

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Stephanie P. McDonald, Circuit Court Judge

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THE STATE,

RESPONDENT, SC Court of Appeals

V.

ALTON RODGERS,

APPELLANT

APPELLATE CASE NO. 2013-002180

RECORD ON APPEAL

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INDEX

INDEX i, ii

TRIAL TRANSCRIPT (SEPTEMBER 30, 2013) 1

MOTION FOR A BLAIR HEARING BY MR. KING5

DR. LEONARD MULBRY40

CHARLES WOHLLEB73

DONALD DAQUIGAN.....91

BENNY TAGHIVAN109

OPENING STATEMENT BY MS. HALEY64

OPENING STATEMENT BY MR. KING68

MOTION FOR A DIRECTED VERDICT BY MR. KING130

RULING BY THE COURT131

MOTION TO DISMISS BY MR. COOPER.....132

MOTION FOR SPOILIATION CHARGE BY MR. COOPER136

COLLOQUY REGARDING DEFENDANT’S RIGHT TO TESTIFY137

RULING BY THE COURT146

RULING BY THE COURT ON SPOILIATION CHARGE152

CLOSING ARGUMENT BY MS. HALEY158

CLOSING ARGUMENT BY MR. KING.....167

CHARGE ON THE LAW.....171

VERDICT.....183

MOTION FOR THE RENEWAL OF A DIRECTED VERDICT BY MR. KING186

SENTENCING193

INDICTMENT196

CERTIFICATE OF COUNSEL.....198

1 STATE OF SOUTH CAROLINA)
) Court of General Sessions
 2 COUNTY OF CHARLESTON) Case No. 2011-GS-10-00767
)
 3 _____)
)
 4 STATE OF SOUTH CAROLINA)
)
 5 vs.) Transcript of Record
)
 6 ALTON RODGERS,)
)
 6 _____) DATE: September 30, 2013

7 B E F O R E:

8 The Honorable Stephanie P. McDonald

9
10 A P P E A R A N C E:

11 Meg Haley and Jessica Baldwin, Assistant Solicitors
For the State of South Carolina

12 Jason T. King, Esq. and Michael Cooper, Esq.
For the Defendant

13
14 Karen V. Andersen, RMR, CRR
Circuit Court Reporter

15
16
17
18
19
20
21
22
23
24
25

INDEX

EXAMINATION

1			
2			
3	Witness Name		Page
4	DR. LEONARD MULBRY		
5	Direct By Mr. King		40
6	CHARLES WOHLLEB		
7	Direct By Ms. Haley		73
8	Cross By Mr. King		83
9	Re-Direct By Ms. Haley		88
10	Re-Cross By Mr. King.....		90
11	DONALD DAQUIGAN		
12	Direct By Ms. Haley		91
13	Cross By Mr. King		95
14	Re-Direct By Ms. Haley		102
15	Re-Cross By Mr. King.....		103
16	BENNY TAGHIVAN		
17	Direct By Ms. Haley.....		109
18	Cross By Mr. King.....		128

EXHIBITS

19				
20				
	Exhibit	Description	Id	Evd
21	State's	MP3 Player	52	79
22	Exhibit 1			
23	State's	Packaging for MP3 Player	52	80
24	Exhibit 2			
25	State's	Utility Knife	52	81
	Exhibit 3			

1	State's Exhibit 4	Packaging for Utility Knife	52	82
2				
3	State's Exhibit 5	Photograph	52	117
4	State's Exhibit 6	Photograph	52	119
5				
6	State's Exhibit 7	Photograph	52	115
7	Court's Exhibit 1	Jury Charge	160	
8				
9	Court's Exhibit 2	Jury Charge	189	
10	Court's Exhibit 3	Jury Question	189	
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: I've reviewed the voir dire from both
2 sides. Are there any objections to the State's requested
3 voir dire?

4 MR. KING: Not from the defense, Your Honor.

5 THE COURT: Any objections to the defense's
6 requested voir dire?

7 MS. HALEY: Not from the State, Your Honor.

8 THE COURT: Ms. Haley, I'm going to get you to read
9 out the names on the witness list so that I can try to
10 pronounce them correctly when I read them out to the jury.

11 MS. HALEY: Your Honor, it should be Sergeant
12 Daquiggan, Benny Taghivand; his first name is Behrooz.

13 THE COURT: Benny Taghivand?

14 MS. HALEY: Yes. And Sergeant Dalinsky should be on
15 there, but he will not be testifying.

16 THE COURT: Do you want me to read it just out of
17 abundance of caution?

18 MS. HALEY: You can.

19 THE COURT: And Charlie --

20 MS. HALEY: Wohlleb.

21 THE COURT: All right. And I've got Katherine Mason
22 and Lee Ginn.

23 MR. KING: Yes, Your Honor.

24 THE COURT: All right. I think the panel will be up
25 here in just a minute. Anything we need to take up before

1 they come in?

2 MS. HALEY: Not from the State, Your Honor, unless
3 we want to take up any other issues we had talked about,
4 pretrial issues, but we can do that afterwards.

5 MR. KING: And Mr. Cooper should be here in a
6 minute.

7 THE COURT: I didn't know we were waiting on
8 anybody. While we wait on him, let me ask y'all: Are there
9 any pretrial motions we are going to need to hear? I need to
10 know what time to tell the jury to be back.

11 MS. HALEY: Your Honor, the State has a motion
12 regarding Katherine Mason's testimony and document that we
13 thought they would try to introduce through her. That
14 shouldn't take very long.

15 THE COURT: Okay. Do we have any Denno issues, do
16 we have any --

17 MR. KING: Just Dr. Mulbry -- Mr. Rogers was
18 evaluated for competency awhile ago. Under State vs. Blair,
19 I was just concerned, I wanted to make sure I covered
20 everything. So Dr. Mulbry did meet with him this morning.
21 Dr. Mulbry still believes he's competent. You know, I can't
22 really dispute that, although I still think there's some
23 trust issues Mr. Rodgers has with me. I don't know if Your
24 Honor wanted to take testimony. I think there needs to be a
25 court finding that he is competent to stand trial.

1 THE COURT: Why don't we do this? After we pick our
2 jury, I will talk to the defendant and get any testimony we
3 need to take on that, and we will just tell them to come back
4 after lunch. How does that sound? Ask the jury to be back
5 at, I don't know, 2:30; does that sound -- shouldn't take us
6 long to pick, I don't think.

7 Is Dr. Mulbry around and available?

8 MR. KING: He's right outside.

9 THE COURT: Wonderful. We will get him up and down
10 as quickly as we can. And I certainly would like to hear
11 from him. Is there a report we need to look at the in the
12 interim?

13 MR. KING: I do have a report I can give you. This
14 is the report from February 2012.

15 THE COURT: Wonderful. I will take a look at that
16 in a minute and we will go from there.

17 All right. Well, then I think if there's nothing
18 else to take up right now, we will go ahead and select the
19 jury in a minute whenever they are ready. I'm not sure, we
20 gave them ten minutes, I think.

21 (Whereupon prospective jurors enter.)

22 THE COURT: Thank you. And thank you, ladies and
23 gentlemen, for your patience. We have to get a head count
24 and make sure that we have everybody; otherwise, we have to
25 start over.

1 The case that we are here to try today is State of
2 South Carolina vs. Alton Rodgers. Mr. Rodgers has been
3 charged by Indictment 2011-0767 with armed robbery. And he
4 has pled not guilty to that charge.

5 The indictment alleges that on or about November
6 11th of 2010, in Charleston County, while at

7 Road, the defendant, by use of force, threats, or
8 intimidation, and while armed with a deadly weapon, or while
9 alleging either by action or words that he was armed with a
10 deadly weapon or a representation of a deadly weapon, did
11 carry away or take goods and moneys from the person or
12 immediate presence of Benny Taghivan with the intent to
13 permanently deprive him of possession thereof in violation of
14 South Carolina law.

15 Ladies and gentlemen, this is the indictment in the
16 case. It is not in any way evidence, nor are any of the
17 allegations in the indictment evidence. The indictment is
18 simply the instrument that brings the case to court so that a
19 jury of 12 Charleston County citizens can determine as the
20 fact finder whether or not the State has met its burden of
21 proving that the defendant is guilty of the charge in the
22 indictment beyond a reasonable doubt.

23 As I indicated before, the defendant has pled not
24 guilty to the charge in the indictment. He is presumed
25 innocent throughout the entire proceeding and the burden of

1 proof remains on the State of South Carolina throughout the
2 trial. If you are selected on this particular jury, you will
3 have further instruction on that shortly.

4 But first, let me ask: Is there any member of the
5 panel who has any information or knows anything about the
6 circumstances alleged in the indictment? If so, please
7 stand.

8 (No response from the Jury.)

9 THE COURT: Okay. Ms. Haley, if you will introduce
10 yourself and the folks at your table for me.

11 MS. HALEY: Thank you, Your Honor. My name is Meg
12 Haley. I'm an assistant solicitor with the Ninth Judicial
13 Circuit. Assisting me is Jessica Baldwin. She's also an
14 assistant solicitor. You also might see our Chief
15 Investigator Keith Hair.

16 THE COURT: Which investigator will you be with
17 y'all?

18 MS. HALEY: Keith Hair.

19 THE COURT: Thank you. Is any member of the panel
20 related to by blood or marriage or a close personal friend
21 of, or have you ever been represented by Ms. Meg Haley or
22 Jessica Baldwin of the Ninth Circuit Solicitor's Office, or
23 are you related by blood or marriage, or have you been
24 personal friends with Keith Hair, an investigator with the
25 Ninth Circuit Solicitor's Office? If so, please stand.

1 (No response from the Jury.)

2 THE COURT: Thank you. Mr. King.

3 MR. KING: Good morning. My name is Jason King.
4 I'm an attorney with the Public Defender's Office. I'm
5 representing Alton Rodgers. Sitting with me is Michael
6 Cooper, also with the Public Defender's Office.

7 THE COURT: Thank you. Does any member of the panel
8 know or are you related to by blood or marriage or close
9 personal friends with Mr. Alton Rodgers, the defendant in
10 this case? If so, please stand.

11 (No response from the Jury.)

12 THE COURT: Is any member of the panel related by
13 blood or marriage or a close personal friend of or have you
14 ever been represented by either attorney Jason King or
15 attorney Michael Cooper of the Public Defender's Office here
16 in Charleston County? If so, please stand.

17 (No response from the Jury.)

18 THE COURT: Okay. Thank you. Ladies and gentlemen,
19 this case is expected to last about a day and a half, maybe
20 two days. I've got a potential witness list. And we don't
21 know if all of these witnesses will be called, but if you
22 would listen to the list, and if you know any of these folks,
23 if you are friends of theirs, if you are related to them by
24 blood or marriage, I'm going to ask that you stand.

25 Katherine Mason, Lee Ginn, Charlie Wohlleb of the

1 North Charleston Police Department, Sergeant Thomas Dalinsky
2 of the Charleston Police Department, Sergeant Donald Daquigan
3 of the Charleston Police Department, or Benny Taghivand; if
4 so, please stand.

5 (No response from the Jury.)

6 THE COURT: Okay. Thank you. Ladies and gentlemen,
7 as we did this morning, I'm going to ask you a series of
8 questions that are more tailored to this specific case that
9 the attorneys have presented. Again, they are trying to get
10 the fairest and most impartial jury that they can both for
11 the State and the defense.

12 So if one of these questions applies to you, I'm
13 going to ask you to stand, give us your name and juror
14 number, and then any information that's responsive to the
15 question. Again, you will be giving your responses pursuant
16 to the oath that you took this morning as members of our jury
17 panel. And, again, most of the questions are not intrusive,
18 but if one of them seeks information that you would rather
19 not share in front of the prior panel or the entire panel, or
20 you think it would be more appropriate to come up and share
21 it individually with the Court and the court reporter and the
22 attorneys, I'm going to ask you to remember any question you
23 need to respond to, and we will have you up at the end with a
24 catch-all question of any other information.

25 First, has any member of the panel or any member of

1 your immediate family or any close personal friend of yours
2 ever had criminal charges adjudicated by the Charleston
3 County Solicitor's Office? If so, please stand or come see
4 me shortly.

5 (No response from the jury.)

6 THE COURT: Okay. I find none at this time. Has
7 any member of the panel or any member of your immediate
8 family or any close personal friend of yours ever been
9 represented by an attorney with the Charleston County Public
10 Defender's Office. If so, please stand or come see me
11 shortly.

12 Yes, ma'am.

13 PROSPECTIVE JUROR: My daughter has.

14 THE COURT: And she was represented by the public
15 defender office.

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: And what's your juror number, please,
18 ma'am, or your name?

19 PROSPECTIVE JUROR: Melissa Hemingway.

20 THE CLERK: 116.

21 THE COURT: Juror Number 116. Okay. Ma'am, would
22 that in any interfere with your ability to be fair and
23 impartial in the trial of this case?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: Thank you, ma'am.

1 Anyone else at this time?

2 Okay. Has any member of the panel ever been a
3 witness in either a civil or criminal case? If so, please
4 stand.

5 PROSPECTIVE JUROR: I'm a physician. I've been an
6 expert witness in civil cases and also criminal cases.

7 THE COURT: All right. And what's your name and
8 juror number please?

9 PROSPECTIVE JUROR: My name is Francis Tunney. My
10 juror number is 275.

11 THE COURT: 275. Thank you, sir.

12 Anyone else?

13 (No response from the Jury.)

14 THE COURT: Okay. Thank you. Would any member of
15 the panel have any problem following the law as the judge
16 cites it to you, even if you believe that it is inappropriate
17 or unfair? If so, please stand or come see me shortly.

18 (No response from the Jury.)

19 THE COURT: Thank you. Does any member of the panel
20 hold any social, ethnic, or racial view that would render you
21 incapable of being fair and impartial in the trial of this
22 case? If so, please stand or come see me shortly.

23 (No response from the Jury.)

24 THE COURT: Does any member of the panel have any
25 religious conviction, philosophical, moral, or political

1 belief or orientation that would make it difficult or
2 impossible for you to sit in judgment of another person? If
3 so, please stand or come see me shortly.

4 (No response from the Jury.)

5 THE COURT: Thank you. I find none at this time.

6 Has any member of the panel or any member of your
7 immediate family or any close personal friend ever been
8 accused of a crime? If so, please stand or come see me
9 shortly.

10 (No response from the Jury.)

11 THE COURT: Has any member of the panel or any
12 member of your immediate family or any close personal friend
13 been arrested for a violent crime? If so, please stand or
14 come see me shortly.

15 (No response from the Jury.)

16 THE COURT: Does any member of the panel have any
17 close relative or close friend who is in prison? If so,
18 please stand or come see me shortly.

19 PROSPECTIVE JUROR: I'm Juror 69. My father is in
20 prison, I believe in Arkansas.

21 THE COURT: And, ma'am, would that in any way
22 interfere with your ability to be fair and impartial in this
23 particular case?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: Thank you. Yes, sir.

1 PROSPECTIVE JUROR: A close friend or distant
2 relative; I wouldn't see it interfering with my judgment.

3 THE COURT: All right. Sir, what's your juror
4 number?

5 PROSPECTIVE JUROR: 3.

6 THE COURT: Would anything about that interfere with
7 your ability to be fair in this case?

8 PROSPECTIVE JUROR: No, ma'am.

9 THE COURT: Thank you, sir.
10 Anyone else at this time?

11 Okay. Has any member of the panel or any close
12 personal friend of a member of the panel or any member of the
13 panel's immediate family ever been arrested by the Charleston
14 Police Department? If so, please stand or come see me
15 shortly.

16 PROSPECTIVE JUROR: I do know someone, a friend that
17 was recently reported. I couldn't tell you if it was
18 Charleston County.

19 THE COURT: Let me ask you this question. What's
20 your juror number, please, ma'am?

21 PROSPECTIVE JUROR: 220.

22 THE COURT: Would anything you know about that
23 experience in any way interfere with your ability to be fair
24 in this case, where there might be a witness from either the
25 City of Charleston or the City of North Charleston?

1 PROSPECTIVE JUROR: No.

2 THE COURT: No, it would not?

3 PROSPECTIVE JUROR: No, it would not.

4 THE COURT: Thank you, ma'am. I appreciate it.

5 Anybody else at this time?

6 Okay. Has any member of the panel or any member of
7 your immediate family ever had an unpleasant experience with
8 law enforcement? By unpleasant, I mean other than just
9 seeing blue lights if you might be speeding or having a
10 traffic issue, but a truly unpleasant experience with law
11 enforcement? If so, please stand.

12 Yes, sir, I'm going to get you to come up in just a
13 minute. All right. You are Juror Number 3, right?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: I will get more information from you in
16 a minute. Anybody else at this time?

17 Is any member of the panel a former member or
18 current member of law enforcement in any capacity? If so,
19 please stand.

20 (No response from the Jury.)

21 THE COURT: Does any member of the panel have any
22 close personal friend or friends or member of your immediate
23 family who is employed by a law enforcement agency? If so,
24 please stand.

25 PROSPECTIVE JUROR: Juror Number 298, personal

1 friend.

2 THE COURT: Okay. And where does he work?

3 PROSPECTIVE JUROR: City of Charleston.

4 THE COURT: City of Charleston? And, sir, would
5 that relationship or anything at all interfere with your
6 ability to be fair in this case?

7 PROSPECTIVE JUROR: No, it would not interfere.

8 THE COURT: Thank you, sir. Anybody else? Yes,
9 ma'am.

10 PROSPECTIVE JUROR: Juror Number 49, I have a very
11 close friend in Richland County. I believe it's Richland or
12 Lexington.

13 THE COURT: And, ma'am, would that in any way
14 interfere with your ability to be fair in this case?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Thank you, ma'am.

17 Yes, ma'am.

18 PROSPECTIVE JUROR: 220. My brother, he's a
19 correctional officer at Lieber.

20 THE COURT: Okay. And, ma'am, did you say 220?

21 PROSPECTIVE JUROR: 220.

22 THE COURT: Would that in any way interfere with
23 your ability to be fair and impartial in this case?

24 PROSPECTIVE JUROR: No, ma'am.

25 THE COURT: Thank you. Anybody else at this time?

1 PROSPECTIVE JUROR: My husband's cousin is a police
2 officer for Mount Pleasant.

3 THE COURT: All right. And what's your juror
4 number?

5 PROSPECTIVE JUROR: 230.

6 THE COURT: And, ma'am, would that in any way
7 interfere with your ability to be fair and impartial?

8 PROSPECTIVE JUROR: No.

9 THE COURT: Has any member of the panel or any
10 member of your immediate family or any close personal friend
11 of a member of the panel been a victim of a robbery or other
12 violent crime? If so, please stand or come see me shortly.

13 PROSPECTIVE JUROR: Long time ago when I was in
14 medical school, I was stuck up and robbed.

15 THE COURT: All right. And are you Juror 275; is
16 that correct?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: And, sir, would that in any way
19 interfere with your ability to be fair in this case?

20 PROSPECTIVE JUROR: No, it wouldn't.

21 THE COURT: Thank you, sir.

22 Yes, ma'am.

23 PROSPECTIVE JUROR: I'm Juror No. 12 and about four
24 years ago I was robbed.

25 THE COURT: All right. And, ma'am, would that in

1 any way interfere with your ability to be fair in this
2 case?

3 PROSPECTIVE JUROR: No, ma'am.

4 THE COURT: Thank you, ma'am.

5 PROSPECTIVE JUROR: Juror 261, I was mugged three
6 times when I lived in Birmingham, Alabama.

7 THE COURT: Ma'am, would anything about any of those
8 experiences interfere with your ability to be fair in this
9 case?

10 PROSPECTIVE JUROR: No, ma'am.

11 THE COURT: Thank you. Yes, ma'am.

12 PROSPECTIVE JUROR: 223, my home was broken into
13 while I was there.

14 THE COURT: And, ma'am, would that in any way
15 interfere with your ability to remember fair in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you. Anyone else at this time?

18 PROSPECTIVE JUROR: I was robbed twice.

19 THE COURT: Twice?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And what's your juror number?

22 PROSPECTIVE JUROR: 38.

23 THE COURT: And, ma'am, would that in any way
24 interfere with your ability to be fair in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Thank you, ma'am. All right. Thank
2 you, ladies and gentlemen.

3 Is any member of the panel or any member of your
4 immediate family a member of or affiliated with a victim's
5 rights organization which promotes law enforcement support,
6 such as Citizens Against Violent Crime, CAVE, People Against
7 Rape, PAR, Mothers Against Drunk Driving, MADD, or Parents
8 Empowered to Save Teens, which is also called PEST, any
9 neighborhood or community watch organization or similar such
10 organization? If so, please stand.

11 PROSPECTIVE JUROR: Juror 261, I'm a member of the
12 national exchange club which is for children's rights.

13 THE COURT: Okay. And, ma'am, would anything about
14 that membership interfere with your ability to be fair in
15 this case?

16 PROSPECTIVE JUROR: No, ma'am.

17 THE COURT: Thank you. Anyone else? Okay.

18 Does any member of the panel have any particular
19 opinion, experience, or feelings about the crime of armed
20 robbery which would make it difficult for you to serve on a
21 jury where the indictment and charge is for armed robbery?
22 If so, please stand.

23 (No response from the Jury.)

24 THE COURT: Does any member of the panel know of any
25 reason whatsoever why you could not render this defendant a

1 fair and impartial verdict, or do you know of any reason why
2 you should not be selected as a juror on this particular
3 case, or do you need to respond to one of the prior
4 questions?

5 So that's the compound question at the end. Any
6 reason why you shouldn't serve on this jury, why you couldn't
7 be fair, or if you need to give information about a prior
8 question, I'm going to ask you to form a line and we will
9 bring you up one by one.

10 THE COURT: All right, yes, sir.

11 THE CLERK: 241.

12 PROSPECTIVE JUROR: It was before I was married, my
13 wife, I believe, was arrested by the City of Charleston
14 Police and charged with DUI. She was not convicted. And in
15 Virginia when I was 24, I was charged with possession of
16 marijuana, but I guess it was dropped first time. I did
17 community service down here. I was never formally charged or
18 convicted, so --

19 THE COURT: Would any of that experience interfere
20 with your ability to be fair in this case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Okay. Thank you, sir. Juror number 241
23 will remain with us.

24 THE CLERK: Juror 3.

25 THE COURT: Tell us what happened.

1 PROSPECTIVE JUROR: Honestly, about six of the
2 questions that you asked, they all somewhat have similar
3 information. Because of my experiences, whether it be with
4 law enforcement or family members, friends, things of that
5 nature, and my faith or religious beliefs, the real --
6 stealing is really not -- it's not real -- it's not a good
7 look as far as how we were raised. It's real extreme as how
8 we feel about thieves, stealing, lying. So I don't think it
9 would be a good -- I don't know if I could give him the best
10 of --

11 THE COURT: You might not be the best juror for
12 him?

13 PROSPECTIVE JUROR: Yeah, just because of how we
14 were raised and how we feel about certain crimes like that.

15 THE COURT: All right. We will probably not select
16 you as a juror on this particular case, but I'm going to get
17 some information from the attorneys. Was there anything else
18 you needed to tell me about
19 experiences with law enforcement?

20 PROSPECTIVE JUROR: No; had not the best.

21 THE COURT: Not the best?

22 PROSPECTIVE JUROR: That's just the story of our
23 life, just because of where we are.

24 THE COURT: If you will have a seat for us for now.
25 I will give you some more information in a minute.

1 Okay. Any objection to my letting him go from
2 either side?

3 MS. HALEY: No, Your Honor.

4 THE COURT: Okay. I'm going to do that. I'm going
5 to wait until the end though.

6 THE CLERK: Number 12.

7 PROSPECTIVE JUROR: My brother, he has been arrested
8 and I believe that's with public defender with Charleston
9 County.

10 THE COURT: Okay. And would any of that interfere
11 with your ability to be fair in this case?

12 PROSPECTIVE JUROR: No, ma'am.

13 THE COURT: Okay. Thank you, ma'am.

14 THE CLERK: 143.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: After hearing the charge --

17 THE COURT: Ma'am, are you okay?

18 PROSPECTIVE JUROR: My son was murdered.

19 THE COURT: Okay. You know what, we are not going
20 to put you on this case. Okay? I'm going to let you go. So
21 sorry. You just call back after six o'clock tonight to the
22 number on the hotline and get some further instructions.
23 Okay? All right? But you can go. Thank you, ma'am.

24 Juror number 143 is excused.

25 THE CLERK: Juror number 116.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR: My cousin was represented by
3 their office, because she used someone else's credit card.

4 THE COURT: She is currently or was?

5 PROSPECTIVE JUROR: Was. The case was dismissed,
6 dropped.

7 THE COURT: Would anything about that interfere with
8 your ability to be fair in this case?

9 PROSPECTIVE JUROR: No, ma'am.

10 THE COURT: Okay. Thank you. Appreciate that.
11 Yes, sir.

12 THE CLERK: 203.

13 THE COURT: Juror Number 143, she's excused. Yes.
14 Thank you, ma'am.

15 Okay. Juror 203, yes, sir.

16 PROSPECTIVE JUROR: I'm a Jehovah's Witness. I
17 would be more comfortable on a traffic ticket.

18 THE COURT: All right. Let's do that. Has Judge
19 Young's panel been pulled already? I'm going to excuse you.
20 If you will call back after six o'clock tonight, we will get
21 you in the civil panel and go from there. Okay.

22 Juror number 203 is excused just from this
23 particular case. We will put him on the civil panel.

24 THE CLERK: Juror Number 49.

25 PROSPECTIVE JUROR: You asked several questions.

1 My -- you asked a question about has immediate family been
2 arrested. My husband was arrested. It's been quite some
3 time ago, but he was.

4 THE COURT: Anything else? Would that in any way
5 interfere with your ability to be fair in this case?

6 PROSPECTIVE JUROR: I don't believe so. It was a
7 very unpleasant experience.

8 THE COURT: Do you remember what agency it was that
9 arrested him? Was it here locally?

10 PROSPECTIVE JUROR: Yeah, I think it was Charleston
11 County. I'm pretty sure. And experience wasn't necessarily
12 because of him, it was just --

13 THE COURT: The whole thing was just a bad
14 experience? I'm sorry.

15 PROSPECTIVE JUROR: Thank you.

16 THE COURT: Would anything, any other questions,
17 anything about that interfere with your ability to be fair in
18 this case?

19 PROSPECTIVE JUROR: I really don't believe so, no.
20 I mean, no, there were several questions that you asked that
21 kind of related to.

22 THE COURT: All to that or --

23 PROSPECTIVE JUROR: Well, the last question you
24 asked about unpleasant experiences, not that they were
25 unpleasant, but my husband had had some dealings with, like,

1 DNR, but I don't think that that would prevent me from being
2 fair and impartial, but I wanted you to know.

3 THE COURT: No, I appreciate that. That's exactly
4 what you are supposed to do. So thank you. Appreciate it.

5 THE CLERK: Juror 287.

6 PROSPECTIVE JUROR: One of the questions you asked
7 was, did we know of anyone that was imprisoned. A friend of
8 ours, her son is in prison now. And, actually, I came to be
9 a supporting witness. It was a drug -- selling drugs
10 illegally.

11 THE COURT: Okay. Would that in any way interfere
12 with your ability to be fair in this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Can you give this defendant a fair trial
15 and the State a fair trial?

16 PROSPECTIVE JUROR: Yeah, sure.

17 THE COURT: Thank you. All right. Okay.

18 MR. COOPER: Her son was arrested?

19 THE COURT: Friend's son.

20 MS. HALEY: I believe there was a question, do you
21 know anybody in the Solicitor's Office, and I'm pretty sure
22 there's somebody that knows me and Ran Stoney, Juror 97. I
23 think you just asked if he knows us four.

24 THE COURT: I can ask, but nobody -- that wasn't
25 given to me.

1 MS. HALEY: I just want to bring it to the Court's
2 attention.

3 THE COURT: Any objection in the meantime to the
4 particular jurors that came up?

5 MS. BALDWIN: No.

6 THE COURT: Y'all have any issues? I'm going to let
7 Number 3 go. Number 3 is going to go.

8 What about 12, 116 and 287?

9 MS. BALDWIN: Cause.

10 THE COURT: Y'all have information?

11 MS. BALDWIN: Yeah.

12 THE COURT: All right. Thank you and then I will
13 see if we have any other questions. All right. Thanks.

14 Okay. Ladies and gentlemen, just a couple of other
15 questions. Is there any member of the panel who is related
16 to by blood or marriage or close personal friends with any
17 employee of either the Ninth Circuit Solicitor's Office or
18 the Charleston County Public Defender's Office? If so,
19 please stand.

20 How else would you like me to ask it?

21 THE COURT: Come on up.

22 MS. BALDWIN: Out of abundance of caution, would it
23 be possible to call up Juror Number 97 and ask if he is
24 friends with Ran Stoney?

25 THE COURT: Juror Number 97, come on down.

1 MS. BALDWIN: He might not know that he works
2 there.

3 THE COURT: Right.

4 MS. BALDWIN: We like to make sure.

5 PROSPECTIVE JUROR: Oh, yes, I do.

6 THE COURT: Do you know anybody that works for the
7 Ninth Circuit Solicitor's Office office?

8 PROSPECTIVE JUROR: Maybe my dad. My dad is a mayor
9 of --

10 THE COURT: Are you friends with Ran Stoney?

11 PROSPECTIVE JUROR: Oh, yes, I am.

12 THE COURT: Did you even know that he worked at the
13 Solicitor's Office?

14 PROSPECTIVE JUROR: Oh, no.

15 THE COURT: I didn't think so. Okay. Thank you.

16 But, ladies, I appreciate your honesty, I do, and
17 gentleman.

18 All right. Anything further from the defense or the
19 State that I need to inquire about?

20 THE COURT: Nothing from the State.

21 THE COURT: Anything from the defense?

22 MR. KING: No, Your Honor.

23 THE COURT: All right. I believe the strikes are 5
24 and 10. I do find our panel qualified and we will go ahead
25 and pull the strike sheets for you. And ladies and

1 gentlemen, our clerk will give you instructions in a minute,
2 but if you are not selected for this particular jury, I will
3 ask you to have a seat, and I will give you further
4 instructions once we get our jury empanelled.

5 Juror Number 3 is excused from the trial of this
6 case. And Juror Number 203 I believe I had already excused
7 from the trial of this case. If the two of you will call
8 back after 6:00 for instructions about when we will be
9 picking next, I appreciate it. Thank you.

10 I believe the strikes are 5 and 10. Do we want one
11 alternate?

12 MS. HALEY: That should be okay, Your Honor.

13 MR. KING: That's fine, Your Honor.

14 THE CLERK: Whenever your name is called, please
15 gather your belongings and make your way to this podium. And
16 once you get to the pulmonary, you are going to turn and face
17 the back of the courtroom. Thank you very much.

18 Juror Number 78, James Dukes. What say you for the
19 State?

20 MS. HALEY: Court's indulgence please. Please
21 present this juror.

22 THE CLERK: For the defendant?

23 MR. KING: Please seat this juror.

24 THE COURT: Sir, if you will make your way to the
25 jury box, you've been selected as a juror in this case.

1 Juror Number 101, Nicole Glenn. What say you for
2 the State?

3 MS. HALEY: Please excuse this juror.

4 THE CLERK: Ma'am, if you will make your way back to
5 the seat. You've been excused as a juror for this case.

6 Juror number 244, Alan, Shirey. What say you for
7 the State?

8 MS. HALEY: Please excuse this juror.

9 THE CLERK: Sir, if you will please return to your
10 seat. You've been excused from the trial of this case.

11 Juror Number 235, Brian Scoggin. What say you for
12 the State?

13 MS. HALEY: Court's indulgence. Please present this
14 juror.

15 THE CLERK: What say you for the defendant?

16 MR. KING: Please seat this juror.

17 THE CLERK: Sir, if you will make your way to the
18 jury box. You've been selected as a juror in the trial of
19 case.

20 Juror 277, Eric Wall. What say you for the State?

21 MS. HALEY: Please present this juror.

22 THE CLERK: What say you for the defendant?

23 MR. KING: Please seat this juror.

24 THE CLERK: Please make your way to the jury box.
25 You've been selected as a juror in the trial of this case.

1 Juror 217, Suzanne Richardson. What say you for the
2 State?

3 MS. HALEY: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 MR. KING: Please seat this juror.

6 THE CLERK: Please make your way to the jury box.

7 You've been selected as a juror in the trial of this case.

8 Juror Number 172, Donald Miller. What say you for
9 the State?

10 MS. HALEY: Please present this juror.

11 THE CLERK: What say you for the defendant?

12 MR. KING: Please seat this juror.

13 THE CLERK: Sir, if you will make your way to the
14 jury box. You've been selected as a juror in the trial of
15 this case.

16 Juror Number 49, Natalie Chapman. What say you for
17 the State?

18 MS. HALEY: Court's indulgence. Please present this
19 juror.

20 THE CLERK: What say you for the defendant?

21 MR. KING: Please excuse this juror.

22 THE CLERK: Ma'am, if you would return to your seat.
23 You've been excused from the trial of this case.

24 Juror Number 69, Whitney Daniel. What say you for
25 the State?

1 MS. HALEY: Please present this juror.

2 THE CLERK: What say you for the defendant?

3 MR. KING: Please excuse this juror.

4 THE CLERK: Ma'am, if you would return to your seat.

5 You've been excused from the trial of this case.

6 Defense has exhausted two of its strikes.

7 Juror Number 35, Francis Budds. What say you for
8 the State?

9 MS. HALEY: Please present this juror.

10 THE CLERK: What say you for the defendant?

11 MR. KING: Please seat this juror.

12 THE CLERK: Sir, if you would make your way to the
13 jury box. You've been selected as a juror in the trial of
14 this case.

15 Juror Number 129, Cynthia Hull. What say you for
16 the State?

17 MS. HALEY: Please present this juror.

18 THE CLERK: What say you for the defendant?

19 MR. KING: Please seat this juror.

20 THE CLERK: Ma'am, if you would make your way to the
21 jury box. Thank you. You've been selected as a juror in the
22 trial of this case.

23 Juror Number 116, Melissa Hemingway. What say you
24 for the State?

25 MS. HALEY: Court's indulgence.

1 Please excuse this juror.

2 THE CLERK: Ma'am, return to your seat. You've been
3 excused from the trial of this case.

4 The State has exhausted three of its strikes.

5 Juror Number 261, Payton St. John. What say you for
6 the State?

7 MS. HALEY: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KING: Please excuse this juror.

10 THE CLERK: Ma'am, if you would make your way back
11 to your seat. You've been excused from the trial of this
12 case.

13 Juror Number 230, Syleria Ruth. What say you for
14 the State?

15 MS. HALEY: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 MR. KING: Please excuse this juror.

18 THE CLERK: Ma'am, if you would return to your seat.
19 You've been excused for the trial of this case.

20 Defense has exhausted four of its strikes.

21 Juror Number 241, John Shaffer. What say you for
22 the State?

23 MS. HALEY: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KING: Please seat this juror.

1 THE CLERK: Sir, if you will make your way to the
2 jury box. You've been selected as a juror for the trial of
3 this case.

4 Juror Number 258, Andrew Steever. What say you for
5 the State?

6 MS. HALEY: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 MR. KING: Please seat this juror.

9 THE CLERK: Sir, if you would make your way to the
10 jury box. You've been selected as a juror in the trial of
11 this case.

12 Juror Number 236, Jeffrey Scott. What say you for
13 the State?

14 MS. HALEY: Court's indulgence. Please present this
15 juror.

16 THE CLERK: What say you for the defendant?

17 MR. KING: Please seat this juror.

18 THE CLERK: Sir, if you would make your way to the
19 jury box. You've been selected as a juror for the trial of
20 this case.

21 Juror Number 26, Christian Broucqsault. What say
22 you for the State?

23 MS. HALEY: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 MR. KING: Please seat this juror.

1 THE CLERK: Sir, if you would make your way to the
2 the jury box. You've been selected as a juror in
3 this case.

4 Juror Number 59, Gordon Cooper. What say you for
5 the State?

6 MS. HALEY: Please excuse this juror.

7 THE CLERK: Sir, if you will return to your seat.
8 You've been excused as a juror for the trial of this case.
9 State has one strike remaining.

10 Juror Number 204, Kanisha Pinckney. What say you
11 for the State?

12 MS. HALEY: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 MR. KING: Please seat this juror.

15 THE CLERK: Ma'am, if you would make your way to the
16 jury box. You've been selected as a juror in the trial of
17 this case.

18 Your Honor, will we strike for one or two
19 alternates?

20 THE COURT: One alternate.

21 THE CLERK: Strikes will be one and two. We are
22 striking for the first alternate.

23 Juror Number 223, Pamela Rodgers. What say you for
24 the State?

25 MS. HALEY: Please present this juror.

1 THE CLERK: What say you for the defendant?

2 MR. KING: Please excuse this juror.

3 THE CLERK: Ma'am, if you would return to your seat.

4 You've been excused as juror for the trial of this case.

5 Juror Number 300, Judith Yost. What say you for the
6 State?

7 MS. HALEY: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 MR. KING: Please seat this juror.

10 THE CLERK: Ma'am, you've been chosen as an
11 alternate for the trial of this case.

12 THE COURT: Okay.

13 THE CLERK: Jury selected, Your Honor.

14 THE COURT: Are there any matters of law from either
15 the State or the defense?

16 MS. HALEY: None from the State, Your Honor.

17 MR. KING: None from the defense, Your Honor.

18 THE COURT: Okay. Ladies and gentlemen, you will be
19 our jurors in the trial of this case, which will start later
20 this afternoon.

21 If you were not selected as a juror in the trial of
22 this case, you are finished for today. If you would please
23 call back after six o'clock tonight to the number for the
24 jury hotline. I believe y'all have a card. It will give you
25 instructions about whether you need to report tomorrow or

1 not. We don't make you just come down here for no reason
2 unless we are selecting a jury tomorrow, you won't have to
3 report. But we may be, so please call after 6:00 for further
4 instructions. And you are excused. Thank you so much.

5 Ladies and gentlemen, thank you so much. We have a
6 number of matters that I need to take up with the attorneys
7 in this case and then one plea that I need to put on the
8 record in another case. And I also have to let the lawyers
9 have a chance to eat some lunch. So I'm going to ask y'all
10 to be back in the jury room at 2:45. I think that will give
11 us enough time to get everything we need to get done. And I
12 will ask you to be back at 2:45. It is a little longer than
13 we normally take for lunch, but sometimes we get
14 double-booked and I'm working on other things during lunch
15 and that's going to happen today and, I think, tomorrow. If
16 you will get back at 2:45.

17 We will try to go to 5:15, 5:30. If anyone has a
18 child care issue, we can go over that later, but let the
19 bailiffs know. I know there's situations where sometimes
20 you've got to be on the other side of the Mount Pleasant or
21 Johns Island or whatever by 6:00 or they start charging you
22 by the minute. We do try to accommodate that whenever we
23 can. Sometimes we can't and we have to ask you to make calls
24 or other arrangements. But today we should be able to finish
25 by 5:15, 5:30, and that won't be a problem. So if you will

1 be back by 2:45.

2 Please don't discuss anything about the case yet,
3 you don't know enough to discuss, or look anything up or try
4 to do any independent research. And I will talk to you more
5 about that when we get back. Thank you.

6 (Whereupon, the jury leaves open court at 12:15
7 p.m.)

8 THE COURT: I have read the reports from the
9 examiners. Do we need to put Dr. Mulbry up now so he can go,
10 or do you need him for this afternoon, or how do you want to
11 handle that?

12 MR. KING: I think we can put him up and let him go,
13 Judge.

14 THE COURT: Is he the only witness that will be
15 testifying regarding the Blair matters?

16 MR. KING: I'm sorry, Judge?

17 THE COURT: Will he be the only witness in the Blair
18 matter?

19 MR. KING: I believe so. There's another fellow out
20 there with him, but I believe it will be just Dr. Mulbry.

21 THE COURT: And we can take a break for lunch and
22 deal with the other issues after that.

23 MS. HALEY: Can I ask for a five-minute break?

24 THE COURT: Sure. Let's take five. Everybody take
25 a quick break and then we will get Dr. Mulbry up and then we

1 will do Luke Malloy's case after that.

2 (Recess is taken.)

3 MR. KING: I don't know how you want to conduct the
4 hearing.

5 THE COURT: We can bring him up. I think the burden
6 is on the defense if they are trying to establish that there
7 is a competency issue. I'm fine either way. I've reviewed
8 the report. I have a couple of questions, but I would rather
9 ask them after y'all have inquired.

10

11

12 DR. LEONARD MULBRY,

13 having been duly sworn, testifies as follows:

14 THE CLERK: Please state your first and last name,
15 spelling your last for the record.

16 THE WITNESS: Leonard Mulbry, M-u-l-b-r-y.

17 THE COURT: Yes, sir.

18 MR. KING: The State, I believe, contends that
19 Dr. Mulbry is an expert in the field of forensic psychiatry.
20 So I don't have to go through all that.

21 THE COURT: Thank you. And I find that he is so
22 qualified.

23 DIRECT EXAMINATION

24 BY MR. KING:

25 Q. Dr. Mulbry, you've had a chance to evaluate

1 Mr. Rodgers a couple of times in the past?

2 A. Once in February of 2012 and then again this
3 morning.

4 Q. And what were the results of those evaluations?

5 A. In both cases, we recognized that Mr. Rodgers does
6 have a history of some mental problems, has been in
7 psychiatric hospitals in the past. Then, as now, suffers
8 from some symptoms consistent with PTSD and depression, but
9 was then and is still felt to be competent to stand trial.

10 Q. One of the things you looked at in his evaluation
11 was his diagnoses, right?

12 A. Yeah, in part, yes, sir.

13 Q. And what were his diagnosis; what history of mental
14 illness does he have?

15 A. He has a history -- at least based on what we got
16 today, he provides a very clear history, a much more --
17 today, a much more clearly defined history of abuse in the
18 past, symptoms of PTSD. He talks about anxiety of wakings,
19 arousal, reliving old, past traumas as a child based on
20 events that have occurred, that occur almost on a regular
21 basis.

22 And we talked about the fact that simply opening a
23 door, opening it quickly, being upset, those kinds of things,
24 when people around him are upset, those kinds of things
25 trigger symptoms in him hearing his mother's -- an abusive

1 parent's voice, feeling anxious, having difficult structuring
2 his thinking and his words.

3 Q. He indicated at some point that he was diagnosed
4 with schizophrenia; is that right?

5 A. Yes, he did.

6 Q. Do you believe he has that diagnosis? Are you able
7 to make that determination?

8 A. I don't have -- right now, neither of our exams were
9 we able to establish that diagnosis. We also requested
10 records from Florida where he was treated, and no records
11 were provided. It was out of state. I cannot establish the
12 diagnosis of schizophrenia.

13 Q. Is it possible he could have a diagnosis of
14 schizophrenia?

15 A. It is possible.

16 Q. And some of the symptoms of schizophrenia would be
17 psychosis, right?

18 A. Correct, yes, sir.

19 Q. Hallucinations?

20 A. Yes, sir.

21 Q. Hearing voices?

22 A. Those are symptoms consistent with schizophrenia,
23 yes, sir.

24 Q. Paranoia?

25 A. Yes.

1 Q. He reported, and you just mentioned this before, he
2 did suffer from physical abuse when he was a child?

3 A. We weren't able to verify independently, but he
4 gives a very accurate description of that abuse, he did on
5 both exams. And the symptoms that he describes today are
6 consistent with sequelae of that kind of abuse. So we took
7 it on face value, yes, sir.

8 Q. And what about his education, do you know about his
9 education?

10 A. Very limited. I think he left school in the 8th
11 grade, I believe. It was a very young age -- 8th grade, left
12 school in the 8th grade.

13 Q. What about employment, has he had much success with
14 employment?

15 A. No, I think his longest job was as a janitor for
16 three years, but he's had difficulty maintaining long-term
17 employment.

18 Q. And he's told you that he hears voices, right?

19 A. Yes.

20 Q. And has he also discussed with you maybe some trust
21 issues he has with me as his lawyer?

22 A. Very much so, yes.

23 Q. Can you explain a little bit about that?

24 A. Well, I think that's why we originally saw him, was
25 that he had some deep concerns about defense strategy and,

1 frankly, your defending him. And I think he had asked to
2 have a new attorney assigned. And so we saw him out of
3 concern that that was based on mental illness.

4 At the time of the evaluation in February 2012, it
5 did not appear that that really was the case. He has some
6 concerns about defense strategy and mechanisms and whether
7 the legal process has treated him appropriately, but these
8 were not psychotic or irrational in nature.

9 Q. He told you he didn't want me as his lawyer?

10 A. He has said that, yes, sir.

11 Q. And you were able to look at some letters that he
12 had written?

13 A. I did.

14 Q. And does he talk in there about that I bring up
15 memories of his past?

16 A. Yes.

17 Q. His Past trauma and paranoia?

18 A. Correct, he does.

19 Q. And that could possibly interfere with the
20 attorney/client relationship, right?

21 A. It could interfere with it.

22 Q. Do you remember when we were meeting with him
23 downstairs and I talked about whether he took the witness
24 stand or not?

25 A. Yes.

1 Q. And do you remember what his -- what he thought when
2 I was discussing that with him about whether or not he should
3 take the stand?

4 A. I remember he chose -- he was very vehement about
5 that he did not wish to do so.

6 Q. Do you remember me talking about he thought that was
7 just me getting him up there to -- so that he wouldn't do a
8 good job and that would get him convicted?

9 A. He did mention that.

10 MR. KING: I believe that's all the questions I
11 have, Your Honor.

12 THE COURT: Thank you, sir.

13 Cross-examination.

14 MS. HALEY: Nothing from the State, Your Honor.

15 THE COURT: I have a few questions. Dr. Mulbry, I
16 have one question. I think I know what this means, but I
17 just want to clarify.

18 On Page 4 of the report under the mental status exam
19 section, it's noted that: The defendant was well-groomed and
20 wore a goatee. His eye contact was engaging, that he was
21 mostly cooperative during the interview but was noted to be
22 attempting to split the two evaluators.

23 What does that mean, attempting to split?

24 THE WITNESS: Splitting is a term when a patient
25 attempts to characterize one of two people as good and one as

1 bad. In other words -- and in our evaluation, typically -- I
2 can't remember the specifics of this particular case, but
3 typically, they will become angry with one person. Honestly,
4 it's usually the junior person in the room, and just say
5 something to the effect of you -- dismiss them, be
6 dismissive, be denigrating and attempt to split the team of
7 people that are there doing the interview. It's a relatively
8 primitive personality characteristic.

9 THE COURT: Is it an attempt at manipulation? I
10 just need a little bit more.

11 THE WITNESS: I think that I'd honestly characterize
12 it more as a defensive mechanism. When you see two people
13 coming at you, perhaps, it may be defensive to try to get rid
14 of one, dismiss one.

15 THE COURT: Did you have any concern about the
16 defendant's ability to understand the charges against him?

17 THE WITNESS: No. He understands the charges
18 against him very well.

19 THE COURT: Did you have any concern regarding his
20 ability to understand the process, the judicial process?

21 THE WITNESS: No. He understands the mechanism of
22 how the process works well.

23 THE COURT: And I believe you stated earlier that
24 his concerns with Mr. King did not seem irrational or as
25 any -- or to be related to any kind of mental illness,

1 correct?

2 THE WITNESS: There are concerns about the -- he's
3 quite suspicious. In other words, he's very suspicious that
4 Mr. King has not done everything in his power to get this
5 resolved. He gives examples of how he thinks past, you know,
6 preliminary hearings should have turned out, and how certain
7 pieces of evidence that he cites specifically should have
8 presented, and if that had been done, we wouldn't be here
9 today, this would all have gone away, and how certain pieces
10 he feels exonerates him from these charges. But those
11 beliefs do not appear to be irrational in nature. I'm not
12 sure they are accurate or right, but they are not based on
13 psychotic thinking, on irrational thinking.

14 THE COURT: I just ask because I see a lot of folks
15 come in that wish things weren't the way that they are or the
16 way they might be, and they think if their attorney were to
17 undertake some strategy that actually could be disastrous,
18 you know, the defendant then gets upset with that attorney.
19 I just need to make sure that he has the competency to go
20 forward today. And then if he so chose to work with
21 Mr. King, he has the ability to do so.

22 THE WITNESS: Yes, yes, ma'am.

23 THE COURT: He does have that ability?

24 THE WITNESS: I do believe he has that ability.

25 THE COURT: He has the ability to cooperate with his

1 defense?

2 THE WITNESS: Yes. He's suspicious of Mr. King, but
3 it is not based on -- it has no irrational basis. It's based
4 on the fact that Mr. King has not been able to defend him to
5 a level he thinks should be.

6 THE COURT: Okay. Thank you, sir. Anything further
7 from the defense or the State in follow up to my
8 questioning?

9 MR. KING: No questions, Your Honor, just argument,
10 not questions.

11 MS. HALEY: Nothing from the State, Your Honor.

12 THE COURT: Thank you, Doctor. I appreciate it.

13 (Witness is excused.)

14 THE COURT: Okay. I'm happy to hear anything else,
15 any additional testimony or anything that the State or the
16 defense would like to put on the record.

17 MR. KING: Your Honor, I have no other witnesses,
18 Your Honor. My concern is with the part of competency that
19 requires him to be able to assist in his own defense, he has
20 had some problems with me, Judge. We know that he has a
21 history of mental illness from Dr. Mulbry's testimony, he has
22 a limited education, he has a pretty limited job history or
23 difficulty holding a job for any length of time. He says
24 he's been diagnosed with schizophrenia. You heard Dr. Mulbry
25 can't really confirm or deny that, but he is talking of some

1 symptoms that are part of schizophrenia, claiming he hears
2 voices. Dr. Mulbry talks about opening doors can trigger
3 some past trauma that he's had. He stated I bring up
4 memories of his mother that bring up this trauma and physical
5 abuse
6 he experienced in the past. And this paranoia and lack of
7 trust of me, I just have some concerns about that, Judge,
8 that I wouldn't want that to hurt his case at all, because if
9 he has any problems with me, any trust issues with me because
10 of any mental illness.

11 THE COURT: Okay. Thank you, sir. Yes, ma'am.

12 MS. HALEY: Thank you, Your Honor. I think the
13 State would just reiterate that Dr. Mulbry stated that the
14 defendant is more than aware of the charges and judicial
15 process. He does not have psychotic thoughts or irrational
16 thoughts. And he seems to understand everything that is
17 happening. He was also found competent on both occasions.
18 So I think the State would argue that there really isn't a
19 need for a formal hearing since there was never any official
20 question as to his competency. However, I think also Dr.
21 Mulbry said that he has the ability to cooperate with
22 Mr. King. And the fact that he hasn't cooperated, doesn't
23 seem to want to cooperate, he might not cooperate with any
24 attorney.

25 And he seems to understand everything. And as I

1 said, on both occasions, he has been found to be competent to
2 stand trial.

3 THE COURT: Okay. Thank you. Anything further?

4 MR. KING: No, Your Honor.

5 THE COURT: All right. Well, as y'all know, the
6 test for determining competency is whether the defendant has
7 a sufficient present ability to consult with his attorney and
8 a reasonable degree of rational understanding of the
9 proceedings against him.

10 I have no concerns in this area, based on Dr.
11 Mulbry's testimony and the report that I've reviewed from the
12 February 24th, 2012, evaluation, in addition to the
13 information that we heard on the stand regarding Dr. Mulbry
14 consulting with the defendant again this morning, as well as
15 my own observations of the defendant. I do think he has the
16 ability to consult with his attorney to assist his defense.

17 And I believe that Ms. Haley is correct, you know,
18 we often see defendants who don't like what their lawyer has
19 to tell them, or are not going to be willing to work with
20 someone, but they certainly have the present ability to do
21 so, and this defendant does have that present ability to work
22 with his attorney in his defense. He certainly understand
23 the proceedings against him. Dr. Mulbry has confirmed that
24 in his testimony and his report.

25 And as y'all know, the burden is on the defense to

1 prove a lack of competency by a preponderance of the
2 evidence. I find instead that clear and convincing evidence
3 that I've seen mandates a finding of competency here based on
4 everything that I have reviewed and my own observations of
5 the defendant. Anything further?

6 MS. HALEY: Nothing from the State, Your Honor.

7 THE COURT: All right. Then I need to do a plea. I
8 think everybody is here for that. Folks in this trial, if
9 y'all want to take a break for lunch. Meg said there was one
10 evidentiary matter we need to take up.

11 MS. HALEY: Yes, Your Honor.

12 THE COURT: Anything else, Mr. King, motion-wise?

13 MR. KING: I don't believe so, Your Honor.

14 THE COURT: Why don't y'all come back -- I think the
15 jury is coming back at 2:45. Why don't you come back at
16 2:15. Do we have any other motions this afternoon? Okay.
17 Why don't y'all be back at 2:15 and we will take up
18 whatever -- is there any law I need to be looking at over
19 lunch?

20 MS. HALEY: No, Your Honor.

21 MR. KING: No. I don't think it's really
22 complicated or anything.

23 THE COURT: Okay. Thank you. See you at 2:15.
24 Thank you, Dr. Mulbry.

25 (Luncheon recess is taken.)

1

2 (State's Exhibit No. 1, MP3 Player, was marked for
3 identification.)

4 (State's Exhibit No. 2, Packaging for MP3 Player,
5 was marked for identification.)

6 (State's Exhibit No. 3, Utility Knife, marked for
7 identification.)

8 (State's Exhibit No. 4, Packaging for Utility
9 Knife, was marked for identification.)

10 (State's Exhibit No. 5, Photograph, was marked for
11 identification.)

12 (State's Exhibit No. 6, Photograph, was marked for
13 identification.)

14 (State's Exhibit No. 7, Photograph, was marked for
15 identification.)

16 THE COURT: Okay. I think we have a motion for some
17 kind of in limine matter.

18 MS. HALEY: Yes, Your Honor. Initially we were
19 going to move to exclude a piece of evidence that the defense
20 was planning on putting in; however, we decided not to make
21 that motion at this time. The only thing we wanted to flesh
22 out was -- and I already spoke to Mr. King about this, he
23 said he was not going to mention it in his opening. And we
24 just wanted to make sure if he does enter it, he lays the
25 proper foundation and gets the witness here to testify.

1 Other than that, we have no problem.

2 THE COURT: Do you all want me to look at the
3 document in question so I know what I am looking out for?

4 MR. KING: Yes, Your Honor. If I may approach, Your
5 Honor. To be honest with you, I don't need to put the letter
6 in either. My client wants it in. And I was trying to
7 explain to him that I don't believe it's much value to us.
8 And if we put up no other evidence, we are going to lose the
9 last closing argument for this letter, which gives us very
10 little. And I think last closing argument is a strategic
11 advantage that we would lose.

12 THE COURT: It is very strategic.

13 MR. KING: So I would not put in the letter. I know
14 he doesn't trust me, so I have that problem there. I want to
15 try his case and I want to do what he wants, but I think it
16 would be detrimental to put this up and lose the last closing
17 argument.

18 THE COURT: And this is it? What does this even
19 purport to show?

20 MR. KING: It refers to the crime as a shoplifting
21 case. And Mr. Rodgers wanted that in to show that Rite-Aid
22 considered this a shoplifting and not an armed robbery, that
23 this was not an armed robbery and that's verified by them
24 referring to it as a shoplifting.

25 THE COURT: Okay. Well, and I'm sure you explained

1 to him it doesn't really matter what Rite-Aid calls it; it's
2 what the General Assembly of the State of South Carolina has
3 set forth the elements as and what the State tries to prove.
4 Just depends on what the State tries to prove.

5 Sir, I'm not really allowed to give legal advice,
6 but I would listen strongly to Mr. King on this. I sure
7 wouldn't waive the last closing argument just for a document
8 that really doesn't show anything at all.

9 Okay. Anything else we need to take up?

10 MS. HALEY: Nothing from the State, Your Honor.

11 THE COURT: Anything from the defense?

12 MR. KING: No, Your Honor. If maybe if I had like a
13 five-minute time to talk to him about that.

14 THE COURT: Sure. Go ahead and take 15 or so. The
15 jury is not coming back until 2:45. They will let me know as
16 soon as everybody is here and we can get started. And if
17 there's anything you want me to talk to your client about,
18 let me know that as well.

19 MR. KING: Ms. Mason, she's coming from Summerville,
20 so might take her an hour to be here.

21 THE COURT: That is fine. But, yeah, if y'all want
22 to go talk, that's fine. We will be at ease and I'm going to
23 sign some documents up here if anybody needs anything.

24 MS. HALEY: Thank you.

25 (A recess transpired.)

1 THE COURT: Anything to take up before we bring in
2 the defendant? All right, sir. I am told the jurors are
3 back, so we are ready to get started. Anything from the
4 State or the defense before we do that?

5 MS. HALEY: Nothing from the state, Your Honor.

6 MR. KING: Nothing from the defense.

7 THE COURT: Let's bring the jury. Thank you, sir.

8 (Whereupon, the jury returns to open court at 2:48
9 p.m.)

10 THE COURT: All right. Thank you, ladies and
11 gentlemen. I hope you had a nice break at lunchtime. If you
12 could swear our jury.

13 THE CLERK: Have we elected a foreperson?

14 THE COURT: We have not. I think that when we take
15 our break this afternoon or first thing in the morning, if
16 y'all could elect a foreperson, once you start to get to know
17 each other, and then he will sit in this chair to your far
18 left in the front row. Okay.

19 (Whereupon, the jury is sworn.)

20 THE COURT: Thank you, ladies and gentlemen. As we
21 discussed this morning, the case we are about to try is the
22 case of State of South Carolina vs. Alton Rodgers, the
23 defendant. The defendant is charged by an indictment filed
24 in this court with the crime of armed robbery. And I will
25 tell you about the elements of armed robbery later when I

1 give the charge on the law after the closing arguments.

2 As we discussed during the jury selection process,
3 the indictment is simply the charge by which the case is
4 brought into court. And it is not in any sense evidence of
5 the allegations that the indictment contains. The defendant
6 has pled not guilty to the charge in this indictment and,
7 therefore, the State bears the burden of proving each and
8 every element of the crime in the indictment beyond a
9 reasonable doubt.

10 It will be your duty, ladies and gentlemen, when the
11 case is given to you for deliberation to determine whether
12 the State has met its burden. For that reason, the State is
13 the first party that you will hear from in the case. It's a
14 tradition in our court that the party bearing the burden of
15 proof sits closer to the fact-finder which collectively is
16 you, the jury.

17 The defendant has no responsibility here whatsoever.
18 He has nothing to prove, nothing at all. He doesn't have to
19 explain anything because the State bears the burden and that
20 burden remains with the State throughout the process. Once
21 we reach the end of the process, you will take the law as
22 given to you by the Court and apply it to the facts and the
23 inferences from those facts that you, the jury, will draw.

24 The standard beyond a reasonable doubt, I've
25 mentioned it a couple of times, is the standard that the

1 State must meet in order to meet its burden. And we will
2 talk about that more at the charge on the law part of the
3 case, but I can tell you now that a reasonable doubt is a
4 doubt that would make an honest, conscientious, sincere juror
5 searching for the truth in the case hesitate to act or take
6 some action. It does not mean beyond all doubt, but beyond
7 any reasonable doubt. And that's the standard that you will
8 apply, and that's what you will be doing when you analyze the
9 evidence that you hear in the testimony and receive by way of
10 any exhibits that come in.

11 Once you are analyzing the evidence, you are going
12 to ask yourselves, am I convinced, firmly convinced as to
13 this specific element that the State has established that
14 element beyond a reasonable doubt? As you are analyzing the
15 elements in the indictment and of the charge, if your answer
16 is yes, then you will move on to the next element that the
17 State is required to prove and consider the same analysis.

18 If the State meets its burden of proof as to each
19 and every element of the offense charged, then your verdict
20 will be guilty because the State will then have met its
21 burden of proving guilty beyond a reasonable doubt. But if
22 your answer is no as to any one of those elements, and that's
23 collectively and unanimously, because in South Carolina, we
24 require unanimous verdicts, if you find no as to any of those
25 elements, then you will have found that the State has failed

1 to meet its burden of proof, and you will have to find the
2 defendant not guilty or innocent.

3 No one in South Carolina is ever required to prove
4 himself innocent; as I said, that burden remains with the
5 State.

6 Ladies and gentlemen, you have a very important
7 function, we will call y'all the fact finder or the judges of
8 the facts because that's what you are. You are the sole
9 judges of facts. I'm not allowed to comment on the facts or
10 indicate one way or another about what I might feel as to the
11 facts. And, quite frankly, I haven't heard the facts yet.
12 I'm going to hear them just as you do. I know a little bit
13 from what we've done pretrial to get ready.

14 If at any time I make any comment regarding the
15 facts, then you must disregard it because that would be
16 improper on my part. On the other hand, the same law that
17 makes you the judge of the fact makes the Court, and today
18 that's me, the judge of the law. What that means is the law
19 that the Court gives to you in the charge is the only law
20 that you may consider and apply. You may not apply what you
21 think the law should be. And that's why we ask that question
22 in voir dire about whether you will be able to apply the law
23 as the Court gives it to you. Your job, as I said, is to
24 take the law that is given and apply it to the facts that you
25 hear and that you find as the fact finder, and you reach your

1 just and true verdict that way.

2 I mentioned this briefly before, but I will tell
3 you, until you actually begin to deliberate, and that's at
4 the very end of the case after the closing arguments and the
5 charge on the law, you are not allowed to discuss the case at
6 all with anyone, even each other. And there's a real good
7 reason for that. I think we all know that you might hear one
8 witness and think, well, that sounds pretty good, and start
9 making up your mind. The story may completely change by the
10 next witness or three witnesses later. It would be unfair
11 for you to start drawing your inferences from the facts and
12 making your collective determination before you have heard
13 all of the evidence. So I will probably tell y'all each and
14 every time we take a break, don't start discussing the case
15 until the bailiff knocks on the door and brings you the
16 evidence, because that will be your clue that you are ready
17 to deliberate.

18 As far as discussing the case with anyone else, you
19 are not allowed to go home and discuss it over the dinner
20 table tonight. You can't communicate information about the
21 case with anyone, and that means face-to-face, by e-mail, by
22 blog, by text, by Twitter, any number of the means that we
23 have of communication now. Likewise, you are not allowed to
24 do any outside research once you actually know enough about
25 the case to do any research.

1 The reason for that is, you reach your decision as
2 the fact finder based solely on the evidence that's presented
3 to you and admitted into evidence here in this courtroom.
4 That means from the witness chair or by way of any exhibits
5 or stipulations that might come in.

6 With respect to the witness testimony, you've got
7 the tools that you need to evaluate that, your life
8 experience and your good common sense. Because part of your
9 burden as the fact finder is to determine the credibility of
10 the witnesses that you hear and observe. Y'all know how to
11 do that. You know how to apply credibility analysis, but we
12 will talk a little bit about that in the charge on the law as
13 well.

14 We are going to hand out the notebooks and either
15 the pencils or pens in just a minute. I think it is helpful
16 to take notes. Some judges let you take notes; some don't.
17 But what the research is finding and has for several years,
18 people learn and absorb information in different ways.
19 People see me writing a lot and typing down, because that's
20 how I retain information. Some people are visual and they
21 have to actually write it. So please use the notebooks as
22 your tool and they will be your guide. We will destroy them
23 once the case is over. We don't save them or go back to see
24 what anybody tried to put.

25 One caution, please don't let your note-taking

1 Just a few other things. As part of being the judge
2 on the law, I have to rule on objections. These are good
3 attorneys. Y'all are fortunate you are going to see some
4 really good lawyers during this trial. They will object as
5 necessary. We try to handle as many issues of law at
6 lunchtime, in the afternoon after y'all leave and in the
7 morning. But sometimes things do come come up and the
8 attorneys will need to object and I will have to handle them
9 then. I don't keep count of who objects the most or who gets
10 on my nerves the most during the trial. I call them as I see
11 them one by one. And I would ask you not to hold that
12 against them either. They are not doing their job if they
13 don't object when they think there's been an issue with the
14 rules of evidence or some other matter much law.

15 We will try to rule on as many things as we can just
16 straight from the bench or right up here. Every now and
17 then, though, it becomes a more complicated matter of law,
18 and I will have to send you to your jury room while we make
19 our record and put that on the record. I will try to avoid
20 that as much as possible. But a trial is a lot of times like
21 live theater; I don't really know what I'm going to see until
22 we actually see it and generally we do have to send y'all out
23 every now and then.

24 We try to break about hour hour and a half. Usually
25 take a mid-morning break and mid-afternoon break. If anybody

1 needs a break at a time other than when we are breaking,
2 please raise your hand. We will very quickly, and this goes
3 for the lawyers and parties as well, we will take a break.

4 Couple of reasons why that's important. One, I
5 don't want you to be any more than miserable than you already
6 are by being here involuntarily, but more importantly even
7 than that, you can't give these parties your full attention
8 if your mind is thinking you need to step out for a moment
9 and be elsewhere. So we will try to keep things going and
10 take a break at a logical time. Just raise your hand if you
11 need one before then.

12 If you run into any of the attorneys out in the hall
13 either in the morning or in the afternoon, they are not being
14 rude if they kind of scurry the other way. They are not
15 allowed to talk to y'all. They might say hello and quickly
16 turn. That used to be hard for me as a lawyer. I always
17 felt like I was being rude to people, but I was more scared
18 of the judge than I was of being rude. So I promise you, it
19 is nothing personal. They know they are not supposed to talk
20 to you and I think that warning helps.

21 We are going to call on the State. Either
22 Ms. Baldwin or Haley will give the opening statement in just
23 a moment. The opening statement is not meant to be argument.
24 It is a road map. It is not evidence. It's just an
25 impression of what the attorney for the State thinks the

1 evidence will show and what she might like for you to listen
2 out for.

3 The same goes for the defense. The defense is not
4 required to even make an opening statement. They don't have
5 to put up anything. I have a feeling you will hear from
6 either Mr. King or Mr. Cooper on opening. Again, that
7 opening is not evidence, but it's merely an outline of what
8 he thinks the evidence will show and the particular points he
9 would like you to listen for.

10 Are there any objections to these opening comments
11 as I have made them?

12 MS. HALEY: No objections, Your Honor. But may we
13 approach?

14 THE COURT: Sure. Come on up.

15 (Whereupon, a bench conference occurs outside the
16 hearing of the jury):

17 MS. HALEY: Apparently, one of the jurors knows
18 Spencer Compton very well and that didn't come out. We don't
19 think it's a big deal.

20 THE COURT: Do we need to inquire?

21 MR. KING: One of the sitting jurors?

22 MS. HALEY: Yes, I think it is 217 in the back. She
23 probably didn't know. She just happened to be in the
24 courtroom. I don't know. We just found out.

25 THE COURT: Okay. I can inquire about that.

1 (Whereupon, bench conference concludes.)

2 THE COURT: All right. Ladies and gentlemen, we
3 have a quick matter that we need to take up before we even
4 get to the opening statements. If I could get Juror 217 to
5 stay with me, and I will send everybody else to the jury
6 room. Please do not discuss the case yet. You do not know
7 enough to discuss it, but I will tell y'all that pretty much
8 every time you go. So we will get you back as soon as we
9 can.

10 (Whereupon, all jurors but Juror 217 leave open
11 court at 3:01 p.m.)

12 THE COURT: All right. Tell me what you need to
13 tell me again on the record.

14 MS. HALEY: Your Honor, it just came to our
15 attention we believe that Juror Number 217 might be a family
16 friend of Spencer Compton. And it just didn't come out
17 during the voir dire and we just wanted to make the Court
18 aware.

19 THE COURT: How do we know that? Was Spencer in
20 here?

21 MS. HALEY: She was in here, yes.

22 THE COURT: Okay. And, ma'am, you may not have even
23 known that Spencer works for the Solicitor's Office.

24 JUROR 217: I don't.

25 THE COURT: How do you know Ms. Compton?

1 JUROR 217: I will be at her mom's house tonight.
2 I've known Spencer since she was about 12.

3 THE COURT: So you did or didn't know she worked for
4 the Solicitor's Office?

5 JUROR 217: I did not.

6 THE COURT: And that makes me a little bit
7 uncomfortable. I think we should let Juror 217 go and seek
8 the alternate. Any objection to that?

9 MS. HALEY: No objection from the State, Your Honor.

10 THE COURT: All right.

11 MR. KING: No objection.

12 THE COURT: Any other suggestion of how y'all would
13 like to handle that? All right. Well, I'm glad she poked
14 her head in. If you are going to be at Melinda's house
15 tonight, I think it is a better idea that you not sit as a
16 juror on the trial of this case. And that's why we asked all
17 those questions at the beginning of whether you know people
18 or not. So I'm going to let you go for today, but if you
19 will call back after six o'clock tonight, I will very much
20 appreciate it. And we will see about the rest of the week.
21 Okay? Thank you.

22 JUROR 217: Thank you.

23 (Whereupon, Juror 217 is excused.)

24 THE COURT: All right. You know, that's something
25 my mother would do. She knows Spencer works for the

1 Solicitor's Office and she is going to Melinda's house for
2 dinner tonight.

3 All right. Are you ready for the rest of the jury?

4 MS. HALEY: Yes, Your Honor.

5 MR. KING: Yes, Your Honor.

6 THE COURT: Okay.

7 (Whereupon, the jury returns to open court at 3:05
8 p.m.)

9 THE COURT: All right. Ladies and gentlemen, thank
10 you for your patience. Our alternate juror is now a regular
11 juror on the trial of this case. Nothing nefarious going to.
12 Juror Number 217, I guess, did not realize that the child
13 she's known since she was 12 years old works in the
14 Solicitor's Office and she's having dinner at her mama's
15 house tonight. So, fortunately, the State brought that to
16 the Court's attention. We just thought it was best and less
17 confusing for everybody to go ahead and put our alternate in.

18 Anything else we need to put on the record before we
19 get started?

20 MS. HALEY: Nothing from the State, Your Honor.

21 MR. KING: Nothing, Your Honor.

22 THE COURT: Either Ms. Haley or Ms. Baldwin will
23 give the opening statement.

24 MS. HALEY: Thank you, Your Honor. May it please
25 the Court.

1 Good afternoon, ladies and gentlemen. First I would
2 like to thank you for your patience. I know it's already
3 been a long day for y'all. Hopefully this will be a very
4 quick trial. And even though it is a quick trial, I would
5 like for y'all to know it's a serious trial. The defendant
6 seated in-between these two attorneys at that table is
7 charged with armed robbery.

8 On November 11th, 2010, around lunchtime, the
9 defendant walked into the Rite-Aid in West Ashley on Ashley
10 River Road and walked straight over to the electronics
11 section. Seemed like a normal customer. No one thought
12 anything of it. Then he went around the back of the aisle,
13 back by the coolers, into the household goods aisle. He
14 started making a lot of noise at that point. The store
15 manager, Benny Taghivan, said that he heard light bulbs
16 falling on the floor. So, naturally, he was talking to his
17 brother at the front of the store who was getting ready to
18 fly out to California, so he had a straight shot of the
19 defendant in that aisle. He decided to see what was going
20 on. He wanted to know why light bulbs were falling all over
21 the place.

22 So when he confronted the defendant about what he
23 was doing, the defendant got extremely jumpy. And he
24 realized he had a utility knife in his hand, and he swiped it
25 at him, and said, get away from me. And he said, hey, man,

1 you just need to come into the office and talk to me, give me
2 back whatever you took, it is not a big deal. And he did it
3 again, swiped at him, said, get away from me, I didn't do
4 anything, you are crazy.

5 At that time, while all this was happening,
6 Mr. Taghivand noticed that there was an MP3 player that the
7 defendant slipped in his pocket. He also saw the open
8 packaging for the MP3 player and the utility knife right
9 there on the top shelf, and light bulbs all around the
10 defendant.

11 During this altercation, the defendant decided to
12 run away. Natural instinct was to run. However, luckily for
13 everyone involved, he ran around the back of that aisle, back
14 the way that he came in. So the defendant -- the victim's
15 brother was able to stop him at the front door. He got in
16 his way a little bit. And at that time, Mr. Taghivand being
17 brave and wanting to protect the store that he had been the
18 manager of for several years, tackled the defendant to the
19 ground.

20 And they waited for law enforcement to arrive at
21 that point. Luckily, Mr. Taghivand wasn't injured. I think
22 everyone knows that a razor blade and utility knife is a very
23 sharp object. It's considered a deadly weapon. And in this
24 case, you will hear testimony from Mr. Taghivand. He will
25 tell you everything that happened, the walking through the

1 store that he was the manager of, and tell you exactly how
2 things went down that day and how he felt during that
3 incident.

4 You will also hear testimony from the two officers
5 who were there that day, Officer Wohlleb, who is now with the
6 North Charleston Police Department, will tell you that he was
7 the first to arrive and saw the two parties out on the
8 sidewalk where Mr. Taghivand was holding down the defendant
9 until police arrived.

10 You will also hear testimony from Sergeant Daquigan
11 with the Charleston Police Department. And he will tell you
12 exactly the same thing that everyone else told you. He will
13 say that he heard the story the same way the victim is going
14 to tell it to y'all, and that he took a statement from the
15 victim that day.

16 I want y'all to listen carefully during all of this
17 testimony. I have no doubt that you will, and will use your
18 common sense throughout that entire time. But I want you to
19 listen because the elements of armed robbery, we have to
20 prove that beyond a reasonable doubt. And those elements are
21 pretty simple. There just has to be a taking of some sort of
22 property of another with the intent to deprive that person of
23 the possession. Here it would have been Mr. Taghivand of the
24 possession of that MP3 player. And that he did so by use of
25 force, threats or intimidation while armed with a deadly

1 weapon.

2 So please listen carefully to the testimony of these
3 three individuals. And I have no doubt that at the end, you
4 will come back and use your common sense and find the
5 defendant guilty beyond a reasonable doubt of armed robbery.
6 Thank you.

7 THE COURT: Thank you.

8 Mr. King.

9 MR. KING: Thank you. Imagine that someone was
10 trying to sell me a car, and that's a pretty serious thing,
11 costs a lot of money to buy a car, it is going to be a
12 serious decision for me. So the first thing I want to do is
13 go and see the car. Guy tells me, I'm sorry, the car is not
14 here, you can't see it. Okay. Well, how about a photograph
15 of the car? Guy says, I'm sorry, don't have any photographs
16 of the car; you are just going to have to take my word for
17 it. Don't worry, I will describe it all for you in detail.
18 You just go ahead with the photos, you have to take my word
19 on that. I'm not going to buy that car seeing a photograph
20 of it.

21 Now, buying a car is a serious matter. But trial
22 for armed robbery is more serious than that. And the State
23 has to convince you beyond a reasonable doubt that this
24 serious crime occurred, armed robbery, it took place inside a
25 Rite-Aid where they have surveillance cameras, but nobody

1 bothered to get the surveillance video so that you could see
2 it. So the most important piece of evidence in this case you
3 are not going to have.

4 They are asking you to take it seriously, but they
5 didn't take it seriously. They didn't get the surveillance
6 video. We don't know what happened inside that Rite-Aid.
7 And they can't prove an armed robbery occurred inside that
8 Rite-Aid. You are going to see the MP3 player and packaging
9 and the utility knife and packaging. None of that was tested
10 for fingerprints or anything like that. Didn't bother with
11 anything like that.

12 When the police arrived, all Rodgers -- he didn't
13 have a utility knife on him. You are going to see
14 photographs, but they are not what the store looked like back
15 then. They have photographs what the store looks like now,
16 and they are different. Not even photographs taken back
17 then.

18 And there are two witnesses who were there, the
19 brother of Benny Taghivand and the cashier. You are not
20 going to hear from them either, two important witnesses.
21 They are trying to sell you something today. Don't buy it.

22 Alton Rodgers and I are asking you to follow your
23 oath and find the defendant not guilty, because they are not
24 going to be able to prove this beyond a reasonable doubt.
25 Thank you.

1 THE COURT: Okay. Call your first witness please.

2 MS. HALEY: State calls Officer Charlie Wohlleb.

3 CHARLES WOHLLEB,

4 having been duly sworn, testifies as follows:

5 THE CLERK: Sir, if you would not mind stating your
6 first and last name, and spelling your last for the record?

7 THE WITNESS: Name is Charles Wohlleb,
8 W-o-h-l-l-e-b, North Charleston Police Department.

9 DIRECT EXAMINATION

10 BY MS. HALEY:

11 Q. Good afternoon, Officer Wohlleb.

12 A. Good evening, ma'am.

13 Q. Where are you employed?

14 A. North Charleston Police Department.

15 Q. How long have you been employed there?

16 A. A year and a half.

17 Q. What's your current position at NCPD?

18 A. I'm a Zone 6 patrol officer.

19 Q. What does that position entail?

20 A. I have everything between Durant, up to Rivers, up
21 to North Rhett, and Ashley Phosphate, handle all calls for
22 service that might happen within my area.

23 Q. What kind of calls would you respond to?

24 A. Anything from domestic violence to cat up in a tree,
25 armed robberies, murders, whatever happens.

1 Q. Will you please describe your education and
2 training, including previous law enforcement experience to
3 the jury.

4 A. Yes, ma'am. I have a Bachelor of Science in
5 business administration from the Citadel, certified to the
6 South Carolina Criminal Justice Academy, and I served three
7 years with the Charleston City Police Department before I
8 left and joined North Charleston.

9 Q. You just mentioned that you were employed at CPD;
10 where were you -- how were you employed and what capacity at
11 CPD?

12 A. Team 4, which is West Ashley, patrol officer.

13 Q. When were you employed there?

14 A. Between December of 2009 until January -- I'm sorry,
15 July of 2012.

16 Q. Will you please describe what your duties were on
17 zone -- Team 4 when you were with CPD?

18 A. Same thing as my duties are now, answer calls for
19 services within West Ashley, whatever might happen.

20 Q. What types of calls might you go out to?

21 A. Murders, armed robberies, domestic violences, cat
22 stuck up in the tree, traffic collisions, pretty much
23 anything.

24 Q. Did you have occasion to become involved in an
25 incident involving the defendant on November 11th, 2010?

1 A. I did, ma'am.

2 Q. And please describe that to us.

3 A. All right, ma'am. On the date and time in question,
4 I received a call for service at the Rite-Aid which is
5 located on Ashley River Road in reference to shoplifting in
6 progress. When I got on scene, Mr. Taghivand had the
7 defendant on the ground right outside the doorway, pinned
8 down to the ground when I got there. And I detained him.
9 Within arm's reach of the suspect was a utility knife. Upon
10 further investigation, it was determined that the utility
11 knife was used as a get-away for the defendant when
12 Mr. Taghivand confronted him about the shoplifting. So at
13 that point he was detained and placed in the back of my car.

14 Q. I'm going to back you up a little bit.

15 A. Yes, ma'am.

16 Q. When did this occur approximately?

17 A. Probably approximately 12:46 in the afternoon on
18 November 11th.

19 Q. And where is the Rite-Aid located?

20 A. Ashley River Road.

21 Q. And do you know what county that's located in?

22 A. Charleston County.

23 Q. And when you got there, where exactly were the
24 defendant and the victim?

25 A. They were at -- right outside the doorway of the

1 main entrance of the business.

2 Q. And where were they if you are looking at the front
3 entrance; can you describe?

4 A. If I'm looking at the entrance, it's right to the
5 left.

6 Q. And both -- how were they situated at the time? Can
7 you describe that a little bit?

8 A. The defendant was -- he had his shirt off. He was
9 sweaty. He was kind of sitting down, and Mr. Taghivand was
10 over top of him holding him down, both arms -- both hands on
11 each arm pinning him down in-between the wall and the ground.

12 Q. What was the first thing that you did after you --
13 once you got there?

14 A. Right when I got on the scene, the defendant was
15 cuffed. I knew who Mr. Taghivand was just from prior
16 instances happening at the Rite-Aid, shoplifters, calls for
17 service. So, he said, this is the guy, put him in cuffs.
18 And I started my investigation.

19 Q. And did you advise the defendant of his Miranda
20 rights at the time?

21 A. Not at the time, no; I didn't speak to him.

22 Q. Did he say anything to you?

23 A. He did not say anything to me.

24 Q. After you put him in the car, what happened after
25 that?

1 A. I went and spoke to Mr. Taghivand, asked him what
2 happened. Then I also called out our detectives and my
3 supervisor.

4 Q. After you did that, what did you do in the Rite-Aid?

5 A. Asked him what had actually occurred, what he saw,
6 asked him to walk me through it. He told me that --

7 MR. KING: Objection, Your Honor, hearsay.

8 THE COURT: I'm not sure what he's going to say, so
9 do you all want to come up?

10 (Whereupon, a bench conference takes place outside
11 of the jury's hearing.)

12 THE COURT: There's an exemption. He's asking him,
13 I guess, what the victim was going to tell him.

14 MS. HALEY: Really what he was getting to was he
15 collected evidence. That's all I'm trying to get from him.

16 THE COURT: Sustained as to the objection. Rephrase
17 the question.

18 (Bench conference ends.)

19 BY MS. HALEY:

20 Q. Once you got there, did you collect anything at the
21 scene?

22 A. I did. A search subsequent to the arrest of the
23 offender, I mean, the defendant, I located within his pocket
24 an MP3 player, and inside was -- also collected a utility
25 knife, like I said, which was in arm's reach when I detained

1 the defendant. And when we went down the aisle to where
2 Mr. Taghivand had told me he first saw -- first approached
3 the defendant, he -- I located packaging for the utility
4 knife and the MP3 player.

5 MS. HALEY: Your Honor, may I approach?

6 THE COURT: You may.

7 Q. I'm going to show you what's been marked as State's
8 1 for identification purposes. Do you recognize this item?

9 A. I do.

10 Q. And how do you recognize that?

11 A. This is the MP3 player I pulled out of the
12 defendant's pocket.

13 Q. And how do you know that that's the MP3 player you
14 pulled out?

15 A. Because I initialed the package as I put it into
16 evidence.

17 Q. Is the item in substantially the same condition as
18 it was when you collected it on November 11th, 2010?

19 A. Yes, ma'am.

20 MS. HALEY: Your Honor, at this time State would
21 move to offer State's 1 into evidence.

22 THE COURT: Anything from the defense?

23 MR. KING: No, no objection.

24 THE COURT: State's 1 is admitted without objection.

25 (State's Exhibit 1 is moved into evidence.)

1 BY MS. HALEY:

2 Q. What do you do when you admit items into evidence?

3 A. We have to go through a process of entering it into
4 the computer, sealing it in a package, double-sealed, and
5 initialing all seals on all four corners of the package, then
6 submit it within a locked container. And, again, that's
7 entered into a computer system as well, where the only people
8 who have access to that container after it's been locked and
9 submitted by officers are the evidence clerks.

10 Q. At this time, I'm going to show you what's been
11 marked as State's Exhibit 2 for identification purposes. Do
12 you recognize this item?

13 A. I do, ma'am.

14 Q. How do you recognize that?

15 A. This was the packaging for the MP3 player, again,
16 sealed by me, my initials.

17 Q. Is that substantially the same condition it was on
18 November 11th, 2010?

19 A. It is, ma'am.

20 MS. HALEY: Your Honor, at this time, State moves
21 State's Exhibit 2 into evidence.

22 MR. KING: Without objection.

23 THE COURT: Admitted without objection.

24 (State's Exhibit 2 is moved into evidence.)

25 BY MS. HALEY:

1 Q. Just got a couple more. At this time I will show
2 you what's been marked as State's Exhibit 3 for
3 identification purposes. Do you recognize that item?

4 A. I do, ma'am.

5 Q. And what is that item?

6 A. This was the box cutter that was allegedly used by
7 the defendant.

8 Q. And where did you recover that from?

9 A. Within arm's reach of the defendant as he was
10 detained.

11 Q. And how do you recognize that item?

12 A. Because this is what I -- it was put in evidence by
13 me and initialed.

14 Q. And is that item in substantially the same condition
15 as it was on November 11th, 2010?

16 A. It is.

17 MS. HALEY: Your Honor, at this time State moves to
18 put State's Exhibit 3 into evidence.

19 MR. KING: No objection.

20 THE COURT: Admitted without objection.

21 (State's Exhibit 3 is moved into evidence.)

22 BY MS. HALEY:

23 Q. And finally, at this time, I will present to you
24 what's been marked as State's Exhibit 4 for identification
25 purposes. Do you recognize that item?

1 A. I do, ma'am.

2 Q. And what is that item?

3 A. This was the packaging for the utility knife.

4 Q. And once again, how do you recognize that item?

5 A. Because it was packaged and sealed and initialed by
6 me.

7 Q. And is that item in substantially the same condition
8 as it was on November 13th -- excuse me, November 11th, 2010?

9 A. Yes, ma'am.

10 MS. HALEY: At this time I would move to enter
11 State's Exhibit 4 into evidence.

12 MR. KING: No objection.

13 THE COURT: State's 4 is admitted without objection.

14 (State's Exhibit 4 is moved into evidence.)

15 BY MS. HALEY:

16 Q. And finally, as far as State's Exhibit 2 and State's
17 Exhibit 4, where did you recover these items from?

18 A. They were located on the back shelf in the store.

19 Q. Do you remember which aisle that was?

20 A. Aisle number 16.

21 Q. Court's indulgence please.

22 THE COURT: Certainly.

23 BY MS. HALEY:

24 Q. Just a few more questions. Do you happen to
25 remember anything that was around State's Exhibit 2 and 4,

1 the packages, on that aisle?

2 A. There was a box of light bulbs that the defendant
3 had knocked over.

4 Q. Do you happen to remember the other aisles around
5 there? If you don't, that's okay.

6 A. I don't remember what was in the aisles or what
7 items were located in each aisle.

8 MS. HALEY: Court's indulgence please. Please
9 answer any questions Mr. King may have.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION

13 BY MR. KING:

14 Q. Officer, you responded to Rite-Aid, you said, back
15 on November 11th, 2010, right?

16 A. Yes, sir.

17 Q. To a shoplifting call?

18 A. Yes, sir.

19 Q. When you got there, Alton Rodgers was being held
20 down; is that right?

21 A. Yes, sir.

22 Q. You said something about the utility knife. Where
23 was the utility knife?

24 A. It was within arm's reach of him. I don't remember
25 exactly what side of him it was on.

1 Q. You are saying it was on the ground outside?

2 A. It was on the ground outside where the defendant was
3 being detained.

4 Q. Do you remember testifying at a preliminary hearing
5 at some point, it would have been a few months after November
6 11th, 2010?

7 A. Yes, sir.

8 Q. You don't recollect testifying at that hearing that
9 the utility knife was inside on the counter?

10 A. I do not remember that, sir.

11 Q. So you arrested Mr. Rodgers, right?

12 A. Yes, sir.

13 Q. And you were aware that Rite-Aid had a surveillance
14 video, right?

15 A. Yes, sir.

16 Q. You didn't get a copy of that video?

17 A. I did not get a copy at that time, no, sir.

18 Q. You didn't watch the video?

19 A. I do not recall.

20 Q. You don't recall seeing it at all?

21 A. I do not recall, sir; it was three years ago.

22 Q. Part of your job as a police officer is to collect
23 evidence, right?

24 A. Yes, sir.

25 Q. More evidence you have against someone the better,

1 right?

2 A. Yes, sir.

3 Q. So you would want to collect all the evidence that
4 was available?

5 A. Yes, sir.

6 Q. And you know that it's not just you getting the
7 evidence, the evidence has to be turned over to the
8 prosecutor?

9 A. Yes, sir.

10 Q. And eventually turned over to the defense as well?

11 A. Yes, sir.

12 Q. But you didn't get the surveillance video in this
13 case?

14 A. No, sir. The only items placed into evidence by me
15 were the MP3 player, utility knife, and the packaging for
16 such.

17 Q. And you didn't take any photographs or anything?

18 A. No, sir; crime scene would have done that.

19 Q. Did crime scene respond?

20 A. No, sir.

21 Q. Armed robbery, you consider that a serious crime?

22 A. I do, sir.

23 Q. But crime scene wasn't called to do any work?

24 A. No, sir, because all that was -- all I was able to
25 obtain is what crime scene would have obtained. And officers

1 were called on scene to follow-up with the investigation.

2 Q. Except the video, all the evidence except the video?

3 A. All the evidence except the video, sir.

4 Q. And you didn't submit any of those packagings, the
5 knife, the MP3 player, or the two packagings for any sort of
6 forensic testing, fingerprints or anything, did you?

7 A. No, sir.

8 Q. Did you talk to Benny Taghivand's brother, a witness
9 there?

10 A. No, sir, I do not recall.

11 Q. Did you talk to the cashier who was their witness?

12 A. No, sir, I talked to Mr. Taghivand.

13 Q. There were two other witnesses there you didn't talk
14 to?

15 A. No, sir, that would have been followed up by an
16 investigator.

17 MR. KING: May we approach briefly, Your Honor?

18 THE COURT: You may.

19 (Whereupon, a bench conference takes place outside
20 of the hearing of the jury.)

21 MR. KING: I'm sorry. I have a recording at the
22 preliminary hearing saying the knife was inside at the
23 counter and might take me a minute to set that up. I would
24 like to be able to play it. And I may just take a minute and
25 may be difficult to hear.

1 THE COURT: All right. Set it up.

2 (Bench conference ends.)

3 THE COURT: Ladies and gentlemen, we need to set up
4 a recording for a minute. Sometimes it takes us a pause to
5 deal with technology, but we are going to get it queued up on
6 the laptop.

7 BY MR. KING:

8 Q. Officer, I think I've got it. I asked you before,
9 you said that the utility knife was outside on the ground
10 within arm's reach of Mr. Rodgers?

11 A. That's what I testified to before.

12 Q. Now, then I asked, didn't you testify at the
13 preliminary hearing that it was inside on the counter, right,
14 if this is your testimony?

15 THE COURT: Are we trying to play the preliminary
16 hearing tape? And I guess we don't have a transcript?

17 MR. KING: No, we don't.

18 THE COURT: I know you don't.

19 (Off-the-record conference.)

20 (Video playing.)

21 BY MR. KING:

22 Q. Did you hear me ask there where was the razor?

23 A. I did, sir.

24 (Video Playing.)

25 Q. Could you hear your response?

1 A. I could not. Could you replay it.

2 (Video Playing.)

3 A. I did hear me say it was up on the counter.

4 Q. It was up on the counter?

5 A. That's what I just heard.

6 Q. Okay. So you agree back then you testified that the
7 utility knife was up on the counter?

8 A. I agree that's what was played. Again, I don't
9 recall testimony from three years ago.

10 Q. Is that your voice?

11 A. That is my voice.

12 Q. You agree that's what you --

13 A. That's what was recorded right there.

14 Q. And that says that the utility knife is on the
15 counter inside the store?

16 A. That's what that says.

17 MR. KING: Okay. Thank you, Your Honor. Sorry
18 about all of that.

19 THE COURT: It's okay.

20 MR. KING: And that's all the questions I have.

21 THE COURT: All right. Thank you. Redirect.

22 REDIRECT EXAMINATION

23 BY MS. HALEY:

24 Q. Just a few more questions, please.

25 A. Yes, ma'am.

- 1 Q. What was the date that this happened on again?
- 2 A. On November 11th, 2010.
- 3 Q. How many years ago was that?
- 4 A. Almost three.
- 5 Q. Would you say your memory is perfect?
- 6 A. No.
- 7 Q. What kind of a call did you respond to?
- 8 A. Originally it was dispatched as a shoplifting call.
- 9 Q. And what did you find out when you got there?
- 10 A. That it turned into an armed robbery when a knife
- 11 was used.
- 12 Q. And what kind of knife was used?
- 13 A. A utility knife.
- 14 Q. Did you recover that utility knife?
- 15 A. I did.
- 16 Q. Did you put it into evidence?
- 17 A. I did.
- 18 Q. Is that the same utility knife I showed you that was
- 19 marked as State's Exhibit 3 and it's in evidence?
- 20 A. Yes, ma'am.
- 21 Q. Did you ever watch a video at the Rite-Aid?
- 22 A. No, ma'am.
- 23 Q. To your knowledge, was there a video?
- 24 A. I know they do have video of it, but again, with the
- 25 way the City of Charleston worked, we take the initial

1 investigation and leave the further investigation up to the
2 detectives.

3 Q. Do you know if there was a video of this exact
4 incident?

5 A. I do not recall.

6 MS. HALEY: Court's indulgence.

7 THE COURT: Certainly.

8 BY MS. HALEY:

9 Q. Finally, to your knowledge was the identity of the
10 armed robbery suspect ever in question?

11 A. No.

12 MS. HALEY: No further questions. Thank you.

13 THE COURT: Okay. Anything further?

14 MR. KING: Just briefly Your Honor.

15 CROSS-EXAMINATION

16 BY MR. KING:

17 Q. It was a long time ago, right?

18 A. Yes, sir.

19 Q. But you usually remember the basic facts, right?

20 A. The basic facts.

21 Q. And you seemed pretty sure that the razor box cutter
22 was within arm's reach, right?

23 A. Again, that was three years ago.

24 Q. But that was wrong?

25 A. Is what I testified to earlier, to go off earlier

1 testimony.

2 Q. So what you said today was wrong about the razor
3 being on the ground?

4 A. Again, sir, it was three years ago.

5 MR. KING: Thank you, Your Honor.

6 THE COURT: Okay. All right. Officer, you may step
7 down. Any objection to this witness being excused?

8 MS. HALEY: No, Your Honor.

9 THE COURT: Thank you, sir.

10 Anybody need a quick break, or is everybody good?

11 Okay. Call your next witness, please.

12 MS. HALEY: State calls Sergeant Daquigan.

13 DONALD DAQUIGAN,

14 having been duly sworn, testifies as follows:

15 THE CLERK: If you would state your first and last
16 name, spelling your last for the record?

17 THE WITNESS: Sergeant Donald Daquigan,
18 D-a-q-u-i-g-a-n.

19 DIRECT EXAMINATION

20 BY MS. HALEY:

21 Q. Good afternoon, Sergeant Daquigan. Where are you
22 presently employed?

23 A. Charleston City Police Department.

24 Q. And how long have you been employed with CPD?

25 A. 39 and a half years.

1 Q. And what is your current position there?

2 A. I am a detective for the -- my, I guess for better
3 term, expertise would be the white collar crime unit.

4 Q. And what kind of duties does that entail?

5 A. Normally it involves just most -- anything that
6 deals with fraud, like breach of trust, forged checks,
7 counterfeit money and those kinds of things.

8 Q. What type of training, education, do you have,
9 including previous law enforcement experience?

10 A. I have 12 1/2 years in Team One area as a uniform
11 patrol officer. 12 of those years as a supervisor in that
12 area, and 6 years in the Team 4 area as a supervisor.

13 Q. Will you briefly describe to the jury what your
14 duties were as a supervisor?

15 A. Basically, it was to make sure that you have the
16 patrol units in a certain area patrolling an area, approving
17 the reports, making the decisions when a case would come up,
18 and anything else that would deal with a supervisor position.
19 Basically that's what we had to do.

20 Q. Were you employed in your present capacity as of
21 November 2010?

22 A. I was essentially detective at that point. 1992 I
23 went up to the detective's office.

24 Q. And did you have occasion to become involved in an
25 incident involving the defendant at Rite-Aid on November

1 11th, 2010?

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

3 Q. Please tell us how you became involved in that.

4 A. Originally, a call went out as a larceny in
5 progress. And by the time the units got there, I think at
6 some point they were also expressing there was a weapon
7 possibly involved in that larceny in progress. As a
8 detective, what we normally do, every five to six weeks we
9 have what they call weekend duty. And this happened to be my
10 weekend duty. And whenever a detective is needed, we are
11 called to the scene. And I was called to that scene in
12 reference to that incident.

13 When I got there, I was briefly told by the uniform
14 patrol officer what was going on. I then went into the
15 Rite-Aid, spoke to the manager, Benny -- and I'm not sure how
16 to pronounce his last name. Last name is spelled
17 T-A-G-H-I-V-A-N-D, in reference to the incident. Once I
18 started talking to him, he explained to me that --

19 MR. KING: Objection, hearsay.

20 THE COURT: Sustained.

21

22 BY MS. HALEY:

23 Q. Please don't go into what the victim said at the
24 time. Where was the defendant when you arrived on scene?

25 A. He was already placed in handcuffs in the back of a

1 police car.

2 Q. And did you take any statements from anyone?

3 A. I took a statement from the victim.

4 MS. HALEY: Court's indulgence.

5 BY MS. HALEY:

6 Q. Do you know if you got an oral statement from the
7 victim before you got a written statement from him?

8 A. Yes, ma'am. That's normally how we would do it, we
9 talk to the victim first, and then we would get him or her to
10 provide a written statement.

11 Q. Would you please describe that briefly, that
12 process.

13 A. Once a detective arrives on the scene, it's our duty
14 then to find out basically what happened from the start to
15 the end by talking to the victims and witnesses. Once we
16 were able to establish that the only real witness that we had
17 was the manager at the time, that's when I spoke to him. And
18 after talking to him, I was able then to get him to write a
19 written statement for me in reference to what happened.

20 MS. HALEY: Court's indulgence.

21 BY MS. HALEY:

22 Q. Based on your recollection of the incident, do you
23 know where the defendant was located when officers arrived?

24 A. I think that he was --

25 MR. KING: Objection. That calls for hearsay.

1 THE COURT: Hold on one second. The objection is
2 overruled. Rephrase your question though. I think she asked
3 him what he knew, what his understanding was.

4 BY MS. HALEY:

5 Q. Yes. What was your understanding of this scene when
6 it was secured?

7 A. When the officers first arrived, the suspect was
8 being held by the victim and the victim's brother.

9 Q. Do you know where that was?

10 A. I think it was somewhere before he -- the exit of
11 the store itself, somewhere else on the floor near the front.

12 MS. HALEY: No further questions. Please answer any
13 questions that Mr. King may have.

14 CROSS-EXAMINATION

15 BY MR. KING:

16 Q. Is it Sergeant Daquigan, Detective?

17 A. Either one will work, sir.

18 Q. Detective Daquigan, you were the detective in this
19 case, right? You are like the -- you are the lead detective.

20 A. Yes.

21 Q. If it's anybody's case, it's your case, I guess?

22 A. Well, I was the detective on scene and they asked me
23 for my advice, yes, sir.

24 Q. Well, usually there's a responding officer that
25 comes to the scene, right?

1 A. Yes.

2 Q. Kind of secures everything, and then especially on a
3 case like an armed robbery, detective would come in and do
4 the follow-up, right?

5 A. Yes, sir.

6 Q. That was you?

7 A. That was me.

8 Q. Because you are the new white collar guy, right?

9 A. Yes, sir.

10 Q. You are typically doing forgeries, things like
11 that?

12 A. Yes, sir.

13 Q. You don't usually investigate armed robberies?

14 A. 18 1/2 years I investigated armed robberies. That
15 was usually the first thing, a responding supervisor there.
16 It was our -- at the time it was our choice whether we called
17 out central or not. So we had to make a decision whether we
18 called central out or not when I was a supervisor. I think
19 some of that has changed now, where most major cases now you
20 call central out anyway. But 18 1/2 years I had to make that
21 decision.

22 Q. So you respond in this case and you talk to
23 Mr. Taghivand, right?

24 A. Yes.

25 Q. You get a statement from him?

1 A. Yes.

2 Q. There was also Mr. Taghivand's brother who was
3 there, right?

4 A. Yes, sir. But when I got there, he was already -- I
5 think he already left the scene.

6 Q. Okay. So you weren't able to even talk to him or
7 get a statement from him or anything?

8 A. Right.

9 Q. There was a cashier there, right?

10 A. I believe the cashier, but they never indicated
11 that, you know, other than the chaos of him running around
12 this store.

13 Q. Did you talk to the cashier?

14 A. I don't think I got a statement from her. I may
15 have asked her some questions, but I don't recall.

16 Q. Part of being a detective, right, is you respond to
17 the scene?

18 A. Right.

19 Q. You are going to try to talk to all the witnesses
20 there who know something, right?

21 A. You try to talk to all the witnesses there, yes.

22 Q. And the more the better, right? Anybody who has
23 some information, you are going to want to at least talk to,
24 right?

25 A. Yes.

1 Q. Because different people can see different things,
2 right?

3 A. Yes, sir. But when the victim was standing there
4 confronting the suspect, he was the main victim we needed --
5 or the main person we wanted to talk to.

6 Q. But you weren't there though, right?

7 A. When the incident took place?

8 Q. Right.

9 A. No, sir.

10 Q. So you don't know what happened?

11 A. I'm never there, normally, when an armed robbery
12 occurs.

13 Q. Right. And that's why we investigate and try to
14 find evidence, so we can find out what actually happened,
15 right?

16 A. Yes, sir.

17 Q. So you just assumed everything that Mr. Taghivand
18 told you was true?

19 A. I never assume, sir. I always dig for the evidence
20 that's there. There was an open package. There was a knife.
21 There was an empty package of that that had been taken out of
22 where the knife was at. And also you could tell where the
23 MP3 had been cut open. So I don't assume; you know, I look
24 for evidence.

25 Q. But didn't you get a chance to talk to

1 Mr. Taghivand's brother, who was a witness to at least some
2 things, right?

3 A. Yes, sir.

4 Q. And didn't talk to the cashier who was at least a
5 witness to some things as well? Right?

6 A. Right.

7 Q. And you didn't take any photographs?

8 A. I think crime scene was called. I'm not sure if
9 photographs were obtained, but they should have been called.

10 Q. You are not sure? You don't have reports or
11 anything?

12 A. Normally on a situation like this where there's
13 evidence, that's got to be collected. I don't know if the
14 officers collected it or crime scene came and collected.
15 Normally you would have crime scene come collect the
16 evidence.

17 Q. Are you familiar with any crime scene reports on
18 this case at all?

19 A. I don't recall, sir. Normally what happens on a
20 weekend duty call, that case goes to another detective at
21 some point for maybe a follow-up, either a team detective or
22 a central detective. And I don't know what happened after,
23 once we turned that case over.

24 Q. You don't have any documentation to show whether
25 crime scene responded, though, did you?

1 A. I don't have any, no, sir.

2 Q. Do you know what crime scene did, if they did
3 respond?

4 A. They would have taken, I would think, the container,
5 the open -- two open containers that were stolen, and also
6 took pictures of that where it was at.

7 Q. And we don't have any pictures?

8 A. That's what you say. I don't know.

9 Q. Well, it's your case, your case.

10 A. I don't know of any, you know, pictures. If you say
11 there's none, there may not be.

12 Q. Well, somebody's got to answer some of these
13 questions. You are the guy. It's your case. Are you sure
14 crime scene was really called, or are you just assuming? Do
15 you know for sure if crime scene was called? Put it that
16 way.

17 A. No, sir, I don't know for sure.

18 Q. Don't know for sure? Okay. And that's something
19 you ought to know if it's your case, right?

20 A. You keep saying my case. It's really my case until
21 I leave that scene. But, you know, I didn't -- you know, I
22 can't tell you I can remember crime scene was there or not.
23 They should have been called. But, you know, I can't tell
24 you that for certain.

25 Q. Do you know whose case it is --

1 A. Well --

2 Q. -- if not yours?

3 A. At the time, once the arrest was made, it's what
4 they call a team arrest. And my duties were to interview the
5 victim and get a statement.

6 Q. And you are not aware of any of this stuff, the
7 packaging, the razor knife, or the MP3 being tested for
8 fingerprints or anything, are you; not aware of any of
9 that?

10 A. No, sir.

11 Q. And this was a Rite-Aid, right? This was a store
12 where there's surveillance cameras, right?

13 A. I believe they do have surveillance cameras, yes.

14 Q. You didn't get a copy of the video, the surveillance
15 video?

16 A. I'm not sure whether videos were in that area or not
17 or just at the register. I can't remember whether we were
18 able to get video or why we weren't able to get video.

19 Q. You didn't even look at video?

20 A. I didn't see the video, no, sir.

21 MR. KING: That's all the questions I have, Your
22 Honor.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MS. HALEY:

1 Q. Briefly, Your Honor. Sergeant, was it your job to
2 take photographs that day?

3 A. No, ma'am.

4 Q. Was it your job to worry if crime scene came that
5 day?

6 A. No, ma'am.

7 Q. And do you know when fingerprints are usually taken,
8 when crime scene usually arrives, in what kind of cases?

9 A. Burglaries, auto thefts. There have been cases
10 where we print it for some checks, counterfeit money, that
11 kind of stuff.

12 Q. Would crime scene usually arrive when the defendant
13 is caught on scene?

14 A. If requested to come to the scene, they would come
15 to the scene, yes, ma'am.

16 Q. Would an officer typically request that crime scene
17 come if the defendant is detained on site?

18 A. I would say yeah, that they should, if there's
19 evidence there. And normally I would ask, you know, has
20 crime scene been notified yet, you know, especially in a
21 maybe an armed robbery.

22 MS. HALEY: Court's indulgence.

23 BY MS. HALEY:

24 Q. If the officer had already collected the evidence,
25 would he typically call crime scene out under these

1 circumstances when the defendant is already detained?

2 A. No. If the evidence is already collected and he's
3 already got it, then normally you could have them come in
4 later and take pictures of it.

5 MS. HALEY: Thank you. No further questions.

6 THE COURT: anything further?

7 MR. KING: Briefly.

8 RE-CROSS-EXAMINATION

9 BY MR. KING:

10 Q. Solicitor asked you some questions about taking
11 prints, and you listed some cases like burglary, you even
12 listed forgeries. Are you saying that in general, nobody
13 takes fingerprints in an armed robbery case?

14 A. No, sir.

15 Q. That's not what you are saying?

16 A. They do normally take prints in an armed robbery
17 case where there's like a counterfeit or -- and in that
18 instance or a door, when they are running out of the door
19 maybe they would get prints. But this guy was caught on
20 scene. So, you know, the prints, you know, we could get his
21 prints, when we got him to the police station now. But he
22 was caught on scene. It was not like we were looking for
23 somebody later on as far as an investigation goes.

24 Q. So case was closed as far as you were concerned
25 because he's there?

1 A. Well, it was closed to the point where he was
2 arrested, yes, sir.

3 MR. KING: No more questions, Your Honor.

4 THE COURT: Okay. Sir, you may step down. Any
5 objection to the witness being excused?

6 MS. HALEY: No, Your Honor.

7 THE COURT: You are excused. Thank you.

8 (Witness is excused.)

9 THE COURT: Ladies and gentlemen, I need to take
10 about a five-minute break. I'm going to ask you to return to
11 your jury room just for a brief break and we will try to get
12 one more witness up at least before we break for the day.
13 Okay? Please don't discuss the case yet.

14 (Whereupon, the jury leaves open court at 4:10 p.m.)

15 THE COURT: Wow. Have you all offered anything?
16 Has there been a plea offer that's been turned down or
17 anything offered?

18 MS. HALEY: Yes, Your Honor.

19 THE COURT: Okay. Did you try the tip jar on the
20 bicycle; was that you?

21 MS. HALEY: Yes, Your Honor.

22 THE COURT: Okay. I'm starting to see a pattern
23 here, not on your part at all, you've got to play the hand
24 you are dealt, but they are not impressed so far. So I just
25 need to take a quick break. Y'all take five and we will

1 regroup. One more, two more officers; how many?

2 MS. HALEY: No, Your Honor, we only plan on putting
3 up the victim at this point.

4 THE COURT: That's it of law enforcement?

5 MS. HALEY: Yes, Your Honor.

6 THE COURT: Okay.

7 MS. HALEY: And I don't believe we would have time
8 to finish with the victim today, would be my assumption.

9 THE COURT: Do you want to get started and go to
10 5:00 and finish the victim tomorrow or what is your --

11 MS. HALEY: I was hoping that we could just do
12 everything first thing in the morning.

13 THE COURT: Okay. Any objection from the defense on
14 that? I mean, I hate to let the jury go. Is that the last
15 witness; the victim is the last witness?

16 MS. HALEY: Yes, Your Honor.

17 MR. KING: I don't plan on any extensive
18 cross-examination, Judge. We are moving pretty quickly with
19 them.

20 THE COURT: What on earth would he talk about that
21 would take too long?

22 MS. HALEY: He can lay the foundation much better.
23 He knew that store very well. And he will go through things
24 vividly. I just think it would take longer than theirs did.

25 THE COURT: All right. We will get started and go

1 to about 5:00, 5:15 and then go from there. Is he here?

2 MS. HALEY: Yes.

3 THE COURT: Y'all take five and we will go from
4 there. I will start getting the jury charges mocked up.

5 Okay? All right. Y'all take a break.

6 (Whereupon, recess transpired.)

7 (Whereupon, Juror 277 writes a note to the Judge and
8 is called.)

9 THE COURT: All right, sir. You are Mr. Wall,
10 correct?

11 A JUROR: Yeah..

12 THE COURT: Who is your friend at the Solicitor's
13 Office?

14 A JUROR: Stephanie Linder.

15 THE COURT: How do you know Stephanie?

16 A JUROR: Just from being friends.

17 THE COURT: Did you know she worked at the
18 Solicitor's Office when I asked all the questions of the
19 panel this morning?

20 A JUROR: I thought it was only family members.

21 THE COURT: How well do you know her?

22 A JUROR: Pretty well.

23 THE COURT: Would anything about that knowledge in
24 any way interfere with your ability to be fair in this case?

25 A JUROR: No.

1 THE COURT: All right. Any further inquiry from the
2 State or the defense?

3 MS. HALEY: None from the State, Your Honor.

4 THE COURT: You can have a minute. That's fine. I
5 just have to inquire when you send me a note and we will mark
6 this as an exhibit. I think you are the third person. It's
7 really close personal friend or member of your family and
8 so --

9 A JUROR: I thought just immediate family.

10 THE COURT: That's okay. I will take that up and we
11 will go from there. Thank you. All right. Thank you, sir.
12 Let's mark this as Court's 1.

13 (Court's Exhibit 1, Note from Juror 277, was marked
14 for identification.)

15 So, we have one that didn't know that Ran worked at
16 the Solicitor's Office that the State pointed out
17 voluntarily, and then two that had remembered as things
18 transpired that they know people that work at the Solicitor's
19 Office. Anything from the defense?

20 MR. KING: No, Your Honor. I mean, I don't think my
21 case will get any better than it already is.

22 THE COURT: I don't think it would either. I
23 certainly wouldn't throw in the towel now. And he's very
24 honest -- yeah, there's a difference between somebody that
25 knows somebody and somebody that's going to eat at somebody's

1 house tonight that's known them since they were 12 years old.
2 And I found him to be honest. I found the last lady to be
3 not so much.

4 MR. KING: But I have no objection to going forward,
5 Your Honor.

6 THE COURT: Well, thank you. I appreciate it.

7 All right. If you would bring the jury, if y'all
8 are ready to go forward, and you can call your next witness.

9 (Whereupon, the jury returns to open court at 4:24
10 p.m.)

11 THE COURT: Thank you, ladies and gentlemen. I
12 appreciate your patience. We are ready to call our next
13 witness. So I will ask Ms. Haley or Ms. Baldwin to track
14 that witness down.

15 MS. HALEY: State calls Benny Taghivand.

16 BENNY TAGHIVAND,

17 having been duly sworn, testifies as follows:

18 THE CLERK: Sir, if you would please state your
19 first and last name, spelling your last for the record.

20 THE WITNESS: My name is Behrooz Taghivand. I go by
21 the name of Benny. My last names spells T-A-G-H-I-V-A-N-D.

22 DIRECT EXAMINATION

23 BY MS. HALEY:

24 Q. Good afternoon, Mr. Taghivand. Will you please
25 speak into the microphone just so we can hear you. Where do

1 you currently reside?

2 A. Mount Pleasant.

3 Q. And where are you presently employed?

4 A. At CVS in North Charleston.

5 Q. How long have you been employed there?

6 A. Two years.

7 Q. What is your current position?

8 A. Store manager.

9 Q. What does a store manager do?

10 A. My daily activities usually starts by counting the
11 money in the morning, making the deposit, going to the bank,
12 and looking at the CVS has manager planners, they usually
13 have some stuff that you have to do on a daily basis. I plan
14 that. I write the work for the employees. And usually
15 checking the vendors, if there is a delivery, truck comes in,
16 I help unload the truck and put up the products, make
17 displays, fill the shelves, you know, clean restrooms and
18 anything, vacuum the floors, anything that needs to be done I
19 will do, empty the trash, everything.

20 Q. Thank you. Will you please tell the jury a little
21 bit about your education and training.

22 A. I'm graduate of college. I started in 1976, went to
23 the Citadel. I graduated in business administration in 1982.
24 And I work for Eckerd's in March of 1983. I've been a store
25 manager ever since.

1 Q. And what are different positions you held with,
2 Eckerd or Rite-Aid?

3 A. I was the store manager for about 19 years, and then
4 I promoted to district manager. I was a district manager
5 from 2002 to 2004. Eckerd's sold to Rite-Aid and when they
6 did that, they reorganized the company. And I stepped down
7 as a store manager. I was a store manager at the West Ashley
8 store on Savage and 61 since November of 2004.

9 Q. So where were you employed in November of 2010?

10 A. At Rite-Aid at West Ashley intersection of 61 and
11 Savage Road.

12 Q. How long were you employed there?

13 A. Since November of 2004, approximately 7 years, 6, 7
14 years.

15 Q. Were you familiar with the area and the people in
16 that area?

17 A. Yes. When I was -- first when I was district
18 manager for Eckerd's, I was in charge of all the stores in
19 Charleston, which is about 18 of them. So I knew my way
20 around that area good. But I also lived in Charleston since
21 1976. So, yeah, I've very familiar with that area.

22 Q. And what was your position at Rite-Aid in 2010?

23 A. Store manager.

24 Q. And will you please describe just briefly what the
25 duties were at that Rite-Aid store at the time?

1 A. Pretty much the same thing I do know now. We were
2 open from 8:00 in the morning 'til ten o'clock, but the store
3 manager was required to come in an hour early. And I got to
4 the store about seven o'clock. I counted the money and made
5 the deposits. And opened up the store at eight o'clock. And
6 look in the manager's planners, the same thing, you know,
7 look what needs to be done for that day, I wrote work plans
8 for the employees that were coming in. Then I go to the
9 bank, and I come back. Once I come back, I start look around
10 to see if there's displays that need to be changed. I
11 usually check the restroom or the stock room to see if
12 anything needs to be filled or cleaned. I do that. That was
13 basically my daily activities.

14 Q. And did you have occasion to become involved in an
15 incident involving the defendant in November, on November
16 11th, 2010?

17 A. That's correct.

18 Q. Will you please describe what happened that day?
19 You can start at the beginning of your day.

20 A. Well, I remember it distinctly that day because my
21 brother, who is a few years older than me, he resided in
22 Charleston for a couple of years. And he was originally
23 lived in California. His family, kids, and he's separated
24 from his wife, they lived in California. So he came to
25 Charleston to stay with me for a couple of years to kind of

1 change the scenery. Then after a couple of years, he wasn't
2 very happy, so he was going to go back to California. I
3 think it was around lunchtime he came in, maybe around 12:30
4 he came in and tell me goodbye because he had a flight
5 leaving Charleston to Los Angeles that afternoon. And he
6 came in, and we were talking. And while we were talking,
7 right in front of the door, just standing right by the front
8 door having a conversation, I saw the defendant came in, just
9 like an ordinary customer. He had a construction clothes on
10 with a hard hat. He kind of moved. We have a photo lab
11 which as you walk into the right-hand side. He moved in that
12 direction. And then we have electronics, which consists of
13 headphones, radios, CD players and that sort of thing, so
14 I -- attached to the photo lab and pictures.

15 Q. I'm sorry. I'm going to stop you right there.

16 MS. HALEY: May I approach briefly, Your Honor?

17 THE COURT: You may.

18 BY MS. HALEY:

19 Q. I am going to show you what's been marked as State's
20 Exhibit 7 for identification purposes. Does that fairly and
21 accurately depict the subject matter in question? What is
22 that? Can you just tell me what that is a picture of?

23 A. This is a picture of entrance of the store from the
24 inside looking outside.

25 Q. And does that fairly and accurately --

1 very happy, so he was going to go back to California. I
2 think it was around lunchtime he came in, maybe around 12:30
3 he came in and tell me goodbye because he had a flight
4 leaving Charleston to Los Angeles that afternoon. And he
5 came in, and we were talking. And while we were talking,
6 right in front of the door, just standing right by the front
7 door having a conversation, I saw the defendant came in, just
8 like an ordinary customer. He had a construction clothes on
9 with a hard hat. He kind of moved. We have a photo lab
10 which
11 as you walk into the right-hand side. He moved in that
12 direction. And then we have electronics, which consists of
13 headphones, radios, CD players and that sort of thing, so
14 I -- attached to the photo lab and pictures.

15 Q. I'm sorry. I'm going to stop you right there.

16 MS. HALEY: May I approach briefly, Your Honor?

17 THE COURT: You may.

18 BY MS. HALEY:

19 Q. I am going to show you what's been marked as State's
20 Exhibit 7 for identification purposes. Does that fairly and
21 accurately depict the subject matter in question? What is
22 that? Can you just tell me what that is a picture of?

23 A. This is a picture of entrance of the store from the
24 inside looking outside.

25 Q. And does that fairly and accurately --

1 A. Yes, absolutely.

2 Q. -- represent the store?

3 A. Almost looked like the way I had it.

4 THE COURT: I'm going to ask you all one favor. My
5 court reporter has to type down everything that you both say.
6 So if you will let her get her question out, and, likewise,
7 let him get his answer. That's okay. She's very good, but
8 she can't type two people talking at the same time.

9 Thank you. All right. Ask it again if you would.

10 BY MS. HALEY:

11 Q. What does that depict? What does the photograph
12 depict?

13 A. Depict the picture from the photo lab looking toward
14 outside the building, the front door.

15 Q. And does that fairly and accurately represent the
16 subject matter?

17 A. Yes, ma'am.

18 MS. HALEY: Thank you. Your Honor, permission to
19 publish to the jury.

20 THE COURT: No objection?

21 MR. KING: I have no objection.

22 THE COURT: State's 7 is admitted without objection.
23 You may publish it.

24 (State's Exhibit 7 is moved into evidence.)

25 BY MS. HALEY:

1 Q. Okay. I'm sorry. Can you take us back to where you
2 were with your brother, and just kind of tell us about the
3 front of the store.

4 A. If I could, yes.

5 Q. Excuse me.

6 A. Can I stand up? Do you have something I can point
7 out?

8 Q. You can point right on there.

9 A. Okay. I was standing right here where I have my
10 finger at. Me and my brother was talking right in this
11 location. As you see this way, it was almost like it was
12 there, right here. You couldn't see. If somebody walked
13 here and go toward the photo lab, you couldn't see them real
14 good. So when the subject came in, he came this way, went
15 around and came back this way. Me and him were talking. Of
16 course, nothing alarmed me when he walked in. I just thought
17 he was a regular customer. It's not like I was, you know,
18 looking at him any way special.

19 I just noticed him, he came in and went toward the
20 photo lab and that wall, towards the drinks. And since he
21 had a construction uniform on, I thought he was going to get
22 a drink. Basically that's what most people do.

23 MS. HALEY: Your Honor, may I approach again?

24 THE COURT: You may.

25 MS. HALEY: Now I'm -- excuse me. At this time the

1 State would move State's Exhibit 7 into evidence.

2 THE COURT: I've already admitted State's 7 into
3 evidence. But State's 7 is admitted without objection.

4 BY MS. HALEY:

5 Q. At this time I'm going to show you what's been
6 marked as State's 5 for identification purposes. Do you
7 recognize that?

8 A. Yes.

9 Q. What do you recognize that photograph as?

10 A. I recognize wine has replaced where I have
11 electronics and the magazines.

12 Q. Does that picture, excuse me, fairly and accurately
13 represent the store?

14 A. Yes.

15 MS. HALEY: Your Honor, permission to publish to the
16 jury.

17 THE COURT: Are you admitting it?

18 MS. HALEY: Yes, at this time the State would move
19 to admit State'S 5.

20 THE COURT: State's 5 is admitted without objection.

21 (State's Exhibit 5 is moved into evidence.)

22 BY MS. HALEY:

23 Q. Okay. Now, I'm sorry, if you can please begin
24 explaining again what you saw.

25 A. Well, the subject came in where the wine is and he

1 walked. I didn't see him after that point. You know, I just
2 saw him go to there and that was my first impression that he
3 walked in.

4 Q. In November of 2010, what was in that aisle; do you
5 remember?

6 A. As you see, there's a sign that says batteries,
7 there was batteries and headphones, radios, and like I said,
8 CD players, and tapes, and some picture frames and photo
9 albums. It was connected to the photo lab. So at that time
10 the photo lab was operational. Because of people using
11 digital cameras, they are closing all the photo labs in all
12 the drug stores.

13 Q. And what else was on that aisle?

14 A. Electronics, like I said, batteries, any kind of CD
15 players, MP3 players, you know, photo albums and picture
16 frames.

17 Q. And what did the defendant do after you saw him? Do
18 you know what he did after he went down that aisle?

19 A. No. I know he might have paused over there, but I
20 didn't pay attention. Like I said, it wasn't like we were
21 looking at anything suspicious.

22 Q. What happened next?

23 A. Well, while I was talking to my brother, I heard
24 that like something fell and bang or broke. I looked down
25 and I see this defendant in the Aisle 16, which is the

1 household chemical to your left and then light bulbs and pet
2 stuff to your right.

3 MS. HALEY: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MS. HALEY:

6 Q. I'm going to show you what's been marked as State's
7 Exhibit 6 for identification purposes. What does that
8 picture depict?

9 A. That picture is a little different than when I was
10 there. Where we have the beer and -- where we have the beer,
11 this place used to be a gondola, short gondola which was
12 dollar products. We had dollar food on one side, and on the
13 back side of it, we had dollar like bathroom tissues, you
14 know, cleaning supplies, you know, cups and that kind of
15 stuff. It was a 12-foot section.

16 Q. Does that picture fairly and accurately represent
17 the store?

18 A. Yes, but seems like they have replaced some of the
19 aisles since when I was there. It's been remodeled since
20 then. The dollar sign is still hanging from the ceiling, if
21 you see that's where it used to be.

22 MS. HALEY: Your Honor, at this time State moves to
23 admit State's 6 into evidence.

24 THE COURT: Any objection?

25 MR. KING: No, Your Honor.

1 THE COURT: State's 6 has been admitted without
2 objection.

3 (State's Exhibit 6 is moved into evidence.)

4 MS. HALEY: Permission to publish to the jury.

5 THE COURT: Yes.

6 BY MS. HALEY:

7 Q. Please describe for the jury, Mr. Taghivand,
8 approximately what you saw and where it came from and --

9 A. Where I put my finger, this used to be -- well, it's
10 actually all over. This is now aisle 16. There's another
11 aisle on this side of that. These look like it was then.
12 And they had soft drinks over there. But the other aisle is
13 where there was household chemicals and right this way,
14 household chemicals and the light bulbs and hardware stuff.

15 Q. And what happened next?

16 A. Well, like I said, the aisle adjacent to that, when
17 I looked down, I could directly see where I was standing in
18 front of the store that the defendant had -- his back was
19 toward me. And looks like he dropped and he was bending
20 over. Looked like he was doing something. I thought he
21 needed help, so I walked cautiously toward him and offered
22 him if I could help him, said, can I help you sir? And then
23 he turned around. The first thing I noticed he had like a
24 utility knife in his hand. And right away, I kind of got
25 suspicious because this is not the first time that happened,

1 they will get a utility knife and cut into the packages.

2 I turned and I said, can I help you? And he said,
3 no. And he was -- got a little nervous. I looked, and as I
4 looked where the light bulb was, there was a peg section and
5 a shelf. I noticed open package of, like, MP3 players. Of
6 course, I couldn't tell it was MP3 player, but it was like a
7 CD player or something on the shelf. As soon as I picked
8 that up, I noticed that a package of also utility knife, that
9 they are all in the hardware aisle, all in the same aisle,
10 also there. I
11 asked him, did you cut this? And he said no.

12 And I picked up -- the light bulbs were on the
13 floor. I picked those. I put them on the shelf and grabbed
14 the two packages, empty packages. And says, well -- I saw
15 them in his hand, and I could see under his jacket he had
16 something there he was like hiding it, holding it, kind of
17 like that. And I ask him, did you take anything? Because as
18 a manager, you know, we are trained to be real cautious. I'm
19 not going to accuse somebody unless I'm 100 percent sure they
20 are stealing something. So I wasn't going to walk into him
21 and say, hey, did you take this item or that item. So I'm
22 real cautious about accusing anybody.

23 Also, the neighborhood that I was in, almost half of
24 my customers are black. And they are very sensitive if you
25 accuse them of taking something, because they all say, I'm

1 black, you're asking me this or that. So I'm very cautious
2 not doing that.

3 And as I approached him, and he wouldn't come, and I
4 was just saying, let's go to the office. Said, can you come
5 with me and go to the office? And I kind of like had my hand
6 like this to come. And he start -- he got real nervous, and
7 he was very aggressive. He start cursing me out. I think he
8 called me, MF or whatever, you know, what you talking about,
9 you know. And then he kind of swipe at me with his hand, you
10 know, like kind of like stepped back this way. And then he
11 took off running the opposite, toward the back of the store,
12 that way, you know.

13 And I kind of went after him and noticed that he
14 came around and tried to come up front. But since he took
15 the long way, I came the other way to kind of meet him in the
16 middle. I was maybe about 4, 5 steps behind him. And my
17 brother already saw him. My brother saw him from the door.
18 And I just yelled at him, block him. And my brother stood in
19 front of him. And he tried to bolt his way through the door,
20 and actually knocked the door off the hinge. And he fell
21 down. And at that time I was right behind him. I kind of
22 lay on top of him and grabbed him and held him down. And my
23 brother kind of helped me. We both kind of held him down.

24 And the cashier at this time had already seen the
25 situation, and she called the police. And they came within a

1 few minutes. It didn't take them that long for sure.

2 Q. I'm going to show you State's Exhibit 7 again. Will
3 you please just describe exactly where you met the
4 defendant.

5 A. Right here, right in front of the door, kind of like
6 right outside the door. You know, these doors are sliding
7 doors. As he went through it, you know, my brother was in
8 front of him, and the door kind of -- was a little flimsy --
9 fell off the hinge. One side of it was dangling. And he
10 fell onto concrete in front of the store. We both fell down.
11 And I grabbed him and I kind of was on top of him, and that's
12 how it went.

13 Q. I'm going to show you what's been marked as State's
14 Exhibit 1. Do you recognize this item?

15 A. Yes.

16 Q. What do you recognize that item as?

17 A. MP3 player.

18 Q. Do you recognize that as an MP3 player the store
19 would have carried?

20 A. Yes.

21 Q. I'm going to show you State's 3. Do you recognize
22 this?

23 A. Yes.

24 Q. And what is that?

25 A. That's a utility knife. We also sell it at the

1 store.

2 Q. Is that the utility knife --

3 A. That's correct, silver color, and comes in a package
4 kind of white and green package.

5 Q. Is that the utility knife you saw that day?

6 A. That's correct.

7 Q. Do you remember what the defendant did when he ran?
8 Do you remember if he said anything else to you? Did he say
9 anything to you?

10 A. No, he didn't say anything, but when I approached
11 him, like I said, he was like real aggressive and angry, I
12 think. You know, I don't know, he was cursing. And what I
13 was trying to do, as a store, we are not -- whenever we catch
14 somebody shoplifting, we have something called civil
15 prostitution -- I mean civil restitution. I call it that.
16 I'm sorry.

17 But anyway, I said it so many times. They pay \$150.
18 And, basically, they sign a paper and we basically let him
19 go. And even if they don't have the money at the time, they
20 can make like payment plans or whatever. And what that does
21 happen, it goes to the loss prevention. And loss prevention,
22 if they don't pay, puts it in like a bad credit. Because
23 it's like a contract they sign saying I'm going to pay you
24 \$150 and we won't call the police. I was trying to
25 explaining that to him before he even start --

1 Q. Before he started what?

2 A. Well, like I said, he start cursing me out and then,
3 you know, like, he didn't steal anything and he was kind of
4 like, you know, what you trying to do? He was talking to me
5 like a tough guy. 'And he was just -- and he just -- I said,
6 well, come on, I want to talk to you. As soon as I said
7 that, he said, no, F'ing this, F'ing that. And I said, come
8 on. And then he kind of not push me, but came around me,
9 just kind of did his hand like this, the one with the utility
10 knife. And I thought he was going to hit me. And I just
11 stepped backed and he just took off running.

12 Q. How close were you during that?

13 A. Probably three foot, maybe not much more than that,
14 maybe two and a half, three foot, very close, not that close,
15 but close.

16 Q. How did you feel during that incident?

17 A. Well, you know, of course, I was kind of nervous.
18 Every time something like this happens, you are pretty
19 nervous. You are not going to go in there and, you know,
20 accuse somebody, but I was nervous. When he did that, I felt
21 kind of like threatened as far as what he was doing, he was
22 going to hit or what. Because we always heard not approach a
23 shoplifter, be very careful, because they might have a gun or
24 a knife or something to attack you. And that has happened
25 before. And especially in that area, there was a few armed

1 robberies and thefts on other drug stores, like CVS, and I
2 think Walgreens across the street had an armed robbery happen
3 a few weeks earlier.

4 Q. Did CVS have video surveillance at the time -- I
5 mean, Rite-Aid, excuse me?

6 A. Rite-Aid, yes. We do have surveillance but it only
7 shows the front door, cash registers, and pharmacy registers,
8 and the exterior of the store. It's mostly for protection
9 of, you know, like property, not much for shoplifting.

10 Q. Would there have been video surveillance of this
11 particular incident?

12 A. It would have been only the front door, you know.

13 Q. There was no video camera --

14 A. Show him coming in and when he was running out in
15 front of the door, right in this area.

16 Q. Did you ever see a video of this incident?

17 A. No.

18 Q. Did you ever show law enforcement a video of this
19 incident?

20 A. No.

21 Q. Did you ever -- was there ever a question as to who
22 committed this armed robbery?

23 A. No. I mean, what do you mean committed?

24 Q. Who did this armed robbery, who went after you?

25 A. Well, no, I didn't know his name or anything like

1 that. I never seen him before.

2 Q. Did he get away from you?

3 A. No.

4 Q. Did anyone take a statement from you that evening?

5 A. Yes, I think the police officer did, if I remember
6 correctly. They came in, like an hour later wrote a
7 statement. They asked me to write a statement.

8 Q. How did you feel?

9 A. Well, it was fresh in my mind. I wrote it down
10 exactly what happened.

11 MS. HALEY: Court's indulgence.

12 BY MS. HALEY:

13 Q. Do you see the defendant in the courtroom today?

14 A. Yes.

15 Q. Can you describe him and point him out?

16 A. That gentleman sitting over there with the tie.

17 And, of course, he looked like he was bigger then. He had a
18 hard hat on, with construction type white hard hat,
19 white-color hard hat

20 Q. You see him sitting here today.

21 MS. HALEY: Court's indulgence.

22 BY MS. HALEY:

23 Q. I'm sorry. I'm going to go back to one more point.
24 You've talked about your brother flying to California that
25 day?

1 A. Yes.

2 Q. Is your brother still in California?

3 A. Yes.

4 Q. Has he been in California pretty much since this
5 occurred?

6 A. Yes, he has never been back since.

7 MS. HALEY: Court's indulgence please.

8 THE COURT: Okay.

9 BY MS. HALEY:

10 Q. Sorry, one more question. How did it make you feel
11 when the defendant swiped the utility knife at you?

12 A. Like I said, I never had anybody done that to me,
13 you know. Usually when I approach a shoplifter, somebody
14 always either ran away, or if it was younger or a female,
15 sometimes they walk with you, you know. A lot of times they
16 do kind of curse at you, they deny everything right away.
17 But then when you take them into the office or whatever, then
18 they come clean and say, yeah, I did it, you know, whatever.
19 But this particular defendant, he was a little bit more
20 agitated.

21 Q. How did that make you feel?

22 A. Well, you know, didn't make me feel any good, kind
23 of like fear, you know, fearful.

24 MS. HALEY: Thank you. Nothing further. Please
25 answer any questions Mr. King may have.

1 THE COURT: Okay. Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. KING:

4 Q. Mr. Taghivand, you were employed at Rite-Aid back
5 then in 2010, right?

6 A. Yes, sir.

7 Q. You said your brother was present in the store?

8 A. Right.

9 Q. He witnessed some of this?

10 A. He witnessed not me confronting him, but he was at
11 the door, yes, sir.

12 Q. And there was a cashier there?

13 A. Cashier, right, yes.

14 Q. And there are surveillance cameras in the store,
15 right?

16 A. Just the front, like as you walk in. See, as you
17 walk in, there's a camera or TV. It captures you coming in.
18 When you leaving, it captures you leaving. That's all. It
19 doesn't -- we don't have -- they didn't have cameras inside
20 the store where you can see the aisles.

21 Q. No surveillance cameras to see any of the aisles?

22 A. That's correct.

23 Q. Those photographs you were shown --

24 A. Yes, sir.

25 Q. -- that's not what the store looked exactly like

1 back then?

2 A. No, sir.

3 Q. Those are photos taken more recently, right?

4 A. That's correct.

5 Q. You said you heard something, walked over, saw a man
6 with a hard hat, safety glasses. This is lunchtime, right?

7 A. Right, probably one o'clock maybe, little after
8 lunch.

9 Q. Like he was just coming from his job?

10 A. That's right.

11 Q. And you said he had a utility knife in his hand?

12 A. Right.

13 Q. Did you see him take the MP3 player?

14 A. No, I did not.

15 Q. And you say that he swiped the knife at you,
16 right?

17 A. Well, after I asked him to come in, you know, he
18 first started saying -- denying it, and then he start cursing
19 me out. And then, you know, I said, come on, let's go, don't
20 do that. And then he says, man, I'm not coming with you,
21 kind of like that, and just started running. He backed off.
22 As I moved toward him, he kept backing off and doing that.
23 And then he did that and ran the opposite way.

24 Q. But nobody else saw this?

25 A. Nobody else.

1 Q. Your brother didn't see it?

2 A. No, because, like I said, he wasn't the clearest
3 view to see when he did that.

4 Q. Cashier didn't see this?

5 A. No, sir.

6 Q. And even though there's surveillance video in the
7 store, that's not even on the surveillance? Wouldn't even be
8 on there if you had it; is that what you are saying?

9 A. That's right, wouldn't show that.

10 Q. So you are the only one who is saying that this
11 happened?

12 A. That's correct.

13 Q. No other witnesses or surveillance video to back
14 that up?

15 A. That's correct.

16 Q. And at some point he dropped the utility knife?

17 A. Yeah, I think when he was running, he dropped it,
18 because we found it, you know.

19 Q. Because you sat him, right? You held him there?

20 A. Yes.

21 Q. He didn't cut you all up with a knife?

22 A. No, no, no. He didn't have -- he dropped it in the
23 store. I picked up the utility knife. I'm not sure what
24 aisle. I think near the coolers I think I found it.

25 Q. You are not a real big guy, right? You are maybe an

1 average size guy?

2 A. Who, me?

3 Q. Yeah.

4 A. Yeah.

5 Q. And you held him down there without any problem?

6 A. Well, me and my brother did. He was bigger. He
7 must have lost weight, but he was bulkier, or maybe the
8 clothes.

9 Q. And your brother held him?

10 A. Yes.

11 Q. But your brother is not here?

12 A. That's correct.

13 Q. Right? He left before even Detective Daquigan got
14 there?

15 A. That's correct.

16 Q. Did he just immediately leave?

17 A. Yes, a few minutes later.

18 Q. He just got out of there?

19 A. That's right. But he saw I got busy and the police
20 was coming, and he was like, I will talk to you later.

21 Q. Even though he was witness to a crime, helped you
22 hold down --

23 A. Usually a crime like that is not like -- you know,
24 doesn't really go this far, so to speak, you know.

25 Q. And the police never asked you for surveillance

1 video?

2 A. No. If they would, I would have copied it.

3 Q. Right. If it was there, you would have given it to
4 them?

5 A. That's right.

6 Q. If first responding Officer Wohlleb asked you for
7 it, you would have given it to him?

8 A. Yes.

9 Q. And if Detective Daquigan asked for it, you would
10 have given it to him?

11 A. Yes.

12 Q. Or if any other officer followed up and came there,
13 you would have given it to them?

14 A. Yes.

15 Q. So we could all see for ourselves?

16 A. That's correct.

17 MR. KING: That's all the questions I have.

18 THE COURT: Okay. Thank you.

19 Any redirect?

20 MS. HALEY: Court's indulgence.

21 Nothing from the State, Your Honor. No redirect.

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

23 Thank you. Any objection to this witness being excused?

24 MS. HALEY: No, Your Honor.

25 THE COURT: All right. Thank you. You are

1 excused.

2 (Witness is excused.)

3 THE COURT: Okay. Anything further from the
4 State?

5 MS. HALEY: No, Your Honor. At this time the State
6 rests.

7 THE COURT: Okay. Ladies and gentlemen, at this
8 time the State has rested. I need to meet with the attorneys
9 so that they put some matters of law on the record. And I
10 need to get our game plan for the remainder of the trial.
11 That will take a few minutes, so instead of having y'all just
12 sit back and wait on us to do that, I'm going to go ahead and
13 ask y'all to be excused for the day. Why don't y'all be back
14 at 9:30 in the morning. That should give us time to work on
15 other
16 matters in the morning before you get here, and we will
17 proceed with the remainder of the case.

18 Please do not discuss the case, as I've explained to
19 you, as you have not heard all of the evidence and the
20 arguments and the charge yet. Also, please do not do any
21 independent research.

22 Y'all have a nice evening, and we will see you at
23 9:30 Thank you.

24 (Whereupon, the jury leaves open court at 4:54 p.m.)

25 THE COURT: Okay. Thank you, sir. Any motions from

1 the defense?

2 MR. KING: Your Honor, at this time I make a motion
3 for directed verdict. You heard the testimony. The officers
4 don't really remember everything about this, Judge. And
5 Mr. Taghivand testified he didn't see Mr. Rodgers take the
6 MP3 player, said he didn't see him take it. I think given
7 the light most favorable to the State, there's not enough
8 evidence to go to the jury as far as armed robbery. I would
9 maybe go forward as a larceny, which is a lesser-included
10 armed robbery, but I would move for directed verdict on the
11 armed robbery.

12 THE COURT: Okay. Let me hear from the State.

13 MS. HALEY: Thank you, Your Honor. I believe the
14 defense's motion for directed verdict should be denied.
15 While the defendant said he didn't actually see -- excuse me.
16 While the victim said he didn't actually see the defendant
17 take the MP3 player off the shelf, he did say that he saw the
18 bulge in his pocket, saw the packagings all there. And the
19 officers recovered the MP3 player from the defendant's
20 pocket.

21 He also had the weapon during the incident. He saw
22 the utility knife, swiped it at the victim, and then ran out
23 of the store. It seems that as far as a directed verdict is
24 concerned, there is enough to send to the jury. It's a
25 question of fact as to whether or not this was an armed

1 robbery. And I think that should be sent to the jury.

2 THE COURT: Isn't it true that the slightest removal
3 of the property or the fact that he had complete possession
4 of it at all, regardless of how long he had possession, is
5 enough to show the taking and carrying away element?

6 MS. HALEY: Yes, Your Honor.

7 THE COURT: I mean, I certainly think we have the
8 intent if he's cutting into those plastic -- you know, those
9 blister packs that you can get cut on so easily. I think
10 that all of that, including the bulge and the fact that the
11 MP3 player was later recovered, not on the shelf but at
12 whatever point they took the defendant down near the parking
13 lot, is enough to get it to the jury.

14 Now; I think that y'all are free to argue how much
15 weight the jury should give to that. And I certainly am sure
16 that Mr. King, Mr. Cooper will tell that at that point, but I
17 do believe the directed verdict standard is an any evidence
18 standard the State has certainly put forth has satisfied that
19 element as far as getting this to the jury. So I'm
20 respectfully going to deny the motion for a directed verdict,
21 although I do appreciate your argument.

22 On that note, are you all going to want a
23 lesser-included offense in the --

24 MR. KING: I was considering lesser-included of
25 larceny, Judge.

1 THE COURT: Okay. I just e-mailed y'all the draft
2 jury charges. I think it has a lesser-included offense of
3 robbery, which is fairly similar. But I can certainly tweak
4 that and we can argue about that as well.

5 Why don't y'all take a look at the charges tonight.
6 Do y'all want to talk to me about the larceny and the
7 objection from the State on that?

8 MS. HALEY: Your Honor, I would like to look into it
9 before saying anything.

10 THE COURT: Y'all look at that tonight. I'm
11 inclined to include a lesser-included offense. I just want
12 to make sure I get the correct language. I want y'all to
13 preserve whatever objection you have to that.

14 What else? Any other motions?

15 MR. KING: Mr. Cooper is working on one, Judge,
16 regarding the video. Maybe he can take it from here. He's
17 got something to put on the record related to that.

18 THE COURT: Well, I guess he's going to want to
19 put -- what is it a negative inference motion?

20 MR. COOPER: Well, Your Honor, we maybe move to
21 dismiss for bad faith under Youngblood. And I know
22 Youngblood probably doesn't fall right on this case because
23 they never actually had the video to begin with, so I don't
24 know if they actually destroyed anything, because we don't
25 know what was ever put on the video.

1 And there's a case, and I think that analysis is
2 compelling, but it is not law in South Carolina, and you
3 know, it's been questioned, but I think that the analysis is
4 compelling because of the similar factual scenario to ours.
5 And it's United States vs. Bryant. And it's 439F second,
6 642. And I know this case is an outlier case in terms of
7 Youngblood and it's progeny. But I think in our scenario, we
8 would argue that the officer's conduct rose to the level
9 where it was beyond negligence, approaching recklessness.
10 And I don't know if bad faith has been defined as
11 recklessness in South Carolina. I know if they know that it
12 is exculpatory and is destroyed, that's bad faith. We don't
13 know what was on the video to begin with at all when it comes
14 to the officer's standpoint.

15 THE COURT: Well, I think that we are having --
16 we've had this in a couple of cases. Just laziness and
17 sloppiness doesn't rise to the level of bad faith, I don't
18 think. But what I have heard -- I want to call him Benny
19 because I'm having trouble pronouncing his last name. The
20 last witness testified was he doesn't think the video, even
21 if there had been any surveillance, it certainly wouldn't
22 have been on the aisle where the MP3 player and the box
23 cutter or utility knife were.

24 I guess to stretch it, the best there possibly could
25 have been would have been at the door, depending on where

1 they took the defendant down. But as I understood his
2 testimony, his brother blocked him, and then the store
3 manager took him down right there. It wasn't a question --
4 it certainly would be better if we had the video, but I think
5 that would be more helpful when there's a true identification
6 issue.

7 Does the State want to talk about that, or do you
8 all want me to look at Youngblood and Bryant first? I've
9 dealt with this argument before.

10 MS. HALEY: Your Honor, it is my understanding that
11 in these circumstances, those cases apply when there has been
12 a video and they watched it and then it gets destroyed. And
13 the State is very aware of that, which is why we make sure to
14 ask every witness was a video ever reviewed. Every person
15 said no.

16 And although it wasn't brought into evidence, it
17 could have been on the prelim. Officer Wohlleb went on to
18 say he spoke about a video, and it was his understanding that
19 the victim told him there would be no video of the incident.
20 So that was the assumption that had been made the whole time.
21 Yes, he said it was likely that there was video surveillance,
22 but Mr. Taghivand has always said there was no video
23 surveillance of that particular area.

24 He actually told me always that it was smart to go
25 to that area because it wouldn't have been captured on video

1 surveillance. And it wasn't brought up because they have
2 restructured their video system at the Rite-Aid now. And so
3 we wouldn't have been able to prove what it was at the time.
4 But Mr. Taghivand stated that there was no video of that
5 incident. And I don't believe that the officers not
6 recovering a video rises to the level of bad faith,
7 especially because no one watched it.

8 THE COURT: Right. Okay. Let me read Youngblood
9 again and look at US v. Bryant. I'm probably not going to
10 grant that motion just because of the way Mr. Taghivand
11 testified that there would have been no video of the aisle in
12 question. And the fact that law enforcement came while the
13 defendant was still being detained by Mr. Taghivand, I think
14 he said his brother left before they got there, but he
15 certainly was still there.

16 Again, I don't see bad faith here. I just see
17 laziness on the part, not of the Solicitor's Office, but in
18 the investigation, they figured they already had the guy so
19 they weren't going to call crime scene, I guess.

20 MR. COOPER: Yes, Your Honor. And I guess we put on
21 the record I make the motion just because the legislature
22 said we don't like swearing contests in terms of DUI cases,
23 active statute when it comes to DUI cases. So in this case,
24 we could have video, but it's not there.

25 THE COURT: Well, I think there was a little bit

1 more to the DUI statute and the fact that there were
2 municipalities like where you live, Ms. Haley, purposely not
3 equipping their cars with video cameras. And that's why
4 Diedreich von Lehe's treatment with the Roberts' case was so
5 important.

6 What you are welcomed to is I will talk to you all
7 in the morning again on the record after I read Youngblood
8 and Bryant this evening. You don't have to give up a brief,
9 but if you want to make it a Court's exhibit, I'm fine for
10 you to do that as well. And then we can talk about a
11 lesser-included offense as well.

12 MR. COOPER: Your Honor, I guess in the alternative,
13 we would ask for a spoliation charge.

14 THE COURT: Okay. We will argue about that too.
15 Okay. And there is a South Carolina case law on I believe
16 spoliation charge and a negative inference, although it is
17 probably in the civil context I think that the charge would
18 be.

19 I need to talk to Mr. Rodgers about his
20 constitutional right to remain silent. I don't want to cut
21 y'all off before you finish putting motions on the record.
22 Anything further motion-wise?

23 MR. KING: No, I think that's it for now, Judge.

24 THE COURT: All right.

25 MS. HALEY: Not from the State, Your Honor.

1 THE COURT: Sir, Mr. Rodgers, I know that Mr. King
2 and Mr. Cooper have explained this to you, because you have
3 excellent attorneys you have all met a number of times. But
4 you have an absolute constitutional right to remain silent.
5 As I've told the jury, we talked about it in the very
6 beginning and then again after we swore the jury, the defense
7 doesn't have to prove anything at all. The burden remains on
8 the State of South Carolina throughout this proceeding. And
9 you've pled not guilty, so you are presumed innocent
10 throughout the entire trial.

11 That only changes if 12 jurors unanimously agree to
12 find you guilty, to find that the State has met its burden of
13 proof. So you are -- it's your right to work with your
14 attorneys and put up evidence and testify if you want to.
15 But no one can hold it against you if you choose not to put
16 up any evidence, and specifically if you choose not to
17 testify. If you choose not to testify, I will instruct the
18 jury that the fact that a defendant does not testify is not
19 proper for them to consider. They are not allowed to discuss
20 it. They are not allowed to talk about it in the jury room.
21 They are not allowed to let that be part of their
22 deliberation at all.

23 Do you understand that right to remain silent,
24 sir?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you have any questions for me about
2 your right to remain silent?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Thank you, sir. Do you have any
5 questions for your attorneys at this time? You don't have to
6 talk to them in front of me, but I want to make sure you
7 understand your right.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And y'all, of course, you don't have to
10 tell me now whether you are going to put up evidence or not,
11 but it is my understanding that y'all are not.

12 MR. KING: Right. At this point, Mr. Rodgers
13 advised me he does not wish to take the stand and we are not
14 planning to put up a defense.

15 THE COURT: Is that correct, Mr. Rodgers?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. Then anything else we need to put
18 on the record or anything further y'all would like me to talk
19 to Mr. Rodgers about?

20 MR. KING: No, Your Honor.

21 MS. HALEY: Nothing from the State, Your Honor.

22 THE COURT: Okay. I sent the proposed jury charges.
23 We will have discussion on that morning. Why don't you all
24 try to get here between 9:15 and 9:30 so we can talk as the
25 jurors are getting here. And I guess we will have the

1 verdict form after we decide what to do about the
2 lesser-included, but we can go ahead and argue a charge in
3 the morning if y'all are ready to go.

4 You should have the e-mail from me by now. If not,
5 I will try to resend it. I had a problem sending stuff out a
6 minute ago. You got it? Okay. Great.

7 Okay. Thanks, everybody. See y'all in the morning
8 about 9:15.

9 (Whereupon, the proceedings adjourn for the day.)

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1 THE COURT: Okay, everybody. I think we have some spoliation
2 issues to talk about and we need to talk about the jury
3 charges and any lesser-included offenses. So I am happy to
4 hear from -- I guess I will start with Mr. King, and then
5 hear what Ms. Haley and Ms. Baldwin have to say.

6 MR. KING: Yes, Your Honor. I did read through the
7 proposed charges. We had requested a lesser-included
8 larceny, not robbery.

9 THE COURT: All right. Yeah. This was prepared
10 before we talked about that, so

11 MR. KING: That's what we are requesting, just
12 larceny.

13 THE COURT: All right.

14 MR. KING: I have another issue with the charges and
15 objection. This is toward the end up under conclusion. I'm
16 going to hand up a case of State vs. Aleksey, A-l-e-k-s-e-y,
17 343 South Carolina 20. And I have a copy if Your Honor needs
18 it. But it talks about -- disfavors charges that talk about
19 seeking the truth.

20 A criminal trial is not really a search for the
21 truth. It is a test of the State's case, whether or not that
22 meets the standard of proof beyond a reasonable doubt. But
23 the proof -- I mean, the presumption of innocence at all
24 times being on Mr. Rodgers. So there's a discussion in that
25 case about burden-shifting. And when a jury is instructed

1 about the verdict speaking the truth or determining the
2 truth, that that case actually says it's harmless error, but
3 it mentions in that case that language is disfavored because
4 it can confuse the
5 jury and could be, I would argue, could be burden-shifting.
6 And I have a copy of the case.

7 THE COURT: I've read the case. And I've had that
8 argument before. Any opinion on that one way or another,
9 Ms. Haley?

10 MS. HALEY: Your Honor, the only argument that I
11 would make is that it seems that in Aleksey, they are talking
12 about the reasonable doubt sections and the circumstantial
13 evidence sections. And here it's simply in the conclusion.
14 And, therefore, I think I don't think is burden-shifting
15 because it's just at the end of it and there is no sequence
16 in it. It says determine the truth, I don't think they are
17 specifically talking about truth in the Aleksey case.

18 THE COURT: I think what they would say, based on
19 what I read in Aleksey, because the reasonable doubt charge
20 and the circumstantial evidence charges are presented as
21 such, that covers -- I think the charge is replete with
22 language about the burden being on the State. However, to
23 me, what's in the conclusion is really just to explain to the
24 jurors what their function is. And it doesn't hurt one way
25 or another to change it to if the -- to seek a finding as to

1 whether the State has met its burden as opposed to determined
2 the burden proof in the case. I think we are getting into --
3 I think it is perfectly appropriate to change it.

4 And in light of the -- how do I say this -- harmless
5 error education that was provided fairly recently, I think at
6 the solicitor's conference, I think we need to tread lightly
7 in that area for awhile.

8 I will revise that language. I will take that out.
9 I don't think it's reversible to leave it in there, but I
10 don't think that it's inappropriate to change it. Okay?

11 MR. KING: Thank you.

12 THE COURT: What about the larceny, the
13 lesser-included, Ms. Haley?

14 MS. HALEY: Also, Your Honor, I think the State
15 would ask that you charge, if you are going to charge
16 larceny, also charge the robbery charge.

17 THE COURT: Robbery and larceny?

18 MS. HALEY: I can't argue against larceny under the
19 circumstances, but we would ask for the armed robbery,
20 robbery, and larceny, to all be charged. Because there was
21 evidence tending to prove that not only did the defendant
22 hold the utility knife, he also lunged at and pushed the
23 victim away. He testified to that on the stand. So if they
24 were not to believe that he had a deadly weapon

25 THE COURT: I think there's certainly evidence from

1 which the jury could find that there was common law or
2 strong-arm robbery. I think there's also evidence from which
3 they could find larceny. I think both of the offenses are
4 properly chargeable based on the evidence that's in this
5 record. Y'all want to be heard on that?

6 MR. KING: We would object to a robbery, Judge.

7 THE COURT: On what grounds?

8 MR. KING: I feel like that either the jury believes
9 that, you know, what Mr. Taghivan said happened in the store
10 happened and he had the knife, which would be a deadly
11 weapon, or that there was no confrontation like that, and
12 that he's found outside with the MP3 player in his pocket,
13 which I think would imply the larceny. But I don't know if
14 there's anything in-between that showed that he took it by
15 force or intimidation without using the weapon. I think if
16 the jury thinks that there was a robbery, then it was with
17 the razor knife.

18 THE COURT: I thought that the testimony was that he
19 struggled before he ran off out the door. I mean, I can
20 certainly look back through. And we've got a real-time
21 transcript here, which I'm kind of spoiled because I'm not
22 used to having that. But to me, that's what the evidence
23 presented. Is that incorrect, Ms. Haley?

24 MS. HALEY: No, Your Honor, I believe that's what
25 Mr. Taghivan testified to. He said that he swiped at him and

1 he also struggled to get away, because he tried to put his
2 hand on the defendant at that time, and that's when he got
3 away from him. And the jury could believe that there was no
4 utility knife involved, period, especially because it wasn't
5 found outside next to him, it was inside on the counter.

6 THE COURT: Well, and also because I think the
7 defense did a good job cross-examining the first officer and,
8 well, the sergeant. But would it be inappropriate as a
9 matter of law for both of those lesser-included offenses to
10 go?

11 MS. HALEY: Not that I'm aware of. It's my
12 understanding that if there is any evidence proving the
13 elements of the crime, then that crime can be charged.

14 THE COURT: That's how I understand the law to be.

15 MR. KING: I think you are right, Judge. And even
16 with them, their testimony of struggling outside, the
17 fighting outside, that's fine, that's fine, the charge of
18 robbery is fine.

19 THE COURT: Okay. So what I'm going to do then is
20 revise the charge to, I guess, offer both options, robbery
21 and larceny. Is that -- okay. Let me look at some case law
22 real quick.

23 MS. HALEY: The only other matter that we would
24 bring up is that if this is a larceny and, of course, this
25 doesn't have to be during the jury's portion of this, that it

1 would need to be a property offense against him due to the
2 defendant's record.

3 THE COURT: What is the sentencing -- well, I guess
4 that would be an issue for me to deal with in sentencing.

5 MS. HALEY: We just wanted to make the Court aware
6 of that.

7 THE COURT: Okay. Y'all just let me look at this
8 one minute.

9 Okay. Common law offense of robbery is essentially
10 the commission of larceny with force. Larceny is the
11 felonious taking and carry away of the goods of another
12 against the owner's will with or without his consent. Both
13 larceny and robbery are lesser-included offenses.

14 Armed robbery is the alleged use of a deadly weapon
15 that distinguishes armed robbery from robbery and the
16 employment of force or threat of force that differentiates a
17 robbery from a larceny.

18 So I think they are all appropriate here based on
19 what the jury believes and who the jury believes. And I just
20 need to find a way to write the charge so that it is not
21 confusing.

22 All right. What about this spoliation issue? I
23 looked at the cases, you know, again. I think y'all could
24 tell I'm certainly disappointed in the performance of the
25 police officers.

1 MR. COOPER: Your Honor --

2 THE COURT: But I don't think it is bad faith.

3 MR. COOPER: It's an uphill battle for us, I
4 understand. I'll just argue for the record that our position
5 is that it doesn't necessarily fall within the Youngblood
6 analysis or the Cheeseboro analysis because the video was
7 never actually collected. So they didn't have anything to
8 destroy. So I think we are outside of that scope. And we
9 just argue for the record that we think that the officers
10 testified that they never even reviewed the video, neither
11 officer reviewed the video. Mr. Taghivan testified that the
12 video would not have captured the incident, but I don't think
13 that was ever communicated. He didn't testify that that was
14 ever communicated to law enforcement.

15 So our argument would be that essentially to allow
16 the -- essentially, our argument is that it's a due process
17 violation because it encourages police to purposely not seek
18 evidence that could be exculpatory. So it's kind of -- it
19 could encourage police to put their head in the sand on
20 things like this. And so we would just -- proposition is
21 that it's a due process violation that they didn't even try
22 to get.

23 THE COURT: And I appreciate your argument, and I
24 agree 100 percent they should have tried to get it. I think,
25 however, the case law is abundantly clear that negligence

1 alone does not establish a constitutional violation. You
2 know, this is one of those situations where they felt like
3 they had the person on the scene, so they just didn't seem to
4 do anything else. While I don't encourage that behavior and
5 I certainly hope this situation would not encourage that
6 behavior, I just don't think it rises to the level that we
7 have bad faith. But I appreciate you preserving the record
8 for that. And if any of this ever goes up on appeal, they
9 sure won't be happy with the way the opinion is written, I
10 would imagine, or the way the record looks.

11 But anyway, I'm going to deny any request just to
12 make sure I get a ruling on the record for y'all to preserve
13 that. And if you wanted to put any kind of brief in as a
14 Court's exhibit, that's fine, but I think you argued it
15 sufficiently.

16 MR. COOPER: I don't think there's anything we can
17 brief on there.

18 THE COURT: I think you've given the case and you've
19 provided the points, and they are certainly well-taken. They
20 just don't rise to the level to support an inference of bad
21 faith. And I don't find any bad faith. I just find
22 laziness, quite frankly.

23 So anything further on that?

24 MR. COOPER: Your Honor, are you going to charge
25 spoliation?

1 THE COURT: I think we were going to argue about
2 that, were we not, this morning? If you have a proposed
3 spoliation charge, I can look at it, or I can pull my
4 language and we can discuss it. I don't think that we have
5 spoliation issue here, because of what Mr. Taghivan's
6 testimony provided about the fact that the coverage of the
7 video just wouldn't have covered that particular area where
8 the struggle with the MP3 player and with the utility knife,
9 if the jury finds that's what it was about, I don't think the
10 video covered that area. I think he said that. But I'm
11 happy to hear any argument you want to put on the record with
12 respect to spoliation.

13 MR. COOPER: And I guess I will sort of repeat my
14 previous concern, is that that was never communicated to law
15 enforcement at the time. And so law enforcement didn't
16 collect the video. They didn't review the video. So we
17 don't know whether or not that's true at all. And so the
18 charge, I guess, that we will propose, and I think Your Honor
19 probably has a satisfactory charge, but that when -- and the
20 charge we propose is from 368 SC 515, which is a civil case.
21 That's Terry Stokes as personal representative.

22 And it says: I charge that when a party fails to
23 preserve material evidence for trial, it's for you to
24 determine whether the party has offered a satisfactory
25 explanation for that failure. If you find the explanation

1 unsatisfactory, you are permitted but not required to draw
2 the inference that the evidence would have been unfavorable
3 to the party's claim.

4 And so the charge allows room for Mr. Taghivan's
5 explanation, but doesn't require them to accept that
6 explanation.

7 THE COURT: Let me just pull that case up real
8 quick. Okay. I think that language is appropriate in this
9 case. Have you had a chance, Ms. Haley and Ms. Baldwin, to
10 look at the Stokes v. Spartanburg? Go to *522 if you are in
11 Westlaw and the language. And if you look at the case: I
12 charge you, when a party fails to preserve material evidence
13 for trial, it is for you to determine whether the party has
14 offered a satisfactory explanation for that failure. If you
15 find the explanation unsatisfactory, you are permitted but
16 not required to draw that inference that the evidence would
17 have been unfavorable to the party's claim.

18 I think based on the police officer's testimony of
19 everything that they failed to do, a spoliation charge is
20 appropriate here. But I'm going to make sure that the jury
21 understands that they are not required to draw any inference.
22 And that will leave y'all free to argue about
23 it in closing.

24 But anything you want to put on the record? I'm
25 happy to hear from you.

1 MS. HALEY: Your Honor, the only thing the State
2 would argue is I obviously believe that the standard should
3 be different in a criminal case than it was in a civil case.
4 All of our case law says that the defense must show destroyed
5 evidence, which, first of all, the destroyed evidence in
6 every case in South Carolina has been destroyed by a
7 government actor. And here Rite-Aid, we did have a letter
8 stating that Rite-Aid just copies over their videos every 45
9 days.

10 THE COURT: Isn't that because nobody ever asks for
11 it?

12 MS. HALEY: Yes. And we tried to ask for it. Even
13 in. --

14 THE COURT: Who tried to ask for it? The police
15 officers didn't testify they asked for anything.

16 MS. HALEY: The State tried to have ask for it.

17 THE COURT: That's not on y'all.

18 MS. HALEY: And I understand that, Your Honor. And
19 I think the big difference is that the defendant must show
20 that the destroyed evidence was obviously exculpatory, which
21 I don't think is shown here.

22 THE COURT: Which case were you citing?

23 MS. HALEY: This is from State v. Newton, and I
24 believe that's Cheeseboro, which I have a copy of if you
25 don't have it.

1 THE COURT: I can pull it up if you want to give me
2 the cite.

3 MS. HALEY: 346 S.C. 526.

4 THE COURT: Seems like it would be kind of hard for
5 the defense to show that if the argument is that the officers
6 didn't even attempt to get it.

7 Is this a spoliation case or a suppression case?

8 MS. HALEY: This is suppression, but it involves
9 spoliation because of destruction of a murder weapon.

10 THE COURT: Is there any language about spoliation
11 in it?

12 MS. HALEY: I don't know that there is actual
13 language of spoliation in that.

14 MR. KING: Is that the cite for Cheeseboro, not
15 Newton?

16 MS. HALEY: No, I have Newton as well, and Austin v.
17 Beaufort County Sheriff's Office, which states that the
18 appellate can point at no specific duty that the Sheriff's
19 Office was required to preserve this evidence and said in a
20 criminal case the State has no absolute duty to preserve
21 potentially useful evidence that might exonerate the
22 defendant.

23 THE COURT: What's the cite for that?

24 MS. HALEY: 377 S.C. 31.

25 MR. KING: SC what? I'm sorry.

1 MS. HALEY: 31.

2 MR. COOPER: Your Honor, both those cases arise in
3 the context of due process violations and the motion for
4 dismissal instead of a request for a spoliation charge.

5 MS. HALEY: Austin is a spoliation case..

6 THE COURT: It's a spoliation regarding the tort of
7 spoliation.

8 MS. HALEY: Yes.

9 THE COURT: Which is different than the charge.

10 MS. HALEY: I agree it is different especially since
11 that's a civil case, but I would still maintain according to
12 State vs. Cheeseboro, the defense must prove that the State
13 destroyed evidence of bad faith or that it was clearly
14 exculpatory. And I don't think even according to
15 Mr. Taghivan's testimony that they can prove that.

16 MR. COOPER: Your Honor, I might be mistaken, but I
17 think the standard for charges is whether there's any
18 evidence to support that charge.

19 THE COURT: It is. It's a different standard.

20 MR. COOPER: And so I think those other cases arise
21 in a different context.

22 THE COURT: They do. All right. I'm going to give
23 the spoliation charge. Let me tell you the way you are
24 arguing this encourages, Ms. Haley. I understand that y'all
25 went to the trial school of "I've got to argue about every

1 single thing," without strategically thinking about whether
2 that's something you want the Attorney General to have to
3 argue in Columbia, you know, except for the times when the
4 Solicitor's Office calls the Attorney General's office to
5 bring them in for extra arguments. That happened in
6 Berkeley, but not here. This is not the same context as a
7 spoliation charge at all. And the bad behavior that
8 Mr. Cooper articulated that we don't want to encourage in
9 police entities is exactly what would be encouraged by
10 applying Austin, Cheeseboro, and Newton in a context such as
11 this one.

12 And I am much more comfortable with an appellate
13 court that chooses to say a charge isn't appropriate in the
14 face of that kind of negligent police work than for me to say
15 it. You know, if they want to say that, more power to them.
16 I'm not going to.

17 Now, is it a due process violation? No. But it
18 does warrant a spoliation charge. Austin deals with the
19 torts of intentional spoliation and negligent spoliation by
20 third-parties. And that's a completely different scenario.
21 And our courts really are just now starting to make law in
22 both of those areas. But I think in the light most favorable
23 to the defense and based on the evidence that came out, they
24 are entitled to the spoliation charge from the Stokes vs.
25 Spartanburg case.

1 Now, I think y'all can both have great fun with that
2 in closing argument based on the way the evidence came down.
3 But that's for the jury to decide.

4 So let me -- I'm going to need about 10 or 15
5 minutes to get the charges in another format revised for
6 y'all to look at. If y'all don't have an objection, I'm just
7 going to go let the jury know that we are still working on a
8 couple of legal matters. We should be ready for them in
9 about 15 minutes. Anybody have an objection to me doing
10 that? And y'all take 15 and we will get going.

11 We will make the charge a Court's exhibit, so
12 everybody's objections are preserved.

13 (Whereupon, recess transpired.)

14 (Court's Exhibit 1, Jury Charge, was marked for
15 identification.)

16 THE COURT: Page 4, that's the language from the
17 Spartanburg Regional case regarding spoliation. I did change
18 it a little bit because it's when it is alleged that a party
19 has failed to preserve material evidence for trial, I think
20 is a more appropriate way to lead into the charge, than I
21 charge you that when a party fails to preserve. And then I
22 will note the State's objection to including that in the
23 charge, and we will mark the charge as a whole as a Court's
24 exhibit.

25 The next change is under the armed robbery section,

1 but it's on Page 7. Actually, starts on Page 8: If you find
2 that the State has failed to prove that the defendant was
3 armed with a deadly weapon, you may then consider whether the
4 State has proved beyond a reasonable doubt that the defendant
5 committed the lesser-included offense of robbery. That's the
6 same as was in before.

7 And the next section is the same: In order to prove
8 robbery, the State must prove beyond a reasonable doubt all
9 of the evidence that I have just explained except that the
10 defendant was armed with a deadly weapon.

11 Then, and this comes right out of Judge Couch's
12 case, I think there was more, but: The offense of robbery is
13 essentially the commission of larceny with force. If you
14 find that the State has failed to prove that the defendant
15 used force or the threat of force in taking and carrying away
16 merchandise that belonged to another, you may then consider
17 whether the State has proved beyond a reasonable doubt that
18 the defendant committed the offense of larceny. In order to
19 prove
20 larceny, the State must prove beyond a reasonable doubt that
21 the defendant took or carried away merchandise without the
22 owner's consent or against the owner's will.

23 Now, I understand that the State has objected to the
24 lesser-included offense of larceny, and I ruled on that. I
25 overruled that objection. But is there any objection to the

1 language itself, and I'm not asking you to waive anything; I
2 just need to know about the language.

3 MS. HALEY: No, Your Honor.

4 THE COURT: Anything from the defense?

5 MR. KING: No, Your Honor.

6 THE COURT: All right. And then the final change
7 under the conclusion, let's see, I changed that sentence
8 regarding the truth to: It is your duty then, in your
9 deliberations, to take the law which I have just given you
10 and apply it to the facts which you determine to be true.
11 You must consider the instructions as a whole and not follow
12 some and ignore others.

13 I think that takes out the concern about
14 burden-shifting. And as I said earlier, the burdens are
15 discussed a number of times -- or the burden is discussed
16 throughout the charge in the reasonable doubt section and the
17 burden of proof. Any objection to that language other than
18 what we've already put on the record?

19 MS. HALEY: No, Your Honor.

20 MR. KING: No, Your Honor.

21 THE COURT: All right. And then y'all just take a
22 look at the part about the less -- I changed that to guilty
23 of a lesser-included offense. You know, there are two of
24 them there, so I changed from B to A. Okay. All right.
25 Y'all want to look at it one more minute and make sure

1 there's nothing else or are we good to go?

2 MS. HALEY: Looks all right, Your Honor.

3 MR. KING: Yes, Your Honor, looks all right.

4 THE COURT: Other than the objections you both had,
5 and Mr. King was objecting to including robbery, the State
6 objected to including larceny, and we are including both, how
7 about the verdict form?

8 MS. HALEY: Looks fine to us.

9 THE COURT: Thank you. All right. I appreciate
10 it.

11 MR. KING: Fine with the defense, Judge.

12 THE COURT: All right. Are you all ready for the
13 jury, or does anybody need a minute to regroup?

14 MS. HALEY: State is ready, Your Honor.

15 THE COURT: Okay.

16 MR. KING: Defense is ready, Your Honor.

17 THE COURT: All right. Let's bring them in. Thank
18 you. And, Jason, do you want to rest on the record or say
19 anything, or do you want me to just tell the jury that
20 everything is done?

21 MR. KING: You can just tell them, Judge. That's
22 fine.

23 THE COURT: I will.

24 (Whereupon, the jury returns to open court at 10:32
25 a.m.)

1 THE COURT: Thank you, ladies and gentlemen. We are
2 trying to streamline things so that we would not have to send
3 you in and out. As you know, the State rested yesterday.
4 And as I explained yesterday, the State bears the burden of
5 proof. The defense has rested as well.

6 So we are ready for closing arguments in the charge
7 on the law. So I will go ahead and call on Ms. Haley or
8 Ms. Baldwin.

9 MS. HALEY: Thank you, Your Honor. May it please
10 the Court.

11 Ladies and gentlemen, again, I would like to thank
12 you for your time. We promised you this would be a quick
13 trial, but we also said it would be a serious trial. Now,
14 before I go into everything, all of the testimony that you
15 heard yesterday, I would like to briefly go over the law as
16 it pertains to this case.

17 Now, the judge is going to charge y'all on the law.
18 So if I misstate anything, if she says anything differently
19 than I say it, please listen to whatever the judge says
20 because she is the judge of the law.

21 The defendant, Alton Rodgers, is charged with armed
22 robbery. Armed robbery has several elements that I discussed
23 in the beginning of this case. First is taking or attempted
24 taking and carrying away of a personal property of another or
25 the presence of another. And that can be within the person's

1 reach, inspection, or observation, or control, with the
2 intent to deprive that person of possession by the use of
3 force, threats, or intimidation, while armed with a deadly
4 weapon or while having in possession an object with which the
5 victim reasonably believed to be a deadly weapon, and
6 alleging by actions or words that he is armed.

7 As far as the taking or attempted taking is
8 concerned, that must be without the will and consent of the
9 victim, through force or through threat of force. Now, in
10 this case, and in many others, that taking doesn't have to
11 occur with the force immediately. The person can come in and
12 the crime can occur once the perpetrator uses that force at
13 any time during that. He can come in and attempt to
14 shoplift, which is what seemed to have happened in this case,
15 and then acquire a weapon and use the force. And the entire
16 carrying away of the personal property, it continues the
17 entire time.

18 The crime has occurred not only if the perpetrator
19 uses force or intimidation to take possession of the
20 property, but also if force or intimidation is used to retain
21 possession immediately after the taking or to carry away the
22 property or to facilitate escape.

23 Finally, a deadly weapon is any weapon -- any
24 article, excuse me, instrument, or substance, which is likely
25 to produce death or great bodily harm. There are many

1 examples of deadly weapons. In this case, it was the utility
2 knife. It has a razor blade in it. I think we can all agree
3 that a razor blade can cause great
4 bodily harm or even death.

5 Now, I would like to go back to armed robbery. The
6 judge is also going to talk to y'all about common law robbery
7 and larceny. Basically, robbery is exactly the same as armed
8 robbery except it doesn't involve a weapon. And then larceny
9 has every other element including the taking or attempted
10 taking and carrying away of the personal property of another
11 with the intent to deprive that person of the property.

12 Now I would like to get into what y'all need to
13 believe you want to believe the defense's version of this
14 story. If you are going to believe the defendant's version,
15 you have to believe the defendant walked into Rite-Aid in
16 West Ashley in the middle of the day on
17 November 11th, 2010.

18 MR. KING: Objection. Burden-shifting as far as
19 referring to a defendant's version.

20 THE COURT: Okay. Sustained. Just rephrase it, if
21 you would.

22 MS. HALEY: Thank you. The defendant walked into
23 the store. The defendant went to the electronics aisle.
24 Then he decided to walk around the back of that aisle while
25 carrying this MP3 player in this package, then he walked over

1 by some light bulbs, made a little bit of noise, started
2 knocking things over. At that time, he picked up a utility
3 knife, or maybe he didn't pick up the utility knife. So when
4 Mr. Taghivan approached him, because he heard the light bulbs
5 falling and he was worried about his property, the property
6 of that store was his, he was the store manager, it was under
7 his control. It was important that all of that property stay
8 there, or that people pay for it when they take it.

9 So he goes over and sees what the defendant is up
10 to. Either he confronts the defendant. He said he saw him.
11 He said he saw the light bulbs. He picked up the light
12 bulbs, started putting them back on the shelf, and noticed
13 that these two packages that I just showed you were sitting
14 open on the shelf. Then he noticed a bulge in the
15 defendant's clothing. Then he noticed that the defendant was
16 holding a utility knife. And at that point he decided to
17 just ask the defendant, you know, do you want to come talk to
18 me, let's go back to my office, just give me back whatever
19 you have.

20 The defendant got aggressive, or maybe he didn't get
21 aggressive, maybe Mr. Taghivan just made all of that up. But
22 Mr. Taghivan says that he got aggressive with him, he cursed
23 at him and said, you are F'ing crazy, I didn't do anything.
24 And once again, Mr. Taghivan still acted reasonably. He
25 tried to act reasonably throughout this entire thing and

1 said, just come back to my office, just give me back the
2 merchandise, we don't have to do anything, nothing has to
3 happen.

4 The defendant continued to get aggressive. And he
5 swiped at him with a utility knife, or maybe because there
6 was no video, we should assume that Mr. Taghivan didn't
7 really confront, that he didn't really swipe this at him, and
8 that somehow this defendant entered the store, grabbed an MP3
9 player, went to another aisle, knocked some light bulbs down,
10 and ran out of the store, and Mr. Taghivan tackled him.

11 And Mr. Taghivan -- the cashier at the store, who
12 unfortunately we were unable to find, the officers were
13 unable to find after this case, but they didn't feel it was
14 necessary to talk to her at the time, she called the police.
15 And when the police arrived, Mr. Taghivan was -- excuse me,
16 the defendant was out on the sidewalk being held down by
17 Mr. Taghivan, and he happened to have this MP3 player in his
18 pocket.

19 Now, if we were to believe that he walked in there,
20 grabbed the MP3 player, he was standing near open packaging,
21 but he wasn't holding any of these items, but somehow he had
22 the item when he got outside, that just doesn't sound
23 reasonable. But what does sound reasonable is exactly what
24 Mr. Taghivan said on the stand yesterday. He said that he
25 confronted the defendant, tried to keep everything under

1 control, just wanted to get his merchandise back, and tried
2 to stay calm throughout the whole encounter. And he even
3 said that he was lucky that he caught the defendant as he ran
4 out of the store because the defendant ran around the back of
5 the aisle. Had he not, he might not have ended up getting
6 stopped by the doors.

7 So it is reasonable that Mr. Taghivan would want to
8 recover this property from the defendant after he got
9 extremely aggressive with him. He said he not only swiped
10 the utility knife at him, he cursed at him. He shoved him
11 out of the way a little bit. He wanted to get out of there.
12 He wanted to get out of with that MP3 player. He could have
13 even stolen the utility knife from Mr. Taghivan while he was
14 cutting open a box, according to our laws.

15 But the fact of the matter is, he went in the store,
16 grabbed the MP3 player, then went to get a utility knife to
17 open the MP3 player, because the packaging is usually pretty
18 secure on items like this. It's kind of hard to get into.
19 And if you look closely, it's cut fairly neatly, which I
20 think a razor blade, which is in this utility knife, could
21 easily do. So it's reasonable that when Mr. Taghivan saw him
22 standing in front of the packaging with the utility knife in
23 hand and the packaging was all open, it was reasonable for
24 him to assume that he had shoplifted at the time. It was
25 also reasonable for him to take him back to the office and

1 try to talk to him so that nothing else happened.

2 What was unreasonable was for the defendant to swipe
3 a utility knife at him to get away with an MP3 player.

4 Mr. Taghivan said that he feared for his life, that he was
5 nervous, that it scared him. He didn't know what to do. He
6 just wanted the property back and wanted everything to be
7 okay in his store.

8 Now, if y'all want to believe that the officers who
9 testified yesterday were unreasonable, we understand that.
10 It was painful for us to watch that too. Do we wish that
11 they had recovered a video? Yes. But you heard Mr. Taghivan
12 say that, even if they had recovered the surveillance video
13 footage from the store, it wouldn't have shown the incident
14 back by the light bulbs, that there was no cameras that
15 showed that area of the store. It might have shown him
16 entering and exiting the
17 store, but that would have been it.

18 Also, we would have liked maybe for the officers to
19 get fingerprints, to try to find DNA. Everyone watches CSI.
20 In a perfect world, we would have all of this evidence. We
21 don't. All we have is the testimony of Mr. Taghivan, who has
22 no reason to lie to y'all. And if the officers had a reason
23 to lie, you think they might have come up with better lies.
24 And they might have made the story a little bit better, but
25 they didn't.

1 The fact of the matter is that they presented the
2 case as we have it, and they had no reason to lie about
3 anything. They presented the case. It was a bit fuzzy.
4 It's been three years since this happened. But if anyone
5 knew what happened, exactly what happened at that Rite-Aid on
6 November 11th, 2010, you would be -- you wouldn't be sitting
7 in the jury box, you would be sitting up on the witness stand
8 testifying.

9 Thankfully, the City of Charleston Police Department
10 and Mr. Taghivan are not the ones who are on trial for armed
11 robbery right now. Alton Rodgers is. He's the one on trial;
12 not the police. So, please, don't blame them in this case.

13 Now, finally, this isn't a case of mistaken
14 identity. Would the surveillance video help? Yes, maybe.
15 Would other forensics have helped? Possibly. Would it have
16 been helpful if crime scene had come and taken pictures so
17 that we didn't have to have pictures that were more recent in
18 a store that looked differently? It probably would have been
19 helpful. But Mr. Taghivan worked there so long that he could
20 explain exactly the layout of that store at the time. And,
21 unfortunately, that's just not what we have.

22 But the good thing that we do have is that the
23 defendant was caught there. He was caught outside the store,
24 MP3 player in pocket, and there was a utility knife found on
25 the scene. Now, it doesn't matter that it wasn't found in

1 his pocket, that it wasn't found around him. The packaging
2 was right next to the MP3 player packaging. Mr. Taghivan
3 testified that he had that utility knife in his hand and he
4 swiped it at him.

5 It's just not relevant that we don't have all of
6 these other issues, all of the these other pieces of
7 evidence. Thankfully, all of the evidence was recovered. We
8 can say that much. And they would like -- the defense would
9 like for you to believe that it's important that we don't
10 have a video, that we don't have fingerprints. But the fact
11 of the matter is, that's just trying to confuse you and draw
12 your attention away from the important issues in this case,
13 that the defendant took the MP3 player, which was the
14 property of Mr. Taghivan, because it was in his possession
15 and control at that store. And that he intended to deprive
16 Mr. Taghivan of the possession of that permanently. He made
17 it out the door of that store. He passed all points of
18 purchase. Finally, he used force and intimidation while
19 doing so, and was armed with a deadly weapon, that being a
20 utility knife or razor blade.

21 Now, the judge is going to instruct you all on the
22 law and on reasonable doubt. And she will explain that there
23 are very few things in this world that we know with absolute
24 certainty. And we welcome the burden of proving every
25 element of this case beyond a reasonable doubt. So long as

1 you are firmly convinced that what Mr. Taghivan testified to
2 is what happened, we would ask you that you please consider
3 all of the evidence carefully. You can take all of that back
4 with you. Consider all of the testimony you've heard. Ask
5 any questions if you need to throughout that process. And,
6 please, use your common sense in this case. That's the most
7 important thing.

8 And once you do all of those things, we ask that you
9 find the defendant guilty of armed robbery, the only possible
10 verdict in this case. Thank you.

11 THE COURT: Thank you. Mr. King.

12 MR. KING: Alton Rodgers is not guilty of anything.
13 They've proven nothing. State's selling a car that nobody
14 could buy. They are trying to sell you a lemon, and don't
15 buy it. How can they expect you to take this case seriously
16 when they didn't take it seriously? And how can they expect
17 you to care when they didn't care?

18 We don't know what happened inside that store. And
19 we can't trust the police about what happened outside when
20 they got there. Officer Wohlleb, he testified, he said, an
21 MP3 player was in Mr. Rodgers' pocket. He also said the
22 utility knife was within arm's reach. Think about it.
23 That's awfully convenient for his case. Can almost imagine
24 reaching out trying to grab a knife.

25 He took an oath, sat in that witness stand, and told

1 you something that was not true about my client, not
2 something that doesn't matter, something that's central to
3 the whole case, to make this case sound better. He knew his
4 case was bad.

5 I'm sorry about the technical difficulties, but I
6 thought it was really important to hear, for the officer
7 here, that the knife was not within arm's reach. It was
8 inside on the counter. And that's a huge difference. So
9 forgive that. The State's had three years. It took me 15
10 minutes to figure out that computer and get it to play, but
11 it was that important. Maybe most important thing in the
12 case. I started off talking about the video, but then turns
13 out we can't trust the police. And I didn't see that coming.
14 I didn't see that coming.

15 How can you believe anything that he told you,
16 Officer Wohlleb? How can you trust any of his testimony now
17 that he's told you something not true under oath.

18 Detective Daquigan, he was the responding detective,
19 but he doesn't want any credit for this case. He said, this
20 is not my case. Well, he's the detective that responded to
21 the case. Officer responds, and then the detective responds.
22 It's not my case, he said. Wouldn't touch it. Nobody wants
23 this case.

24 So he responds, just like Officer Wohlleb. Doesn't
25 talk to any other witnesses, the one guy, the manager.

1 Manager's brother, he must have got out of there pretty
2 quick. He's gone. Nobody talks to him. He's left.

3 Cashier didn't leave. Cashier didn't leave and go
4 to California, but they didn't bother to talk to her either.
5 So can't blame her leaving for that.

6 So he doesn't talk to any witnesses. He doesn't
7 even look at the surveillance video. Doesn't get a copy to
8 show you so you can see. He didn't call crime scene. He
9 didn't take photographs. Didn't have any testing for
10 fingerprints, which is pretty traditional common police tool
11 that they use, especially in a serious crime like an armed
12 robbery.

13 No, they've taken, I guess, this is the narrow
14 approach to law enforcement. You go to the scene. You talk
15 to one person, ignore all those other pesky witnesses or any
16 video that might have shown what happened, or any forensic
17 evidence or anything like that, and just go with whatever
18 they say. That's now the narrow approach to law enforcement.
19 I guess that's sufficient. It's pretty quick. But that's
20 not what we are supposed to do.

21 And the police just believed whatever Mr. Taghivan
22 said. We should have that video so we could see for
23 ourselves. There's no reason we should not have that video
24 to be able to see. The judge is going to charge you that if
25 they don't preserve evidence, you are allowed to, not

1 required, but allowed to infer that that evidence would have
2 been bad for their case. You will hear that instruction.

3 People, even police officers, can be mistaken and
4 they can lie. Videos don't lie. Fingerprints don't lie. We
5 know nothing about what happened that day, about what really
6 happened inside that store. And we can't trust the police
7 what they tell us about what happened when they get there.
8 They've proven nothing. We know so little about what
9 happened.

10 They couldn't even disprove to say Mr. Rodgers goes
11 to Rite-Aid on his lunch break, manager and his brother shake
12 him down, try to get him to pay \$150, some scam maybe, they
13 call it civil prostitution. But they try to shake him down
14 for \$150. He doesn't pay up, knock him down, sit on him, and
15 they call the police. And then next thing you know,
16 detective-not-in-my-case showed up, and
17 officer-pants-on-fire, and now they are taking him to jail.
18 They've arrested him. Manager's brother has taken off and
19 gone. They don't interview him. They don't interview any
20 other witnesses there. They don't check the surveillance
21 tape to see if anything the manager says is true. They don't
22 check any of these items for prints to see if any of that
23 matches up.

24 They take him to jail, and then almost three years
25 later, try to convince you that he's guilty. And even tried

1 to make the case better by changing things around, saying the
2 knife was within arm's reach. Makes it sound a lot more
3 sinister. So after all of that neglect, they are going to
4 come and then tell you something that's not true.

5 We have photos. We have photos probably taken some
6 time last week. Store doesn't even look like this anymore,
7 but use your imagination, I guess. Pretend these wine
8 bottles are batteries, I guess that's going to help you with
9 this case. This is what we have, photos.

10 You know, we set up this system of justice for a
11 reason. And many people were involved building this
12 courthouse. Think of the time that was put in, and how proud
13 we are of our system of justice, and what's fair, and how we
14 fought to preserve the freedom that we have, and justice is
15 supposed to happen in this courtroom. And this is not
16 acceptable. This is not justice.

17 Alton Rodgers has waited three years for this, and
18 he deserves better than this. They've proven nothing. This
19 case is infected with deceit and with neglect, and he's not
20 guilty of anything.

21 This case is a lemon. Don't buy it.

22 THE COURT: Thank you, sir. Ladies and gentlemen,
23 you have heard the testimony, the evidence, and the arguments
24 of the State and the defense. I will now explain to you the
25 law that applies to this case.

1 Under the constitution and laws of the state of
2 South Carolina, you are the finders of fact in this case. I
3 do not have the right to pass upon the facts or even express
4 any opinion that I might have as to them. Because that is a
5 matter solely for you, the jury, to determine.

6 As jurors then, it is your duty to determine the
7 effect, the value, the weight, and the truth of the evidence
8 presented during this trial. As the trial judge, it's my
9 responsibility to preside over the trial of the case and to
10 rule upon or pass upon the admissibility of the evidence
11 offered during the trial.

12 You are to consider only the testimony which has
13 been presented from this witness stand together with any
14 exhibits which have been made a part of the record.

15 I have the additional duty to charge you about the
16 law applicable to this case. And as the presiding judge, I'm
17 the sole judge of the law of this case. It is your duty as
18 jurors to accept the law as the Court now states it to you,
19 and then reach your verdict. And, finally, I will charge you
20 in this regard that you should not be concerned with what you
21 think the law ought to be, but with what I charge you the law
22 here is.

23 The testimony of a victim or that of any witness
24 need not be corroborated; however, it is up to you, ladies
25 and gentlemen, as the fact finder, to weigh and determine the

1 the testimony of all witnesses in this case. You are the
2 judges and the sole judges of the credibility or
3 believability of the witnesses who have testified and of the
4 evidence in this case.

5 In passing upon credibility, you may take into
6 consideration many things, such as the demeanor or manner of
7 the witness testifying, whether the witness had a reason to
8 be bias or prejudiced, whether a witness' testimony was
9 contradicted on the one hand, or supported and corroborated
10 on the other hand. You may believe a small portion of a
11 witness' testimony and disregard the larger, or vice versa.
12 You may believe one witness against many, or many against
13 one.

14 All of these things you will consider bearing in
15 mind that you must give the defendant the benefit of any
16 reasonable doubt. It becomes your duty then as jurors to
17 analyze and to evaluate the evidence and determine that
18 evidence which convinces you of its truth. There are two
19 types of evidence which are generally presented during a
20 trial, direct evidence and circumstantial evidence.

21 Direct evidence is the testimony of a person who
22 claims to have actual knowledge of a fact, such as an
23 eyewitness. It is evidence which immediately establishes the
24 main fact to be proved.

25 Circumstantial evidence is proof of a chain of facts

1 and circumstances indicating the existence of another fact.
2 It is evidence which immediately establishes collateral facts
3 from which the main fact may be inferred. Circumstantial
4 evidence is based on inference and not on personal knowledge
5 or observation.

6 When it is alleged that a party has failed to
7 preserve material evidence for trial, it is for you, the
8 jury, to determine whether the party has offered a
9 satisfactory explanation for that failure. If you find the
10 explanation unsatisfactory, you are permitted, but not
11 required, to draw the inference that the evidence would have
12 been unfavorable to the party's claim.

13 The fact that the defendant here was arrested,
14 charged, and indicted, is not evidence in this case, and
15 cannot be considered by you as evidence of guilt in the case,
16 nor does it create any presumption or inference of guilt.
17 The indictment is simply the formal written instrument which
18 contains the charge made against this defendant. An
19 indictment is simply the formal document by which the case is
20 brought into court.

21 The defendant has pled not guilty to the charge in
22 this indictment, and that plea puts the burden on the State
23 to attempt to prove the defendant guilty. A person charged
24 with committing a criminal offense in South Carolina is never
25 required to prove himself innocent. It's an important rule

1 in our law that the defendant in a criminal trial, no matter
2 what the seriousness of the charge may be, will always be
3 presumed to be not guilty of the crime for which the
4 indictment was issued, unless guilt has been proven by
5 evidence satisfying you of that guilty beyond a reasonable
6 doubt.

7 This presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the defendant
9 throughout the trial unless you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt. The presumptions of innocence is like a
12 robe of righteousness placed about the shoulders of the
13 defendant which remains with him unless it has been stripped
14 from him by evidence satisfying you collectively of the
15 defendant's guilt beyond a reasonable doubt. The
16 presumptions of innocence is not mere legal theory and it is
17 not just a legal phrase. It is a substantial right to which
18 every defendant is entitled unless you, the jury, are
19 satisfied from the evidence of the defendant's guilt beyond a
20 reasonable doubt.

21 So the State must prove the defendant guilty beyond
22 a reasonable doubt. What is a reasonable doubt in the law?
23 A reasonable doubt is a doubt which makes an honest, sincere,
24 conscientious juror in search of the truth hesitate to act.
25 Proof beyond a reasonable doubt must therefore be proof, of

1 such a convincing character, that a reasonable person would
2 not hesitate to rely and act upon it in the most important of
3 his or her own affairs. Proof beyond a reasonable doubt can
4 also be described as proof that leaves you firmly convinced
5 of the defendant's guilt.

6 Now, there are very few things in this world that we
7 know with absolute certainty. And in criminal cases, the law
8 does not require proof that overcomes every possible doubt.
9 If, based on your consideration of the evidence, you are
10 firmly convinced that the defendant is guilty of the crime
11 charged, you must find him guilty.

12 If, on the other hand, you think there is a real
13 possibility that he is not guilty, you must give him the
14 benefit of that doubt and find him not guilty or guilty of a
15 lesser-included offense.

16 I instruct you and emphasize that the fact that the
17 defendant did not testify is not a factor to be considered by
18 you in any way in your deliberation and in your consideration
19 on the question of the guilt or innocence of this defendant.
20 It must not be considered by you in any manner whatsoever.

21 A defendant has an absolute constitutional right to
22 remain silent. And the assertion of this right must not be
23 considered by you or any jury in its deliberations. I
24 repeat. Under your oath, the oath that you took as jurors,
25 you are to draw no conclusion whatsoever from the fact that

1 the defendant in this case did not testify. In fact, that
2 should not even be discussed in your jury room.

3 The burden of proof, as I have explained, is on the
4 State. The defendant is not required to prove his innocence.
5 The burden remains on the State to prove him guilty beyond a
6 reasonable doubt.

7 The defendant is charged with armed robbery. In
8 order to prove this offense, the State must first prove
9 beyond a reasonable doubt that the defendant took personal
10 property from a person or the presence of another person.
11 Property is in the presence of another person if it is within
12 the person's reach, inspection, observation, or control, so
13 that the person could, if not overcome with violence or
14 prevented by fear, keep possession of that property.

15 The State must also prove beyond a reasonable doubt
16 that the defendant carried away that property, intending to
17 permanently deprive the owner of the property, and to keep
18 the property for his own use. The slightest removal of the
19 property or the complete possession of the property, even for
20 an instant by the defendant, is sufficient to show a taking
21 and carrying away of the property.

22 The taking and carrying away of the property must
23 have been done by violence or putting the owner of the
24 property in fear of violence.

25 Finally, the State must prove beyond a reasonable

1 doubt that the defendant was armed with a deadly weapon
2 during the robbery. A deadly weapon is an article,
3 instrument, or substance which is likely to cause death or
4 great bodily harm. Whether an instrument has been used as a
5 deadly weapon depends on the facts and circumstances of each
6 case.

7 If you find that the State has failed to prove that
8 the defendant was armed with a deadly weapon, you may then
9 consider whether the State has proved beyond a reasonable
10 doubt that the defendant committed the lesser-included
11 offense of robbery. In order to prove robbery, the State
12 must prove beyond a reasonable doubt all of the evidence that
13 I have just explained except that the defendant was armed
14 with a deadly weapon.

15 The offense of robbery is essentially the commission
16 of larceny with force. If you find that the State has failed
17 to prove that the defendant used force or the threat of force
18 in taking and carrying away merchandise that belonged to
19 another, you may then consider whether the State has proved
20 beyond a reasonable doubt that the defendant committed the
21 offense of larceny. In order to prove larceny, the State
22 must prove beyond a reasonable doubt that the defendant took
23 or carried away merchandise without the owner's consent or
24 against the owner's will.

25 Ladies and gentlemen, you have been selected by both

1 the State and the defendant to be fair and impartial jurors
2 in this matter. It is your duty then in your deliberations
3 to take the law which I have just given to you and apply it
4 to the facts which you determine to be true. You must
5 consider these instructions as a whole and not follow some
6 and ignore others.

7 You've heard the evidence and now you've heard the
8 law. Whatever your verdict, your Foreperson will indicate it
9 by checking not guilty, guilty of a lesser-included offense,
10 or guilty as to the charge on the verdict form. Your
11 Foreperson will then sign and date the verdict form.

12 Please remember that, although the Foreperson is the
13 only juror who actually writes the verdict, it is not her's
14 alone. The verdict must be a unanimous verdict. And your
15 Foreperson is not authorized to write the verdict until you
16 have all agreed as to what that verdict must be.

17 Ladies and gentlemen, I'm going to send you to your
18 jury room in just a minute, but please do not begin to
19 discuss the case until you have received the verdict form and
20 the exhibits. Once you've received those, that will be your
21 signal to begin your deliberations.

22 Once you begin your deliberations, you will
23 deliberate until you have reached your verdict, at which time
24 you will knock on the door, advise the bailiff, and we will
25 bring you out to receive your verdict.

1 Now, if a question comes up while you are
2 deliberating that you need for us to address before you reach
3 your verdict, you will write the question out, give it to
4 your Foreperson, knock on the door. We will get it. I will
5 share it with the attorneys. And we will determine how to
6 best answer your question.

7 One question that sometimes come up, and I don't
8 know if in this trial we referred to things that weren't
9 admitted into evidence, I believe most of the items were
10 admitted, you will have those back there with you. So
11 anything that was admitted into evidence is going to go back
12 with you to the jury room.

13 The verdict form will also go back to the jury room.
14 And it's pretty self-explanatory, but I do want to go over
15 it. Again, only the Foreperson writes on the verdict form,
16 but your verdict must be unanimous. The first charge put on
17 the verdict form, the first question asks: On the charge of
18 armed robbery, we the jury unanimously find the defendant,
19 Alton Rodgers, and there's a place for either not guilty or
20 guilty as to the armed robbery charge. If you check not
21 guilty, you must to Question 2, which provides the question
22 on the lesser-included charge of robbery. If you find the
23 defendant guilty, that's the end of the deliberation, and you
24 move to the end, the Foreperson signs and dates it.

25 But if you find the defendant not guilty, you go to

1 Question 2, which asks about the charge, the lesser-included
2 offense of robbery. Same thing, we, the jury, unanimously
3 find the defendant, either not guilty or guilty. If you find
4 the defendant not guilty, you move to Question 3 and consider
5 the larceny charge. And, again, it asks not guilty or
6 guilty. If you find the defendant guilty in Question 2,
7 again, the Foreperson signs the verdict form.

8 So just take them each in order according to the
9 elements and the charge, apply to the facts as you find them,
10 and that's how you reach your unanimous verdict. Okay?

11 I'm going to ask y'all to go to your jury room while
12 we get the evidence together for you. Please don't begin to
13 discuss the case yet. We will have everything to you
14 shortly. Thank you.

15 (Whereupon, the jury leaves open court at 11:09
16 a.m.)

17 THE COURT: Okay. Any objections to the charge as
18 given?

19 MS. HALEY: None from the State, Your Honor.

20 MR. KING: Just my previous objections I think about
21 the robbery charge.

22 THE COURT: Certainly. And I've noted the State's
23 previous objections as well. I'm going to go ahead and get
24 this marked. I think it might be Court's 2. This will be
25 Court's 2. And then I'm going to keep it up here in case

1 they come back with anything. Here's the verdict form and
2 the indictment, if y'all will come up and make sure you have
3 all of the exhibits. Is that everything? Great, thanks.

4 (Court's Exhibit No. 2, Jury Charge, was marked
5 for identification.)

6 (Whereupon, the jury begins deliberations.)

7 THE COURT: Okay. We have a question from the jury,
8 which is a reasonable question, and I'm going to get it
9 marked as Court's 3. The question is: Can we have the
10 written definition of all three charges? Which is a
11 reasonable question.

12 My inclination is to send the whole charge back.
13 It's been marked as a Court's exhibit. Any objection to
14 that?

15 MS. HALEY: None from the State, Your Honor.

16 MR. KING: No, none from the defense.

17 THE COURT: Then I'm not even going to bring them
18 out. If y'all are okay with that, and we will just send the
19 charge back. And they can figure out where -- I think it is
20 more appropriate to do it that way then to send part of the
21 charge.

22 (Court's Exhibit No. 3, Jury Question, was marked
23 for identification.)

24 THE COURT: All right. It's my understanding that
25 we have a verdict. So we can bring them on in.

1 (Whereupon, the jury returns to open court at 12:09
2 p.m.)

3 THE COURT: All right. Madam Foreperson, it's my
4 understanding the jury has reached a verdict; is that
5 correct?

6 THE FOREPERSON: Yes, ma'am.

7 THE CLERK: Case Number 2011-GS-10-767, State of
8 South Carolina vs. Alton Rodgers, indictment for armed
9 robbery. On the charge of armed robbery, we, the jury,
10 unanimously find the defendant, Alton Rodgers, not guilty.

11 On the lesser-included charge of robbery, we, the
12 jury, unanimously find the defendant, Alton Rodgers, not
13 guilty.

14 And on the lesser-included charge of larceny, we,
15 the jury, unanimously find the defendant, Alton Rodgers,
16 guilty.

17 THE COURT: Okay. Thank you. Ladies and gentlemen,
18 is that your verdict.

19 (Jury indicates in the affirmative.)

20 THE COURT: Anything further from the defense?

21 MR. KING: We request a polling of the jury.

22 THE COURT: Will you poll the jury for me please?

23 THE CLERK: Whenever I call your name, please
24 respond to the questions appropriately.

25 Jury number 78, is this your verdict?

1 JUROR 78: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR 78: Yes.

4 THE CLERK: Juror 204, is this your verdict?

5 JUROR 204: Yes.

6 THE CLERK: Is this your still verdict?

7 JUROR 204: Yes.

8 THE CLERK: Jury 235, is this your verdict?

9 JUROR 235: Yes.

10 THE CLERK: Is this still your verdict? .

11 JUROR 235: Yes.

12 THE CLERK: Juror 277, is this your verdict?

13 JUROR 277: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR 277: Yes.

16 THE CLERK: Juror Number 172, is this your
17 verdict?

18 JUROR 172: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR 172: Yes.

21 THE CLERK: Juror Number 35, is this your verdict?

22 JUROR 35: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR 35: Yes.

25 THE CLERK: Juror Number 129, is this your

1 verdict?

2 JUROR 129: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR 129: Yes.

5 THE CLERK: Juror Number 241, is this your

6 verdict?

7 JUROR 241: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR 241: Yes.

10 THE CLERK: Juror Number 258, is this your

11 verdict?

12 JUROR 258: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR 258: Yes.

15 THE CLERK: Juror Number 236, is this your

16 verdict?

17 JUROR 236: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR 236: Yes.

20 THE CLERK: Juror Number 26, is this your verdict?

21 JUROR 26: Yes.

22 THE CLERK: Is this still your verdict?

23 JUROR 26: Yes.

24 THE CLERK: Your Honor, the jury has been polled and

25 the jury stands.

1 THE COURT: Thank you. Anything else further at
2 this time from the defense?

3 Okay. How about Juror Number 300, have we
4 polled --

5 THE CLERK: My apologies. Juror 300, is this your
6 verdict?

7 JUROR 300: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR 300: Yes.

10 THE COURT: Thank you to Sarah, my law clerk.
11 Thank you, ladies and gentlemen.

12 Mr. King, anything further at this time?

13 MR. KING: Just renew my previous motions, motion
14 for directed verdict.

15 THE COURT: And I will, for the reasons stated
16 before, respectfully deny that motion. And note that all of
17 your other motions are raised and ruled upon. With the State
18 too, we marked the Court's Exhibit 2, which is the jury
19 charge, and I think the other two Court's exhibits were the
20 notes.

21 Anything from The state at this time?

22 MS. HALEY: Nothing from the State, Your Honor,

23 THE COURT: All right. Ladies and gentlemen, thank
24 you so much for your kind attention and for your work on
25 this. You are now excused at this time for today. Do they

1 need to call back tonight, I know we are picking other jurors
2 tomorrow.

3 THE CLERK: Yes, they need to call back this
4 evening.

5 THE COURT: If y'all will call back tonight on the
6 jury hotline. We are probably going to be picking some more
7 juries tomorrow. And we will have instructions for you at
8 that time. So thank you very much. And have a good rest of
9 your afternoon. I will probably see y'all again tomorrow.
10 So thank you very much.

11 (Whereupon, the jury leaves open court at 12:14
12 p.m.)

13 THE COURT: Okay. Let's take a break for lunch and
14 then do sentencing after lunch, because I need to look at the
15 prior record and I need to let y'all prepare for any
16 arguments that there may be that need to be made.

17 I know there's an enhancement issue with the
18 larceny. If there's any particular case I need to look at
19 over lunchtime, y'all let me know.

20 We've got one motion for a continuance at two
21 o'clock. Why don't we convene at 2:15. And if there's
22 anything you want me to look at in the interim, I've got one
23 meeting that I'm late for, but I'm going to move that and go
24 now, and then I will be back. Happy to look at anything you
25 want me to look at at lunch.

1 And I know you will want to put on the record the
2 prior record. Okay. Anything else y'all need me to look at
3 at lunchtime?

4 MS. HALEY: Your Honor, I can send you State v.
5 Lewis. That was the only case I was able to find somewhat.

6 THE COURT: If y'all want to give me the cite, that
7 would be great.

8 MS. BALDWIN: Your Honor, it's 325 South Carolina
9 324.

10 THE COURT: Okay. I will take a look at it. And
11 that will give Mr. Cooper and Mr. King a chance to look at.
12 We will be back at 2:15. And after that we will do the other
13 motion in the other matter y'all have. We will be at ease
14 until 2:00 when we have that motion for continuance and see
15 y'all at 2:15.

16 (Luncheon recess is taken.)

17 THE COURT: All right. We are back on the record in
18 State vs. Alton Rodgers. I'm happy to hear from the State.

19 MS. HALEY: Thank you, Your Honor. The defendant,
20 as I mentioned earlier, has convictions over the last 30
21 years.

22 THE COURT: Okay.

23 MS. HALEY: If you would like, I can read every one
24 from 1982.

25 THE COURT: What did he have in the last ten years

1 specifically?

2 MS. HALEY: In the last ten years --

3 THE COURT: I will tell you what, if it is easier to
4 start at the beginning and go back.

5 MS. HALEY: 1982, shoplifting.

6 1983, assault -- oh, I also wanted to say that there
7 are a lot from Florida and a lot from South Carolina. I can
8 read them chronologically or read them South Carolina and
9 then Florida.

10 THE COURT: I think chronologically is fine.

11 MS. HALEY: Okay. 1982, shoplifting; 1983, assault;
12 1984, sale of marijuana; 1985, disorderly conduct; 1986, CDV
13 first; 1987, forgery; 1988, shoplifting, two counts, also a
14 larceny; 1989, two counts of passing a forged check; 1990,
15 two counts of larceny, and burglary, one count of that; in
16 1992, a general property crime violation and three counts of
17 larceny, and a probation violation; in 1995, two counts of
18 larceny, contempt, and escape; in 1996, selling cocaine,
19 burglary, two counts of criminal aggravated battery with a
20 deadly weapon, and petty theft; and 1997, another probation
21 violation; in 2001, scheme to defraud or swindle, two counts
22 of larceny, and possession of cocaine; 2003, larceny,
23 resisting an officer for merchandise recovery, and three
24 counts of petty theft; a probation violation 2004; 2005,
25 trespass; 2006, trespass and drinking in public; 2007,

1 resisting arrest and petty larceny; 2008, petty larceny; and
2 then in 2009, burglary second nonviolent, two counts of
3 trespassing, simple possession of marijuana, and a property
4 offense enhancement. And the release date on those was
5 October 1st, 2010.

6 THE COURT: Okay. Go ahead. Any other argument you
7 would like to make?

8 MS. HALEY: The State would argue based on the
9 defendant's extensive record and the fact that there are 25
10 total property crime convictions over 30 years, the State
11 would argue the maximum under the property offense
12 enhancement statute. We think it applies in this
13 circumstance. And just based on the facts of this incident,
14 we find it to be appropriate.

15 THE COURT: Mr. King or Mr. Cooper?

16 MR. KING: Thank you, Your Honor. First, we just
17 put an objection on the record about the property crime
18 enhancement and argue that the issue be limited to a 30-day
19 sentence based on no indictment for property crime
20 enhancement, insufficient notice. And I believe the State
21 should have certified convictions with the two priors that
22 they are using to enhance.

23 THE COURT: Is there any authority that you have for
24 the proposition that your client should be entitled to be
25 sentenced under the 30-day offense when it's a

1 lesser-included of armed robbery and he has that on his
2 record?

3 MR. KING: I looked, Your Honor. I looked, and the
4 case did seem to be against me. Out of abundance of caution,
5 I'm putting it on the record.

6 THE COURT: I appreciate that.

7 MR. KING: But, no, I have no cases to give you that
8 support that.

9 THE COURT: Okay. Okay.

10 MR. KING: Regarding sentencing, Judge, he's been
11 in -- I add up 1,055 days.

12 THE COURT: On this charge?

13 MR. KING: On this charge. He's been in the county
14 jail a long time. And the county jail is a tough time to
15 spend. I think that's worse than being in the Department of
16 Corrections.

17 You heard from the Blair hearing that we had that he
18 did have physical abuse as a child. He had a tough
19 childhood. He's had a limited education. He's had
20 difficulty holding a job for a long time, although he was
21 working at this time. He was working for a temp agency. I
22 think even under the State's initial case, I don't think that
23 anyone thought he went in there trying to hurt anyone or even
24 trying to commit a robbery, but he's been acquitted of that.
25 He's been acquitted of using force or anything like that.

1 This is just stealing.

2 If -- this was actually an offer that I had tried to
3 pursue for a good part of the case. So if we had had this
4 offer in the beginning, it might have been a guilty plea.

5 THE COURT: For property crime enhancement?

6 MR. KING: Property crime, yes, Your Honor. That
7 was one of the suggestions for a plea deal trying to work
8 something out as opposed to an armed robbery. Offer was
9 eight on attempted armed robbery, which would have been 85
10 percent. Under this, what he's sentenced now, that will not
11 be an 85 percent sentence.

12 We're just asking you to consider that the jury
13 acquitted him of using any kind of force or using the knife
14 for anything, and we would ask that you would consider maybe
15 a time served or probation with any sort of counseling that
16 you might see fit.

17 THE COURT: Okay. Anything further from the
18 State?

19 MS. HALEY: Nothing further from the State, Your
20 Honor.

21 THE COURT: Okay. I'm just trying to pull up the
22 enhancement statute. Do you all have the cite?

23 MS. BALDWIN: It's 16-1-57, Your Honor.

24 THE COURT: Thank you. And the larceny statutes, I
25 guess we've got the statutes that are petty larceny. We've

1 got the larceny, between two and ten. We've got grand
2 larceny. So the terms of imprisonment are contingent upon
3 the value of the property involved in those situations.

4 MS. HALEY: Yes, Your Honor.

5 THE COURT: So I guess the issue we've got is does
6 the enhancement apply when it's a lesser-included offense of
7 armed robbery. That's the issue we are dealing with?

8 MS. HALEY: Yes, Your Honor.

9 THE COURT: Tell me the cite for your case again,
10 Ms. Haley.

11 MS. HALEY: State v. Lewis, was 325 SC 324.

12 MR. COOPER: That's the case that's footnoted in the
13 statute, I think, Your Honor.

14 MS. HALEY: That was the only thing I could find.

15 THE COURT: Yeah. Okay. All right. Anything
16 further from either side?

17 MS. HALEY: Nothing from the State, Your Honor.

18 THE COURT: All right. In light of the lengthy
19 criminal record that we have here and the circumstances of
20 this particular offense, the sentence is going to be seven
21 years with credit for the time served. I believe y'all said
22 it was 1,055 days under the property crime enhancement
23 statute.

24 Sir, I believe your attorneys did an excellent,
25 excellent job for you. You were facing a mandatory minimum

1 of, I think, 15 on the armed robbery, but this isn't a 30-day
2 larceny situation. And I do think the intent of the
3 legislature in the statute and as recognized in State v.
4 Lewis is proper. So that will be the order of the Court.

5 Do we have the sentencing sheet?

6 MS. HALEY: Yes, Your Honor.

7 THE COURT: Okay. Thank you. Okay. I have signed
8 the sentencing sheet. Thank you.

9 THE COURT: Thank you. Y'all did an excellent job.

10 (Whereupon, the proceedings are concluded.)

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MEC 106 1105973

WITNESSES

WOHLLEB

Charleston City Police Department

AGENCY CASE NUMBER

1019023

ARREST WARRANT NUMBER

K684298

DATE OF ARREST

November 11, 2010

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date: FEB 07 2011

VERDICT

Guilty of Larceny

[Signature] 10/1/13
Foreperson of Petit Jury Date

INDICT

DOCKET NO. 2011GS1000767

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

February Term 2011

THE STATE

vs.

ALTON RODGERS

10-5962(1)

Indictment for

Armed Robbery

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 7, 2014



Robert M. Pachak
Appellate Defender


South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

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COURT OF APPEALS

THE STATE,

V.

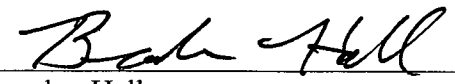
ALTON RODGERS,

APPELLANT

APPELLATE CASE NO. 2013-002764

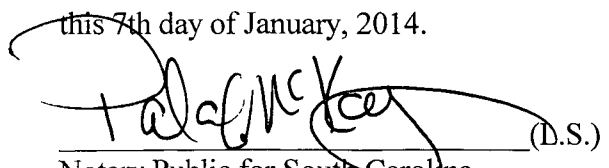
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of January, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2014.



(D.S.)

Notary Public for South Carolina
My Commission Expires: July 24, 2022.