] I just want you to review that
15 and confirm that it's Andre Mendoza and Kelly Rowel
16 throughout.

17 A. Yes.

18 Q. It is?

19 A. Yes.

20 Q. And could you count the pages of that log of
21 communication?

22 A. It's fourteen pages.

23 Q. Fourteen pages. Would you agree that it's
24 single spaced?

25 A. I didn't understand you.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. Okay. Withdraw the question.

2 On page 427, isn't it true there's a
3 conversation here with author listed Andre Mendoza, 8721,
4 dated 12/2/11: how much green you need.

5 A. I don't recall this conversation.

6 Q. You don't recall that conversation?

7 A. No.

8 Q. Do you recall a conversation when Ms. Rowel
9 asked: mo-fo, you smoking with me.

10 A. No.

11 Q. Another reference to weed on 12/2. Don't recall
12 that conversation?

13 A. No, sir.

14 Q. On page 428, I would ask you to review the first
15 few lines of that conversation. Do you recall that
16 conversation?

17 [Whereupon, the witness reviews documents]

18 A. What lines? What lines did you say?

19 Q. [Mr. Biering] Just read about the first ten
20 lines.

21 [Whereupon, the witness reviews documents]

22 A. No, sir.

23 Q. [Mr. Biering] Don't recall any of that
24 conversation, either?

25 A. No, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Your Honor, the exhibits that were
2 published --

3 Q. [Mr. Biering] Just to clarify. You agree that
4 your e-mail address is ny -- two e-mail addresses:
5 nydre1488@Yahoo.com and andremendoza56@Gmail.com; correct?

6 A. Well, that nymendoza is not my address no more.

7 Q. Those e-mail addresses are not your addresses
8 anymore?

9 A. No.

10 The first -- andremendoza56 is, but the nydre is
11 not because when I got hacked in my facebook I had to
12 change my whole e-mail.

13 Q. You agree that at one point those were e-mail
14 addresses?

15 A. Yes.

16 Q. And you've already agreed, as we looked through
17 Defendant's Exhibit 5, 2 --

18 THE COURT: I think he's already agreed. And
19 they're in evidence. We're getting repetitive now.

20 MR. BIERING: Your Honor, if I could have a
21 slight amount of latitude, I think there's one other
22 thing I would like to be able to --

23 THE COURT: I'm going to give you as much
24 latitude as you want. I'm just not going to let you
25 get repetitive over and over. Okay?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Thank you, Your Honor.

2 THE COURT: As long as you're dealing with new
3 material.

4 MR. BIERING: I'm sorry, Your Honor?

5 THE COURT: As long as we're dealing with new
6 material. The jury hears what you've asked him and
7 what he said.

8 [Whereupon, Mr. Biering reviews documents]

9 MR. BIERING: If I could approach the witness,
10 Your Honor?

11 THE COURT: Pardon?

12 MR. BIERING: Can I approach the witness?

13 THE COURT: Yes, sir.

14 Q. [Mr. Biering] There's a few more pictures
15 there, Mr. Mendoza. Do you want to browse through to see
16 if any of those are not pictures from your facebook, or do
17 you want to agree that they are?

18 A. If you want me to go through all this, I will.

19 Q. You need to feel comfortable.

20 MS. CORNWELL: Objection, Your Honor. Can we
21 establish a relevance for --

22 THE COURT: I'm sorry. What?

23 MS. CORNWELL: Can we establish a relevance for
24 this stack of papers that Mr. Biering just gave him?

25 THE COURT: Well, I don't know. Right now he

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 just asked him to identify them. I don't know if
2 they're relevant or not.

3 All right. Madam Forelady, let me see. It's
4 four o'clock. We started somewhere around quarter to
5 three, I believe, so we're going to take an afternoon
6 break at this time and during that break I'll let him
7 thumb through these pictures. There's no sense in
8 y'all sitting here watching him thumb through.

9 We'll take about a ten- or fifteen-minute break.
10 If you need anything, let the bailiffs know.

11 Please don't discuss the case amongst
12 yourselves. The note-takers, leave your notes in the
13 chairs.

14 Follow the bailiff, please.

15 MR. BIERING: Thank you, Your Honor.

16 [Whereupon, the jury exits the courtroom at
17 4:03 p.m.]

18 THE COURT: Mr. Mendoza, go through those forms
19 and make sure -- did you say his pictures?

20 MR. BIERING: I just want to know that -- the
21 same question as it relates to whether or not he would
22 agree that they came off his facebook page.

23 THE COURT: During the break, sit there and
24 thumb through them, please.

25 While Mr. Mendoza is looking through those:

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 we've had several bench conferences that were not on
2 the record concerning admissibility into evidence and
3 I said I would give y'all an opportunity to put it on
4 the record.

5 So, solicitor, I believe this is your
6 opportunity to put on the record -- anything the
7 defense would like to put on the record concerning the
8 bench conferences, I would like to do that at this
9 time.

10 MS. CORNWELL: Your Honor, the State's objection
11 is the relevancy of all of this. It goes against
12 every rule of evidence, as far as character
13 assassination. It's redundant. The defense attorney
14 is testifying.

15 I believe that when he asks can you recall a
16 conversation, Mr. Mendoza can read the conversation in
17 his mind and determine whether or not he remembers
18 having a conversation. If he does not remember having
19 a conversation, I have a strong objection to the
20 defense attorney still be allowed to read into the
21 record in front of the jury, because basically he's
22 testifying as to what's in that conversation and this
23 victim has already stated he doesn't recall having it.
24 I think it's improper testimony by the defense
25 attorney.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 I also think that we've left the relevancy of
2 how any of this relates to the kidnaping, armed
3 robbery, possession of a firearm during the commission
4 of a violent offense, and assault and battery that
5 these defendants committed on this victim. It's a
6 complete character assassination. It's bringing in
7 extrinsic evidence for matters not related to this
8 crime or the events of this crime or any defense that
9 either one of these defendants may have as it relates
10 to this crime.

11 None of these things -- he's admitted to having
12 marijuana, he's admitted to selling it in the past,
13 he's admitted -- it just gets to the point where if
14 we're going to go by, page by page, of every facebook
15 person he's talked to, every facebook page he's ever
16 had, every picture he's ever had, we're going to be
17 here until next week. At some point, it has got to
18 stop.

19 THE COURT: Okay. Thank you very much.

20 Before I hear from defense counsel in response
21 to that, let me put on the record, so the record is
22 very clear: I have ruled earlier on the
23 authentication issue that the account, I believe it's
24 8721, had been authenticated as tied to his e-mail
25 addresses. I did not agree that everything that was

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 on that facebook would go into evidence. And the fact
2 that he did not remember or couldn't identify the
3 individual conversations, I think either he or the
4 various parties, Nathan Fish, Ralphie Santiago, Kelly
5 Rowel, Jonathan Espinal -- either that person or this
6 person had to agree that this was their conversation.
7 However, that goes, in this Court's opinion, to
8 admissibility of the piece of paper, but since it's --
9 part comes from his facebook and it's an alleged
10 conversation he had on the facebook, I allowed you to
11 ask questions about those facebook question and
12 answers or conversations, or whatever you want to call
13 it. Okay?

14 MR. BIERING: Thank you.

15 THE COURT: Now, anything you want to say -- and
16 let me say this. We are getting very commutative and
17 I'm about ready to cut you off, especially with these
18 pictures. I mean, I've allowed some pictures in, and
19 I don't know what this stack of pictures, or whatever
20 he's going through, has to do with anything.

21 Number one, I'm not sure the first pictures had
22 anything to do with anything, but I allowed it in.

23 MR. BIERING: Well, I think it allows us to
24 have -- allowed the Court the ability to begin to
25 authenticate the account. There's a linking of the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 information that I think allows that ruling.

2 But, Judge, I had said before I was doing
3 twenty-five --

4 THE COURT: You told me 1 through 25, because I
5 said y'all could go into the drugs.

6 MR. BIERING: Yes, sir.

7 And what I did is I've immediately withdrawn
8 five of those items and getting ready to only do a
9 couple more. I've only done the checked items. I'm
10 just slow and I apologize for that, judge.

11 THE COURT: Well, I mean, what do these pictures
12 -- what's this stack of pictures he's going through?
13 What does that have to do with anything?

14 MR. BIERING: I think the whole facebook should
15 be open to the jury.

16 THE COURT: Well, it's not going to be. Okay?
17 So please tell me what these pictures have to do --
18 what's the relevancy of these pictures?

19 MR. BIERING: The relevancy is that he agrees to
20 everything and recalls everything except these
21 conversations that involve drugs.

22 THE COURT: Well, that's argument.

23 MR. BIERING: Yes, sir.

24 THE COURT: That doesn't affect the
25 admissibility of these pictures.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I understand.

2 THE COURT: You understand?

3 MR. BIERING: Yes, sir.

4 THE COURT: Are these just -- what are these
5 pictures of?

6 MR. BIERING: It's all the pictures of his
7 facebook that are provided --

8 THE COURT: Pardon?

9 MR. BIERING: It's all the pictures.

10 The way that facebook organizes information,
11 they gave all the pictures --

12 THE COURT: And they've got little statements
13 under the pictures whether --

14 MR. BIERING: Yes, sir.

15 THE COURT: -- they worked at Hooters or College
16 of Charleston or whatever. .

17 MR. BIERING: Yes, sir.

18 And then after --

19 THE COURT: And then you've got private
20 conversations after that --

21 MR. BIERING: Yes, sir.

22 THE COURT: -- that you have to --

23 MR. BIERING: Yes, sir.

24 THE COURT: -- have the password and the user ID
25 to get into. And that's what --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: Yes, sir.

2 THE COURT: -- that's the conversations that he
3 didn't remember.

4 MR. BIERING: Yes, sir.

5 THE COURT: So what are we trying --

6 MR. BIERING: Yes, sir.

7 THE COURT: -- to do?

8 MR. BIERING: I mean, I just think -- well, the
9 Court said what he was going to rule.

10 But I'm going to ask to admit the entire balance
11 of the facebook material.

12 THE COURT: Well, if that's what you are asking
13 to do, I'll sustain the objection.

14 Now, if there are some other things you want to
15 get back to focus on, on the drug issue --

16 MR. BIERING: And I'll --

17 THE COURT: -- I'll allow you to do that --

18 MR. BIERING: I'm going to --

19 THE COURT: -- because that's what we started at
20 and we're getting far afield.

21 MR. BIERING: Well, judge, can I continue to at
22 least allow him to tell me if there are any of those
23 pictures that he -- I've asked the question are any of
24 those pictures not on his facebook.

25 THE COURT: Yeah, I'll allow that question. But

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 we're moving on from the pictures.

2 MR. BIERING: Okay.

3 THE COURT: Because, quite frankly, I'm not sure
4 they have any relevance at all.

5 MR. BIERING: The relevance --

6 THE COURT: But I've already allowed some
7 pictures in, so I'll allow that question. Okay?

8 MR. BIERING: Thank you.

9 THE COURT: All right. Where else are you
10 planning on going with this facebook information?

11 MR. BIERING: I've got a couple more drug
12 references, Judge.

13 THE COURT: Anything else that we need to
14 discuss while the jury is out?

15 MR. BIERING: I don't know of anything, no, sir.

16 Well, I guess while the jury is out, it wouldn't
17 hurt to --

18 [Off the record momentarily]

19 MR. BIERING: Your Honor, I would like to be
20 able to ask some questions as it would relate to his
21 bond issue and his violation of probation.

22 THE COURT: What bond --

23 MS. CORNWELL: Absolutely not.

24 THE COURT: -- issue?

25 Let me hear what issues you're talking about,

1 first, before I ask for the State's argument.

2 MR. BIERING: We've got -- we've got evidence
3 that he left the State while he was out on bond, which
4 is --

5 THE COURT: So what?

6 MR. BIERING: -- a violation of a court order.

7 THE COURT: What does that have to do with
8 anything as far as this case is concerned?

9 MR. BIERING: I think it goes to his issue
10 of his credibility, Your Honor. I think it's --
11 here's -- they talk about character assassination.
12 That's like saying that somebody who's been dead for
13 twenty years has been shot and killed. I mean, that
14 ship left the harbor before we got here. We didn't
15 have anything to do with that.

16 THE COURT: Well, first of all, does the bond
17 prohibit him from going out of state?

18 MR. BIERING: All -- I -- Your Honor, I was on
19 the wrong side of that argument right here with Judge
20 Dennis and he schooled me very clearly on the fact
21 that all bonds in the state of South Carolina, unless
22 there is a specific order provided by the solicitor,
23 include a provision that a defendant should not leave
24 the state.

25 THE COURT: I think you're right. I just wanted

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 to see if you knew that.

2 MR. BIERING: I learned that a very painful
3 way --

4 THE COURT: I think you're right. I wanted to
5 know if you knew that. Okay?

6 So what you want to bring out is he possibly
7 left the state --

8 MR. BIERING: Yes, sir.

9 THE COURT: -- while he was on bond?

10 MR. BIERING: Yes, sir.

11 THE COURT: What else about the bond do you want
12 to bring out?

13 MR. BIERING: That's it.

14 THE COURT: All right. What about probation
15 violation?

16 MR. BIERING: I think that the drug issues are
17 probation violations.

18 THE COURT: Well, I've allowed you to go into
19 that. I mean, you know, I've --

20 MR. BIERING: And I just want to ask that
21 question.

22 THE COURT: I've allowed you part of the hog.
23 Now you want the whole hog.

24 What else do you want to go into on probation
25 violations?

1 MR. BIERING: Judge, that's really -- the only
2 thing I would like to do is to find, from a date
3 standpoint, when he was placed on probation. That's
4 the only thing I would like to be able to do.

5 THE COURT: So you want to -- you want to go
6 into the out-of-state bond and define when he was on
7 probation?

8 MR. BIERING: Yes, sir.

9 THE COURT: Date-wise?

10 MR. BIERING: Yes, sir.

11 THE COURT: All right. Solicitor, we've sort of
12 narrowed it down.

13 MS. CORNWELL: Your Honor, the State objects to
14 all of this under Rule 404, which specifically states
15 character evidence is not admissible through conduct,
16 exception, or other crimes.

17 This has nothing to do with the crimes that
18 these people committed, have no relevance in any of
19 this, other than to make the victim out to be the bad
20 guy. And the victim is not on trial here, Your Honor.
21 The drug use, all of that, it's not relevant.

22 THE COURT: Well, it's relevant because it --

23 MS. CORNWELL: The Court has -- the Court has
24 given plenty --

25 THE COURT: His testimony made the drug use

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 relevant, okay, and that's the reason I ruled the way
2 I ruled.

3 MS. CORNWELL: The bond issue, the probation
4 issue --

5 THE COURT: Now, the bond issues and these
6 others are separate -- something separate.

7 MS. CORNWELL: All of this is clearly a
8 violation of the rules of evidence. You're not
9 allowed to get into -- he's admitted that he has a
10 prior record. What he's doing on bond, what he's
11 doing on probation, all of that is a character-trait
12 assassination. It's -- you can't go into the trait of
13 a character. It's not admissible for proving an
14 action that's not in conformity there within.

15 I'm not really sure what conformity there within
16 has to do with the kidnaping, armed robbery,
17 possession of a weapon during a violent offense, and
18 an assault and battery first. The Court has given
19 plenty of leeway with the drugs, and the State has
20 stipulated to some of that, and some of that has come
21 into evidence.

22 I think at some point there has to be an end to
23 the assassination of this victim and we've got to move
24 into the elements of the crime.

25 THE COURT: All right. Unless you want to be

1 very brief, I'm ready to rule.

2 MR. BIERING: I'll be very brief.

3 THE COURT: All right.

4 MR. BIERING: I agree that I have asked for the
5 whole hog. Pigs get fed, hogs get ate.

6 I'll slow down a little bit. I'll back down. I
7 only have a very few number of items. I will limit it
8 to just two or three more. That's the first issue --

9 THE COURT: All right. As far as the bond
10 issue, I'm sustaining the objection. I don't think
11 the bond issue has anything to do with this case --

12 MR. BIERING: Thank you.

13 THE COURT: -- and I'm going to sustain the
14 objection on the issue of probation violation. That's
15 a separate issue. It doesn't have anything to do with
16 this case.

17 MR. BIERING: Thank you.

18 THE COURT: So we're not going into those two
19 areas.

20 MR. BIERING: Okay.

21 THE COURT: Now, anything else we need to
22 discuss?

23 MR. BIERING: Can't -- but can't I ask: the
24 specific date when did your probation begin?

25 THE COURT: No, sir.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I can't. Okay.

2 THE COURT: No. We're not going into probation,
3 period.

4 MR. BIERING: Okay.

5 THE COURT: We've gone in the conviction,
6 period. Two convictions.

7 Anything else -- any place else you want to go?

8 MR. BIERING: Not on that issue. I've got other
9 cross that I'll do, but not on that issue. Nothing
10 that I think -- other than just standard cross.

11 THE COURT: Okay. Just standard cross.

12 All right. We'll take a ten- or fifteen-minute
13 break. Thank y'all very much.

14 MR. BIERING: Thank you, Judge.

15 MS. CORNWELL: Thank you, Your Honor.

16 [Whereupon, a recess is taken from 4:14 p.m. to
17 4:35 p.m.]

18 [Whereupon, Defendant Clark's Exhibit Number 14
19 is marked by the court reporter]

20 [Whereupon, Defendant Clark's Exhibit Number 15
21 is marked by the court reporter]

22 THE COURT: Are y'all ready to proceed?

23 MR. BIERING: Yes, Your Honor.

24 MS. CORNWELL: Your Honor, for scheduling
25 purposes --

1 THE COURT: I'm sorry. What?

2 MS. CORNWELL: For scheduling purposes, does the
3 Court think that we're going to get to another witness
4 today?

5 THE COURT: It depends on how much longer he
6 talks and how much redirect you do. If it goes like
7 it's gone this afternoon, probably no.

8 MS. CORNWELL: I just have to make some
9 childcare issues, scheduling issues. I --

10 THE COURT: What do you want to do? Do you want
11 to wait until in the morning? It suits me. Whatever
12 you want to do.

13 MS. CORNWELL: From what I understand, the
14 victim is going to take a little bit longer, so I
15 would like to just start tomorrow --

16 THE COURT: Well, he hasn't -- hasn't been --
17 any brevity with anything yet, so I expect him to be
18 awhile.

19 Not detrimental to you. Okay?

20 MR. BIERING: I understand, Judge.

21 THE COURT: Okay. So why don't we just plan on
22 that next witness in the morning.

23 MS. CORNWELL: Thank you, Your Honor.

24 THE COURT: Okay. And whenever we finish with
25 this witness, we'll quit for the day.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MS. CORNWELL: Thank you, Your Honor.

2 THE COURT: Okay. Anything else?

3 MS. CORNWELL: That's all from the State, Your
4 Honor.

5 MR. BIERING: From a scheduling purpose, Your
6 Honor, by way of finishing today, I don't know if --
7 would you desire that I finish my cross by five
8 o'clock?

9 THE COURT: That's up to you.

10 MR. BIERING: Okay.

11 THE COURT: I mean, I'm not going to cut your
12 cross short unless you start being too cumulative --

13 MR. BIERING: I'm not going to.

14 THE COURT: -- or irrelevant.

15 MR. BIERING: I'll try not to.

16 THE COURT: Most lawyers can't give you their
17 name in thirty minutes, you know.

18 MR. BIERING: No, sir.

19 THE COURT: Bring us the jury, please.

20 But I appreciate your representation and your
21 efforts. I don't mean any of that derogatory. Okay?

22 MR. BIERING: I know you don't. And I
23 appreciate that, Judge.

24 [Whereupon, the jury enters the courtroom at
25 4:37 p.m.]

1 THE COURT: Please proceed.

2 MR. BIERING: Thank you, Your Honor. May it
3 please the Court.

4 CONTINUED CROSS-EXAMINATION

5 BY MR. BIERING:

6 Q. Mr. Mendoza, when we broke some time ago, you
7 were reviewing some photographs. Do those appear also to
8 be facebook photographs from your facebook account?

9 A. Yeah.

10 Those are photographs of my account and also
11 pictures that have been tagged in.

12 Q. Pictures you've been tagged in --

13 A. Well, other people tagging in a picture and it
14 automatically pops up on my page.

15 Q. Yes, sir.

16 And if you have an opportunity to look, it still
17 seems to have that linking number ending in 8721 on those,
18 as well; is that correct?

19 A. Yes.

20 Q. Thank you.

21 MR. BIERING: This global exhibit has not been
22 pre-marked, Your Honor, but if I could just pre-mark
23 that as 16.

24 THE COURT: What number is it?

25 MR. BIERING: 16, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Mia, is that right? 16?

2 THE COURT REPORTER: 16. Yes, sir.

3 [Whereupon, Defendant Clark's Exhibit Number 16
4 is marked by the court reporter]

5 Q. [Mr. Biering] Okay. Sir, if I could, if I
6 could hand up to you what's been pre-marked as Defendant's
7 Exhibit 14.

8 Would you agree on May 17th of 2011 that you
9 were a facebook user?

10 A. Yes, sir.

11 Q. Do you recall having a conversation with
12 Ms. Lauren Potts [phonetic]?

13 A. No, sir.

14 MR. BIERING: If I could approach the witness,
15 Your Honor --

16 THE COURT: Yes, sir.

17 MR. BIERING: -- and direct him to specific
18 points in this document?

19 Q. [Mr. Biering] If I could ask you just to review
20 briefly the conversation that's there, see if it refreshes
21 your recollection.

22 [Whereupon, the witness reviews documents]

23 A. I don't recall this conversation.

24 Q. [Mr. Biering] Do not recall that conversation?

25 A. No, sir.

1 Q. And that was May the 17th, beginning of 2011.

2 As you turn to the next page, does that
3 conversation appear to go on to June 27th, July the 5th,
4 then right on into November of 2011? Are those dates that
5 are represented on the document?

6 A. Yes.

7 Q. And do those continue -- those dates continued
8 on to November the 26th?

9 A. [No response]

10 Q. Can you move on to the last page?

11 A. Yes.

12 Q. Do you recall a conversation that you had with
13 Ms. Lauren Potts [phonetic]? And I direct your attention
14 to the middle of the page where there is a request to
15 obtain roxies?

16 A. No, sir.

17 Q. And would you agree that roxies are a reference
18 to an illicit substance?

19 A. I don't understand.

20 Q. Would you agree that a roxie is a reference to
21 illegal drugs?

22 A. Yes.

23 Q. You would agree with that?

24 A. Yes, sir.

25 Q. As you move on down, do you recall the

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 conversation where there's a discussion of, yeah, I lost
2 all my contacts and all I can get in opana.

3 A. No, sir.

4 Q. You don't recall that conversation?

5 A. No, sir.

6 Q. If you could review again that conversation.

7 Does it appear that in the recipient and author lines, it
8 continues to be Lauren Potts [phonetic] and Andre Mendoza
9 that are listed with a Andre Mendoza facebook tag number
10 of 8721?

11 A. Yes.

12 Q. And do you agree those dates would span from May
13 17th through -- of 2011 through November of 2011? Is that
14 correct?

15 A. Yes, sir.

16 Q. But you don't recall that conversation?

17 A. No, sir.

18 Q. But you do recall a conversation of January of
19 2011 with my client; is that correct?

20 A. Yes.

21 Q. Facebook? You do recall that conversation?

22 A. Yes.

23 Q. How much do you make a week, Mr. Mendoza?

24 A. About a 100, 150 a week.

25 Q. 100 or 150 a week.

1 Do you recall a conversation on facebook where
2 you reported that you made \$1,000 a week?

3 A. No, sir.

4 Q. Do you recall in that conversation making
5 reference to the method that you utilized to obtain your
6 \$1,000 a week?

7 A. No, sir.

8 MR. BIERING: The Court's indulgence, Your
9 Honor. Search this --

10 [Whereupon, Mr. Biering reviews documents]

11 [Whereupon, Defendant Clark's Exhibit Number 17
12 is marked by the court reporter]

13 MR. BIERING: If I could approach the witness,
14 Your Honor?

15 THE COURT: Yes, sir.

16 Q. [Mr. Biering] Again, you were a facebook user
17 in October of 2011; is that correct?

18 A. Yes, sir.

19 Q. Do you recall a conversation with -- well, how
20 do you pronounce that person's name?

21 A. I don't even know who's that.

22 Q. You don't know who that is? You don't recall
23 that person?

24 A. I don't even know -- I haven't heard of that
25 name. I don't know okay

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 Q. So you don't recall a conversation saying, I do
2 shit, I make good money. like \$1,000 a week.

3 A. No, sir.

4 Q. The conversation continues: LOL weed?

5 A. No, sir.

6 Q. Don't recall that conversation?

7 A. No, sir.

8 THE COURT: What number is that?

9 MR. BIERING: I'm sorry, Your Honor. I didn't
10 give you a copy. That's number 17. I'll be happy to
11 give you a copy.

12 THE COURT: Number 17. Okay.

13 MR. BIERING: Yes, sir.

14 It's page 512, Your Honor, to the right-hand
15 side.

16 [Whereupon, Mr. Biering proffers documents to
17 the Court]

18 MR. BIERING: Your Honor, I would make a motion
19 at this point to admit Defendant's -- let me assemble
20 these, Your Honor, to make this a little easier.

21 [Off the record momentarily]

22 MR. BIERING: I would make a motion at this
23 point, Your Honor, to admit Defendant's Exhibit --

24 THE COURT: That's Defendant Clark; right?

25 MR. BIERING: Defendant Clark's Exhibit 7,

1 Defendant Clark's Exhibit 10, Defendant Clark's
2 Exhibit 11, Defendant Clark's Exhibit 12, Defendant
3 Clark's Exhibit 13, Defendant Clark's Exhibit 14,
4 Defendant Clark's Exhibit 17, all bearing the common
5 strain of the facebook identifying number that has
6 been identified previously by this witness, Your
7 Honor, with the photographs, all of this information
8 coming from the exact same location. Which I believe
9 there's already been an authentication that --

10 THE COURT: The accounts.

11 MR. BIERING: -- of the accounts, yes, sir.

12 THE COURT: Right.

13 MR. BIERING: I would move to admit these
14 documents into evidence.

15 THE COURT: All right. I believe the State has
16 previously objected; is that correct?

17 MS. CORNWELL: We have, Your Honor.

18 THE COURT: All right. The State's objection is
19 sustained. The parties to the conversation no one has
20 identified as either this gentleman or the other party
21 of the conversation. Neither party has identified
22 that conversation; therefore, that document is not
23 being allowing into evidence. However, I have allowed
24 you to ask questions about the documents.

25 MR. BIERING: Thank you, Your Honor.

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Okay?

2 Q. [Mr. Biering] Are you currently involved in the
3 use of drugs, Your Honor -- I mean, Mr. Mendoza?

4 A. Marijuana, yes.

5 Q. Currently involved in the use of marijuana?

6 A. Yes, sir.

7 Q. Specifically, when was the last time you used
8 marijuana?

9 A. About a week ago.

10 Q. And where were you at?

11 A. I was at a friend's house.

12 Q. And what was that friend's name?

13 A. Jeremy.

14 Q. Last name?

15 A. Gibson.

16 Q. Jeremy Gibson associated with you on facebook?

17 Yes or no.

18 A. No.

19 Q. Who else resides at Jeremy Gibson's address?

20 MS. CORNWELL: Objection, Your Honor.

21 THE COURT: I'll sustain the objection --

22 MR. BIERING: Thank you, Your Honor.

23 THE COURT: -- as to relevance.

24 MR. BIERING: Thank you, Your Honor.

25 THE COURT: Okay?

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 MR. BIERING: I've got nothing further at this
2 time.

3 THE COURT: I'm sorry. Do you have any cross?

4 MS. CORNWELL: He's already crossed, Your Honor.

5 THE COURT: I'm sorry. That's right, he has.

6 Excuse me.

7 Redirect?

8 MS. CORNWELL: Nothing further from the State,
9 Your Honor.

10 THE COURT: Pardon?

11 MR. BIERING: Nothing further from the State.

12 THE COURT: Nothing from the State.

13 MS. CORNWELL: No, Your Honor.

14 THE COURT: You may step down. Thank you very
15 much.

16 [Whereupon, Mr. Mendoza is excused and exits the
17 witness stand]

18 THE COURT: Does the court reporter have all of
19 those exhibits?

20 Mia, do you --

21 THE COURT REPORTER: I have the numbers.

22 THE COURT: Pardon?

23 THE COURT REPORTER: I have the numbers.

24 THE COURT: But do you have the exhibits?

25 THE COURT REPORTER: I --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: She needs all those exhibits.

2 MR. BIERING: Your Honor, I've not taken any
3 exhibits away. These are the exhibits -- these are
4 the facebook conversations that the Court ruled would
5 not come into evidence.

6 THE COURT: Right. Well, just give them all to
7 the court reporter so she can mark them as
8 identification only. Okay?

9 MR. BIERING: I believe that these items were
10 admitted, Your Honor.

11 THE COURT: Okay. Just give them back to her
12 custodian and care, please.

13 MR. BIERING: Thank you, Your Honor.

14 THE COURT: Let me see the attorneys up here
15 just a second after we get that done.

16 [Whereupon, a bench conference is held in
17 reference to scheduling]

18 THE COURT: All right. Madam Forelady and
19 ladies and gentlemen of the jury, it's five minutes to
20 5:00. We're going to stop at this time rather than
21 starting another witness this late in the day.

22 So if you will, please don't discuss the case
23 amongst yourselves or read anything in the paper or
24 talk to anybody about the case. And please don't get
25 on the internet or any facebook and look at any

1 information concerning anybody's facebook.

2 I want you to make a decision on what you hear
3 in the courtroom and what's admitted into evidence
4 here in the courtroom, not outside the courtroom.

5 So if you'll be back in the jury room at 9:30,
6 we'll get started at that time. Have a good evening.

7 [Whereupon, the jury exits the courtroom at
8 4:52 p.m.]

9 THE COURT: Solicitor, how many more witnesses
10 do you think you'll have? Just approximately.

11 MS. CORNWELL: We got through two of them, Your
12 Honor.

13 THE COURT: Pardon?

14 MS. CORNWELL: We got through two of them.

15 We've got probably no more than five potential
16 witnesses, Your Honor.

17 THE COURT: I'm sorry. What?

18 MS. CORNWELL: Probably no more than five
19 potential witnesses.

20 THE COURT: Five? Assuming the defense offers
21 testimony, how many do you think y'all will have?

22 MR. CHAD SHELTON: Your Honor, one witness. If
23 the solicitor does not call that person, that is on
24 the witness list, it's my anticipation at this point
25 in time I don't think any other than that --

State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

1 THE COURT: Okay.

2 MR. BIERING: At the most, two. At the most,
3 two, Your Honor, if we -- if we present a defense, at
4 the most, two.

5 THE COURT: As far as the bond is concerned, Ms.
6 Clark, because of your physical condition I'm going to
7 continue you on your bond rather than incarcerating
8 you tonight. But I want you to understand if you do
9 not show up in the morning, the trial will continue
10 and if you -- a bench warrant will be issued for your
11 arrest.

12 If the jury does convict you, I will issue a
13 sentence that's sealed and when they find you on the
14 bench warrant the sentence will be revealed to you.
15 Okay? If the jury acquits you, then nothing will
16 happen.

17 I want you to understand if you don't show up
18 for trial, we'll continue. Do you understand?

19 MS. CLARK: Yes.

20 THE COURT: Okay. Have any questions?

21 MS. CLARK: No.

22 THE COURT: All right. I'll see you in the
23 morning.

24 As far as the other defendant, I'm not extending
25 his bond.

1 MR. CHAD SHELTON: Yes, Your Honor.

2 THE COURT: Okay? She has a legitimate medical
3 reason to continue on her bond and I don't want the
4 County to assume any responsibility for her medical
5 problems if something should happen.

6 MR. CHAD SHELTON: Yes, Your Honor.

7 THE COURT: All right. We'll adjourn until 9:30
8 in the morning.

9 MR. BIERING: Thank you, Your Honor.

10 [JURY TRIAL ADJOURNS AT 4:55 P.M.]

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State v. Newman and Clark
Jury Trial - Volume 2 of 4
September 11, 2012

C E R T I F I C A T E

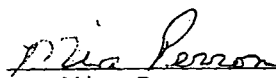
STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable J.C. Nicholson, Jr., on September 11, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 25th day of December, 2012.


Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

-449-

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INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	455
CHELSEY ARROWOOD	
Direct Examination by Ms. Cornwell	456
Cross-Examination by Mr. Chad Shelton	460
Cross-Examination by Mr. Biering	462
DENNIS WELLS	
Direct Examination by Ms. Cornwell	468
Cross-Examination by Mr. Chad Shelton	473
Cross-Examination by Mr. Biering	479
BRUCE ASHE, JR.	
Direct Examination by Ms. Cornwell	484
Cross-Examination by Mr. Chad Shelton	496
Cross-Examination by Mr. Biering	502
Direct Examination by Ms. Cornwell	537
LARRY BALLARD	
Direct Examination by Ms. Cornwell	541
Cross-Examination by Ms. Littlejohn	549
Cross-Examination by Mr. Biering	553
MOTION FOR A DIRECTED VERDICT - MR. CHAD SHELTON	556
MOTION FOR A DIRECTED VERDICT - MR. BIERING	562

INDEX TO PROCEEDINGS, continued

	PAGE
DEFENDANT NEWMAN'S RIGHT TO TESTIFY	572
DEFENDANT CLARK'S RIGHT TO TESTIFY	577
 CATHY ADAMS	
Direct Examination by Mr. Biering	591
 ANDRE MENDOZA	
Direct Examination by Mr. Biering	603
 CERTIFICATE OF COURT REPORTER	642

INDEX TO EXHIBITS

[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

STATE'S

State's Exhibit Number 1 [Photograph]	455 / 546
State's Exhibit Number 2 [Photograph]	455 / 546
State's Exhibit Number 3 [Photograph]	455 / 486
State's Exhibit Number 4 [Photograph]	455 / 486
State's Exhibit Number 5 [Photograph]	455 / 486
State's Exhibit Number 6 [Photograph] - ID Only	455 /

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

PROCEEDINGS

[Whereupon, State's Exhibit Numbers 1 through 6
are marked by the court reporter]

THE COURT: Are you ready to -- is the State
ready to proceed?

MS. CORNWELL: The State is, Your Honor.

THE COURT: Anything else from the defendant
before we bring the jury?

MR. CHAD SHELTON: No, Your Honor.

MR. BIERING: Nothing from Defendant Clark, Your
Honor.

THE COURT: Bring us the jury, please, ma'am.

[Off the record momentarily]

[Whereupon, the jury enters the courtroom at
9:49 a.m.]

THE COURT: Solicitor, if you'll call your next
witness, please.

MS. CORNWELL: Thank you, Your Honor.

The State calls Chelsea Arrowood.

[Whereupon, Ms. Arrowood comes forward]

THE CLERK OF COURT: Please raise your right
hand. Place your left hand on the Bible.

[Whereupon, Ms. Arrowood is duly sworn by the
clerk of court as follows: do you solemnly swear or
affirm the testimony you will give the Court in the

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 trial of this case will be the truth, the whole truth,
2 and nothing but the truth, so help you God]

3 THE WITNESS: Yes, ma'am.

4 THE CLERK OF COURT: Please be seated.

5 [Whereupon, Ms. Arrowood takes the witness
6 stand]

7 THE CLERK OF COURT: State your full name.
8 Spell your last name for the record.

9 THE WITNESS: Okay. Chelsea J. Arrowood.
10 A-R-R-O-W-O-O-D.

11 - - - - -
12 CHELSEA J. ARROWOOD,

13 Having Been First Duly Sworn,
14 was Examined and Testified as Follows:

15 DIRECT EXAMINATION

16 BY MS. CORNWELL:

17 Q. Ms. Arrowood, where are you currently employed?

18 A. Carolina MedCare.

19 Q. And what is your position at Carolina MedCare?

20 A. Supervisor.

21 Q. And prior to working at Caroline MedCare, where
22 did you work?

23 A. Berkeley County EMS.

24 Q. And what was your position at Berkeley County
25 EMS?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Crew member paramedic.

2 Q. And please describe your duties as a paramedic.

3 A. We respond to calls to provide BLS and ALS
4 services.

5 Q. And can you let the jury know what BLS and ALS
6 is?

7 A. Like CPR, wound treatments.

8 THE WITNESS: I'm sorry. I'm nervous.

9 A. First-round cardiac care, any airway management
10 patients need. Any type of treatment from the time the
11 call occurs to the hospital.

12 Q. [Ms. Cornwell] And what type of training or
13 education is required to be a paramedic?

14 A. For me, I did two years at Trident Tech. I have
15 an associate's degree.

16 You also attend in-service monthly to keep up on
17 all your certs. You have to stay certified in your BLS
18 and ALS treatments, which is you renew every year as well.

19 Q. And were you working as a paramedic on January
20 6th of 2011?

21 A. Yes, ma'am.

22 Q. Do you recall being dispatched to the home of
23 Andre Mendoza?

24 A. Vaguely.

25 Q. And why were you dispatched to Mr. Mendoza's

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 home?

2 A. The report you gave me said that we responded to
3 a male patient who was assaulted. Or the report I wrote
4 that I read recently.

5 Q. And that is your report; is that correct?

6 A. Yes, ma'am.

7 Q. You wrote that report?

8 A. Yes, ma'am.

9 Q. And who was the -- who was with the victim when
10 you arrived?

11 A. The police department.

12 Q. And were you able to see any visible injuries on
13 the victim?

14 A. In my report, I noted that the patient had some
15 abrasions and I think swelling to the orbital region.

16 Q. Would it refresh your recollection to look at
17 your report now?

18 A. Please.

19 MS. CORNWELL: Your Honor, may I approach the
20 witness?

21 THE COURT: Yes, ma'am.

22 [Whereupon, Ms. Cornwell proffers documents to
23 the witness]

24 THE WITNESS: Thank you.

25 Q. [Ms. Cornwell] Just take a minute to read over

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 that and I'll resume questioning when you're ready.

2 A. Okay.

3 [Whereupon, the witness reviews documents]

4 A. Okay.

5 Q. [Ms. Cornwell] And were you able to see any
6 visible injuries on the victim?

7 A. The patient did have some abrasions and bruising
8 noted to the right orbital region, is what I --

9 Q. And while speaking to the victim, were you able
10 to assess how he received those injuries?

11 A. The patient told me that he was jumped, kicked
12 many times, then stripped of all his clothes, hit with the
13 butt of a gun and then struck in the head with the butt of
14 a gun.

15 Q. Okay. And were his injuries consistent with his
16 story?

17 A. His injuries are consistent with any type of
18 blunt trauma which is received from an object.

19 MS. CORNWELL: Okay. Can I get that report from
20 you?

21 [Whereupon, the witness proffers documents to
22 Ms. Cornwell]

23 MS. CORNWELL: And I have no further questions.
24 If you'll answer any questions that defense counsel
25 may have for you.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

CROSS-EXAMINATION

BY MR. CHAD SHELTON:

Q. Ms. Arrowood, you don't --

A. Yes, sir.

Q. -- you don't have any independent recollection
of this night?

A. I vaguely remember. I didn't really remember
until I read from the report.

Q. And so it was important that you complete --
that's why it's important to complete a report?

A. Yes, sir.

Q. And so the report, you never indicate that
Mr. Mendoza says he was robbed?

A. No, sir.

Q. And the chief dispatch complaint was for an
assault?

A. Yes, sir.

Q. And the chief complaint was abrasions?

A. Yes, sir.

Q. And you have call times, also, that you plug in?

A. Our dispatch plugs them in.

Q. Okay. And you arrived on the scene at 1:58.

A. Okay.

Q. Do you want -- do you want to see the --

A. Yes, sir.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 [Whereupon, the witness reviews documents]

2 A. Thank you.

3 Q. [Mr. Chad Shelton] Arrived on scene at 1:58?

4 A. Yes, sir.

5 Q. And you leave -- left the -- you were back in
6 service for another call at 2:06?

7 A. Yes, sir.

8 Q. So you're on scene eight minutes?

9 A. Yes, sir.

10 Q. And he refused --

11 A. Treatment --

12 Q. -- treatment?

13 A. -- yes, sir.

14 Q. A blunt object could be a fist?

15 A. Yes, sir.

16 Q. It could be falling on the ground?

17 A. Yes, sir.

18 MR. CHAD SHELTON: No further questions.

19 THE COURT: Defendant Clark?

20 MR. BIERING: May it please the Court, Your
21 Honor.

22 Good morning, Ms. Arrowood.

23 THE WITNESS: Hello.

24 - - -

25 - - -

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

CROSS-EXAMINATION

BY MR. BIERING:

Q. Ms. Arrowood, how long were you employed with Berkeley County EMS, again?

A. Seven years, roughly. Seven, eight.

Q. And could you give me a full description of your training as an EMT?

A. Well, I mean, you start out -- like just from the beginning?

Q. Sure. Everything.

A. Okay. I started out -- when I was eighteen, I attended a EMT basic class at Trident. Continued -- that was about six months of training, only one ride-along required.

And then I went into intermediate school, tested -- you have to go to test nationally -- and then I went to Trident Tech to get my associate's degree, which is two years. It's about 200-and-something hours, ride-along hours. Also 200-and-something hours in the ER, before you're -- and then you also have to test nationally and state to get your certification. And then you have to keep up those certs through monthly in-service training.

Is that what you mean? Or like my actual --

Q. I think that's a good overview.

And certainly throughout your time with Berkeley

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 County EMS you've maintained all the appropriate
2 certifications; correct?

3 A. Yes, sir.

4 I'm still certified. I'm still a paramedic, I'm
5 just with a different company, a private company, now.

6 Q. And what do your current job duties report -- I
7 mean, require?

8 A. I do private services now.

9 I'm a supervisor, so most -- we still run
10 twenty-four-hour trucks, but we have contracts with
11 nursing homes and they will call us if a patient needs to
12 be transported to the ER. It's more for patients that
13 have -- need medical attention but don't have a -- they're
14 really not ambulatory and need to get to the ER. We also
15 take some patients to doctors' offices.

16 And I'm a supervisor so I, you know, maintain
17 the day-to-day stuff at Carolina MedCare, as well.

18 Q. And you've certainly -- through your occasion to
19 be employed with EMS, you've had occasion to treat people
20 who have sustained some type of concussion or neurological
21 condition; is that correct?

22 A. Yes, sir.

23 Q. Through your training, would you agree that one
24 of the very important things with EMS would be
25 documentation of your what and when and where you do

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 things? Would you agree with that?

2 A. Yes, sir.

3 Q. And that times are very important?

4 A. [No response]

5 Q. The documentation of times?

6 A. Yeah.

7 Q. When you arrive and when you depart?

8 A. Yes, sir.

9 Q. On your report -- do you have your report in
10 front of you?

11 A. Not anymore, sir.

12 Q. You don't?

13 [Whereupon, Mr. Biering reviews documents]

14 Q. [Mr. Biering] Have you ever filled out an EMS
15 run report for like an automobile accident?

16 A. Yes, sir.

17 Q. Generally, the EMS run report is the same; is
18 that correct?

19 A. Yes, sir.

20 Like you mean the typical format?

21 Q. Yes, ma'am.

22 A. Yes, sir.

23 Q. And within that report, isn't there a place for
24 you to describe the neurological condition of the person
25 you're treating or evaluating?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Yes, sir.

2 Q. And how does that work? How does that -- tell
3 us what that scale is called and how that works.

4 A. Like which one?

5 Q. Well, basically we're talking about level of
6 consciousness, aren't we?

7 A. Okay. There's many different ones --

8 Q. Okay. So --

9 A. -- ones, like stroke and stuff like that.

10 Q. So let's talk about level of consciousness.

11 A. Okay. A patient who their level of
12 consciousness, they have to be alert and oriented which
13 means they need to know their name, date of birth
14 information. They have to be oriented enough to I guess
15 give us the correct information.

16 Q. And you go through a litany of questions,
17 correct, to determine that?

18 A. Typically just, you know, their -- they have to
19 know their name, date of birth, what year it is, who the
20 president is. That's basically the general questioning
21 you ask to get their level of consciousness.

22 Q. Okay. And did you make some type of
23 determination of Mr. Mendoza's level of consciousness --

24 A. In here --

25 Q. -- on January the 6th?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. -- I put -- let's see.

2 [Whereupon, the witness reviews documents]

3 A. I put patient was conscious, alert, and oriented
4 times three, which means he was able to give me all his
5 information in his run report, which would have been his
6 social, date of birth, his -- like if he can give me all
7 that correctly, then obviously he's conscious, alert, and
8 oriented to answer my question appropriately and refuse
9 treatment if he chooses.

10 Q. [Mr. Biering] Because if you believe that there
11 was some type of concussion or neurological effect going
12 on, then he would not have the capacity to have refused
13 treatment; is that correct?

14 A. He could -- he complained of dizziness, which in
15 here I put that patient -- a lot of times, you know, if
16 they have any type of headache or dizziness, we urge them
17 to go. They could still have a concussion.

18 But he was oriented enough to make his own
19 medical decisions and that's why they have to -- he was,
20 you know, advised to call us back. He was advised of, you
21 know, the complications that could happen if he was not
22 evaluated or transported and he was capable enough to make
23 his own decision to tell us no.

24 Q. And you didn't see him sustain any injuries that
25 night; is that correct?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. No, sir, I didn't see anything. I just reported
2 what he told me.

3 MR. BIERING: Thank you. Nothing further of the
4 witness, Your Honor.

5 THE WITNESS: Okay.

6 MS. CORNWELL: The State --

7 THE COURT: Redirect?

8 MS. CORNWELL: -- has no further questions, Your
9 Honor.

10 THE COURT: You may step down.

11 [Whereupon, Ms. Arrowood is excused and exits
12 the witness stand]

13 MS. CORNWELL: Your Honor, if it's okay with
14 defense attorneys, the State would like to release
15 Ms. Arrowood from her subpoena at this time.

16 THE COURT: Any objection to her being excused?

17 MR. CHAD SHELTON: No objection.

18 And I also would release her from my subpoena.

19 THE COURT: Pardon?

20 MR. CHAD SHELTON: I would also ask to release
21 her from my subpoena.

22 THE COURT: All right. Ms. Arrowood, you're
23 excused. Thank you very much.

24 Call your next witness, please.

25 MS. CORNWELL: Thank you, Your Honor. The State

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12,, 2012

1 calls Deputy Wells.

2 [Whereupon, Mr. Wells comes forward]

3 THE CLERK OF COURT: Please raise your right
4 hand. Place your left hand on the Bible.

5 [Whereupon, Mr. Wells is duly sworn by the clerk
6 of court as follows: do you solemnly swear or affirm
7 the testimony you will give the Court in the trial of
8 this case will be the truth, the whole truth, and
9 nothing but the truth, so help you God]

10 THE WITNESS: Yes, ma'am.

11 THE CLERK OF COURT: Please be seated.

12 [Whereupon, Mr. Wells takes the witness stand]

13 THE CLERK OF COURT: State your full name.
14 Spell your last name for the record.

15 THE WITNESS: Dennis Wells. W-E-L-L-S.

16 - - - - -

17 DENNIS WELLS,

18 Having Been First Duly Sworn,
19 was Examined and Testified as Follows:

20 DIRECT EXAMINATION

21 BY MS. CORNWELL:

22 Q. Deputy Wells, where are you employed?

23 A. Berkeley County Sheriff's Office.

24 Q. How long have you been employed by the Berkeley
25 County Sheriff's Office?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Five years.

2 Q. What is your current position and rank?

3 A. PFC, patrol officer.

4 Q. And were you working in that capacity on January
5 the 6th of 2011?

6 A. Yes, ma'am.

7 Q. Do you recall being dispatched to [REDACTED]
8 [REDACTED] regarding an incident regarding Andre Mendoza?

9 A. Yes, ma'am.

10 Q. And what was that call in reference to?

11 A. Armed robbery.

12 Q. And where did that armed robbery take place?

13 A. It happened on Wide Awake Circle. It --

14 Q. And where is Wide Awake Circle?

15 A. It's located off College Park Road.

16 Q. And what county is that in?

17 A. Berkeley County.

18 Q. And once you arrived at Mr. Mendoza's house,
19 what did you do?

20 A. Once I established that a crime had been
21 committed I asked Mr. Mendoza, of course, who was there to
22 do the crime and also if he needed to have EMS respond.

23 Q. And what crimes did you determine had been
24 committed?

25 A. According to what he said and according to the

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 discoloration to the side of the cheek, that he was
2 attacked upon that time.

3 Q. And was the victim able to identify any of the
4 suspects involved?

5 A. The one name that he give me for certain was a
6 Ryan Newman.

7 Q. And did the victim have any injuries?

8 A. He had discoloration to the cheek, but during --
9 because of the freshness of the crime, it didn't have time
10 for the bruising to set in.

11 Q. Did you take any written statements from the
12 defense that night -- or from the victim that night?

13 A. I was unable to. He was distraught at the time,
14 complaining of having dizziness and headache due to the
15 incident.

16 Q. Deputy Wells, do you have a copy of your
17 incident report with you?

18 A. Yes, ma'am.

19 MS. CORNWELL: May I see what you're looking at,
20 just to make sure it's the same thing I have?

21 [Whereupon, Ms. Cornwell reviews documents]

22 THE WITNESS: That's my initial incident report.

23 MS. CORNWELL: Okay. If you'll just give me one
24 moment.

25 THE WITNESS: Okay.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 [Whereupon, Ms. Cornwell reviews documents]

2 MS. CORNWELL: Thank you, Deputy Wells.

3 THE WITNESS: Thank you, ma'am.

4 Q. [Ms. Cornwell] In looking at your report, what
5 time did this incident allegedly occur?

6 A. It was about quarter to 2:00 in the morning.

7 Q. That's what time you responded?

8 A. Yes, ma'am.

9 Q. Did the victim tell you what time he was
10 attacked?

11 A. The estimated time is --

12 MR. BIERING: Objection. Ask and answered.

13 THE COURT: Overruled.

14 A. The estimated time was around 1:20 in the
15 morning.

16 Q. [Ms. Cornwell] And in your report, you noted
17 that the -- where it says drugs for the victim, you've
18 marked -- indicated yes. What made you think that the
19 victim was on drugs at the time?

20 A. The victim was on drugs? Well, due to dilation
21 of the eyes.

22 Q. And do you have any medical training, other than
23 first-aid training, that you received --

24 A. No, ma'am.

25 Q. -- through the police academy?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 And so are you able to testify whether or not
2 that was drugs? Or could it have been from a head injury,
3 from --

4 A. It could have been from a head injury.

5 The only reason is from the -- when he stated
6 that he was there to purchase narcotics. That's the only
7 reason I justified all that.

8 Q. And he willingly told you that; is that correct?

9 A. Yes, ma'am.

10 Q. And you've also got marked that there was no
11 complaint of visible injuries or no sign of visible
12 injuries?

13 A. Well, I put it at the time because, as I stated,
14 that due to the freshness of the crime there was no
15 bruising to the face. There was just a small
16 discoloration around the left bone of the cheek. And
17 that's the reason I put in there that it was really no
18 visible injuries at that time.

19 Q. Are you aware if EMS responded?

20 A. Yes, ma'am. I did call EMS in and they did
21 check him out.

22 He refused to go to the hospital at that time.

23 Q. But it was enough to where you thought you
24 needed to call?

25 A. Yes, ma'am.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Anytime somebody suffers trauma to the side of
2 the face or the head, it could be -- you know, from
3 previous knowledge, that it could be a concussion. So
4 automatically I call EMS.

5 MS. CORNWELL: Thank you, Deputy Wells. Please
6 answer any questions defense counsel may have for you.

7 THE WITNESS: Yes, ma'am.

8 MR. CHAD SHELTON: Mr. Wells, how are you doing?

9 THE WITNESS: Fine. How are you doing?

10 MR. CHAD SHELTON: Good.

11 CROSS-EXAMINATION

12 BY Mr. CHAD SHELTON:

13 Q. How long have you been with Berkeley County?

14 A. Five years.

15 Q. Five years?

16 A. Yes, sir.

17 Q. Do you -- did you work with any place else
18 before?

19 A. I worked at the detention center for two and a
20 half years and then on to as a road deputy.

21 Q. For the next two and a half years?

22 A. Yes, sir.

23 Q. You went to the academy?

24 A. Yes, sir.

25 Q. Had training?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Yes, sir. Certified through the State.

2 Q. They teach you about filling out incident
3 reports?

4 A. Yes, sir.

5 Q. And it's important to be accurate in incident
6 reports; correct?

7 A. Yes, sir.

8 Q. You have many cases that you work a day --

9 A. [Indicates affirmatively]

10 Q. -- a week?

11 A. [Indicates affirmatively] Quite a bit.

12 Q. And many calls that you get called out to?

13 A. [Indicates affirmatively]

14 Q. And so something that happened a year and a half
15 ago, it's important that you put that all in your incident
16 report?

17 A. Yes, sir.

18 Q. You don't have any other notes from this night?

19 A. Only the supplementals from after the
20 investigator got into -- involved into it.

21 Q. But that's not your --

22 A. No, sir.

23 Q. -- your notes?

24 A. That's -- my initial report is the only thing
25 that I had involvement in.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Q. And preparing for trial, you've reviewed,
2 obviously --

3 A. Yes.

4 Q. -- your --

5 And you want to be able to tell the jury the
6 complete truth?

7 A. Yes, sir.

8 Q. And you want to be as complete as possible?

9 A. Yes, sir.

10 Q. And you know that your reports go to a
11 solicitor?

12 A. [Indicates affirmatively]

13 Q. And you called for an investigator this night?

14 A. Yes, sir.

15 Due to the initiation of the crime, an armed
16 robbery, I automatically call investigations.

17 Q. And it was important that your report was
18 truthful --

19 A. Yes, sir.

20 Q. -- to that investigator so that he could
21 investigate?

22 A. Yes, sir.

23 Q. And you, as a police officer, want to be fair?

24 A. Yes, sir.

25 Q. Fair to everyone?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. I swore that oath. Yes, sir.

2 Q. Your incident report also indicates Shane Newman
3 as a suspect?

4 A. He gave me two names that he was sure of, Ryan
5 and Shane both, and he said the reason he understood and
6 recognized those two is because they were roommates at a
7 previous time.

8 Q. And he told you specifically -- gave you
9 specific items that were taken from him?

10 A. Yes, sir.

11 Q. Some money, a wallet, and car keys?

12 A. Yes, sir.

13 Q. He didn't say anything about a cell phone?

14 A. Not at that time.

15 Q. And he talked about buying narcotics?

16 A. Yes, sir.

17 Q. And it was your opinion, it was your feeling
18 that night, that he was under the influence of drugs?

19 A. There was a possibility.

20 Q. And there's a box to check about complaints of
21 any non-visible injuries --

22 A. Yes.

23 Q. -- and that was checked no?

24 A. [Indicates affirmatively]

25 Q. So he didn't complain of any non --

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Just the headache and the dizziness.

2 Q. And all you saw was a mark underneath his eye?

3 I think that was where you pointed to.

4 A. It was in this vicinity, if I can remember
5 correctly.

6 Q. We talked briefly about this case?

7 A. Yes, sir.

8 Q. And his mother was also home?

9 A. She was there once I arrived, yes.

10 Q. And she was present while you were --

11 A. She was standing behind me while I was talking
12 to Mr. Mendoza, yeah.

13 Q. And he kept looking at his mother?

14 A. He was looking back and forth with a glazed look
15 in his eye from the -- complaining of the headache. He
16 was looking all around the room.

17 Q. You were dispatched at 1:43?

18 A. Yes, sir.

19 Q. And you left at 2:00?

20 A. [Indicates affirmatively]

21 Q. So you were there for seventeen minutes?

22 A. Yes, sir.

23 Q. You didn't do any other investigation in the
24 case?

25 A. I wasn't able to get any kind of a written

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 statement.

2 After having EMS talk to him, he was -- like I
3 stated, he was very distraught. I wasn't getting much
4 information from him so I tried to get as much information
5 as I could, enough to supply to the Investigations.

6 Q. But you didn't do any other investigation?

7 A. No, sir.

8 Q. You didn't go out to the scene?

9 A. I had a deputy. It was --

10 Q. You didn't go out to the scene?

11 A. No. I had Deputy Antoine [phonetic] respond,
12 try to locate the vehicle, but I responded to the Cindy
13 Drive.

14 Q. And so he was able to give you a description of
15 the vehicle?

16 A. Yes, sir.

17 Q. Is that anywhere in your report?

18 A. They left the scene driving a burgundy Ford
19 Contour. And that was the information he did give me and
20 it was in my initial report.

21 Q. You were present when EMS was there?

22 A. Yes, sir.

23 Once -- that's one of our standard procedures.
24 We don't leave until after EMS leaves.

25 Q. Okay. And you were present when he was talking

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 to EMS?

2 A. Yes, sir.

3 Q. No detectives showed up that night?

4 A. No, sir.

5 Detective -- the on-call detective was notified.

6 Q. But no one showed up?

7 A. No, sir.

8 Q. He made sure to tell you he was stripped of his
9 clothes?

10 A. Yes, sir.

11 MR. CHAD SHELTON: Nothing further.

12 THE COURT: Cross-examination.

13 MR. BIERING: May it please the Court?

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

15 CROSS-EXAMINATION

16 BY MR. BIERING:

17 Q. Deputy Wells, other than your initial training
18 at the police academy, have you had other follow-up
19 training?

20 A. The FTO program through the sheriff's office,
21 yes, sir.

22 Q. And how often do you think that you go through
23 follow-up training with them?

24 A. On a regular basis.

25 We're constantly updated on certain things.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Glock training each year and follow-ups with the
2 instructors.

3 Q. And your certification has been maintained
4 consistently since the time you began with the sheriff's
5 department --

6 A. Yes, sir.

7 Q. -- correct?

8 What did you do prior to working at the Berkeley
9 County detention center?

10 A. I was the assistant team lead for James Hardy
11 Building Products.

12 Q. You agreed that you were dispatched at 1:43 a.m.
13 on January the 6th; is that correct?

14 A. Yes, sir.

15 Q. And when you were dispatched, you were provided
16 a very small amount of information; is that correct?

17 A. Yes, sir.

18 Q. And you agree that you arrived at 1:46 a.m. on
19 January the 6th; is that correct?

20 A. Yes, sir.

21 Q. Because one of the things that you've been
22 trained, obviously, is that the details are important and
23 you're supposed to put those in your report; is that
24 correct?

25 A. Yes, sir. If he states it, I should put it in

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 the report.

2 Q. And your report, would you agree, says that you
3 left there at two o'clock; is that correct?

4 A. Yes, sir.

5 Q. You've got sixteen minutes in this case;
6 correct?

7 A. Yes, sir.

8 Q. In your position as a law enforcement officer,
9 have you had occasion to arrest a person for solicitation
10 for the purchase of drugs? Yes or --

11 A. No, sir.

12 Q. -- no.

13 Do you believe that it's illegal to attempt to
14 purchase drugs?

15 A. Yes, sir.

16 Q. And you agree that that night, Andre Mendoza
17 confessed to you that he was attempting to purchase drugs;
18 is that correct?

19 A. Yes, sir.

20 Q. Did you make an arrest that night of Andre
21 Mendoza?

22 A. No, sir.

23 Q. You also -- in the report, when you document
24 it -- because, you know, as already has been discussed,
25 you go to how many -- how many calls do you think you go

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 to a day, ballpark?

2 A. Ballpark figure, fifteen, sixteen calls a night.

3 Q. So if you don't put it in your report, the
4 reality is that two years later it's hard to refresh your
5 recollection about what transpired; is that correct?

6 A. Sometimes, yes.

7 Q. So you find it important to put information in
8 your report so your reports can be detailed?

9 A. Yes, sir.

10 Q. Do you think that the difference between a year
11 and a month is a big deal from a documentation standpoint?

12 A. It depends on the accuratization [phonetic] of
13 the document.

14 Q. No. I'm not saying of the age of it.

15 A. Yeah.

16 Q. I'm saying but if you're going to -- if you're
17 going to write down that something happened a year ago, as
18 opposed to something happened a month ago, that would be a
19 big deal, wouldn't it?

20 A. Yeah.

21 Q. Would you agree in your report that Mr. Mendoza
22 told you that night that he had lived with Ryan Newman
23 several years prior?

24 A. [Indicates affirmatively]

25 Q. You would agree with that?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Yes, sir.

2 Q. That night, isn't it true that you were not
3 given an address for Ryan Newman?

4 A. No, sir, not at that time.

5 Q. Do you think that would have been something
6 important to have been provided at that time?

7 A. It would have.

8 MR. BIERING: Thank you. No further questions
9 of this witness.

10 THE COURT: Any redirect?

11 MS. CORNWELL: None from the State, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Yes, sir.

14 [Whereupon, Mr. Wells is excused and exits the
15 witness stand]

16 MS. CORNWELL: The State calls Lieutenant Bruce
17 Ashe.

18 [Whereupon, Mr. Ashe comes forward]

19 THE CLERK OF COURT: Please raise your right
20 hand. Place your left hand on the Bible.

21 [Whereupon, Mr. Ashe is duly sworn by the clerk
22 of court as follows: do you solemnly swear or affirm
23 the testimony you will give the Court in the trial of
24 this case will be the truth, the whole truth, and
25 nothing but the truth, so help you God]

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12,, 2012

1 THE WITNESS: I do.

2 THE CLERK OF COURT: Please be seated.

3 [Whereupon, Mr. Ashe takes the witness stand]

4 THE CLERK OF COURT: State your full name.

5 Spell your last name for the record.

6 THE WITNESS: My name is Allen Bruce Ashe, Jr.

7 The spelling of my last name is A-S-H-E.

8 - - - - -

9 BRUCE ASHE,

10 Having Been First Duly Sworn,

11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MS. CORNWELL:

14 Q. Lieutenant Ashe, where are you employed?

15 A. I'm employed with the Berkeley County Sheriff's
16 Office.

17 Q. How long have you been employed by the Berkeley
18 County Sheriff's Office?

19 A. Since 1991.

20 Q. And what is your current position and rank?

21 A. I'm assigned to the sheriff's office drug
22 enforcement unit narcotics team and presently ranked as
23 lieutenant.

24 Q. And how long have you held that position?

25 A. About seven months this time.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Q. Prior to being a lieutenant in the narcotics
2 unit, what did you do?

3 A. I was assigned to the sheriff's office criminal
4 enforcement division as a sargent.

5 Q. And what were your duties as sargent in the
6 criminal enforcement division?

7 A. I handled walk-ins when people come in to make
8 complaint or to follow up on a prior case.

9 Q. And do you recall an incident involving Andre
10 Mendoza?

11 A. I do, ma'am.

12 Q. Please tell the jury what your involvement was
13 regarding Mr. Mendoza's case.

14 A. Mr. Mendoza had came to the sheriff's office and
15 wanted to finish up with giving a statement and telling
16 his side of the story in regards to an armed robbery that
17 happened to him the night before.

18 Q. And did he give a written statement at that
19 time?

20 A. He did, ma'am.

21 Q. Were you able to observe any injuries on
22 Mr. Mendoza at the time of his statement?

23 A. Yes, ma'am.

24 He had abrasions to the head and face, his eyes
25 were swollen, had a knot to the back of his head.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Q. Lieutenant, I'm going to show you three pictures
2 that have been marked State's Exhibit 3, 4 and 5 for
3 identification purposes. Can you look at these pictures
4 and let me know if you recognize those.

5 [Whereupon, the witness reviews documents]

6 A. Yes, ma'am, I do.

7 Q. [Ms. Cornwell] And are those pictures true and
8 accurate copies of the way you remember seeing the
9 defendant that day -- the --

10 A. Yes, ma'am --

11 Q. -- the victim that day?

12 A. -- I do. Yes, ma'am, I do.

13 Q. And have there been any changes, alterations,
14 deletions or modifications made --

15 A. No, ma'am.

16 Q. -- to those pictures?

17 A. No, ma'am.

18 MS. CORNWELL: Your Honor, at this time the
19 State would move to enter State's Exhibit 3, 4 and 5
20 into evidence and publish to the jury.

21 THE COURT: Any objection?

22 MR. BIERING: No objection from Defendant Clark.

23 MR. CHAD SHELTON: No objection.

24 THE COURT: All right. 3, 4 and 5 admitted
25 without objection.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 [Whereupon, State's Exhibit Number 3 is admitted
2 into evidence by the Court]

3 [Whereupon, State's Exhibit Number 4 is admitted
4 into evidence by the Court]

5 [Whereupon, State's Exhibit Number 5 is admitted
6 into evidence by the Court]

7 Q. [Ms. Cornwell] Looking at State's Exhibit 3 --

8 MS. CORNWELL: Miss Evelyn, is there a way we
9 can turn the lights down a little?

10 [Off the record momentarily]

11 Q. [Ms. Cornwell] Looking at State's Exhibit 3,
12 can you please tell the jury --.

13 THE COURT: Can the jury see the picture all
14 right? Do we need more lights off?

15 All right. Please proceed, Solicitor.

16 Q. [Ms. Cornwell] On State's Exhibit 3, could you
17 point out to the jury what injuries you observed that day?

18 A. That day I observed the abrasions to the left
19 side of the temple, started above his eyebrow, coming
20 around. Also, eyes were appeared to be swollen shut --

21 Q. If you would --

22 A. -- and redness.

23 MS. CORNWELL: If you want to use this pointer,
24 I -- thank you.

25 THE WITNESS: Top button, ma'am?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 MS. CORNWELL: Yes, sir.

2 A. Right here -- I observed abrasions to the top of
3 the head right here. This was also swollen a little bit.
4 I also noticed that he had a bruising underneath his eyes
5 and his eyes appeared to be puffy and swollen. And the
6 abrasions was down on the side of his face, also.

7 Q. [Ms. Cornwell] Okay. And I believe that this
8 is State's Exhibit 3. In looking at State's Exhibit 3, is
9 that just a closer --

10 A. Yes, ma'am.

11 Q. -- photograph?

12 A. Yes, ma'am.

13 Q. And those are the injuries that you saw on him
14 that day?

15 A. Yes, ma'am.

16 Q. State's Exhibit 5.

17 A. Yes, ma'am.

18 Q. And those injuries are also injuries you
19 observed that day?

20 A. Yes, ma'am.

21 Like I said -- well, the lump on the back of the
22 head, you couldn't get a photo of it so I didn't take a
23 shot of that.

24 Q. But do you recall him having a knot on the back
25 of his head, as well?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Yes, ma'am, I do.

2 MS. CORNWELL: I'm actually going to let you
3 hold on to that.

4 Q. [Ms. Cornwell] And when you took Mr. Mendoza's
5 statement, was he able to identify any of the suspects
6 that robbed him?

7 A. Yes, ma'am, he was.

8 Q. And who did he identify?

9 A. He identified Ryan Newman, Shane Newman, and a
10 fellow that he only knew as Teddy at the time.

11 Q. And did he also make mention of any females that
12 were involved that night?

13 A. Yes, ma'am.

14 MR. BIERING: Objection. Leading.

15 A. He also --

16 MR. BIERING: Objection. Leading.

17 THE COURT: Right now overruled.

18 Go ahead.

19 A. He also stated that --

20 MR. BIERING: Your Honor, can I --

21 THE COURT: Overruled. Have a seat.

22 Please proceed.

23 A. He also advised that he believed that the female
24 he was riding with, Jessica Clark, was also involved with
25 them.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 MR. BIERING: Your Honor, can I approach?

2 THE COURT: If you have an objection -- you've
3 already made an objection. Overruled. What else do
4 you --

5 MR. BIERING: There's something I would like to
6 place on the record contemporaneous with my objection.

7 THE COURT: I'll allow you to do that at a later
8 time. Just remember to do it. Okay?

9 Q. [Ms. Cornwell] And after speaking with Mr.
10 Mendoza, exactly how was he able to identify the people
11 that robbed him?

12 A. The subject Ryan Newman, he was an ex-roommate
13 with. He also knew him at the time of the incident when
14 the incident was occurring, that he recognized his voice,
15 a scar, and a GPS monitor that was still attached to his
16 leg from a prior time when Mr. Newman was living with him.

17 MR. CHAD SHELTON: Your Honor, just for the
18 purposes of the record, a continuing --

19 THE COURT: Pardon?

20 MR. CHAD SHELTON: Continuing objection, Your
21 Honor, for purposes of the record.

22 THE COURT: What's your legal objection?

23 MR. CHAD SHELTON: The ankle monitor, Your
24 Honor.

25 THE COURT: Okay. Overruled.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Go ahead.

2 MS. CORNWELL: Thank you, Your Honor.

3 Q. [Ms. Cornwell] And did you do any additional
4 followup on Mr. Mendoza's report of a GPS monitor?

5 A. Yes, ma'am, I did.

6 Q. And what did you do?

7 A. I contacted the GPS monitoring people and
8 obtained a printout of Mr. Newman's whereabouts -- or the
9 GPS monitor that was attached to his leg and compared it
10 with the incident dates and times.

11 Q. And did Mr. Mendoza explain to you where this
12 incident took place?

13 A. Yes, ma'am.

14 It happened on Wide Awake Circle, which is in
15 the Summerville area of Berkeley County.

16 Q. I'm going to show you what's been previously
17 marked as State's Exhibit 1 and State's Exhibit 2. Do you
18 recognize those documents?

19 [Whereupon, the witness reviews documents]

20 A. Yes, ma'am, I do.

21 Q. [Ms. Cornwell] What are those documents?

22 A. This is a printout of the area of College Park
23 Road and Wide Awake Circle.

24 Q. And are there any indicating marks on those --
25 on that map?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Yes, ma'am.

2 There's dots or hits where the GPS was hitting
3 at on Wide Awake Circle.

4 MR. CHAD SHELTON: Objection, Your Honor.
5 Foundation.

6 THE COURT: All right. Which ones -- which one
7 are you referring to, 1 and 2, or just -- when you're
8 referring to those, refer to the number if you would,
9 please, sir.

10 THE WITNESS: Okay.

11 THE COURT: All right. Come up forward for a
12 minute and let me listen to you.

13 [Whereupon, a bench conference is held]

14 THE COURT: What's your objection? Hadn't
15 even got into it yet.

16 MR. CHAD SHELTON: Right.

17 THE COURT: She just asked him where it was
18 and what it showed. What's your objection --

19 MR. CHAD SHELTON: He's starting to --

20 THE COURT: -- at this point in time?

21 MR. CHAD SHELTON: He's starting to get
22 into that that's where it was. And he hasn't
23 laid a foundation -- he can't lay that
24 foundation. He doesn't -- he didn't do the
25 technology, he just has the printout from the

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 GPS. So I think --

2 THE COURT: He can testify what he has. I
3 mean, I don't think he can testify that the man
4 was there and that's where it came from.

5 Have you got somebody coming from GPS?

6 MS. CORNWELL: I do, Your Honor.

7 MS. LITTLEJOHN: -- liability.

8 THE COURT: Well, she hasn't offered it
9 into evidence. He can testify what it is.

10 MR. CHAD SHELTON: I understand. He was
11 getting close --

12 THE COURT: I'm trying to figure out what
13 your objection is. I know you don't want it in,
14 but what's your objection?

15 MR. CHAD SHELTON: Through him. I
16 understand that.

17 THE COURT: Well, she hasn't offered it
18 yet.

19 MR. CHAD SHELTON: I understand. He's
20 getting close. That's what I'm saying. So --

21 THE COURT: Well, let's wait until she
22 offers it and then I'll listen to your
23 objection. Okay?

24 MR. CHAD SHELTON: Yes, sir.

25 THE COURT: I mean, I don't even know if

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 she's going to offer it.

2 MR. CHAD SHELTON: Okay.

3 THE COURT: Okay?

4 MR. CHAD SHELTON: All right.

5 THE COURT: I'll be happy for you to put
6 whatever you want on the record. I just didn't
7 want to send the jury out right now to do it.
8 We'll go back and recapture that on the record.
9 Okay?

10 MR. CHAD SHELTON: Okay.

11 THE COURT: All right. Thank you.

12 MR. BIERING: It's very important.

13 Q. [Ms. Cornwell] Were you able to find -- are
14 there any other markings on that map?

15 A. Yes, ma'am.

16 THE WITNESS: Can I have that light turned back
17 on?

18 THE COURT: Can we cut the light on, please,
19 sir.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you.

22 A. On State's Exhibit 1, there's approximately six
23 to eight dots which was, per the monitoring company --
24 they advised was --

25 MR. CHAD SHELTON: Objection.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 THE COURT: Don't say what the monitoring
2 company advised you of. Okay? Just tell what you
3 observe on the map.

4 A. These are points hitting showing where --

5 MR. CHAD SHELTON: Objection, Your Honor.

6 THE COURT: Just say what you see on the map.
7 Okay?

8 A. Okay. I see College Park Road, I see Wide Awake
9 Circle, which is the incident location, and several little
10 round bleeps showing a location.

11 Q. [Ms. Cornwell] And is this the printout that
12 you received from the monitoring company?

13 A. Yes, ma'am, it is.

14 Q. And that's the printout you received when you
15 requested --

16 A. Yes, ma'am, it is.

17 Q. -- Ryan Newman's monitoring?

18 A. Yes, ma'am.

19 MS. CORNWELL: I believe that's all the
20 questions I have for you.

21 THE COURT: Cross-examination.

22 MR. CHAD SHELTON: Beg the Court's indulgence
23 for a second.

24 [Whereupon, Mr. Chad Shelton and Ms. Littlejohn
25 confer]

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

CROSS-EXAMINATION

BY MR. CHAD SHELTON:

Q. Mr. Mendoza came and talked to you, correct?

A. Yes, sir.

Q. January 7th?

A. 2011. Yes, sir.

Q. That was the day after the incident?

A. Yes, sir.

Q. And you did a supplemental report?

A. Yes.

Q. Correct?

A. Yes, sir.

Q. And the supplemental report states that
Mr. Mendoza came because he did wish to prosecute the
case --

A. Correct.

Q. -- and give a written statement?

A. Correct, sir.

Q. He provided you Mr. Newman's address?

A. The general location, yes.

He didn't give the numerics. I don't think he
gave me the numerics at the time, but told me the
subdivision and the street.

Q. And you had reviewed the incident report from
Mr. Wells? Officer Wells.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Correct. Pulled it up on the computer.

2 Q. So you had -- you were able -- and you were able
3 to find Mr. Newman's address?

4 A. I don't remember if I got it right then. I'm
5 not sure. I'm not sure if --

6 Q. You never did -- you never did a search warrant
7 for Mr. Newman's house?

8 A. No, sir. No, I did not, sir.

9 Q. In fact, regarding Mr. Newman you only did one
10 arrest warrant?

11 A. The Ryan Newman?

12 Q. For Mr. Ryan Newman, yes.

13 A. Yes, sir, just one.

14 Q. You just did an arrest warrant for armed
15 robbery?

16 A. That's correct, sir.

17 Q. You didn't find any clothes?

18 A. [No response]

19 Q. Any of Mr. Mendoza's clothes?

20 A. No, sir.

21 Q. You didn't find his wallet?

22 A. No, sir.

23 Q. You didn't find his keys?

24 A. No, sir.

25 Q. And you've reviewed Mr. Mendoza's statement?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Yes, sir.

2 Q. You've reviewed his statement given to Mr.
3 Wells? Officer Wells.

4 A. Correct.

5 His verbal information, yes, for the narrative
6 of the report.

7 Q. And he never mentioned a cell phone being taken?

8 A. No, I don't think so. I would have to look
9 back. I mean, I --

10 Q. And that -- that's -- as a detective, that could
11 be important information? You could hit cell phone towers
12 and try to find out if that cell phone is on and find out
13 where it is?

14 A. Correct.

15 Q. But you weren't provided with that information?

16 A. Correct. Was not. Not from Deputy Wells's
17 report, no.

18 Q. And Deputy Wells' report and in your discussions
19 with Mr. Mendoza, he indicates that he ran from the scene;
20 correct?

21 A. Correct.

22 Q. He never told you about a car picking him up?

23 A. No.

24 Q. Because that would be important information;
25 correct?

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 A. Correct.

2 Q. Try to find that person --

3 A. Correct.

4 Q. -- and talk to that person?

5 A. [No response]

6 Q. His cousin came with him also?

7 A. Yes.

8 Q. And his cousin provided a statement?

9 A. Yes.

10 Q. He also indicate -- Mr. Mendoza indicated to you
11 that him and his cousin went by Mr. Newman's house?

12 A. Correct.

13 Q. And you -- he was never able to describe to you
14 a handgun that night, was he? That handgun?

15 A. I don't think so. He just advised that he was
16 beaten with a gun, a handgun.

17 Q. But he was never able to describe to you the
18 handgun?

19 A. Right. Meaning semiautomatic, revolver, or
20 whatever?

21 Q. Right.

22 A. Correct.

23 Q. You indicate that they were past roommates,
24 Mr. Newman and Mr. Mendoza?

25 A. Correct.

State v. Newman and Clark
Jury Trial - Volume 3 of 4
September 12, 2012

1 Q. And I think your testimony on direct was that
2 you weren't able to take pictures of the knot on the back
3 of the head?

4 A. Correct.

5 Q. Did you take any pictures of the rest of his
6 body?

7 A. I don't recall any.

8 Q. Well, if you did, they would be here?

9 A. Correct. Yes, sir.

10 Q. The solicitor's office would have had them, they
11 would have provided them to us --

12 A. That's correct.

13 Q. -- so we would have pictures.

14 So there's no pictures of the rest of his body?

15 A. Correct.

16 Q. In his written statement, Mr. Mendoza's written
17 statement, he didn't indicate that he was beat down behind
18 the back of the car and the brake lights were able to show
19 the face so he was able to determine who it was? He
20 didn't write that in his written statement, did he?

21 A. No, sir.

22 Q. And when he's giving an account of being robbed,
23 he actually questions the people that are out there? He
24 says, are you for real, about taking off his clothes.

25 A. I recall that. I -- yes.