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STATE OF SOUTH CAROLINA

ORIGINAL

ANDERS
NO DEF. BRIEF

In The Court of Appeals

APPEAL FROM LAURENS COUNTY

Donald B. Hocker, Circuit Court Judge

RECEIVED

MAR 17 2015

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

CHRISTOPHER WYMER,

APPELLANT

APPELLATE CASE NO. 2014-002234

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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State of South Carolina)
) Court of General Sessions
County of Laurens) 2011-GS-30-1127, 1129

State of South Carolina)
) vs. Transcript of Record
)
Christopher L. Wymer)
) VOIR DIRE
) DEFENDANT

October 6, 2014
Laurens, South Carolina

B E F O R E:

Honorable Donald B. Hocker, Judge

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

Dale Scott, Deputy Solicitor
Warren Mowry, Deputy Solicitor
Attorney for the State

Elizabeth Wiygul, Esq.
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: We are going to start the case of the
2 State versus Christopher Lee Wymer. That is spelled,
3 W-Y-M-E-R. And, Mr. Wymer, if you would stand and face
4 the jury panel for just a moment. That is fine, very
5 good, sir. I have got two indictments in front of me.
6 And I will explain what indictments are in just a little
7 bit. But they charged Mr. Wymer with two offenses, being
8 the same offense but two counts of attempted carjacking.
9 And I will publish these indictments in just another
10 moment. That is the case that we are going to be
11 starting, actually will not start the case until in the
12 morning. But we will pick now the trial jury in that
13 case. One other thing too and I failed to mention to you,
14 if there is any time there is an emergency at home or work
15 that a family member or a coworker or a supervisor or
16 someone needs to get in touch with you, whether you are on
17 a trial jury or you are on the jury panel as you are now,
18 just make sure they know how to contact the Clerk's office
19 and we can certainly deal with that particular emergency.
20 Lastly I want to explain to you, when we start this trial
21 we will not be in this courtroom. We will actually be in
22 the courtroom right next to this courtroom which is a
23 smaller courtroom, still large enough to handle a jury
24 trial. The reason for that is, is that Judge Griffith as
25 I mentioned to you earlier, who is one of our resident

1 Judge's in this circuit from Newberry is actually here and
2 he is going to be presiding over other cases. And he will
3 actually be in this courtroom. And you are going to be
4 shown where to report if you are selected on the trial
5 jury, but just wanted to go ahead and give you the heads
6 up that when we have this trial it will actually be in the
7 other circuit courtroom which is right next to here. I am
8 going to go ahead and publish these indictments. An
9 indictment is not evidence of any guilt whatsoever. It is
10 only the mechanism in which to get a case into trial as we
11 are here. It is the charging paperwork. But it is not
12 evidence of any kind of guilt on behalf of the defendant
13 because you will hear me tell you more than one time that
14 any defendant at any time is presumed innocent unless they
15 are proven guilty beyond a reasonable doubt. So, again,
16 do not take these indictments as evidence. But I do want
17 to read the charge to you.

18 Indictment 11-GS-30-1127 states that Christopher Lee
19 Wymer did in Laurens County, South Carolina on or about
20 the 27th day of April, 2011 willfully and unlawfully take
21 or attempt to take a motor vehicle from another person by
22 force and violence or by intimidation while the person was
23 operating the vehicle or while the person was in the
24 vehicle to wit: Said Christopher Lee Wymer did attempt to
25 take a tractor trailer truck being operated by one Tylon,

1 will read the names and then I will ask the question.
2 Christopher Wymer, Timothy Wayne Threatt, that is spelled
3 T-H-R-E-A-T-T; Deputy Devin Hodges; Deputy Steven Sweat;
4 Investigator Chris Martin; Tylon Johnson; Brian Ortscheid;
5 Eddie Bridges and Timothy Threatt. Is anyone related by
6 blood or marriage to any of those individuals I just
7 listed or is anyone had or currently have a close personal
8 or social relationship with any of those people. If so,
9 please stand.

10 (No response.)

11 THE COURT: I am going to give the attorneys a chance
12 to introduce themselves. I will tell you that on both
13 sides we have excellent attorneys representing their
14 respective clients. So at this time I will turn it over
15 to the State.

16 MR. SCOTT: Thank you, Your Honor, may it please the
17 Court. My name is Dale Scott, I am Deputy Solicitor here
18 in the Eighth Circuit. We are here in Laurens today, I
19 work out of Newberry and Laurens. Also here is Warren
20 Mowry, he is also Deputy Solicitor. Walter Bentley is our
21 investigator.

22 THE COURT: Ms. Wiygul.

23 MS. WIYGUL: My name is Elizabeth Wiygul. I am a
24 criminal defense attorney out of Greenville. I represent
25 Mr. Wymer.

1 THE COURT: Does any member of the jury panel ever
2 been represented by any of the attorneys involved in this
3 case, if so please stand.

4 (No response.)

5 THE COURT: Any member of the jury panel related by
6 blood or marriage to or have had or currently have a close
7 personal or social relationship with any of the attorneys
8 involved in this case. If so, please stand.

9 (No response.)

10 THE COURT: Has any member of the jury panel formed
11 or expressed an opinion about any issue or matter involved
12 in this case. If so, please stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel
15 aware of any biased or prejudiced towards either the State
16 or the defendant in this case. If so, please stand.

17 (No response.)

18 THE COURT: Now this question, I don't think it
19 applies but I have to ask it anyway. Is there any member
20 of the jury panel that was a member of the grand jury
21 which issued the two indictments in this case. If so,
22 please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 is a member of, contributor to any group which has as its

1 primary concern the promotion of law enforcement or
2 victims rights. These groups would include but not
3 limited to MADD, SADD or CAVE. If so, please stand.

4 (No response.)

5 THE COURT: Does any member of the jury panel know of
6 any reason whatsoever why he or she should not serve as a
7 juror in this case with the particular emphasis being
8 placed on your ability to be fair and impartial to both
9 the State and the defendant in this case. If so, please
10 stand.

11 (No response.)

12 THE COURT: Any exceptions or objections to the
13 Court's voir dire by the State?

14 MR. SCOTT: None from the State, Your Honor.

15 THE COURT: Any additional questions that the State
16 would like to ask in voir dire?

17 MR. SCOTT: No, sir.

18 THE COURT: Thank you. And for the defendant, any
19 exceptions or objections to voir dire?

20 MS. WIYGUL: No, Your Honor.

21 THE COURT: Any additional questions?

22 MS. WIYGUL: No, Your Honor.

23 THE COURT: Thank you very much. Is there any
24 potential matter that anybody on the jury panel would like
25 to speak with me in private, I will give you an

1 opportunity to do at this time. If you will stand and
2 form a line like we did a little while ago during jury
3 qualification.

4 (No response.)

5 THE COURT: The process of selecting a trial jury in
6 a criminal case consist of this. A name will be called
7 out, if your name is called out you will come down to the
8 front and you will stand in the area between both counsel
9 tables but backing up where both sides can see you and
10 they will each have an opportunity to determine whether or
11 not they want you on the jury. If you are not selected do
12 not take any offense to that, don't take it personally.
13 It doesn't mean that you would not make a good juror. But
14 whatever reason, one side or the other may believe for
15 whatever reason they do not want you on the jury but don't
16 take it personally. If you are selected then hopefully
17 you will be excited about that or anxious to engage in
18 your civic responsibility which many consider being the
19 second highest civic responsibility that we all have,
20 second to only serving in the military. So if you are
21 selected hopefully you will be glad about that. So, in
22 just a moment we will start with jury selection. If I can
23 see the lawyers for just one second.

24 (Whereupon, a bench conference was held in the
25 presence of the jury panel but out of the hearing of

1 the jury panel.)

2 THE COURT: Madam Clerk, if you are ready the Court
3 is ready.

4 CLERK OF COURT: Juror number 98, William R. Knight.
5 What says the State?

6 MR. SCOTT: Please seat the juror.

7 CLERK OF COURT: What says the defense?

8 MS. WIYGUL: Please seat the juror.

9 CLERK OF COURT: Juror number 21, Ansel C. Burgess,
10 Jr. What says the State?

11 MR. SCOTT: Seat the juror.

12 CLERK OF COURT: What says the defense?

13 MS. WIYGUL: Please excuse this juror.

14 CLERK OF COURT: Juror number 172, Jay A.

15 Stubblefield. What says the State?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: What says the defense?

18 MS. WIYGUL: Please seat the juror.

19 CLERK OF COURT: Juror number 17, Timothy W. Bracken.

20 What says the State?

21 MR. SCOTT: Please excuse this juror. .

22 CLERK OF COURT: Juror number 174, Jean K. Swanson.

23 What says the State?

24 MR. SCOTT: Please present the juror.

25 CLERK OF COURT: What says the defense?

1 MS. WIYGUL: Please seat the juror.

2 CLERK OF COURT: Juror number 23, Tamara L. Byrd.

3 What says the State?

4 MR. SCOTT: Please present the juror.

5 CLERK OF COURT: What says the defense?

6 MS. WIYGUL: Please excuse this juror.

7 CLERK OF COURT: Juror number 81, Antonio Hill. What
8 says the State?

9 MR. SCOTT: Please present the juror.

10 CLERK OF COURT: What says the defense?

11 MS. WIYGUL: Please seat the juror.

12 CLERK OF COURT: Juror number 85, Connie R. Hodges.
13 What says the State?

14 MR. SCOTT: Please present the juror.

15 CLERK OF COURT: What says the defense?

16 MS. WIYGUL: Your Honor, may we approach?

17 THE COURT: Sure.

18 (Whereupon, a bench conference was held in the
19 presence of the jury panel but out of the hearing of
20 the jury panel.)

21 THE COURT: Mr. Hodges, if you will just stand where
22 you are. We received some information that possibly you
23 were the defendant's coach in high school at some point
24 and time. Do you recall that?

25 JUROR: I do not.

1 THE COURT: I understand. Do you believe that if you
2 were to recall at some future point and time that that
3 would prevent you from being fair and impartial to both
4 the State and the defense?

5 JUROR: No sir, I do not.

6 THE COURT: If you will come back up and face counsel
7 table, please.

8 MS. WIYGUL: Please excuse the juror.

9 CLERK OF COURT: Juror number 70, Christian L.
10 Griffin. What says the State?

11 MR. SCOTT: Please present the juror.

12 CLERK OF COURT: What says the defense?

13 MS. WIYGUL: Please seat the juror.

14 CLERK OF COURT: Juror number 133, Daniel B. Nelson.
15 What says the State?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: What says the defense?

18 MS. WIYGUL: Please seat the juror.

19 CLERK OF COURT: Juror number 100, Shannon Lattimore.
20 What says the State?

21 MR. SCOTT: Please present the juror.

22 CLERK OF COURT: What says the defense?

23 MS. WIYGUL: Please seat the juror.

24 CLERK OF COURT: Juror number 29, Christopher G.
25 Champaign. What says the State?

1 MR. SCOTT: Please present the juror.

2 CLERK OF COURT: What says the defense?

3 MS. WIYGUL: Please seat the juror.

4 CLERK OF COURT: Juror number 201, Fran G. Rogers.

5 What says the State?

6 MR. SCOTT: Please present the juror.

7 CLERK OF COURT: What says the defense?

8 MS. WIYGUL: Please excuse this juror.

9 CLERK OF COURT: Juror number 185, John P. Tyler.

10 What says the State?

11 MR. SCOTT: Please present the juror.

12 CLERK OF COURT: What says the defense?

13 MS. WIYGUL: Please seat the juror.

14 CLERK OF COURT: Juror number 184, Joe K. Turner.

15 What says the State?

16 MR. SCOTT: Please present the juror.

17 CLERK OF COURT: What says the defense?

18 MS. WIYGUL: Please seat the juror.

19 CLERK OF COURT: Juror number 116, Deena Medlin.

20 What says the State?

21 MR. SCOTT: Please present the juror.

22 CLERK OF COURT: What says the defense?

23 MS. WIYGUL: Please seat the juror.

24 CLERK OF COURT: Juror number 130, Amanda E. Munyan.

25 What says the State?

1 MR. SCOTT: Please present the juror.

2 CLERK OF COURT: What says the defense?

3 MS. WIYGUL: Please excuse this juror.

4 CLERK OF COURT: Juror number 39, David E. Crocker.
5 What says the State?

6 MR. SCOTT: Please present the juror.

7 CLERK OF COURT: Will the defense challenge for
8 cause?

9 MS. WIYGUL: No, Your Honor.

10 CLERK OF COURT: For the alternate. Juror number
11 121, Adam N. Mills. What says the State?

12 MR. SCOTT: Please present the juror.

13 CLERK OF COURT: What says the defense?

14 MS. WIYGUL: Please seat the juror.

15 THE COURT: All right, ladies and gentlemen of the
16 jury, congratulations. What I am going to do is I am
17 going to ask for you to, Mr. Bolt will escort you to your
18 jury room for just a few moments. You will see where you
19 will be in the next day or two. I will also give you an
20 opportunity for you to meet each other if you haven't
21 already. I will bring you back and I will give you
22 further instructions on when we are going to start this
23 trial. You will hear something from me throughout the
24 whole course of the trial, don't start talking about this
25 case. I understand you really don't know much about it

1 other than just a little bit I read to you from the
2 indictments. But don't start discussing this case among
3 yourselves and we will get you back out here shortly.
4 Thank you very much.

5 (Whereupon, the jury was excused from open court for
6 a break.)

7 THE COURT: Any exceptions to jury selection from the
8 State?

9 MR. SCOTT: None from the State, Your Honor.

10 THE COURT: From the defense?

11 MS. WIYGUL: None, Your Honor.

12 THE COURT: Remaining ladies and gentlemen of the
13 jury panel, I know some of you are probably glad you were
14 not selected. I think most of you were just a little
15 disappointed that you were not selected. As I understand
16 it we will have another trial that will be called after
17 this. So maybe you will have another shot at being
18 selected. You have been provided a call-in number. It is
19 extremely important that you remember after 6:00 o'clock
20 every evening starting this evening to call in and you
21 will be given instructions on when to report back.
22 Whether to report back tomorrow, whatever the case may be.
23 So you call that call-in number and it will provide you
24 with instructions on what to do. With that said you are
25 now excused from the court house and hopefully we will see

1 you back sometime this week. Thank you. Have a great
2 afternoon and evening.

3 (Whereupon, the remaining jury panel was excused from
4 court.)

5 THE COURT: As I understand it indictment
6 2011-GS-30-1129 which states that the vehicle involved was
7 a 1997 Grand Marquis which would be a sedan. The State
8 has informed the Court that in fact it was a truck, still
9 a 1997 truck?

10 MR. SCOTT: I am unclear what the year it was. It
11 would probably be more accurately stated as a Ford F350
12 pickup truck.

13 THE COURT: A Ford F350 pickup truck?

14 MR. SCOTT: Yes, sir. This is a scribner's error.
15 The Marquis would be associated with the defendant, would
16 probably have no real affect as far as the charges, the
17 indictment is. We would respectfully ask to amend that to
18 Ford F350 pickup truck.

19 THE COURT: And, Ms. Wiygul, your position on this.

20 MS. WIYGUL: Your Honor, we adamantly object to this.
21 I have been through this discovery numerous times, I have
22 been through it numerous times alone and with Mr. Wymer.
23 I can't think of anywhere in the discovery I have been
24 provided that references a Ford F350 pickup truck.

25 MR. SCOTT: Just a vehicle will be fine, Your Honor.

1 That was actually something I learned from talking to the
2 victims over the phone, they live up in Fountain Inn, I
3 believe. I think the report is only listed they were the
4 victims of an attempted carjacking. We could just have a
5 generic description, a vehicle being operated by Mr.
6 Ortscheid.

7 MS. WIYGUL: And, again, Your Honor, we would object.
8 We have received no discovery as to the notes from that
9 conversation. We don't know when it occurred. This case
10 was presented to the Grand Jury and true billed in July of
11 2011.

12 THE COURT: All right. As I understand the law on
13 amending indictments, so long as the amendment does not
14 change the nature of the offense then the amendment will
15 be admissible. I don't see how, certainly will be glad to
16 hear from you further, Ms. Wiygul. I don't see how
17 changing the vehicle from a Grand Marquis to a F350 pickup
18 truck would change the nature of the offense. It is still
19 a vehicle involved, the statute dealing with carjacking.
20 So, does it really matter what kind of vehicle it was so
21 long as it was a vehicle.

22 MS. WIYGUL: Your Honor, in this particular case with
23 the facts being alleged by the State, I believe that it
24 does matter what type vehicle it was because the facts
25 being alleged by the State is that Mr. Wymer and Mr.

1 Threatt attempted to lock the vehicle being highjacked or
2 carjacked. There is a big difference between how a small
3 Mercury could block another Mercury versus how it could
4 block a Ford F350 which I don't even know what kind of
5 truck that is, Your Honor. I don't know whether it is a
6 big rig, I don't know whether it is a pickup, I don't know
7 what year it is, I don't know what capabilities it has. I
8 don't know whether it has the capabilities of going off
9 road whereas a Mercury Marquis might not. I don't know
10 any of these things about this vehicle, Your Honor.

11 THE COURT: Solicitor.

12 MR. SCOTT: Well, Your Honor, I don't have the
13 citation in front of me. The Gentry case I think is very
14 clear that the indictment means only to notice the
15 defendant on what the charges he is here to face on. As
16 you stated, Your Honor, I don't see how the description,
17 even a generic description on an automobile, which is not
18 an element of the crime, would affect his preparation on
19 his charges he is on trial for today.

20 MS. WIYGUL: Your Honor, it has also changed the
21 angle of the view of the alleged witnesses or victims in
22 this case. The driver and the passenger. I don't know
23 what they could see or couldn't see because I don't know
24 what type vehicle they were looking out of. I don't know
25 how high up it is, I don't know anything about it except

1 that according to the statements apparently it had some
2 type of trailer type behind it. So I don't know if that
3 means it was an 18-Wheeler, if it was, I don't know what
4 it was.

5 THE COURT: Solicitor, the report is not indicating
6 what kind of vehicle that was alleged to have been
7 involved here.

8 MR. SCOTT: I don't recall it specifically talking
9 about the type of vehicle it was. I recall last week,
10 just sort of, when I realized this thing was going to
11 trial, reaching out to some of these victims and it did
12 mention, I think, as Ms. Wiygul said, it was a vehicle
13 towing a trialer. At that time is when they gave me the
14 description of the F350 which is, that is a, I think it is
15 a diesel. It is just a larger pickup truck, it is not an
16 18-Wheeler or anything like that.

17 THE COURT: You say an F350?

18 MR. SCOTT: Yes, sir.

19 THE COURT: Here is what I am going to do. My
20 inclination is to grant the motion to amend, but let me
21 just do a little studying on it and we can take it back up
22 in the morning. Okay.

23 MS. WIYGUL: Thank you, Your Honor.

24 THE COURT: Anything else before we bring the jury
25 back out?

1 MR. SCOTT: No, sir.

2 MS. WIYGUL: Your Honor, just for the record, I
3 discussed this issue with Mr. Mowry. He is willing to let
4 me look through the 500 to 600 pages of medical records of
5 the codefendant to just make sure that he didn't give any
6 statements about the case to any of his medical providers.
7 This is my understanding and he would be willing to do
8 that.

9 MR. MOWRY: Actually, I received about 100 pages from
10 Mr. Wise, Your Honor, it is electronic. She can look on
11 my computer, I have no trouble with that at all.

12 MS. WIYGUL: Your Honor, I didn't understand that to
13 be the case. During the guilty plea, I believe it was
14 specifically put on the record that between 5 and 600
15 pages of medical records had been provided to the
16 Solicitor's office. So that is what I was basing that
17 request upon.

18 MR. MOWRY: I think Mr. Wise said that he had
19 compiled about 5 to 600 pages, he provided me with about
20 100.

21 THE COURT: I don't recall specific number of pages.
22 I do know that Mr. Wise did physically show the Court the
23 stack and it certainly was voluminous so far as the pages.
24 I don't necessarily remember the page amount. But
25 certainly the Solicitor indicates that--

1 MS. WIYGUL: Your Honor, if that is available, an
2 electronic format, if that is something he can just email
3 up to my office then I can review that this afternoon.

4 MR. MOWRY: I have no trouble with that at all, Your
5 Honor.

6 THE COURT: If you will do that, she can look at it
7 at her leisure.

8 MS. WIYGUL: Thank you, Your Honor.

9 MR. MOWRY: If it please the Court, I will go
10 accomplish that right now.

11 THE COURT: Bring the jury out.

12 MR. MOWRY: I will wait, Your Honor, that will be
13 fine.

14 THE COURT: Mr. Bolt, if you bring the jury back out.
15 (Whereupon, the jury came into open court at
16 approximately 12:37 p.m.)

17 THE COURT: Ladies and gentlemen, I have some good
18 news for you, we are not going to start this case until in
19 the morning. So, I am going to cut you loose for this
20 afternoon and ask that you promptly be back here at 10:00
21 o'clock. Allow yourself some time, things happen and you
22 don't want to be late. We are ready to start at 10:00 and
23 we are missing a juror. That doesn't work out too well.
24 So, allow yourself some time and make sure you are here so
25 we can start back at 10:00 o'clock or as close to that as

1 we can. Go back to the jury room where you have been for
2 the last few moments. Again, I remind you not to start
3 talking about this case among yourselves especially when
4 you go home this afternoon or to work or where ever you
5 need to go. If anybody asked you, hey, what did you do
6 today. You are on the jury. You can say, the Judge said
7 I can't talk about this. Make sure you get back here in
8 the morning and you have got your juror pin on. See you
9 in the morning and have a great evening.

10 (Whereupon, the jury was excused from open court to
11 return the next morning at 10:00 a.m.)

12 (Whereupon, Stacy Johnson is the Court Reporter for
13 the remaining trial.)

14 *** END OF PARTIAL REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER

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State of South Carolina)

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County of Newberry)

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I, Joy E. Holston, Official Court Reporter for the
Eighth Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
partial transcript of record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the County of Laurens, South
Carolina on the 6th day of October, 2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 20, 2015

s/ Joy E. Holston

Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

1 State of South Carolina

Court of General Sessions

2 County of Laurens

3

4

5 State of South Carolina) Partial Transcript of Record

6 vs.) 2011-GS-30-1127

7 Christopher Lee Wymer,) 2012-GS-30-1129

8 Defendant.)

9

10

11 October 7 - 8, 2014
12 Laurens, South Carolina

13 B E F O R E:

14 The Honorable Donald B. Hocker, Judge; and a jury

15

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

17 Christopher Dale Scott, Deputy Solicitor
18 O. Warren Mowry, Jr., Deputy Solicitor
Attorneys for the State

19 Elizabeth P. Wiygul, Esquire
20 Attorney for the Defendant

21

22

23 Stacy S. Johnson, RPR
Circuit Court Reporter

24

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1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	State's 1	Photograph	11	129
4	State's 2	Photograph	11	
5	State's 3	Photograph	11	91
6	State's 4	Photograph	11	90
7	State's 5	Cheater bar/steel bar	98	109
8	State's 6	Aerial Photograph	130	131
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1 (Joy Holston was the court reporter for the Voir
2 Dire, selecting the jury for this case, which took place
3 on October 6, 2014, and was transcribed in a separate
4 transcript.)

5 (The following proceedings were held on October 7,
6 2014.)

7 **BAILIFF:** All rise. Court come to order, please.

8 **THE COURT:** How's everybody this morning?

9 **MS. WIYGUL:** Fine.

10 **THE COURT:** All right. We're on the record this
11 morning starting the trial of State versus Christopher
12 Lee Wymer on indictments 11-GS-30-1127 and 29. I have
13 before me a motion to suppress an alleged statement made
14 by the Defendant. The motion's based upon Jackson v.
15 Denno. Are we ready to proceed on a Jackson v. Denno
16 hearing?

17 **MR. SCOTT:** We are, Your Honor.

18 **THE COURT:** Okay. All right.

19 **MS. WIYGUL:** Your Honor, we are, but could I ask
20 that the Court address the issue of the State's request
21 to amend the indictment first?

22 **THE COURT:** Thank you. I appreciate you for
23 reminding about that. We took a look at it yesterday
24 and looked at several cases. The Gentry case, Means
25 case, Guthrie case. I think it's all pretty clear that

1 the requested amendment does not change the nature of
2 the offense and I will explain to the jury when we have
3 them brought back out that it was just a scrivener's
4 error. I may not use that because they may not know
5 what "scrivener" means, but -- as far as designating
6 the vehicle as a Grand Marquis when, in fact, it is an
7 F-350, which would be a Ford brand, but I don't think
8 it changes at all the nature of the offense and so the
9 motion to amend made by the State is granted, but you're
10 protected on the record.

11 **MS. WIYGUL:** And, Your Honor, based upon the
12 granting of the State's request, we would ask that the
13 case be continued in order to allow me additional time
14 to research the issue.

15 **THE COURT:** Okay. All right. Solicitor, do you
16 want to address that motion to continue?

17 **MR. SCOTT:** Judge, I don't really see the need for
18 a continuance or how the model of the victim's car
19 changes the nature --

20 **THE COURT:** Right.

21 **MR. SCOTT:** -- of the trial and what's been noticed
22 to the Defendant. It's very clear from the record that
23 the Defendants -- the alleged car that the Defendants
24 were in was a Grand Marquis, so I think it's pretty
25 clear that was a typo or a scrivener's error.

1 **THE COURT:** Okay, yeah.

2 **MS. WIYGUL:** And, Your Honor, simply to protect
3 Mr. Wymer's rights, yesterday was the first time we
4 ever heard the vehicle described as a Ford F-350.

5 **THE COURT:** Right.

6 **MS. WIYGUL:** In other places it's referenced as
7 a truck. It come across as sounding like an
8 eighteen-wheeler.

9 **THE COURT:** Right.

10 **MS. WIYGUL:** That was the basis on which we
11 prepared for trial and so just to put that on the
12 record that I would like additional time to research
13 better what -- what the view, I guess, was and what
14 the substitution of a Ford F-350 would change in the
15 case.

16 **THE COURT:** Right. Well, based upon my limited
17 knowledge about the case, and it is extremely limited
18 at this point, I do not see how the -- changing the --
19 the name of the vehicle involved in that one indictment
20 would justify granting a continuance; however, what I
21 will do is once we get into the case and, you know, we
22 hear from the State's witnesses, et cetera, I will allow
23 you an opportunity to renew that, and I can deal with it
24 at that time. Because I just don't know anything about
25 this case, so it's kind of hard for me to put myself in

1 your position to see where there might be some prejudice
2 involved insofar as the changing of the -- the name of
3 the vehicle. So I'm gonna deny it, but if you want to
4 raise that issue later on, I'll be glad for you to do
5 that, okay?

6 MS. WIYGUL: Thank you.

7 THE COURT: All right. Okay. Solicitor, are you
8 ready to proceed?

9 MR. SCOTT: Yes, sir.

10 THE COURT: Okay.

11 MR. SCOTT: Your Honor, for purposes of this motion,
12 we'll call Chris Martin of the Laurens County Sheriff's
13 Department.

14 THE COURT: Okay.

15 INVESTIGATOR CHRIS MARTIN,
16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION (In-camera)

18 BY MR. SCOTT:

19 Q. All right. Investigator Martin, April 27, 2011,
20 where were you employed?

21 A. Laurens County Sheriff's Office.

22 Q. And, let's see, about 3 AM that night were you on
23 call?

24 A. Yes, sir.

25 Q. And did you have an opportunity to receive a call

1 regarding an attempted carjacking on Highway 72?

2 A. Yes, sir.

3 Q. And how did that call come to you?

4 A. Deputy Hodges, who was a deputy with the sheriff's
5 office, was working uniformed patrol and called me to
6 advise me of the situation there on Highway 72. At that
7 time I promptly left the house and met with him at that
8 incident location.

9 Q. All right. Were you asleep at home when you got
10 the call?

11 A. Yes, sir.

12 Q. All right. What was your understanding of the --
13 what was the nature of the call?

14 A. The initial phone call from Deputy Hodges stated
15 that they were out with the individual, that they
16 currently had one in custody and one on the way to the
17 hospital in reference to an attempted carjacking, and I
18 believe I asked what did they try to take and he said an
19 eighteen-wheeler. At that time I left the house and
20 went to this incident location.

21 Q. And where was the incident location?

22 A. They were at -- Deputy Hodges was at Highway
23 72 East in Whitmire.

24 Q. Okay. And who was he with?

25 A. Deputy Sweat.

1 Q. And that incident location is a Laurens County
2 address?

3 A. Yes.

4 Q. All right. So when you get there, what do you
5 observe?

6 A. There was vehicle in the driveway. I'd say a
7 silver-ish Grand Marquis, a silvery beige. The doors
8 were open to the vehicle. Deputy Hodges stated that he
9 had one person inside his vehicle detained. I observed
10 the suspect vehicle; a lot of blood in the front seat
11 portion of the vehicle. I found Mr. Wymer in the back
12 seat of Deputy Hodges' vehicle, approached him, had
13 Deputy Hodges unlock the vehicle. I asked Mr. Wymer
14 if he was willing to speak with me. He said yes. I
15 advised Mr. Wymer of his rights. I asked him basically
16 what happened and he said that -- Mr. Wymer said that
17 Mr. Threatt told him if he would help him carjack
18 someone, he would buy him some pills. The next thing
19 he knew Mr. Threatt was knocked out. He put Mr. Threatt
20 in the car and he was just scared. And he definitely
21 was scared in the back seat of the police car.

22 MR. SCOTT: All right. Wait one second. I probably
23 -- for the judge, I'm gonna mark these, Your Honor, 1, 2
24 and 3 for purposes of this hearing only at this time.

25 THE COURT: Okay.

1 **MS. WIYGUL:** Your Honor, if I could see what he --

2 **THE COURT:** Okay.

3 **MR. SCOTT:** Everything he just described.

4 (State's Exhibit Numbers 1, 2 and 3, photographs,
5 were marked for identification.)

6 BY MR. SCOTT:

7 Q. All right. We just -- we covered a lot of
8 information there. Let me back you up.

9 A. Yes, sir.

10 Q. Whenever you get to the scene, Highway 72
11 East, that is a residence?

12 A. Yes, sir.

13 Q. You stated there was a gold or a pewter-colored
14 Grand Marquis there?

15 A. Yes, sir.

16 **MS. WIYGUL:** Objection, Your Honor. He specifically
17 stated there was a silver-colored car. I mean, I'm --
18 I'm not meaning to nitpick --

19 **THE COURT:** Right.

20 **MS. WIYGUL:** -- but if he's gonna restate what was
21 testified to, the testimony was it was a silver-type
22 vehicle.

23 **THE COURT:** Okay. All right. Well, maybe,
24 Solicitor, just make sure that you clear that up as
25 far as the color of this Grand Marquis.

1 **MR. SCOTT:** I'm gonna have one more exhibit
2 premarked as State's 4 for purposes of this hearing
3 only.

4 (State's Exhibit Number 4, a photograph, was marked
5 for identification.)

6 BY MR. SCOTT:

7 Q. Okay. So when you get to the location,
8 approximately what time is it?

9 A. It was, I'd say, almost 4:00. Sometime after 4 AM.

10 Q. Okay. Obviously dark outside?

11 A. Yes, sir, it was dark.

12 Q. And you observed a car parked at that location?

13 A. Yes, sir.

14 Q. And to your recollection, what color was it?

15 A. It was a silver, beige-ish colored Grand Marquis.

16 Q. Let me show you what's been premarked as State's
17 Number 4. Do you recognize that?

18 A. That's the vehicle, yes, sir.

19 Q. All right. Is that the vehicle you observed that
20 night?

21 A. Yes.

22 Q. And what color is that car?

23 A. Based off this photo, maybe a -- I guess you'd say
24 a pewter, gold, something similar to that.

25 Q. You said beige or silver earlier?

1 A. Yes. It's closer to pewter, I guess.

2 Q. Okay. But is that the car you saw there?

3 A. Yes, that's the vehicle.

4 Q. All right. And you said earlier there was someone

5 who was detained at that time?

6 A. Yes, sir.

7 Q. Who had been detained?

8 A. Mr. Wymer.

9 Q. Okay. And where was he when you arrived?

10 A. He was in the back seat of Deputy Hodges' vehicle.

11 Q. So he was under arrest?

12 A. Yes, sir.

13 Q. And Mr. Wymer is this fella over here?

14 A. Yes, sir.

15 Q. Okay. And did you go over to the Grand Marquis?

16 A. I went to the Grand Marquis initially because there

17 was a big pile of blood to the right side passenger side

18 on the ground.

19 Q. All right. Wait a minute. Let me show you State's

20 Number 1.

21 A. Yes, the passenger side of the vehicle. I noticed

22 there was blood on the outside of the vehicle first.

23 That's why I went to the vehicle. I walked up to the

24 vehicle and observed this blood on the passenger seat of

25 the vehicle.

1 Q. Was there any blood on the driver's side of the
2 vehicle?

3 A. It was -- from the passenger over to the driver's
4 side there was like a little -- I guess you would say
5 the center console, armrest or something, there was
6 blood kind of splattered in the front seat of the
7 vehicle.

8 Q. I see. Was there any other individual there besides
9 Mr. Wymer?

10 A. Previously to me getting there was a Timothy
11 Threatt, he was on-scene at that location, but he was
12 taken off by EMS before my arrival.

13 Q. Okay. So he wasn't there when you got there?

14 A. No. No, sir.

15 Q. All right. Getting back to Mr. Wymer, who's already
16 been detained, is he in handcuffs?

17 A. Yes, sir.

18 Q. He's in the back of the car?

19 A. Yes, sir.

20 Q. And did you approach him?

21 A. Yes, sir.

22 Q. All right. What, if anything, did you say to him?

23 A. At first, I asked him if he was willing to speak to
24 me and he said yes, so I read him his Miranda rights.
25 I keep a Miranda card in my wallet.

1 Q. Okay. Do you have it with you today?

2 A. Yes, sir. Would you like me to read it?

3 Q. Yeah, if you don't mind. Is that -- typically, you
4 don't -- do you read them from the card? Do you ever go
5 by memory?

6 A. No, it's easiest just to read it from here.

7 Q. Okay. Would that be the card you used that night?

8 A. Yes, sir.

9 Q. Okay. Read it for the Court, please, the Miranda
10 rights that you instructed Mr. Wymer.

11 A. You have the right to remain silent. Anything you
12 say can and will be used against you in court. You
13 have the right to an attorney and to have an attorney
14 present during the questioning. If you cannot afford
15 an attorney, an attorney will be appointed at no cost.
16 You can decide at any time to exercise these rights and
17 not answer any questions or make any statements. I
18 asked Mr. Wymer if he understood and he said yes.

19 Q. All right. Just for the Court's sake, would you
20 point to Mr. Wymer if you see him here today?

21 A. Right here at the table.

22 Q. Did he appear to understand those rights as you
23 read them to him?

24 A. Yes, sir.

25 Q. Did you notice any signs of intoxication or any

1 sort of -- I don't know. Did he appear to be --

2 A. No, despair. Just, I guess, nervous or scared,
3 something like that.

4 Q. Okay. Did you intimidate him in any way?

5 A. No, sir.

6 Q. He was already under arrest?

7 A. Yes, sir.

8 Q. So you simply asked if he would be willing to
9 answer questions and then you read him those Miranda
10 rights you just read in court?

11 A. Yes, sir.

12 Q. Did he agree to speak with you?

13 A. Yes, sir.

14 Q. What did he say?

15 A. He said that Mr. Threatt, who was the other
16 individual that was there prior to my arrival, asked
17 him if he would help carjack somebody in exchange that
18 he would purchase him some pills. Mr. Wymer stated
19 that the next thing he knew that Mr. Threatt was knocked
20 out by a truck driver and he loaded him up in the car
21 and that's when they left Highway 72 and ended up at
22 that location that the deputies were out at. Mr. Wymer
23 stated he -- the reason he ran into the woods is because
24 he was -- was scared. At that time we were gonna leave
25 that location and go to the sheriff's office to obtain

1 a statement from Mr. Wymer, but at that time he asked
2 if he could have a lawyer present and I advised him
3 that's his right, so I stopped -- I stopped asking any
4 questions.

5 Q. All right. So he did -- he did invoke his right to
6 an attorney?

7 A. Yes, sir.

8 Q. And at that point you stopped questioning him?

9 A. Yes, sir.

10 **MR. SCOTT:** All right. Please answer any questions
11 Ms. Wiygul has for you.

12 **THE WITNESS:** Yes, sir.

13 **THE COURT:** Ms. Wiygul, any cross-examination for
14 purposes of this hearing?

15 **MS. WIYGUL:** Yes, Your Honor.

16 CROSS-EXAMINATION (In-camera)

17 BY MS. WIYGUL:

18 Q. Mr. Martin, what is your title? Is it sergeant or
19 investigator?

20 A. I'm a lieutenant now with investigations. It was
21 sergeant, yes, ma'am.

22 Q. Okay.

23 A. At that date and time it was sergeant, yes, ma'am.

24 Q. But now it's lieutenant?

25 A. Yes, ma'am.

1 Q. Okay. Lieutenant, are you the lead investigator in
2 this case?

3 A. Yes, ma'am.

4 Q. All right. As lead investigator, would you have
5 reviewed all the other incident reports?

6 A. Yeah, I was provided an incident report prior to
7 obtaining the warrants -- the next warrant, yes, ma'am.

8 Q. Okay. Who told you that Mr. Wymer had been placed
9 under arrest?

10 A. It was Deputy Hodges.

11 Q. It was Deputy Hodges?

12 A. Yes, ma'am.

13 Q. So --

14 A. Deputy Hodges and Deputy Sweat were both on the
15 scene there.

16 Q. Okay.

17 **THE COURT:** Who was the other officer?

18 **THE WITNESS:** Hodges and Sweat.

19 **THE COURT:** Sweat?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** Okay.

22 BY MS. WIYGUL:

23 Q. Sir, could you take a look at this incident report?

24 A. Yes, ma'am.

25 Q. Would you agree that this is an incident report that

1 was prepared in relation to this case?

2 A. Yes, ma'am.

3 Q. And would you agree that that incident report
4 indicates that Mr. Wymer had been placed into
5 investigative detention, not placed under arrest?

6 A. Could you point out what specific line, please?

7 Q. Right there.

8 A. Yes, ma'am. That's what the deputy wrote, yes,
9 ma'am.

10 Q. So the deputy did not write that Mr. Wymer was under
11 arrest. He reported he was in investigative detention;
12 is that correct?

13 A. In his report, yes, ma'am.

14 Q. And in the deputy's report, did he indicate what
15 Mr. Wymer's physical, mental, emotional state was? Did
16 he indicate that he found Mr. Wymer squatted behind the
17 bushes with his pants and underwear around his ankles?

18 A. Yes, ma'am.

19 Q. Did he indicate or did you view that Mr. Wymer was
20 covered in blood?

21 A. He had some blood on him, but I think there was --
22 it's possibly on some shorts or something like that.
23 I'd have to go read through here.

24 Q. Do you recall that night?

25 A. Yes, ma'am.

1 Q. Okay. Whose car was Mr. Wymer in when you spoke
2 with him?

3 A. Deputy Hodges'.

4 Q. Does -- Deputy Hodges' car, is it equipped with
5 video equipment?

6 A. Prior to now, in 2011, I'm not sure what our video
7 surveillance in the vehicle is. I know currently we
8 have in-car cameras in the back seat and such, but not
9 -- I don't believe --

10 Q. When you spoke with Mr. Wymer, was the deputy's car
11 equipped with recording equipment or not?

12 A. I can't recall.

13 Q. You can't recall?

14 A. No, ma'am.

15 Q. How many times since 2011 have additional cameras or
16 video equipment been installed in older police vehicles
17 in Laurens County?

18 A. It's hard to say. Some have them, some don't.

19 Q. So it's your testimony that as the lead investigator
20 in this case, having been called to the scene, that you
21 did not check to see if there was the capability of
22 recording equipment?

23 A. No, ma'am.

24 Q. And you did not bring a written Miranda form where
25 Mr. Wymer could sign off that you actually had read him

1 those rights?

2 A. No, ma'am, there was not. He was in handcuffs. I
3 didn't have one.

4 Q. And he appeared under the influence, didn't he?

5 A. He just seemed generally scared to me. I couldn't
6 say whether he was under the influence or not. I didn't
7 conduct any field sobriety on him or anything.

8 Q. How long have you been an officer?

9 A. Since 2008.

10 Q. Okay. In the course of being an officer, have you
11 been trained to recognize when someone appears to be
12 under the influence?

13 A. I've never taken a field sobriety test, no, ma'am.

14 Q. You've never received any training to recognize when
15 someone's under the influence of drugs or alcohol?

16 A. I've never taken any field sobriety test.

17 Q. That's not what I asked, sir. Have you ever
18 received any training as a police officer to recognize
19 whether someone's under the influence of drugs and
20 alcohol?

21 A. Other than general appearance, no, ma'am.

22 Q. Never? Okay. Have you ever received any training
23 in the appropriate interviewing techniques of a -- of a
24 suspect?

25 A. Yes, ma'am.

1 Q. And during the course of that training, is it
2 recommended that you record those interviews?

3 A. If at all possible.

4 Q. But you made no effort to do so, correct?

5 A. At this time, we didn't have body cameras or
6 anything like that.

7 Q. That's not what I asked, sir. Did you make any
8 effort to record this interview?

9 A. No.

10 Q. Did you make any effort to document Mr. Wymer's
11 state? There were cameras there.

12 A. I documented that he was scared.

13 Q. There -- there were cameras on the scene, right?

14 A. Yes, ma'am.

15 Q. Did you take a picture of Mr. Wymer?

16 A. No, ma'am.

17 Q. Okay. And all you recall is some blood on his
18 shorts, correct?

19 A. Yes, ma'am.

20 Q. Do you recall what kind of shirt Mr. Wymer was
21 wearing that night?

22 A. Not right offhand, no, ma'am.

23 Q. Does this appear like the shirt?

24 A. It's possible, yes, ma'am. I remember it had some
25 red in it.

1 Q. It had some red in it?

2 A. Yes, ma'am.

3 Q. Whenever there was the capability of recording
4 Mr. Wymer's statement, he didn't want to talk to you,
5 did he?

6 A. No, he invoked his right and he asked for a lawyer.

7 Q. He exercised his right?

8 A. Yes, ma'am.

9 Q. And you didn't feel the need to have any witnesses
10 to your interview of Mr. Wymer, correct?

11 A. Deputy Hodges was at the vehicle.

12 Q. He didn't document that he heard your conversation,
13 did he?

14 A. No, ma'am.

15 **MS. WIYGUL:** I don't have any further questions.

16 Thank you.

17 **THE COURT:** Solicitor, any redirect?

18 **MR. SCOTT:** I don't think so, Judge. I guess the
19 two prongs here are custody and then whether there was
20 an interrogation. He was in custody in the back of a
21 patrol car with handcuffs around the wrists and there
22 was an interrogation; however, Miranda was given and it
23 was given from the card that Investigator Martin read
24 here. All indications was that Mr. Wymer understood his
25 rights and began answering questions. He understood his

1 rights enough that at some point he did invoke his right
2 to an attorney and ceased all questioning -- or answers
3 at that point. I mean, he voluntarily waived his rights
4 after being given Miranda and then he continued to
5 answer questions. I think Investigator Martin asked
6 would you be willing to answer questions and he did so
7 and indicated he would, so.

8 **THE COURT:** Okay.

9 **MR. SCOTT:** I think those questions do come in and
10 Miranda was properly given. He did consent to answer
11 questions and, Judge, I think -- I think those would be
12 properly submitted to the jury.

13 **THE COURT:** Okay. Are there any other witnesses
14 on behalf of the State for purposes of this Jackson v.
15 Denno hearing?

16 **MR. SCOTT:** Judge, the -- Deputy Hodges, that he
17 indicated was within earshot possibly, has a son who
18 is currently undergoing, I think, a fairly substantial
19 medical procedure down at M.U.S.C., he's unavailable to
20 us, so really the only witness we can proffer at this
21 time is Investigator Martin.

22 **THE COURT:** Okay. All right. Thank you very much.
23 Does the defense intend to put up any witnesses or any
24 evidence for purpose of this Jackson v. Denno hearing?

25 **MS. WIYGUL:** We would call Mr. Wymer.

1 **THE COURT:** Okay. All right. Officer Martin, you
2 can step down. Thank you for your testimony, sir.

3 (Witness excused.)

4 CHRISTOPHER LEE WYMER,
5 having been duly sworn, testified as follows:

6 **THE COURT:** You may proceed.

7 DIRECT EXAMINATION (In-camera)

8 BY MS. WIYGUL:

9 Q. Mr. Wymer, on the night of April 27, 2011, had you
10 been drinking?

11 A. Yes, ma'am.

12 Q. For approximately how many hours had you been
13 drinking?

14 A. Since early in the daylight hours.

15 Q. Okay. Would you consider yourself drunk at the
16 time you came into contact with law enforcement?

17 A. Yes, ma'am.

18 Q. Do you have any recollect of speaking with
19 Investigator Martin?

20 A. No, ma'am.

21 Q. None at all?

22 A. I mean, I don't know exactly who I spoke to. I
23 can't tell you exactly which one was which or anything.
24 I remember there were officers.

25 Q. Do you have any -- at the time, do you recollect

1 having any understanding of what they were saying to
2 you?

3 A. No, ma'am.

4 **MS. WIYGUL:** I have no further questions. Thank
5 you.

6 **THE COURT:** Solicitor?

7 CROSS-EXAMINATION (In-camera)

8 BY MR. SCOTT:

9 Q. What all were you drinking that day?

10 A. Wine. I don't know what kind of wine. Gin, Bud
11 Light.

12 Q. What was the occasion?

13 A. Just another day.

14 Q. And what else were you doing?

15 A. I was on a couple of different prescriptions.
16 That's about it.

17 Q. And then you drove a Grand Marquis?

18 A. Yes, sir.

19 Q. And who -- who had -- Mr. Threatt, how are you
20 friends with him?

21 A. I've known him since I was a kid.

22 **MS. WIYGUL:** Objection, Your Honor. Beyond the
23 scope of this hearing.

24 **MR. SCOTT:** We're trying to establish what all they
25 were doing that day that led up to this event.

1 **THE COURT:** I'll allow it for -- for a little while
2 longer. We don't want to go too far afield. You may
3 proceed.

4 BY MR. SCOTT:

5 Q. All right. So you decided to drive after you'd been
6 drinking all day that day?

7 A. Yes, sir.

8 Q. Okay. So you were behind the wheel of that Grand
9 Marquis?

10 A. Yes, sir.

11 Q. And how did you wind up on 72?

12 **MS. WIYGUL:** Objection, Your Honor. This is, again,
13 going beyond the scope. This is going into the actual
14 facts at issue in the case, not as to his mental state
15 when he gave a -- or allegedly gave a statement.

16 **THE COURT:** Well, the defense has raised the
17 argument that he was under the influence going to the
18 issue of voluntariness. I think the Solicitor can
19 go to some extent, some kind of foundation type of
20 questioning, concerning the defense's position. I'll
21 allow it for a while. Again, I don't want it to go too
22 far, but I'll allow it for a while. You may proceed.

23 BY MR. SCOTT:

24 Q. Okay. What were y'all doing on Highway 72?

25 A. We were just riding.

1 Q. All right. And what kind of things were y'all
2 talking about?

3 A. I mean, I can't really exactly remember what we
4 were talking about. We were just riding around
5 drinking.

6 Q. Just riding and drinking. And you live in Clinton?

7 A. Yes, sir.

8 Q. And y'all were out towards Whitmire that night,
9 right?

10 A. We were, yes, sir.

11 Q. Okay. You don't remember why you were going towards
12 Whitmire?

13 A. We didn't really have a destination in mind.

14 Q. Do you remember being out in the woods with your
15 pants around your ankles?

16 A. No, sir. I barely -- I mean, I vaguely remember
17 bits and pieces. I mean, I don't remember exactly one
18 steady stream of what happened. I can remember coming
19 -- coming back to in the back of the police car and it
20 being hot and I remember going into the county jail. I
21 do remember running out of the car.

22 Q. Okay. You do remember driving the Grand Marquis,
23 you do remember being on Highway 72, you do remember
24 being with Threatt, you remember drinking gin, drinking
25 wine. You remember all that?

1 A. Yes, sir.

2 Q. Okay. Do you remember that man, Investigator
3 Martin?

4 A. I mean, I recognize him since he's been up here.

5 Q. But it's convenient you don't remember him talking
6 to you though.

7 MS. WIYGUL: Objection, Your Honor.

8 THE COURT: And the basis for your objection?

9 MS. WIYGUL: Argumentative.

10 MR. SCOTT: That's fully what I intend to do is be
11 argumentative.

12 THE COURT: All right. Rephrase, Solicitor.

13 MR. SCOTT: Excuse me. Let me have a sip of water.

14 BY MR. SCOTT:

15 Q. Okay. So you remember all that, but you just do not
16 remember speaking with Investigator Martin?

17 A. I remember speaking with officers, but which one I
18 spoke with I could not tell you.

19 Q. Okay. Did you hear him read the Miranda rights just
20 now?

21 A. Just now on the stand, yes, sir.

22 Q. And did you understand them?

23 A. Yes, sir.

24 Q. Is it your testimony you cannot -- you recall all
25 that, but you can't recall him reading you Miranda

1 rights that night?

2 A. I mean, like I said, I can remember certain -- very
3 little things that come back to my memory.

4 Q. Do you remember him asking you questions?

5 A. I remember somebody asking me questions.

6 Q. Okay. And if you didn't understand them, would you
7 have told the person I don't understand what you're
8 asking me?

9 A. Yeah.

10 **MR. SCOTT:** Okay. Thank you.

11 **THE COURT:** Redirect.

12 **REDIRECT EXAMINATION**

13 **BY MS. WIYGUL:**

14 Q. Mr. Wymer, do you recall telling any of the officers
15 that night that you didn't understand anything?

16 A. That I didn't understand, no, ma'am.

17 Q. Do you recall telling any officers that night that
18 you tried to carjack anybody?

19 A. No, ma'am, I didn't.

20 Q. What's your first recollection of hearing your
21 Miranda rights after -- as of April 27, 2011?

22 A. There were none.

23 Q. Okay. At some point did you exercise your right to
24 get a lawyer?

25 A. In the back of the police car.

1 Q. Okay.

2 **THE COURT:** I'm sorry, I didn't hear that answer.

3 **THE WITNESS:** In the back of the police car.

4 BY MS. WIYGUL:

5 Q. When, do you remember?

6 A. I can't really exactly remember at which point,
7 how long I had been in the car. It had been a little
8 while. I laid in the back of the car for a good long
9 while.

10 Q. Do you even know who you were talking to when you
11 told them you wanted a lawyer?

12 A. Just an officer.

13 Q. Just someone in uniform?

14 A. It was an officer. I mean, that was the only
15 person that was gonna go -- come up to the car was an
16 officer.

17 **MS. WIYGUL:** Okay. I don't have any further
18 questions. Thank you, sir. Oh, I apologize. I do --
19 I do have one quick question.

20 BY MS. WIYGUL:

21 Q. What prescriptions were you on at this time?

22 A. Lortab 7.5's, Demerol, 50 milligram, Phenergan,
23 and I also had a prescription that I didn't get filled.

24 Q. What was the Lortab, the Demerol and the Phenergan
25 for?

1 A. I was working here in Gray Court for a contractor
2 and I got my jaw broke in three places.

3 Q. So your jaw was broken in three places this night?

4 A. Yes, ma'am.

5 MS. WIYGUL: All right. Thank you, sir.

6 THE COURT: Anything in recross, Solicitor?

7 MR. SCOTT: No, sir.

8 THE COURT: Okay. You can step down, sir. Thank
9 you for your testimony.

10 (Witness excused.)

11 THE COURT: Anything further, Ms. Wiygul?

12 MS. WIYGUL: No, sir. We would simply say that
13 it's clear that Mr. Wymer did not know what was going
14 on that night. Lieutenant Martin did not follow the
15 appropriate procedure that he had been trained to follow
16 in recording any interview of a suspect, that he was --
17 that he had the capability of recording his testimony,
18 is that he made no effort to record it, he didn't look
19 for a recording device. He didn't even pull out his
20 phone and hit record, and we know he had his phone on
21 him because he was called in by Hodges.

22 So he didn't follow the training that he had
23 received and the appropriate procedure to interview
24 a suspect and so we'd ask that the statement be
25 suppressed.

1 **THE COURT:** Okay. So the basis for your position
2 that you want the statement excluded from evidence
3 is that Officer Martin did not follow protocol in
4 videotaping the statement? Is that --

5 **MS. WIYGUL:** The basis, Your Honor, is that there's
6 no indicia of reliability in this statement. We get to
7 that no indicia of reliability because there had been
8 procedures put in place. This is the appropriate
9 procedure to follow when you're interviewing a suspect.
10 Lieutenant Martin didn't follow any of them.

11 **THE COURT:** Doesn't that go to the weight as
12 opposed to the admissibility of the statement? Doesn't
13 that go to the weight that you can argue to the jury
14 that the jury should give or not -- or not give? I
15 mean, I don't think the law says if it's not videotaped
16 it's never admissible. I don't think the law says that
17 and I'm not -- I don't know if you're arguing that,
18 but --

19 **MS. WIYGUL:** No, Your Honor, I'm not arguing that.
20 What I'm arguing that is if we had the video we could
21 see how very messed up Mr. Wymer was that night.

22 **THE COURT:** Right, right.

23 **MS. WIYGUL:** His testimony is he was drugged or
24 under the influence of Lortab 7.5, Demerol, Phenergan,
25 gin, wine and some other type of alcohol. If we had a

1 video, we could see that, but we don't have a video.

2 **THE COURT:** Right.

3 **MS. WIYGUL:** He had no understanding of what these
4 people were talking to him about, he didn't even know
5 who he was talking to except it was cops. He was in
6 such a state where he apparently was running around half
7 clothed behind bushes with his shorts falling down and
8 at that point this officer decides oh, here's a good
9 time to talk to him and not record anything and not have
10 any witnesses.

11 And he may say Deputy Hodges was there, but that
12 is not documented in any of the discovery I've been
13 provided in this case, nor is it mentioned in
14 Mr. Martin's incident report or Lieutenant Martin's
15 incident report or Deputy Hodges' incident report.

16 So there's no indicia of reliability, there's no
17 indication Mr. Wymer understood what he was being told
18 except for the testimony of this officer.

19 **THE COURT:** All right. But didn't -- didn't your
20 client, Ms. Wiygul, testify just a moment ago that he
21 did remember invoking his right to counsel, so at
22 least he had the wherewithal at that point in time to
23 understand that he had a right to a lawyer and that he
24 could invoke it and he invoked it and everything stopped
25 right then, so --

1 **MS. WIYGUL:** Your Honor, we don't know when that
2 was invoked, we don't know which officer it was invoked
3 with.

4 **THE COURT:** Well, Officer Martin just testified
5 that after he gave Miranda and the Defendant gave some
6 statements about what happened and then he said that the
7 Defendant says I want a lawyer and Officer Martin says
8 that he stopped questioning right then.

9 So, I mean, what I'm -- it kind of -- you know, if
10 he remembers -- if your client remembers that, then by a
11 preponderance of the evidence, and that's my standard
12 that I'm operating under, not the jury naturally as you
13 well know, but the standard I'm operating under is more
14 likely than not did he know what he was doing? Well,
15 by his own admission he knew that he had a right to a
16 lawyer and that he could invoke it and, in fact, he
17 did invoke it, so -- I know we're getting a little off
18 track because your argument is the reliability and the
19 videotaping, and we can come back to that, but it would
20 seem like to me more likely than not he did understand
21 what was being done.

22 All right. I'm looking at -- and we'll come back
23 to the videotaping, okay? I'm looking at State versus
24 Saxon. It says proof of intoxication short of rendering
25 the accused unconscious of what he is saying goes to

1 the weight and credibility to be -- it says accorded,
2 I think maybe afforded might be the better word, but
3 anyway, accorded to the confession, but does not require
4 that the confession be excluded from evidence. State
5 versus Saxon. That's 261 S.C. 523.

6 So I don't think we have a situation where the
7 Defendant was necessarily unconscious of what he was
8 saying and, again, going back to my previous observation
9 that he did admit that he remembers invoking his right
10 to -- to counsel, so I think on that -- I think by a
11 preponderance of the evidence I think I could find
12 voluntariness.

13 Now let's -- let's jump back to your original
14 argument, Ms. Wiygul, about the videotaping. Again, I
15 think that goes also to the weight and credibility that
16 can be afforded to what Officer Martin has testified
17 and not necessarily to the admissibility because I
18 don't think anywhere it says that you've got to have it
19 videotaped for it to be admissible, but I'll -- I'll be
20 glad for you to argue further if you want and try to
21 convince me.

22 **MS. WIYGUL:** No, Your Honor, we'll rest. We would
23 ask that the Court instruct the State to not have any
24 testimony about the presence of Deputy Hodges during the
25 trial during the supposed time that Mr. Wymer gave this

1 statement as that's not --

2 **THE COURT:** Okay. Well, Solicitor, do you want to
3 -- do you want to address --

4 **MR. SCOTT:** Just honestly, Your Honor, I don't
5 intend to elicit that testimony.

6 **THE COURT:** Okay. All right. So the Solicitor has
7 agreed then that there be no testimony referencing that
8 -- well, I think -- now wasn't he in -- the Defendant
9 was in Lieutenant or Officer Hodges' vehicle?

10 **MR. SCOTT:** Yes, sir.

11 **THE COURT:** So you don't even want that mentioned,
12 whose vehicle he was in?

13 **MS. WIYGUL:** Oh, I don't care about that, Your
14 Honor. I just don't want him saying that he had another
15 deputy standing there.

16 **THE COURT:** I got you. Okay. And the Solicitor
17 indicates he doesn't have a problem with that. I think
18 based upon the evidence presented at this hearing,
19 the Court does find that the -- that the statement
20 or statements allegedly made by the Defendant were
21 voluntarily made and that there was a voluntary and
22 intelligent and knowing waiver of his Miranda rights
23 up until the point where he invokes the right to
24 have counsel present. Based upon the totality of
25 all the circumstances, I'm going to allow it in by

1 a preponderance of the evidence standard.

2 Anything further we need to take up pre-trial?

3 **MS. WIYGUL:** Your Honor, the only further motion
4 we would have would just be to sequester witnesses.

5 **THE COURT:** Okay. And, Solicitor, your position
6 on that?

7 **MR. SCOTT:** I don't -- I don't have any problem,
8 Judge. I'm gonna have three victims who are gonna be
9 -- I guess they have a right to be present in court.

10 **THE COURT:** Okay.

11 **MR. SCOTT:** I do -- I see an evidence custodian
12 who's not gonna testify. I do have Deputy Sweat here,
13 he would be subject to sequestration, and other than
14 that, Chris Martin is gonna be my lead investigator.
15 So probably, Deputy Sweat, you're gonna be sequestered.

16 **THE COURT:** Okay. All right. Ms. Wiygul, are
17 you good with what the Solicitor stated as far as his
18 people?

19 **MS. WIYGUL:** Your Honor, I believe they have
20 the right to have the alleged victims and the lead
21 investigator.

22 **THE COURT:** Right, they do, and then the lead
23 investigator, and he said the only one else he has is
24 -- is Officer Sweat?

25 **MR. SCOTT:** Yes, sir.

1 **THE COURT:** Okay. Are you Officer Sweat?

2 **DEPUTY SWEAT:** Yes, sir.

3 **THE COURT:** Okay. All right. When the trial
4 starts, you'll just need to be outside the courtroom.
5 Anything else?

6 **MS. WIYGUL:** No, Your Honor.

7 **THE COURT:** All right. Well, let's take about a
8 ten minute break and then we'll get the jury in and
9 we'll get started.

10 (Recess taken.)

11 **BAILIFF:** Let's keep your seats. Court will come
12 back to order, please.

13 **THE COURT:** This is just for housekeeping purposes.
14 Today I've got a lunch engagement and need to stop about
15 12:15 and it'll be a little bit longer lunch break,
16 we'll come back and start back at 2:00. So just for
17 purposes of witnesses, et cetera, that's kind of what
18 we'll need to do today.

19 And, Ms. Wiygul, didn't you indicate tomorrow
20 you're gonna be out of pocket for in the morning time?

21 **MS. WIYGUL:** That's correct.

22 **THE COURT:** And when -- when do you think you may
23 be back?

24 **MS. WIYGUL:** It's pretrial conferences and guilty
25 pleas scheduled at 10:00 and I just don't know how many

1 defendants they have scheduled.

2 **THE COURT:** Okay.

3 **MS. WIYGUL:** I would think we'd be done by 12,
4 12:30.

5 **THE COURT:** Okay. All right. Because I just kind
6 of need to have a general idea so I can let -- when we
7 finish up today to let the jury know when to come back.

8 **MS. WIYGUL:** Yes, sir. I should be able to be
9 back at 1:30, 2:00 tomorrow.

10 **THE COURT:** Okay. All right.

11 **MR. SCOTT:** Judge, realistically I've got six
12 witnesses. I don't see why we realistically couldn't
13 finish today.

14 **THE COURT:** Okay. Anything else before we bring
15 the jury out?

16 **MR. SCOTT:** I think Ms. Wiygul has indicated that
17 at least one of my first two witnesses she intends to
18 attempt to impeach with a prior record. And I didn't
19 prep him on this, but one of my witnesses, Eddie
20 Bridges, has an '89 shoplifting conviction. I think
21 she's gonna want to probably under the theory that it's
22 a crime of dishonesty, well outside of the ten-year
23 range, but my understanding is if it's a crime of
24 dishonesty I don't guess there's a time limit, but I
25 would -- I would note that I did notice that on the

1 rap sheet.

2 **THE COURT:** Right.

3 **MR. SCOTT:** But that would probably be -- and I
4 don't really have an argument against it. It would
5 appear to be a crime of dishonesty.

6 **THE COURT:** Right, and typically those do come in.
7 I think, you know, the Court can still do a -- you know,
8 a 403 analysis ultimately, but I think probably in this
9 situation I would allow it to be used for impeachment
10 purposes.

11 **MR. SCOTT:** Yeah, that's the only one I noted as
12 far as any State witnesses --

13 **THE COURT:** Right. Okay. All right.

14 **MR. SCOTT:** -- that will be subject to impeachment.

15 **MS. WIYGUL:** I would agree, Your Honor.

16 **THE COURT:** Ma'am?

17 **MS. WIYGUL:** I would agree.

18 **THE COURT:** All right. Well, Mr. Bolt, if you'll
19 bring the jury out.

20 (Whereupon, the jury enters the courtroom at
21 10:12 AM.)

22 **BAILIFF:** All jurors present, Your Honor.

23 **THE COURT:** Okay. Thank you, Mr. Bolt. Good
24 morning, everybody. I hope you're doing well and ready
25 to get to work today. We need to do a few things before

1 we get started. Madam Clerk, would you first swear the
2 jury in, please.

3 **THE CLERK:** Okay. Yes sir. If you'll, please,
4 stand and raise your right hands.

5 (Whereupon, the jury was sworn in by the Clerk of
6 Court.)

7 **THE COURT:** All right. Ladies and gentlemen of
8 the jury, the second housekeeping matter we need to
9 attend to is to appoint a foreperson of the jury. Now
10 before I tell you who I've decided to appoint, I want
11 you to know that I believe that all of you would make
12 excellent forepersons of this jury, but we can't have
13 twelve quarterbacks, we only have to have one, so that's
14 why I have to go with just one, but let me emphasize
15 with you that the foreperson's vote carries no more
16 weight than everybody else's vote in this case. I have
17 to have a person who will be the spokesperson for the
18 jury. If there is a concern during the course of this
19 trial that needs to be brought to my attention, then I
20 need someone to speak on behalf of the jury. I also
21 need someone to make sure that everyone on the jury is
22 following the instructions that I will give you in just
23 a moment and so I need someone to handle that.

24 And the third hat that the foreperson wears is
25 someone has to oversee the deliberations. Once you

1 get this case, once I tell you it's now time to
2 deliberate and to reach a verdict in this case, I
3 have to have someone who will organize and oversee
4 those deliberations, but I can't emphasize with you
5 enough that the foreperson's vote is equal to everyone
6 else's vote in this matter. And I've decided on
7 Antonio Hill. Mr. Hill, you've got a smile on your
8 face. That's good. When you come back out the next
9 time after a break, and from now on, you will always
10 be seated in that front seat there, okay?

11 Now the alternate is Adam Mills. Mr. Mills, you
12 will always sit in the back -- on the end on the back
13 row there, okay? Everybody else can sit where you like,
14 okay? Now what I -- I generally tell this to juries.
15 It's been my experience that most times jurors like to
16 sit in the same seat. It's kind of like at church, you
17 sit in the same pew, and you don't have to sit in the
18 same seat, but if you want to, that's okay, too. That's
19 totally up to y'all, all right?

20 Okay. Now what we'll do to start this trial off,
21 I'll have a -- what we call a preliminary charge and
22 then the -- both lawyers, or both sides rather, and I'm
23 not sure who will give the opening on behalf of the
24 State, but they'll give a brief opening argument or
25 statement to you, which is not evidence. It just will

1 be an outline of what they believe this case is about
2 and what they believe will be shown in this case and
3 then we'll start into the witness testimony and the
4 evidence.

5 Mr. Foreperson, ladies and gentlemen of the jury,
6 we are now starting this case, which is the State of
7 South Carolina versus Christopher Lee Wymer. Before we
8 begin this trial, I want to tell you that this trial
9 probably will be different from what you might expect.
10 Many people do not have a chance to attend actual court
11 sessions as you're doing now and may think from watching
12 television or movies or reading books that trials are
13 always full of high drama, intense action and riveting
14 circumstances.

15 While all of these things may be true at times,
16 this trial is not for entertainment. It is an
17 fundamental part of our democracy, a search for the
18 truth in an effort to make sure that justice is done
19 between the parties before the Court. Searching for
20 the truth and making sure that justice is done is often
21 slow, deliberate and repetitive; the opposite of what
22 you may have seen on television or in movies or have
23 read in books.

24 Mr. Foreman and ladies and gentlemen of the jury,
25 this place, this courtroom, is a place of honor

1 dedicated to the protection and preservation of
2 citizens' rights through what many have called to be
3 the greatest justice system ever created. The
4 attorneys appearing before you are advocates for the
5 parties they represent, but first and foremost they
6 are officers of the court, sworn to uphold the
7 integrity and fairness of our judicial system and to
8 help you in the search for the truth. You should
9 expect them to be professional, competent and ethical
10 in the representation of their clients' interests,
11 which I will guarantee you that they will be, I know
12 these lawyers, they're excellent lawyers, but also you,
13 the jury, are expected to be professional, reasonable
14 and ethical as well. I want to thank you, Mr. Foreman
15 and ladies and gentlemen of the jury, for accepting the
16 important responsibility of jury service and for your
17 contribution today to our justice system.

18 What I will now say is intended to serve as an
19 introduction to the trial of this case. These remarks
20 are not a charge on the law in this case. I will
21 instruct you on the law applicable to this case at the
22 end of the trial before you retire to consider your
23 verdict. This is merely an explanation of the
24 procedure that we will follow in the trial of this
25 case so that you may better understand what may be

1 happening, and I'll instruct you now that you are not
2 permitted to take any notes.

3 Now as I told you at the outset yesterday, the
4 Defendant is charged by two indictments filed in this
5 court, both with the crimes of attempted carjacking.
6 Now there was a -- what we call a scrivener's error in
7 one of them. It did refer in one of the indictments
8 to a vehicle being involved, a 1997 Grand Marquis.
9 That was a mistake and that has been cleared up where
10 the vehicle involved in that indictment, that was
11 Indictment 1129, is an F-350, I'm not sure of the year,
12 so I didn't want you to -- because I had read the
13 indictment to you and mentioned a Grand Marquis and
14 if you had heard something about a truck and not the
15 Grand Marquis, then you would have been possibly
16 confused, so I wanted to clear that up.

17 Now as I told you yesterday, these indictments
18 are not evidence. The fact that the Defendant has
19 been charged is not evidence. These indictments are
20 the documents to get this case into court in the
21 posture that we are in today. The Defendant has pled
22 not guilty to these two indictments; therefore, the
23 State has the burden of proving each and every element
24 of these offenses beyond a reasonable doubt standard
25 and it will be your duty, ladies and gentlemen, to

1 decide whether the State has met that burden, and I'll
2 explain more about that at the conclusion of this case.

3 Your purpose as jurors is to find and determine
4 the facts. You are the sole judge of the facts. If
5 at any time I make any comment regarding the facts in
6 this case, you must disregard it. You are to determine
7 the facts from the testimony you hear and the other
8 evidence introduced in court. It is up to you to
9 determine the inferences which you feel may properly be
10 drawn from the evidence. Is it especially important
11 that you perform your duty of determining the facts
12 diligently and conscientiously because ordinarily there
13 is no way to correct an erroneous determination of the
14 facts by a jury.

15 On the other hand, and with equal emphasis, the
16 same law that makes you the judge of the facts makes
17 me the judge of the law. The law as given by the Court
18 is the only law you may consider. You must accept and
19 follow it even though you disagree with it. I cannot
20 tell you what the facts are and you cannot disagree
21 with me about what the law is or should be. Your job
22 is to take the law as I give it to you and apply it to
23 the facts as you find them from the testimony of the
24 witnesses and any other evidence that is introduced.
25 After doing that, you will render your verdict; the

1 verdict under the solemn oath that you just took as
2 jurors. And until I tell you to start your
3 deliberations, you cannot do so prior to that.

4 And, again, and I told you this yesterday and I
5 will remind you on a regular basis throughout this
6 trial, you cannot discuss the facts of this case or
7 anything about this case among yourselves or anybody
8 that you may come into contact with during a lunch break
9 or in the evening time after we adjourn for the day.
10 When you do begin your deliberations at the conclusion
11 of the case once I instruct you to start, you may only
12 discuss the case in the jury room with your fellow
13 jurors because they have seen and heard the same
14 evidence that you have.

15 Again, you must not discuss this case with anyone
16 until I tell you to. You must decide this case based
17 solely on the evidence presented here in this courtroom.
18 This means that during the trial you must not conduct
19 any independent research about this case, about the
20 facts of the case, the evidence presented or any
21 individuals involved in this case. We nowadays have
22 access to such information, being the Internet and
23 other means, and you cannot go home tonight and start
24 going on the Internet and doing your own independent
25 research. That is totally prohibited. You can't do

1 it. You have to base your verdict on what is brought
2 out in this courtroom.

3 And equally so, and I don't know if there's going
4 to be any newspaper accounts of this case in any local
5 newspapers, I don't know that, but if there is, then
6 you're instructed not to read those newspapers or
7 consider anything that may be in the newspapers about
8 this case or anything that may be on the radio or any
9 other media outlet.

10 It's very important, Mr. Foreman and ladies and
11 gentlemen of the jury, that you keep an open mind
12 throughout this whole trial and not decide any issue in
13 the case until all of the evidence has been presented,
14 the parties have made their closing arguments and I
15 have instructed you on the law in this case. It is
16 your solemn responsibility to determine the guilt or
17 innocence of the Defendant and your verdict must be
18 based solely on the evidence as it is presented to you
19 in this trial and on the law as I instruct you during
20 and at the close of the trial.

21 Now there may be times where one of the lawyers
22 makes an objection or may say Judge, I have a matter of
23 law to take up with the Court, and it may require me to
24 excuse you to retire to your jury room for some period
25 of time. The reason for that is during my discussions

1 with the lawyers concerning the particular legal issue
2 or the objection involved, it may require me to discuss
3 the facts and I can't do that in your presence because,
4 again, you are the sole judge of the facts of the case.
5 If at any time you are in your jury room, I can assure
6 you that we are working. It's not going to be a
7 situation that we will ever leave you in the jury room
8 and we're taking it easy and not doing any work. We'll
9 be working while you're in the jury room.

10 And, lastly, ladies and gentlemen of the jury,
11 it is very, very important that you pay very close
12 attention to everything that is done in this courtroom.
13 Don't let your thoughts wander, don't close your eyes
14 and be very relaxed. You need to be very attentive
15 because I'm not allowing you to take notes, so you're
16 gonna have to have a really good memory of what is
17 brought out during this trial. So pay very close
18 attention to everything that goes on in this trial
19 and I'll give -- we will have breaks throughout the
20 trial. If at any time that you need to take a break
21 and I haven't given you one, all you have to do is
22 just raise your hand and let me know that you need to
23 take a break. We'll stop right then. We want to make
24 you as comfortable as possible and make it the best that
25 we can make it for you so you can be very attentive

1 during this trial.

2 Now in order to preserve everyone's rights, I
3 will first ask the State is there any objections or
4 exceptions to the State's {sic} preliminary charge?

5 **MR. SCOTT:** No, Your Honor.

6 **THE COURT:** From the defense?

7 **MS. WIYGUL:** None from the defense, Your Honor.

8 **THE COURT:** Thank you very much. I'll turn it
9 over to the lawyers for them to make their opening
10 statements.

11 **MR. SCOTT:** Thank you. May it please the Court?
12 This is a matter of -- as a way of reintroduction, my
13 name's Dale Scott. I'm a Solicitor here. And a
14 Solicitor is -- I guess if you watch TV, watch Law and
15 Order or Matlock or any of the crime TV shows, they
16 usually referred to them as the District Attorney or DA.
17 In South Carolina, kind of one of these antiquated terms
18 that we would use would be a Solicitor, but that's what
19 I am.

20 The judge said we each advocate for own parties.
21 I represent the citizens of Laurens County and a
22 Solicitor would be tasked with enforcing the laws
23 that we have in South Carolina. Every so often as a
24 Solicitor you will get a case that you review it, you
25 look at all the facts and you say man, that's really

1 bizarre that stuff like this goes on in the community,
2 a real head-scratcher, and that clearly in my opinion
3 that breaks the law, but I'm reminded of the all too
4 classic refrain from my father: Son, what were you
5 thinking? I used to hear that a lot when I was little.
6 What were you thinking? And I was reminded of that when
7 I reviewed these facts, but in all seriousness, there
8 was a chain of events that Mr. Wymer and his friend,
9 Tim Threatt, set into motion on April 27, 2011.

10 And I'll be honest with you. We're lucky we're not
11 dealing with someone dead right now because you heard
12 the indictments, carjacking. And we all kind of have
13 some notion of what carjacking is. Our state law says
14 it's the taking or attempt to take a motor vehicle
15 operated by someone else by violence or by force or
16 intimidation, and that's what this case is about.
17 That's what I'm going to allege and that's what I
18 submit the evidence is gonna show that Mr. Wymer
19 undertook to do that night in April of 2011.

20 Let me just briefly -- as the judge said, I'm going
21 to kind of lay out what I think the evidence is gonna
22 show you and sort of how I think this case is gonna
23 proceed. So what I'm gonna do is start off with a
24 truck being driven by Brian Ortscheid. Brian Ortscheid
25 works for a cellular communications company and Eddie

1 Bridges is his coworker, and late that night, or more
2 accurately the early morning hours of April 27th, we're
3 talking like 2:30 AM, 2:40 AM, they're out servicing
4 cell phone towers down by the lake.

5 And I asked them, you know, what in the world --
6 is that typical that you're servicing phones when
7 everybody else is sleeping? Well, yeah, because that's
8 when, you know, it's not peak hours, that's a time when
9 you're not gonna interrupt customers' service, and it
10 takes them to some real rural areas at times of night
11 that you and I would like to be in bed and not, you
12 know, out in the woods or out on country roads and
13 whatnot, but that's their job and they were doing their
14 job that night.

15 And somewhere in between Lake Greenwood and they're
16 getting to Waterloo and they're getting towards Clinton,
17 up from behind them comes a gold-ish, pewter-ish --
18 it's a kind of colored car that I'm never clear on how
19 to describe it. I onetime had a car that was called
20 pewter. But it's somewhere in between gold or a beige
21 colored car, a Grand Marquis, comes flying up on them,
22 okay? They're on Highway 72 eastbound. Now that's that
23 road that will take you through Sumter National Forest.
24 Are y'all familiar with that area? So you're familiar
25 that that is a large forest where it's very rural,

1 there's not a whole lot of businesses or homes out in
2 the area. It's fairly desolate stretches of road and
3 we're talking about 2:40 AM at night and they've got
4 a Grand Marquis that flies up behind them with their
5 headlights on them.

6 This car comes up beside them and there's two
7 people in the car as far as they can tell and the
8 passenger is hanging out the window waving at them to
9 stop. They have no clue what this is all about, but,
10 hey, this guy might need help, so they stop their
11 truck. They're driving an F-350, a larger bodied Ford
12 pick-up, they're hauling a closed trailer with all their
13 equipment, but they stop and the passenger gets out and
14 runs at them and at this point they -- they're scared,
15 they're intimidated and they take off.

16 The passenger jumps back in the Grand Marquis.
17 He's going down the road with them following them,
18 cutting in front of them trying to cut them off the
19 road, slamming on the brakes. At this point these guys
20 know something; that this ain't right. They're calling
21 9-1-1, but they're proceeding down the road. They don't
22 want to stop because they don't want these two guys to
23 highjack them out in the middle of that desolate stretch
24 of 72 out there. They're on the phone, needing help,
25 you know, what do we do? They can't stop. There's

1 nowhere to stop and they don't want these guys to catch
2 them out on this road with no help around and so they
3 keep going. The Grand Marquis the State's gonna allege
4 is being driven by Mr. Wymer. It continues -- continues
5 harassing them, continues pulling in front of them
6 causing them to alter their driving, slamming on brakes
7 in front of them.

8 At some point they're approaching I-26. Mr. Wymer
9 anticipates they're gonna try to get on the ramp. He
10 pulls on the ramp. He cuts his car sideways, cuts that
11 Grand Marquis sideways trying to block them, so they
12 keep going. Wymer has the wherewithal to pull back out
13 and shoot on by them again. At this point, he cuts his
14 car sideways on the highway there forcing Mr. Ortscheid
15 to stop his pick-up. At this point, he stops about
16 50 yards short. He can't turn around with that enclosed
17 trailer, a two-lane road with ditches on either side,
18 so he's kind of stuck.

19 Out jumps the passenger again. His name is Timothy
20 Threatt. He's a buddy of Wymer's. Threatt comes
21 running back at their car -- or Mr. Ortscheid's truck.
22 He waits for him to get right up by the truck and he
23 takes off again. See, that Grand Marquis is still
24 blocking the road. What he does is he tries to act like
25 he's gonna go in front of it. Wymer tries to cut him

1 off again. He jolts the car forward. Luckily there's a
2 view kind of to the rear of it and he just takes off on
3 down the road. And they're on with 9-1-1 again. Hey,
4 we ain't stopping, we're getting on out of here, leaving
5 Mr. Wymer in the car and Mr. Threatt to walk back to the
6 car and get in.

7 But they ain't done yet because at that point on
8 Highway 72 East, that desolate stretch of road out there
9 in the middle of the national forest, comes Mr. Tylon
10 Johnson, okay? Mr. Johnson is a truck driver and has
11 been for 30 years and he's driving a logging truck that
12 night. He's going to testify -- I submit to you he's
13 gonna testify that here comes that same Grand Marquis
14 and they've got a new target now, and it's Mr. Johnson
15 in his big rig. They shoot up behind him, again, just
16 following really close. In 30 years I imagine you see
17 a lot on the road as a truck driver and this is just
18 something that he sees and it kind of gets his guard up
19 at this point. What are these people doing?

20 They pull up beside him. They're coming up close.
21 It's a two-lane road, so they've gotten into the lane of
22 oncoming traffic in order to pass him. He's watching
23 them and he's trying to see what they're doing. Imagine
24 his surprise when he sees that passenger, Mr. Threatt,
25 open the door while they're going 50 miles an hour down

1 the road trying to reach up and grab ahold of his mirror
2 to board his trunk. I mean, that's an unusual night,
3 but that's what he's gonna tell you happened that night.
4 He taps the brakes, that Grand Marquis goes on forward,
5 driven by Mr. Wymer. Mr. Wymer, again, it sounds
6 familiar at this point, the same MO that he had with
7 Ortscheid and Eddie Bridges, but he pulls right in
8 front of that eighteen-wheeler and starts tapping
9 on the brakes trying to get this guy to stop and
10 Mr. Johnson, he's able to maneuver around them and
11 keep going down the road.

12 They continue this for some time. They do the
13 same thing. They're able to cut the Grand Marquis in
14 the middle of Highway 72 out in the middle of that
15 national forest. Cell phone service is pretty shoddy
16 out there. So Mr. Johnson is forced to stop his rig or
17 else run right through them. Then he stops short just
18 like they made Ortscheid do and Timothy Threatt jumps
19 out of that Grand Marquis being driven by Christopher
20 Wymer. He runs right at Mr. Johnson's door. And what
21 is going through Mr. Johnson's mind at that point? In
22 the middle of nowhere. He can't carry gun. He's from
23 Georgia. I mean, that's just a -- it's the way our law
24 works. We don't have reciprocity with Georgia as far as
25 carrying a gun goes. He's following the law. He can

1 carry a gun in Georgia, but he can't in South Carolina.
2 That's just the way our gun laws operate.

3 He has no idea what this guy's doing. Timothy
4 Threatt is at his door in no time. Mr. Johnson says do
5 not open that door. He's got -- all he's got is a
6 little pocket knife that he can't reach into. He's got
7 one other thing truckers will carry. They call it a
8 cheater bar. It serves a couple of purposes. You can
9 use it to ratchet down chains or straps that would carry
10 a load in the back, but they also take this thing and
11 they ping their tires with it to make sure their air
12 pressure is what it's supposed to be. I guess it makes
13 a sound a trucker would be familiar with when the air
14 pressure's right and it might make a thud if it's a
15 little bit low, but anyway that's all he has.

16 So he's pushing this guy out the window, don't you
17 open that door, because he knew in his mind if this guy
18 gets me in this cab, I'm a goner. What are you thinking
19 with people behaving like this on the open road in the
20 middle of the night? I mean, you've got no clue. He's
21 defending himself at this point trying to get this guy
22 back. He pushes him off and figures if I can get out of
23 the cab, I might have a better chance because if he's
24 got me closed in in this cab, I can't really swing this
25 thing.

1 Threatt engages him immediately, grabs him by the
2 arm. Wymer's still back in the car. Tylon Johnson's
3 lights are shining in his face. Tylon hits him once in
4 the side. It doesn't stop this guy. He's still going
5 at him. Eventually he takes this thing, and I believe
6 he's got it kind of on this side, and brings it down
7 on top of Mr. Threatt's head. In his mind, this is a
8 matter of life and death here. And he didn't ask for
9 that. Mr. Ortscheid didn't ask for that. These folks
10 are doing their job, they're going to work, and you've
11 got Mr. Wymer and Mr. Threatt attempting to get at them
12 either way, attempting to carjack him basically.

13 Mr. Threatt goes down. Like I said, he's lucky
14 he's not dead, you know, because he was hit right across
15 the head with that metal bar. It ain't over though
16 because Mr. Johnson doesn't know what the driver's
17 doing. He's still in the car. He's got his pipe,
18 that's about all he's got, but he doesn't know what
19 Mr. Wymer's got. He doesn't have a clue. I mean, what
20 kind of weapons could he possibly have? I mean, that's
21 what's going through Mr. Johnson's mind right there.
22 He's hunkering down beside his truck waiting to see what
23 this other fella's gonna do and Mr. Wymer gets out,
24 stands right in this spotlight, he's got the high beams
25 on, and Mr. Wymer can't quite see what had happened to

1 his buddy, he can't quite see where the truck driver
2 is. He's sneaking around. About that time he catches
3 a glimpse of Mr. Johnson over there with the metal bar
4 and jumps in his car and tries to pull around. At that
5 time, Mr. Johnson sees this is my chance to get on out
6 of here and jumps in his truck and takes off toward
7 Union.

8 The police at this point have gotten the 9-1-1
9 calls from Mr. Ortscheid and they've got other 9-1-1
10 calls saying that this Grand Marquis is blocking the
11 road out here, somebody needs to come out here.
12 Officers respond. They're going eastbound on 72. They
13 -- officers pass that Grand Marquis. Mr. Wymer, at
14 some point he lifted his buddy up off the ground, his
15 unconscious buddy, threw him in the car, the Grand
16 Marquis, and now he's getting on out of there before
17 the cops get there, but they pass him and they do a
18 U-turn and give chase. Mr. Wymer runs the car a little
19 ways and pulls into a residence over there. The actual
20 address was Highway 72. It's a Whitmire address.
21 Mr. Wymer bails out of the car, runs out into the woods
22 and the cops get him like that.

23 That's pretty much the case, ladies and gentlemen.
24 I mean, they catch him red-handed. His buddy,
25 Mr. Threatt, again, cracked over the head. He's

1 unconscious laying out beside the car. There's
2 absolutely no doubt the driver's Mr. Wymer. Again, as
3 I said, he's caught in the woods. He comes on out, they
4 cuff him, put him in the back of the police car, they
5 read him his rights; what were you doing, what were you
6 thinking? Well, we figured if we could, you know,
7 highjack a car or two, we might get some pills. That's
8 the case. That's the law. You can't do that. We all
9 know that.

10 Again, it's bizarre set of facts. I would -- I
11 would say that right off the bat, and it's a weird set
12 of facts, but it's against the law. It's carjacking.
13 Carjacking in South Carolina is to take or attempt to
14 take a motor vehicle from another by force and violence
15 or intimidation. I don't know what else you would call
16 that. Catching somebody in the middle of nowhere like
17 that and trying to run their car off the road or block
18 their car and charge their cab and do all this. It's
19 just dangerous because what you're gonna hear is that
20 Mr. Ortscheid had a pistol in his truck the whole time.
21 I mean, things could have wound up a whole lot worse
22 than it did. You've got one guy that's cracked over the
23 head with a metal pipe, you've got three other victims
24 here. They're gonna remember this the rest of their
25 lives. I can guarantee you that. We've got a man on

1 trial here today and you guys are gonna decide the case
2 against him, all right?

3 And the judge is right. It's not gonna be like TV.
4 I mentioned a couple of crime series earlier and you're
5 not gonna see me pull down a screen or a smart board and
6 show you all kinds of cool evidence and DNA and high
7 pixel photographs and everything. I've got a couple of
8 color printouts that we got from the scene, but it's
9 just gonna be an old-fashioned trial. You're gonna hear
10 from eyewitnesses, people who were there that night,
11 I've got a couple of cops, and that's gonna be my --
12 I've got six witnesses in all, and we'll call them all
13 today probably if I stop talking and sit down and what
14 have you.

15 But that's our case, and I've got to prove it to
16 you beyond a reasonable doubt. If you will just use
17 some reason and doubt something when you need to doubt
18 it, but don't jump to conclusions, don't try to play
19 detective. Just be firmly convinced of the facts at
20 the end of this trial and that is all you need to
21 convict Mr. Wymer of two counts of carjacking. The two
22 counts come from the one attempted carjacking against
23 Mr. Ortscheid and Mr. Bridges, that's the F-350 for the
24 purposes of the victims in it, and then the count that
25 is associated with Mr. Tylon Johnson, the operator of

1 the eighteen-wheeler.

2 So just listen carefully, just be attentive, that's
3 all I can really ask, and at the end of this thing I'm
4 gonna ask you to find him guilty of these two counts of
5 attempted carjacking. Thank you.

6 **THE COURT:** Thank you, Solicitor. Ms. Wiygul.

7 **MS. WIYGUL:** Thank you, Your Honor. Despite
8 everything Mr. Scott just told you, right now Mr. Wymer
9 is innocent. He's cloaked in a coat of innocence and
10 unless they produce the evidence to convince you of his
11 guilt beyond a reasonable doubt, he'll walk out of this
12 courtroom innocent at the end of this trial.

13 Don't try to play detective? Well, I wish someone
14 would. I wish someone would investigate. This is gonna
15 be an old-fashioned trial because they didn't use things
16 like video cameras or audio recordings or paper as they
17 were trained to do. What else could you possibly call
18 such a bizarre set of facts?

19 Well, I've seen very similar facts called lots of
20 things. There's a video going around from Moncks Corner
21 where two fathers got into a road rage incident and then
22 one blocked the other one in at the middle school and
23 ran over to his car. They called it disorderly conduct,
24 they called it road rage. They call people driving
25 under the influence, driving under the influence, DUI.

1 They call reckless driving, reckless driving. So
2 there's all kinds of things they could have called this.
3 Mr. Scott chose to call it carjacking. Mr. Scott, what
4 were you thinking?

5 Please do listen to the evidence in this case.
6 Listen to what happened. Listen to what they know and
7 listen to what they're guessing about because there
8 were only two people in that Mercury Marquis, or Grand
9 Marquis, and that was Mr. Wymer and his co-defendant,
10 who you're gonna hear jumped out a window of the moving
11 vehicle to run over to one of these gentlemen.

12 So was this carjacking or was this two really drunk
13 people that should not have been on the road driving
14 around with the driver trying to stop his crazy
15 passenger from jumping out of the vehicle? Someone
16 could have been ended up dead. Luckily it wasn't these
17 gentlemen. It was Mr. Wymer and Mr. Threatt, and you're
18 gonna hear Mr. Threatt almost did end up dead because of
19 his own actions, which were stupid and scary, and nobody
20 would want to go through that, but that doesn't make it
21 carjacking or attempted carjacking. That would make it
22 all kinds of things.

23 Please listen to the investigative techniques that
24 Laurens County chose to use in this case. Please listen
25 to how careful they were in preparing their paperwork.

1 You heard about the scrivener's error on the indictment.
2 How many other scrivener's errors are there in this
3 case? How many other mistakes were made? How many
4 assumptions were made? Please, somebody play detective.

5 At the end of this case, we're confident that
6 you're gonna find Mr. Wymer is not guilty of carjacking.
7 He might be guilty of something, but not that. Thank
8 you.

9 **THE COURT:** Thank you, Mr. Wiygul. Is the State
10 ready to call its first witness?

11 **MR. SCOTT:** Yes, sir. The State calls Brian
12 Ortscheid.

13 BRIAN ORTSCHIED,
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q. Mr. Ortscheid, so where are you employed?

18 A. South Carolina -- actually we do work for SCT, so
19 really I'm self-employed.

20 Q. What kind of work do you do for SCT?

21 A. For SCT we do electrical for the base of the tower.
22 We upgrade telecommunications systems.

23 Q. Okay. And do you work a specific region?

24 A. South Carolina and North Carolina. Just pretty
25 much the Carolinas. That's about it.

1 Q. All right. And so tell me about, I guess, an
2 average day or an average night for your job. What do
3 you -- what does that entail?

4 A. Average, a lot of driving, a lot of work. We go
5 out during the day, you know, we can go out at night.
6 Typically though it's a lot of night work because we do
7 have to shut down the -- the sites at night, so.

8 Q. You've got to shut down the entire -- what, the cell
9 tower can't receive or --

10 A. Well, the tower might have several carriers on it;
11 Verizon, AT&T, and we have to shut down depending on who
12 we're working on, so.

13 Q. Okay. So that would be why you probably do them
14 late at night?

15 A. That's correct.

16 Q. Because that's when the least amount of traffic is
17 going through those towers?

18 A. Yeah, they don't want to affect the customers'
19 signal, so. Our main schedule is twelve midnight until
20 six in the morning typical.

21 Q. Okay. All right. So April 27, 2011, do you
22 remember that date?

23 A. Yes, sir.

24 Q. Okay. And tell me where you -- were you working on
25 some tower down around Lake Greenwood?

1 A. Yes, sir, we were. We had just finished up on
2 another tower. It was a new tower that didn't have any
3 service on it yet. We were trying to get the service
4 brought up and we were en route from one tower to
5 another and it was for -- I think it was for PRTC at
6 that time and we were heading en route through Clinton
7 up through that Highway 72 national forest area and we
8 were gonna start work on that -- that site as well.

9 Q. Okay. Who's we?

10 A. Me and Mr. Bridges.

11 Q. Eddie Bridges?

12 A. Eddie Bridges, yes.

13 Q. That's the gentleman with the gray T-shirt?

14 A. Yes, sir.

15 Q. And he works with you?

16 A. Yes, sir.

17 Q. All right. So -- well, tell me what happened.

18 A. Well, we were coming out -- like I said, we were
19 leaving that one site that was near the Greenwood -- I
20 don't know -- recall that site address or where it was,
21 but we were leaving the Lake Greenwood and coming into
22 Clinton, it's a four-lane highway, and the Defendant and
23 his occupant were driving in the -- the left-hand lane
24 and they were coming up behind us and I noticed the dome
25 lights were on and they stayed beside us for quite some

1 time. The passenger of the vehicle, of the Grand
2 Marquis, was kind of fiddling around in the back seat
3 for something, I don't know what it was, but he then --
4 the driver of the Grand Marquis, the Defendant, pulled
5 out in front of me and the passenger was motioning me to
6 stop out the window.

7 So naturally at 2:30 in the morning, 2:00, somewhere
8 around there, I didn't know what was going on at this
9 point because I'd never seen these guys before, but I --
10 I slowed down to a stop. The passenger actually exited
11 the vehicle before it came to a complete stop, so I
12 thought that was kind of odd, and then he came running
13 at me at a full run at that point with his hands up,
14 you know, fists balled and towards the door.

15 I didn't like situation, so I went around them.
16 It was four lanes, a four-lane highway with a grass
17 median, so at that time I could get around pretty easy.
18 So I got around there and came into Clinton and they
19 attempted to get around me again, but, you know, this
20 time I was swerving, trying to keep them away from me.
21 They got around me. The passenger actually had the door
22 open with his foot inside the door and his foot inside
23 the vehicle facing me while travelling down the road.

24 Q. Okay. How fast were y'all going?

25 A. 40, 50 miles an hour.

1 Q. So he's hanging out the door?

2 A. Yeah.

3 Q. Well, describe it. What are you saying he was doing
4 now?

5 A. He had the door -- passenger door open and his left
6 foot was in the door like where, you know, you can put
7 items inside the door, in the side door, his foot was on
8 that.

9 Q. The pocket thing?

10 A. Yeah, the pocket. His foot was on the door and his
11 right-hand foot -- or his right side foot was inside the
12 vehicle and he was facing me --

13 Q. Standing up?

14 A. -- and then they came to a stop and he came running
15 at me again. This time he attempted to get in the bed
16 of my truck, but he could not because I have a cover, a
17 sliding cover. As soon as he got towards the bed of my
18 truck, I took off. I heard him slap the back of my
19 truck, he couldn't get in, so we continued down the road
20 and that's when the Defendant actually ended up passing
21 us again, but turned down a side road before we got to
22 Clinton.

23 Q. Who did?

24 A. The Defendant.

25 Q. He turned -- are you talking about Mr. Wymer, who

1 was driving this car?

2 A. Mr. Wymer, yeah. Yes, sir.

3 Q. And Threatt was the one who's hanging out the side?

4 A. Yes, sir.

5 Q. All right. So you're going through Clinton at this
6 point and all that's going on?

7 A. Well, we were approaching Clinton and they turned
8 down the side road and that's when we told -- we were on
9 9-1-1 with the -- over the truck speakers at the time
10 and we told them that they had just turned down a side
11 road and we didn't know where they went, but we met back
12 up with them. They must have went around town somehow
13 and when we saw them again, they were actually coming
14 out of a side road and came around us and he got on the
15 entrance ramp of 26 and then stopped and parked the car
16 and both occupants of the vehicle got out at that point
17 and so we didn't -- we weren't going that way, we were
18 actually going to the -- Clinton National Forest was
19 where the site was, so we passed them and when we passed
20 them, both of them jumped back in the car and got in
21 behind us again, but at that point it's no longer a
22 four-lane road, it turns into two lanes, and so I know
23 there's heavy traffic because we go up and down that
24 road quite often, there's a lot of cell towers down that
25 way on Highway 72, and we continued down the road, they

1 came around us on the side and I know there's semis that
2 come all the time, logging trucks, as you can see come
3 down that road quite often at night as well, and they
4 were coming around me in a no passing zone.

5 The passenger of the vehicle, again, was trying to
6 get on the side of my vehicle while we were moving in a
7 no passing zone and, sure enough, a car came around the
8 corner, so I had to hit the brakes; otherwise, we would
9 have all crashed. I hit the brakes, he got in front of
10 me, he took off -- the Defendant took off and stopped
11 his vehicle, I don't know, a quarter mile, a half a mile
12 ahead of me, and at this point I see a reoccurring, you
13 know, circumstance happening. You know, the driver
14 would stop the car, the passenger would get out, the
15 passenger would run towards us, try to board the vehicle
16 and then, you know, I'd get around them, the driver
17 would wait for the passenger to get back in the car and
18 then continue to follow us. So this time I decided to
19 wait a good ways back from the vehicle. That way when
20 the passenger tried to get back in the car I'd have more
21 time.

22 Q. All right. Let's describe that. So they -- they
23 stopped the car in the middle of the road again?

24 A. Yeah, and this time it's sideways in a two-lane
25 road, I have nowhere to go, I can't turn around. I'm

1 telling dispatch I can't turn around. They said, you
2 know, just turn around. I said well, I can't.

3 Q. Why can't you?

4 A. There's a ditch on both sides of the road. I've got
5 a four-door F-350 long bed, it's 22 feet and then I've
6 got a 16-foot trailer, that's 40 feet of vehicle. I
7 can't turn around on a two-lane road. So, you know,
8 I'm assessing the situation. There's a vehicle in front
9 of me, the passenger's now running toward me. The only
10 thing I can do at this point, I had my weapon drawn
11 because I had nowhere to go. The passenger in the
12 vehicle saw the weapon, I know he did. I mean, we had
13 our interior lights on as well and just so he could see
14 that I was armed so that he wouldn't come toward me
15 anymore, but he just kept coming and at that time I
16 said well, I'll just try to get around him, you know.
17 I don't want to kill anybody, but, you know, if I had
18 to, I -- you know, I'd have to do it, you know, to
19 defend myself.

20 Q. You didn't want to?

21 A. No, I didn't want to. The car was parked in the
22 middle of the road, like I said, so as I approached the
23 car I waited until the passenger got right next to me
24 and I took off. At this point I went like I was gonna
25 go in front of the Defendant and he pulled forward,

1 which gave me a little bit of an opening on the back
2 end, so I turned the wheel. The truck and trailer when
3 I -- the trailer actually went all the way into the
4 ditch and I came back, the truck came out of the ditch,
5 the trailer was stuck in the ditch a little ways, tires
6 were spinning, I took off. Finally I got out, the
7 trailer got out, and at that time I just started taking
8 all kinds of turns to just try to lose them.

9 Q. All right. So you -- it's safe to say you were
10 pretty panicked?

11 A. Oh, yeah. Yeah, very panicked. Panicked enough I
12 put my way of life into a ditch, you know, to try to get
13 away, so.

14 Q. Okay. You're saying the Defendant moved his car
15 forward. Are you talking about Mr. Wymer?

16 A. Yes, sir.

17 Q. Actually when you're trying to get around him, he
18 pulls the car forward to --

19 A. To try to stop me from getting around.

20 Q. And then you said after that you were able to --
21 you got in the ditch, but you were eventually able to
22 get out and head on back down the road?

23 A. Yes, sir.

24 Q. And what did you say? You started taking back
25 roads?

1 A. Yeah, I took a left and I started taking all kinds
2 of turns. Just as unpredictable, you know, as the turns
3 could be, it would be better for myself because it would
4 be unpredictable, you know, so I started turning down
5 different roads and just trying to lose them.

6 Q. Okay. So that's what you mean?

7 A. I was trying to get off the main roads where people
8 were travelling on, so.

9 Q. What did you do to make them do that to you?

10 A. Nothing. I was just going down the road.

11 Q. You didn't do anything to give them road rage?

12 A. No, sir. They came up on me. I didn't -- they came
13 from behind me. I never saw them before.

14 Q. Well, I'm asking you what did you do to deserve
15 that? You surely did something to them.

16 A. No, sir, nothing.

17 Q. Okay. Have you ever seen anything like that before
18 in your life?

19 A. Never.

20 Q. And Eddie Bridges was in the truck with you at the
21 time?

22 A. (Nods head.)

23 Q. All right. So you go down these back roads and what
24 happened next?

25 A. Dispatch had been on the phone with us the entire

1 time and they said the -- the police had the guys in
2 custody, Mr. Wymer and the passenger, Threatt, had them
3 in custody, so we went to the officers. At that point
4 they said they were on Highway 72. We went to the
5 officers, which happened to be really right across the
6 road from where we were gonna be working, so.

7 Q. Okay. Did you see Mr. Wymer?

8 A. Yes, sir.

9 Q. Where was he when you saw him?

10 A. He was in handcuffs and he was slamming his head
11 against the squad car and threatening a bunch of the
12 officers.

13 Q. And did you see Mr. Threatt?

14 A. Yes, sir. He was laying on the ground and just
15 really bloody and just wasn't moving.

16 Q. At that point, did you know what happened to him?

17 A. No, sir. I thought the police had shot him.

18 Q. Okay. Did you recognize the fella laying down
19 there bloody as the one who was trying to jump into your
20 truck?

21 A. Yes, sir.

22 Q. Now about how long do you think it was between the
23 time you lost those fellas and you started going down
24 those back roads and then when you saw them at the
25 arrest scene?

1 A. I -- it's been a long time, so I can't really
2 recall. Maybe 30, 45 minutes.

3 Q. Okay. And tell me what sorts of -- what was your
4 feeling, I guess, at the time all that was going on?
5 What sort of emotions were you experiencing?

6 A. Oh, it was definitely fear. I mean, it was 2:30
7 in the morning and two guys I've never met in my life
8 were trying to get me to stop. I mean, there was no
9 explanation other than, you know, mal intent at that
10 point.

11 Q. Okay.

12 MR. SCOTT: Okay. All right. Mr. Ortscheid,
13 answer any questions Ms. Wiygul has for you, okay?

14 THE WITNESS: Okay.

15 THE COURT: Cross-examination, Ms. Wiygul?

16 MS. WIYGUL: Yes, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. WIYGUL:

19 Q. Mr. Ortscheid, at any point did you meet with
20 Sergeant or Lieutenant Martin in this case, this
21 gentleman sitting right here?

22 A. Yes, ma'am.

23 Q. Okay. And did you talk to him about this case?

24 A. Yes, ma'am.

25 Q. Where did you meet with him?

1 A. We met at -- there was a gas station on Highway 418.

2 Q. You didn't meet him at the -- where you saw

3 Mr. Wymer and Mr. Threatt?

4 A. No, ma'am.

5 Q. Okay. Did you meet him before or after you saw

6 Mr. Wymer and Mr. Threatt being arrested?

7 A. I met with him after.

8 Q. Okay. And did he show you anything?

9 A. Like?

10 Q. Did he show you any documents?

11 A. No, ma'am.

12 Q. Did he show you any pictures?

13 A. I can't recall.

14 Q. Okay. Did he have you sign anything?

15 A. He -- well, just the statement that we took -- we

16 wrote down.

17 Q. Oh, okay. Would that be -- oh, where it is? This

18 statement?

19 A. That's mine, yes.

20 Q. Does that look --

21 A. Yes, that's mine.

22 Q. Okay. And did Sergeant Martin have this form for
23 you to write on?

24 A. Yes, ma'am.

25 Q. And did he just have that in his car?

1 A. Yeah, he had several forms that we filled out. He
2 had, you know, blank pages that we filled out.

3 Q. Okay. Did he ask you to write down everything that
4 you knew about this incident?

5 A. He asked me to write down what had happened.

6 Q. Okay. Did you tell him that you had actually drawn
7 your weapon?

8 A. Yeah. I mean, that was pretty clear on the 9-1-1
9 dispatch.

10 Q. Okay. In the statement that you were asked to
11 write where you were asked to write down everything that
12 happened, did you write down that you had drawn your
13 weapon?

14 A. I can't recall. I may have.

15 Q. Okay.

16 **MS. WIYGUL:** May I approach, Your Honor?

17 **THE COURT:** Sure.

18 BY MS. WIYGUL:

19 Q. Sir, could you tell me what you're looking at here?

20 A. Yes, this is what I -- the statement I made when I
21 met with the sheriff's deputy.

22 Q. And is that dated April 28th of 2011 at the bottom
23 of the page there? 28th day of 4, 2-0-1-1?

24 A. Yes, it is.

25 Q. Okay. And would looking at that statement, it being

1 so long ago, help refresh your memory as to what you
2 actually put in the statement?

3 A. Yeah. Let me read it. Okay.

4 Q. Did you mention anywhere in that statement that you
5 had a gun?

6 A. No, I did not.

7 Q. Did you mention that you drew a gun?

8 A. No, I did not.

9 Q. Okay. Did you have a concealed weapons permit for
10 that gun?

11 A. Yes, ma'am.

12 Q. But you just didn't put it in this statement?

13 A. No, I didn't.

14 Q. Because you had already told 9-1-1?

15 A. (Nods head.)

16 Q. Okay.

17 **THE COURT:** If you could verbally give your answer,
18 sir --

19 **THE WITNESS:** Yes, ma'am.

20 **THE COURT:** -- instead of shaking your head.

21 **THE WITNESS:** Sorry.

22 **THE COURT:** That's okay.

23 **MS. WIYGUL:** Thank you, sir.

24 BY MS. WIYGUL:

25 Q. All right. When you first saw this vehicle, was it

1 driving in a normal fashion?

2 A. Yes, ma'am.

3 Q. Did it come up and pass you when you first saw it
4 or did you come up and it was in front of you?

5 A. No, it was -- when I first saw him, Mr. Wymer, he --
6 he was behind me and then he -- he passed me and he was
7 beside me for some time, I'd say maybe a half a mile.

8 Q. Okay. At any point, did Mr. Wymer approach your
9 truck?

10 A. No, ma'am.

11 Q. When Mr. Threatt came toward your truck, before you
12 drew the weapon or anything, the first time he came
13 towards your truck, did you lock the doors?

14 A. Yeah, they automatically lock.

15 Q. Okay. So you had the doors locked. He couldn't get
16 in the truck?

17 A. Not with his hands, no.

18 Q. Not with -- not with his hands? He couldn't just
19 open the door?

20 A. No, ma'am.

21 Q. All right. All right, sir. And you said all of --
22 this entire thing lasted -- took about 30, 40 minutes?

23 A. Yes.

24 Q. Okay. And at no point did Mr. Wymer come up to your
25 truck?

1 A. Not himself. His vehicle did, yeah.

2 Q. But Mr. Wymer never approached your truck?

3 A. No, ma'am.

4 Q. All right. And you saw Mr. Wymer -- the last time
5 they pulled over, he had pulled over you said somewhere
6 between a quarter mile and a half mile in front of you,
7 correct?

8 A. A quarter mile, yes.

9 MS. WIYGUL: Okay. I have no further questions.
10 Thank you, sir.

11 THE COURT: All right. Any redirect?

12 REDIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q. I guess at what point did you draw the weapon?

15 A. It would be after we had gotten into Clinton and
16 they had attempted to stop us on the onramp. That's
17 when I pulled the weapon out of my glove box and I had
18 it in my -- in my lap.

19 Q. This was after --

20 A. After the first engagement.

21 Q. Okay. And then Threatt had -- was that the time he
22 tried to jump in your bed?

23 A. Yes, sir. That's when I knew it was mal intent,
24 and, you know --

25 Q. Was that after the time that he was sort sitting in

1 the doorway while y'all are going 40 miles an hour down
2 the road?

3 A. Yes, sir.

4 Q. And was that after the time that they had blocked
5 the -- or pumped the brakes in front of you at least
6 once?

7 A. Yes, sir.

8 Q. I just want to be clear that there was not -- this
9 is not a road rage incident in your mind? I mean, did
10 you start this?

11 A. No, sir, it was not road rage. They came up -- I
12 was travelling down the highway, it was empty, desolate,
13 we're talking two in the morning, there was nobody out,
14 and then their car lights approached behind me, they
15 came up beside me and that's when everything started.
16 I -- I didn't motion anything at them, my hands were on
17 the steering wheel, we were just driving. It was just
18 a normal night and we were just driving down the road
19 and this started happening.

20 Q. Okay. And there was that one occasion at least
21 when Mr. Wymer did exit the vehicle when they had
22 blocked the ramp to go by --

23 A. Yes, sir. Yes, they had stopped on I-26 and both
24 of them exited at that point.

25 **MR. SCOTT:** All right. Thank you.

1 **THE WITNESS:** Thank you.

2 **THE COURT:** Anything on recross?

3 **MS. WIYGUL:** No recross, Your Honor.

4 **THE COURT:** Okay. You may step down, sir. Thank
5 you for your testimony.

6 **THE WITNESS:** Thank you.

7 (Witness excused.)

8 **MR. SCOTT:** Your Honor, the State calls Eddie
9 Bridges.

10 EDDIE BRIDGES,

11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SCOTT:

14 Q. Okay. Mr. Bridges, where are you employed?

15 A. We generally do work for South Carolina Telecom.
16 I'm self-employed.

17 Q. Okay. And do you work with Mr. Ortscheid?

18 A. Yes, I do.

19 Q. On a daily basis?

20 A. Yes.

21 Q. And so you do the same thing, you service the cell
22 towers and everything?

23 A. That's correct.

24 Q. Okay. Do you remember April 27, 2011?

25 A. I do.

1 Q. And tell me -- tell me your recollection of the
2 events.

3 A. As Mr. Ortscheid said, it was pretty much a
4 30-minute hustle from Waterloo to the other side of
5 Clinton trying to get away from the two people that were
6 trying to take our vehicle from us.

7 Q. All right. So in Waterloo, what was the first thing
8 you remember happening?

9 A. These guys came up on us and tried to get us to pull
10 over and once the passenger exited the vehicle, it was
11 apparent that they wanted us to forfeit our vehicle and
12 had the intention to board the vehicle and us to leave.

13 Q. I see. Were you a passenger in the truck at the
14 time?

15 A. Yes, that's correct.

16 Q. All right. Give me a little bit more detail, I
17 guess. You're in Waterloo. When's the first time you
18 noticed this car? And tell me what kind of car it was.

19 A. It was a gold Grand Marquis, an older style vehicle.
20 It just came up from behind in my left-hand lane and it
21 was apparent that they wanted us to pull over and tried
22 to board our vehicle.

23 Q. How was it apparent?

24 A. Because the guy was hanging out of the window and
25 trying to -- trying to get us to pull over. He had the

1 door open, he was standing inside the door, between the
2 door and the apron of the vehicle, just waiting on the
3 other guy to stop and he centered the road with his
4 vehicle and this guy jumps out and starts running
5 towards our truck as he's got us blocked out in the
6 middle of the road.

7 Q. What were you thinking whenever he's running at the
8 truck?

9 A. I said Brian, this guy's trying to get in the truck
10 and Brian said well, he's not going to and he skirts
11 around the side of the vehicle once the passenger tries
12 to run toward our vehicle.

13 Q. Okay. And then what happened?

14 A. Then they got back -- the passenger got back in
15 the vehicle and they speed up along side us again and
16 continue to try to get us to pull over and he tries to
17 board the vehicle through the window on the back of the
18 truck and by this time we got to the edge of Clinton,
19 and like Mr. Ortscheid stated, they took a right-hand
20 turn and what appeared to be leaving the scene and we
21 went on through Clinton and we're like man, I'm glad
22 that's over with. So we get to the other side of
23 Clinton and, sure enough, they come in behind us again
24 and Brian said you're not gonna believe this, they're
25 behind us again, and I'm like you've got to be kidding

1 me. So they do the same antics again trying to get us
2 to pull over and swerve in front of us and check us with
3 their brakes and try to -- try to get us to stop in the
4 middle of the road. And as Mr. Ortscheid said, they --
5 we get to 26 and they pulled off onto the entrance ramp
6 to the highway thinking that's the way -- that obviously
7 we were gonna follow them and when we didn't, they
8 backed the vehicle back up and up 72 we go again and
9 more battling and intent for us to pull over and to
10 board our vehicle.

11 Q. What kind of thoughts are going through your head
12 when this was going on?

13 A. Well, the whole time I was on the phone with
14 dispatch, you know, looking for Laurens County at any
15 time because it's usually pretty heavy up through there,
16 you know, it's not hard to find Laurens County police
17 in that area, and it just -- there were -- there didn't
18 seem to be any out there that night, so we just kind of
19 stayed on the phone with them and we explained to them
20 what was going on. And at one point we lost -- lost the
21 call because of poor cell coverage and immediately we
22 called them back and, you know, they -- they told us
23 don't discharge your weapon, they knew that we had a
24 weapon in the truck, and we told them we're in fear for
25 our lives, you know, what do you expect us to do? They

1 were wanting us to turn the vehicle around and go the
2 other way, which was not an option, we couldn't. And
3 at this point they stopped in the middle of the road
4 again on 72 and had the road blocked completely and the
5 passenger, again, tried to run at the vehicle and get
6 onboard and Brian was able to skirt around him and get
7 in the ditch and up the road we went. And like he said,
8 we went some back roads and dirt roads and wound back up
9 on 72 and at this point it's probably 25 minutes later
10 and we see the policemen that have apprehended the
11 Grand Marquis in a fella's yard, I don't know who the
12 homeowner was, but, you know, I look up and there's this
13 one guy that's laying on the ground that was obviously
14 the passenger and his face was bloody and obviously he
15 -- it appeared to me that he had resisted arrest. I
16 didn't realize that they had run into Mr. Williams, I
17 think, at that point and when we pulled up on-scene
18 Brian and I got out of the vehicles and the police
19 officer -- at that point I don't know if they didn't
20 realize that we were the lead vehicle in the -- the
21 whole thing and Brian jumped out and said that's the
22 guys, that's the guys that we were calling about, and,
23 you know, they asked us just if you would get back in
24 the vehicle, this is what's going on, this is what's
25 happening, and Brian pointed out that they were the

1 suspects that we were calling 9-1-1 on.

2 Q. All right. And when you get there, did you
3 recognize that Grand Marquis?

4 A. Oh, yeah.

5 Q. And that was the same one that you had -- had been
6 chasing you from Waterloo all the way to Whitmire?

7 A. That's correct.

8 Q. And did you recognize the fella that you said was
9 laying on the ground; that you said you thought he had
10 been shot?

11 A. I thought he had been shot or he had resisted arrest
12 and they had given him what they do for resisting
13 arrest.

14 Q. Did you recognize him?

15 A. Yeah.

16 Q. Which one was he?

17 A. He was the passenger.

18 Q. All right. Did you see Mr. Wymer?

19 A. I did.

20 Q. Where was he when you saw him?

21 A. He -- they had him in cuffs and headed towards the
22 squad car and when he got to the squad car and saw Brian
23 and I, he just started beating his head on top of the
24 squad car for some reason.

25 Q. When he saw y'all, that's what he started doing?

1 A. Yeah.

2 Q. Let me show you State's Number 4. Do you recognize
3 that?

4 A. Yeah, that appears to be the rear end of the Grand
5 Marquis that was chasing us up the road.

6 Q. All right. And that's --

7 A. Without seeing the license plate number, you
8 know, and we gave -- we gave them -- we dispatched
9 the license plate number that was on the back of the
10 vehicle, as well as the description and a play-by-play,
11 GPS coordinates of where the vehicle was because we had
12 GPS in the vehicle, and, you know, as the chase ensued
13 we kept giving them the location of where the vehicle
14 was, it was apparent, the vehicle and its ID tag.

15 Q. Okay. So you actually -- you were able to dispatch
16 the tag?

17 A. Oh, yeah.

18 Q. But that car, is that a fair and accurate
19 representation of the Grand Marquis that you witnessed
20 that night?

21 A. I would say so.

22 Q. Okay. And that's the one that followed you from
23 Waterloo to Whitmire?

24 A. I would say so.

25 Q. And the one that you eventually saw at the scene of

1 arrest?

2 A. It appears to be. Like I said, without a tag, it
3 appears to be the same vehicle.

4 MR. SCOTT: Okay. Your Honor, the State would
5 offer State's Number 4 for admission into evidence.

6 THE COURT: What says the defense?

7 MS. WIYGUL: Without objection.

8 THE COURT: All right. Without objection, it will
9 be admitted as State's Exhibit Number 4 into evidence.

10 (State's Exhibit Number 4, a photograph, was
11 admitted into evidence.)

12 BY MR. SCOTT:

13 Q. Now the passenger, where was he when you first saw
14 him? I'm sorry. When you get to the scene of the
15 arrest, where was the passenger at that point?

16 A. He was laying on the ground beside the -- the
17 vehicle, the Grand Marquis, just laying on the ground.
18 He seemed to be unconscious.

19 Q. Let me show you State's Number 3. Do you recognize
20 that?

21 A. I do.

22 Q. Okay. Does that -- is that how the passenger
23 appeared when you saw him at the scene of arrest?

24 A. Possibly. I think he was more on his back when I
25 saw him, but that's definitely him.

1 Q. That's what you observed that night?

2 A. Yeah.

3 **MR. SCOTT:** The State would offer State's Number 3
4 for admission into evidence.

5 **THE COURT:** And what says the defense?

6 **MS. WIYGUL:** Without objection.

7 **THE COURT:** All right. Without objection, it will
8 be State's Number 3 into evidence.

9 (State's Exhibit Number 3, a photograph, was
10 admitted into evidence.)

11 **MR. SCOTT:** Okay. Permission to publish, Your
12 Honor.

13 **THE COURT:** Sure.

14 BY MR. SCOTT:

15 Q. Okay. So were you able to speak with officers that
16 night?

17 A. Briefly.

18 Q. Okay. And you gave a statement?

19 A. The next day, yes.

20 Q. Okay. And was it with Mr. Martin?

21 A. It was.

22 Q. Okay. And where was that?

23 A. It was at the Exxon, I believe it is, on 418 and
24 385.

25 Q. Okay.

1 A. He agreed -- well, he called us and we agreed to
2 meet him there, it was a convenient spot for him as well
3 as us, and we met him there and filled out the
4 statements and signed them.

5 Q. Okay. Now you said you were in fear for your life.
6 What other -- if anything, what other emotions were
7 going through your head throughout this whole incident?

8 A. Just defensive. I mean, to be honest with you, I
9 had -- well, just in fear for my life and my family.
10 I've got two young kids and a wife and, you know, this
11 isn't quite what we signed on for when we started this
12 kind of work. I didn't really --

13 Q. Because you were working that night, right?

14 A. That's correct.

15 **MR. SCOTT:** All right. Answer any questions
16 Ms. Wiygul has for you, please.

17 **THE COURT:** Cross-examination, Ms. Wiygul?

18 CROSS-EXAMINATION

19 BY MS. WIYGUL:

20 Q. Mr. Bridges, when you met with Investigator Martin,
21 was he in his patrol vehicle?

22 A. Yes.

23 Q. Okay. And he provided you this form and then you
24 completed it yourself; is that right?

25 A. That's correct.

1 Q. Okay. You didn't mention the fact that y'all had a
2 weapon in the vehicle that night, did you?

3 A. I wasn't the owner of the weapon.

4 Q. Okay. But -- but you listed everything that you
5 recalled happening, didn't you?

6 A. That's correct.

7 Q. And you wrote down what you saw Brian do, didn't
8 you?

9 A. That's correct.

10 Q. And you didn't write anything about Brian having a
11 gun, did you?

12 A. I haven't seen the statement in a while.

13 **MS. WIYGUL:** Permission to approach?

14 **THE COURT:** Sure.

15 BY MS. WIYGUL:

16 Q. Sir, does that look like the statement you wrote out
17 on April 28, 2011?

18 A. It appears to be, yes.

19 Q. Okay. Sir, does it mention anywhere in that
20 statement that Brian had a gun?

21 A. No.

22 Q. Okay. Now in reviewing that statement, isn't it
23 true that the day after this incident you told
24 Investigator Martin that y'all were headed towards the
25 City of Laurens, not towards Clinton?

1 A. I'm not sure. To be honest with you, I don't live
2 in that area, so if it's Laurens or Clinton, it's all
3 the same to me. Clinton is downtown Clinton.

4 Q. Okay. Did you take the time in that statement to
5 specifically parentheses out and state that y'all were
6 headed towards the City of Laurens?

7 A. Yes, it appears so.

8 Q. Okay. Now you were working that night, correct?

9 A. That's correct.

10 Q. And Brian had the absolute legal right to have that
11 gun, didn't he?

12 A. Yeah.

13 Q. Okay. But you've run -- you've had a run-in with
14 the police at least once before, correct?

15 A. Yeah, when I was 18.

16 Q. You had a shoplifting conviction; is that right?

17 A. That's correct.

18 Q. Now when you met with Investigator Martin, did he
19 ask you where anyone had touched the vehicle?

20 A. I'm not sure if I understand quite what you're --

21 Q. Your testimony is that on several occasions
22 Mr. Threatt somehow got out of a moving vehicle and was
23 actually touching --

24 A. That's correct. We were driving down the road and
25 he touched the vehicle.

1 Q. Okay. And this was Mr. Threatt, correct?

2 A. Yes.

3 Q. Did Sergeant Martin ask where he had touched the
4 vehicle?

5 A. I don't recall.

6 Q. Okay.

7 A. Where as in the location on the vehicle or in --

8 Q. The location on the vehicle, yes, sir.

9 A. He -- he probably did. I think we told him that he
10 touched it on the bed of the truck.

11 Q. Okay. Did he ask to look at the truck?

12 A. We were -- I think we were in the same truck, so he
13 may have looked at the truck. I'm not sure.

14 Q. But you're not -- you don't recall that?

15 A. No.

16 Q. Okay. Was the truck processed for any type of
17 fingerprints?

18 A. No.

19 Q. Okay. Did -- and you -- Brian testified just a
20 few moments ago that y'all had the doors locked in the
21 truck, correct?

22 A. Yes, they automatically lock when you put the
23 vehicle in motion after three miles an hour.

24 Q. All right. Now I'm unfamiliar with this type of
25 truck. How high up do you have to climb to get into a

1 Ford F-350?

2 A. One step.

3 Q. So is it just like a regular SUV where you hop right
4 in?

5 A. Yeah, I would compare it to an SUV.

6 Q. Okay. So it's no bigger than a Toyota 4-Runner or
7 a Range Rover?

8 A. Probably a Range Rover I would say.

9 Q. Okay. So a larger SUV-type vehicle?

10 A. Uh-huh.

11 Q. So this isn't one of those huge trucks with the
12 double tires in the back?

13 A. No.

14 Q. Okay. It's a smaller one?

15 A. Yeah.

16 Q. All right. And then you had a 22-foot trailer on
17 the back; is that correct?

18 A. No, a 16-foot trailer.

19 Q. A 16-foot trailer. Was that trailer covered?

20 A. Yes.

21 Q. What was it carrying?

22 A. It's electrical equipment that we use on the job
23 sites that we work.

24 Q. Okay. Did it have any copper wire in it?

25 A. Possibly.

1 Q. Okay. And what was it covered with?

2 A. It's a covered trailer. It's an enclosed trailer.

3 Q. It's an enclosed trailer. So was it actually
4 locked?

5 A. Yes. Well, the doors were shut on it, yes.

6 Q. Well, the doors were shut, but was the trailer
7 locked?

8 A. I don't recall.

9 Q. Okay. So other people couldn't see what was in this
10 trailer, right?

11 A. No, no one can see in the trailer.

12 Q. All right. Y'all both stated you were independent
13 contractors. Was this truck identifiable as a work
14 truck?

15 A. No, it's just black on black.

16 Q. What year is that truck; do you know?

17 A. That truck was, I think, a 2010.

18 Q. And is this an extended cab or just a regular cab?

19 A. It's a four-door extended cab.

20 Q. To the best of your knowledge, did Investigator
21 Martin or any other officer take a picture of the truck?

22 A. I don't think so.

23 Q. Okay. All right. And do you recall Investigator
24 Martin showing you anything else, going through any
25 other documentation with you, any other documents?

1 A. I don't recall.

2 MS. WIYGUL: Okay. I have no further questions.

3 Thank you, sir.

4 THE COURT: Anything in redirect, Solicitor?

5 MR. SCOTT: Nothing further from the State, Your
6 Honor.

7 THE COURT: Okay. Thank you for your testimony,
8 sir. You can step down.

9 (Witness excused.)

10 THE COURT: Ladies and gentlemen of the jury, we're
11 gonna take a brief morning break. I'll tell you now
12 that we are gonna break a little early, around 12:15 for
13 lunch, but we're gonna go ahead and take a little short
14 break right now. I'll remind and caution you not to
15 discuss this case amongst yourselves and we'll be back
16 out shortly, okay?

17 (Whereupon, the jury retires to the jury room at
18 11:30.)

19 (Recess taken.)

20 (State's Exhibit Number 5, a steel bar, was marked
21 for identification.)

22 BAILIFF: Let's keep your seats and court come back
23 to order.

24 THE COURT: All right. Anything before we bring
25 the jury out?

1 **MR. SCOTT:** No, sir.

2 **MS. WIYGUL:** Nothing from the defense, Your Honor.

3 **THE COURT:** Okay. Let's bring the jury out, please.

4 (Whereupon, the jury returns to the courtroom at
5 11:45 AM.)

6 **BAILIFF:** All present, Your Honor.

7 **THE COURT:** Thank you, Mr. Bolt. Solicitor, are
8 you ready to proceed?

9 **MR. SCOTT:** Yes, sir. The State calls Tylon
10 Johnson.

11 TYLON JOHNSON,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q. Good morning, Mr. Johnson.

16 A. Good morning.

17 Q. Where are you from?

18 A. Clayton, Georgia.

19 Q. And what county is that?

20 A. It's in Rabun. Georgia.

21 Q. How far away is that from here?

22 A. About a two and a half hour drive.

23 Q. Okay. And what do you do for a living?

24 A. I'm a truck driver.

25 Q. Do you drive eighteen-wheelers?

1 A. Yes, sir.

2 Q. How long have you been doing that?

3 A. 30 years.

4 Q. And that's currently what you're employed doing?

5 A. Yes.

6 Q. And, I mean, is there a specific region, I guess,
7 you travel in or is it just nationwide?

8 A. Well, now I'm just local. I don't run coast to
9 coast anymore.

10 Q. Okay. What's local mean?

11 A. Down to Rock Hill, places like that, you know, just
12 delivering logs.

13 Q. Okay. So, I mean, you have occasion to come into
14 South Carolina fairly often?

15 A. Yes. Yes.

16 Q. And did you have such an occasion on April 27, 2011?

17 A. Yes.

18 Q. What were you carrying at that time?

19 A. A load of pine pulp wood to go over to the Bowater
20 Mill over there in Rock Hill.

21 Q. Okay. So trees?

22 A. Yeah, tree wood.

23 Q. Okay. Now where were you coming from? You said you
24 were headed to Rock Hill. Where were you coming from?

25 A. I was coming from Westminster, South Carolina, but

1 we just run down 76 and pick up Highway 72 and run it on
2 that way because we can't go up the Interstate.

3 Q. Okay. And that date, April 27, 2011, did you have
4 occasion to come through Laurens County?

5 A. Yes. Yes, sir, that's -- that's my main route.

6 Q. Okay. And tell us what happened when you were on
7 Highway 72 in Laurens County.

8 A. Well, just prior -- just after you cross over
9 Highway 20 -- or Interstate 26 going towards Whitmire,
10 which would have been going eastbound, another driver,
11 he hollered at me on the CB and said hey, man, watch
12 out, there's a car sitting about halfway out in the road
13 about a half, three-quarters of a mile in front of you
14 out there. He said I don't know what they're doing, but
15 they're sitting there, so just be careful. And I was
16 like okay, I appreciate it, you know, and going about my
17 way.

18 Q. Now y'all talk on the radios back and forth?

19 A. Yes. Yes, sir.

20 Q. CB's, I guess?

21 A. Yes, sir.

22 Q. Truckers still use the CB's?

23 A. Oh, yeah.

24 Q. For cars, it was kind of a fad, wasn't it, at one
25 point?

1 A. Yeah, for cars it was. For us, it's the information
2 highway.

3 Q. Kind of a necessity for truck drivers?

4 A. Uh-huh.

5 Q. And so would you remind me of what time it was at
6 night that that happened?

7 A. Yeah, roughly around 3:00 in the morning.

8 Q. Okay. So the information over the CB was that some
9 car was blocking the road. Did they give a description
10 or was it just --

11 A. No, they just told me there was a car; just watch
12 out for it. Don't know why he's there, but just watch
13 out.

14 Q. All right. So when you receive this information,
15 whereabouts are you?

16 A. I am just now east of Interstate 26 fixing to drop
17 off into the first dip.

18 Q. Okay. On 72?

19 A. On 72. Highway 72.

20 Q. Are you in Whitmire yet?

21 A. No. No, sir. I am just right out here.

22 Q. Oh, okay.

23 A. I'm very close to where we're at now.

24 Q. Okay. All right. So you get that information and
25 then what do you do?

1 A. I just tell them thank you, you know, and then I
2 proceed on down the road very slow because I'm looking
3 for this car.

4 Q. Okay.

5 A. I'm running about maybe no more than 45 miles an
6 hour because I don't need anything real unexpected to
7 happen because I'm kind of heavy.

8 Q. All right. Did you eventually see the car? Did
9 you see a car?

10 A. I did not. I travelled on looking for this thing
11 and I'm -- then I never did see them and I never seen
12 them, so I'm like well, I'm fixing to the grab the gear
13 and go on about my business, you know, time's ticking,
14 I've got to go, and then the next thing I know there's
15 headlights right on me and I'm trying to figure out
16 well, where did they come from because I didn't see them
17 coming, you know, because you spend the biggest part of
18 your time looking in your mirrors as much as you do out
19 your windshield. And then this car is just dead on me,
20 locked up on me, I don't know how they're this close
21 without hitting the wood that's hanging off the back of
22 this trailer, and I eased over a little bit, you know,
23 to give them room, we're in this big, long stretch. So
24 I eased over to give them room to get by me without
25 anything happening and they slowly start inching up this

1 way. I mean, the bright lights are on, I can't see. I
2 want them just to go on. You know, you're killing me
3 here, so I back out the throttle a little bit more and
4 they ease up and ease up.

5 Q. That's a two-lane road right there?

6 A. It's a two-lane highway.

7 Q. So you think they're fixing to pass you?

8 A. Yes, sir. Yes, sir. I mean, by all intents -- I
9 hope they do pass me and they go on.

10 Q. All right. So in 30 years of trucking you've
11 probably seen a lot on the open roads?

12 A. Oh, yes, sir.

13 Q. What do you typically see when somebody's kind of
14 easing on past you slowly in the passing lane?

15 A. Well, I've seen all kinds of things. I mean, I
16 have really seen all kinds of things, and I figured I
17 was fixing to get to see a show, you know?

18 Q. Right.

19 A. You can see anything from women showing you parts
20 to men showing you parts and it's something to laugh
21 about anyhow.

22 Q. At that point though at least it's just a typical --

23 A. It's just a typical night. There's nothing going
24 on, you know, out of the ordinary. You know, I can't
25 find this car that's supposed to be hung out in the

1 road, but, I mean, no big deal. I mean, I haven't hit
2 nothing yet, so we're good.

3 Q. At this point, did you suspect the car that was
4 fixing to pass you was the one that --

5 A. No, I didn't -- I didn't expect nothing at all.

6 Q. All right. So it's easing up on you on the left in
7 the opposite lane of travel?

8 A. Yes, sir.

9 Q. And you think it's attempting to pass you?

10 A. Yeah.

11 Q. All right. So what happens next?

12 A. Well, like I say, it's taking them forever to pass
13 me and I'm like, well, okay, I've kind of seen shows
14 before. I've done slowed down. I probably ain't
15 running 40 miles an hour at the top speed maybe and I
16 keep watching them in the mirror to see where they're
17 at, you know, so I can hold my line and not hit them or
18 anything, and as they get a little closer to me right
19 here, I say well, okay, I want to see what's going on.
20 About that time the front of their car got within --
21 even of my mirror right here. I turn and I looked and
22 -- how do you say his name, Treat, Threatt or something
23 like that? Timothy?

24 Q. Timothy Threatt.

25 A. I turn and I looked out my window, and I ride with

1 my window down, I always have, and I look out and this
2 guy is standing in the door frame of this car with his
3 hand on the roof and he's reaching for my mirror bracket
4 and I'm like, man, I've never seen this before, so it
5 kind of scared me, you know, something's going on now.
6 I mean, my Spidey senses are up, you know.

7 Q. So you're going about 40 miles an hour down the
8 road?

9 A. Yeah, and this guy's gonna board my truck. So
10 whenever I looked and seen what was going on, I just
11 tapped my brake and let them go by. Well, they get in
12 front of me now and I'm like oh, man, why did they ever
13 do that, you know, because now they're here and there
14 ain't nothing I can do about it. And Mr. Wymer, he's
15 driving. I mean, I could see them because they're right
16 there at me. I mean, they're as close as from here to
17 you to the other side of the car and I'm looking in the
18 car and they veer over in front of me and he starts
19 jacking the brakes on, you know, trying to get me to hit
20 him and I'm like oh, man, here we go, insurance ride.
21 They want me to hit them so they can just collect money.
22 So I stay off of him all I can. Well, he -- he slowed
23 down even more, he hits his brakes and then he's warping
24 back and forth across the road right there. I pulled
25 out into the left lane and he veers over and whenever he

1 does, when he did that, he also hit his brakes, so I
2 warped back over in my lane and put the gas pedal down
3 and went on. Now I passed them for just a split second,
4 but he's in a car and I'm in a diesel truck, you know,
5 loaded, so he guns it and he comes back in front of me.
6 He pulls back over in front of me here and tries to get
7 me to hit him again and I won't do it and I start
8 slowing down even more. Finally, I am -- he's pulled
9 sideways in my lane. The tail end of his car is hanging
10 over the yellow line, the double yellow line, and I
11 stopped may 25, 30 yards from them.

12 Q. You couldn't get around him?

13 A. I could not get around him. I mean, as you've
14 already heard and most of y'all that live here know 72
15 ain't nothing but ditches on both sides of the road
16 and rough asphalt in the middle, so I get stopped and
17 Timothy gets out of the car. I mean, here he comes. I
18 don't have time for nothing. I was -- I can't even get
19 my knife out of my pocket because I'm sitting down and
20 I don't have a gun and I do not know what this man
21 wants, but he is running at me just head-on. The only
22 thing I could think about was that strap bar right there
23 that you showed everybody because I ride with it behind
24 my seat. It's a day cab, it's not a sleeper truck or
25 nothing like that. It's just a regular old Mack truck.

1 So I pulled it out, got it -- I had just got it in my
2 hands whenever Mr. Threat or Threatt --

3 Q. Hold on a second. While you're bringing it up,
4 this is State's Number 5.

5 A. Yeah, that's mine.

6 Q. That's yours?

7 A. This is a strap bar. This is what we use. You
8 know, you throw your straps over and tighten them down.
9 You use this to ratchet them down and you use this end
10 right here for steel binders, chain binders.

11 Q. And what other kinds of things would a trucker use
12 one of those for?

13 A. Poke your tires with it. You know, it's just a
14 handy little tool.

15 Q. And you're talking about you ping your tires with
16 it?

17 A. I ping my tires with it, yes, sir.

18 Q. To check the air pressure?

19 A. To check the air pressure, yeah. They make a
20 distinctive sound if they're up and if they're down.

21 Q. Okay. And what do you call it?

22 A. This is a strap bar. That's what I call it. A lot
23 folks call it a cheater pipe and stuff like that.

24 Q. A cheater pipe? Okay. Do you recognize that
25 specific one?

1 A. Oh, yes, sir, it's mine. Yes, sir.

2 Q. That's the one you had that night?

3 A. Yes, sir.

4 Q. You were reaching for it?

5 A. Uh-huh.

6 **MR. SCOTT:** Your Honor, the State would offer
7 State's Number 5 for admission into evidence.

8 **THE COURT:** What says the defense?

9 **MS. WIYGUL:** Without objection.

10 **THE COURT:** All right. Without objection, it will
11 be State's Number 5 into evidence.

12 (State's Exhibit Number 5, a steel bar, was admitted
13 into evidence.)

14 BY MR. SCOTT:

15 Q. Okay. So you can't get to your knife?

16 A. I can't get to it.

17 Q. Where is Timothy Threatt at this point?

18 A. At this time, he is right here. He's coming --
19 he's fixing to come up on my truck.

20 Q. And where is Christopher Wymer?

21 A. He is still in the car.

22 Q. He's sitting sideways in the road?

23 A. He's sitting, yeah, kind of at a little angle,
24 probably a 30 degree angle or so, you know, across the
25 road. So Timothy gets up on there and I gouge at him

1 and he jumps back down off the truck and I look at him
2 and he's standing there looking at me all the while and
3 my door don't lock, it doesn't lock, so I can't lock him
4 out, so I tell him at this time you better not open that
5 door, and he comes walking a little bit more and I said
6 listen, man, I'm telling you, you better not open that
7 door, and at this time he wanted to, you know, look at
8 me and he's like well, why not, you know? He grabs the
9 door, he opens it up and I make a kick at him.

10 Q. Mr. Johnson?

11 A. Yes, sir.

12 Q. This is out in the middle of Sumter Forest?

13 A. Yes, sir.

14 Q. At 3 AM?

15 A. Yes, sir.

16 Q. What is going through your head at that time?

17 A. A billion thoughts, you know, what is going on here
18 and well, pretty much, I'm scared to death because I
19 never had anything like this. I know I cannot let him
20 get in this truck with me.

21 Q. Why?

22 A. Because he looks like he's a pretty sizable guy, you
23 know, and if he gets me pushed down between these seats
24 right here, well, he can kill me. I mean, there is no
25 fighting inside a truck. If you're the attacker, you

1 can just push them down and have at them.

2 Q. All right. So what did you do?

3 A. Well, I'm gonna have to fight him in open ground, so
4 I tried to keep him off the -- you know, get him out of
5 my truck and whenever I hit the ground he looked and
6 seen that I had this pipe in my hand and we -- we locked
7 up left hands, just like that, and he seen I had this
8 and he kind of charged me. Well, when he did that, I
9 just politely just kept pulling him to me and I laid
10 into his ribs.

11 Q. How are you are holding that thing?

12 A. Huh?

13 Q. How are you holding that thing?

14 A. Just like this right here so I don't lose my
15 handhold.

16 Q. You say you caught him in the side?

17 A. Yes, sir. Yes, sir, I hit him right across his
18 ribs. And, I mean, I -- I meant to hurt him. I did,
19 jurors. I meant to hurt the man because he -- I don't
20 know what his intentions are, but it cannot be good at
21 3:00 in the morning and he's wanting to board my truck.

22 Q. All right, sir. Did that stop him?

23 A. No, sir. He did not go down at all. He just kind
24 of grunted real big and I thought well, okay, I'll pop
25 you right -- you know, I'll fix you. I was gonna break

1 his collarbone. I don't know if he moved or if -- it
2 was 3 AM, it was very dark. Anyhow, I ended up hitting
3 him in the head and it's just like you flipped a switch.
4 He went out, face planted right there on the white line
5 in the oncoming traffic. Of course, there's no oncoming
6 traffic because pretty much it's a dead highway other
7 than log trucks at night. I mean, that's -- everybody
8 uses Highway 72. He hits the ground and I just -- I
9 think I've killed this guy. I've killed him. Not of my
10 doing. I wanted nothing of this. I'm just trying to
11 make a living, feed my family, going down the highway,
12 and that's whenever -- I went over to my truck, of
13 course, it's just right there, and I sit down and I
14 waited. That's when he got out of the car.

15 Q. You're talking about Chris Wymer right there?

16 A. Yes, sir. He got out of the car and he came my way
17 and I'm thinking to myself, man, if you can just get
18 within reach, I'm gonna give you some of this. Because,
19 like I said, I thought I'm going to go to prison for the
20 rest of my life for killing this guy.

21 Q. That's what you were thinking?

22 A. That's what I thinking. That's something that I
23 didn't even want.

24 Q. Okay. And you've got your headlights on?

25 A. My headlights -- the engine died, you know, because

1 of all the excitement. You know, it happened this
2 quick. The lights were still on though, the bright
3 lights were on because I was trying to blind them
4 because -- to keep them from looking back at me to tell
5 the distance that I am. So I'm down beside my front
6 tire there and the fender waiting on him to get close
7 enough and he starts looking, you know, holding --
8 trying to screen the bright light off his face and he
9 turns and he sees his buddy over there on the side of
10 the road and then he caught a glimpse of me, you know,
11 beside my tire right there and he turned to run and I
12 chased him, but he had too good a head start on me and
13 he was gonna get to his car before I could get to him.
14 Well, now I'm thinking, you know, he might have a gun or
15 whatever in there, you know, and I'm a dead man standing
16 here, so I remember telling him it doesn't make no
17 difference, I've got you, I've got you, I've got your
18 tag number, and I started shouting it to myself and
19 aloud, you know, , so I would not forget
20 that. He peels out -- Mr. Wymer peels out and he runs
21 down the road a little piece and warps over to the side
22 of the road to make a -- you know, half a doughnut, a
23 180, to come back. Well, at this time I'm done back to
24 my truck and I'm thinking well -- well, I haven't got in
25 there yet, I'm nearly at it and I'm thinking, man, he's

1 either gonna shoot me or run me over, you know, it's
2 unreal what's happening right now. So I jumped in my
3 truck, fired it back up, crammed it in gear, pushed the
4 brakes off and I'm thinking to myself, oh, boy, if
5 you're gonna take me out, I'm taking you with me, so I'm
6 gonna meet you head-on with that truck. And I run at
7 him and he run me and I don't know how he got around me
8 without running over Timothy right here on the side of
9 the road, but he did. And I'm cranking gears and I'm
10 watching my mirrors and he goes -- he just takes off.
11 He's gone out of my mirrors. I don't see no taillights
12 anymore at all and I'm thinking, God, you just left your
13 buddy for dead, you know. He could be dead, but he may
14 not be, but you've left him. Anyhow, I'm 9-1-1'ing. In
15 this particular area right here, you don't have any cell
16 service probably for about -- it's in and how, sporadic,
17 for about 8 to 10 miles. You won't have good cell
18 service until you get into Whitmire. Well, as we know
19 now, 9-1-1 works whether you've got a cell signal or not
20 because they was right on there. I mean, I called and I
21 told this lady what was going on and she kept telling me
22 -- she said well, you're gonna have to turn around and
23 go back and I'm like ma'am, I'm in a log truck, I'm not
24 in a taxicab, I can't just turn this thing around, and
25 she said well, where are you headed and I told her into

1 Whitmire and she well, that's out of our jurisdiction
2 and I said ma'am, I can't help that. You just send your
3 deputies and I'll ride back up there with them. Long
4 story short, we finally got everything worked out and I
5 sit right there. Well, I can't remember which officer
6 it was, but I was talking to him on my cell phone
7 because 9-1-1 had give them my number, and I met up
8 with him right there at the Li'l Cricket right there
9 in Whitmire that you first come into, and my first
10 question to them was how's that guy that's laying in
11 the road? I didn't care about nothing else. I just
12 wanted to know how he was, you know. No idea what's
13 going on, no idea why they stopped me whatsoever. It
14 was just hair-raising, man. I mean, hair-raising.

15 Q. You never seen anything like that before in
16 30 years?

17 A. No, sir. No, sir. I've heard about stuff like it,
18 but never experienced it.

19 Q. Where the incident occurred as described, that was
20 in Laurens County?

21 A. Yes, sir.

22 Q. And then you go into Union County. Is it Union
23 county that you finally got stopped?

24 A. No, I was still -- I came back to Laurens because
25 the 9-1-1 dispatcher -- the 9-1-1 dispatcher, she told

1 me that if you cross the bridge, you'll be out of our
2 jurisdiction, so, okay, yes, ma'am. I turned around at
3 the truck stop that's in Union County, came right back
4 and that's whenever I was talking to -- I don't know
5 which one it was. I was talking to one on my phone and
6 whenever I seen them coming up the road, I said is that
7 you and he said yes, is that you in that truck and I
8 said yes, sir and he said well, pull in right there and
9 that's whenever I was at the Li'l Cricket and then later
10 on they -- some more of them surrounded me and I guess
11 they thought I was kind of a bad guy to start with or
12 whatever, you know, until they got things sorted out.

13 Q. All right. Now what did you do while you were
14 riding down the road to get them so mad at you that
15 they'd do something like that?

16 A. Sir, I -- I'd never even seen a vehicle at three
17 in the morning other than that truck that just hollered
18 at me and told me to watch out for this car that's
19 sticking halfway out in the road. There was nobody
20 else on that highway. So if I provoked them, I mean,
21 I done it silently and blind-sided.

22 **MR. SCOTT:** Thank you, Mr. Johnson. Answer any
23 questions Ms. Wiygul has for you.

24 **THE COURT:** Let me see the lawyers for just a
25 minute, please.

1 (Proceedings held at the bench; not reported.)

2 **THE COURT:** Mr. Foreman and ladies and gentlemen of
3 the jury, since we need to really stop for lunch about
4 12:15, we're gonna go ahead and take our lunch break now
5 and we're gonna take a little longer lunch break than we
6 normally do. We're gonna go to 2:00, so be back here
7 promptly at 2:00 and we'll start back up with the case.

8 Again, I remind you don't start talking about this
9 case, anything about this case, amongst yourselves or
10 anybody that you come into contact with over your lunch
11 break, and we'll see you back at 2:00 sharp, and have a
12 good lunch. Thank you.

13 (Whereupon, the jury was excused for lunch at
14 12:09 PM.)

15 **THE COURT:** Mr. Johnson, since you're in the middle
16 of your testimony, during the lunch break you cannot
17 talk with anyone about your testimony or anything about
18 this case. Now if you want to talk about the weather
19 or sports or anything like that, you sure can, but you
20 can't talk about anything about this case or anything
21 related to your testimony, okay?

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** Okay. Thank you very much. We'll be
24 in recess until 2:00. And the courtroom will be locked
25 up, so if y'all need to leave your stuff in here, that's

1 perfectly fine.

2 **MS. WIYGUL:** Thank you, Judge.

3 (Whereupon, a luncheon recess taken at 12:10 PM.)

4 **BAILIFF:** Let's all rise. Court will come back to
5 order.

6 **THE COURT:** Thank you very much. Have a seat.
7 Okay. Anything on the record before we bring the jury
8 out?

9 **MS. WIYGUL:** Your Honor, we were wondering whether
10 the Court would like to go on and discuss the proposed
11 jury instructions before we bring the jury back in or if
12 you'd rather wait until later?

13 **THE COURT:** Let's wait because probably what I'll
14 do is work on that this evening and in the morning get
15 y'all a draft of it and then we can deal with that,
16 yeah.

17 **MS. WIYGUL:** Okay. I believe the State has a
18 proposed charge.

19 **THE COURT:** I mean, if you want to go ahead at some
20 time this afternoon hand up anything proposed, but I
21 don't want to really get into any discussion about it
22 until I can get my draft worked up, okay? But if you've
23 got anything proposed, get it to me and I'll certainly
24 take a look at it when we're putting the charges
25 together.

1 **MR. SCOTT:** Yes, at this point I've got just the
2 standard hand of one charge and then I'll probably --
3 just depending, like you said, on how the testimony
4 goes, I foresee a voluntary intoxication charge, but I
5 don't have one prepared at this point.

6 **THE COURT:** Okay.

7 **MS. WIYGUL:** And, Your Honor, in response to their
8 request for the charge, we would simply ask that as
9 opposed to using their requested language, that the
10 Court use the language found in the Ralph King Anderson
11 Requests to Charge for criminal court, and that is
12 Section 2-70.

13 **THE COURT:** The -- are you talking about on the
14 hand of one charge?

15 **MS. WIYGUL:** Yes, Your Honor.

16 **THE COURT:** Yeah, the hand of one charge that we've
17 got is not verbatim Judge Anderson, but it's pretty
18 close and I'll let y'all take a look at that and see if
19 we need to -- if we need to, you know, toy with it a
20 little bit, we can, okay?

21 **MS. WIYGUL:** Thank you, Your Honor. And then our
22 only request would be if the Court's inclined to include
23 a hand of one, hand of all charge, then we'd also
24 request that a conspiracy charge be given as a lesser
25 included offense.

1 **THE COURT:** Okay. I'll make a note of that and
2 we'll take a look at it again. I really don't want to
3 get in too deep right now as far as charges, but -- make
4 a note of that -- and we'll fully flesh everything out
5 on the charges.

6 **MS. WIYGUL:** Thank you, Your Honor.

7 **THE COURT:** Okay. All right. Bring the jury out,
8 Mr. Bolt, please.

9 **MR. SCOTT:** Mr. Johnson, go ahead and take the
10 stand.

11 (Whereupon, the jury returns to the courtroom at
12 2:13 PM.)

13 **BAILIFF:** All jurors present, Your Honor.

14 **THE COURT:** Thank you, Mr. Bolt. I think when we
15 recessed for lunch, we were going to start with cross?

16 **MS. WIYGUL:** Yes, Your Honor.

17 **THE COURT:** You may proceed, Ms. Wiygul.

18 CROSS-EXAMINATION

19 BY MS. WIYGUL:

20 Q. Mr. Johnson, in your testimony before lunch when
21 you were talking about how Mr. Threatt, the passenger in
22 the vehicle --

23 A. Yes, ma'am.

24 Q. -- was hanging out of the vehicle when y'all were
25 going down the road going about forty, just for

1 clarification, sir, was he hanging out of the door or
2 was he out the open window?

3 A. Ma'am, he was out of the car.

4 Q. Okay. Had he come out through the window or was
5 the door open?

6 A. I don't know how he got there. I just know where
7 he was at, ma'am.

8 Q. Okay.

9 A. He was standing in the door with his hand ahold of
10 the roof.

11 Q. Okay.

12 A. Hunkered down, you know, kind of squatting.

13 Q. But you couldn't tell whether the door was open or
14 not?

15 A. The door was not open, no, ma'am.

16 Q. Okay. That's what I was trying to figure out.
17 Thank you, sir.

18 A. Yes, ma'am.

19 Q. And you stated that the driver of that Mercury
20 Marquis had more of a slender build than Mr. Threatt,
21 correct?

22 A. That's what it appeared to me, yes, ma'am.

23 Q. Okay. And, sir, about how far off the ground does
24 your truck sit? How far up do you have to climb to get
25 into the truck rather?

- 1 A. It's three steps.
- 2 Q. Three steps?
- 3 A. Yes, ma'am.
- 4 Q. And are those steps like this or --
- 5 A. They're about like that.
- 6 Q. Okay. So you're up there?
- 7 A. Yes, ma'am. I'm in a tractor-trailer. We've all
- 8 passed them. We know that.
- 9 Q. Like from Final Destination what those logging
- 10 trucks look like?
- 11 A. Yeah, sort of. Kind of.
- 12 Q. Okay. All right. And you stated that the locking
- 13 mechanism to the driver's side door of that vehicle was
- 14 broken?
- 15 A. Yes, ma'am.
- 16 Q. And is that a company-owned truck or is that your
- 17 own truck?
- 18 A. No, ma'am, that's my truck.
- 19 Q. Your truck?
- 20 A. My truck.
- 21 Q. And when you -- you gave a written statement in this
- 22 case, didn't you?
- 23 A. Yes, ma'am.
- 24 Q. And you gave that statement to Officer Sweat?
- 25 A. Yes.

1 Q. And you gave that statement at 4:00 or thereabouts
2 that morning, didn't you?

3 A. Yes, ma'am.

4 Q. And so is it fair to say that it's possible you left
5 some of the details of your testimony today out of the
6 statement?

7 A. Well, what part do you want to hear because I pretty
8 much got it?

9 Q. Well, you didn't go into detail in your statement
10 about this whole back and forth thing where -- where the
11 car had turned around and you had your brights on like
12 you told us just prior to lunch. You just didn't list
13 all that in detail in your statement?

14 A. No, I just didn't list it. I didn't find it
15 relevant.

16 Q. Okay. And that's all I was asking you, sir. I
17 appreciate it.

18 MS. WIYGUL: That's all the questions I have.
19 Thank you.

20 THE COURT: Okay. Redirect?

21 MR. SCOTT: Nothing from the State, Your Honor.

22 THE COURT: Thank you for your testimony, sir. You
23 can step down.

24 (Witness excused.)

25 MR. SCOTT: The State calls Steven Sweat.

1 DEPUTY STEVEN SWEAT,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. SCOTT:

5 Q. Deputy Sweat, what agency do you work for?

6 A. Laurens County Sheriff's Department.

7 Q. How long have you been with that agency?

8 A. Just a little over seven years.

9 Q. All right. What do you do for that department?

10 A. Uniformed patrol officer. I protect person and
11 property.

12 Q. Okay. And do you work a specific shift or does it
13 vary?

14 A. I'm on Bravo team, which is a night rotation. I'm
15 actually on at night. I also do work overtime on shifts
16 whenever they're short.

17 Q. Okay. Bravo team would typically be the nighttime
18 shift, is that what you said?

19 A. Yes, sir.

20 Q. And so how do you spend your days, or nights, I
21 guess. Are you responding to calls or are you generally
22 just patrolling?

23 A. It varies. You're patrolling when you're not
24 responding to calls. Responding to calls, of course,
25 minor investigations, following up on tips. Basic

1 criminal enforcement.

2 Q. Okay. But if a call comes over the radio that
3 there's a crime committed somewhere, that's your
4 responsibility?

5 A. That's priority.

6 Q. April 27, 2011, do you recall that date?

7 A. Yes, sir.

8 Q. And were you on patrol that night?

9 A. Yes, sir, I was.

10 Q. Did you have an occasion to respond out to
11 Highway 72 East towards Whitmire?

12 A. I did.

13 Q. Where were you coming from when you received the
14 call?

15 A. I can't remember exactly where I was, but I remember
16 the Interstate was the fastest way for me to get there.
17 I believe I jumped on 385 somewhere around the Laurens
18 area and responded from there.

19 Q. And what was the nature of the call that came on
20 the radio?

21 A. A call came out that there was a Mercury on
22 Highway 72 in the Clinton area of Laurens County and it
23 was going up beside cars, getting in front of them,
24 slamming on brakes, following closely. It seemed like
25 to be a possible carjacking attempt. The lieutenant

1 that was on duty --

2 **MS. WIYGUL:** Objection, Your Honor. This witness
3 has not been qualified as a witness to give his opinion
4 in this matter.

5 **THE WITNESS:** Your Honor, if --

6 **THE COURT:** Wait a minute. No, you can't -- you
7 can't argue. Your Solicitor argues. Let me -- let me
8 just see the lawyers up here for just a second.

9 (Proceedings held at the bench; not reported.)

10 **THE COURT:** All right. So the objection was to
11 the officer forming that opinion based upon the facts
12 as relayed to him with the call so I understand it --

13 **MS. WIYGUL:** Correct.

14 **THE COURT:** -- so I'm going to sustain the
15 objection and instruct the jury to disregard Officer
16 Sweat's opinion that there was a possible carjacking.
17 Disregard that and that will be stricken from the
18 record. You may proceed, Solicitor.

19 BY MR. SCOTT:

20 Q. All right. What was the nature of the call? What
21 did you understand you were responding to without the --
22 the legal terms?

23 A. I was responding to a car that was driving
24 erratically in the Highway 72 area of Clinton, Laurens
25 County, South Carolina, that was getting upside very

1 closely to vehicles, slamming on brakes in front of
2 vehicles, tailgating very closely. I was also
3 dispatched blue lights and sirens to this call.

4 Q. Okay. Did you have any indication of them blocking
5 the road or anything like that?

6 A. That came out later while I was still en route to
7 the call.

8 Q. All right.

9 A. We received a second call, dispatch advised, from a
10 truck driver who said that he had been blocked, attacked
11 in the vehicle, and had to fend off the attacker with a
12 pipe. He had --

13 Q. That comes later, I think, but you're initially
14 responding to the scene?

15 A. Yes, later. This was later on en route.

16 Q. Okay. What time of night is it approximately?

17 A. Somewhere around 3:00, 0300 hours.

18 Q. Okay. You're alone in your patrol car?

19 A. Yes, sir.

20 Q. And you're going, I guess, 72 eastbound?

21 A. Yes, sir, that's where I am.

22 Q. All right. As you're responding to the scene or,
23 I guess, the general vicinity as you understood it, what
24 happens?

25 A. Okay. We're still en route. I was getting close

1 to Highway 72. I was advised by radio that another
2 responding deputy had spun around on a vehicle matching
3 the description. As he got behind it, it pulled into a
4 driveway and the driver fled on foot from the vehicle.
5 He stood by with a passenger who was apparently injured
6 as the same deputy had dispatched EMS to get there as
7 soon as they could.

8 Q. Okay. And did you respond to that scene or did
9 you --

10 A. I did.

11 Q. Okay. What did you observe?

12 A. I pulled up. The driver's door was open to this
13 silver-ish Mercury Grand Marquis. I walked up. There
14 was a guy at the time that was identified as Tim,
15 Timothy Threatt, I believe. He was covered in blood,
16 there was blood all over the passenger front seat of
17 this Grand Marquis and towards the middle of the front
18 seat. The back seat was empty. I didn't see any blood
19 back there or anything like that.

20 Q. Just hold on one second. Let me -- State's Number 4
21 is in evidence. Do you recognize that?

22 A. Yes, sir. That's the vehicle and it looks like the
23 side of the house it was near.

24 Q. Okay. This is State's Number 1. That has not been
25 introduced yet, but do you recognize that?

1 A. The passenger seat of the same vehicle.

2 Q. Okay. That's -- that would be the passenger seat
3 of the gold Grand Marquis?

4 A. Yes, sir, the same car.

5 Q. That's what you observed that night?

6 A. Yes, sir.

7 **MR. SCOTT:** The State's would offer State's Number 1
8 for admission.

9 **MS. WIYGUL:** Without objection.

10 **THE COURT:** All right. Without objection, State's
11 Number 1 into evidence.

12 (State's Exhibit Number 1, a photograph, was
13 admitted into evidence.)

14 BY MR. SCOTT:

15 Q. Okay. And when you get there, Mr. Threatt is lying
16 on the ground near the passenger door, is that what you
17 said, by the Grand Marquis?

18 A. Yes, sir, he was in the area of the passenger seat.
19 I believe -- it's been three years, but I believe he was
20 still in the car and Deputy Hodges was trying to get him
21 to -- we were able to get the name Tim out of him and
22 ended up getting him out on the ground and once he got
23 out of the car, he really didn't talk to us anymore. He
24 was out of it.

25 Q. And this is State's Number 3. Is that what you

1 observed?

2 A. Yes, sir.

3 Q. And that's the Tim individual?

4 A. Yes, sir. Timothy Threatt, I believe.

5 (State's Exhibit Number 6, an aerial photograph,
6 was marked for identification.)

7 BY MR. SCOTT:

8 Q. All right. Let me show you State's Number 6. Is
9 that something you recognize?

10 A. It looks like the area of Highway 72 where we ended
11 up getting out of that car.

12 Q. And that's in Whitmire?

13 A. I believe the Whitmire area of Laurens County, yes,
14 sir.

15 Q. All right. Do you see the address where the Grand
16 Marquis ended up?

17 A. I believe it's going to be the house here.

18 Q. Do you mind -- would you draw an "X" on it, please.

19 A. (Witness complies.)

20 Q. Are you able to determine eastbound and westbound
21 directions from that?

22 A. If my memory serves, that's back towards Clinton and
23 that's back toward Whitmire.

24 Q. Okay. So eastbound would be going right to left in
25 that picture?

1 A. Yes, sir.

2 MR. SCOTT: Your Honor, the State would offer
3 State's Number 6 for admission into evidence.

4 THE COURT: Okay.

5 MS. WIYGUL: Without objection.

6 THE COURT: All right. Without objection, State's
7 Number 6 into evidence.

8 (State's Exhibit Number 6, an aerial photograph,
9 was admitted into evidence.)

10 BY MR. SCOTT:

11 Q. Okay. So what you're describing is this is
12 Highway 72?

13 A. Uh-huh.

14 Q. Clinton would be back that way?

15 A. Yes, sir.

16 Q. And Whitmire would be about --

17 THE COURT: Solicitor, move just a little bit. We
18 don't want to block the court reporter's view of the
19 witness.

20 MR. SCOTT: Yes, sir.

21 BY MR. SCOTT:

22 Q. This is the home that you responded to where the
23 Grand Marquis was?

24 A. Yes.

25 Q. What is all this back here?

1 A. Woods.

2 Q. And this?

3 A. More woods.

4 Q. Okay. This is a state -- the national forest, I
5 guess?

6 A. Yes.

7 Q. What is it called?

8 A. I believe Sumter National Forest.

9 Q. All right. So the Grand Marquis is parked and
10 Threatt's lying on the ground beside the car. Where
11 was the driver?

12 A. He's not with the vehicle or he fled on foot. As
13 mentioned earlier, I was advised by radio --

14 **MS. WIYGUL:** Objection, Your Honor.

15 **THE COURT:** Okay. And the nature of your
16 objection?

17 **MS. WIYGUL:** The characterization of fled. There's
18 no information indicating that this officer was present
19 or that anyone saw Mr. Wymer exit the vehicle.

20 **THE COURT:** Okay. I think the officer previously
21 testified that the driver fled on foot, he's already
22 testified to that, so I'll overrule the objection.

23 BY MR. SCOTT:

24 Q. You're getting there as a responder to a crime?

25 A. Yes.

1 Q. And you're gathering information?

2 A. (Nods head.)

3 Q. You stated that one of the pieces of information
4 that you gathered was the driver had run --

5 A. Yeah, he was gone.

6 Q. -- moved away from the car in some fashion?

7 A. Yes, sir.

8 Q. Did you have any information as to what direction
9 he had gone?

10 A. Yes, sir, I had information leading me to believe
11 that he'd gone in front of the car, past the residence
12 and to the right side of the driveway into the wooded
13 area there.

14 Q. Okay. And, again, this is -- this is the home and
15 this is all woods back here. He had run somewhere back
16 in the woods behind the trailer at that location?

17 **MS. WIYGUL:** Objection, Your Honor. The officer's
18 not stated that anyone said Mr. Wymer was running.

19 **THE COURT:** Okay. Sustained.

20 Q. He's moving in some form or fashion. He's
21 ambulating towards the woods; is that correct?

22 A. Yes, he'd moved away from the car and into the
23 woods.

24 Q. Did you know of any reason he should be back in
25 those woods?

1 A. No, sir.

2 Q. Did you locate him in the woods?

3 A. Yes, sir, we did. I -- we got a Clinton officer, I
4 believe it was Officer Prather, to go there and stand by
5 Mr. Threatt. Myself and Deputy Hodges then went to look
6 for the driver of the vehicle. We proceeded back behind
7 that residence and got looking toward the wood line on
8 the right-hand side, which would be looking back toward
9 Clinton. I observed a red in color baseball hat laying
10 on the ground near that wood line. From there I began
11 looking into the woods in that area and I found -- maybe
12 20, 25 yards inside of the woods, I discovered a male
13 laying behind some branches on a log face down, the rear
14 end -- the rear end was up in the air with pants and
15 shorts, boxer shorts, around his knees. I shown the
16 light across him and kept going like I didn't see him
17 and indicated to Deputy Hodges there he is and we moved
18 in closer, ordered the individual to show their hands.
19 The individual, who was identified as Mr. Wymer, he
20 complied and was detained at that point in time.

21 Q. Okay. By detained, do you mean handcuffed?

22 A. Yes, sir.

23 Q. And you walked him out of the woods?

24 A. Yes, sir, I did.

25 Q. Back to the car?

1 A. Yes, sir.

2 Q. Did you tell him he was under arrest at that time?

3 A. We told him he was detained.

4 Q. So he was in custody?

5 A. Yes.

6 Q. And then what do you do, put him in the back of your
7 car?

8 A. I believe we put him in the back of Deputy Hodges'
9 car. On the way out, he had a little trouble walking
10 because the shorts kept coming off of him, which led us
11 to observe that the shorts had blood on them and they
12 were later collected into evidence, and Mr. Wymer was
13 put into, I believe, Deputy Hodges' patrol vehicle after
14 we got him out of the woods.

15 Q. And did he appear to be injured in any way?

16 A. No, sir.

17 Q. All right. And did he understand directions as you
18 gave them to him?

19 A. Yes, sir. He walked out of the woods just fine.

20 Q. You say --

21 A. We told him to go here, he went there. When we
22 told him to show his hands, he showed his hands. He
23 said I'm complying. I mean, everybody -- he more or
24 less told us what he was doing. He was having hard
25 time walking because of the shorts. They would easily

1 come off of him. He got the in car no problem. He was
2 -- he seemed coherent.

3 Q. Were the shorts too big for him?

4 A. Yes, sir.

5 Q. All right.

6 A. The trouble with walking was it's kind of hard to
7 walk with them around the ankles.

8 Q. Did you recall any kind of noticeable intoxication
9 or anything regarding Mr. Wymer that he couldn't
10 understand your directions?

11 A. No, he wasn't -- he was coherent. He may have
12 been drinking a little bit that night, but he was not
13 inebriated beyond comprehension of what was going on or
14 anything.

15 Q. Okay. And you put him in the patrol car?

16 A. Yes, sir.

17 Q. Anything else that you recall?

18 A. From that point, I believe we got in contact with
19 the investigator on-call. Deputy Hodges took some
20 photographs. I ended up leaving and going to speak with
21 the truck driver. He'd come back toward Laurens County
22 just inside the line at the Li'l Cricket and I went
23 there to go speak with him.

24 Q. All right. And that's Mr. Tylon Johnson you spoke
25 to?

1 A. Yes, sir.

2 Q. And were you there -- or Mr. Threatt, I guess he --
3 he left by ambulance; is that --

4 A. Yes, sir.

5 Q. Okay. And do you remember when Investigator Martin
6 showed up or were you already gone?

7 A. I believe he showed up at -- I know he showed up
8 at the scene with the truck driver and me. Prior to
9 getting there, I can't recall if he came directly to me
10 or if he dropped by the scene first because I know for
11 a fact he did go by the scene.

12 Q. Okay. Do you have any other involvement at this
13 point?

14 A. I got an initial verbal statement from the truck
15 driver, Mr. Tylon. He showed us the bar that he used to
16 fend off Mr. Threatt.

17 Q. Is that -- was that this, State's Number 5?

18 A. Yes, sir. I took that into evidence and -- and
19 by the time Sergeant Martin arrived, he started the
20 statement and the investigation was handed over to him.

21 **MR. SCOTT:** Okay. Thank you. Answer any questions
22 Ms. Wiygul has. And speak up a little bit.

23 **THE WITNESS:** Yes, sir. Sorry. My mouth's getting
24 really dry.

25 **MR. SCOTT:** Would you like some water or anything?

1 **THE WITNESS:** If you don't mind, that would be
2 really great.

3 **THE COURT:** Cross-examination?

4 **MS. WIYGUL:** Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. WIYGUL:

7 Q. Sir, you stated that you had information that
8 Mr. Wymer was -- or the driver of the vehicle was in the
9 woods. Did you get that information from the homeowner?

10 A. No, ma'am.

11 Q. Who did you get that information from?

12 A. Deputy Hodges.

13 Q. And had Deputy Hodges turned on his blue lights to
14 get Mr. Wymer to pull over?

15 A. I believe the back blue lights were on when I
16 arrived on-scene. I couldn't tell you what he did
17 during the stop. I wasn't there.

18 Q. Have you -- did you talk to Deputy Hodges?

19 A. No, I did, but we were a little preoccupied with
20 the guy bleeding on the ground and trying to locate the
21 driver of the vehicle among other things.

22 Q. Did you charge Mr. Wymer with failure to stop for
23 blue lights?

24 A. I did not make any charges, no. I did not, no.

25 Q. To the best of your knowledge, was Mr. Wymer charged

1 with failure to stop for blue lights?

2 A. No, ma'am.

3 Q. Okay. Thank you. When Mr. Wymer was arrested, he
4 had \$70 cash on him, didn't he?

5 A. I don't know.

6 Q. Sir, could you, please, identify what you're
7 looking at here, what these documents are?

8 A. This is a booking report in reference to Case
9 Number 1100-1217.

10 Q. And is one of those booking reports regarding
11 Mr. Wymer's arrest in this case? Just yes or no.

12 A. Yes, ma'am, it is.

13 Q. And does it indicate that he had on his person \$70
14 in cash at the time of his arrest?

15 A. Yes, ma'am, it does.

16 Q. Okay. While you have those booking reports in front
17 of you, how much did Mr. Wymer weigh on the date of his
18 arrest or when he was booked?

19 A. I don't know, but according to the booking report it
20 says he weighed 300 pounds.

21 Q. And how much does it say Mr. Threatt weighed? I
22 apologize, is the other booking report regarding
23 Mr. Threatt?

24 A. Yes, ma'am, it is.

25 Q. And does it indicate his weight?

1 A. It does. It indicates he weighs 230 pounds.

2 Q. Thank you, sir. Sir, are you aware of what address
3 this is a picture of?

4 A. I don't know the exact number. Not right off the
5 top of my head.

6 Q. Sir, did you prepare an incident report in this
7 case?

8 A. The supplemental I did, yes, ma'am.

9 Q. Okay. And would it help you to refresh your memory
10 to look at that report?

11 A. Yes, ma'am. I can see the address listed here is
12 .

13 Q. And is that the report that you prepared?

14 A. Again, yes, ma'am, it is.

15 Q. Okay. And you recorded the address as

16 A. On this report, yes, ma'am,

17 Q. Thank you, sir. In your earlier testimony, did you
18 testify that this address was located within Laurens
19 County?

20 A. Yes, ma'am.

21 Q. Sir, as a Laurens County officer, are you familiar
22 with inmate request forms that may be submitted by
23 inmates?

24 A. I had to deal with them when I -- I managed those
25 when I was working at the detention center, but I

1 haven't had any contact with them since I left there,
2 no, ma'am. I'm familiar with what they are, yeah.

3 Q. Thank you, sir.

4 **MR. SCOTT:** Judge, we may have a matter of law to
5 take up.

6 **THE COURT:** Okay. All right. Mr. Foreman and
7 ladies and gentlemen of the jury, there's a matter of
8 law that I need to take up with the lawyers, so if you
9 will retire to your jury room. Again, I'll remind you
10 not to start discussing this case.

11 (Whereupon, the jury retires to the jury room at
12 2:38 PM.)

13 **THE COURT:** Okay. We've got evidently some
14 document that possibly, Ms. Wiygul, you're wanting to
15 either examine the witness with or get into evidence,
16 and evidently the State has a problem. What document
17 is it?

18 **MS. WIYGUL:** Your Honor, it's an inmate request
19 form that simply asks whether anywhere in Whitmire is
20 in Laurens County and the response is there is no place
21 -- let's see. No, Whitmire is in Newberry County, not
22 Laurens County, and the zip code, 29178, is the zip code
23 for Whitmire.

24 So basically just that this wasn't Laurens -- this
25 was not Laurens County, this was Newberry County.

1 **THE COURT:** Okay. Solicitor?

2 **MR. SCOTT:** We have got multiple objections.
3 Number one, it's an inmate request form generated by
4 the Defendant. It appears to have an answer -- may I?

5 **MS. WIYGUL:** Sure.

6 **MR. SCOTT:** It looks like the jail has responded to
7 his question, and his question is "Could you, please,
8 tell me if Whitmire's in Laurens County?" You can take
9 judicial notice that some of Whitmire is in Laurens
10 County, some of it's is in Newberry. I believe the
11 town --

12 **THE COURT:** The town of Whitmire itself would be in
13 Newberry County, but, I guess, the mailing address -- is
14 this address where the -- where the car pulled over, was
15 the mailing address Whitmire?

16 **MR. SCOTT:** Yes, sir. He's got a Whitmire address.

17 **THE COURT:** Highway 72, is it Whitmire?

18 **MR. SCOTT:** I don't know what -- what Deputy Sweat
19 is testifying to. I didn't catch that before. The
20 incident location reports Highway 72 East. I
21 would also argue that's not where the crime occurs.
22 That's where it terminates, that's where the car is
23 discovered. The actual carjacking was further up
24 towards Clinton as described by the three victims in the
25 case.

1 **THE COURT:** Right.

2 **MS. WIYGUL:** And, Your Honor, we would not be
3 introducing this -- we wouldn't be going in this line
4 of questioning to question jurisdiction on the
5 carjacking charges.

6 **THE COURT:** Right. Okay. So you're wanting to get
7 out into evidence that where the driveway -- the
8 residence that the car pulled into was actually located
9 in Newberry County and not in Laurens County; is that --
10 is that correct?

11 **MS. WIYGUL:** Correct, Your Honor.

12 **THE COURT:** And the purpose for wanting that in is
13 what?

14 **MS. WIYGUL:** Sloppy police work.

15 **THE COURT:** Okay. All right.

16 **MR. SCOTT:** But it's actually a Laurens County
17 address. I think what -- the incident location of
18 Highway 72 East -- something in Sweat's
19 supplemental references a different address.

20 **THE COURT:** Right. I wrote down Highway 72
21 is what he -- I thought he testified to.

22 **MS. WIYGUL:** That's what he just testified to,
23 Your Honor.

24 **THE COURT:** Okay.

25 **MR. SCOTT:** But earlier --

1 **MS. WIYGUL:** There's been other testimony with a
2 different address.

3 **THE COURT:** Okay. All right.

4 **MR. SCOTT:** Now he may be able to explain why he
5 did that, I'm unsure of why, but this just kind of
6 caught me off guard as to --

7 **THE COURT:** Let me -- let me see that form.

8 **MS. WIYGUL:** And I apologize, Your Honor. I saw
9 this document for the first time today. And, Your
10 Honor, I have no problem with the Court taking judicial
11 notice if this is something that the law clerk could
12 perhaps just pull up online. Just pull up that address
13 and say Newberry or Laurens County.

14 **THE COURT:** Again, all this form -- the way I read
15 it is that -- is that no Whitmire -- no, Whitmire is in
16 Newberry County, not Laurens County. I mean, yes, the
17 -- the city limits of Whitmire is completely in Newberry
18 County, but the mailing address or the zip code could
19 very well include Newberry and Laurens County. I would
20 have to assume so. So I don't think you can get this
21 into evidence. I don't know, staff signature,
22 Neiderheiser. I don't think you can get this into
23 evidence. I think what you can do is you can ask this
24 witness, you know, what is his understanding as far as
25 which county the address where the car pulled into is

1 located and if you've got some admissible evidence to
2 counter that to -- to support your theory that -- of
3 sloppy police work, then, of course, you could do that,
4 but I'm not gonna allow you to necessarily use this in
5 cross-examination or put it into evidence.

6 **MS. WIYGUL:** Yes, Your Honor.

7 **THE COURT:** Okay. I mean, you can question him
8 as far as what his knowledge is of what county, if he
9 knows.

10 **MS. WIYGUL:** I'll move on, Your Honor. That's not
11 a problem.

12 **THE COURT:** Okay. All right. Good. Anything else?

13 **MS. WIYGUL:** No, Your Honor.

14 **THE COURT:** All right. Let's get the jury back out,
15 Mr. Bolt, please, sir.

16 **THE COURT:** And I want to make sure, gentlemen --
17 I know y'all are being quiet, but y'all are talking a
18 little bit, you're so close to the jury box, but no
19 conversation while we're going on. I'm not fussing at
20 you. I just don't want y'all to maybe say something
21 maybe the end jurors could hear, okay? Thank you.

22 All right. For whatever it's worth, it's on the
23 county line; the Laurens/Newberry County line, for
24 whatever that's worth.

25 **MS. WIYGUL:** Thank you, Your Honor.

1 (Whereupon, the jury returns to the courtroom at
2 2:46 PM.)

3 **BAILIFF:** All jurors present, Your Honor.

4 **THE COURT:** Thank you, Mr. Bolt. Ms. Wiygul, you
5 may proceed with your cross.

6 BY MS. WIYGUL:

7 Q. Deputy Sweat, now we reviewed the booking report
8 where it indicated that Mr. Wymer did have \$70 on him
9 whenever he was arrested, correct?

10 A. Yes, ma'am, that's what it indicates.

11 Q. And you stated that you had no personal recollection
12 about him having this money on him at the time that he
13 was taken into detention, correct?

14 A. No, ma'am, I don't.

15 Q. Sir, could you take a look at this incident report?
16 And I believe this particular part was prepared by
17 Deputy Hodges. Specifically, the last sentence.

18 A. Okay.

19 Q. Does that paper help refresh your recollection of
20 events from that evening?

21 A. I don't remember doing it, but it says I did it and
22 I believe I did, yes.

23 Q. It says that you helped count the money, right?

24 A. Yes, ma'am.

25 Q. Okay. Deputy, what kind of training do you receive

1 to be an officer in Laurens County?

2 A. I attended the -- now you go to the Criminal Justice
3 Academy for 12 weeks and you go through an FTO program
4 for like 8 or 9 weeks.

5 Q. Do you have any continuing -- like on-going training
6 that you have to attend every year?

7 A. We have legal updates, CV updates, weapons
8 qualification, more or less to make sure we're
9 up-to-date on certain law, as well as equipment we're
10 issued.

11 Q. Regarding the equipment you're issued, back in 2011
12 was your car equipped with video equipment in the car?

13 A. Not that I recall. No, not at the time. I think
14 it happened right before we got those.

15 Q. Okay. And was Deputy Hodges' car equipped with that
16 equipment?

17 A. No, ma'am.

18 Q. And was Deputy Martin -- or Investigator Martin's
19 car equipped?

20 A. No, ma'am. Investigators' cars don't have that at
21 all.

22 Q. Okay. All right. They just kind of carry around
23 paperwork?

24 A. They have their equipment in their car and what
25 they carry, I couldn't tell you. I know what uniformed

1 patrol guys carry.

2 Q. What do uniformed patrol guys carry?

3 A. We have a camera, we have --

4 Q. You do have a camera?

5 A. Yeah, to take pictures with and whatnot. We have
6 certain documents such as statement forms. We have
7 victim's forms, we have weapons, radios --

8 Q. Do you have Miranda forms?

9 A. Ma'am?

10 Q. Do you have Miranda forms?

11 A. We do have those available to us, yes, ma'am.

12 Q. Okay. Keep going. I apologize for interrupting.

13 A. More or less everything on our duty belt, our
14 personal safety equipment as far as coming into contact
15 with pathogens, emergency equipment like thermal
16 blankets, first aid kits, fingerprint equipment, crime
17 scene tape, evidence tags.

18 Q. Do you have a phone?

19 A. I don't have an issued phone, no, ma'am.

20 Q. Do you have a personal phone that you keep on you?

21 A. At the time I did have, yes.

22 Q. And did that phone come equipped with a recorder
23 where you could record yourself?

24 A. A terrible one, but yes, ma'am.

25 Q. Okay. Even back in 2011 it had something, right?

1 A. I still had one of those old flip phones, they're
2 tougher than the smart phones, but, yes, ma'am, it had
3 one.

4 Q. Okay. I appreciate it, sir. And you stated that
5 Mr. Wymer got in the car with no problem, correct?

6 A. Yes, ma'am.

7 Q. And followed your instructions?

8 A. Yes, ma'am.

9 MS. WIYGUL: All right. I don't have any further
10 questions.

11 THE COURT: Redirect?

12 MR. SCOTT: No, sir.

13 THE COURT: You can step down, sir. Thank you for
14 your testimony.

15 (Witness excused.)

16 MR. SCOTT: The State calls Chris Martin.

17 INVESTIGATOR CHRIS MARTIN,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q. Okay. Investigator Martin, you're with the Laurens
22 County Sheriff's Department, too?

23 A. Yes, sir.

24 Q. And you're in investigations?

25 A. Yes, sir.

1 Q. How's that different -- we just heard from Sweat,
2 he's a patrol officer. What does an investigator do
3 for Laurens County?

4 A. Numerous things. You can respond to violent
5 crimes, assist uniformed patrol with 9-1-1 calls,
6 assist narcotics. Just various different things.

7 Q. Okay. Is it safe to say that a patrol unit might
8 respond to a crime, but then they call you in to sort of
9 flesh out what exactly happened?

10 A. Yes, sir, that's correct.

11 Q. April 27, 2011, what would you have been doing
12 around 3 AM?

13 A. I was asleep.

14 Q. And then your phone rings?

15 A. Yes, sir.

16 Q. Is that just part of your job?

17 A. Yes, sir, it's the nature of being on-call with
18 investigations.

19 Q. Okay. And that's just something you accept; your
20 phone might ring in the middle of the night and you've
21 got to get up and go to wherever the crime is occurring?

22 A. Yes, sir.

23 Q. All right. So do you remember -- approximately what
24 time did you receive the call that night?

25 A. I'd say between three and four in the morning,

1 somewhere in there.

2 Q. All right. So what was the nature of the crime you
3 were responding to?

4 A. I received an initial call from dispatch stating
5 that Deputy Hodges wanted me to give him a phone call,
6 so I advised them I would, so I called Deputy Hodges.
7 Deputy Hodges then related to me that he was out on
8 Highway 72. At the initial time, he didn't give me the
9 actual address. He just stated he was on Highway 72
10 towards Whitmire. He stated that he had an individual
11 in his vehicle, had another one that was on the ground
12 on the way to the hospital in reference to a possible
13 carjacking.

14 Q. Okay. From your residence, how long would it have
15 taken you to respond to that location?

16 A. I live on the other side of the county from where
17 that occurred, so 45 minutes to an hour maybe, somewhere
18 in there. 45 minutes.

19 Q. All right. So you -- but you did respond to the
20 scene?

21 A. Yes, sir.

22 Q. And what's going on when you get there?

23 A. When I initially arrived, I went to where Deputy
24 Hodges was. That was Highway 72 East because
25 that's where he had one person in his vehicle. When I

1 arrived on-scene, he basically advised me of what we had
2 because one of -- my first initial appearance at the
3 scene was there was -- this Grand Marquis was in front
4 of Deputy Hodges vehicle and to the right side of that
5 vehicle, the passenger side, there was a lot of blood on
6 the ground, so we walked there initially and he advised
7 that Mr. Threatt came out of that passenger side of the
8 vehicle, said that he was taken off by EMS due to his
9 condition. I believe unresponsive -- yeah, he was
10 medically -- he was unresponsive.

11 Q. All right. So he was gone by the time you arrived?

12 A. Yes, sir.

13 Q. The ambulance had already taken him off?

14 A. Yes, sir.

15 Q. All right. So who did they have in the car with
16 them?

17 A. Mr. Wymer was in the back of Deputy Hodges' vehicle.

18 Q. Okay. And he had handcuffs on?

19 A. Yes, sir, behind his back.

20 Q. All right. And what are you doing at this point?

21 A. Then I made initial contact with Mr. Wymer like I
22 would with, you know, any scene. When you have somebody
23 in custody, you make contact with that person. I
24 advised Mr. Wymer his rights.

25 Q. What do you mean, what rights?

1 A. His Miranda rights.

2 MS. WIYGUL: And, Your Honor, at this time we would
3 just renew our earlier objection for the record.

4 THE COURT: So noted. Thank you.

5 BY MR. SCOTT:

6 Q. I guess we probably know at this time what Miranda
7 rights are. How do you -- what are Miranda rights? How
8 do you administer them?

9 A. Yes, sir. I have a card -- it's in my jacket now,
10 but I normally keep it in my wallet. I read it from
11 this card. Would you like me to read it?

12 Q. Yes, sir, please.

13 A. You have the right to remain silent. Anything you
14 say can and will be used against you in court. You
15 have the right to an attorney and have the attorney
16 present during questioning. If you cannot afford an
17 attorney, an attorney will be appointed at no cost. If
18 you decide to -- you can decide at any time to exercise
19 these rights and not answer any questions or make any
20 statements. I asked him if he understood and he said
21 he did.

22 Q. Okay. He seemed to understand?

23 A. Yes, sir.

24 Q. All right. Did he -- I mean, just looking at
25 him, did he seem to have any difficulty whatsoever

1 understanding those rights?

2 A. No, sir.

3 Q. And what did you ask him after you read him his
4 rights?

5 A. I just asked him what was going on, you know. Once
6 he, you know, understood his rights and he agreed that
7 he would talk, I just, like I would anybody, tell me
8 what happened and he then -- you know, he stated that
9 Mr. Threatt told him that if he would help him carjack
10 someone, he'd buy him pills. Mr. Wymer stated the next
11 thing he knew Threatt was knocked out by the truck
12 driver, so he put him in the car and he took off.
13 Mr. Wymer stated that he was scared and that's why he
14 ran into the woods. And you could generally tell. I
15 mean, he was pretty scared.

16 Q. What, of getting arrested or what?

17 A. Probably the whole situation and seeing his buddy
18 like this and everything.

19 Q. Okay. So he didn't know whether Threatt was alive
20 or dead at that point, did he?

21 A. I'm sure he didn't, no, sir. He was in the woods.
22 I'm sure he didn't.

23 Q. You didn't either, did you?

24 A. No, he was taken off by ambulance prior to me
25 getting there and what I was told is his condition was

1 not so good at the time when he left the location.

2 Q. Okay. What else did you ask Mr. Wymer?

3 A. I asked him if he was driving the vehicle, he said
4 no, and then from there -- initially my next step was to
5 take him to the office, but he asked for an attorney, so
6 I closed the door and that was it.

7 Q. So the last thing you were able to ask him was were
8 you driving and he said no and at that point he asked
9 for an attorney?

10 A. Yes, sir.

11 Q. All right. Where did you go next?

12 A. After then, Deputy Hodges was waiting for a -- I
13 believe a wrecker, I'm unsure of which wrecker service,
14 to show up for the vehicle. Deputy Sweat was at the
15 Li'l Cricket, which is just outside of Laurens County,
16 with one of the victims, Mr. Johnson, so I responded to
17 that location. When I arrived there, Deputy Sweat had
18 already had that bar right there, the cheater bar or
19 whatever you want to call it, on his vehicle, I believe
20 it was on the trunk, and had already taken a statement
21 from Mr. Johnson.

22 Q. Okay. And were you able to speak to Mr. Johnson as
23 well?

24 A. Yes, sir.

25 Q. At that point, were you aware that -- were you aware

1 of Mr. Ortscheid and Mr. Eddie Bridges?

2 A. I wasn't, no, sir.

3 Q. Okay. And then when did you learn that they had
4 been involved with the situation?

5 A. It would be that -- the hours kind of run together
6 that day. It was that next day, whenever I received the
7 CAD report. I originally thought that Mr. Johnson was
8 the initial complainant, but when I received a copy of
9 the initial CAD report, that's when I seen that -- the
10 other two gentlemen's names as well.

11 Q. Okay. The CAD report would be the 9-1-1 call
12 history?

13 A. Yes, sir. I'm sorry. Yes, sir.

14 Q. So you review that and you realize that somebody
15 else had called in with a similar story?

16 A. Yes, sir.

17 Q. And were you able to make contact with Mr. Ortscheid
18 and Eddie Bridges?

19 A. Yes, sir.

20 Q. Did you take statements from them?

21 A. Yeah, I met them at the Exxon on Highway 418 that's
22 just outside of Laurens County, Greenwood County, and
23 obtained two statements from them; one apiece.

24 Q. I notice you today referring to some notes. Did you
25 document that statement Mr. Wymer gave to you?

1 A. Yes, sir, I did. I put it in my supplemental.

2 Q. Okay. And that's what you just relayed to this jury
3 about the --

4 A. Yes, sir.

5 Q. -- if you help me carjack some cars, you can get
6 some pills out of it?

7 A. Yes, sir.

8 Q. Okay. Did you get any of this on video? Did you
9 videotape any of this stuff?

10 A. No, sir, none of this was on video. I don't
11 believe, as Deputy Sweat stated, that back at this
12 specific incident in 2011 we didn't have -- most of the
13 in-car cameras that you have now, deputy cams, there's a
14 lot that was transitioning in technology between now and
15 then.

16 Q. What was your intentions of doing with Mr. Wymer if
17 he had continued to answer questions? Where were you
18 gonna take him?

19 **MS. WIYGUL:** Objection, Your Honor. Calls for
20 speculation.

21 **THE COURT:** Well, I mean, if he had definite
22 plans of what he was gonna do if the questioning had
23 continued, he can state what those plans were, if he
24 did have definite plans. You may want to kind of lay
25 little more foundation on that, so overruled at this

1 time.

2 BY MR. SCOTT:

3 Q. Did you have any intentions had Mr. Wymer continued
4 to answer your questions what you were gonna do with
5 him?

6 A. Yes, sir.

7 Q. And what were your intentions?

8 A. Intentions as of him, as you would anybody else,
9 anybody that would agree to speak with you, you would
10 take them to the sheriff's office and go into the
11 training room. There are two cameras in there, two
12 speakers in there, so you can record the whole thing,
13 and then that's when you can actually sit down with them
14 and you can fill out all your paperwork. You can do a
15 statement form, you can do your Advisement of Rights
16 sheets, get all your paperwork out.

17 Q. And you've got some pretty good cameras in there,
18 don't you?

19 A. Yes, sir.

20 Q. Well, what do you do when anybody says I don't want
21 to answer any more questions, I want a lawyer?

22 A. You stop talking to them.

23 Q. That's law, isn't it?

24 A. Yes, sir.

25 Q. What happens if you keep badgering them, you keep

1 asking them questions if they ask for a lawyer?

2 A. I haven't done that, but I'm sure you could probably
3 get in a lot of trouble.

4 Q. All right.

5 A. Lose your job, go to jail. I wouldn't try to do
6 that.

7 Q. When Mr. Wymer said he wanted a lawyer, what did
8 you do?

9 A. Stopped talking to him.

10 Q. You shut the door and left him in the car, didn't
11 you?

12 A. Yes, sir.

13 Q. And then you went and spoke to Mr. Johnson?

14 A. Yes, sir.

15 Q. And the next day you spoke to Mr. Ortscheid and
16 Mr. Bridges?

17 A. Yes, sir.

18 Q. As a result of all that, what charges did you bring
19 against Mr. Wymer?

20 A. Two counts of attempted carjacking.

21 **MR. SCOTT:** Thank you.

22 **THE WITNESS:** Is it okay if I can get some water
23 real quick?

24 **THE COURT:** Sure. Would one of the solicitors --

25 **THE WITNESS:** Thank you.

1 **THE COURT:** Cross-examination?

2 **MS. WIYGUL:** Yes, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. WIYGUL:

5 Q. Lieutenant, could you take a look at this and tell
6 me what it is?

7 A. Yes, ma'am. A supplemental done by me.

8 Q. And supplemental, you mean supplemental incident
9 report?

10 A. Yes, ma'am.

11 Q. Okay. What date did you prepare this supplemental
12 incident report?

13 A. May 4, 2011. I'm sorry.

14 Q. Now when you went and spoke with Mr. Johnson, did
15 you show him a picture of Mr. Wymer?

16 A. I did a lineup.

17 Q. You showed Mr. Johnson a lineup?

18 A. Yes, ma'am.

19 Q. Which included a picture of Christopher Wymer?

20 A. Yes, ma'am.

21 Q. And he picked him out of that lineup?

22 A. Yes, ma'am.

23 Q. Did you document in that in your incident report?

24 A. Can I look?

25 Q. Please.

1 A. I documented that Sergeant Martin showed Mr. Johnson
2 a picture of Mr. Wymer and Mr. Johnson advised that he
3 was the driver of the vehicle.

4 Q. And you're Sergeant Martin, right?

5 A. Yes, ma'am.

6 Q. So you were just referring to yourself in the third
7 person?

8 A. Yes, ma'am. Sorry.

9 Q. So in your incident report, you said that you showed
10 Mr. Johnson a picture?

11 A. Yes, ma'am.

12 Q. Okay. But now it's your testimony that you actually
13 showed him a photo lineup?

14 A. Yes, ma'am.

15 Q. Okay. When you met with the other two gentlemen --

16 A. Yes, ma'am.

17 Q. And, I'm sorry, I'm bad with the pronunciation of
18 names, but when you met with the other two victims in
19 this case, did you show them anything?

20 A. Yes, ma'am.

21 Q. What did you show them?

22 A. A photo lineup.

23 Q. Did they pick anybody out?

24 A. Mr. Wymer and Mr. Threatt?

25 Q. They did?

1 A. Yes, ma'am.

2 Q. What's your procedure on handing over materials from
3 an investigation to the Solicitor's office?

4 A. Normally within ten days or so we do a General
5 Sessions packet, which we put everything in there, you
6 now, all our paperwork.

7 Q. Would that include anything you showed the victims?

8 A. It should, yes, ma'am.

9 Q. Would that include any photo lineups that were shown
10 to the victims?

11 A. It should, yes, ma'am.

12 Q. Sir, do you have these photo lineups?

13 A. No, ma'am, I don't.

14 **MS. WIYGUL:** Your Honor, we have a matter we need
15 to take up outside the jury.

16 **THE COURT:** Okay. All right. Let's go ahead and
17 we'll just take an afternoon break. So, Mr. Foreman,
18 ladies and gentlemen of the jury, we'll take a break and
19 I can also during that break deal with a matter of law.
20 I instruct you not to discuss this case among yourselves
21 and I'll get you back out here shortly.

22 (Whereupon, the jury retires to the jury room at
23 3:04 PM.)

24 **THE COURT:** Okay. Ms. Wiygul, I'll be glad to hear
25 from you.

1 **MS. WIYGUL:** Your Honor, this is a clear Brady
2 violation and we'd ask that the Court dismiss these
3 charges.

4 **THE COURT:** Well, you know, I was wondering why you
5 would even bring it up, Ms. Wiygul. The State didn't
6 bring it up. Why would -- if they didn't bring it up,
7 if they didn't try to use it into evidence, then why --
8 why would you even -- even mention it with this witness?

9 **MS. WIYGUL:** Your Honor, either this witness is
10 lying or every one of their victims is lying because
11 every one of those victims stated that this officer
12 showed them no paperwork. All he did was have them fill
13 out their statements for the two victims he spoke with
14 and Mr. Johnson clearly stated that he didn't show him
15 anything.

16 **THE COURT:** Well, now, of course, I'd have to rely
17 on what the court reporter took down. I don't recall
18 them being asked if they were shown any photographs. I
19 mean, they may -- they may were asked that. I don't
20 recall that. Did you ask that on cross-examination, if
21 they were shown any photographs?

22 **MS. WIYGUL:** I did, Your Honor. I asked them if
23 they were shown any documentation whatsoever by this
24 officer and every one of them stated they were not.

25 **THE COURT:** Okay. All right. But, again, how --

1 how does that justify dismissal of the charges? And I
2 assume, Solicitor, this photo lineup was not produced
3 in discovery, right?

4 **MR. SCOTT:** It doesn't exist, Your Honor.

5 **THE COURT:** Okay. All right.

6 **MR. SCOTT:** My understanding is --

7 **THE COURT:** All right. So if it doesn't exist --
8 how can there be a Brady violation if it doesn't exist?

9 **MS. WIYGUL:** Your Honor, if the Court's willing to
10 take judicial notice that there's no such photo lineup,
11 then I will immediately withdraw my motion.

12 **THE COURT:** All right. I mean, certainly you
13 can argue to the jury that here we've got these
14 witnesses that said nothing was shown to them by this
15 investigator and this investigator says no, that's not
16 true, I did show them a photo lineup and they identified
17 the Defendant. I mean, that certainly gives you an
18 argument.

19 **MS. WIYGUL:** But, Your Honor, we've got the
20 Solicitor saying there's no such thing.

21 **THE COURT:** All right.

22 **MR. SCOTT:** I think I can explain, Your Honor.

23 **THE COURT:** Yeah. I mean, I just -- I just don't
24 see where under any fact scenario it justifies me
25 granting a dismissal, but go ahead, Solicitor. Do you

1 want to try to explain why that doesn't exist?

2 MR. SCOTT: Yes, sir, and probably the most
3 efficient way would be to proffer the testimony of
4 Investigator Martin.

5 EXAMINATION (In-camera)

6 BY MR. SCOTT:

7 Q. All right. You stated you showed them a lineup?

8 A. Yes, sir.

9 Q. And how was that administered?

10 A. It was done on my laptop. When you do a photo
11 lineup through LawTrak, you type in the individual's
12 name and then you randomize -- just random six pictures.
13 It puts whichever suspect, you know, you're putting in
14 randomly in one of the six. Those were done, but when
15 those are done if you're not doing it at the office and
16 if you're on your laptop, like I was, out of the office,
17 you can save it. There are two ways you can save it.
18 One you can save it into an initial file on your desktop
19 and the other way is you just hit save and it will
20 create a generic --

21 MR. SCOTT: Well, wait a minute. He's trying to
22 explain the --

23 THE COURT: Yeah, let him explain --

24 MS. WIYGUL: I've not said anything.

25 A. -- it will create a generic name and number for

1 that lineup and it just goes on your computer. But,
2 unfortunately, I've been through two computers since
3 then. I've lost -- on some other cases, I've lost
4 everything. I've lost pictures, I've lost a lot of
5 stuff that was on my desktop.

6 Q. Why didn't you just print it up that night or the
7 next day?

8 A. I didn't really then think it would be an issue if
9 I saved it to my desktop. I wasn't thinking that my
10 computer was gonna crash and I'd lose everything, but
11 since then I've learned to print everything.

12 Q. Did you ever supply any hard copy, I guess, of the
13 lineup that you showed these witnesses on your laptop?
14 Did you ever supply a hard copy to the Solicitor's
15 office?

16 A. No, sir.

17 Q. All right. So is it your testimony that this was
18 shown to them that night and that you were unable or --
19 or failed to save it, I guess, somehow to your -- to
20 your desktop back at the office?

21 A. Yeah, I would just create files for names or case
22 numbers on my desktop.

23 Q. All right. This is probably a little bit more
24 detailed whenever you're in the field and you're showing
25 some witness, I guess, in a real dynamic situation like

1 this where you're running to different locations and
 2 you've got different witnesses in different areas, when
 3 you show them one and you generate one on your laptop,
 4 how does that work?

5 A. How does the lineup work when you generate one?

6 Q. Okay. I presume at that time Wymer was in custody?

7 A. Yeah. Are you asking how it shows up on the
 8 computer?

9 Q. How do you generate one -- you know, you've got him
 10 and you want to get some kind of ID from a witness, so
 11 how do you generate a sixpack from just kind of one
 12 individual in mind?

13 A. If that individual has been previously arrested with
 14 the Laurens County Sheriff's Office, or booked at the
 15 detention center specifically, that picture would be
 16 saved, so you would use that picture and do a random six
 17 pictures of people that look similar to him and do a
 18 randomization and put his picture in one of the six.

19 Q. I see. So you're saying you did that that night?

20 A. Yes, sir.

21 Q. All right. We don't know what slot he was in, one
 22 through six?

23 A. No, sir, I couldn't testify to that.

24 Q. And we don't know the other individuals, the other
 25 five individuals, in the picture with him?

1 A. No, sir, I couldn't testify to that.

2 Q. But it would be your testimony that that software
3 would attempt to generate five other folks with similar
4 characteristics?

5 A. Yes, sir.

6 Q. Likewise, is that kind of how it worked with
7 Ortscheid and Bridges or do you recall were they shown
8 a lineup, too?

9 A. Yes, sir, I did lineups with them as well as
10 Mr. Johnson just for clarification purposes, I mean.

11 **MR. SCOTT:** Okay. I think that's it, Judge. That's
12 the way I understand it. We were never provided a --

13 **THE COURT:** Right, and I don't see a violation.
14 And if the State had attempted to elicit this testimony
15 from this witness, I probably would not have allowed it
16 because it would certainly put the defense at a big
17 disadvantage without physically seeing the lineup that
18 this witness claims the Defendant was identified from,
19 but the fact that the State did not attempt to utilize
20 that information from the -- from this witness, I mean,
21 I -- quite frankly, I don't see a problem.

22 **MS. WIYGUL:** And, Your Honor, I'm getting real
23 confused with this witness because his earlier testimony
24 during the Jackson v. Denno hearing was that he did not
25 have the capability of recording that conversation;

1 whereas now his testimony is he had his laptop with him.

2 **THE COURT:** Okay. You can -- you can certainly
3 cross-examine him about the ability or inability thereof
4 to record or videotape the statements made by -- or
5 alleged statements made by the Defendant. You can
6 certainly cross-examine that, but I'm trying to focus
7 on your Motion to Dismiss based upon a Brady violation.

8 Again, number one, I don't see a violation because
9 the State never -- there's nothing in existence to
10 produce or fail to produce. Secondly, the State never
11 attempted to bring this out with this witness in direct
12 examination, the existence of a photographic lineup, so
13 I just don't see where there's any reason to even think
14 about a dismissal, okay?

15 **MS. WIYGUL:** Yes, Your Honor.

16 **THE COURT:** All right. Since this is our afternoon
17 break, we'll take about ten minutes.

18 **MS. WIYGUL:** Thank you, Your Honor.

19 **THE WITNESS:** Is it okay, Your Honor --

20 **THE COURT:** Yeah, just -- you can't talk to anybody
21 about your testimony, but you can certainly step down.

22 **THE WITNESS:** Thank you.

23 (Recess taken.)

24 **BAILIFF:** Let's everyone keep your seats and come
25 back to order, please.

1 **THE COURT:** All right. Are we ready to bring the
2 jury out?

3 **MR. SCOTT:** Yes, sir.

4 **MS. WIYGUL:** Yes, sir.

5 **THE COURT:** All right, Mr. Bolt, please.

6 (Whereupon, the jury returns to the courtroom at
7 3:28 PM.)

8 **BAILIFF:** All jurors present, Your Honor.

9 **THE COURT:** Okay. Thank you, Mr. Bolt. Ms. Wiygul.

10 CONTINUED CROSS-EXAMINATION

11 BY MS. WIYGUL:

12 Q. Lieutenant, when you spoke with Mr. Wymer in the
13 back of Deputy Hodges' car, did you have him complete a
14 Miranda form?

15 A. No, ma'am.

16 Q. Did you have a Miranda form you could have
17 completed?

18 A. I couldn't say for sure if somebody might have had
19 one. It's hard to say.

20 Q. Did you ask Deputy Hodges if he had one?

21 A. No, ma'am.

22 Q. Did you ask Deputy Sweat if he had one?

23 A. No, ma'am.

24 Q. Did you ask the Clinton Police Department officer
25 on-site if he had one?

1 A. No, ma'am.

2 Q. Did you ask Mr. Wymer if he'd like to give a written
3 statement?

4 A. No, ma'am. I believe I just read him his Miranda
5 and asked him if he wanted to speak with me.

6 Q. You did not offer him an opportunity to write his
7 statement?

8 A. Well, that was gonna be next, but he asked for an
9 attorney.

10 Q. Officer, please answer the question. Did you offer
11 Mr. Wymer the opportunity to write the statement that
12 you say he gave?

13 A. No, ma'am.

14 Q. And did you give him the opportunity to sign a
15 written Miranda waiver form where he agreed to speak
16 with you without a lawyer?

17 A. No, ma'am.

18 Q. You had the capability of recording that statement,
19 didn't you?

20 A. As in --

21 Q. You had something on your person or within your
22 control that you could have used to record the
23 statement, didn't you?

24 A. It's hard to say.

25 Q. It's not hard to say, sir. Did you have the

1 capability of recording that statement or not?

2 A. Nothing through the sheriff's office, no, ma'am.

3 Q. Sir, I'm gonna ask you to choose yes or no.

4 **THE COURT:** And then, Mr. Witness, then after you
5 give a yes or no statement, then you have every right
6 to explain your answer after you've given a yes or no
7 answer, okay?

8 **THE WITNESS:** Okay.

9 BY MS. WIYGUL:

10 Q. Did you when you spoke with Mr. Wymer have the
11 capability of recording that conversation?

12 A. Yes.

13 Q. And you chose not to record it, didn't you?

14 A. Yes. Can I explain, Your Honor?

15 **THE COURT:** Sure.

16 A. The only thing that I possibly could have had is
17 my personal cell phone, which at the time I can't even
18 remember which cell phone I had then. I know I didn't
19 have a smart phone or anything like that. I'm sure
20 there was maybe some type of recording, if there was,
21 but if I used my personal phone, that's personal
22 property, I didn't use that. I had nothing from the
23 County to use.

24 Q. You didn't have a laptop?

25 A. Yes, I have a laptop.

1 Q. Your laptop doesn't have the capability of
2 recording?

3 A. Not that I know of.

4 **MS. WIYGUL:** I don't have any more questions.

5 **THE COURT:** Okay. Redirect from the State?

6 **MR. SCOTT:** Real briefly, Judge.

7 **REDIRECT EXAMINATION**

8 **BY MR. SCOTT:**

9 Q. This conversation with Mr. Wymer was in the back of
10 a patrol car?

11 A. Yes, sir.

12 Q. Had he not invoked his right to a lawyer, what
13 were your intentions and what did you want to do with
14 Mr. Wymer?

15 A. Take him to the sheriff's office.

16 Q. And at the sheriff's office, what would you have
17 done?

18 A. Put him into the training room where we have video
19 surveillance, audio, everything.

20 Q. Okay. But he did invoke his rights, as he has every
21 right to do and ask for a lawyer, and at that point the
22 questioning was terminated; is that right?

23 A. That's correct.

24 **MR. SCOTT:** Thank you.

25 **THE COURT:** Recross?

1 **MS. WIYGUL:** Very briefly, Your Honor.

2 RECROSS EXAMINATION

3 BY MS. WIYGUL:

4 Q. Just to clarify, Lieutenant, Mr. Wymer gave a full
5 confession and then invoked his right to a lawyer; is
6 that correct?

7 A. No, ma'am.

8 Q. Is that your testimony?

9 A. No, ma'am.

10 Q. No?

11 A. I would not say that's a full confession. No,
12 ma'am.

13 Q. Is it your testimony that Mr. Wymer told you he
14 tried to carjack people --

15 A. Yes, ma'am.

16 Q. -- and then invoked his right to an attorney?

17 A. Yes, ma'am.

18 **MS. WIYGUL:** I don't have any further questions.

19 **THE COURT:** Okay. Thank you for your testimony,
20 sir. You can step down.

21 **THE WITNESS:** Thank you.

22 (Witness excused.)

23 **MR. SCOTT:** Judge, at this time the State rests.

24 **THE COURT:** Okay. All right. Let me see the
25 lawyers for just a moment, please.

1 (Proceedings held at the bench; not reported.)

2 **THE COURT:** Mr. Foreman and ladies and gentlemen
3 of the jury, we're now at the stage of the trial where
4 the State has rested their case. We've got some legal
5 issues that I need to discuss with the lawyers. I don't
6 anticipate it taking very long to get you back out, so
7 I'll ask for you to retire to your jury room and, again,
8 remind you not to start talking about the case among
9 yourselves. Thank you for your patience and your
10 understanding.

11 (Whereupon, the jury retires to the jury room at
12 3:36 PM.)

13 **THE COURT:** Okay. Ms. Wiygul, I understand you've
14 got a motion to make?

15 **MS. WIYGUL:** That's correct, Your Honor. We would
16 make a motion for a directed verdict at this time. I
17 do not believe that the State has presented evidence
18 meeting the elements of the charge of attempted
19 carjacking; specifically the testimony of the victims
20 at no time stated that either Mr. Threatt or Mr. Wymer
21 tried to get them out of their vehicles or tried to
22 take control of those vehicles. In fact, Mr. Johnson's
23 specific testimony was that he did not know what
24 Mr. Threatt's intentions were. There's been testimony
25 about reckless driving, about following too closely,

1 about breaking -- numerous traffic violations, but
2 there's been no testimony that anyone tried to take
3 either of these vehicles.

4 **THE COURT:** Okay. All right. Thank you.
5 Solicitor, do you want to respond?

6 **MR. SCOTT:** I respectfully disagree, Judge.
7 Mr. Johnson, I think his term was that he was afraid
8 and it appeared the Defendant was trying to board his
9 eighteen-wheeler. Mr. Bridges a number of times used
10 the -- I can't remember exactly what term he used, but
11 he talked about them trying to take the truck over.
12 That's what they felt like they were trying to do with
13 him jumping into the bed and trying to go for the door.
14 You know, Judge, the Defendant's own statement that we
15 just heard was that his intentions were carjacking the
16 vehicle in exchange for pills. I think -- I think
17 there's been abundant testimony, enough for a jury to
18 infer that that's what their intentions were, and it is
19 an attempted crime, so they didn't -- they ultimately
20 were unable to take over the car, but I think there was
21 ample testimony that that was their intention and that
22 they had attempted to take a motor vehicle by force and
23 violence or intimidation, so we would offer it.

24 **THE COURT:** All right. Well, naturally, folks,
25 you know what the standard is for reviewing a motion

1 for directed verdict and viewing the evidence in the
2 light most favorable to the State, considering the
3 existence of any evidence and all inferences therefrom,
4 I believe that there is enough to send this case to
5 the jury and I will respectfully deny your motion,
6 Ms. Wiygul. Okay.

7 **MS. WIYGUL:** Your Honor, before the jury comes back
8 in, there is an issue that I believe would be best
9 brought up outside the presence of the jury just to
10 avoid --

11 **THE COURT:** Sure, sending them back. Yeah, I
12 appreciate that. Yeah, if we've got anything else we
13 can talk about right now, let's do it.

14 **MS. WIYGUL:** The defense intends to call Mr. Threatt
15 and we do wish to cross-examine him about the plea deal
16 that he has made with the State in this case.

17 **THE COURT:** Okay.

18 **MS. WIYGUL:** I just wanted to put that out there and
19 make sure there would be no objections from the State.

20 **MR. SCOTT:** I don't know that we can object to that.
21 I think --

22 **THE COURT:** Well, I think it's public record when --
23 when I took the plea yesterday morning, I guess it was
24 in the morning time, the recommendation was made and we
25 took the plea, a public record. So, yeah, I don't think

1 the State could argue against that. Now they may argue
2 as to relevancy or something else, but -- so you're
3 planning to call Mr. Threatt?

4 **MS. WIYGUL:** Yes, Your Honor.

5 **THE COURT:** Okay. All right. And are you planning
6 to examine him concerning the -- the facts of the
7 incident or just the fact that he was a co-defendant
8 and he was -- had got this deal from the State?

9 **MS. WIYGUL:** Your Honor, the deal from the State
10 and the fact he was looking at 40 years and walking with
11 probation and the fact that he has no memory of the
12 events and the fact that he and the Defendant were out
13 drinking earlier that day.

14 **THE COURT:** Uh-huh. Okay.

15 **MR. SCOTT:** You know, obviously, Judge, I think I
16 misspoke. I think I'd distinguish to some -- some
17 degree he was not a State's witness that we proffered
18 any testimony from.

19 **THE COURT:** Well, that was kind of running through
20 my mind. It's not your typical scenario and it still
21 may be --

22 **MS. WIYGUL:** And that's why I wanted to --

23 **THE COURT:** Right. Okay.

24 **MR. SCOTT:** I probably should have caught that
25 before, but, you know, typically it would be

1 impeachment-type evidence whereas we -- we did not
2 call him as a witness.

3 **THE COURT:** Right. And the rules prohibit
4 impeaching your own witness as -- as a general rule?

5 **MR. SCOTT:** Well, yes, Judge, that's typically my
6 understanding. If I called a witness in an attempt to
7 impeach him, typically that's improper.

8 **THE COURT:** All right. Okay. Are you attempting
9 to impeach?

10 **MS. WIYGUL:** It wouldn't necessarily be for
11 impeachment purposes, Your Honor. It's more just in
12 the general theme of the -- under the Fourth and Fifth
13 -- under the Fifth and Sixth Amendment the right that
14 Mr. Wymer has to put on a full defense.

15 **MR. SCOTT:** Judge, I just -- I don't understand --
16 really, Judge, I -- I mean, I misspoke earlier, but
17 the more it kind of churns in my brain, the more I'm
18 thinking that that jury's duty is to consider all the
19 facts that would tend to lead toward the guilt or
20 innocence of Mr. Wymer and I don't fully understand how
21 any plea negotiations through a non-testifying witness
22 or a witness not called by the State to testify against
23 the Defendant would be relevant to them making any
24 determination of guilt or innocence in this case.

25 **THE COURT:** Okay.

1 **MS. WIYGUL:** And, Your Honor, I think it would be
2 very confusing for this jury if I put Mr. Threatt up
3 and he's testifying and he's not in here in front of
4 them today and he's obviously not in jail and they're
5 just not gonna have a clue why.

6 **THE COURT:** All right. Well, but -- all right.
7 You're not wanting to use it for impeachment. Typically
8 when -- the typical scenario is the State puts up a
9 co-defendant, the co-defendant testifies against the
10 trial defendant and then the defense wants to bring up
11 well, you know, you must be lying or you're not telling
12 the truth because the State gave you this deal or
13 whatever, that's the typical scenario, and -- and so
14 you impeach their credibility with the fact that they
15 got a deal from the State, all right, which is generally
16 permissible.

17 Now under Rule 607 it says the credibility of a
18 witness may be attacked by any party, including the
19 party calling the witness, under certain situations,
20 but you're not even wanting to affect Mr. Threatt's
21 credibility. You're just wanting to, I guess, show in
22 some manner hey, this guy got this sweetheart deal and
23 my guy's, you know, in trial and, you know, I don't see
24 the relevancy of that on this -- on the sole issue of
25 the guilt or innocence of your client, the fact that the

1 co-defendant got a good deal from the State.

2 **MS. WIYGUL:** Well, Your Honor, the testimony
3 throughout the trial has been that Mr. Wymer was sober
4 and we need Mr. Threatt to show that Mr. Wymer was not
5 sober.

6 **THE COURT:** Well, now -- okay. Apart from the
7 issue of Mr. Threatt's recollection of that day, I think
8 certainly you would be able to call Mr. Threatt and have
9 him testify yeah, we were out drinking that day, yeah, I
10 think that would be fine, but I do want to get over the
11 hurdle of is he even able to remember that? I mean,
12 from what I remember from yesterday, he remembered
13 nothing, absolutely nothing, related to the -- this case
14 involving he and Mr. Wymer.

15 **MR. MOWRY:** Yes, sir, that's correct.

16 **THE COURT:** So -- but apart from that, yeah, I think
17 you could bring out the fact that he could, you know,
18 testify yeah, we were drinking all day, taking drugs,
19 doing whatever they were doing, but, you know, from
20 yesterday I -- I recall he remembered nothing,
21 absolutely nothing, so.

22 Well, I'm not going to allow you to examine
23 Mr. Threatt on the issue of the deal with the State,
24 the fact that he got probation facing 40 years. I
25 mean, that's not relevant to the guilt or innocence

1 of your client. Concerning his testimony about the
2 drinking, if he's gonna testify to that, I'll probably
3 allow you to do it, but he's running the risk -- and
4 I see and let the record reflect that his attorney is
5 present in the courtroom -- he's running the risk of
6 possibly having his plea and sentence vacated by this
7 Court if he gets in here and starts recollecting
8 something, but --

9 **MS. WIYGUL:** And that would kind of be our point,
10 Your Honor. If he says he remembers what happened,
11 this deal goes away and he's looking at 40 years.

12 **THE COURT:** Well, but, again, I'm not gonna allow
13 you to get in with Mr. Threatt the fact that a deal was
14 reached between he and the State, the fact that he was
15 facing 40 years and got probation. I'm not gonna allow
16 you to get into all that. I'll allow you to call him
17 and let's see. I mean, I don't want to second guess
18 what he may testify to, and I don't think that would be
19 fair for me to do that, so if you want to put him up and
20 see what he says, but, you know, I -- I can say right
21 now that I -- I would have some concerns if he starts
22 recollecting some things.

23 **MS. WIYGUL:** And, Your Honor, in light of that
24 ruling, may I have about five minutes with Mr. Wymer?

25 **THE COURT:** Sure. Not a problem.

1 (Discussion between Defendant and his counsel.)

2 **MS. WIYGUL:** Your Honor, Mr. Wymer would like
3 about ten minutes just to think over whether he wishes
4 to testify, and we will not be calling Mr. Threatt.

5 **THE COURT:** Okay. You won't be calling Mr. Threatt.
6 Well, let me go on ahead and do this before you -- and
7 I'll giving you the ten minutes. Let me -- and while
8 I'm pulling it up, you can -- you don't need to stand
9 yet because I've got to pull it up on my computer, but
10 you can explain to him the instruction I have to give
11 him concerning testifying, okay?

12 **MS. WIYGUL:** Yes, sir.

13 **THE COURT:** I'll give that to him and then he
14 doesn't have to tell me until y'all take your break.

15 (Recess taken.)

16 **THE COURT:** Back on the record. Madam Clerk, would
17 you swear Mr. Wymer in, please.

18 **THE CLERK:** Yes, sir.

19 (Whereupon, Christopher Lee Wymer was sworn by the
20 Clerk of Court.)

21 **THE COURT:** Mr. Wymer, at this time I'm going to
22 explain to you certain of your rights. If you do not
23 understand anything I say, please let me know. If you
24 want me to explain anything in more detail, please let
25 me know that as well. Do you understand, sir?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Okay. We have now reached the stage
3 of the trial where you may present your defense. You
4 have the right to claim the protections given to you by
5 the Fifth Amendment to the Constitution of the United
6 States. This Amendment states, in part, no person
7 shall be compelled in any criminal case to be a witness
8 against himself. This means that you cannot be
9 required to testify in this case. You have the right
10 to testify on your own behalf; however, no one can make
11 you testify. This is a personal right and no one can
12 waive this right except you. If you decide to testify,
13 you'll be subject to the same rules that govern other
14 witnesses and you may be examined and cross-examined on
15 any relevant issue in this case.

16 In addition, if you had any convictions involving
17 dishonesty or a false statement or for crimes punishable
18 by imprisonment for more than one year and this Court
19 determines that the probative value of admitting this
20 evidence outweighs its prejudicial effect to you, the
21 Solicitor would be able to introduce your record to
22 attack your credibility. If you decide to testify,
23 this decision on your part must be freely, voluntarily
24 and intelligently made with knowledge of the protections
25 given to you by the Fifth Amendment and the consequences

1 of your decision to testify.

2 If you decide not to testify, I will instruct the
3 jurors that they cannot give the fact that you did not
4 testify any consideration whatsoever and that there is
5 to be absolutely no prejudice to you because you did not
6 testify. It is left entirely up to you whether or not
7 you testify. You certainly have the right to talk with
8 your attorney, which I think you're planning to do
9 during the ten-minute break, any family or friends
10 that you have with you, anyone else, but I want you to
11 understand, Mr. Wymer, the final decision will be left
12 entirely up to you.

13 Do you understand what I have explained to you,
14 sir?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Okay. Do you have any questions
17 whatsoever about what I've explained to you?

18 **THE DEFENDANT:** No, sir.

19 **THE COURT:** Okay. At this time, we're gonna take
20 another ten-minute break and allow you time to decide
21 what you want to do and then we'll get you back in and
22 go from there, okay, sir?

23 **THE DEFENDANT:** Thank you, sir.

24 **THE COURT:** Thank you.

25 **MS. WIYGUL:** And, Your Honor, in an effort to help

1 Mr. Wymer make his decision, the State has indicated
2 that if he testifies they plan to introduce two criminal
3 convictions. We would have a disagreement on one of
4 those if we could argue that issue before he makes his
5 decision.

6 **THE COURT:** Okay. Tell me about the -- what the
7 two convictions are, Solicitor.

8 **MR. SCOTT:** Judge, there's one December 9th, '09.

9 **THE COURT:** December 9th, '09.

10 **MR. SCOTT:** So within the ten years, and that's
11 just gonna be a possession of cocaine first, so that --
12 I think we're in agreement that that was probably one we
13 can use. The other is an '03 sentence date, August 27th
14 of '03. It is a burg second. My argument would be that
15 -- I would argue that burglary is gonna be a crime of
16 dishonesty. It's unclear to me -- Mr. Mowry's stating
17 that it would be after the probation or sentence
18 terminated that the clock would start ticking.

19 **MR. MOWRY:** On the ten years, yes, sir.

20 **MR. SCOTT:** So if it is '03 -- let me see.
21 Recommend shock program, recommend restitution be a
22 condition of YOA parole, so that's an indeterminate
23 sentence, but it's not to exceed six years. I don't
24 know how the timing would work on that, but I think --
25 burglary, to me, seems like would have to be a crime

1 of dishonesty, but those are the two, Judge; burglary
2 second, August 27th, '03. A youthful offender sentence
3 not to exceed six years is what he was given.

4 **MS. WIYGUL:** Your Honor, I was just questioning
5 Mr. Wymer as to the underlying facts of this conviction.
6 It's my understanding that the homeowner was actually
7 present when the burglary occurred and that he opened
8 the front door and walked in without permission. There
9 was no dishonesty, no lying, no trickery used to get
10 inside the home, and I think that's the only place when
11 dishonesty would come into the crime of burglary.

12 **THE COURT:** Okay.

13 **MR. SCOTT:** I probably should have been more clear.
14 This crime's in 2011, the sentence date is August '03,
15 so that's eight years from the time, but I suspect it's
16 probably the time of trial.

17 **THE COURT:** Time of trial would be the end date,
18 yes.

19 **MR. SCOTT:** Yes, sir. Okay. But I don't have
20 any real clear understanding on when the clock begins
21 ticking because I don't know how you would do a YOA
22 indeterminate sentence.

23 **THE COURT:** It would be kind of hard. I'm inclined
24 to leave that one out just because of the uncertainty
25 of -- if you want to try to give me something, we'll --

1 **MR. SCOTT:** Maybe if you give me ten minutes maybe.
2 I don't know if I'll find anything.

3 **THE COURT:** I'll give you some time and then what
4 we'll do, Ms. Wiygul, then you can still have some more
5 time after that. You can just share with Ms. Wiygul
6 what you've come up with and then you can still talk
7 with your client to make a determination.

8 **MS. WIYGUL:** Thank you, Your Honor.

9 **THE COURT:** All right. Why don't y'all do this?
10 Why don't y'all just come back in chambers once you
11 figure out what to do, okay?

12 **MR. SCOTT:** Yes, sir.

13 **THE COURT:** All right. We'll be in recess for just
14 a little bit.

15 (Recess taken.)

16 **THE COURT:** Okay. We're back on the record and
17 what we've been working on is the Defendant's prior
18 record if he does testify, which we'll get to in just a
19 moment, but the -- the '09 cocaine possession charge,
20 that was agreed it could come in for impeachment
21 purposes. What was at issue was '03 burglary second.
22 Based upon this case that the State came up with,
23 State versus Ellis, a 2012 case, even though the fact
24 situation in that case is different from what we have,
25 it still goes to the issue of defining confinement and

1 so it appears that confinement would include, in that
2 case, the probationary time and so the very conclusion
3 of the entire sentence and not just actual active prison
4 time.

5 So, Ms. Wiygul, do you want to --

6 **MS. WIYGUL:** Your Honor, it's my understanding
7 that the State -- Mr. Scott has informed me that just
8 to avoid any potential appellate issues, he does not
9 intend to introduce the burglary.

10 **THE COURT:** Oh, okay.

11 **MS. WIYGUL:** Is that correct?

12 **MR. SCOTT:** That's right. Mr. Mowry wanted me to
13 reiterate that he was right and wants everybody in the
14 courtroom to know that he was right; however, we don't
15 intend to get into that.

16 **THE COURT:** All right. If I could take judicial
17 notice of that.

18 **MR. SCOTT:** Yes, sir. We would ask that you do.

19 **MS. WIYGUL:** We will stipulate, Your Honor.

20 **THE COURT:** Okay. All right. So that's off the
21 table. The '09 can still come in per agreement.

22 Now with that said, Ms. Wiygul, has your client
23 made the decision whether or not to testify?

24 **MS. WIYGUL:** He has, Your Honor, and he would like
25 to testify.

1 **THE COURT:** Okay. Mr. Wymer, if you'd just stand,
2 please, sir. Mr. Wymer, have you had sufficient time to
3 talk with your attorney and whoever else that you may
4 have wanted to talk to concerning this issue of whether
5 or not to testify?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Okay. And Ms. Wiygul indicates it's
8 been your decision to testify?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Has that decision been made freely,
11 voluntarily and intelligently?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. All right. I so find. Thank
14 you very much, sir.

15 **THE DEFENDANT:** Thank you.

16 **THE COURT:** Okay. Let's -- and I believe that is
17 your only witness, correct, Ms. Wiygul?

18 **MS. WIYGUL:** That's correct, Your Honor.

19 **THE COURT:** Okay. All right. Let's bring the jury
20 out.

21 (Whereupon, the jury returns to the courtroom at
22 4:25 PM.)

23 **BAILIFF:** All jurors present, Your Honor.

24 **THE COURT:** Thank you, Mr. Bolt.

25 Ms. Wiygul, does the defense intend to put up a

1 case?

2 **MS. WIYGUL:** Yes, Your Honor. The defense calls
3 Christopher Wymer.

4 **THE COURT:** Okay. All right. Come around, please,
5 sir.

6 CHRISTOPHER LEE WYMER,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. WIYGUL:

10 Q. Chris, could you, please, introduce yourself to this
11 jury.

12 A. I'm Chris Wymer.

13 Q. And where did you grow up?

14 A. I moved to Clinton, South Carolina, whenever I was
15 in elementary school.

16 Q. Okay. Have you lived in that area ever since?

17 A. Yes, ma'am.

18 Q. All right. Mr. Wymer, what do you do right now?

19 A. Right now I'm a full-time student.

20 Q. Okay. And what are you going to school for?

21 A. Business administration.

22 Q. All right. How are your grades?

23 A. 3.2.

24 Q. Very nice. Is that Dean's list?

25 A. I'm really not sure, to be honest with you. I don't

1 check none of that. I know I've got a 3.2 though.

2 Q. Okay. Do you remember April of 2011?

3 A. I remember the beginning of the day.

4 Q. Okay. Then let me just ask you what Mr. Scott
5 started this trial with. Boy, what were you thinking?

6 A. I wasn't thinking. I was doing a lot of drinking
7 and a lot of other things.

8 Q. Where were you drinking?

9 A. I started off the morning at my sister's house.

10 Q. Okay. Where does she lives?

11 A. She used to live in Clinton Manor. She lives on --

12 Q. We don't need an exact address. Just where did she
13 live?

14 A. Clinton Manor Apartments in Clinton.

15 Q. Okay. And so is it your testimony that on
16 April 27th of 2011 you were at your sister's house
17 drinking?

18 A. Yes, ma'am.

19 Q. Were you alone?

20 A. No, ma'am.

21 Q. Who was there?

22 A. The whole list?

23 Q. Sure.

24 A. It started off with my sister, Brandy Wymer, her
25 boyfriend, Joseph Abercrombie, her neighbor, Marcus

1 Wallace, a guy -- the last name is Suber. Marquis I
2 want to say his first name is. We call him Suber.
3 Mr. Threatt and his girlfriend showed up later on in
4 the day. Various people in and out of the apartment
5 complex coming in and out.

6 Q. Okay. Were you working at the time?

7 A. Yes, ma'am.

8 Q. Okay. Where were you working?

9 A. I was working for a contractor out of Greenville
10 named Paul Cely and John Cely Construction.

11 Q. Okay. If you were working, how was it you were
12 sitting at your sister's that day?

13 A. Well, I wasn't working that day. I was out on
14 medical. I had my jaw broke in three places.

15 Q. You had your jaw broke?

16 A. Yes, ma'am, but he was still, I mean, paying for me
17 to live. He was still writing me checks and --

18 Q. So your jury occurred at your place of business?

19 A. At work, yes, ma'am.

20 Q. Okay. Were you prescribed any medications for your
21 jaw injury?

22 A. Yes, ma'am.

23 Q. What prescribed medications were you taking on
24 April 27, 2011?

25 A. I was taking Lortab 7.5's, Demerol, 50 milligrams,

1 Phenergan.

2 Q. Okay. And were you drinking on top of those
3 medications?

4 A. Yes, ma'am.

5 Q. What were you drinking?

6 A. Wine, gin, Bud Light.

7 Q. Okay. At some point in the day, you said that
8 Mr. Threatt and his girlfriend got there?

9 A. Yes, ma'am, they brought the wine.

10 Q. Can you tell me what -- what kind of wine was it;
11 do you remember?

12 A. Big jugs.

13 Q. It was a jug?

14 A. Two of them.

15 Q. Okay. Red or white?

16 A. One was red, one was white.

17 Q. Okay. What happened?

18 A. I really honestly can't even -- I mean, the last
19 thing I remember was getting in the car. Whenever we
20 got in the car, it was me, Tim and his girlfriend,
21 Lou Ann.

22 Q. Okay. Who's car was it?

23 A. Tim's father's, if I'm not mistaken.

24 Q. Who was driving the car?

25 A. I was.

1 Q. Should you have been driving?

2 A. No, ma'am.

3 Q. Okay. Tell me what -- tell me what you recall
4 happening. Do you remember when his girlfriend got out
5 of the car?

6 A. No, ma'am.

7 Q. Do you remember where y'all were going?

8 A. No, ma'am. I don't think we had a destination in
9 mind.

10 Q. Okay. Tell me what you recall of that evening.
11 About what time did you and Mr. Threatt and his
12 girlfriend leave the apartment?

13 A. I have no idea.

14 Q. Okay. Was it dark?

15 A. Yes, ma'am.

16 Q. All right. Tell me what you recall after that.

17 A. I recall coming to Laurens. I bought beer at
18 the Li'l Cricket right down there.

19 Q. What kind of beer?

20 A. I bought Bud Light, he bought Budweiser. Bottles.

21 Q. How much?

22 A. A 12-pack apiece.

23 Q. Okay. Was that in the vehicle?

24 A. Yes, ma'am.

25 Q. Go ahead.

1 A. Then I remember getting arrested, being in
2 handcuffs, asking for a lawyer.

3 Q. Okay. You've heard the testimony today; is that
4 correct?

5 A. Yes, ma'am.

6 Q. You heard what these three gentlemen had to say?

7 A. Yes, ma'am.

8 Q. You heard what kind of fear they were in?

9 A. Yes, ma'am.

10 Q. Do you remember any of that?

11 A. No, ma'am.

12 Q. Do you believe them?

13 **MR. SCOTT:** No. No, ma'am. Pitting witnesses at
14 this point.

15 **THE COURT:** Right. Sustained.

16 BY MS. WIYGUL:

17 Q. Do you have any reason to disbelieve them, their
18 recollection of events?

19 A. No, ma'am.

20 Q. Do you recall being in the car with Mr. Threatt?

21 A. I recall getting in the car.

22 Q. Do you recall Mr. Threatt, how he was acting?

23 A. I mean, he's usually a pretty wild guy whenever,
24 you know, he gets a few drinks in him. I mean, there
25 ain't no doubt about that; he was drinking and wild.

1 Q. Is he wild enough to hang out a window?

2 A. Oh, yeah.

3 Q. Is he wild enough to try and jump onto a moving
4 truck?

5 A. He could be, yes, ma'am.

6 Q. Did you ever form any kind of agreement with
7 Mr. Threatt to try and commit any illegal act that
8 night?

9 A. No, ma'am.

10 Q. Did you know any of these three gentlemen --

11 A. No, ma'am.

12 Q. -- prior to that day?

13 A. No, ma'am.

14 **MR. SCOTT:** And, Judge, I want to extend some
15 latitude, but as far as leading questions to the
16 Defendant, I would ask that --

17 **THE COURT:** Okay. Try to rephrase your questions,
18 Ms. Wiygul.

19 BY MS. WIYGUL:

20 Q. Chris, had you ever seen any of these gentlemen or
21 had any recollection of seeing these gentlemen prior to
22 court?

23 A. No, ma'am.

24 Q. Have you ever been in trouble with the law?

25 A. Yes, ma'am.

1 Q. Were you actually convicted of possession of
2 cocaine?

3 A. Yes, ma'am.

4 Q. Did you have a jury trial on that charge?

5 A. No, ma'am.

6 Q. What did you do?

7 A. I pled guilty.

8 Q. What happened?

9 A. I left a bar one night at a birthday party and got
10 a little wild, we had too many drinks, the police came
11 up and -- a female officer asked to search my person and
12 as soon as she did, she went into the pocket that had
13 cocaine in it.

14 Q. And did you enter a guilty plea to that charge?

15 A. Yes, ma'am.

16 Q. What -- what did you get?

17 A. A year suspended to a year probation.

18 Q. Did you successfully complete probation?

19 A. Yes, ma'am, in five months.

20 Q. Mr. Wymer, do you have any recollection of being in
21 the woods with your pants and underwear around your
22 ankles?

23 A. No, ma'am.

24 Q. Do you have any recollection of walking through the
25 woods?

1 A. No, ma'am.

2 Q. Do you have any recollection of interacting with
3 Lieutenant Martin?

4 A. I interacted with somebody. I don't know exactly
5 who it was. I can't tell you who exactly I talked to.

6 Q. What do you recall about that interaction?

7 A. I told him I wanted a lawyer.

8 Q. Okay. Were you concerned about Mr. Threatt?

9 A. Yeah. I even asked about him in jail and
10 everything.

11 Q. Do you recall whether you were calm whenever you
12 were being placed under arrest?

13 A. I don't remember being very calm whenever --
14 whenever everything -- I'm at the car. I wouldn't say
15 I was calm.

16 Q. What would you say?

17 A. I mean, I was pretty much in a drunk rage you might
18 would call it maybe.

19 Q. Okay. Did you assault anyone?

20 A. No, ma'am.

21 Q. Did you cause any injury to anyone?

22 A. No, ma'am.

23 Q. Did you ever have any intention of attempting
24 to take the truck from these two gentlemen or the
25 eighteen-wheeler from Mr. Johnson?

1 A. No, ma'am.

2 Q. Do you know how to drive an eighteen-wheeler?

3 A. No, ma'am.

4 Q. Do you know how to start one?

5 A. No, ma'am. I've never physically sat in the
6 driver's seat of an eighteen-wheeler.

7 Q. Chris, do you have anything else that you'd like
8 this jury to hear?

9 A. I mean, besides the fact that I wasn't trying to
10 carjack anybody. I mean --

11 MS. WIYGUL: Okay. I don't have any further
12 questions. Thank you.

13 THE COURT: Thank you very much. Solicitor, any
14 cross-examination?

15 MR. SCOTT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. SCOTT:

18 Q. Mr. Wymer, you're 31 years old, correct?

19 A. Yes, sir.

20 Q. You're from Clinton, correct?

21 A. Yes, sir.

22 Q. You're very familiar with this area, correct?

23 A. Yes, sir, most of it.

24 Q. You went to Clinton High?

25 A. Yes, sir.

1 Q. You've been living here most of your whole life
2 then?

3 A. Yes, sir.

4 Q. Okay. And you're an educated fella. You're still
5 in school, right?

6 A. I try, yes, sir.

7 Q. You're in school right now, correct?

8 A. Yes, sir, I'm trying to get my education. I don't
9 have it yet. I don't have a degree yet.

10 Q. April 27, 2011, you remember that day?

11 A. Like I said, I remember the start of it mostly.

12 Q. Well, I mean, you were at your sister's in Clinton,
13 right?

14 A. Yes, sir.

15 Q. And your sister was there, right?

16 A. Yes, sir.

17 Q. And her boyfriend was there, correct?

18 A. Yes, sir.

19 Q. And even your sister's neighbor was there, correct?

20 A. Yes, sir.

21 Q. Marquis Suber was there?

22 A. Yes, sir.

23 Q. Wasn't he?

24 A. Yes, sir.

25 Q. Tim Threatt and his girlfriend were there?

1 A. Yes, sir.

2 Q. Others from the apartment. You remember all that?

3 A. (Nods head.)

4 Q. Wine, gin and Bud Light. Do you remember drinking
5 those three different types of alcohol?

6 A. That's what I started off drinking, yes, sir.

7 Q. You remember Tim Threatt bringing two jugs of wine;
8 one red, one white?

9 A. Yes, sir.

10 Q. You remember that. That's pretty detailed two or
11 three years ago; wouldn't you say?

12 A. Yes, sir.

13 Q. You remember jumping in the car with Mr. Threatt
14 and you remember driving a Grand Marquis, wasn't it?

15 A. A Grand Marquis, yes, sir.

16 Q. Do you remember going to the store with him?

17 A. I remember going to the store, yes, sir.

18 Q. As a matter of fact, you remember exactly what
19 Tim Threatt bought and what you bought?

20 A. Yes, sir.

21 Q. Because he bought twelve bottles of Budweiser and
22 you bought twelve bottles of Bud Light. Do you remember
23 that?

24 A. Yes, sir.

25 Q. You remember all these things with impressive

1 recall I would say. Wouldn't you say that's pretty
2 detailed-oriented?

3 A. Yes, sir.

4 Q. But yet it's your testimony to this jury that you
5 don't remember tearing up Highway 72 that night with
6 Mr. Threatt hanging out of the car?

7 A. No, sir.

8 Q. All right, sir. So you have selective memory when
9 it comes to that, correct?

10 A. If that's what you'd like to call it.

11 Q. What do you call it?

12 A. Drunk.

13 Q. I mean, you're talking about flavors of beers and
14 liquor and what is it you're having, what he's having
15 and who's at the party. You remember all that. I mean,
16 you just testified to it, right?

17 A. Yeah, that was the beginning of the party.

18 Q. Well, you remember stuff that happened after the
19 party, correct? You don't remember the woods, but you
20 remember being in the car and asking for an attorney.

21 A. Yes, sir.

22 Q. Okay. But we just need this jury to believe that
23 one block of time?

24 **MS. WIYGUL:** Objection, Your Honor. He's
25 testifying.

1 **MS. SCOTT:** Let me rephrase the question.

2 **THE COURT:** Rephrase your question.

3 BY MR. SCOTT:

4 Q. It's your testimony this one block of time
5 sandwiched in between those events that these three
6 folks will never forget for the rest of their lives,
7 but you just can't remember it?

8 A. No, sir.

9 Q. That's what you want that jury to believe?

10 **MS. WIYGUL:** Objection, Your Honor.

11 **THE COURT:** And the nature of your objection?

12 **MS. WIYGUL:** He's -- he's asking the witness what
13 he would like the jury to believe.

14 **THE COURT:** All right. I'll sustain it.

15 BY MR. SCOTT:

16 Q. That's your testimony under oath?

17 A. Yes, sir.

18 Q. Now Mr. Threatt, you've been knowing him since you
19 were around 11 years old?

20 A. Yes, sir.

21 Q. Do you remember when he was driving trucks?

22 A. Yes, sir.

23 Q. He could drive an eighteen-wheeler, couldn't he?

24 A. Yes, sir.

25 Q. All right. So you remember when you were blocking

1 those eighteen-wheelers, you remember when he was
2 pulling up beside those big rigs, that Mr. Threatt could
3 take it over? Do you remember that?

4 A. I don't recall pulling up on the other side of an
5 eighteen-wheeler, sir.

6 Q. You ain't denying it though, are you?

7 A. No, I am denying it.

8 Q. Well, how can you deny it if you don't remember?

9 A. Because I don't think I would do something like
10 that.

11 Q. But you did.

12 A. No, I didn't.

13 **MS. WIYGUL:** Objection, Your Honor. He's
14 testifying.

15 **THE COURT:** Okay. Argumentative. Rephrase.

16 BY MR. SCOTT:

17 Q. Are you denying that it happened?

18 A. I'm not denying -- I'm denying that I carjacked
19 somebody. Yes, sir, I am.

20 Q. How could -- out of one corner of your mouth you
21 say you don't remember.

22 A. Because I wouldn't do something like that, sir.

23 Q. Well, how do you know?

24 A. Because I know.

25 **MS. WIYGUL:** Objection, Your Honor. He's

1 continuing to be argumentative.

2 **THE COURT:** Okay. Well, it is -- wait a minute,
3 sir. I mean, it is cross-examination. Certainly
4 there's some -- some latitude there. Try not to be
5 argumentative with the witness, but, again, it is
6 cross-examination here.

7 BY MR. SCOTT:

8 Q. Okay. I don't want to keep going over a
9 well-trodden path, but what is it you're saying; you
10 don't remember or it didn't happen? Which one is it?

11 A. I mean, I don't remember it. I do not.

12 Q. Okay. But earlier when your attorney asked you did
13 you have any reason to disbelieve those three fellas you
14 said no, you had no reason to disbelieve them, correct?

15 A. I mean, I wouldn't want to call them a liar.

16 Q. Okay. That wouldn't be very nice. You know, are
17 you denying that you blocked the road with your Grand
18 Marquis?

19 A. I mean, I can't tell you if I did or not. I told
20 you I don't remember it.

21 Q. But you're not denying it. Certainly you're
22 admitting to driving the vehicle?

23 A. Yes, sir, I am admitting to driving the vehicle.

24 Q. Okay. How did you get your jaw broken?

25 A. We were hauling a gas tank from Spinx off 418 and

1 Fairview Road behind a dump truck and something caught a
2 dog, it's a ratchet binder for a chain. We got to the
3 scrap yard in Gray Court and a guy from New Orleans was
4 coming to pick it up and make a grill out of it and
5 whenever I popped the rear ratchet binders off with a
6 piece of pipe, it hit me in the chin and fractured my
7 jaw in three places.

8 Q. Is it a ratchet kind of like that?

9 A. No, it's actually that binder that holds the chain
10 going over the gas tank to strap it down to a trailer.
11 You take a piece of pipe, it's called a dog, that's what
12 we called it, you secure it down, then you have to use
13 the same pipe to break it loose.

14 Q. Do you remember Threatt getting hit upside the head
15 with that pipe that night?

16 A. No, sir.

17 Q. You testified earlier you were very concerned about
18 Threatt when you went to the jail and were asking about
19 him.

20 A. Yeah, and I still had on clothing covered in blood.

21 Q. How did you know what happened to him if you don't
22 remember?

23 A. Because the jailer told me I was being held for
24 attempted murder.

25 Q. You weren't charged with attempted murder.

1 A. I know. That's what I was told.

2 Q. How does that make you -- you thought you killed
3 Threatt?

4 A. They said that I killed Threatt is what I was told
5 when I woke up the next morning. I asked where my
6 tickets were, they said warrants for attempted murder,
7 and that he was in the hospital and may not make it.

8 Q. Okay. You didn't get any warrants for attempted
9 murder.

10 A. I know, but that's what they were telling me.

11 Q. Okay. I want this absolutely clear. Your testimony
12 is you recall everything up to stopping and getting
13 twelve bottles of Bud Light, Threatt got twelve bottles
14 of Budweiser, then you have a lapse where you don't
15 remember anything, no memory of the woods, but then you
16 do remember asking for a lawyer and you do remember
17 being in a drunk rage. Is that accurate?

18 A. Yes, sir.

19 Q. Your testimony is you have no recollection of what
20 happened in the car?

21 A. Yes, sir. I mean, I have no recollection of what
22 even happened to the beer.

23 MR. SCOTT: Thank you.

24 THE COURT: Redirect?

25 MS. WIYGUL: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. WIYGUL:

Q. Mr. Wymer, would you intentionally cause someone harm?

A. No, ma'am.

Q. Have you been asked over the past three years since this incident to write down everything you could remember and make every effort you could to remember everything about that day?

A. Yes, ma'am.

Q. And have you done so?

A. There wasn't nothing to write.

Q. Have you told this jury everything you remember --

A. Yes, ma'am.

Q. -- about the night of April 27, 2011?

A. Yes, ma'am. I don't have to write it down. It's memory.

MS. WIYGUL: Thank you, sir. No further questions.

THE COURT: Thank you for your testimony, sir. You can step down. You can step down, sir.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Anything further from the defense, Ms. Wiygul?

MS. WIYGUL: Your Honor, the defense rests.

1 **THE COURT:** Okay. Thank you very much. Any reply,
2 Solicitor?

3 **MR. SCOTT:** No, sir, Your Honor.

4 **THE COURT:** Okay. Mr. Foreman and ladies and
5 gentlemen of the jury, this concludes the evidentiary
6 part of this trial. What we have left to do in this
7 trial is the lawyers will make their closing arguments
8 and then I will charge you on the law involved in this
9 case. Since we're at about a quarter till five, I don't
10 see any need for us to go any further today, so we're
11 gonna go ahead and adjourn for the day.

12 Now let me tell you because of some scheduling
13 matters we're not gonna start back tomorrow until 2:00
14 at which time the closing arguments will take place, I
15 will charge you on the law and then I will give you the
16 case, so you can start your deliberations only after all
17 that is done.

18 So for this afternoon we're gonna go ahead and
19 adjourn for the day and I'll ask you to be back here
20 promptly at 2:00. And, again, I have to remind you not
21 to discuss this case, anything about this case, anything
22 that you have heard today, amongst yourselves or with
23 anybody that you come into contact with; family,
24 friends, neighbors, whoever that you may see this
25 evening. They may -- as I think I may have mentioned

1 yesterday, they may try to grill you pretty hard to find
2 out what all took place today, but just tell them the
3 judge has told me I cannot talk about the case.

4 And, again, I remind you don't do any independent
5 research. Don't go on the Internet and try to find out
6 what the law is or anything about this case. You can't
7 do it.

8 Okay. So with that said, have a great afternoon,
9 a great evening, and I'll see you tomorrow at 2:00.

10 (Whereupon, the jury was excused for the day at
11 4:47 PM.)

12 **MS. WIYGUL:** Your Honor, we would renew our motion
13 under Rule 19 for a directed verdict.

14 **THE COURT:** Okay. Thank you very much. Your
15 motion is respectfully denied.

16 Let's -- let's just take this opportunity for --
17 I tell you what, it may be good, let's just kind of
18 chat informally back in chambers for just a couple of
19 minutes about charges and whatever we need to put on
20 the record we can certainly do that if y'all have just
21 a few minutes.

22 **MS. WIYGUL:** Yes, Your Honor.

23 **THE COURT:** Okay. Let's do that. All right. We'll
24 be in recess until 2:00 tomorrow.

25 (Whereupon, the proceedings were concluded for

1 October 7, 2014.)

2 (The following proceedings were held on October 8,
3 2014.)

4 **BAILIFF:** Let's all rise. Court come to order,
5 please.

6 **THE COURT:** Thank you very much. Have a seat.
7 Good afternoon, everybody.

8 **MS. WIYGUL:** Good afternoon.

9 **THE COURT:** Okay. We're on the record in the trial
10 of the State of South Carolina versus Christopher Wymer.
11 We're at the stage of arguing and charging the jury.

12 Ms. Wiygul, I think you have a matter concerning a
13 newspaper article.

14 **MS. WIYGUL:** That's correct, Your Honor. It was
15 brought to my attention that there is an article, which
16 I've laid a copy up on the bench for the Court,
17 regarding this trial. It references specifically
18 quotes from witness statements, from victim statements,
19 and has a bunch of information in there that is not
20 before this jury. We just ask that the Court poll the
21 jury and see if anyone read it.

22 **THE COURT:** I think that would be a good idea. I
23 did just a moment ago in chambers read the -- read the
24 article and I think it would be -- and, hopefully, they
25 followed my initial instruction and did not read any

1 newspaper accounts.

2 Does the State have a position on this?

3 **MR. SCOTT:** No, sir. Ms. Wiygul, brought it to my
4 attention today. I didn't have any idea.

5 **THE COURT:** I'll ask the jury if they -- and I'll
6 be specific to the Laurens County Advertiser. Now
7 there's a Clinton Chronicle, which, Ms. Wiygul, you may
8 be aware of, and I don't know if there's anything in
9 that. Has anyone read the Chronicle?

10 **MS. WIYGUL:** And, Your Honor, this information was
11 brought to my attention by one of the court bailiffs,
12 so I have no information on that.

13 **MR. MOWRY:** And nothing in the Greenville News,
14 Your Honor. I can attest to that.

15 **THE COURT:** Right. I'll ask any other newspapers,
16 but I'll specify the Advertiser.

17 **MS. WIYGUL:** And could the Court also specify any
18 online articles?

19 **THE COURT:** I'll do online, any radio accounts,
20 anything in addition to the Laurens Advertiser. I'll
21 do that.

22 **MS. WIYGUL:** Thank you, Your Honor.

23 **THE COURT:** All right. Now the charge -- has
24 everybody had an opportunity to review the proposed
25 charge?

1 **MR. SCOTT:** Yes, sir.

2 **THE COURT:** And is there any objections? And,
3 certainly, after I give the charge, y'all know you have
4 every right to take any exception or objection to the
5 charge, but at least at this stage is there any problems
6 with the charge from the State?

7 **MR. SCOTT:** No, sir.

8 **THE COURT:** From the defense?

9 **MS. WIYGUL:** Your Honor, no problem as to the actual
10 language. We would request that the charge regarding
11 involuntary intoxication be move in the charge to before
12 the hand of one, hand of all. I think it's like one of
13 the last things in the charge and I feel like it would
14 be more appropriately back before the hand of one, hand
15 of all instruction.

16 **THE COURT:** Okay. Would your request be directly
17 before the hand of one?

18 **MS. WIYGUL:** Yes, Your Honor.

19 **THE COURT:** Okay. I don't -- I don't have a
20 problem with that. Solicitor?

21 **MR. SCOTT:** No, sir.

22 **THE COURT:** Let me -- let me make a note to do the
23 involuntary intoxication right here.

24 **MS. WIYGUL:** Thank you, Your Honor. And just for
25 clarification purposes, I noticed that some of the

1 language in the charge is in parentheses and did not
2 seem to apply to this case and I'm assuming that that
3 language just wouldn't be read out loud.

4 **THE COURT:** Let me --

5 **MS. WIYGUL:** I think there was one place where it
6 said his/her.

7 **THE COURT:** Right, and that's just in the charge
8 so, you know, you can make it gender applicable.

9 **MS. WIYGUL:** Your Honor, there was one additional
10 charge that we'd like to request, but I don't have the
11 specific language. I think it is available in the
12 Bench Book and in Ralph King Anderson's book, and that
13 is simply an instruction that law enforcement has no
14 more credibility than any other lay witness.

15 **THE COURT:** Right, and that has -- that charge has
16 been requested in other trials I've presided over, and
17 I've denied that, but certainly you have made that
18 request and you're protected on the record. I typically
19 don't like to charge that.

20 **MS. WIYGUL:** And, Your Honor, I found what I was
21 referencing in parentheses. It's on Page 15 under the
22 prior record of Defendant and it just says committed a
23 bad act, not the subject of conviction.

24 **THE COURT:** Page 15?

25 **MS. WIYGUL:** Yes, sir.

1 **THE COURT:** Right, that's -- that's right. That
2 will not be charged.

3 **MS. WIYGUL:** Thank you, Your Honor.

4 **THE COURT:** Okay. And the verdict form is okay as
5 well?

6 **MR. SCOTT:** Yes, sir.

7 **THE COURT:** Ms. Wiygul?

8 **MS. WIYGUL:** Yes, Your Honor.

9 **THE COURT:** Okay. And so are both sides ready to
10 make their opening -- I mean, their closing?

11 **MR. SCOTT:** Yes, sir.

12 **MS. WIYGUL:** Yes, sir.

13 **THE COURT:** All right. And, Solicitor Scott, you
14 typically do not open on the law and just argue in full
15 after the defense?

16 **MR. SCOTT:** Yes, sir.

17 **THE COURT:** You typically do that.

18 **MR. SCOTT:** Yes, sir.

19 **THE COURT:** All right. Well, let's get going and
20 let's bring the jury out, please, Mr. Bolt.

21 (Whereupon, the jury enters the courtroom at
22 2:09 PM.)

23 **BAILIFF:** All jurors present, Your Honor.

24 **THE COURT:** Thank you, Mr. Bolt. Good afternoon,
25 ladies and gentlemen of the jury.

1 One matter that I want to take up before we go
2 into the closing arguments, if you will remember in my
3 preliminary instructions yesterday I instructed you that
4 if there were any media accounts, whether newspaper,
5 Internet, radio, TV, of this case for you not to look
6 at that, and it's been brought to my attention that the
7 today's copy of the Laurens Advertiser has a front page
8 story about this particular case. I don't know about
9 the other papers that are -- well, we know the
10 Greenville News did not and I don't know about the
11 Clinton Chronicle, but I need to poll you to make sure
12 that my instructions were followed and that, in fact,
13 you have not read the Laurens Advertiser and any other
14 media outlet whether on the Internet, radio or TV.

15 So, Madam Clerk, do you have a list handy of the
16 jury?

17 **THE CLERK:** Yes, sir.

18 **THE COURT:** Would you poll each one and please
19 indicate whether or not you have followed my
20 instructions and have not considered the Advertiser
21 and any other media outlet.

22 **THE CLERK:** Antonio Hill, yes or no?

23 **THE JUROR:** No.

24 **THE CLERK:** Okay. William R. Knight?

25 **THE JUROR:** No.

1 **THE CLERK:** Okay. Jay A. Stubblefield?
2 **THE JUROR:** No.
3 **THE CLERK:** Jean Kay Swanson?
4 **THE JUROR:** No.
5 **THE CLERK:** Christian L. Griffin?
6 **THE JUROR:** No, ma'am.
7 **THE CLERK:** Daniel B. Nelson?
8 **THE JUROR:** No, ma'am.
9 **THE CLERK:** Shannon Lattimore?
10 **THE JUROR:** No.
11 **THE CLERK:** Christopher D. Champaign?
12 **THE JUROR:** No.
13 **THE CLERK:** John P. Tyler?
14 **THE JUROR:** No.
15 **THE CLERK:** Joe K. Turner?
16 **THE JUROR:** No.
17 **THE CLERK:** Deena M. Medlin?
18 **THE JUROR:** No.
19 **THE CLERK:** David E. Crocker?
20 **THE JUROR:** No, ma'am.
21 **THE CLERK:** And Adam N. Mills?
22 **THE JUROR:** No, ma'am.
23 **THE CLERK:** Thank you.
24 **THE COURT:** Thank you, Madam Clerk. And thank you,
25 ladies and gentlemen of the jury.

1 At this time, the lawyers will make their closing
2 arguments to you. After that's done, then I will give
3 you the final instructions. Please give these lawyers,
4 they worked real hard in this case, give them your
5 undivided attention. Thank you. Ms. Wiygul.

6 **MS. WIYGUL:** Thank you, Your Honor. Absolute power
7 corrupts absolutely. That's a quote that most people
8 have heard at some point in their life. It's been
9 around a long time and it's around because it's true.
10 When people get a certain amount of power, historically
11 it's been shown they no longer feel like they have to
12 follow the rules.

13 In this country, people are protected. They're
14 protected by our constitution, they're protected by our
15 state laws, they're protected by procedures and training
16 and policies that are put in place within the police
17 departments on a local level.

18 What kind of policies, what kind of procedures are
19 put into place to protect people? Well, Miranda forms.
20 A simple piece of paper that has the Miranda rights
21 listed. They sign it. That verifies that they were
22 told of those rights. What else exists? Recording
23 devices. Recording devices are standardly used now
24 whenever suspects are interviewed. Why did this happen?
25 Well, unfortunately it happened because police are human

1 and there's good ones and there's bad ones. And you
2 can't take someone's word that something happened just
3 because they're cops.

4 So these procedures have been put in place. None
5 of these procedures were followed in this case by this
6 man, Lieutenant-Sergeant-Investigator Martin. He sat
7 on this stand and he told you he could have recorded
8 his conversation that he supposedly had with Mr. Wymer.
9 He just chose not to. We've heard from these three
10 gentleman that the forms were in the police vehicles,
11 so they were right there.

12 What else did we hear from these three gentlemen?
13 We heard that they each were provided forms to write
14 their statement out on. Two of them were provided that
15 form by Mr. Martin; or investigator or lieutenant.

16 What did they not see? Because, if you'll recall,
17 I asked them did Investigator Martin show you any
18 pictures, show you any documents, show you anything else
19 other than this blank form that he told you to write
20 your statement on? No, he did not. No, he did not.
21 No, he did not. But this investigator sat on that stand
22 and told you that he showed all three of these gentlemen
23 photo lineups with Mr. Wymer in it and that they picked
24 him out of the photo lineups. Well, we don't have them.
25 He doesn't have them. The Solicitor's office doesn't

1 have them. Those gentlemen never saw any such thing.

2 In the State's opening, Mr. Scott told you that
3 solicitors are tasked with enforcing the law. No
4 they're not. They're tasked with prosecuting people
5 that are charged with crimes. Law enforcement is tasked
6 with enforcing the law. Prosecutors are tasked with
7 trying to convict people when officers like this charge
8 them.

9 An old boss of mine told me when I started
10 practicing law you dance with the girl you brought.
11 You don't get to pick your cases, you don't get to pick
12 the facts. You don't get to pick your investigators.
13 Neither does Mr. Scott. All he has to work with is
14 what this man gave him. Mr. Scott told you this is an
15 old-fashioned trial. Well, he wants to make it an
16 old-fashioned trial. He wants to make it the kind of
17 trial where an officer can stand up and tell you that
18 man's guilty and you'll say okay, yes, sir, officer,
19 because that's what an old-fashioned trial was.

20 Well, this is 2014. This incident occurred in
21 2011. It's not old-fashioned. It's not old-fashioned
22 because there's modern equipment that can be used,
23 there's modern policies to be followed, there's modern
24 procedures that have been taught to protect the rights
25 of individuals.

1 You've heard about some of the -- some flat-out
2 mistakes made in this case. Scrivener's errors on the
3 charging documents. Oh, it's okay, it's just a mistake.
4 It just lists an entirely different year, make and model
5 of the vehicle. That's all. No big deal. Oh, the
6 incident location where the Defendant was arrested?
7 Different addresses in everybody's incident report. Oh,
8 that's no big deal. It's just a mistake. But we know
9 Investigator Martin didn't make a mistake whenever he
10 chose not to record his interaction with Mr. Wymer.

11 Let's talk some more about what Investigator Martin
12 told you. It's kind of without argument that when
13 Mr. Wymer was located he had parked in the front of this
14 house, whatever address it may be, right here. He had
15 not pulled back behind the building or attempted to hide
16 the vehicle, he just parked, and then he went stumbling
17 off in the woods, had his shorts and underwear around
18 his ankles and they found him face down in the woods.
19 But he was completely sober. Think about things that
20 make sense. Think about things that don't.

21 Investigator Martin told you that Mr. Wymer was very
22 cooperative at the scene, he was very calm. They had no
23 problems with him. He asked to speak with Investigator
24 Martin and just gave a full confession and then he asked
25 for a lawyer.

1 What did we hear from these three gentlemen? Well,
2 we heard that at least two of them went by this scene.
3 They went here. What did they see? They saw Mr. Wymer
4 screaming and acting the fool and bashing his head
5 against the police car. Sober, calm and cooperative?
6 Drunken rage? Well, Mr. Wymer told you he had vague
7 memories of showing out in front of the cops. He wasn't
8 sure what he was charged with when he woke up in jail
9 the next morning, but he knew he had been showing out.
10 Drunken rage, banging heads against the police vehicle,
11 screaming or calm and cooperative with the police?

12 Well, some of these things can't -- you can't
13 believe both of them, so you're gonna have to choose.
14 Do you believe these gentlemen, do you believe him?
15 These three gentlemen took the stand and they told you
16 everything that they can recall about that evening.
17 Mr. Ortscheid, and I apologize if I'm mispronouncing the
18 names, told us that when the Grand Marquis was parked in
19 the road and was blocking it and Mr. Threatt was out of
20 the vehicle and coming towards them, the driver of the
21 vehicle pulled the vehicle forward so that their truck
22 could get around it. That's not someone trying to
23 carjack a vehicle. That's someone trying to get off the
24 roadway and out of their way.

25 He also told us that he went with Eddie Bridges

1 to this address on Highway 72 and he saw Mr. Wymer in
2 handcuffs against a police vehicle yelling and screaming
3 and slamming his head against the police car. Eddie
4 Bridges went with Mr. Ortscheid to Highway 72 and he
5 told us he saw Mr. Wymer in handcuffs banging his head
6 against the police car.

7 Tylon Johnson, what did he tell us? He told us the
8 car was weaving, told us what happened, told us all the
9 craziness by Mr. Threatt, said that when the car stopped
10 it was at a 33 -- a 30-degree angle in the street, said
11 that the passenger came towards his vehicle and he told
12 him don't open that door and when Mr. Threatt kept
13 approaching, Mr. Johnson exited the vehicle. What he
14 did not say and what Mr. Scott told you you would hear
15 is that Mr. Threatt grabbed him. We didn't hear about
16 that.

17 Now Mr. Johnson was as honest as he could be and
18 he told you, and I wrote it down and put it in big
19 quotes with a star, he did not know what Mr. Threatt's
20 intentions were. He didn't take the stand and say
21 Mr. Threatt demanded that I give him the keys to my
22 vehicle, he didn't say that Mr. Threatt said I want
23 your vehicle, give me the vehicle. We didn't hear that
24 from anybody. We've heard about some really bad
25 driving, we heard about some really bizarre behavior

1 from Mr. Threatt and Mr. Wymer, but we didn't hear
2 anything about anybody trying to take a vehicle, and
3 that's what we're here for.

4 Mr. Johnson was also very honest in that Mr. Wymer
5 never came close to him. Now we know that's true
6 because he thought that Mr. Wymer was more slender than
7 Mr. Threatt and we know from the booking report that
8 Mr. Threatt outweighed -- I'm sorry, Mr. Wymer
9 outweighed Mr. Threatt by 70 pounds.

10 We know that Mr. Wymer had \$70 cash on him when he
11 was arrested. We know that he was suffering from a
12 fractured jaw and that he was on some pretty strong
13 pain medication as well as Phenergan and that he had
14 been drinking with it. Now if he were drunk and messed
15 up on these drugs and went up to someone and said get
16 out of your car, I'm taking it, well, he'd still be
17 guilty of carjacking, it doesn't matter how messed up
18 he is, but this gentleman told us that Mr. Wymer
19 appeared completely sober. He also told us that in
20 the confession Mr. Wymer said that he was going to help
21 Mr. Threatt carjack cars so that Mr. Threatt would help
22 him buy pills. Well, he didn't need any pills. He
23 had prescription pills and he had \$70 in his pocket.
24 Laurens is a great place, but there are very few places
25 in South Carolina if you have \$70 cash that you can't go

1 find some pills if you want them. So he had the money,
2 he had income. He had no need to get Mr. Threatt's
3 assistance with anything.

4 Now Mr. Wymer told us he's in school, he's trying
5 to complete his education. He admitted freely he had a
6 drug conviction from years ago. He finished -- he got
7 probation, he finished it early. He's tried to get his
8 life back together. He took the stand and you heard him
9 speak. This is not a stupid man. I submit to you that
10 somewhere in the Laurens-Clinton area on the night in
11 question if Mr. Wymer or Mr. Threatt actually wanted to
12 carjack someone there were easier ways to go about it.
13 There are plenty of people at Wal-Mart at 3:00 in the
14 morning in the parking lot, not in moving vehicles going
15 down the Interstate or going down Highway 72.

16 So Mr. Scott seemed to think it was a very big deal
17 that Mr. Wymer could remember bits and pieces of that
18 day and bits of pieces of that night, but not all of it.
19 Well, I've seen people on drugs and I've seen people
20 under the influence of alcohol, and most people have,
21 and most people have talked to some of those people the
22 next day and realized that they didn't have a full
23 memory of events because that is how alcohol and drugs
24 affect someone. They do affect the memory. What they
25 don't tend to affect is a person's basic nature. I

1 submit to you that it's not in Mr. Wymer's basic nature
2 to try something like this. If he was gonna be violent
3 in that manner, it would have happened a long time ago.
4 What he did admit was there's no way he should have
5 gotten behind the wheel that night. He shouldn't have
6 been driving. He was driving like an idiot. We are
7 lucky someone did not die, but not because of an
8 attempted carjacking, just because there's a drunk
9 driver on the road. But they didn't choose to charge
10 him with DUI. They chose to charge him with attempted
11 carjacking.

12 I anticipate in Mr. Scott's closing that he's gonna
13 make a really big deal out of a legal theory called hand
14 of one, hand of all, and that means basically that if
15 two people enter into an agreement to commit a crime and
16 they both intend to commit that crime and A shoots
17 somebody, then B is responsible for it just as much as
18 A is, and that's true, but there has to have been the
19 intent to commit the crime. Not one person driving
20 drunk while his crazy drunk passenger was jumping out
21 of a moving car, out -- crawling out the window. If
22 Mr. Wymer was attempting to help Mr. Threatt reach these
23 vehicles, he could have done a lot better job of it.
24 But what did we hear? The only time he exited the
25 vehicle was after Mr. Johnson had laid Mr. Threatt out

1 in the street.

2 Now Mr. Johnson didn't do anything wrong. He was
3 acting in self-defense because he was scared of
4 Mr. Threatt, and who can blame him, but what do we know?
5 He had no idea what Mr. Threatt's intentions were, but
6 they didn't charge anyone with assault. They charged
7 them with attempting to take the vehicle and that just
8 didn't happen.

9 Absolute power corrupts absolutely and this isn't
10 an old-fashioned trial. No photo lineups, no recording,
11 no forms, no care, no effort. I submit to you that this
12 gentleman decided he wanted somebody convicted for
13 carjacking so he set his goal and then he did everything
14 he needed to to reach that goal whether it was right or
15 not. That's not how you investigate a case. You don't
16 -- you don't start a case with an end goal in mind. You
17 investigate it. You find out did anyone ever actually
18 attempt to take a vehicle? Why, no, they didn't.
19 Perhaps carjacking would not be the appropriate charge
20 in this case. No, he said, huh, carjacking. Well,
21 yeah, he confessed to it. Oh, no, nobody heard him.
22 Lots of cops there, but nobody heard him but me. No, I
23 didn't record it even though I could have. No, no, I
24 didn't get a written Miranda form. Sorry. You just
25 believe me because I'm the police. Well, we know how

1 that goes. That's why these policies and procedures are
2 in place. Because they protect good cops, they protect
3 people that do their job by the books and do adequate
4 investigations. They protect individuals. What they
5 don't protect is somebody that wants to take shortcuts.
6 They don't protect somebody that lies. We're confident
7 that there is reasonable doubt all over this case.
8 The three gentlemen who had their night disrupted so
9 horribly told you he didn't show them anything, but he
10 says he did. If he'll lie about that, why would he tell
11 the truth about anything else?

12 The judge is gonna tell you what I told you in my
13 opening. This man is cloaked in a cloak of innocence.
14 He's not guilty. He's sure not guilty just because that
15 man says he is. Not of what he's been charged with.
16 Thank you.

17 **THE COURT:** Thank you, Ms. Wiygul. Solicitor Scott,
18 are you ready?

19 **MR. SCOTT:** Yes, sir. It's a wild set of facts. It
20 leaves you wondering what were you thinking, doesn't it?
21 Brian Ortscheid and Eddie Bridges, they're out doing
22 their jobs. Tylon Johnson, he's out doing his job.
23 What's Chris Wymer doing? What were you doing and what
24 were you thinking? 3 AM. You think Brian Ortscheid and
25 Eddie Bridges knew what they were in for when they were

1 leaving that cell phone tower on Lake Greenwood? What
2 was going through their minds when they're getting
3 towards Clinton and they see that Grand Marquis speeding
4 up behind them with the dome light on? It looks like
5 these guys need help.

6 I'm glad we have people like them because I would
7 have kept going, but these guys stopped because they've
8 got a guy waving out the window at them with the dome
9 light on. They appear like they need them to stop
10 because they need help. Mr. Ortscheid pulls that F-350
11 over him, then Threatt comes running at them in an
12 aggressive manner, and he takes off.

13 What does Mr. Wymer do? He's driving the car. That
14 could have been the end of it right there if he's just
15 merely a drunk driver, but, no, he jumps in the car,
16 waits for his buddy to get back in and chases after
17 them. What's his intent? He's not out there joyriding.
18 What's his intent? He tracks them down and passes ahead
19 of them, pumping the brakes. What's his intent? He
20 tries to run them off the road. What's his intent? He
21 ain't just out joyriding at 3 AM. No, he's not just a
22 drunk driver. He's a carjacker.

23 What's going through their minds? My God, I'm
24 thinking, that's terrifying stuff right there. A
25 desolate road, 3 AM at night, and you've got these two

1 maniacs trying to run you off the road. At some point
2 they turn off a side road. These guys were on the phone
3 with 9-1-1. They're thinking, oh, God. They have some
4 form of relief about them, think these guys are gone.
5 That relief is apparently just short-lived because here
6 they come again and at this point they're getting
7 towards the national forest where the lanes turn to two
8 lanes and here comes the Grand Marquis again. The same
9 stuff; trying to run them off the road, getting in front
10 of them, pumping the brakes. Mr. Ortscheid is able to
11 outmaneuver them and get around them every time he does
12 it, but, you know, what is -- what are they trying to
13 do? They're trying to stop the rig so they can take his
14 truck. He shoots ahead of them, anticipates these guys
15 are gonna take I-26, so Mr. Wymer blocks the entrance
16 ramp to I-26.

17 And, you know, I think Ms. Wiygul's recollection
18 of the testimony differs from mine in a few aspects; one
19 of which she says Mr. Wymer never gets out of the car.
20 Well, these guys say that both of them get out of the
21 car and sit there waiting for the truck to try to enter
22 the ramp that they have blocked off. They see him.
23 He's standing outside the car blocking the ramp. They
24 decide to go straight because the road to I-26 is
25 blocked by this Grand Marquis driven by Mr. Wymer.

1 Mr. Wymer puts it in reverse, shoots ahead of them
2 again.

3 And this goes on for six miles or so, 30 or
4 40 minutes was the testimony that these guys are on
5 them, swerving, braking. Mr. Wymer pulls that gold
6 Grand Marquis, blocks the two lanes of Highway 72 out
7 in the middle of this -- this forest. Mr. Ortscheid
8 sees him coming and stops about 50 yards to give them
9 some distance and here comes Mr. Threatt again running
10 at them. Mr. Ortscheid said he waited until he was
11 right by the truck, then he takes off because he knows
12 that Mr. Wymer is gonna have to wait for his buddy to
13 get back in the car before he can pursue them again.
14 He waits until Mr. Threatt's right there and he starts
15 pulling forward and Mr. Wymer's got the road blocked.

16 Again, Ms. Wiygul's recollection of events and the
17 testimony is different than mine because Mr. Ortscheid
18 and Mr. Bridges both testified they attempted to go
19 around the front of the Grand Marquis, all right, and
20 this man decides to pull it forward to block them.
21 That's when they juke around to the back, take off, and
22 while Mr. Wymer's waiting for his buddy to get back to
23 the car they shoot on down the road, take a number of
24 back roads and allude these guys.

25 But it's just drunk driving, right? I mean, that's

1 all he's guilty of according to Ms. Wiygul, but it ain't
2 over. They're not done because here comes Tylon Johnson
3 now in his eighteen-wheeler. The same thing. He had
4 been alerted through his CB that some guy's out here
5 blocking roads and what are these guys doing, so he's on
6 the lookout for these guys. He doesn't see them, but
7 before he knows it though there's a car right up on his
8 tail so close he said he doesn't understand how they
9 were able to get that close because he that timber
10 hanging off the back, but there they are.

11 They pull around to the left and try to pass him in
12 the other lane, just as easy and deliberate as you want,
13 pulls right beside them. That's Mr. Wymer driving by
14 the way. He positions the car, he's driving the same
15 speed as Mr. Johnson, they're right by the driver's
16 door. What's his intent? He's trying to position it
17 so his buddy can jump on the rig. That's exactly what
18 he's trying to do. That's what Mr. Johnson said.

19 Imagine his surprise when he looks down and this fella
20 is hanging out the door trying to grab onto his mirror
21 bracket. He's been trucking for 30 years, but he's
22 never seen anything like that. He's seen a lot, but
23 never anything like that. He taps the brakes and
24 Mr. Wymer goes on ahead, but Mr. Wymer's just drunk
25 driving, right? He pulls in front of the big rig and

1 starts pumping the brakes.

2 Again, the same thing as he was doing with the
3 F-350 that Mr. Bridges and Mr. Ortscheid are in.
4 Mr. Johnson's able to, again, avoid them, avoid wrecking
5 into them, gets around them. Eventually they are even
6 stopped. The same maneuvers he did with Mr. Ortscheid,
7 Mr. Wymer, the driver of the vehicle, but we're supposed
8 to believe he's just out having a good time. He's just
9 a drunk driver. He blocks the road again. Ditches on
10 either side. He can't drive the eighteen-wheeler around
11 them, but he stops and he's in his cab.

12 Sound familiar? Here comes Mr. Threatt running at
13 him again. He's got his headlights shining on that
14 Grand Marquis that Mr. Wymer's sitting in and here comes
15 Mr. Threatt. He said don't you get in this cab. Why
16 not? He jumps in there. He's trying to get a knife out
17 of his pocket. This is all happening like that. The
18 only thing he can think of is this. Thank God he had
19 that. He's pushing the guy out the window, the guy
20 keeps coming.

21 It's a bizarre set of facts, it's just wild, but it
22 shouldn't be lost on you how terrifying that must have
23 been. I mean, you're out in the middle of nowhere and
24 these guys have you stopped on the road and they're
25 trying to get in the cab with you. He said I just knew

1 if they get me in between them seats I'm dead. So
2 that's what's going through his mind.

3 I mean, we're looking at it like this is a crazy
4 set of facts, but the man thought he was gonna die that
5 night. He really did. In his mind, a fight of life
6 and death. We're lucky we're not dealing with somebody
7 who's dead right now, whether it be Mr. Threatt, who got
8 this upside the head, or whether it be Mr. Wymer because
9 these guys had a gun and they would have been justified
10 in using it. And all this driving. I mean, we're lucky
11 somebody didn't run off the road. It just -- we're
12 lucky this is all that's happened, but it could have
13 been so much worse.

14 Again, Ms. Wiygul says there was no contact.
15 Mr. Johnson clearly said they were arm to arm at one
16 point. He had to take the thing and hit him in the
17 ribs to make him stop, but that didn't stop him, he
18 keeps coming. Eventually he is able to knock him
19 out with this thing right across the head and hit
20 Mr. Threatt, but in his mind it's not over yet because
21 there's Mr. Wymer in the car. He doesn't know does he
22 have a gun. What's he gonna do? I mean, these guys
23 sounded pretty much capable of anything in this short
24 time I've been exposed to them.

25 So he hunkers down by the eighteen-wheeler and he's

1 watching and out comes Mr. Wymer. He sees his buddy on
2 the ground, catches a glimpse of Mr. Johnson and runs
3 back to the car. Again, Mr. Johnson, what's he going to
4 do? Is he going to get his gun? He jumps in his truck
5 and he takes off and heads down the road trying to get
6 away from that -- those two guys and he's able to do so.
7 At some point Mr. Wymer is able to collect his buddy,
8 throw him in the car, and you saw the blood in the Grand
9 Marquis passenger seat.

10 The cops respond and they have a description of the
11 car, pass it, are able to do a U-turn and follow it, and
12 this is where Mr. Wymer -- they've got an "X" on it
13 right there, but there's the location they finally stop
14 at. See all this forest back there? He pulls the Grand
15 Marquis in there, jumps out and runs out into the woods.
16 The cops chase him out there and they find him and he's
17 face down. I submit he's trying to hide, why else would
18 he be out in those woods, but they catch him. They
19 bring him back, they said he was compliant. I don't
20 know that anybody said he was not drunk. They said he
21 could understand their demands, which was, you know, put
22 your hands behind your back, walk with us to the car.
23 They get him to the car and he's detained at that time.
24 Now Chris Martin, he's been called out there. It's
25 3 AM. He's an investigator. The patrol units respond

1 to the scene and they call the investigator to try to
2 figure out what in the world is going on, who do I need
3 to talk to, what happened here. He opens the door.
4 Mr. Wymer, do you care to tell me what happened? Yeah,
5 I'll talk with you. He reads him his Miranda rights and
6 that's when he says my buddy Threatt asked me -- told me
7 if I helped him carjack some cars, he'd get me some
8 pills. He asks him a few more questions. Were you
9 driving? I think I need an attorney. That was his
10 right, he stopped the questioning at that point, as he
11 has a right to do, but that's what he told Mr. Martin,
12 Investigator Martin.

13 Martin goes and speaks with Tylon Johnson. At this
14 point he's at a gas station in Whitmire. He gets his
15 version of the story and you heard Mr. Tylon Johnson's
16 version of the story in court yesterday. It's just a
17 terrifying situation if you ask me. The next day he
18 speaks to Mr. Ortscheid and Mr. Bridges, the same
19 scenario, and you heard their story yesterday as well.

20 That's the case. I mean, what was their intent?
21 You know, there's an old saying Ms. Wiygul quoted:
22 Absolute authority corrupts absolutely. Another one
23 was kind of going through my mind while she was saying
24 that. You know, if the law is on your side as an
25 attorney, you pound on the law. If the facts are on

1 your side, you pound on the facts, but if neither's on
2 your side, you just pound away and you wave your arms
3 around. In her case, the facts aren't on her side,
4 so she's gonna pound on law enforcement, pound on
5 Investigator Martin. She's right. I don't get to
6 select my investigators on a case, but I'm proud to
7 work with this man, I'll tell you that.

8 **MS. WIYGUL:** Objection, Your Honor, bolstering the
9 witness.

10 **THE COURT:** Closing argument. I'll allow it.

11 **MR. SCOTT:** I'm proud to work with these guys who
12 are willing to get up at 3 AM, leave their family and
13 rush to a scene like this. Pound on law enforcement
14 because you didn't video a confession. His intention
15 was to take the guy into the station if he wanted to
16 cooperate and that's where they'd videotape it, not out
17 on the road in the middle of a forest. What are you
18 supposed to do when he says he doesn't want to talk
19 anymore? You cease questioning him, which is what he
20 did. This is a dynamic situation, ladies and gentlemen.
21 He responding to a scene. He's got one man off to the
22 hospital. We don't know if he's gonna live or die.
23 We've got another man under arrest. You've got one set
24 of victims who's out here and you've got another one
25 who's out in Whitmire and you've got to track all them

1 down. I mean, this is not just an open and shut thing
2 that happens right at this incident location.

3 If you want to beat on the fact that he didn't give
4 him a written Miranda form or even videotape it, I've
5 got four defenses I've identified in this case and I've
6 got them labeled. One's police, Threatt, drunk and
7 memory. That's how I have them labeled. That's the
8 police defense. Let's ignore Mr. Wymer a bit. Let's
9 focus on what the police didn't do here. They didn't
10 videotape it. So just disregard everything else you
11 heard because Investigator Martin didn't videotape him.
12 That's number one.

13 Number two is the Threatt defense, that's the
14 co-defendant. Threatt is a wild man. Who knows what
15 Threatt's capable of. Threatt's his buddy. Threatt's a
16 passenger in his car, you know. Now Threatt is charged
17 for his part in this. Threatt is gonna have his day in
18 court. We're here to talk about Wymer, okay? They want
19 you to deflect attention away from him and talk about
20 Threatt. And she's right. I'm not gonna harp on it
21 like she says I am, but there is a legal theory; hand
22 of one, hand of all. Both of them are guilty. Yeah,
23 Threatt's running to the car, but it takes two to tango.
24 You've got to have the driver to block the trucks,
25 you've got to have the driver to position the car right

1 up to the door where your buddy can jump on, you've got
2 to have the driver swerve and then try to put on the
3 brakes to stop the rigs. Two or more people acting
4 together and committing the crime, the act of one is
5 the hand -- is the act of all. A person who joins
6 with another to commit an unlawful act is criminally
7 responsible for everything done by the other person. So
8 that's fine. Threatt is the one who was running up to
9 the cars, but he's the one who's driving. They're both
10 equally responsible for the same thing. That's his
11 second defense.

12 The third is the drinking. I don't know how drunk
13 he was. If he says he's drunk, maybe he was, but that's
14 not a defense. How are we ever gonna prosecute a DUI?
15 You can't -- you can't go out and take pills and drink
16 and then commit a crime and say can I get a Mulligan, I
17 was drunk. I was drunk. That's my defense. That's not
18 a defense and the judge is gonna tell you that. So his
19 third defense doesn't work either.

20 The fourth is the memory defense. That's when
21 he took the stand and that's the last ditch defense
22 typically. If you're not buying this other stuff, I
23 just don't remember. I remember everything that day
24 in great detail up to the point where all y'all are
25 saying all this stuff happened. I can't remember that.

1 I also remember some stuff that happened after that,
2 but this whole little chunk of time that I'm on trial
3 for, I can't remember that. I remember drinking at
4 my sister's in Clinton; her and her boyfriend, her
5 neighbor, Marquis Suber, Mr. Threatt, his girlfriend
6 and several others. I remember drinking wine, gin,
7 Bud Light. I remember riding around with Threatt, I
8 remember driving the Grand Marquis. Hell, I even
9 remember stopping and getting beer. I got twelve Bud
10 Light bottles and Threatt got twelve Budweiser bottles.
11 I remember all that. I remember sitting in the car and
12 asking for an attorney. It's convenient, but I ain't
13 buying it. These guys aren't ever gonna forget. Are
14 y'all gonna forget the rest of your lives? No.

15 But that's his excuse; I don't remember any of
16 this. But the interesting thing is I don't remember
17 it, but I didn't do it. How are you gonna say that if
18 you don't remember, but that's what he sat up here and
19 said. But he has no reason to believe they weren't
20 telling the truth. You heard their recollection of
21 things.

22 There are elements of the bizarre in this case and,
23 as I said, this is a serious case. It could have wound
24 up much, much worse. Thankfully it didn't. It's so
25 odd, but this community, Laurens County, should not

1 stand for this sort of thing occurring. That's why
2 he's charged with carjacking. Because that's what the
3 facts show he's guilty of. He's not just a drunk
4 driver. Carjacking is attempting to take another motor
5 vehicle driven by somebody else or somebody else in it
6 by force or intimidation, and that's exactly what he
7 and Threatt were up to that night. He says I didn't
8 know how to drive an eighteen-wheeler. He testified
9 that Threatt was a truck driver for years. He told cops
10 that Threatt said if I help him take some trucks he'd
11 get me some pills.

12 I've got to prove my case beyond a reasonable doubt
13 and the judge is gonna explain that. You heard all
14 the testimony that night, you heard about them getting
15 caught right there at the scene in the Grand Marquis,
16 you seen what happened to Threatt. You just need to
17 be firmly convinced, ladies and gentlemen, that he's
18 guilty of carjacking. Firmly convinced is the best
19 way for me to explain beyond a reasonable doubt. It
20 doesn't have to be beyond all doubt. There's certain
21 things in this case that are just so wild you might say
22 well, man, I can't explain that. You don't have to
23 find that you understand this case 100 percent. I've
24 never had a case I've fully understood a hundred percent
25 because we're not there that night. We've got to look

1 at the evidence, we've got to hear the testimony, we've
2 got to see what makes sense here.

3 So it doesn't have to be absolute certainty that
4 you have in finding his guilt, you just have to be
5 firmly convinced, and I submit to you after that
6 testimony and after all the evidence you've been shown
7 and everything you've heard, you should be firmly
8 convinced what he was up to that night. What else was
9 he trying to do? I mean, really. Y'all think he's just
10 out drunk driving? Trying to carjack somebody on a
11 desolate highway at 3 AM, I can't imagine how terrifying
12 a situation that could be.

13 You know, Ms. Wiygul, she says prosecutors they're
14 not here to enforce the law, and she might be right.
15 It kind of occurred to me when she said that that maybe
16 she's right, but then it occurs to me that you guys
17 are. You guys are tasked with enforcing the law because
18 you're gonna have the ultimate decision. Is Laurens
19 County gonna put up with this kind of stuff happening on
20 the roads? It could have been a lot worse. Mr. Wymer
21 says he has no reason to believe these three guys aren't
22 telling the truth. Why should you?

23 I'm gonna ask you to go back and deliberate,
24 consider everything you've heard and return a verdict
25 of guilt for the attempted carjacking of Mr. Ortscheid

1 and Mr. Bridges and the attempted carjacking of
2 Mr. Johnson. Thank you.

3 **THE COURT:** Thank you, Solicitor. Mr. Foreman and
4 ladies and gentlemen of the jury, we're gonna take about
5 a five, ten minute break before we go into the Court's
6 final charges, so if you'll just go back to your jury
7 room. Again, don't start deliberating, don't begin your
8 discussions concerning this case, and we'll get you back
9 out in about ten minutes and I'll instruct you on the
10 law and give you the final instructions.

11 (Whereupon, the jury retires to the jury room at
12 2:58 PM.)

13 **THE COURT:** Okay. About five, ten minutes.

14 **MS. WIYGUL:** Your Honor, may I put something on the
15 record before we break?

16 **THE COURT:** Sure.

17 **MS. WIYGUL:** Just to protect the record, I would
18 move for a mistrial on the basis of Mr. Scott's
19 characterization in the closing telling the jury it was
20 their job to enforce the law as that is not correct.
21 It is there job to determine the facts, not enforce the
22 law.

23 **THE COURT:** All right. Well, you know, it is
24 argument. I think that the jury's responsibility is
25 to ensure that justice is done I think would be the

1 correct way of saying it, and I think everybody would
2 agree with me; would you not? No? You just --

3 **MS. WIYGUL:** Your Honor, I think it's their job to
4 determine the facts.

5 **THE COURT:** Well, they -- right. All right.
6 Here's what I'll do. I don't think it rises to the
7 level -- apart from the fact it's in closing argument,
8 I don't think it rises to the level of declaring a
9 mistrial, but I will in my final instructions, again,
10 say that their job, and their sole job, is to determine
11 the facts of the case.

12 **MS. WIYGUL:** Thank you, Your Honor.

13 **THE COURT:** I'll do that, but I don't think it
14 rises to the level of a mistrial, but you are protected
15 on the record.

16 **MS. WIYGUL:** Thank you, Your Honor.

17 **THE COURT:** Okay. Thank you.

18 **MS. WIYGUL:** And can I go on and renew my motion
19 for a directed verdict now just so it's on there and we
20 don't have to do it later?

21 **THE COURT:** Okay. Well, you did it at the close of
22 the evidence --

23 **MS. WIYGUL:** I did.

24 **THE COURT:** -- so, I mean, you're protected.

25 **MS. WIYGUL:** Thank you, Your Honor.

1 **THE COURT:** Thank you. We'll take about a ten
2 minute break.

3 (Recess taken.)

4 **BAILIFF:** Let's keep your seats and come back to
5 order, please.

6 **THE COURT:** Okay. Are we ready to bring the jury
7 in?

8 **MR. SCOTT:** Yes, sir.

9 **MS. WIYGUL:** Yes, sir.

10 **THE COURT:** All right. Mr. Bolt, bring the jury
11 out.

12 (Whereupon, the jury returns to the courtroom at
13 3:13 PM.)

14 **BAILIFF:** All jurors present, Your Honor.

15 **THE COURT:** Thank you, Mr. Bolt.

16 Mr. Foreman and ladies and gentlemen of the jury,
17 I now will charge you on the law applicable to this
18 case and you must consider this charge as a whole and
19 not focus on some portions to the exclusion of other
20 portions.

21 The indictments charge the Defendant with
22 attempted carjacking. I'll remind you that the fact
23 that the Defendant was arrested, charged and indicted
24 in this case is not evidence in this case and cannot
25 be considered by you as evidence of guilt in this case,

1 nor does it create any presumption or inference of
2 guilt. These documents, these two indictments, are
3 simply the formal written instruments which contains
4 the charge made against the Defendant. It is the
5 formal documents by which this case is brought into
6 this court.

7 The indictments in this case allege several --
8 well, allege the same offense, but in two different
9 indictments. The charges are Indictment Number 1,
10 2011-GS-30-1127, and 1129, and each indictment charges
11 the Defendant with attempted carjacking. Each
12 indictment charges a separate and distinct offense.
13 You must decide each indictment separately on the
14 evidence and the law applicable to it uninfluenced
15 by your decision as to the other indictment. The
16 Defendant may be convicted or acquitted on any or all
17 of the offenses charged. In other words, he could be
18 convicted or acquitted on one or both of the indictments.
19 You will be asked to write a separate verdict of guilty
20 or not guilty for each indictment, and I will show you
21 that at the conclusion of my charge.

22 Mr. Foreman and ladies and gentlemen of the jury,
23 as I told you initially, the Defendant has pled not
24 guilty to both of these indictments and that plea puts
25 the burden on the State to prove the Defendant guilty.

1 A person charged with committing a criminal offense
2 in South Carolina is never required to prove himself
3 innocent.

4 I charge you that it is an important rule of the
5 law that the Defendant in a criminal trial, no matter
6 what the seriousness of the charge may be, will always
7 be presumed to be innocent of the crime for which the
8 indictment was issued unless guilt has been proven
9 by evidence satisfying you of that guilt beyond a
10 reasonable doubt. This presumption of innocence does
11 not end when you begin your deliberations, but it
12 accompanies the Defendant throughout this trial until
13 you reach a verdict of guilt based on the evidence
14 satisfying you of that guilt beyond a reasonable doubt.

15 The presumption of innocence is like a robe of
16 righteousness placed about the shoulders of the
17 Defendant, which remains with the Defendant until it
18 has been stripped from the Defendant by evidence
19 satisfying you of the Defendant's guilt beyond a
20 reasonable doubt.

21 Now, Mr. Foreman and ladies and gentlemen of the
22 jury, the presumption of innocence is not mere legal
23 theory. It is not just a legal phrase. It is a
24 substantial right to which every Defendant is entitled
25 unless you, the jury, are satisfied from the evidence

1 of the Defendant's guilt beyond a reasonable doubt.

2 Again, the State has the burden of proving the
3 Defendant guilty beyond a reasonable doubt as to each
4 indictment. Now some of you may have served as jurors
5 in civil cases where you were told that it is only
6 necessary to prove that a fact is more likely true
7 than not true, such as by the greater weight or the
8 preponderance of the evidence. In criminal cases, the
9 State's proof must be more powerful than that. It must
10 be beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the Defendant's guilt.
13 Now there are very few things in this world that we
14 know with absolute certainty, and in criminal cases
15 the law does not require proof that overcomes every
16 possible doubt. If, based on your consideration of
17 the evidence, you are firmly convinced that the
18 Defendant is guilty of the crime charged, you must
19 find the Defendant guilty. If on the other hand, you
20 believe there is a real possibility that the Defendant
21 is not guilty, you must give the Defendant the benefit
22 of the doubt and find him not guilty.

23 Now, Mr. Foreman and ladies and gentlemen of the
24 jury, I'll remind you, once again, that during this
25 trial you and I have had certain duties to perform.

1 As the trial judge, it is my responsibility to preside
2 over the trial of this case and I've also had the duty
3 to rule on the admissibility of the evidence offered
4 during this trial. You are to consider only the
5 competent evidence before you. If there was any
6 testimony ordered stricken from the record in this
7 case during this trial, and I think that happened on
8 one occasion, you must disregard that testimony. You
9 are to consider only the testimony which has been
10 presented from the witness stand, any exhibits which
11 have been made a part of the record in this case, and
12 any stipulations of counsel.

13 Your sole job has been and is to determine the
14 facts and apply those facts to the law as I give it to
15 you in reaching a verdict in this case. That is your
16 only job. Now I have had the additional duty to charge
17 you the law applicable to this case. As the presiding
18 judge, I am the sole judge of the law of this case and
19 it is your duty as jurors to accept and apply the law as
20 I now state it to you. As I told you at the outside of
21 this case, if you already have any idea as to what the
22 law is or what the law ought to be and it does not agree
23 with what I now tell you the law is, you must abandon
24 this idea because you are sworn to accept the law and
25 apply the law exactly as I state it to you.

1 And, again, I cannot emphasize enough that in every
2 case tried in this court before a jury, the jury becomes
3 the sole and exclusive judge of the facts in the case.
4 A trial judge cannot intimate, state, comment on or make
5 any statement to a trial jury about the facts in a case.
6 Since you, the jury, are the sole judge of the facts in
7 this case, you are not to infer from what I have said
8 during the progress of this trial in ruling upon the
9 admissibility of evidence or otherwise, or anything I
10 say now during the course of these instructions to you,
11 that I have any opinion about the facts in this case.
12 I do not have an opinion about the facts in this case.
13 The law does not allow me to have an opinion about the
14 facts in this case. This is a matter solely for you,
15 the jury, to determine. As jurors, it is your duty to
16 determine the effect, value, weight and truth of the
17 evidence that has been presented during this trial.

18 Now, Mr. Foreman and ladies and gentlemen of the
19 jury, there are two types of evidence which are
20 generally presented during a trial, direct evidence
21 and circumstantial evidence. Direct evidence directly
22 proves the existence of a fact and does not require
23 deduction. Circumstantial evidence, however, is proof
24 of a chain of facts and circumstances indicating the
25 existence of a fact.

1 Crimes may be proven by circumstantial evidence.
2 The law makes no distinction between the weight or
3 value to be given to either direct or circumstantial
4 evidence; however, to the extent the State relies on
5 circumstantial evidence, all of the circumstances must
6 be consistent with each other, and when taken together,
7 point conclusively to the guilt of the Defendant beyond
8 a reasonable doubt. If these circumstances merely
9 portray the Defendant's behavior as suspicious, the
10 proof has failed.

11 The State has the burden of proving the Defendant
12 guilty beyond a reasonable doubt. This burden rests
13 with the State regardless of whether the State relies
14 on direct evidence, circumstantial evidence or some
15 combination of the two.

16 Necessarily, Mr. Foreman and ladies and gentlemen
17 of the jury, you must determine the credibility of
18 witnesses who have testified in this case. Credibility
19 simply means believability. It becomes your duty as
20 jurors to analyze and to evaluate the evidence and
21 determine which evidence convinces you of its truth.
22 In determining the believability of witnesses who have
23 testified in this case, you may believe one witness
24 over several witnesses or several witnesses over one
25 witness. You may believe a part of the testimony of a

1 witness and reject the remaining part of the testimony
2 of that very same witness, you may believe the testimony
3 of a witness in its entirety or reject the testimony of
4 a witness in its entirety. You may consider whether
5 any witness has exhibited to you any interest, bias,
6 prejudice or other motive in this case. You may also
7 consider the appearance and manner of a witness while
8 on the witness stand.

9 A statement alleged to have been made by the
10 Defendant has been admitted into evidence in this case.
11 While the Court has determined that the statement is
12 admissible, I instruct you that you make the ultimate
13 decision of whether or not the Defendant made the
14 statement. If the Defendant did make the statement,
15 you must determine whether the statement was made by
16 the Defendant voluntarily and of his own free will.
17 This means that the statement was not caused by
18 pressure, force, fear, threats, coercion or intimidation
19 or by hope of a promise of leniency or a reward of any
20 kind. In determining whether the statement was
21 voluntary,
22 you should consider both the characteristics of the
23 Defendant and the details of the questioning. Some of
24 the factors that you must consider are the age of
25 the Defendant, the Defendant's education or lack of

1 education, the Defendant's mental ability or capacity,
2 the Defendant's IQ or intelligence, the Defendant's
3 background and environment, the place and length of
4 detention, the nature of the questioning and the advice
5 or lack thereof to the Defendant of his constitutional
6 rights, including, but not limited to, the right to
7 remain silent, that any statement could be used against
8 him in a court of law, the right to have a lawyer
9 present, that if he could not afford a lawyer, a lawyer
10 would be appointed to represent him without any cost
11 and that he could stop making a statement at any time.
12 You must carefully consider all of the surrounding
13 circumstances before you give any weight to an alleged
14 statement.

15 The State has the burden of proving beyond a
16 reasonable doubt that the alleged statement was given
17 voluntarily. If you determine it was, you may give
18 the statement any further consideration that you deem
19 proper. You must decide what weight, if any, should
20 be given to the alleged statement. If you determine
21 the alleged statement was not the free and voluntary
22 statement of the Defendant, you should not consider the
23 statement at all.

24 Mr. Foreman and ladies and gentlemen of the jury,
25 I charge you that voluntary intoxication, where it has

1 not produced permanent insanity, is not a defense to a
2 crime. A person who voluntarily becomes intoxicated
3 is just as responsible for the acts committed while
4 intoxicated as if the person were not intoxicated.

5 I further charge you that if a crime is committed
6 by two or more people who are acting together in
7 committing a crime, the act of one is -- the act of
8 one is the act of all. A person who joins with another
9 to commit an unlawful act is criminally responsible for
10 everything done by the other person which happens as a
11 probable or natural consequence of the acts done in
12 carrying out the common plan and purpose. I'll give
13 you an example. Two people can be guilty of killing
14 another person when only one of the two had a gun,
15 there was only one bullet, and only one of the two
16 fired the shot that caused the death. If two or more
17 people are together, acting together, assisting each
18 other in committing the offense, the act of one is the
19 act of all or as it is sometimes said, "the hand of one
20 is the hand of all".

21 Prior knowledge that a crime is going to be
22 committed, without more, is not sufficient to make a
23 person guilty of that crime. Mere knowledge that
24 another person is going to commit a crime, even if the
25 Defendant is present when the crime is committed, is not

1 sufficient to convict the Defendant as a principal.
2 Guilt as a principal is shown by actual or constructive
3 presence at the scene as a result of a prior
4 arrangement. Therefore, a finding of a prior arranged
5 plan or common scheme is necessary for a finding of
6 guilt as a principal. The State must prove beyond a
7 reasonable doubt by competent evidence the theory of
8 the hand of one is the hand of all. A principal in a
9 crime is one who either acts or commits the crime or
10 who is present aiding, abetting or assisting in
11 committing the crime. When a person does an act in
12 the presence of and with the assistance of another, the
13 act is done by both. Where two or more, acting with a
14 common plan or intent, are present at the commission
15 of the crime, it does not matter who actually commits
16 the crime. All are guilty. The hand of one is the
17 hand of all. Present at the commission of a crime
18 means to be sufficiently near to -- to aid and abet
19 and assist in the commission of the crime.

20 However, mere presence at the scene of a crime is
21 not sufficient to convict one as a principal on the
22 theory of aiding and abetting. Intent is also a
23 necessary element, for there must have been a common
24 design or intent to commit the crime and the crime must
25 have been committed pursuant thereto with the person

1 aiding and abetting by some overt act. Intent means
2 intending the result which actually occurs; not
3 accidentally or involuntary. Intent may be shown by acts
4 and conduct of the Defendant and other circumstances
5 from which you may naturally and reasonably infer
6 intent. The State must prove these elements beyond a
7 reasonable doubt.

8 I further charge you, Mr. Foreman and ladies and
9 gentlemen of the jury, a person who has a past criminal
10 record is competent to testify during a trial. A past
11 record does not affect the ability of that witness to
12 testify. The past record may only be considered by you,
13 if at all, in determining the witness' believability.
14 Remember, you are the sole judges of the facts in the
15 case and of the believability of any and all of the
16 witnesses.

17 Furthermore, you have heard evidence that the
18 Defendant was convicted of a crime other than the one
19 for which the Defendant is now on trial. This evidence
20 may be considered by you, if you conclude it is true,
21 only in deciding whether the Defendant's testimony is
22 believable, and for no other purpose. You must not
23 consider the Defendant's prior record as any evidence
24 of the Defendant's guilt of the charge we are trying
25 yesterday and today.

1 Mr. Foreman and ladies and gentlemen of the jury,
2 the Defendant is charged with attempted carjacking. In
3 order to prove carjacking, the Defendant {sic} must
4 prove beyond a reasonable doubt that the Defendant took,
5 or attempted to take, a motor vehicle from another
6 person by force and violence or by intimidation while
7 the person was operating the vehicle or while the person
8 was in the vehicle.

9 Now, Mr. Foreman and ladies and gentlemen of the
10 jury, your verdict must be unanimous among the twelve of
11 you as to each indictment. Now we have prepared what we
12 call a verdict form. Let me come down a little closer.
13 It's fairly simple. This is just what's called the
14 caption of the case stating the State of South Carolina
15 versus the Defendant, and as to the Indictment 1127,
16 which charges the Defendant of attempted carjacking of
17 a eighteen-wheeled tractor trailer being operated by
18 Tylon Jennings {sic}, we, the jury, find the Defendant
19 guilty or not guilty, and you will mark which line.
20 And the order of guilty and not guilty is of no
21 significance. One has to go before the other. There's
22 no significance to that. And you'll do the same thing
23 as to the other indictment, mark either guilty or not
24 guilty, and, Mr. Foreman, you will sign your name on the
25 place designated there. Again, as to each indictment,

1 your verdict must be unanimous.

2 Now I'm going to ask you at this time to retire to
3 the jury room. Don't begin your deliberations yet. I
4 need to discuss with the lawyers and make sure that the
5 Court's final instructions were proper and make sure
6 that there's nothing that needs to be added. When
7 Mr. Bolt brings you the exhibits in this case, the
8 verdict form and the two indictments, at that time
9 that will be your signal, Mr. Foreman, to begin your
10 deliberations. Equally, at that same time, Mr. Mills,
11 you are the alternate, you will have to leave the jury
12 room and you'll come back in here and then I will give
13 you some further instructions.

14 So don't start your deliberations yet, but we will
15 -- hopefully this is just a few minutes and we'll let
16 you know what to do next, okay?

17 **MR. SCOTT:** Judge, just before they leave so they
18 don't have to leave and then come back, and it's really
19 a minor thing, we just caught this on the verdict form,
20 Tylon Jennings, his last name is Johnson, just so they
21 don't get confused because the indictment will say
22 Tylon Johnson and the verdict says Tylon Jennings.

23 **THE COURT:** Okay. All right.

24 **MS. WIYGUL:** And that is correct, Your Honor, and
25 we have no objection to making that change.

1 **THE COURT:** Okay. All right. I'm just gonna pen
2 on here Johnson. It just had the incorrect last name,
3 okay?

4 If you will retire to the jury room and, again,
5 don't start your deliberations until Mr. Bolt brings
6 you those documents. Thank you very much. And when
7 you -- Mr. Foreman, and when you have reached a
8 unanimous verdict as to each indictment, notify the
9 bailiff who is outside the jury room that you have
10 reached a verdict as to each indictment and then we
11 can go from there, okay?

12 Thank you very much.

13 (Whereupon, the jury retires to the jury room at
14 3:34 PM.)

15 **THE COURT:** Y'all do not want for your filing a
16 clean copy of the verdict form?

17 **MR. SCOTT:** No, sir.

18 **THE COURT:** I just marked through it and wrote
19 Johnson. Does it matter?

20 **MS. WIYGUL:** No, Your Honor, we've done the same on
21 ours, so that will be fine.

22 **THE COURT:** All right. Any exceptions to the
23 Court's charge by the State?

24 **MR. MOWRY:** There is one issue, Your Honor. In
25 your -- on Page 15 of your charge when you were talking

1 about carjacking, on the second line you said the
2 Defendant must prove beyond a reasonable doubt.

3 **THE COURT:** Did I say that?

4 **MR. MOWRY:** Yes, sir.

5 **MS. WIYGUL:** And I caught that, too, Your Honor,
6 but I don't think the jury noticed.

7 **MR. MOWRY:** Well, I don't either, but out of an
8 abundance of caution I wanted to bring that to your
9 attention. I will point out for the record that on the
10 third line the word "Defendant" is directly below the
11 word "State", so I think you just kind of juxtaposed
12 those.

13 **THE COURT:** All right. Well, to make sure that
14 the record is clear, let me bring them out and tell
15 them that the Court made an error, and I will re-read
16 that charge and show them the mistake that I made. I
17 appreciate you bringing that out.

18 **MR. MOWRY:** Thank you, Your Honor.

19 **MS. WIYGUL:** Thank you, sir.

20 **THE COURT:** It's correct here. It's just me.

21 All right. Other than that, any exceptions or
22 objections to the Court's charge?

23 **MR. SCOTT:** No, sir.

24 **THE COURT:** And from the defense?

25 **MS. WIYGUL:** None from the defense, Your Honor.

1 **THE COURT:** Okay. Thank you. All right. Before
2 we bring the jury out, let's make sure we've got all
3 the exhibits together because then I'm going to have
4 Mr. Bolt with the exhibits escort them to the jury room,
5 so make sure we've got them all.

6 (Recess taken.)

7 **THE COURT:** Okay. Have we got all the exhibits?
8 Y'all are good?

9 **MS. WIYGUL:** Yes, Your Honor.

10 **THE COURT:** Okay. If you'll bring them out and let
11 me make that one corrected charge.

12 (Whereupon, the jury returns to the courtroom at
13 3:37 PM.)

14 **BAILIFF:** All present, Your Honor.

15 **THE COURT:** Thank you, Mr. Bolt. Mr. Foreman and
16 ladies and gentlemen of the jury, the lawyers pointed
17 out to me that I inadvertently stated something that
18 was incorrect. When I was charging you as to the
19 attempted carjacking statute, I said that the Defendant
20 must prove beyond a reasonable doubt that the Defendant
21 took or attempted to take a motor vehicle from another.
22 I should have said the State because throughout my whole
23 charge I have constantly stated that the State must
24 prove beyond a reasonable doubt, but maybe my glasses
25 slipped a little bit or something, but I inadvertently

1 said the Defendant must prove, but it's the State must
2 prove this offense beyond a reasonable doubt.

3 I'm gonna go ahead and get Mr. Bolt to assist
4 Mr. Foreman and the jury. You can begin your
5 deliberations now. He will assist you in carrying the
6 exhibits. And, Mr. Mills, I'll ask you just to remain
7 where you are and I'll give you further instructions.

8 So now you can begin your deliberations. When you
9 have reached a unanimous verdict as to each indictment,
10 if you'll just notify the bailiffs that you have done
11 so, okay? Thank you very much.

12 (Whereupon, the jury retires to the jury room at
13 3:39 PM to begin their deliberations.)

14 **THE COURT:** Mr. Mills, I know that -- that you
15 would like to be back there with your fellow jurors. I
16 want you to know, and I can't emphasize enough, that an
17 alternate juror's responsibility is very large. I say
18 that because oftentimes what happens is that a member of
19 -- of the main jury has to be excused for some reason or
20 another and there have been many times where I've had to
21 put that alternate in that person's place. So your role
22 as alternate is equally important as the main twelve.
23 But with that said, you are free to stay with us, if
24 you'd like. You are free to leave, if you'd like.
25 Whenever you do leave, I need to go ahead and tell you

1 now because I may not see you again, I need you to be
2 back in the large courtroom at 9:00 in the morning. We
3 are drawing a jury for one more case this week, so you
4 need to be part of the jury panel. So be back tomorrow
5 at 9:00 in the big courtroom, okay?

6 **ALTERNATE JUROR:** Okay.

7 **THE COURT:** Thank you very much. And, again, if
8 you want to stay with us, you're free to go out in the
9 -- out here or anywhere you'd like, okay?

10 **ALTERNATE JUROR:** Okay.

11 **THE COURT:** And you just need to leave your button.
12 Just go ahead and just put it on the rail right there
13 and the bailiffs will pick it up, okay? Thank you, sir.

14 All right. Everybody be at ease.

15 (Recess taken.)

16 **BAILIFF:** Let's keep your seats. Come back to
17 order, please.

18 **MS. WIYGUL:** Your Honor, I need to step out and get
19 something.

20 **THE COURT:** Sure. Take your time. No problem.

21 Okay. I understand that the jury has reached a
22 verdict. If there's nothing we need to deal with on the
23 record, I'm gonna ask Mr. Bolt to bring the jury out.

24 (Whereupon, the jury returns to the courtroom at
25 4:07 PM to report its verdict.)

1 **THE COURT:** Mr. Wymer, if you'd please stand,
2 please.

3 Mr. Foreman, I understand that you have reached a
4 verdict.

5 **THE FOREPERSON:** Yes.

6 **THE COURT:** Okay. And is your verdict unanimous
7 among the twelve of you?

8 **THE FOREPERSON:** Yes.

9 **THE COURT:** If you'll hand the verdict and the
10 indictments to Mr. Bolt, please.

11 Okay. Madam Clerk, would you publish the verdict,
12 please, ma'am.

13 **THE CLERK:** Your Honor, in the case of the State
14 of South Carolina versus Christopher Wymer, Case Number
15 2011-GS-30-1127 and 2011-GS-30-1129, as to Question
16 Number 1, as to Indictment Number 2011-GS-30-1127, which
17 charges the Defendant of attempted carjacking of an
18 eighteen-wheeled tractor trailer truck being operated by
19 Tylon Johnson, we, the jury, find the Defendant guilty.

20 As to Question 2, as to Indictment Number
21 2011-GS-30-1129, which charges the Defendant of
22 attempted carjacking of a Ford model F-350 truck being
23 operated by Brian Ortscheid, we, the jury, find the
24 Defendant guilty. Signed by the foreman, Antonio Hill,
25 dated -- Laurens, South Carolina, dated October 8, 2014.

1 **THE COURT:** Okay. Thank you very much, Madam Clerk.
2 You can have a seat. Either side wish for the jury to
3 be individually polled?

4 **MS. WIYGUL:** Yes, Your Honor.

5 **THE COURT:** Okay. Madam Clerk, would you handle
6 that, please?

7 **THE CLERK:** All right. Ladies and gentlemen, the
8 verdict I just published was a verdict you reached in
9 the jury room. I ask you was it your verdict then and
10 is it your verdict now? As I call your name, if you'll
11 answer yes or no. Antonio Hill?

12 **JUROR:** Yes.

13 **THE CLERK:** William R. Knight?

14 **JUROR:** Yes.

15 **THE CLERK:** Jay A. Stubblefield?

16 **JUROR:** Yes.

17 **THE CLERK:** Jean K. Swanson.

18 **JUROR:** Yes, ma'am.

19 **THE CLERK:** Christian L. Griffin?

20 **JUROR:** Yes, ma'am.

21 **THE CLERK:** Daniel B. Nelson?

22 **JUROR:** Yes, ma'am.

23 **THE CLERK:** Shannon Lattimore?

24 **JUROR:** Yes.

25 **THE CLERK:** Christopher D. Champaign?

1 **JUROR:** Yes.

2 **THE CLERK:** John P. Tyler?

3 **JUROR:** Yes.

4 **THE CLERK:** Joe K. Turner?

5 **JUROR:** Yes.

6 **THE CLERK:** Deena M. Medlin?

7 **JUROR:** Yes.

8 **THE CLERK:** David E. Crocker?

9 **JUROR:** Yes.

10 **THE CLERK:** Thank you.

11 **THE COURT:** Thank you very much, Madam Clerk.

12 Mr. Foreman and ladies and gentlemen of the jury,
13 let me offer my sincere appreciation for your jury
14 service this week. As I told you, I think, maybe on
15 Monday, service on a jury is considered by many to be
16 the second highest civic responsibility that we all
17 have, second only to serving in the military, and so I
18 do appreciate your service to the judicial system for
19 Laurens County.

20 But we're not done with you yet. We have got one
21 more case that we are going to select a jury on in the
22 morning and just because you served on this jury does
23 not automatically excuse you from potentially serving on
24 another jury. So with that said, I will need for you to
25 report in the big courtroom at 9:00 in the morning and

1 we will qualify the jury panel for that particular case
2 and select a jury. Once that is done, and if you're not
3 selected for that jury, then you'll be excused along
4 with the other remaining jury panel members that were
5 not selected. So I will see you again at 9:00 tomorrow
6 morning.

7 And let me mention one other thing to you. You are
8 free to discuss this case with anyone, if you so choose.
9 If someone approaches you and wants to discuss the case
10 and you don't want to discuss the case with them, then
11 you don't have to. Now I'm not suggesting this is gonna
12 happen, but if they force themselves to try to get
13 information out of you and you don't want to give them
14 any information, then, please, report that to the Court
15 and I promise you I will deal with that appropriately
16 because, again, we want to take care of and protect our
17 jurors. And, again, I'm not suggesting that's gonna
18 happen, it would be very rare for that to happen, but
19 if it does, I want you to know that you've got the
20 Court's assistance, okay?

21 So I hope you have a good afternoon, a good
22 evening, and we'll see you bright and early at 9:00 in
23 the morning. Be sure and turn in your jury buttons.

24 (Whereupon, the jury was excused at 4:12 PM.)

25 **THE COURT:** Okay. We're gonna take about a ten

1 minute break. Everybody can gather their thoughts.
2 I'll entertain post-trial motions at this time and then
3 we will -- if I deny the post-trial motions, then we
4 will move into the sentencing phase of this proceeding.
5 So we'll take about a ten minute break. Everybody
6 gather their thoughts.

7 **MS. WIYGUL:** Thank you, Your Honor.

8 **MR. SCOTT:** Are you going to take the Defendant
9 into custody?

10 **THE COURT:** He can remain -- since we're only
11 breaking about ten minutes, I'm going to ask law
12 enforcement to stay with the Defendant, but he can
13 stay in the courtroom since we're only breaking about
14 ten minutes. So, Officer Turner, I don't know if you're
15 gonna go with me and get these two officers to stay.

16 **DEPUTY TURNER:** Okay.

17 **THE COURT:** If y'all will stay with him, please.
18 (Recess taken.)

19 **BAILIFF:** Let's keep your seats and come back to
20 order, please.

21 **THE COURT:** Okay. Any post-trial motions?

22 **MS. WIYGUL:** Your Honor, the defense would renew
23 all motions made during trial, including the motions
24 for directed verdict --

25 **THE COURT:** Okay.

1 **MS. WIYGUL:** -- and motion for a verdict -- or a --

2 **THE COURT:** Judgment notwithstanding verdict?

3 **MS. WIYGUL:** That would be it, Your Honor. Thank
4 you.

5 **THE COURT:** Thank you. Respectfully denied.

6 Okay. Let's move into the sentencing phase.

7 Mr. Wymer, you will need to -- you can just remain at
8 the table there and, Solicitor, you can do the same
9 thing.

10 **MR. SCOTT:** Yes, sir.

11 **THE COURT:** Okay. Do we have sentencing sheets
12 prepared yet?

13 **MR. SCOTT:** I do, Your Honor.

14 **THE COURT:** I'll be glad to hear from the State
15 first as to sentencing.

16 **MR. SCOTT:** Judge, those are the facts. His record
17 is an '02 lynching that's pled down to a simple assault
18 and battery, a minor in possession of alcohol; '03, a
19 burg second, down from burg first; another simple
20 assault in '06. DUS and possession of cocaine in '09.
21 That's his record, Judge.

22 I'd just reiterate my closing, the State's position
23 of it, this could have been much worse. There is a
24 co-defendant who's permanently disabled, just as
25 culpable obviously as Mr. Wymer, but the guy can hardly

1 stand up on his own at this point. Of course, my three
2 victims. As I said, they'll remember this for the rest
3 of their lives. I think I would be, you know, terrified
4 if I was in that situation, or I know I would be, and
5 they've indicated that that's affected them. They
6 feared for their lives that night. It was a serious
7 situation. I think -- like I kind of, myself, at least
8 get caught in how bizarre the whole thing was, it was a
9 serious situation though, and the State would ask for a
10 sentence that would reflect that.

11 **THE COURT:** Okay.

12 **MR. SCOTT:** I will put on the record there was a
13 -- there was limited testimony on it, but there was a
14 threatening the life of a public employee charge that
15 came out of this incident location. The offer today
16 was to plead on it and let it run with whatever he
17 gets. He denied that. I would notice him on the
18 record for trial the next term of court on that charge
19 as well.

20 **THE COURT:** Okay. All right.

21 **MS. WIYGUL:** Your Honor, I would just ask when the
22 next term of court is?

23 **MR. SCOTT:** November 3rd.

24 **MS. WIYGUL:** And I am scheduled to begin a murder
25 trial October 20th in this circuit, so I'd just

1 respectfully ask that I not be put on this next trial
2 docket.

3 **THE COURT:** What you'll need to do, Ms. Wiygul, is
4 talk with or communicate with Judge Griffith, who is
5 the chief admin judge for General Sessions and he would
6 be the one to discuss concerning continuances.

7 **MS. WIYGUL:** Yes, sir.

8 **THE COURT:** Okay. Ms. Wiygul, I'll be glad to hear
9 from you, ma'am, related to sentencing. If Mr. Wymer
10 wants to address the Court, I'll be glad to hear from
11 him as well and anybody -- I don't know if there's
12 anybody in the courtroom on his behalf. I'll be glad
13 to hear from them, too.

14 **MS. WIYGUL:** Your Honor, we simply ask that you
15 not punish Mr. Wymer for exercising his right to go to
16 trial. You took the guilty plea in the co-defendant's
17 case; exact same set of facts, exact same ramifications,
18 everything's the same, so we'd ask that you take
19 that into consideration and give Mr. Wymer the same
20 opportunity you've given Mr. Threatt and put him on
21 probation. Mr. Wymer has successfully completed
22 probation previously. He finished it within five
23 months. He was taken off early because he did
24 everything he was supposed to. He's going to school,
25 he is trying to better himself and become a productive

1 member of society. He has strong family. His mother
2 and stepfather are here with him today. He has
3 somewhere to live, he can support himself, and so we
4 would simply ask that the Court take all of that into
5 consideration and not treat him any differently than
6 the Court treated Mr. -- or will treat Mr. Threatt upon
7 the recommendation of the Solicitor's office.

8 **THE COURT:** Okay. All right.

9 **MS. WIYGUL:** I believe that to treat him differently
10 would just lead to a disparity in sentencing that would
11 -- could potentially cause people to think twice before
12 they exercise their right to go to trial.

13 **THE COURT:** All right. Okay. Thank you,
14 Ms. Wiygul. Does your client wish to address the Court?
15 If so, I'll need to put him under oath.

16 **MS. WIYGUL:** His mother would like to address the
17 Court, Your Honor.

18 **THE COURT:** Okay. Yes, ma'am, if you will come
19 around and we'll need to place you under oath. Once
20 that is done, you'll need to state your name before you
21 tell me whatever you want to tell me. Madam Clerk.

22 **THE CLERK:** If you will raise your right hand,
23 please.

24 (Whereupon, Lisa Lowie was sworn by the Clerk of
25 Court.)

1 **THE COURT:** Yes, ma'am. Could you give me your
2 name, please?

3 **MS. LOWIE:** Lisa Lowie.

4 **THE COURT:** Okay.

5 **MS. LOWIE:** I don't know what happened that night
6 because I wasn't there. I know Chris has made some
7 mistakes along the way. I don't know whether he did
8 that night, but I would ask for your leniency with him
9 because he is trying to do something different with his
10 life now.

11 **THE COURT:** Okay. Thank you very much, ma'am.
12 Anything further from the defense, Ms. Wiygul?

13 **MS. WIYGUL:** No, Your Honor.

14 **THE COURT:** Okay. Solicitor, you stood up. Is
15 there something --

16 **MR. SCOTT:** I just only feel compelled to say that
17 Mr. Threatt was handled by Mr. Mowry, who Mr. Threatt
18 had two driving offenses on his record and admitted to
19 his guilt. These are two separate individuals and I
20 think their sentences should be taken -- or considered
21 independently. And Mr. Threatt, again, is permanently
22 disabled and that was also a factor in his resolution.

23 **THE COURT:** Thank you very much. Everybody be at
24 ease for just a moment. Oh, let me ask how much time
25 did he spend in jail before being released? Do you have

1 that information?

2 **MS. WIYGUL:** Your Honor, he tells me sixteen months
3 and I don't have that information.

4 **MR. SCOTT:** I'll check with the Clerk's office,
5 Your Honor, just to verify that.

6 **THE COURT:** Okay. If you'll do that because
7 certainly that's -- that's an important ingredient in
8 the sentencing. So everybody just be at ease and if
9 somebody will check on that, please.

10 **MS. WIYGUL:** Your Honor?

11 **THE COURT:** Wait for the --

12 **MS. WIYGUL:** Yeah, I'll wait.

13 **MR. SCOTT:** I got 471 days, Your Honor.

14 **THE COURT:** 471 days?

15 **MR. SCOTT:** Yes, sir.

16 **MS. WIYGUL:** Your Honor, we're also -- are we back
17 on the record?

18 **THE COURT:** Yes.

19 **MS. WIYGUL:** We're also gonna ask that the Court
20 consider giving him credit for the time he did on house
21 arrest as it is now permissible under South Carolina
22 law, and that would be 1,260 days.

23 **THE COURT:** All right. We've got 471 in -- in jail
24 and then how many days?

25 **MS. WIYGUL:** Jail plus house arrest would be 1,260,

1 Your Honor.

2 **THE COURT:** The State's position on that?

3 **MR. SCOTT:** Well, Judge --

4 **THE COURT:** When did that house arrest change go
5 into effect?

6 **MR. SCOTT:** I'm unaware of that. I didn't think
7 they gave you credit for that. They do now? That's
8 probably within the judge's discretion.

9 **MS. WIYGUL:** Yes, it's within the judge's
10 discretion is my understanding, Your Honor.

11 **THE COURT:** Let's look it up.

12 **MR. MOWRY:** I believe, Your Honor, it has to be
13 with electronic monitoring. If it's just simply house
14 arrest with no other monitoring, then there's -- there's
15 no credit for it.

16 **THE COURT:** Okay. We're gonna look that up.

17 **MR. MOWRY:** Mr. Scott and I had a similar case with
18 a felony DUI a couple of terms ago, Your Honor, and that
19 was an issue.

20 **THE COURT:** Yeah, we dealt with this statute
21 recently, but I just need to read it again. What is --
22 what is everyone's understanding concerning the house
23 arrest being monitored or not?

24 **MR. SCOTT:** I think electronic monitoring is a
25 requirement.

1 **THE COURT:** Yeah, but was it in this case is my
2 question?

3 **MS. WIYGUL:** There was not electronic monitoring in
4 this case, Your Honor.

5 **THE COURT:** I think the statute is clear that for
6 the Court to be even able to consider it, it's got to
7 be monitored house arrest. That's under 24-13-40.
8 May be given for any time spent under monitored house
9 arrest. Mandatory as far as time actually spent in
10 jail, but for it to even be considered by the Court it's
11 got to be monitored house arrest and if everybody is
12 saying in this case it wasn't, then it's not even gonna
13 be considered by me.

14 Okay. Anything further?

15 **MS. WIYGUL:** No, Your Honor. I just did not
16 realize that.

17 **THE COURT:** Okay. Mr. Wymer, if you'll, please,
18 stand, sir. While certainly I am mindful of the
19 situation involving the co-defendant because I was the
20 plea and sentencing judge in that case, I'm certainly
21 mindful of that; however, each case stands on its own.

22 Mr. Wymer, considering everything, and these
23 sentences will run concurrent with each other, as to
24 both indictments the sentence of the Court is,
25 Mr. Wymer, you be committed to the State Department

1 of Corrections for a period of ten years provided upon
2 the service of four years, the balance is suspended.
3 Probation for two years. 471 days' credit. While on
4 probation, substance abuse counseling, random drug and
5 alcohol testing. Good luck to you, sir.

6 **MS. WIYGUL:** Your Honor, would the Court permit him
7 to do any portion of the four years on house arrest?

8 **THE COURT:** No.

9 **MS. WIYGUL:** And, Your Honor, there's one other
10 issue that we'd like to put before the Court. His
11 mother posted a ten percent cash option on all of his
12 pending charges. Realistically, he's not going to be
13 out on the street. We'd like to ask the Court to
14 consider permitting her to go off his bond and just
15 revoke all of his current bonds, and I've got a list
16 of the warrants I can hand up to the Court, so that
17 she can go on and get her money back.

18 **THE COURT:** Would that not be -- Madam Clerk, would
19 that not be automatically done once the conviction --

20 **THE CLERK:** Not -- as long as he has pending cases
21 on that bond, we do not release the money.

22 **THE COURT:** Okay. All right.

23 **THE CLERK:** And I thought maybe we could release
24 a portion, but Fredna was not in favor of that unless
25 there was an order that, you know, made sure that the

1 other --

2 **THE COURT:** Okay. Does the State have a position
3 on that?

4 **MR. SCOTT:** Your Honor, I would ask that -- he's
5 got pending charges.

6 **THE COURT:** Is there more than the one you referred
7 to?

8 **MR. SCOTT:** Yes, he's got distribution of meth,
9 he's got threatening the life of a public official and
10 he's got contraband charges that are pending. We tried
11 to resolve them today. He didn't wish to do so.

12 **THE COURT:** Right. I understand. In as much as I
13 would like to help his mother, I'm gonna have to keep
14 those in place. Good luck to you, sir.

15 **MS. WIYGUL:** Thank you, Your Honor.

16 (Whereupon, the proceedings were concluded for
17 October 8, 2014.)

18 (Whereupon, on October 10, 2014, I was provided by
19 Judge Hocker the following addendum to the record.)

20 ADDENDUM TO THE RECORD

21 **THE COURT:** I find that the offense of attempted
22 carjacking is a violent felony as it relates to the
23 prohibition against possession and ownership of firearms
24 pursuant to Section 16-23-500.

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and partial transcript of record of the
proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
7th - 8th day of October, 2014.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

December 23, 2014

Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

C MARTIN
Laurens County Sheriff

WARRANT NUMBER

J620392

True Bill

Justus

Foreman of the Grand Jury

Date: 7-15-11

VERDICT

Guilty

Justus

Foreman

10/8/14

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011

Indictment # 11GS30- 1127

THE STATE

vs.

Christopher Leo Wymer

INDICTMENT FOR

ATTEMPTED CARJACKING

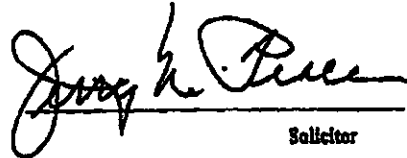
16-03-1075

THE STATE OF SOUTH CAROLINA**COUNTY OF LAURENS****INDICTMENT FOR****ATTEMPTED CARJACKING
16-83-1075**

At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

That Christopher Lee Wymer, did in Laurens County, state aforesaid, on or about the 27th day of April, 2011 willfully and unlawfully take or attempt to take a motor vehicle from another person by force and violence or by intimidation while the person was operating the vehicle or while the person was in the vehicle, to wit: that the said Christopher Lee Wymer did attempt to take a tractor trailer truck being operated by one Tylon Johnson, in violation of the provisions of Section 16-3-1075 of the 1976 Code of Laws of South Carolina, as amended

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



Solicitor

WITNESSES

C MARTIN
Laurens County Sheriff

WARRANT NUMBER

J997576

True Bill

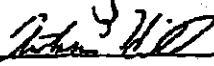


Foreman of the Grand Jury

Date: 7-15-11

VERDICT

Guilty



Foreman

10/8/14

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

July Term, 2011

Indictment # 11G330- 1129

THE STATE

vs.

Christopher Lee Wymer

INDICTMENT FOR

ATTEMPTED KIDNAPING
16-03-1875

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

INDICTMENT FOR

**ATTEMPTED CARJACKING
16-03-1075**

At a Court of General Sessions, convened on the 15th day of July, 2011 the Grand Jurors of Laurens County present upon their oath:

That Christopher Lee Wymer, did in Laurens County, state aforesaid, on or about the 27th day of April, 2011 willfully and unlawfully take or attempt to take a motor vehicle from another person by force and violence or by intimidation while the person was operating the vehicle or while the person was in the vehicle, to wit: that the said Christopher Lee Wymer did attempt to take a 1987 Grand Marquis being operated by one Brian Ortschold, in violation of the provisions of Section 16-3-1075 of the 1976 Code of Laws of South Carolina, as amended

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


Solicitor

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 17, 2015

A handwritten signature in black ink, appearing to read "Robert M. Pachak", written over a horizontal line.

Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589