

22703

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County
The Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

RAPHAEL LAMAR PONTOO,

APPELLANT

APPELLATE CASE NO. 2015-000323

RECORD ON APPEAL

DONALD L. MCCUNE, JR.
Associate Attorney

Savage Law Firm
15 Prioleau Street
Charleston, SC 29401
(843) 720-7470

ROBERT M. DUDEK
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit
205 E. Main Street
Lexington Judicial Center
Lexington, SC 29072
(803) 785-8532

ATTORNEYS FOR RESPONDENT

RECEIVED
AUG 24 2016
SC Court of Appeals

INDEX

INDEX.....	i.
TRIAL TRANSCRIPT DATE JANUARY 26 th – 28 th , 2015	001
JURY SELECTION	002
JACKSON V. DENNO HEARING	
DETECTIVE TODD GARRICK	
Direct Examination by Mr. McNair	013
Cross Examination by Mr. Mauldin	020
Redirect Examination by Mr. McNair	023
Examination by the Court.....	033
RALPH LAMAAR PONTOO	
Direct Examination by Mr. Mauldin	025
Cross Examination by Mr. Graham	026
Redirect Examination by Mr. Mauldin.....	030
NEIL V. BIGGERS HEARING	
JONATHAN RUPLE	
Direct Examination by Mr. McNair	035
Cross Examination by Mr. Mauldin	053
DETECTIVE TODD GARRICK (recalled)	
Direct Examination by Mr. Graham	055
Cross Examination by Mr. Mauldin	061
JURY SWORN	071
OPENING STATEMENT BY MR. GRAHAM	079
OPENING STATEMENT BY MR. MAULDIN	087
TRIAL TESTIMONY	
TROOPER BRANDON LEE	
Direct examination by Mr. McNair	090
Cross examination by Mr. Mauldin	105

TROOPER JASON SNIDER	
Direct Examination by Mr. McNair	107
Cross examination by Mr. Mauldin	125
OFFICER JOHN MISHOE	
Direct Examination by Mr. McNair	126
Cross Examination by Mr. Mauldin	136
Redirect Examination by Mr. McNair	136
AMANDA SUCHER	
Direct Examination by Mr. Graham	138
Cross examination by Mr. Mauldin	149
NEIL PRICE	
Direct Examination by Mr. Graham	152
JEFFREY BERRY	
Direct Examination by Mr. McNair	158
MATTHEW ROWLETTE	
Direct Examination by Mr. McNair	163
MICHAEL PHIPPS	
Direct Examination by Mr. Graham	166
Cross Examination by Mr. Mauldin.	185
XAVIER PERDUE	
Direct Examination by Mr. Graham	186
XAVIER PERDUE (Proffered Testimony)	
Direct Examination by Mr. Graham	190
Cross Examination by Mr. Mauldin	191
XAVIER PERDUE	
Direct Examination Continued by Mr. Graham	194
Cross Examination by Mr. Mauldin	195
JANICE EDWARDS ROSS, M.D.	
Direct Examination by Mr. Graham	196
DETECTIVE TODD GARRICK	
Direct Examination by Mr. McNair	201
Cross Examination by Mr. Mauldin	215
Redirect Examination by Mr. McNair	217

JONATHAN RUPLE	
Direct Examination by Mr. McNair	218
Cross Examination by Mr. Mauldin	237
Redirect Examination by Mr. McNair	244
LIEUTENANT WILLIAM BENNETT	
Direct Examination by Mr. McNair	246
SAMUEL SMITH	
Direct Examination by Mr. Graham	253
Cross Examination by Mr. Mauldin	256
CARLISLE JONES	
Direct Examination by Mr. Graham	261
Cross Examination by Mr. Mauldin	285
PATRICK JOHNSON	
Direct Examination by Mr. Graham	290
Cross Examination by Mr. Mauldin	314
Redirect Examination by Mr. Graham	316
STATE RESTS	
DEFENSE DIRECTED VERDICT MOTION.....	318
TESTIMONY	
RALPH LAMAAR PONTOO	
Direct Examination by Mr. Mauldin	327
Cross Examination by Mr. Graham	336
Redirect Examination by Mr. Mauldin.....	378
Recross Examination by Mr. Graham	380
DEFENDANT RESTS	383
DEFENSE DIRECTED VERDICT MOTION.....	384
TESTIMONY	
DETECTIVE TODD GARRICK (recalled)	
Redirect Examination Continued by Mr. McNair.....	386
CLOSING ARGUMENT BY MR. MAULDIN.....	394

CLOSING ARGUMENT BY MR. MCNAIR	399
CHARGE OF THE COURT	410
VERDICT	425
SENTENCE OF THE COURT	432
INDICTMENT FOR FAILURE TO STOP FOR A BLUE LIGHT RESULT DEATH	436
SENTENCING SHEET FOR FAILURE TO STOP FOR A BLUE LIGHT RESULT DEATH	438
INDICTMENT FOR ARMED ROBBERY	439
SENTENCING SHEET FOR ARMED ROBBERY	441
CERTIFICATE OF COUNSEL FOR APPELLANT	442

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT # 59 (PHOTO LINEUP)

STATE'S EXHIBIT #60 (PHOTO LINEUP)

1 State of South Carolina) In the Court
 2 County of Lexington) Of General Sessions
 3
 4 State of South Carolina,) Indictment Nos.:
 5 Plaintiff,) 2014-GS-32-1408
 6 vs.) 2014-GS-32-1409
 7 Raphael Lamarr Pontoo,) Transcript of Record
 8 Defendant.)
 9

January 26 through January 28, 2015

Lexington, South Carolina

BEFORE:

The Honorable Thomas A. Russo, Judge

APPEARANCES:

Robby McNair, Assistant Solicitor
 Shawn Graham, Assistant Solicitor
 Attorneys for the Plaintiff

David Mauldin, Assistant Public Defender
 Attorney for the Defendant

ORIGINAL

1 January 26, 2015

2 * * * * *

3 THE COURT: All right. Ladies and gentlemen, I
4 think everyone has returned from the break and we're
5 going to go ahead and we'll proceed to selecting our
6 first jury so I would recognize the State to call the
7 first case.

8 MR. McNAIR: Thank you, Your Honor. The State calls
9 to trial the case of State versus Raphael Lamarr Pontoo.
10 Indictment number 2014-GS-32-01409 armed robbery, and
11 indictment number 2014-GS-32-01408 for failure to stop
12 for a blue light resulting in death.

13 THE COURT: Thank you, sir.

14 All right. Ladies and gentlemen, you have just
15 heard the Solicitor call the first case for trial. The
16 State of South Carolina versus Raphael Lamarr Pontoo.
17 Mr. Pontoo is charged under these indictments.

18 Let me first state to you folks that an indictment
19 is simply a piece of paper that contains the charge or
20 the allegations that's made against an individual. An
21 indictment is not in any way evidence. In a moment I'm
22 going to read to you the allegations that are contained
23 in this indictment. Those allegations are not evidence
24 against Mr. Pontoo. They are merely that at this stage.
25 They're allegations that the state has made against

1 Mr. Pontoo. To these allegations he has pled not guilty
2 and so that plea of not guilty places upon the state the
3 burden of proving the elements of these charges beyond a
4 reasonable doubt.

5 Now, I'm going to read to you the contents of these
6 allegations so that I can ask you questions as they
7 relate to these charges. Indictment number
8 2014-GS-32-1409 charges Mr. Pontoo with the offense of
9 armed robbery and the allegations are as follows: That
10 Raphael Lamarr Pontoo did in Lexington County South
11 Carolina on or about January the 24th of 2014 did
12 knowingly and willfully while armed with a deadly weapon
13 and/or having possession of an object which the victim
14 reasonably believed to be a deadly weapon and alleging
15 by actions or words that he was armed to wit with a .22
16 caliber pistol did feloniously take from the person or
17 presence of Jonathan Ruple by means of force, threats or
18 intimidation goods or monies being described as follows;
19 \$200 in United States currency and/or a nine millimeter
20 pistol and/or clothing with the intent to deprive the
21 owner of the use of such property all in violation of
22 Section 16-11-330 Subsection (a) of the South Carolina
23 Code of Laws 1976 as amended.

24 The next indictment is 2014-GS-32-1408. That charge
25 or that indictment alleges that Raphael Lamarr Pontoo

1 did in Lexington County South Carolina on or about
2 January the 24th of 2014 did willfully, knowingly and
3 unlawfully fail to stop a motor vehicle while driving
4 said motor vehicle on a road, street or a highway of
5 this state when J.G. Snider, a law enforcement officer
6 with the South Carolina Highway Patrol signaled and
7 sounded his siren and/or turned on his flashing blue
8 light and when driving he did perform an act forbidden
9 by law or neglected a duty imposed by law in driving of
10 that vehicle that resulted in the death of Alexander
11 Clemmons in violation of Section 56-5-750 Subsection
12 (c) (2) of the Code of Laws of South Carolina 1976 as
13 amended.

14 Now, ladies and gentlemen, these are the allegations
15 of the charges that have been brought against Mr. Pontoo
16 to which he has pled not guilty.

17 Is there any member of the jury panel who knows
18 anything about this case or about these allegations
19 based on what I have shared with you this morning? If
20 so, please stand. Thank you. There are none.

21 Ladies and Gentlemen, I'm going to ask the attorneys
22 that will be appearing during the course of this trial
23 to stand and introduce themselves to you. If you would,
24 please, listen carefully as they do that.

25 MR. McNAIR: Good morning. I'm Robby McNair,

1 or to check back at a certain time, okay? So if
2 everyone else will remain seated, the members of the
3 jury panel you're excused for the balance of the day.

4 (The balance of the jury venire excused for the
5 remainder of the day.)

6 THE COURT: All right. Ladies and gentlemen, while
7 the members of the panel are filing out, I'm going to
8 excuse you in just a moment and I'm also going to excuse
9 you for the balance of the day. We're going to begin
10 this case first thing in the morning, but I need to send
11 you off with some instructions that I didn't need to
12 send them off with. And the reason we are going to do
13 that and start this case first thing in the morning is I
14 have got some matters that are not associated with this
15 case that I need to finish out the balance of this
16 morning with and then this afternoon we're going to take
17 up some pretrial matters that are non jury matters that
18 will help the case proceed along quicker and resolve
19 those issues so that when we start with the case
20 tomorrow morning, we'll have those issues resolved and
21 we'll be able to just proceed into the case and not have
22 to stop and deal with those pretrial matters. So we're
23 going to be working that out this afternoon, but it's
24 matters that we don't need the jury for.

25 So what I'm going to do is excuse you and I'm going

1 to share this with you throughout the course of this
2 trial and that is this: Any time that you are not in
3 this jury box in this courtroom, you are to have no
4 communications with anybody about the case and that
5 includes amongst yourselves. From time to time during
6 the course of the trial you will step back into the jury
7 room as we take breaks and do things of that nature and
8 while you're back there it's important that you do not
9 discuss this case and you do not discuss any evidence in
10 the case. There is only one time that you are supposed
11 to begin those deliberations and that's at the close of
12 the case after everything is in and after I have given
13 you the charge on the law. But prior to that, it's
14 improper to have any conversation about the case.

15 Now, when you leave here and go home, obviously you
16 will have family friends or loved ones that will be
17 curious as to whether or not you have been selected to
18 be on the jury panel. You can let me them know that you
19 have been chosen to be on a panel and that you have to
20 be back in the morning, but that's really where it needs
21 to stop. Now, they're going to be curious. If they're
22 anything like my wife, she would want to know, really?
23 What kind of case is it? What does it involve? What
24 are the issues? Saying something as innocent as, well,
25 it's a case that involves an armed robbery or a failure

1 to stop for a blue light or it's a case that involves a
2 gentleman by the name of Mr. Pontoo, something as
3 innocent as those comments could possibly illicit a
4 response that would somehow compromise your ability to
5 be fair and impartial. So it's always better to err on
6 the side of caution and have no conversation and just
7 let them know you are not allowed to discuss anything
8 about the case, even the charge or what it's about.

9 You can let them know and assure them at the close
10 of the case when the case is over, then you're free to
11 talk about it to anybody and whoever you want to talk to
12 about it, but until that time you must not have any
13 conversation.

14 Also, we live in a day and age where computers are a
15 wealth of avenues to find stuff out on the Internet.
16 There are phones that are capable of computer tasks.
17 What is very important for you to understand is this:
18 That your oath in this case is to judge this case and to
19 decide this case based solely on the evidence that is
20 presented during the course of this trial and on nothing
21 outside of this courtroom. So I would caution you it
22 would be highly improper for you while you're not here
23 in the courthouse to do any independent investigation or
24 to go on line and try to find out anything about this
25 case. I don't know that you would find anything anyway.

1 But it's important that you do not do that. You're
2 under oath to try this case based solely on the evidence
3 that is provided during this trial. You are to protect
4 yourselves from anything outside of this case.

5 We all know from experience that oftentimes what we
6 hear in the media, what we see on the television, what
7 we see on the Internet are, I'm not going to say not
8 true. Some things are true. Some things are not true.
9 Some things are embellished. Some things are not. It's
10 just completely unreliable. It's not fair to the state.
11 It's not fair to Mr. Pontoo to expose yourself to
12 anything outside of what's presented to you here in the
13 courtroom. So please protect that. Protect your
14 ability to be fair and impartial and to judge this case
15 based solely on the testimony and the evidence in this
16 case, okay?

17 So I'm going to ask you, if you would, in a minute
18 when I send you out follow Mr. Mills out. He's going to
19 show you where the jury room is and when you come back
20 tomorrow, that's where you will report. You will come
21 up and report back to the jury room. There will be
22 bailiffs out there to guide you back. I would ask you
23 to please be back in the jury room at 9:30 in the
24 morning and once you all have reconvened, we'll get
25 started with the case at 9:30, okay? So everybody else

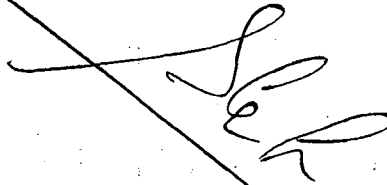
1 please remain seated. Ladies and gentlemen of the jury,
2 please follow Mr. Mills out and we'll see you back here
3 at 9:30 in the morning. You're excused for the day.

4 (Whereupon, the jury was excused for the remainder
5 of the day.)

6 THE COURT: All right. Folks, unless there is
7 anything that we need to deal with this morning, we will
8 be in recess on this case until 2:00. So we'll start
9 back at 2:00 with this case and I think we may have a
10 couple of matters that we're going to take up before we
11 break for lunch so I think Scott had a matter.

12 * * * * *

13
14
15
16
17
18
19
20
21
22
23
24
25



* * * * *

1
2 THE COURT: All right. We're back on the record in
3 the State versus Raphael Pontoo and we're here to take
4 up any pretrial matters that we may have. Anything from
5 the state?

6 MR. McNAIR: Nothing from the state, Your Honor.

7 THE COURT: All right. How about from the defense?

8 MR. MAULDIN: Yes, sir. Your Honor, I made the
9 state aware that there are some photo lineups in this
10 case and I thought it would be appropriate to have a
11 Neil v. Biggers Hearing regarding the suggestibility or
12 potential suggestibility of them. The main issue I see
13 is that there are two separate photo lineups that
14 contain the same pictures. It appears that there is
15 different handwritings on both by the same person so it
16 appears that two of the same photo lineups is
17 essentially the same person.

18 THE COURT: So the same person was shown in photo
19 lineups on two different occasions?

20 MR. MAULDIN: Well, I have asked them about it
21 because the circle and the signature are in different
22 places and it looks like it's been signed in different
23 places on the same day, but I have inquired about it,
24 but I have not had any kind of explanation as to what
25 that is. I believe it's both for a photo lineup six

1 pack containing Mr. Pontoo, and I think there was a
2 separate gun lineup as well that has a similar thing
3 that there appears to be two separate ones. They're
4 signed the same day, but they appear to be done
5 differently as if they were shown two separate ones of
6 the same thing. In that regard that would be our first
7 one. The second one is regarding any potential
8 statements by Mr. Pontoo that the state intends to
9 introduce as far as if there are any Jackson v. Denno
10 issues.

11 THE COURT: Okay.

12 MR. MAULDIN: And the state is aware of that. We
13 have talked about those two separate motions. They are
14 prepared with their witnesses.

15 THE COURT: Ms. McNair, let me first inquire as to,
16 I'm going to kind of take them in reverse order. Are
17 there any statements or anything that the state would
18 intend to get into that we need to go over with a
19 Jackson v. Denno?

20 MR. MCNAIR: It kind of depends on what the defense
21 is, Judge. I know Detective Garrick met with the
22 defendant while he was in the hospital after the wreck.
23 Asked him a few questions. He essentially said I don't
24 know why you're here. I don't remember anything. If
25 his defense is that somebody else was driving or

1 something at trial, we would seek to introduce that
2 statement. Then when Detective Garrick served him with
3 arrest warrants, again it was not you've got the wrong
4 person. It was somebody else. It was more you're a
5 racist. Why are you arresting me, et cetera. So if his
6 defense is what we expect it to be, we would attempt to
7 introduce those statements.

8 THE COURT: Why don't we just go ahead and take that
9 up at this time.

10 MR. McNAIR: Judge, as far as the lineups, they were
11 identical photo lineups shown to the victim and it's my
12 understanding that it was Detective Garrick who wanted
13 an extra copy for his file so the same person picked out
14 the same lineups, same everything.

15 THE COURT: But the identity that the witness
16 identified, in other words, you're just using the one
17 lineup for that purpose?

18 MR. McNAIR: Exactly. Yes, sir. They're identical.

19 THE COURT: Let's deal first with the statements.
20 Let's go ahead and take up those matters.

21 MR. McNAIR: All right. Your Honor, the state calls
22 Detective Todd Garrick.

23 Thereupon,

24 DETECTIVE TODD GARRICK

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Once you're seated state your full name
2 spelling your last on the record, please.

3 THE WITNESS: Detective Todd Garrick, G-a-r-r-i-c-k.

4 DIRECT EXAMINATION

5 BY MR. McNAIR:

6 Q. Detective Garrick, you were pretty much the lead
7 investigator in this case; is that correct?

8 A. That's correct.

9 Q. All right. How long have you been with the
10 Sheriff's Department?

11 A. Been with the Sheriff's Department almost nine
12 years.

13 Q. Do you have any prior law enforcement experience?

14 A. I do.

15 Q. What did you do before the Sheriff's Department?

16 A. Worked with probation and parole for approximately
17 ten years and then approximately five years with the Eleventh
18 Circuit Solicitor's Office.

19 Q. Were you responsible for obtaining arrest warrants
20 for armed robbery in this case?

21 A. Yes, sir.

22 Q. How did you first become involved in this case?

23 A. I was on day call on the 24th of January. My
24 sergeant, Sergeant Lent called me and asked me to respond to
25 Whetstone Road right outside of Swansea in reference to an

1 incident.

2 Q. Why did you respond to Whetstone Road?

3 A. I was informed that there had been a traffic stop
4 involving people that had been involved in an armed robbery
5 in West Columbia.

6 Q. Where in West Columbia?

7 A. Yes.

8 Q. I said where in West Columbia?

9 A. It's called The Rock. It's a club in the West
10 Columbia area.

11 Q. Was a BOLO put out after that robbery at the Mile
12 High Club?

13 A. Yes.

14 Q. Had they stopped a vehicle fitting that description
15 at Whetstone Road?

16 A. Correct.

17 Q. When you got to Whetstone Road, what was going on?
18 Was the vehicle still there?

19 A. The vehicle was not there. There was a couple
20 gentlemen being detained on the side of the road. Some of
21 our officers were there basically holding them sitting with
22 them until I got there.

23 Q. How many individuals were there at Whetstone Road?

24 A. Three.

25 Q. How many individuals were in the vehicle? Were you

1 aware of that?

2 A. Not until I started talking to the individuals over
3 there.

4 Q. Can you identify the individuals on the side of the
5 road?

6 A. Yes. It was Carlisle Jones, Iquawn Jones, and
7 Patrick Johnson.

8 Q. And after speaking with those individuals, did you
9 develop a suspect in the armed robbery?

10 A. I did.

11 Q. What was the name of that suspect?

12 A. Raphael Lamarr Pontoo.

13 Q. Where was the vehicle and where was Mr. Pontoo?

14 A. I was informed once I got there that the vehicle was
15 wrecked further down Whetstone Road at the intersection of
16 Whetstone Road and Highway 178.

17 Q. Did you go to the wreck site?

18 A. Eventually I did, but it was a good hour, hour and a
19 half before I got down there.

20 Q. At some point did you learn who was in the driver's
21 seat of the wrecked vehicle?

22 A. Yes, I did.

23 Q. Who was that?

24 A. Raphael Lamarr Pontoo.

25 Q. When did this occur?

1 A. The morning of January 24th, 2014.

2 Q. When was the first time you made contact with
3 Mr. Pontoo?

4 A. Later that morning at the Palmetto Richland Memorial
5 Hospital in Columbia.

6 Q. Where was he in the hospital?

7 A. He was in one of the emergency rooms.

8 Q. Did you go into Mr. Pontoo's room?

9 A. I did.

10 Q. What condition was he in?

11 A. He was in hospital gear or wardrobe, a gown it
12 looked like and he was laying in the bed in the room.

13 Q. Was he awake?

14 A. He was.

15 Q. Was he alert?

16 A. He was.

17 Q. Did he appear to understand what was going on?

18 A. He did.

19 Q. Were they treating him at the time?

20 A. They were treating him. I can't tell you what they
21 were doing, but it seemed medical persons were attending to
22 him.

23 Q. Now, at the point you went to the hospital, was he
24 under arrest?

25 A. He was not.

1 Q. If he was able to, would he have been free to leave
2 the hospital?

3 A. He would have.

4 Q. Why was that?

5 A. Well, at the time I had just spoken to the witnesses
6 there on Whetstone Road. I had not had a chance to speak to
7 the victim Mr. Ruple at that point so I wanted to talk to Mr.
8 Ruple before any warrants were gotten.

9 Q. Okay. Prior to asking Mr. Pontoo any questions or
10 talking to him, did you Mirandize him?

11 A. I did.

12 Q. How do you Mirandize folks?

13 A. I always have a card on me that has the Miranda
14 Rights on it.

15 Q. Did you use that card with Mr. Pontoo?

16 A. I did.

17 Q. Would you just read that card into the record?

18 A. You have the right to remain silent. Anything you
19 say can and will be used against you in a court of law. You
20 have the right to talk to an attorney and have him or her
21 present with you while you are being questioned. If you
22 cannot afford to hire an attorney, one will be appointed to
23 represent you before any questioning if you wish. You can
24 decide at any time to exercise these rights and not answer
25 any questions or to make any statements. Do you understand

1 each of these rights that I have explained to you? And
2 having those rights in mind do you wish to talk to us now?

3 Q. And to the best of your knowledge did he appear to
4 understand his rights?

5 A. He did.

6 Q. Did he ask you any questions about his rights?

7 A. No, sir.

8 Q. After reading those rights, did he indicate he was
9 willing to speak with you?

10 A. He did.

11 Q. Did you ask him any questions?

12 A. I began asking him questions about the incident.

13 Mr. Pontoo was very argumentative. Kept asking me why I was
14 there. He didn't know anything. That went on for about a
15 little more than five minutes.

16 Q. Okay. So he essentially said he did not remember
17 anything about the accident?

18 A. Correct.

19 Q. Who all was present while you were questioning Mr.
20 Pontoo?

21 A. Myself, Officer Brad White with the Sheriff's
22 Department and hospital personnel that was in the room.

23 Q. Did anybody promise, coerce or threaten him to make
24 a statement?

25 A. No. No, sir.

1 Q. Was he being deprived of any medical care while you
2 were talking to him?

3 A. No, sir.

4 Q. And he didn't appear to have any mental or physical
5 condition that prevented him from understanding what you were
6 saying, did he?

7 A. No, sir.

8 Q. Were his answers in context with the questions you
9 were asking him?

10 A. Yes, sir.

11 Q. To the best of your knowledge, were his responses
12 voluntarily made?

13 A. Yes, sir.

14 Q. Now, after talking to Mr. Pontoo in the hospital,
15 when is the next time you saw him?

16 A. I believe on the 20 -- Let me look back at my
17 notes. It would have been the 29th at Palmetto Richland
18 Health. When we went over to the hospital, he was being
19 discharged and we were going over there to pick him up to
20 transport him to the detention center.

21 Q. Did you serve warrants on him on that day?

22 A. Yes, sir.

23 Q. Did you Mirandize him again when you served the
24 warrants?

25 A. I believe we did.

1 Q. All right. Well, at any rate, did you attempt to
2 interrogate him or question him any further after you served
3 those warrants on him?

4 A. No, sir.

5 Q. What, if anything, did he say to you when you were
6 transporting him to the detention center?

7 A. Again he was basically just talking. He did make
8 the statement at one point to the effect that I and Detective
9 Sandy Black who was with who helped me transport him back to
10 the hospital, that we could hit him and no one would look
11 into it or believe him.

12 Q. He did not say anything about that he wasn't driving
13 the vehicle? Did not deny driving the vehicle?

14 A. No, sir.

15 Q. Never mentioned Kewon Clemmons?

16 A. No, sir.

17 MR. McNAIR: Judge, that's the extent of what we
18 seek to introduce.

19 THE COURT: All right. Mr. Mauldin, do you wish to
20 cross the witness?

21 MR. MAULDIN: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MR. MAULDIN:

24 Q. When you went to see Mr. Pontoo in the hospital on
25 the 24th, did he have a neck brace on?

1 A. He did.

2 Q. Okay. Did the hospital inform you whether or not he
3 was under any kind of medication or anything?

4 A. They were just - they told me they were treating
5 him, but they did not specifically tell me what medication
6 they were giving him.

7 Q. And often when a suspect or people that are going to
8 be charged are in the hospital, you put a hold on them so the
9 hospital will notify you when to come pick them up; is that
10 correct?

11 A. Correct.

12 Q. Did you do that in Mr. Pontoo's case?

13 A. Yes, we did.

14 Q. When you talk about the hospital people being
15 present, was there security from the hospital there since law
16 enforcement was involved?

17 A. No, sir. Nobody from hospital security was in the
18 room.

19 Q. And your testimony is that the statement Mr. Pontoo
20 gave was basically he asked you why you were there and then
21 you talked about the armed robbery case or the failure to
22 stop case?

23 A. I was asking him about the armed robbery case. I
24 believe Officer White was asking him more about the traffic
25 wreck.

1 Q. That's Officer White with the Sheriff's Office?

2 A. Yes, sir.

3 Q. And the statements regarding that was that he didn't
4 know anything?

5 A. He just kept repeating why are you here? I don't
6 know anything. Can't you see I'm in the hospital room? Why
7 are you talking to me?

8 Q. Well, at any point did he say he didn't want to talk
9 to you?

10 A. Yes, sir, at some point he became agitated and he
11 stated he was through talking with me and at that point and
12 he ended the conversation.

13 Q. Okay. And your testimony regarding the 29th is that
14 you were transporting Mr. Pontoo from the hospital to the
15 detention center and he said something to the effect that you
16 and Detective Black could hit him and no one would believe
17 him?

18 A. That's correct.

19 Q. And that's it?

20 A. That's it.

21 Q. Now, you said when you transported him, that you
22 believed you gave him Miranda. Are you not sure that you
23 gave him Miranda?

24 A. I'm not positive. I'm pretty sure that I did. I
25 cannot remember that day if I did give him Miranda.

1 Q. And during the time of this transport you made him
2 aware that he was being charged with crimes; is that
3 correct?

4 A. Yes, sir. He already knew that he was being
5 charged.

6 MR. MAULDIN: No further questions, Your Honor.

7 THE COURT: All right. Anything further from the
8 state of this witness?

9 MR. McNAIR: Very briefly.

10 REDIRECT EXAMINATION

11 BY MR. McNAIR:

12 Q. When you were transporting him to the detention
13 center, did you ask him any questions to elicit a response or
14 he just volunteered that information?

15 A. I did not ask him any questions between the hospital
16 and the jail.

17 Q. Okay. So that was just volunteered by him,
18 correct?

19 A. Correct.

20 Q. In the hospital when he said he didn't want to talk
21 to you anymore, did all the questioning at that point stop?

22 A. It did.

23 Q. Were you present when he was asked about driving the
24 vehicle that wrecked? Was Mr. Pontoo asked whether or not he
25 was driving the vehicle when it wrecked?

1 A. I believe Officer White did ask him that.

2 Q. Do you recall what his response was to that?

3 A. It was either I don't remember or I don't know what
4 you're talking about. Something along those lines.

5 MR. McNAIR: Thank you.

6 THE COURT: All right. Thank you very much. Step
7 down. Anything further?

8 MR. McNAIR: That's all we have on that, Your
9 Honor.

10 THE COURT: Anything other statements other than
11 those?

12 MR. McNAIR: No. That's it, Your Honor.

13 THE COURT: Mr. Mauldin?

14 MR. MAULDIN: Yes, Your Honor. We would call
15 Mr. Pontoo for the purposes of this hearing.

16 THE COURT: Mr. Pontoo, come around, please, sir and
17 be sworn.

18 Thereupon,

19 RAPHAEL LAMARR PONTOO

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Have a seat, please, sir. Once you're
22 seated, state your full name spelling your last for the
23 record, please.

24 THE WITNESS: My name is Raphael Lamarr Pontoo,
25 P-o-n-t-o-o.

DIRECT EXAMINATION

BY MR. MAULDIN:

Q. Raphael, do you remember when Detective Garrick came to see you at the hospital on January 24th of 2014?

A. Yes, sir.

Q. Okay. When he was there, did he tell you that you had the right to remain silent?

A. No, sir.

Q. Or that anything you say could be used against you?

A. No, sir.

Q. Did he tell you anything about a right to an attorney or a right to an appointed attorney?

A. No, sir.

Q. Did he tell you anything about the right to stop any time during questioning?

A. No, sir.

Q. And when he was starting to talk to you, what was your response to him when he wanted to talk to you?

A. I didn't want to talk to him.

Q. And that's it?

A. That's it. Never stated anything else.

MR. MAULDIN: No further questions, Your Honor.

THE COURT: Any cross?

CROSS EXAMINATION

1 BY MR. GRAHAM:

2 Q. Mr. Pontoo, you have a conviction as a juvenile for
3 assault and battery of a high and aggravated nature; is that
4 correct?

5 A. Yes, sir. I have a question. I thought you can't
6 go back that far with juvenile?

7 Q. I'm sorry?

8 A. You can't go back that far with juvenile.

9 Q. Well, that's a legal issue. That will be up to the
10 Judge, not yourself.

11 THE COURT: And that's not an issue that we're
12 dealing with at this point because the jury is not
13 present.

14 BY MR. GRAHAM:

15 Q. The charges you're facing today carry serious time;
16 is that correct?

17 A. Yes, sir.

18 Q. When did you first become aware that -- You've read
19 your discovery, right?

20 A. Yes, sir.

21 Q. So you read Detective Garrick's report where he
22 makes the claims that he read you your rights and that he
23 interviewed you in the hospital and you said either I don't
24 know or I don't remember; is that correct?

25 A. I never stated that.

1 Q. I understand you're testifying you haven't said
2 that. But my question is you have read his reports that say
3 that, correct?

4 A. Yes, sir. I read his reports, but I don't clearly
5 remember everything about him saying he read me my Miranda
6 Rights.

7 Q. You don't remember?

8 A. I don't remember clearly what he stated. My motion
9 is big, about this big (indicating) and I don't remember
10 exactly where it says he read me my Miranda Rights because
11 there are so many --

12 Q. Are you saying you don't remember him reading you
13 your Miranda Rights?

14 A. No. I know he didn't read them. I'm saying in my
15 paperwork.

16 Q. Okay. In the paperwork you don't remember --

17 A. I don't remember seeing it. I don't remember seeing
18 it in his report that he stated he read me my Miranda Rights
19 because he never read them to me.

20 Q. Okay. When you read it though, didn't you tell your
21 attorney this didn't happen?

22 A. I told him -- I told him when he first came to see
23 me that I never got read my Miranda Rights.

24 Q. And you knew that he was going to make a claim that
25 you had been read Miranda and that you made those statements,

1 correct?

2 A. I didn't know that.

3 Q. Well, you read your discovery, yes?

4 A. Yes. But I told my lawyer that before I got my
5 discovery.

6 Q. When you read the discovery, you knew that he was
7 lying, correct?

8 A. I told you I never seen or remember any paperwork in
9 his statement saying that he read my Miranda Rights so I'm
10 not going to say that, uhm, gonna say that he was lying
11 because I never remember reading that he read me my Miranda
12 Rights.

13 Q. But you're saying today that he's lying?

14 A. Yeah.

15 Q. And you read your discovery, but you don't remember
16 that in your discovery?

17 A. There's so many police statements in the discovery I
18 can't remember every police statement, sir.

19 MR. GRAHAM: Okay. Where is your report?

20 BY MR. GRAHAM:

21 Q. I'm going to show you a document and ask if you
22 recognize this document? Start reading right here
23 (indicating.)

24 A. (Witness complies.)

25 Q. Do you see in the report now where he talks about

1 coming to see you and reading you your rights and what you
2 said? That first paragraph there. Does that look familiar
3 to you now?

4 A. Yeah. I remember this report. I'm reading it.

5 Q. Do you remember the report now?

6 A. Yeah.

7 Q. Okay. So you remember reading the report where he
8 talked about coming to the hospital and Mirandizing you and
9 what you said now?

10 A. But I never -- Yeah. I understand that he said he
11 came to do it, but he never read me my Miranda Rights.

12 Q. No. I understand you're testifying that he didn't
13 read you your Miranda Rights. My question is, when you got
14 your discovery and this report which you said you recognize,
15 it talks about that he read you your Miranda Rights and you
16 said you knew that was wrong when you read it, right?

17 A. Yes, sir.

18 Q. Okay. Once you read your discovery, did you file a
19 complaint against Investigator Garrick with the Sheriff's
20 Department for lying?

21 A. Talking about -- No. No, sir.

22 Q. You didn't?

23 A. No, sir.

24 MR. GRAHAM: Okay. Thank you.

25 THE COURT: Anything further?

1 MR. MAULDIN: Just something briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MAULDIN:

4 Q. You were wearing a neck brace at that point in time;
5 is that right?

6 A. Yes, sir.

7 Q. Did the hospital people say that you were able to
8 leave?

9 A. No, sir.

10 Q. Why was that?

11 A. Because they said that I was in no condition to
12 leave and that I couldn't leave.

13 Q. The hospital people said that?

14 A. Yes, sir.

15 MR. MAULDIN: No further questions.

16 THE COURT: All right. Thank you very much, sir.
17 You may step down. Mr. Mauldin, anything further on
18 these statements?

19 MR. MAULDIN: No further witnesses, Your Honor.

20 THE COURT: Okay. What's your position then?

21 MR. MAULDIN: Well, Your Honor, as to the statement
22 on January 29th, the second one in time, I would first
23 move that that statement is not relevant to the case.
24 The fact that he said that officers could hit him and
25 nobody would believe him, I don't think it goes to prove

1 any point or issue at all in the case. It's not
2 relevant and the prejudice of it would outweigh any kind
3 of probative value that it would have firstly. And
4 secondly, the officer testified that he was in custody
5 and he was being transported and they do not believe
6 that Miranda was read to him; that they did tell him
7 what his charges were. That could be an invitation to a
8 response. Even though it's not a specific questioning,
9 the fact that they talked to him and told him what his
10 charges were could be seen as a statement designed to
11 elicit some type of response. But first of all, I would
12 say that it's not relevant and the prejudice outweighs
13 the probative value. As to the first in time statement,
14 Your Honor, it would be our position that he was unable
15 to leave the hospital. The officer was there. He was
16 wearing a cervical collar, a neck brace and he was not
17 able to move or leave and that he technically was in
18 custody and it's our position that Miranda was not read
19 at that time and therefore that statement should not
20 come in. And, of course, my Miranda arguments would be
21 for the Fifth Amendment U.S., and Article 1 Section 12,
22 the State Constitution. Of course, the Sixth Amendment
23 U.S. and Article 1 Section 14 of the State Constitution,
24 due process under the Fifth and Fourteenth U.S. and
25 Article 1, Section 3 of the State Constitution.

1 THE COURT: All right, sir. Mr. McNair or Mr.
2 Graham, whoever is going to argue it, let's go first,
3 take them in the order that Mr. Mauldin brought them up.
4 The second statement that was allegedly made during the
5 transport, what relevance would that be in this case at
6 all?

7 MR. McNAIR: I guess like I said at the beginning,
8 Judge, at this time there may not be any, but depending
9 on what his defense could be at trial, if it was like I
10 didn't do this. It was not me. I wasn't driving. I
11 think it goes to show his reaction at the time he's
12 served these warrants. It's not like you got the wrong
13 person. It wasn't me. It was somebody else. He's just
14 like telling the officers, well, you can hit me and
15 nobody would do anything about it. So I think it's kind
16 of indicative of guilt in that sense. But I agree at
17 this point it may not be, but depending on what his
18 defense is I think it is relevant to show what his
19 reaction was when he was served with the warrants.

20 THE COURT: Okay. How about the first one?

21 MR. McNAIR: I think the first one, the testimony
22 was by Detective Garrick that he was not under arrest.
23 He was not in custody at that point because he had not
24 talked to the victim Mr. Ruple in the armed robbery. As
25 far as the Miranda Warnings, I think that's just a

1 credibility issue. I think clearly he has more to lose
2 than Detective Garrick in this. Detective Garrick has
3 no reason to make up something in his report.

4 THE COURT: Let me ask this of Detective Garrick.

5 (DETECTIVE TODD GARRICK RECALLED.)

6 EXAMINATION

7 BY THE COURT:

8 Q. Detective Garrick, you're still under oath, sir.

9 A. Yes, sir.

10 Q. When you went to the hospital to talk with
11 Mr. Pontoo, at the time you were speaking with him had there
12 been any communications with the hospital that he was a
13 suspect and that he was to be held or did that occur -- When
14 did that occur? When did that conversation with the hospital
15 occur?

16 A. That occurred a day or two after that. The 20 --
17 This happened the 24th. It would have been --

18 Q. When you met with him --

19 A. -- a day or two after the emergency room visit.

20 Q. So when you met with him on the 24th, at that point
21 it's purely investigative?

22 A. Yes, sir.

23 Q. And when you left that day, if the hospital would
24 have released him that evening, he could have gone home?

25 A. Yes, sir.

1 THE COURT: Okay. All right. It doesn't appear
2 that on the first, on the visit of the 24th that he was
3 not under arrest. He wasn't in custody. I don't think
4 Miranda is an issue. I don't think the statements are
5 either inculpatory or exculpatory. If I understand them
6 correctly, it was either I don't remember or I don't
7 know on the heels of an accident. But in any case, I
8 don't think there was any issue with regards to the
9 Miranda in that situation. He's not in custody. He's
10 not under arrest. As far as the second series of
11 statements, again I tend to agree with Mr. Mauldin on
12 the face, but I'm going to reserve a ruling on that as
13 far as if there is any substance to it based on the
14 facts and circumstances as they unfold throughout the
15 trial so as to that -- And let me back up a little bit,
16 too. In dealing with that statement, if it comes to
17 that issue, at least for me, the issue is going to be
18 relevancy in my opinion. Even though he was under
19 arrest and was being transported, the statement,
20 according to the testimony, was not in response to any
21 questioning or any interrogation. It was just offered.
22 So from that standpoint it would appear to be admissible
23 in my opinion. But the issue that I find and agree with
24 Mr. Mauldin at this point is the relevance of it. And
25 it may be that in the context of the testimony and the

1 evidence that is presented that it may become relevant,
2 but I think at this stage it's not and so I'm just going
3 to withhold any ruling on that unless or until that
4 becomes an issue, okay?

5 Any other statements, anything else that we're
6 dealing with on statements?

7 MR. McNAIR: That's all from the state, Your Honor.

8 THE COURT: All right. Let's then move to the Neil
9 v. Biggers and the photo lineup.

10 MR. McNAIR: The state calls Jonathan Ruple.
11 Thereupon,

12 JONATHAN RUPLE
13 after having been first duly sworn, testified as follows,

14 THE CLERK: Have a seat, please, sir. Once you're
15 seated, state your full name spelling your last on the
16 record, please, sir.

17 THE WITNESS: Jonathan Trey Ruple, R-u-p-l-e.

18 DIRECT EXAMINATION

19 BY MR. McNAIR:

20 Q. Mr. Ruple, where are you currently living?

21 A. I'm living in Nashville, Tennessee.

22 Q. How long have you been in Nashville?

23 A. Since June of 2014.

24 Q. Where did you live prior to moving?

25 A. West Columbia, South Carolina.

1 Q. Is that where you're from as well?

2 A. Yes, sir.

3 Q. Were you living in West Columbia back on January
4 24th, 2014?

5 A. Yes, sir.

6 Q. Are you familiar with a club in West Columbia called
7 the Mile High Club?

8 A. Yes, sir.

9 Q. Were you at that club on January 24th?

10 A. Yes, sir.

11 Q. Okay. What were you doing there that night?

12 A. I was hanging out with a friend.

13 Q. What was your friend's name?

14 A. His name is Nick.

15 Q. Was it a special occasion?

16 A. Yes, sir. He just got back from Saudi Arabia.

17 Q. Do you recall approximately what time you all got to
18 the Mile High Club?

19 A. No, sir, I don't.

20 Q. Sometime that night?

21 A. Yes, sir.

22 Q. At some point while you all were there, do you meet
23 some individuals you hadn't seen before?

24 A. Yes, sir.

25 Q. Okay. Did they introduce themselves?

1 A. One of them did. I can't remember if the other ones
2 did or not.

3 Q. Okay. How many were there?

4 A. Five of them.

5 Q. Okay. Now, where are you when you meet these
6 individuals?

7 A. I was standing at my car.

8 Q. Where was your car parked?

9 A. It was in front of the door of the club.

10 Q. Who is with you at your car?

11 A. Nick is.

12 Q. Where are these other individuals?

13 A. Two spots over in another car.

14 Q. So you all are outside at this point?

15 A. Yes, sir.

16 Q. How many individuals are at the other car?

17 A. I just recall two.

18 Q. Two. Okay. Did they walk up and introduce
19 themselves?

20 A. They did.

21 Q. You said -- What was one of them names?

22 A. Los.

23 Q. Did you know what the other guy's name was?

24 A. I don't recall.

25 Q. What did you and Los and the other individuals start

1 talking about?

2 A. Started talking about cars, music, girls, guns,
3 stuff like that.

4 Q. At some point did you all show each other guns?

5 A. We did.

6 Q. Who showed who what gun?

7 A. I showed him a Hi-Point nine millimeter.

8 Q. Was that your weapon?

9 A. It was.

10 Q. Where was it?

11 A. It was in the trunk of my car inside of a book
12 bag.

13 Q. Let me back up just a little bit.

14 A. All right.

15 Q. What were you talking about with Nick at your car
16 when these individuals walked up?

17 A. That I had just bought a gun.

18 Q. Did you have that gun pulled out at that point?

19 A. I did.

20 Q. Where was it?

21 A. It was in my hand. I was at the back of the car.

22 Q. At your trunk?

23 A. Yes, sir.

24 Q. And you had the gun out?

25 A. Yes, sir.

1 Q. Showing it to your friend Nick?

2 A. Yes, sir.

3 Q. And is it at that point that the gentlemen named Los
4 and the other guy walk up?

5 A. Yes, sir.

6 Q. And you mentioned you all started talking about rims
7 and girls and then guns?

8 A. Yes, sir.

9 Q. Did you show them your gun?

10 A. I did.

11 Q. Did they have any guns?

12 A. They did.

13 Q. Well, who had what guns?

14 A. Los had a .22. It was a black gun, a little small
15 revolver, hammer less.

16 Q. A black handleless .22 revolver?

17 A. Yes, sir. It had a red laser pointer on it. And
18 then the other guy, I can't remember his name, he had a
19 silver or a chrome .25 automatic with pearl handles on it.

20 Q. Did Los say anything about his gun?

21 A. Not really.

22 Q. Did he say where or when he got it?

23 A. He had said that had just gotten it that day. I
24 remember that. But he didn't tell me where.

25 Q. Okay. How long do you think you all were outside by

1 your car talking about guns and whatever else you all were
2 talking about?

3 A. Probably about 10 to 15 minutes.

4 Q. And describe that area where that is. Is that right
5 outside the bar?

6 A. Yes, sir. It's right there. The sidewalk is
7 probably ten feet away from is.

8 Q. Are there any lights in that area?

9 A. There are lights by the sidewalk to light up that
10 area.

11 Q. Did you get a good look at Los's face?

12 A. I did.

13 Q. When you were talking to him, how far away from you
14 was he?

15 A. Two feet.

16 Q. You talked to him about 10 to 15 minutes?

17 A. Yes, sir.

18 Q. Could you tell what he was wearing as well?

19 A. Yes, sir.

20 Q. What was his hair style?

21 A. He had thin dreadlocks probably about shoulder
22 length like gold tips.

23 Q. Okay. What type of clothes was he wearing?

24 A. He had, I remember had on a green puffy jacket and
25 like a silver grayish pants.

1 Q. Were they jeans?

2 A. Yes.

3 Q. So grayish jeans, green puffy jacket. Do you
4 remember anything about his shirt?

5 A. It was black.

6 Q. A black T-shirt?

7 A. Yes, sir.

8 Q. How did the other guy look that was with Los?

9 A. I just remember him wearing a hat I guess to hold
10 his dreadlocks.

11 Q. Do you know if he had dreadlocks?

12 A. I never seen his hair. I just seen the hat.

13 Q. Why did you say to hold his dreadlocks then?

14 A. It's the kind of hat that they wear to hold the
15 dreadlocks.

16 Q. What color was it?

17 A. It was red, green and yellow.

18 Q. A Jamaican style hat?

19 A. Yes, sir.

20 Q. Okay. Did you ever see his hair?

21 A. No, sir.

22 Q. So you don't whether he had dreadlocks or not?

23 A. I have no clue.

24 Q. Okay. Los had dreadlocks?

25 A. Yes, sir.

1 Q. You're certain of that?

2 A. Yes, sir.

3 Q. Do you remember any clothing items that the guy with
4 Los was wearing?

5 A. I just remember he had on like a green striped
6 shirt.

7 Q. Okay. In size how big was Los?

8 A. He was a little bit shorter than me, but we still
9 could see kind of eye to eye. Kind of stocky.

10 Q. How tall are you?

11 A. I'm six foot one.

12 Q. So how much shorter than you would you say he was?

13 A. Maybe three to four inches.

14 Q. Okay. How much would you say he weighed?

15 A. I'm not exactly sure. If I had to guess, probably
16 180 pounds.

17 Q. Was he bigger or smaller than the guy he was with?

18 A. He was shorter than the guy he was with, but a
19 little bit more stocky.

20 Q. Okay. So you say you all hung out there by your car
21 outside the bar for 10 to 15 minutes?

22 A. Yes, sir.

23 Q. Okay. And the whole time are you talking with Los
24 and his friend?

25 A. Yes, sir.

1 Q. And you're a couple feet away, correct?

2 A. Yes, sir.

3 Q. What happens after you all are done outside?

4 A. Me and Nick walked back into the bar and they walked
5 back into the bar and me and Nick just kind of broke off to
6 the left side of the bar for a little bit, had a few
7 drinks.

8 Q. When you went back into the bar, where was Los and
9 his other friend?

10 A. Whenever you walk into the door, he was on the right
11 side by the pool tables and pinball machine and I was over to
12 the left across the bar.

13 Q. Did you hang out with him anymore inside the bar?

14 A. Not really.

15 Q. You mentioned he had other friends with him. When
16 did you meet those other folks?

17 A. Whenever me and Nick had walked back in, he briefly
18 introduced us and then we separated.

19 Q. Okay. How much longer would you say you stayed
20 inside the bar after you had been outside by your car?

21 A. Approximately two hours.

22 Q. Okay. Did you see the man you knew as Los inside
23 the bar for that whole period?

24 A. I could see him from across the bar, yes.

25 Q. Would you occasionally talk to him or did you all

1 pretty much split up at that point?

2 A. Pretty much split up at that point.

3 Q. Okay. How was the bar -- Was the bar well lit?

4 A. Over by the pool tables it was, but where I was at
5 not really. It was kind of dim.

6 Q. Did you get a good look at him inside the bar as
7 well though?

8 A. Yes, sir.

9 Q. Over the course of, I guess, two hours while you all
10 were still in the bar, did you see him on multiple
11 occasions?

12 A. I could see him from across the bar.

13 Q. All right. Now, I guess at this point you're at a
14 bar. How much had you had to drink?

15 A. Honestly I couldn't tell you.

16 Q. On a scale of 1 to 10, how drunk would you say you
17 were --

18 A. Five.

19 Q. -- 10 being the most?

20 A. Five.

21 Q. Five?

22 A. Five.

23 Q. Did you feel you were capable to drive?

24 A. I did after I stopped drinking for about an hour
25 before I left.

1 Q. Okay. So you said you were in the bar, inside the
2 bar for another two hours or so?

3 A. Yes, sir.

4 Q. At that point did you decide to leave?

5 A. Yeah. After about two hours I decided to leave.

6 Q. And you quite drinking for a period of time before
7 you left?

8 A. Yes, sir.

9 Q. Tell us what happened when you leave the bar.

10 A. I walked with Nick back out to his car and kind of
11 talked to him for about five to ten minutes, said our
12 good-byes.

13 Q. Let's back up one second.

14 A. Okay.

15 Q. Before you leave the bar, do you see Los again?

16 A. I do.

17 Q. What, if anything, did he say to you and where do
18 you see him?

19 A. He just asked me where I was headed and I just told
20 him I was going home.

21 Q. Okay. So then you walked out. You said you went to
22 your friend Nick's car?

23 A. Yes, sir.

24 Q. Telling Nick good-bye?

25 A. Yes, sir.

1 Q. How long do you think that takes?

2 A. Maybe five to ten minutes.

3 Q. So what happens after Nick leaves?

4 A. I go to my car and get in.

5 Q. And when you're walking back to your car, do you see
6 Los again?

7 A. I do. He's standing out by the exit on the
8 sidewalk.

9 Q. Was he by himself at that point or did you see other
10 people with him?

11 A. I don't recall seeing anybody else.

12 Q. Okay. So what happened next?

13 A. After I got back into my car, he tapped on my window
14 and asked me about some rims and stuff and, you know, told me
15 like he wanted to hang out so I wrote down my number and gave
16 him my number and, you know, we shook hands and then he said
17 thank you and reached in and grabbed my bag.

18 Q. And took off?

19 A. Yeah. He started running off.

20 Q. What did you do?

21 A. I got out of my car and chased him.

22 Q. Did you catch him?

23 A. I did.

24 Q. Where did you catch him?

25 A. He was trying to get into another car that was

1 parked behind me.

2 Q. Was that the same vehicle you had seen them at
3 prior?

4 A. Yes, sir.

5 Q. Earlier that night?

6 A. Yes, sir.

7 Q. Was that vehicle still parked?

8 A. It was backed up facing towards the exit ready to
9 go.

10 Q. Were there people in that car?

11 A. Yes, sir.

12 Q. So what did you do when caught Los?

13 A. I grabbed him. Tried to grab my bag back. He hit
14 me with my bag so I hit him several times with my hands and
15 then after, you know, we scuffled around for a second or two,
16 he pulled a gun out and stuck the gun in my face.

17 Q. Did you recognize the gun?

18 A. Yes.

19 Q. Was that the same gun you had seen earlier in the
20 night?

21 A. Yes, sir.

22 Q. That was the .22 revolver?

23 A. Yes, sir.

24 Q. How far away is he when he was sticking that gun in
25 your face?

1 A. Maybe three to five feet.

2 Q. What did you do at that point?

3 A. I held my hands up and told him he could take my
4 bag. It wasn't worth my life, then I turned around and
5 walked away. He got in his car and whenever they started
6 peeling out, I turned around and got the tag number and
7 called 911.

8 Q. What type of car did he get into?

9 A. Into a Grand Marquis.

10 Q. You got the tag number?

11 A. Yes, sir.

12 Q. And did you call 911?

13 A. I did.

14 Q. Did you provide 911 with that tag number?

15 A. I did.

16 Q. To this day do you remember part of that tag
17 number?

18 A. Yes, sir.

19 Q. What were the last --

20 A. The last digits were 222.

21 Q. Do you recall after this incident being showed a
22 photo lineup containing pictures of different people?

23 A. Yes, sir, I do.

24 Q. Where were you shown that lineup?

25 A. At the Lexington County police station.

1 Q. Who showed that lineup to you?

2 A. Mr. Garrick.

3 Q. Do you recall when that was?

4 A. The 27th of January 2014.

5 Q. Okay. And what, if anything, did Detective Garrick
6 instruct you to do when he showed you that lineup?

7 A. He told me that the suspect may or may not be in it
8 and just to use my best judgment.

9 Q. Did he in any way suggest, hint or point out who you
10 should pick?

11 A. No, sir.

12 Q. When you looked at that lineup, what did you tell
13 Detective Garrick?

14 A. I told him I picked two people, but I couldn't be
15 fair as to which one I could choose because it was not a
16 color picture. It was a black and white picture of black men
17 and I couldn't distinguish between the tone of the skin and
18 the hair.

19 Q. Okay. So you narrowed it down to two people?

20 A. Yes, sir.

21 Q. Were you one hundred percent certain it was one of
22 those two people?

23 A. Yes, sir.

24 Q. But you just couldn't choose which one?

25 A. Yes, sir. That's correct.

1 Q. Now, were you actually shown two lineups?

2 A. No, sir. It was the same lineup twice.

3 MR. McNAIR: These will be Court's exhibits.

4 (Whereupon, Court's Exhibit #1 and #2 marked for
5 Identification.)

6 BY MR. McNAIR:

7 Q. Now, I'm going to show you Court's exhibits 1 and 2.
8 Take a look at those and tell me if you recognize those?

9 A. Yes, sir, I do.

10 Q. Okay. Are those the lineups that you were shown by
11 Detective Garrick on January 27th?

12 A. Yes, sir.

13 Q. And how do you recognize these? Are those your
14 initials?

15 A. Yes, sir, they are.

16 Q. You circled number 2 on both of those, correct?

17 A. Yes, sir.

18 Q. Those are your initials beside number 2?

19 A. Yes, sir.

20 Q. And did you write 50 percent beside?

21 A. I did.

22 Q. Why was that?

23 A. Because I couldn't distinguish because it wasn't a
24 color photo.

25 Q. What numbers were you in between?

1 A. Two and four.

2 Q. Two and number 4?

3 A. Yes, sir.

4 Q. And you felt that if you had seen these pictures in
5 color, you could have picked the person out?

6 A. Yes, sir.

7 Q. Now, prior to seeing that photo lineup, did
8 Detective Garrick or anybody show you a picture of the person
9 who they arrested?

10 A. No, sir.

11 Q. Have you ever seen a picture of the person who was
12 arrested for this armed robbery?

13 A. No, sir.

14 Q. Have you ever had an opportunity to see that person
15 in person?

16 A. No, sir.

17 Q. Do you see that person in court today?

18 A. Yes, sir.

19 Q. Where is he sitting?

20 A. He's sitting right there (indicating.)

21 Q. You're pointing at the defendant?

22 A. Yes, sir.

23 Q. And how certain are you that that's him?

24 A. One hundred percent.

25 Q. Why are you so certain?

1 A. Because since that incident I got nightmares reoccur
2 for the past year a few times a week.

3 Q. In fact, when you look at this lineup today, do you
4 still think number 2 is the person?

5 A. No, sir.

6 Q. Why did you change? Who do you think it is as you
7 sit here today?

8 A. Number 4.

9 Q. And did you think it was number 4 before you ever
10 saw this man in court today?

11 A. Yes, sir.

12 Q. Why is that?

13 A. Because his face is burned into my brain.

14 Q. You feel like you have a picture of what his face
15 looked like more clearly today than you did back then?

16 A. Yes, sir.

17 Q. You say you have dreams about his face?

18 A. Yes, sir.

19 Q. Did you think he was going to pull the trigger that
20 night?

21 A. Yes, sir.

22 Q. Was that a traumatic experience for you?

23 A. It was. It still affects me.

24 Q. Do you know why you were shown two lineups? When I
25 say that, two copies is what I mean. Not two lineups.

1 A. One for his photo.

2 Q. Did you do these back to back or was there some time
3 period in between?

4 A. I don't recall.

5 Q. Do you recall after January 27th, did you ever go
6 back to the police station?

7 A. I don't think I did.

8 MR. McNAIR: Okay. I think that's it, Your Honor.

9 THE COURT: All right. Mr. Mauldin.

10 MR. MAULDIN: Thank you.

11 CROSS EXAMINATION

12 BY MR. MAULDIN:

13 Q. Mr. Ruple, you have had an opportunity to speak with
14 the police closer to the event about the description of the
15 person that robbed you; is that correct?

16 A. Yes, sir.

17 Q. Didn't you tell one of them that you thought he was
18 five five, 180 pounds?

19 A. Yes, sir.

20 Q. Okay. And then another time you told somebody you
21 thought he was five eight?

22 A. Yes, sir.

23 Q. And 180 pounds?

24 A. Yes, sir.

25 Q. You just testified that you weren't sure what the

1 sequence was of what time between one and the other that you
2 picked that number 2 out of the lineup?

3 A. Yes, sir.

4 Q. Had you already circled one and signed it before you
5 got showed the second one?

6 A. Yes, sir.

7 Q. Or did they -- Okay. And you picked number 2 both
8 times; is that correct?

9 A. Yes, sir.

10 Q. Now, you have attended bond hearings for Mr. Pontoo;
11 isn't that correct?

12 A. I showed up for one and somebody had met me in the
13 room and told me that I should walk outside with him and then
14 he kind of talked to me and asked me a couple questions and
15 he said I didn't have to come inside if I wanted to, I didn't
16 have to attend. I could go ahead and leave and he would
17 speak on my behalf.

18 Q. So you were never actually present for any bond
19 hearing?

20 A. No, sir.

21 Q. But you were inside the courtroom; is that correct

22 --

23 A. No, sir.

24 Q. -- before you got pulled out of the courtroom?

25 A. No, sir. I just walked into the lobby and I asked

1 the woman behind the counter where I needed to go. At that
2 time an older gentleman come outside and greeted me and we
3 walked out to the parking lot. I didn't step back foot into
4 the building after that.

5 MR. MAULDIN: No further questions, Your Honor.

6 THE COURT: Anything further of this witness?

7 MR. McNAIR: No, sir, Your Honor.

8 THE COURT: All right. Thank you very much, sir.
9 You may step down. Call your next witness.

10 MR. McNAIR: The state calls Todd Garrick.

11 THE COURT: Officer Garrick, you're still under
12 oath, sir. Please come and take the stand.

13 (DETECTIVE TODD GARRICK RECALLED.)

14 DIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. Detective Garrick, when was the first time you went
17 and met with Mr. Ruple?

18 A. That would have been January 27th.

19 Q. Where was that?

20 A. That was at the Sheriff's Department, 521 Gibson
21 Road.

22 Q. And you showed him a photo lineup on that day?

23 A. I did.

24 Q. Prior to showing him a photo lineup, did he provide
25 you with a description of the robber?

1 A. Yes. We did a statement beforehand.

2 Q. How did he describe the robber to you on January
3 27th?

4 A. A black man, dreadlocks, maybe five ten, black
5 shirt, puffy green Jacket and white/silver pants.

6 Q. Okay. Did he describe anything about the other
7 individual who was with the man he knew as Los?

8 A. Earlier he had said that he was, in a statement he
9 said --

10 Q. We can move on.

11 A. At some point he did state that he had a green
12 striped shirt on.

13 Q. Now, when you went to the hospital to meet
14 Mr. Pontoo and you saw him January 24th, did you retrieve
15 clothes that day that belonged to Mr. Pontoo?

16 A. I did.

17 Q. Okay. What kind of pants did you retrieve?

18 A. They were whitish gray. I believe they were --

19 Q. The color is fine.

20 A. Yes. Whitish gray jeans.

21 Q. Okay. Was that consistent with what Mr. Ruple told
22 you?

23 A. It was.

24 Q. Okay. Did you retrieve a T-shirt?

25 A. I did.

1 Q. What color was that?

2 A. It was black.

3 Q. Did Mr. Pontoo have dreads?

4 A. He did.

5 Q. Was Mr. Ruple also able to provide a description of
6 the vehicle and a tag number?

7 A. He was.

8 Q. Okay. Did that match the description of the wrecked
9 vehicle?

10 A. It did.

11 Q. And was it the same tag number?

12 A. It was.

13 Q. Did they find items in the wrecked vehicle that fit
14 the description of items that Mr. Ruple said were stolen from
15 him?

16 A. They did.

17 Q. What did they find inside the vehicle?

18 A. A backpack and a nine millimeter.

19 Q. Okay. Did they find the weapon that Mr. Ruple
20 described on Mr. Pontoo anywhere?

21 A. Not at the scene that didn't. Later on they did
22 find - we did get that gun.

23 Q. Where?

24 A. At the hospital.

25 Q. Where did it come from?

1 A. It came from Mr. Pontoo's clothing.

2 Q. The folks at the hospital found it in his
3 clothing?

4 A. Yes, sir.

5 Q. Where in particular?

6 A. I believe in his pants.

7 Q. Was that a black .22 revolver?

8 A. It was.

9 Q. I'm going to show you what's already been marked as
10 Court's 1 and 2. Who generated these photo lineups?

11 A. Beverly Smith in our intel department.

12 Q. Are you familiar with how they're generated?

13 A. I am.

14 Q. And where are those pictures obtained from?

15 A. DMV database.

16 Q. Those are the originals and they're in black and
17 white, correct?

18 A. Correct.

19 Q. Did you show Mr. Ruple those lineups?

20 A. I did.

21 Q. Who was present when you showed him?

22 A. Myself and Mr. Ruple.

23 Q. Okay. What, if anything, did you instruct Mr. Ruple
24 to do before you showed him this lineup?

25 A. Before I showed him the lineup, I just told him to

1 take his time. The person that he was looking for may or may
2 not be on that sheet of paper. Just take his time and look
3 over it and if he saw the person, just circle it.

4 Q. Did he look at the lineups?

5 A. He did.

6 Q. What was his response?

7 A. He had it narrowed down between number 2 and number
8 4. I told him, I said, well, just take your time and look at
9 them and he eventually circled number 2 and said that he was
10 50 percent because he had it down between 2 and 4.

11 Q. Was he certain it was one of those two
12 individuals?

13 A. He was.

14 Q. Did you tell him just to initial beside the one he
15 thought and put that 50 percent?

16 A. I did.

17 Q. And are those, in fact, his initials?

18 A. It is.

19 Q. Why did you show him two copies of the identical
20 one?

21 A. I showed him the original and then I just got him to
22 fill out a second one for my copy for my file in case the
23 original had to go somewhere else.

24 Q. Did he do those at the same time?

25 A. He did.

1 Q. Those were done on the same date at the same time,
2 correct?

3 A. Yes, sir.

4 Q. Prior to showing him that lineup, had you shown him
5 any other pictures of anybody?

6 A. I had not.

7 Q. And by the way, which number is actually
8 Mr. Pontoo's picture on that photo lineup?

9 A. Number 4.

10 Q. He so he picked number 2?

11 A. Yes, sir.

12 Q. After he picked number 2, did you tell him whether
13 or not he had picked the right person or not?

14 A. No, sir.

15 Q. Did you ever show him any pictures of Mr. Pontoo --

16 A. I did not.

17 Q. -- other than that photo lineup?

18 A. I did not.

19 Q. Mr. Ruple, has he ever been with you when the
20 defendant was present, Mr. Pontoo was present?

21 A. No, sir.

22 MR. MCNAIR: That's all from the state, Your
23 Honor.

24 THE COURT: Mr. Mauldin.

25 MR. MAULDIN: Thank you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Investigator Garrick, how tall is Raphael Pontoo?

A. I would have to look back at his DMV. I don't know for sure exactly how tall he is.

Q. Well, if you don't know, then you don't know if five eight or five five is an accurate description?

A. At that time I did not.

Q. How much does he weigh?

A. Again, I would have to have his DMV in front of me to know exactly what his DMV said.

Q. Now, when you went to the hospital and you got these clothes, who said that these clothes belonged to Mr. Pontoo?

A. The hospital staff there in the room.

Q. Do you remember who it was?

A. I do not.

Q. And they told you that they didn't have a weapon or anything for you to take, didn't they?

A. Correct. At that time they didn't.

Q. Although they supposedly found the weapon when they cut off his clothes?

A. Supposedly. I wasn't there when the clothes were cut off.

Q. Okay. Now, the backpack that you are talking about

1 was actually found in the car or outside the car after?

2 A. I believe it was outside the car, but I would have
3 to look at the crime scene photos.

4 Q. So you're not sure where it was?

5 A. Not at this moment, no.

6 Q. Now, I'm a little confused. What's the purpose of
7 -- I mean, you showed him the same lineup twice. What was
8 the reason for doing that?

9 A. Again, I wanted those two copies for myself, one for
10 the original in case, for the file, and number 2 for my file
11 in case I had to give the original to the Solicitor's Office
12 or something like that.

13 Q. Couldn't you have just made a copy of it?

14 A. I could have, but I had both - I had two - I had
15 both forms in there in the room with me and just to save time
16 just have him fill out both of them.

17 Q. And he filled them both out at the same time?

18 A. He did.

19 Q. So he was shown both and then circled both at the
20 same time and then signed them?

21 A. He was shown the first one. He circled it,
22 initialed it, I signed and dated it and then we filled out
23 the second one for my copy.

24 Q. So that's not at the same time. One was after?

25 A. Right after the first one. I say the same time. It

1 was right after the first one was signed.

2 Q. Did you say, would you mind doing a second one for
3 my file?

4 A. Correct.

5 Q. Is that how it went?

6 A. Yes.

7 Q. It's still -- Why would you have two separate ones
8 instead of just making a copy? I don't understand. Had you
9 lost one before? Has that been an issue in the past?

10 A. No, sir. I just -- I had two copies of the lineup
11 with me so I got Mr. Ruple to sign both copies so that there
12 would be two copies.

13 Q. And you did the same thing with the lineup regarding
14 the gun; is that correct?

15 A. That's correct.

16 Q. Two separate ones for that, but the same
17 procedure?

18 A. Yes, sir.

19 Q. Now, when you showed him that lineup, how sure was
20 he when picked out the gun?

21 A. He circled it right away after looking at them. I
22 can't -- He -- He just circled that gun. I don't think we
23 went through how sure percentage wise he was.

24 MR. MAULDIN: Okay. No further questions, Your
25 Honor.

1 THE COURT: Anything further?

2 MR. McNAIR: No, sir, Your Honor.

3 THE COURT: Thank you, sir. You may step down. Any
4 further witnesses?

5 MR. McNAIR: That's it's, Your Honor.

6 THE COURT: Mr. Mauldin.

7 MR. MAULDIN: Thank you, Your Honor. It's our
8 position that the showing of the two separate lineups
9 and both as far as the face lineup and the gun lineup
10 that that is a suggestive process and we believe that
11 they should be excluded under Mr. Pontoo's due process
12 rights and the Fifth and Fourteenth Amendments and
13 Article 1, Section 3 of the South Carolina Constitution,
14 his right to a fair trial under the Sixth Amendment of
15 U.S. and Article 1, Section 14 of the South Carolina
16 Constitution. Your Honor, we believe the lineup showing
17 demonstration was suggestive and it does not meet the
18 standard and therefore they should be excluded and any
19 in court identification of Mr. Pontoo and/or the gun
20 should be excluded. Thank you.

21 THE COURT: Mr. McNair.

22 MR. McNAIR: Judge, I mean, obviously it wasn't
23 suggestive. He picked the wrong person. I mean, just
24 because there's two of them doesn't make it more
25 suggestive.

1 THE COURT: Just, and I may have missed something,
2 is there a reason why you refer to one as the -- What
3 did you refer to them as? One is a gun lineup?

4 MR. MAULDIN: There's a separate lineup of guns that
5 was shown to him, Your Honor. There were two separate
6 ones of that as well.

7 THE COURT: The guns.

8 MR. McNAIR: They did a gun lineup. I wasn't
9 planning on introducing that.

10 THE COURT: Okay. That -- I was going to say that's
11 not in front of me so I've just got this photo lineup;
12 is that correct?

13 MR. McNAIR: Yes, sir. And they were duplicates so
14 if one is not suggestive, I don't see how two are
15 suggestive. He picked the wrong person on both of them.

16 THE COURT: Right. All right.

17 MR. McNAIR: Judge, I'm sorry if I didn't pass these
18 up to you. I'll hand them up.

19 THE COURT: All right.

20 MR. McNAIR: (Proffering.)

21 THE COURT: All right. I'm going to overrule any
22 objection to the photo lineups. I'm not -- I haven't
23 heard anything that would lead me to believe that it was
24 prepared in any suggestive manner. It was not presented
25 in any suggestive manner. Obviously it's odd that you

1 would have someone look at and sign two originals. I
2 guess that's what you would consider that, but according
3 to the testimony it was done at the same time and
4 explained that it was to provide a copy for the file so
5 there wasn't any, from what I gathered from the
6 testimony, there wasn't any further suggestion to like,
7 for example, look at this again and look more carefully.
8 It was basically do another one for us and in both of
9 them, you know, he selected number 2 and put 50 percent
10 and it doesn't appear that there was anything
11 inappropriate or suggestive so I'm going to overrule any
12 objection to the admissibility of that. Now, those
13 aren't marked.

14 MR. McNAIR: Yes, sir, they are.

15 THE COURT: We're they're marked for identification
16 --

17 MR. McNAIR: Yes, sir.

18 THE COURT: -- at this point. All right. Anything
19 else, Mr. Mauldin, with regards to any matters pre-trial
20 or anything?

21 MR. MAULDIN: Not at this time as far as I'm aware
22 of. Things could always come up during trial.

23 THE COURT: Absolutely and we'll deal with things as
24 they do, but nothing that you are aware that we can take
25 up at this point?

1 MR. MAULDIN: No, Your Honor.

2 THE COURT: Anything further? Anything from the
3 state at all at this point?

4 MR. McNAIR: No, sir, Your Honor.

5 THE COURT: Okay. We've got the jury coming back in
6 at 9:30 as you are aware and we'll start then, but and I
7 don't know if there would be and I'm just saying this
8 now for you to just keep in mind. If you have any
9 specific requested charge that you want us to consider,
10 Lauren and I will be putting together a charge, but
11 obviously we won't finalize anything until we get to the
12 end of the case, but if you have anything specifically
13 that you want us to consider, please e-mail that to us
14 at your earliest convenience or when you can do that so
15 that we can be considering it and putting it together,
16 okay? All right. If there is nothing else, then we'll
17 be at ease until 9:30 tomorrow morning. And that's
18 regarding this case. Shawn, anything from the state
19 besides this matter?

20 MR. GRAHAM: I don't believe so, Your Honor.

21 THE COURT: Okay. All right. Then if there's
22 nothing else, then we will be adjourned until 9:30
23 tomorrow morning.

24 (Whereupon, court was adjourned for the day at
25 3:15.)

January 27th, 2015

THE BAILIFF: Court is now in session. The Honorable Judge Tommy Russo presiding.

THE COURT: Thank you, ladies and gentlemen, and please have a seat. Is there anything we need to take up before we get started from the state?

MR. McNAIR: Not from the state, Your Honor.

THE COURT: Anything from the defense?

MR. MAULDIN: Your Honor, this morning I discussed with Mr. McNair and, in fact, I didn't move to sequester the witnesses. I told him that I would be moving to do that and he said that he wouldn't have any issue with doing that.

THE COURT: Okay. All right. So have we got the folks sequestered that need to be?

MR. GRAHAM: I don't think that will be a problem, Your Honor, and we ask that it would be reciprocal.

THE COURT: Sure. I think you listed one --

MR. MAULDIN: Yes. He's not --

THE COURT: All right. What about the folks from the state that are potential witnesses, are they sequestered?

MR. GRAHAM: I think everybody right now is over there. The armed robbery victim Mr. Ruple under the Constitution is allowed to be in here. He's not in here

1 right now, but if he comes and goes, he's not subject to
2 sequestration.

3 THE COURT: Sure. Okay. All right. Let's go ahead
4 and bring the jury in then, please.

5 (The jury enters the courtroom.)

6 THE COURT: On the record. All right. Ladies and
7 gentlemen, welcome back. I hope everyone had a good
8 evening and are ready to start getting back to work here
9 this morning. Let me just share a few things with you
10 before I give you my opening remarks.

11 During the course of the trial, it's important that
12 everyone is comfortable and paying attention to the
13 testimony and the evidence so if at any time if you get
14 too hot or too cold or whatever, if you will let us
15 know, we can do some adjustment with the thermostat in
16 here. If at any time -- Now, we'll take breaks at
17 certain times, just at times during the course where
18 it's natural that we can take a break, but we can take a
19 break at any time any member of the jury panel needs
20 one. So there are some things that we have no control
21 over. If mother nature calls or comes a knocking, we've
22 got to take a break and that's not an issue. So don't
23 hesitate to let me know if you need to take a break.
24 The last thing I want you to do is to sit there and to
25 be uncomfortable and think, well, I'll wait until this

1 witness is done. Well, sure enough, Murphy's Law, that
2 will be the longest witness in the case and you will be
3 so uncomfortable you're not going to be paying
4 attention. So don't hesitate. Get my attention. Get
5 Mr. Mills' attention and let us know that you need to
6 take a break and we'll stop right where we're at and
7 we'll take that break. We can always start back where
8 we left off so that's not an issue, okay? If you can't
9 hear a witness or if you can't hear one of the
10 attorneys, please, let us know so we can get them to
11 speak up or repeat what it is that they said. If at any
12 time you can't see, if there is an exhibit or something
13 that one of the attorneys is using and you can't see it
14 very well, let us know so we can position it so you can
15 see it. It's important that you see and hear everything
16 that's presented, okay?

17 Now, also in the jury box there is really only a
18 couple of assigned seats. The two alternates will
19 always occupy the two back chairs there and at some
20 point I'm going to ask one of you to serve as the
21 foreperson and then whoever that person is will occupy
22 this first seat. The rest of the chairs you just sit as
23 you normally flow in and out. In other words, don't
24 feel like you have to get to the seat you are in now and
25 have to step over people if you didn't come in that way.

1 Just go ahead and normally flow in and out as you
2 normally would.

3 I'm going to turn it over at this moment to Ms.
4 Frick and she's going to place you under your oath for
5 your role as jurors in this trial.

6 THE CLERK: Please stand and raise your right hand.
7 (The jury was duly sworn by the Clerk of Court at
8 9:50 a.m.)

9 THE COURT: Ladies and gentlemen of the jury, we are
10 about to begin the trial of the case of State of South
11 Carolina versus Raphael Pontoo. Some things I want to
12 share with you. First of all, I don't know how many of
13 you have ever actually sat in on an actual jury trial.
14 Most people don't have that opportunity. Most peoples'
15 experience as it relates to jury trials is what they
16 have seen in the movies or what they have read in books
17 or what they have seen on television and obviously those
18 trials are designed to entertain the listener or the
19 reader. It's Hollywood and those cases tend to always
20 be full of some type of high drama or intense action
21 that you oftentimes would probably not see in a regular,
22 in a real life setting.

23 Now, during the course of this trial while any
24 number of those things could happen, what is important
25 for you to understand is that this trial is not for your

1 entertainment. This trial is a fundamental part of our
2 democracy. It is a search for the truth and oftentimes
3 in searching for the truth it's slow. Sometimes it's
4 very deliberate. It can actually be repetitive. In
5 other words, it's very different from what you have seen
6 in the movies or read in books or seen on television.
7 This courtroom is a place of honor that is dedicated to
8 the protection and to the preservation of citizens'
9 rights through what many have called the greatest
10 justice system ever created.

11 The lawyers that appear before you are advocates for
12 the parties or the sides that they represent, but first
13 and foremost they are officers of the court sworn to
14 uphold the integrity and fairness of our judicial
15 system. You should expect them to be professional,
16 competent, and ethical in the representation of their
17 client's interest.

18 Now, you have just taken an oath to try this case
19 and to reach a fair and just verdict and so you are also
20 expected to be professional, reasonable, and ethical in
21 the performance of your duties which I have absolutely
22 no doubt you will do and I want to thank you for
23 accepting this role as jurors in our system of justice
24 here in Lexington County.

25 Now, I'm going to share some remarks with you. At

1 the close of the case I'm going to give you a charge on
2 the law. This is not that, but what this is or what I
3 hope this will be will basically just be some overview
4 of the trial that we're about to begin and the
5 procedures and the steps that we're going to follow so
6 that you can better follow along with what's going on.

7 Mr. Pontoo is charged as I indicated earlier by an
8 indictment that's been filed with this court and you
9 heard yesterday that we called out what those alleged
10 charges or those allegations are. He's charged with
11 armed robbery and with failure to stop for a blue light
12 resulting in death.

13 Now, the elements of those charges I will explain to
14 you when I give you the charge on the law. As I told
15 you yesterday, the indictment and those allegations,
16 well, the indictment is basically those allegations in
17 written form that bring this case into court and the
18 indictment is not in any sense evidence of the
19 allegations that it contains. To those allegations or
20 to that indictment Mr. Pontoo has pled not guilty and
21 the state therefore has the burden of proving each of
22 the elements of the indictments beyond a reasonable
23 doubt. It will be your duty, ladies and gentlemen, to
24 decide whether or not the state has met that burden.
25 Your purpose as jurors is to find and to determine the

1 facts of this case. You are the sole judges of the
2 facts in this case. If at any time during the course of
3 this trial I make any comment about the facts or the
4 evidence that's presented, you must disregard those
5 comments because only you the jury can decide what the
6 facts are in this case. You are to determine the facts
7 from the testimony that you hear as well as any other
8 evidence that may be introduced during the course of
9 this trial. It is up to you to determine the inferences
10 which you feel may be properly drawn from that evidence.

11 It is especially important that you perform your
12 duty of determining the facts clearly, diligently and
13 conscientiously because ordinarily there is no way that
14 we can correct an erroneous determination of facts by a
15 jury.

16 Now, on the other hand but with equal emphasis the
17 same law that makes you the judges of the facts makes me
18 the judge of the law. The law as given to you by this
19 court is the only law that you may consider. You must
20 accept and follow it even though you may disagree with
21 it and I'm now allowed to tell you what I think about
22 the facts of this case and you're not allowed to
23 disagree with me about what the law is or what you think
24 the law should be. Your job is to take the law as I
25 give it to you, apply it to the facts as you find the

1 facts to be from the testimony of the witnesses and any
2 exhibits which may have come in during the course of the
3 trial.

4 Now, until I advise you that it's appropriate to
5 begin your deliberations you must not discuss this case
6 with anyone and that includes your fellow jurors. It's
7 important that, ladies and gentlemen, that throughout
8 the course of the trial that you keep an open mind and
9 that you do not decide any issue in this case until all
10 of the evidence has been presented, the parties have
11 made their closing arguments to you, and I have given
12 you the instruction on the law. It is your solemn
13 responsibility to determine the guilt or innocence of
14 the defendant and your verdict must be based solely on
15 the facts, the evidence as it is presented to you during
16 the course of this trial and on the law as I instruct to
17 you at the close of the trial.

18 Now, in just a moment I'm going to recognize the
19 state for what we call an opening statement. In that
20 opening statement the Solicitor will explain to you the
21 issues in this case or at least what he believes the
22 issues are in this case. Once he's concluded his
23 remarks, then Mr. Mauldin will have an opportunity to
24 address you on behalf of the defense if he chooses to do
25 so. Although he's not required to make any opening

1 statement. The important thing that you need to
2 understand is this, ladies and gentlemen. What the
3 lawyers tell you in their opening statements is not
4 evidence. They are not under oath. They are not
5 testifying. It is merely their contention as to what
6 they believe the evidence in this case is going to show.

7 The evidence in this case will be presented to you
8 by the testimony of witnesses who are placed under oath
9 and who take the witness stand and who testify from this
10 stand as well as any exhibits that may be introduced
11 during the course of the trial.

12 Now, throughout the trial you may at times hear one
13 of the attorneys say something along these lines.
14 Judge, we have a matter of law we need to take up with
15 the Court. Or, Your Honor, may we approach the bench?
16 During that time as I told you I'm the judge of the law.
17 You're the judge of the facts. If I can resolve a
18 matter of law up here at the bench with the attorneys,
19 I'll do that. But it may be that I need to go into a
20 little bit greater discussion and if I would have to do
21 that, I may ask you to step back into the jury room
22 while I do that. If I do ask you to do that, the only
23 reason I would would simply be for this reason. There
24 are times when I'm dealing with a matter of law that it
25 requires me to make some comment about some testimony

1 that was given or some exhibits or some facts that have
2 been presented in connection with that ruling. As I
3 told you earlier I'm not to have any influence over you
4 about the facts in this case so to protect you from
5 those comments I may have to ask you to step back into
6 the jury room while I take up that matter of law. Once
7 we've resolved that matter of law, I will then bring you
8 back in and then we would proceed from that point on.

9 Ladies and gentlemen, in determining what the true
10 facts are in this case you're going to have to decide
11 whether or not the testimony of a witness is believable.
12 It's going to be my responsibility to rule as a matter
13 of law whether certain testimony is allowed into this
14 trial at all or not. But once testimony is allowed into
15 this case whether or not you believe it is solely up for
16 you to decide.

17 In deciding whether to believe a witness you have
18 the right to consider the interest of a witness, the
19 bias of any witness, the opportunity for that witness to
20 have seen the matters and the things about which that
21 witness testifies, the way the witness acts on the
22 witness stand. You have the right, ladies and
23 gentlemen, to consider anything that is in this record
24 that will assist you or help you in evaluating the
25 testimony of the witnesses. That means it's very

1 important that you listen very carefully to the
2 witnesses. Observe them as they testify. Watch the
3 witnesses. Listen carefully to the attorneys as well as
4 to the Court. Please do not let your thoughts wander
5 but pay strict attention to all of the evidence as it's
6 presented during the course of this trial so at the
7 close of the evidence after all of the evidence has been
8 presented, the attorneys have had an opportunity to
9 address you with their closing remarks, and I have given
10 you the charge on the law, after all of that occurs, you
11 will then be in a position to go back into the jury room
12 and begin your deliberations, discuss the case, discuss
13 the evidence, discuss the law, apply the law to those
14 facts as you find them to be in arriving at a verdict.

15 So that's basically an overview of what we're going
16 to do over the course of the next day or so. But before
17 I turn it over to the attorneys, let me first inquire of
18 the State, are there any objections or exceptions to the
19 Court's opening remarks?

20 MR. GRAHAM: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MR. MAULDIN: No, Your Honor.

23 THE COURT: All right. Folks, if you would, please
24 listen very carefully as the attorneys address you with
25 their opening remarks. Mr. Graham.

1 MR. GRAHAM: Thank you, Your Honor.

2 Today is January 27th, 2015. One year ago today
3 Alexander Kewon Clemmons passed away. He died. And he
4 died because of the choices that that man sitting over
5 there in that chair made a couple of days before.

6 The night of January 23rd, the early morning hours
7 of January 24, 2014 at a bar, a nightclub known as The
8 Rock, recently changed the name to the Mile High Club,
9 it's over by the airport in Lexington County, that's
10 where two different groups of people came together by
11 fate and by chance.

12 There were two different celebrations that were
13 going on that night. Jonathan Ruple, the man sitting
14 over there in the suit, had a friend coming home from
15 the military who had been in Afghanistan. They were
16 having a welcome home party and he was there with his
17 friend and they were drinking and they were having a
18 good time welcoming him back to the United States. Mr.
19 Pontoo was there for a different celebration.

20 Mr. Clemmons was there for a different celebration.
21 Kewon as he's known by his family and his friends. His
22 birthday was on the 25th so on the night of the 23rd
23 Kewon was with a friend of his Iquawn and he was with a
24 friend of his Mr. Pontoo. He was with a cousin of his
25 Pat, and he met up with his uncle Carlisle. So the five

1 of them met up and they decided to go out and celebrate
2 Kewon's birthday that was coming up on the 25th. They
3 end up at the Mile High Club. They are all there for
4 different reasons. Celebrating a birthday. Celebrating
5 coming home. But one person brings them together and
6 the person that brings them together is the defendant.
7 He's in there. Mr. Clemmons is 23, getting ready to
8 turn 24 and because of his choices Kewon never reached
9 25. He had short hair. Carlisle Jones, his uncle works
10 in a nearby plant. That's his bar. That's where he
11 goes after work. That's why he suggested they go there.
12 He has short hair. Pat Johnson, Patrick, Kewon's best
13 friend and his cousin. He works at Amazon at the time
14 and he's got to go to work the next day, but he's out
15 with his friends celebrating Kewon's birthday. He had
16 short hair. Iquawn Jones is a friend of Kewon and I
17 think a cousin of the defendant. He had short hair.

18 Mr. Pontoo goes by Ralf for Raphael. He goes by
19 Polo as a nickname and he goes by Los as a nickname.
20 He's there and just like today with his dreadlocks he's
21 the only one of those five who had dreadlocks that
22 night.

23 At some point during the night Mr. Ruple is talking
24 to his friend Nicholas Howard who had gotten back from
25 Afghanistan and Jonathan tells him I've got a gun. I

1 just a new gun. I want to show it to you. So he steps
2 out into the parking lot with Nicholas Howard, his
3 friend, and goes to his car and he pulls out a nine
4 millimeter Hi-Point, the semi automatic pistol that he
5 just got and he's showing his friend Nicholas. As he's
6 doing that, the one person out of those five in the
7 other group overhears it and he sees it. He sees an
8 opportunity. He comes over, introduces himself and
9 spends time talking to Mr. Ruple and asking him what
10 he's doing. Well, he shows him his gun. This is my new
11 nine millimeter. I got it. Mr. Pontoo, Los, says,
12 well, I've got a gun, too, and he pulls out a small .22
13 caliber revolver. And you're going to see the guns and
14 you'll see the difference of them. He even let's Mr.
15 Ruple touch it and let's him handle it and I believe he
16 let's the defendant handle his nine millimeter.

17 There's another individual that comes over at the
18 time. He's got a .25 caliber semi automatic in his
19 pocket. Mr. Ruple sees that, too. You're going to hear
20 about all of those guns. They ended up chatting for a
21 few minutes. Maybe 15 or 20 minutes. Everybody goes
22 back inside. Kind of goes back to doing their own
23 thing.

24 At some time because of that encounter in the
25 parking lot, at some time a plan comes into Mr. Pontoo's

1 mind. And we can't read his mind, but you can tell from
2 his actions what happens. Mr. Ruple goes to leave and
3 he's going to tell you that Mr. Pontoo as he was walking
4 out the door he asked him where he was going and he said
5 he was getting ready to leave. He goes out. He walks
6 his friend Mr. Howard to his car. There's a girl with
7 him as well. He says good-bye to Mr. Howard.
8 Mr. Howard is leaving. He goes to get in his car and as
9 he's doing this, what does he see? He sees a predator
10 waiting. He sees Mr. Pontoo waiting up at the door of
11 the club watching him. He gets in his car and as soon
12 as he gets in his car there's a knock on the passenger
13 side. He rolls down the window and the defendant talks
14 to him and engages him in conversation some more looking
15 him straight in the face seeing his dreadlocks talking
16 about buying rims for a car. Talking about people in
17 the music industry that they might know.

18 Mr. Pontoo goes to shake his hand, but it's not in
19 friendship. It's not a handshake of friendship. As
20 he's reaching out to shake Mr. Ruple's hand, he reaches
21 in and grabs the bag, a Swiss army book bag that Mr.
22 Ruple put the nine millimeter back in that Mr. Pontoo,
23 that Los knew about. He grabs it out of the vehicle.
24 Mr. Ruple comes out. They get into a tussle. Mr. Ruple
25 hits him because he's not going to let go of his gun.

1 He's not going to let go of his bag. He's not going to
2 let go of his stuff. At that point Mr. Pontoo pulls out
3 that .22 revolver. He points it right at Mr. Ruple.
4 There's a laser on it and the laser comes on and he's
5 afraid he's going to die. He puts up his hands. It's
6 not worth it. Go ahead and take it and that's exactly
7 what Mr. Pontoo does. That's what Los does. He gets in
8 his car with the four other people and they drive off.

9 Well, Mr. Ruple does what anybody would do
10 hopefully in that situation have the presence of mind,
11 he gets a description of the car and he gets the tag
12 number and he calls 911. He tells the police I just got
13 robbed. Here's where it happened. Here's which way
14 they drove off. Here's a description of the car.
15 Here's the tag number. The person that robbed me. His
16 name is Los. Might be going to Wagener because that's
17 where he told me he was from. Help me.

18 911 calls out and they radio Lexington County
19 Sheriff's Department, the Highway Patrol, all the
20 agencies in the area. And you're going to hear about
21 the Highway Patrol officers. They heard that BOLO, that
22 be on the look out for that came over the radio for that
23 car description. One of them has the forethought
24 thinking he said something about being from Wagener.
25 I'm going to head that way. So he positions himself

1 between where the Mile High Club and on the way to
2 Wagener. And there's really only one or two highways
3 that are going to take you from that location and you
4 all will see the maps that will show you that.

5 The officer goes out with the highway patrol, a
6 young trooper. He sees the car. He radios in. It's an
7 armed robbery so they're going to do what they call a
8 felony car stop. It's not just a regular traffic stop.
9 We've got guns in that car. We've got somebody who just
10 robbed somebody. He needs backup. So he's going to
11 wait for another police officer to come with him. When
12 the other police officer comes up, the lights come on,
13 that car immediately pulls over. It's Carlisle Jones'
14 car. He's in his regular bar. He's the driver. He's a
15 little bit older. He's got a job. He immediately pulls
16 over, stops the car and they start taking people, the
17 police start taking people out of the car. And you're
18 going to hear how they take them out, hands up, jackets
19 come off, raise your shirt, make sure you don't have any
20 guns, back up toward me slowly.

21 Mr. Jones gets pulled out of the car and he gets
22 cuffed and gets put down on the ground. You're going to
23 hear about the front seat passenger side getting taken
24 out. That's going to be Iquawn. He gets taken out,
25 hands up, backing up, cuffed, down on the ground. The

1 trooper is going to tell you that during the course of
2 him pulling people out, the back driver's side door pops
3 open multiple times and he has to order that door to be
4 shut and go back in. You're going to hear that's where
5 Mr. Pontoo, Los, was sitting. The third person comes
6 out of the car, Pat Johnson. That's Kewon's cousin. He
7 gets brought out hands up, back up, cuffed and down on
8 the ground. Two people left in the car, Kewon and the
9 defendant.

10 At that time the defendant jumps over into the front
11 seat and takes off in the car because he just robbed
12 somebody. He's got a stolen gun and he doesn't want to
13 get caught. So another trooper had arrived on the
14 scene. He gets in his car and he takes off and then the
15 other trooper who made the original stop follows behind
16 him and they take off and there's car chase. The
17 defendant is driving the car and Kewon is in the car.
18 104, 108 miles an hour, several miles down the road
19 continuing to head towards Wagener over there in Aiken
20 County.

21 At some point Mr. Pontoo loses control of that car.
22 The car goes around a curve. He hits a pole up on a
23 building. He becomes airborne at an intersection. He
24 was getting ready to run a stop sign at an intersection
25 across two highways. You're going to hear about a

1 Lexington County officer who was coming who saw that car
2 cross over the road, go into a ditch, hitting trees and
3 crushing the car. The choices that Mr. Pontoo made.

4 Officers arrive on scene. They secure the scene.
5 They find the nine millimeter handgun, but it's not in
6 the bag. It's not in the bag that he stole. It's on
7 the seat beside the driver. The officers secure that
8 weapon and get it out. And who is behind the wheel?
9 The man with the dreads. The only man with the
10 dreadlocks. The defendant. He's trapped in there.
11 There's a tree through the windshield. Air bags have
12 deployed and the other person in the car is Kewon, and
13 Kewon is in the back seat laid out unconscious.

14 Police officers get the nine millimeter out. They
15 secure the scene. EMS and fire services come down.
16 Fire services come down and they cut the door off the
17 back. Mr. Pontoo is alive and he's awake. He's
18 screaming for help behind the steering wheel. There is
19 no noise coming from the back. The firefighters cut the
20 door with the jaws of life. EMS comes in and they bring
21 him out. And you're going to hear about his condition.
22 Never regained consciousness. They life lined him out
23 and take him to the hospital. You're going to hear he's
24 taken to the hospital brain dead and he dies one year
25 ago today.

1 We're here because of the choices. Choices that
2 everybody made that night. The illegal choices were
3 made by the defendant, Mr. Pontoo. He's a predator. He
4 saw an opportunity and he seized it. Thought it was an
5 easy mark. I'll take that gun. I'll get away. Or if I
6 need to, I'll pull my gun and point it at you choosing
7 to do that. He gets in his car. He gets stopped. He
8 doesn't want to be arrested. He chooses to jump over,
9 get in the front seat and drive with his friend in the
10 car with him. He chooses to run away from the police at
11 104, 108 miles an hour losing control of the car,
12 wrecking the car, causing his friend Kewon to die.

13 It's all about choices. Choices that he made.
14 Choices that brought you all here today, that bought all
15 of us here today. The choices that the evidence will
16 show that Raphael Lamarr Pontoo is guilty of armed
17 robbery. He's guilty of failure to stop for a blue
18 light. Ladies and gentlemen, only the guilty run.
19 Raphael Lamarr Pontoo is guilty and ran.

20 THE COURT: Thank you, Mr. Graham. Mr. Mauldin.

21 MR. MAULDIN: Thank you, Your Honor.

22 Raphael is innocent of these charges. That should
23 be your mind set through this entire trial. Your mind
24 set should be why are we here? He's innocent because
25 he's presumed to be innocent throughout this whole case.

1 When you go in, he's innocent. Why are we here?
2 Because it's easy to jump to conclusions. We often do
3 it. Everybody does it. Read a news article in the
4 paper. More often today on the Internet you see a
5 headline, paragraph, mug shot, you automatically just
6 assume, well, that person did it. Blase blah.

7 That's not what this process is about. This process
8 is for you to look at all the information because the
9 mind set is Raphael is innocent. And in not jumping to
10 conclusions you should keep an open mind. Keep in mind
11 about the situation. You have a bar in a strip mall
12 well past midnight in West Columbia. Guns are going
13 around. There's talk of rap groups. Rims. That kind
14 of thing. Keep an open mind. There's more to the
15 picture because your mind set should be that Mr. Pontoo,
16 Raphael is innocent of these charges because the state
17 has the burden of proof. It's beyond reasonable doubt
18 and that means there would be no real possibility that
19 Mr. Pontoo is innocent and your mind set should be that
20 he is innocent. If you don't jump to conclusions and
21 carefully listen to the evidence and you keep an open
22 mind even after your deliberations you will determine
23 that Mr. Pontoo is innocent. Thank you.

24 THE COURT: Thank you, sir.

25 (Side bar off the record.)

1 THE COURT: We need to take up a matter of law
2 involving some witnesses before we get started. If you
3 all could just step back into the jury room. Have no
4 conversation about the case. If you need anything while
5 you're back there, just let Mr. Mills know and we'll get
6 you whatever you might need.

7 (The jury goes into the jury room.)

8 THE COURT: On the record. All right. We will be
9 at ease for a few minutes.

10 (Short recess.)

11 THE COURT: Back on the record. All right. Is the
12 State ready to proceed?

13 MR. McNAIR: The State is ready, Your Honor.

14 THE COURT: Is the defense ready?

15 MR. MAULDIN: Yes, Your Honor.

16 THE COURT: All right. Bring the jury back in.

17 (The jury returns to the courtroom.)

18 THE COURT: Back on the record. Thank you, folks,
19 for that courtesy while we took care of that witness
20 issue. We're ready to proceed now and recognize the
21 State for your first witness.

22 MR. McNAIR: Thank you, Your Honor. The State calls
23 Trooper Brandon Lee.

24 Thereupon,

25 TROOPER BRANDON LEE

1 after having been first duly sworn, testified as follows,

2 THE CLERK: Please have a seat and state your name
3 for the record spelling your last name.

4 THE WITNESS: Yes. I am Trooper Brandon W. Lee.
5 Last name spelled L-e-e.

6 DIRECT EXAMINATION

7 BY MR. McNAIR:

8 Q. Trooper Lee, how long have you worked with the
9 Highway Patrol?

10 A. I've been on the Highway Patrol approximately two
11 years.

12 Q. What's your position over there now?

13 A. I'm a trooper.

14 Q. Do you have any prior law enforcement experience?

15 A. Yes. Prior to being hired by the Highway Patrol, I
16 worked for the City of Anderson for approximately two years
17 and prior to that I was a military police officer at Fort
18 Jackson.

19 Q. Okay. Were on you patrol January 24th, 2014?

20 A. I was.

21 Q. What shift were you working that night?

22 A. I was working the midnight shift. The night
23 shift.

24 Q. Okay. At some point that night did you receive
25 what's known as a BOLO?

1 A. That's correct.

2 Q. What's a BOLO?

3 A. A BOLO is a broadcast to -- Well, BOLO stands for be
4 on the look out for a vehicle or persons.

5 Q. Okay. So what was that BOLO in reference to that
6 night?

7 A. That night the BOLO was in reference to an armed
8 robbery suspect. The vehicle was a Mercury. They gave a
9 South Carolina tag with it as well.

10 Q. Okay. Did you know where the robbery had
11 occurred?

12 A. The BOLO was originated from Boston Avenue and 302
13 which is in the Cayce area and Springdale area of Lexington
14 County.

15 Q. Do you recall what type of vehicle you were looking
16 for?

17 A. A Mercury Grand Marquis.

18 Q. Were you given a color?

19 A. Yes. I believe it was blue or silverish in color.

20 Q. Okay. And you said you were provided with a tag
21 number as well?

22 A. Yes, sir. The tag number they provided us with was
23 JPT222.

24 Q. Where were you when you received that BOLO?

25 A. As I was tagging an abandoned vehicle on I-26

1 westbound near Interstate 77.

2 Q. What did you do after you heard that BOLO?

3 A. After I heard the BOLO, Lance Corporal Snider which
4 was the other trooper on shift that night had our dispatch
5 run that tag and the tag came back to a vehicle out of I
6 believe it was North, South Carolina and from where the BOLO
7 came out was 302 we believed that the possible route to
8 travel from 302 to the house was 321 which was just one exit
9 off from where I was at so I then traveled up the interstate
10 westbound to 321 and then headed 321 southbound towards
11 Gaston or the Swansea area.

12 Q. And did you locate what you thought to be the
13 vehicle?

14 A. Yes, sir. I did. I did locate the vehicle on 321
15 just right outside of Swansea.

16 Q. Okay. Heading towards Swansea?

17 A. That's correct.

18 Q. Was the tag number the same as what you had been
19 provided on the BOLO?

20 A. Yes, sir. I was traveling northbound. The vehicle
21 passed me southbound. I turned around. The vehicle was
22 traveling approximately 55 miles an hour. I turned around on
23 the vehicle and got close enough to verify the tag and then
24 once I verified the tag, I then created some distance from
25 the vehicle.

1 Q. Okay. Why did you do that?

2 A. Well, the BOLO was for armed robbery suspects with a
3 weapon and I knew that I was going to have to conduct a
4 felony car stop on that vehicle since the tag was verified
5 and I wanted as much distance from the vehicle in case they
6 did stop or pull over. You know, in a shooting scenario
7 distance is something that I would want on my side that
8 night.

9 Q. Okay. It wasn't a traffic stop for a speeding
10 ticket?

11 A. No. It was not a typical traffic stop.

12 Q. So it was something you were waiting on backup?

13 A. That's correct.

14 Q. Now, does your car have a camera system on it?

15 A. Yes, sir. It's an in car video system.

16 MR. McNAIR: This is State's 1 and 2.

17 (Whereupon, State's Exhibit #1 and #2 marked for
18 Identification.)

19 BY MR. McNAIR:

20 Q. Now, does your system also record GPS coordinates?

21 A. Yes, sir.

22 Q. Now, I'll show you what's marked as State's number
23 1. Is that a -- What is that?

24 A. Yes, sir. This is a picture of a screen shot of my
25 camera the night of that incident and what's highlighted is

1 the GPS coordinates after I spotted the vehicle and then
2 backed off.

3 Q. Okay. And State's number 2?

4 A. Yes, sir. This is the GPS coordinates the same as
5 the camera and that actually places me where I spotted the
6 vehicle at on 321 near Charlie Rast Road.

7 Q. The mark on that map indicates, that corresponds
8 with the GPS coordinates on your video?

9 A. Yes, sir.

10 Q. Does that accurately represent where you got behind
11 that vehicle that night?

12 A. Yes, sir.

13 MR. McNAIR: Your Honor, we move to admit State's 1
14 and 2 into evidence.

15 MR. MAULDIN: No objection.

16 THE COURT: Without objection State's 1 and 2 are in
17 evidence.

18 BY MR McNAIR:

19 Q. This is hard to see, but is this a still shot from
20 your incamera system?

21 A. Yes, sir, it is.

22 Q. And this outline is just your GPS coordinates on
23 your camera system?

24 A. Yes, sir.

25 Q. And what this is, 321, is that correct, where that

1 blue dot is?

2 A. Yes, sir.

3 Q. And that's where you initially got behind the
4 suspect vehicle?

5 A. Yes, sir. Well, that's after I activated my camera.
6 Yes, sir. That's where I got behind the vehicle.

7 Q. Okay. And are you traveling south or north?

8 A. Traveling north. Or should be traveling south
9 towards Swansea.

10 Q. South towards Swansea. Now, how far do you follow
11 the vehicle without turning your lights on?

12 A. I followed the vehicle from the spot you just saw
13 which was near Charlie Rast Road into Swansea, then we turned
14 onto Whetstone Road and that's when a Swansea PD unit was, or
15 my dispatch contacted a Swansea PD unit and it was behind me
16 and that's when I did initiate a traffic stop.

17 Q. So you went all the way through Swansea?

18 A. Yes, sir.

19 Q. Who arrived to back you up at that point?

20 A. Swansea PD officers.

21 Q. When you first got behind the vehicle, do you recall
22 what speed it was going?

23 A. Yes. The speed of the vehicle was approximately 55
24 miles an hour whenever I first - the vehicle passed me.

25 Q. Okay. When you got behind the vehicle and before

1 you turned on your blue lights, did their speed change?

2 A. Drastically changed, sir.

3 Q. In what way?

4 A. Down. They were probably traveling approximately 25
5 to 30 miles an hour. It was an abrupt change in speed.

6 Q. And did that continue all the way through Swansea?

7 A. Yes, sir. The speed limit does drop in Swansea, but
8 the drastic change in speed was when it was still 55 miles an
9 hour.

10 Q. Now, you said it was Lieutenant Bennett who backed
11 you up?

12 A. Yes. Lieutenant Bennett from Swansea PD.

13 Q. When he got behind you, what did you do at that
14 point?

15 A. At that time I advised my dispatch I was conducting
16 a felony stop via the radio and I then turned on my blue
17 lights. The vehicle pulled over and then I --

18 Q. Did it immediately pull over?

19 A. Yes, it did.

20 Q. When you turned on your blue lights?

21 A. Yes, sir.

22 Q. What did you do at that point?

23 A. I then cantered my vehicle in accordance with how I
24 was trained to do a felony car stop.

25 Q. Will you explain to the jury what a felony car stop

1 is?

2 A. A felony car stop is a high risk traffic stop and at
3 that time you, after you initiate the traffic stop, you order
4 all occupants out one at a time. When you order the
5 occupants out, you remove all outer garments and you want to
6 make sure there are no weapons on any of the occupants and
7 you order them back to the vehicle or back towards your
8 patrol vehicle one at a time and then you handcuff them
9 separately.

10 Q. And is your weapon drawn?

11 A. Yes, sir, my weapon is drawn.

12 Q. Who did remove first out of the vehicle?

13 A. The first occupant that I ordered out of the vehicle
14 was the driver.

15 Q. Okay. You had him step out and did you have him
16 remove his jacket?

17 A. Yes. I remember before whenever I was identifying
18 myself as a state trooper and, you know, ordering the
19 occupants out, I ordered the driver out of the vehicle first
20 and the driver's rear door opened and I remember, you know,
21 telling the passenger shut the door and I had to focus my
22 attention back on the driver.

23 Q. So before the driver exited, the back driver's side
24 door opened?

25 A. Yes, sir. If you numbered seats in a vehicle, one

1 would be the driver. If there's a seat in the middle, that
2 would be two. The passenger would be three, and behind the
3 driver would be four. The number 4 door which would be the
4 driver's passenger or the driver's rear door opened.

5 Q. And that's not who you instructed?

6 A. That's not who I instructed.

7 Q. So when the driver got out, what did he do?

8 A. The driver complied with all of my instructions. I
9 ordered him to take off all clothing and walk back towards
10 the sound of my voice.

11 Q. And did you handcuff him?

12 A. Yes. I handcuffed him.

13 Q. Who came out next then?

14 A. The next occupant I ordered out, I worked in
15 clockwise motion to the passenger which would be the number 3
16 seat.

17 Q. Did he comply as well?

18 A. He complied with all my directions as well.

19 Q. So he removed his jacket and he was handcuffed as
20 well?

21 A. Yes, sir.

22 Q. Who was after that?

23 A. The next occupant that was ordered out would be the
24 number 6 passenger so which would be behind the passenger's
25 rear door.

1 Q. Okay.

2 A. He was ordered out. I remember whenever between
3 ordering those, between ordering the passenger out and the
4 rear passenger out, the driver's side rear door opened again
5 and I had to, you know, instruct the passenger to shut the
6 door and then I ordered out the number 6 passenger.

7 Q. Okay. That's the same door that opened the first
8 time?

9 A. Yes, sir.

10 Q. What happened after the third rear passenger got
11 out?

12 A. The third rear passenger was ordered out, complied,
13 and was handcuffed and then after that passenger was out, the
14 door was still, that number, the passenger rear door which
15 I'll refer to as the number 6 door based off of seating
16 arrangement, that door was still open. The vehicle then took
17 off, or the vehicle left the scene with the door --

18 Q. Were you aware how many people were left in the
19 vehicle at that point?

20 A. I had -- I'm not sure.

21 Q. So you removed three people and the vehicle took
22 off?

23 A. Yes, sir.

24 Q. What did you do at that point?

25 A. At that time Lance Corporal Snider, he was, he just

1 arrived on scene to back me up and so it was me, Swansea PD
2 and Lance Corporal Snider. Once that third passenger was
3 handcuffed, I looked at the Swansea PD officer to make sure
4 that he was okay and then I - Lance Corporal Snider pursued
5 the vehicle and then I jumped in as a secondary as a
6 pursuit.

7 Q. Did Lance Corporal Snider have his blue lights when
8 he started pursuing the vehicle?

9 A. Yes. He had his blue lights on and siren
10 activated.

11 Q. Did you ever catch up with him?

12 A. No, sir. I was able to keep Lance Corporal Snider's
13 blue lights in sight. With the jump I just couldn't catch
14 up, sir. I was trying my best but I couldn't.

15 Q. So when was the next time that you saw that
16 vehicle?

17 A. The next time I saw him was if you travel down
18 Whetstone there's a four way stop beside an old country store
19 and that's when I saw Lance Corporal Snider's patrol vehicle
20 pulled off to the side and I heard over the radio advise that
21 the vehicle is 1050 which is 10 code for collision and that's
22 when I saw Lance Corporal Snider.

23 Q. So you initiated a stop on Highway 3, correct?

24 A. Yes, sir.

25 Q. That's in Lexington County?

1 A. That is in Lexington County.

2 Q. And the four way stop, what roads meet at that
3 intersection?

4 A. Uhm, it's US 178 and SC 3.

5 Q. Okay. That's also in Lexington County?

6 A. Yes, sir, it is.

7 Q. And are both of those roads public roadways of this
8 state?

9 A. Yes, sir, they are.

10 Q. So what happened when you got to where Corporal
11 Snider was and where the vehicle had run off the road?

12 A. At that four way intersection there's a little patch
13 of woods, as I was coming up to Lance Corporal Snider, a
14 little patch of woods in front of me to the right and with
15 the traveling of the vehicle on the roadway I assumed that it
16 was in that area so I drove my vehicle around the backside of
17 that little patch of woods and then I got out and searched
18 for the vehicle.

19 Q. Could you locate the vehicle from the direction it
20 appeared to have gone in?

21 A. From the original direction we were traveling we
22 couldn't see the vehicle. It traveled into the brush a
23 little bit.

24 Q. How did you get to it?

25 A. I drove around the backside of the brush which would

1 be on SC 3. I just drove through the stop sign
2 approximately, you know, maybe 500 feet and then there's a
3 driveway and I drove around it and I saw the tracks when I
4 drove around so I knew that no vehicle traveled through there
5 so I then stopped my car and I walked around the back side of
6 the trees.

7 Q. Okay. Were you able to get to the vehicle?

8 A. Yes. I was the first one that saw the vehicle.

9 Q. How was it positioned?

10 A. The vehicle was positioned with the front of the
11 vehicle facing towards Whetstone or SC 3 with it
12 perpendicular to US 178 and it was damaged from the collision
13 colliding with the trees.

14 Q. Were you able to get to the driver's side of the
15 vehicle?

16 A. No. There's a lot of trees and just debris from the
17 collision on the driver's side. I was able to approach it
18 from the passenger side.

19 Q. Okay. How many occupants were in the vehicle?

20 A. At that time there was two occupants.

21 Q. Did you see the driver?

22 A. Yes, I did see the driver.

23 Q. How was he positioned?

24 A. The driver was positioned in the driver's seat of
25 the vehicle. There was a tree limb through the vehicle and

1 it was pinning the driver into the driver's seat.

2 Q. Was it coming through the windshield?

3 A. It was coming through the windshield into the back
4 of the vehicle so it was pinning the driver into the vehicle
5 beside the door.

6 Q. Was the airbag deployed as well?

7 A. The airbags, both front airbags were deployed.

8 Q. Was he sitting upright?

9 A. Yes, sir.

10 Q. Okay. What kind of condition was he in? Was he
11 conscious?

12 A. He was conscious, but at this time I had my weapon
13 drawn again and I was ordering them to show me their hands
14 and not to move and the driver was just moving back and
15 forth, I guess, trying to get out.

16 Q. Was he saying anything?

17 A. At this time he wasn't saying anything to me.

18 Q. Okay. What about the other guy in the vehicle?

19 A. Complete -- From what I could see completely
20 unresponsive. Moving around, but just not even saying
21 anything or, you know, at first I didn't even see the
22 passenger to begin with until I was looking at the driver. I
23 looked down and I saw what was the passenger just moving up
24 and down from breathing.

25 Q. Okay. But pretty much unconscious?

1 A. Yes, sir.

2 Q. Did you get close to the driver?

3 A. I was at the passenger rear tire of the vehicle kind
4 of using the apex of the right there between the door, the
5 back windows as cover in case I was fired on so I was from
6 that passenger rear tire to the front seat from the driver.

7 Q. Okay. What type of hair did the guy in the driver's
8 seat have?

9 A. Dreadlocks.

10 Q. How long were they?

11 A. Shoulder length.

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

13 A. Yes, sir.

14 Q. Do you see him in court today?

15 A. Yes, sir.

16 Q. Where is he?

17 A. He's seated to my left with the white shirt on with
18 a goatee.

19 Q. The defendant?

20 A. Yes, sir.

21 Q. Okay. Did you mention where the passenger was
22 located in the vehicle?

23 A. The passenger was in the seat directly, it would be
24 the number 6 and 5 seat kind of slouched over.

25 Q. So that would be, I guess, the middle towards --

1 A. The middle.

2 Q. -- towards the rear driver's side?

3 A. Towards the middle towards the rear. More towards
4 the middle of the car.

5 Q. In the back seat, right?

6 A. Yes. He was in the back seat.

7 MR. McNAIR: That's all the questions I have.

8 Please answer anything Mr. Mauldin has.

9 THE WITNESS: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. MAULDIN:

12 Q. Trooper Lee, you mentioned when you pulled over the
13 car a lot of numbers and you were talking about a number 6
14 passenger. You mean there were six people in the car?

15 A. No, sir. I'll be more than happy to show you how I
16 number the seats.

17 Q. Well, if you could tell us. What number would the
18 driver be?

19 A. The driver would be in the number 1 seat and if
20 there is a seat for - the number 2 seat would be right beside
21 the driver and then the number 3 seat is the passenger, front
22 passenger and the number 4 seat is directly behind the
23 driver, 5 seat would be behind in the middle in the back seat
24 and 6 would be the passenger rear.

25 Q. Okay.

1 A. That's just how we number occupants in collision
2 reports.

3 Q. And the Solicitor showed you a still from your in
4 car video system; is that correct?

5 A. That's correct.

6 Q. But your video system actually went down and the
7 actual; the video, the visual part of it kind of broke down
8 and you don't have any visual of the stop or your actions
9 thereafter; is that correct?

10 A. That is correct. It did, however, still record
11 audio.

12 MR. MAULDIN: No further questions, Your Honor.

13 MR. McNAIR: Nothing further, Your Honor.

14 THE COURT: All right. Thank you very much,
15 Trooper. Any objection to Trooper Lee being excused?

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: Thank you very much, sir. You're free
18 to go. You may call your next witness.

19 MR. McNAIR: The State calls Trooper Jason Snider.
20 Thereupon,

21 TROOPER JASON SNIDER
22 after having been first duly sworn, testified as follows,

23 THE CLERK: Have a seat over there. Once you're
24 seated, state your full name spelling your last for the
25 record, please.

1 THE WITNESS: Jason Gregory Snider, S-n-i-d-e-r.

2 DIRECT EXAMINATION

3 BY MR. McNAIR:

4 Q. Trooper Snider, how long have you worked for the
5 Highway Patrol?

6 A. Seven years.

7 Q. What's your position there now?

8 A. I'm a Lance Corporal.

9 Q. Do you patrol a particular area of the state?

10 A. Yes, sir. Lexington County. Troop 1, Post C.

11 Q. Do you have any prior law enforcement experience?

12 A. No, sir. After college I did five years in the U.S.
13 Coast Guard.

14 Q. How did you first become involved in this case?

15 A. On the 24th of January 2014, I was working routine
16 patrol in Lexington County when they gave out a BOLO of a
17 possible armed robbery and the vehicle was tagged. Once
18 another trooper got in behind the vehicle I proceeded to his
19 location and --

20 Q. Was that Trooper Lee?

21 A. Yes, sir.

22 Q. Did you respond to assist Trooper Lee?

23 A. Yes, sir.

24 Q. Where did you first meet up with him?

25 A. I was at 321 and 21 split or between Star Mountain

1 Road on 321 near Blanchard Cat checking on an abandoned
2 vehicle. Trooper Lee had indicated at that time that he was
3 coming into Swansea on 321, was possibly behind the vehicle
4 we were looking for in the armed robbery. At that time I
5 went ahead and initiated my lights and siren, started down
6 321 southbound towards Swansea and Gaston area because he
7 can't conduct a traffic stop of that nature without having
8 another vehicle present.

9 Q. Okay. What was going on when you got to that
10 location?

11 A. I took 321 down to SC 3. Once I pulled up on scene
12 he had another officer out there from Swansea PD. When I
13 pulled up, they were at that time getting three gentlemen out
14 of the vehicle. There were two people still in the vehicle
15 conducting a felony traffic stop which we call one person
16 back at a time to clear the vehicle. While they were doing
17 that, I approached the rear, I believe, of Trooper Lee's car.
18 As I approached, I was there maybe 15 seconds or so, and
19 that's when one of the subjects jumped into the driver's seat
20 and took off. At that time I ran back to my patrol car and
21 then I had to catch up with them and then begin a pursuit.

22 Q. Okay. Did you have your blue lights and your sirens
23 on?

24 A. Yes, sir, per policy.

25 Q. Did that vehicle slow down?

1 A. No, sir. He, as a matter of fact, he wound up
2 passing two cars over a double yellow proceeding on down
3 Highway 3. At that time I was in pursuit and in speeds in
4 excess of a hundred miles an hour.

5 Q. I was going to ask you, how fast did you all get up
6 to?

7 A. I don't recall the exact maximum speed. I know I
8 was around 120 to catch up and then once I got in behind him
9 we leveled off at about 108, 110 miles an hour.

10 Q. Okay. You said there were some other cars in front
11 of you all that night?

12 A. I think I recall passing one or two cars.

13 Q. Was that on a double yellow line?

14 A. Yes, sir. There's a couple straightaways on that
15 road. At one point we did make the pass. From what I recall
16 it was double yellow.

17 Q. How long would you say you pursued them for?

18 A. I don't know the exact minutes. Maybe anywhere
19 between five to eight minutes.

20 Q. Okay. Well, did you ever get close to them?

21 A. Yes, sir. I finally closed the gap because I had to
22 run back to my vehicle so he had a little bit of a jump on
23 me. Once I caught up with him, we leveled out and I was safe
24 enough off of him where I could avert any kind of collision
25 or anything that might have happened in front of me, but at

1 one point I got close enough to where I could see inside the
2 vehicle.

3 Q. How can you see inside the vehicle?

4 A. When I run my blue lights, I have my take down
5 lights as well. They flash. And they pretty much light a
6 vehicle up so I can see.

7 Q. Are those like spotlights?

8 A. Yes, sir.

9 Q. Could you see the profile of the individuals inside
10 the vehicle?

11 A. Yes, sir. I could tell whoever was driving the
12 vehicle had dreadlocks, not a shaved head. There's a
13 silhouette of that. I didn't know at the time if it was a
14 female or a male.

15 Q. Right. But you could tell the driver had long
16 hair?

17 A. Long hair. Yes, sir.

18 Q. Did you see anybody else in the vehicle?

19 A. Uhm, I thought at times I could see somebody in the
20 back seat, but I wasn't a hundred percent, but I do remember
21 the person driving the vehicle a vision of that from the
22 back.

23 Q. Okay. Well, how did the pursuit end?

24 A. As we were coming down Highway 3 to 178, it's a four
25 way stop intersection, there's a bad sharp curve that comes

1 into that. I knew going at the speeds we were at in excess
2 of a hundred, I couldn't take that. I couldn't chance taking
3 that curve at that kind of speed. That's when I started
4 backing off because I knew the curve was coming up so I
5 backed down to probably about 80 miles an hour and that's
6 when the back tires go out on it. He goes sideways through
7 what I thought was like a telephone pole or a pole of some
8 type. At that point they're sliding off, start wrecking.
9 I'm looking to make sure nothing is going to fall on me and
10 then they basically go into the wood line across Highway 178
11 at the four way stop and I lose sight for a few seconds of
12 the vehicle.

13 Q. How far would you say it was from when they went off
14 the road to when they went into the woods?

15 A. Probably at least a hundred yards or so.

16 Q. Okay. When you got to the point where they went
17 into the woods, what did you do?

18 A. Well, I immediately started looking for the vehicle
19 and then another, by this time other law enforcement agencies
20 started converging on the same location. I believe it was me
21 and a Lexington County deputy started looking through the
22 woods trying to see where the entry point was at, but it was
23 blocked by all the trees that had fallen down. I returned to
24 my car to turn the siren off. That way we can kind of hear
25 each other better and I believe at that point somebody said

1 there was an entrance on the backside of where the car went
2 in. There's a house and there's actually an entry point into
3 the woods and we wound up going around the tree line and
4 coming through the back side and that's where we located the
5 vehicle.

6 Q. So were you the first ones to get to the vehicle?

7 A. Probably either the second or third, yes, sir.

8 Q. Who was with you at that time, do you remember?

9 A. Brandon Lee and then deputy -- I can't remember his
10 last name.

11 Q. Okay. How many occupants were in the vehicle that
12 you could tell?

13 A. First all I saw was the driver or the person behind
14 the driver's seat. The airbag was deployed and there was a
15 tree pretty much pinning him into the driver's seat. We
16 demanded him to show us his hands because obviously we have
17 an armed robbery so we're worried about weapons in the
18 vehicle.

19 Q. Was he conscious?

20 A. Yes, sir.

21 Q. Was he talking?

22 A. Mumbling and just kind of -- I don't recall any
23 words being said, but he was conscious, yes, sir.

24 Q. Okay. And what position was he in? Was he upright?

25 A. He was upright pretty much like this (indicating.)

1 Because of the way the tree was and the airbag, his hands
2 were pretty much pinned up.

3 Q. Could he move?

4 A. He could move his arms. That was about it. And
5 then at that time I noticed -- Sorry.

6 Q. Go ahead.

7 A. At that time as we're trying to clear the car I
8 noticed there was another subject in the back seat face down
9 with short hair.

10 Q. Was he conscious or unconscious?

11 A. No, sir. He actually had kind of death gurgles is
12 what we call them. I have been around numerous people
13 passing in the car or in the process of dying in a car in a
14 collision and they kind of gurgle and he was kind of
15 basically in that position.

16 Q. And you said he had short hair?

17 A. Yes, sir.

18 Q. And when you saw the driver, what kind of hair did
19 he have?

20 A. I guess longer, I guess, dreadlock type hair.

21 Q. Okay. Do you see him in the courtroom here today?

22 A. Yes, sir.

23 Q. Will you point him out?

24 A. (Indicating.)

25 Q. You're pointing to the defendant over there?

1 A. Yes, sir.

2 Q. Okay. Now, where you initiated this pursuit, where
3 this pursuit ended, was all that in Lexington County?

4 A. Yes, sir.

5 Q. Those are all public roadways, correct?

6 A. Yes, sir.

7 Q. Did you see any guns in the vehicle?

8 A. Uhm, the only gun I came in contact with was one in
9 the passenger seat.

10 Q. Did you see it?

11 A. Yes, sir. It was a black gun. It had like I think
12 either a flashlight or a laser sight on it.

13 Q. Okay. It was in the passenger seat?

14 A. Yes, sir. Me and the deputy at that point we
15 normally don't like to reach in the car, but obviously
16 because of the situation we had our guns trained on him and
17 we made the decision, he reached in and secured the weapon
18 while I kept my gun in the direction of the subject in the
19 vehicle.

20 Q. Now, your car has an in car recording system?

21 A. Yes, sir. It's a Watch Guard digital DVD.

22 Q. Was it operating that night?

23 A. Yes, sir.

24 (Whereupon, State's Exhibit #3 marked for
25 Identification.)

1 BY MR. McNAIR:

2 Q. Have you previously watched a copy of your video
3 from that night?

4 A. Yes, sir.

5 Q. Did that copy accurately reflect things as they
6 happened on January 24th, 2014?

7 A. Yes, sir.

8 Q. Is State's 3 a copy from your camera system?

9 A. Yes, sir.

10 Q. Okay. How do you recognize that?

11 A. First of all, it's got my name on it in print and
12 it's got my initials on the bottom.

13 Q. So this is a copy you watched previously?

14 A. Yes, sir.

15 MR. McNAIR: Your Honor, we move State's 3 into
16 evidence.

17 MR. MAULDIN: No objection, Your Honor.

18 THE COURT: State's 3 is in evidence without
19 objection.

20 (Playing video.)

21 BY MR. McNAIR:

22 Q. Trooper Snider, do you recognize the individual in
23 the video?

24 A. That's me.

25 Q. You just pulled up to where Trooper Lee was?

1 A. Yes, sir.

2 (Playing video.)

3 BY MR. McNAIR:

4 Q. Now, real quick. Your camera system reflects time
5 as well?

6 A. Yes, sir. The top would show the time and date
7 which is January 24th, 2014 at 04:38 hours. Underneath that
8 that's my map log with my location. The bottom shows my
9 speed off the GPS. A91 was my call number at the time and
10 then LSM stands for lights, siren and microphone.

11 (Playing video.)

12 BY MR. McNAIR:

13 Q. Okay. Is that the suspect vehicle in front of
14 you?

15 A. Yes. The one that just passed on the double yellow
16 line.

17 (Playing video.)

18 BY MR. McNAIR:

19 Q. Just passed another vehicle?

20 A. Yes, sir.

21 (Playing video.)

22 BY MR. McNAIR:

23 Q. Now, I guess even though you can't really tell in
24 this video, can you see inside the vehicle at this point?

25 A. Yes.

1 Q. Are you close enough to see inside the vehicle?

2 A. Yes, sir, because the video don't show how bright
3 actually the lights and stuff are and plus on top of that the
4 camera sits back inside of your patrol car so it has to go
5 through the windshield and out where you're driving it's kind
6 of sitting.

7 Q. Are you closer than it appears on video?

8 A. Yes, sir.

9 (Playing video.)

10 BY MR. McNAIR:

11 Q. Now, are you able to get to the vehicle from this
12 side?

13 A. No, sir.

14 Q. You had to go around to the left?

15 A. To the left on the Highway 3 side because on that
16 side it's pretty thick, but we couldn't even tell exactly
17 where the car went in at at that point. We just knew --

18 Q. Did the vehicle flip?

19 A. It appeared to have flipped. Like I said, whenever
20 I was approaching the intersection, when I saw him start
21 going sideways through the pole, that's when I kind of looked
22 to make sure nothing was going to get me so I started looking
23 to the left and then by the time I looked back up it had
24 pretty much went over 178 and that's the last time I saw it
25 before it got sucked into the trees.

1 Q. So based on that video it appeared -- You at one
2 point got up to 128 miles per hour?

3 A. Yes, sir.

4 Q. But when you're behind the vehicle you get up to
5 108?

6 A. Yes, sir.

7 (Whereupon, State's Exhibits #4 through #17 marked
8 for Identification.)

9 BY MR. McNAIR:

10 Q. All right. Your camera system records GPS
11 coordinates as well; is that correct?

12 A. Yes, sir.

13 Q. Let me show you State's 4 and 5 and ask you if you
14 can tell us what that represents?

15 A. Number 4 shows where Trooper Lee pulled the vehicle
16 over just on SC 3 up on 321. That's where I first, you see
17 me pull in behind his vehicle. I'm the next vehicle to
18 approach.

19 Q. That corresponds with GPS coordinates obtained from
20 your camera system?

21 A. Yes, sir. It's 33 degrees 42.9 and then west 81.

22 Q. What is exhibit 5?

23 A. I'm sorry.

24 Q. What is exhibit 5?

25 A. Exhibit 5 basically shows my camera system with the

1 lat and long and it corresponds with the lat and long for SC
2 3.

3 MR. McNAIR: Your Honor, we would offer State's 4
4 and 5 into evidence.

5 MR. MAULDIN: No objection, Your Honor.

6 THE COURT: 4 and 5 are in evidence without
7 objection.

8 BY MR. McNAIR:

9 Q. I show you State's 6 and 7. What does State's 6
10 represent?

11 A. Where the collision actually occurred at the end of
12 the video where you see it happen 178 and SC 3 and it has the
13 GPS coordinates. Those GPS coordinates correspond with my
14 dash cam. It shows the route the vehicle plotted.

15 Q. And State's 7 is a still shot from your video
16 system?

17 A. Yes, sir.

18 MR. McNAIR: Your Honor, we would offer State's 6
19 and 7 in evidence.

20 MR. MAULDIN: No objection, Your Honor.

21 THE COURT: Without objection 6 and 7 are in
22 evidence.

23 BY MR. McNAIR:

24 Q. I show you State's 8 through 17. Take a look
25 through these.

1 A. (Witness complies.)

2 Q. Do all of those photographs accurately represent the
3 way things appeared on January 24th, 2014?

4 A. Yes, sir.

5 MR. McNAIR: Your Honor, we would offer State's 8
6 through 17 into evidence.

7 MR. MAULDIN: No objection, Your Honor.

8 THE COURT: Without objection State's 8 through 17
9 are in evidence.

10 BY MR. McNAIR:

11 Q. All right. State's 4, you said this represents
12 where you initially pulled behind Trooper Lee, correct?

13 A. Yes, sir. That's where he was conducting a felony
14 traffic stop at.

15 Q. On Highway 3?

16 A. Yes, sir.

17 Q. State's 5 you said is a still shot from your camera
18 system?

19 A. Yes, sir. That's my call number on the bottom right
20 A91 and lat and long is at the top.

21 Q. What time did you arrive?

22 A. Appears about 04:38 a.m.

23 Q. Okay. State's 6?

24 A. That's where the collision ended or where the
25 collision occurred and the chase ended at that point, 178 and

1 SC 3.

2 Q. State's 7 is again from your camera system?

3 A. Yes, sir. Call numbers on the bottom right and the
4 same as lat and long.

5 Q. So the pursuit ended at what time?

6 A. 04:41.

7 Q. Okay. Now, State's 4, that's already in evidence,
8 when Trooper Lee first spotted the vehicle what time is
9 reflected on his camera system? Can you tell?

10 A. I can't see, sir. 04:27.

11 Q. Okay. So he spotted the vehicle at 04:27 picked up
12 on his camera system, then you got there at 04:38?

13 A. Yes, sir.

14 Q. The pursuit ended at 04:41?

15 A. Yes, sir.

16 Q. This is State's 8. What does that reflect? It's
17 hard to see, but there's some orange marks here on the
18 pavement.

19 A. Yes, sir. That would have been put down probably by
20 Lexington County in order to investigate a collision any time
21 we are involved.

22 Q. Is that approximately where the vehicle went off the
23 road?

24 A. Yes, sir, in that vicinity.

25 Q. Okay. State's 9, what is this building here on the

1 right?

2 A. I'm sorry, sir.

3 Q. What is that building that's reflected on the right
4 side of that picture?

5 A. It's an old, I guess, gas station that's been there
6 for probably 70 years or so. It's an abandoned building.

7 Q. Did the suspect vehicle appear to travel through
8 that parking lot?

9 A. Yes, sir. There's a little porch overhang that had
10 some wooded poles that come down and it appears with those
11 marks that they would be from the tires sliding across the
12 pavement and went directly through the path of where the
13 building was at.

14 Q. It's hard to see this, but State's 10, does that
15 show - is that - are we looking at --

16 A. That should be --

17 Q. -- 178?

18 A. 178, yes, sir.

19 Q. Okay. So that's what the vehicle crossed. State's
20 11?

21 A. That would be where he entered into the wood line
22 and that mark right there with the orange would show where it
23 left the roadway.

24 Q. Okay. State's 12?

25 A. Another - that's the same - it's a little bit closer

1 version of where the vehicle went in and struck the sign and
2 where it went through the woods.

3 Q. Okay. And you couldn't get to the vehicle from this
4 direction?

5 A. No, sir.

6 Q. State's 13, this appears to be the other side?

7 A. Yes, sir. Because there's a clearing. This is
8 these people's yard per se. We had to basically -- The last
9 picture is showing the entry where the vehicle went through
10 the woods. If you're looking at the woods from where my car
11 is at and go to the left, you had to wrap back around towards
12 the back side of the woods so if you could see through those
13 woods, you would be looking at the front of my patrol car.

14 Q. Okay. So is this the way you had to get access to
15 the vehicle?

16 A. Yes, sir.

17 Q. State's 14, I guess about the same thing?

18 A. Yes, sir. You get a better visual of the car.
19 That's a vehicle bumper. This is where we had to enter
20 through to get access to the vehicle.

21 Q. A close up of the vehicle?

22 A. Yes, sir. Obviously that's the passenger side
23 facing us.

24 Q. Okay. Now, when you first got there, was the roof
25 cut open like that?

1 A. No, sir. That was done by the fire department for
2 extrication.

3 Q. Okay. Could you get around to the driver's side
4 from this?

5 A. No, sir. We had to approach from the passenger
6 side.

7 Q. Okay. Why couldn't you get to the driver's side?

8 A. There was trees. In particular one larger tree that
9 was kind of wedged around where the driver's side door is
10 at.

11 Q. Okay. So all entry into the vehicle had to come
12 from this side?

13 A. Yes, sir.

14 Q. A picture of the tag number of the vehicle?

15 A. Yes, sir.

16 Q. Now, this is a picture of the driver's side,
17 correct?

18 A. Yes, sir.

19 Q. Okay. Did they have to cut any trees down to even
20 get to that?

21 A. Uhm, I know they did on the passenger side. Uhm, I
22 don't know because I didn't really watch them cut down. Once
23 they started extrication I didn't get a chance to see all
24 they cut down from the driver's side.

25 MR. McNAIR: That's all we have at this time.

1 Please answer any questions Mr. Mauldin has.

2 THE WITNESS: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. MAULDIN:

5 Q. Trooper Snider, let's just make it clear. Those
6 photos were taken after Raphael and the passenger were
7 airlifted to the hospital; is that right?

8 A. Yes, sir.

9 Q. Okay. And the chase in the video you said it began
10 at 4:38 and ended at 4:41?

11 A. Yes, sir.

12 Q. Okay. So that's closer to three minutes, not eight
13 minutes, correct?

14 A. Yes, sir.

15 Q. Okay. And you prepared a couple of reports. You
16 typed out a couple of reports regarding this case, did you
17 not?

18 A. Yes, sir.

19 Q. And in none of those reports you said that during
20 the chase you were able to see in the vehicle or see the
21 driver or anything like that, did you?

22 A. In any reports did I put that?

23 Q. You didn't indicate that you were able to see in the
24 vehicle during the chase and saw long hair?

25 A. No, sir, I didn't put it in my report.

1 Q. Those were two reports that you prepared?

2 A. It's two reports, but it's the same narrative for
3 both.

4 MR. MAULDIN: No further questions.

5 MR. McNAIR: Nothing further, Your Honor.

6 THE COURT: Any objections to the Trooper being
7 excused?

8 MR. MAULDIN: No, Your Honor.

9 MR. McNAIR: No, Your Honor.

10 THE COURT: Thank you very much, sir. You are free
11 to go. Thank you.

12 MR. McNAIR: Your Honor, the State calls Officer
13 John Mishoe.

14 Thereupon,

15 OFFICER JOHN MISHOE

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Have a seat, please, sir. Once you're
18 seated state your full name spelling your last on the
19 record, please.

20 THE WITNESS: John Mishoe, M-i-s-h-o-e.

21 DIRECT EXAMINATION

22 BY MR. McNAIR:

23 Q. Officer Mishoe, how long have you worked for the
24 Sheriff's Department?

25 A. Since August of 2011.

1 Q. Do you work a particular area of the county?

2 A. Yes, sir. I work in the south region. We cover
3 Swansea, Horses Neck, Pelion, Fairview area.

4 Q. You're actually from Swansea, aren't you?

5 A. Yes, sir. Born and raised.

6 Q. You know that area?

7 A. Yes, sir.

8 Q. And were you on duty January 24th of last year?

9 A. Yes, sir, I was working night shift.

10 Q. And were you called out to Highway 3 and 178 that
11 night?

12 A. Yes, sir, I was.

13 Q. What was that call in reference to?

14 A. I believe there was a armed robbery earlier in the
15 night in our north region and the call I was made aware of
16 was Highway Patrol had gotten behind a vehicle that was a
17 suspect vehicle in the armed robbery down in the Swansea area
18 and I was called as a back up unit to start going that way to
19 assist them.

20 Q. Okay. Was the pursuit still going on by the time
21 you got there?

22 A. Well, initially when I was made aware of the call,
23 there wasn't a pursuit. I believe they were in the Swansea
24 area. I think they were about to stop the vehicle. While I
25 was headed that way down Highway 178, I was located in the

1 Pelion area they attempted to stop the vehicle. I believe
2 they had stopped the vehicle and at one point a chase ensued
3 going down Highway 3.

4 Q. Okay. What direction are you coming from towards
5 that intersection of SC 3 and 178?

6 A. Highway 178 it comes from - from the area I was
7 coming, I was coming from Pelion going down towards Highway
8 3. I'm headed, I guess it would be like southeast
9 approximately and we actually intersect with Highway 3 down
10 at the very bottom part of the county. I believe that's
11 south roughly, southwest.

12 Q. Take a look at this map represented as State's 6.
13 Now, this blue dot, that's the intersection of Highway 3 and
14 178, correct?

15 A. Correct, sir.

16 Q. Okay. So were you coming from down 178 from this
17 direction (indicating)?

18 A. Yes, sir.

19 Q. All right. And describe for us what you saw as you
20 approached that intersection.

21 A. Okay. As I'm coming down 178, I believe the last
22 road before you get to the intersection is Pooles Mill Road.
23 Once you pass Pooles Mill there's a sharp left hand curve.
24 Right as I'm getting into the curve or coming out of the
25 curve, I notice taillights from a vehicle just kind of

1 disappearing coming from my left going to my right just
2 disappearing off in the distance.

3 Q. Did those taillights appear to be on the ground or
4 elevated?

5 A. Elevated. I mean, they weren't like sky high, but
6 it happened quick. All I saw was a flash of red and I
7 recognized it as taillights, but I didn't know exactly what
8 was going on at that point other than just something quick
9 from left to right.

10 Q. How far away were you would you say from that point
11 when you saw that?

12 A. Maybe 150 yards, something. Not very far
13 considering that I'm traveling probably 65, 70 miles an hour
14 at that point rounding that curve. I got to the intersection
15 pretty quick. As it happened we're talking maybe three to
16 five seconds from me being at that intersection to where I
17 was.

18 Q. I got you. Is this the sharp curve you're talking
19 about kind of right before the intersection?

20 A. Yes, sir.

21 Q. That's a short distance away, is it not?

22 A. Correct, sir. There's a little patch of water that
23 goes up under the road so there's little guardrails right
24 there in the curve and as I'm coming out of that curve
25 passing the guardrails is when I actually noticed the

1 taillights.

2 Q. Okay. What did you do when you got to the
3 intersection?

4 A. As I'm approaching the intersection is when I
5 noticed the trooper's vehicle and I noticed Trooper Snider
6 actually with his gun drawn going left to right crossing over
7 the road in front of me. It actually took me a split second
8 longer than it should have just because as soon as I saw him
9 running out on the road, I immediately backed off and kind of
10 tried to figure out what's going on at that point. I ended
11 up stopping. I had another officer behind me. We got out at
12 that point and just like I said, I drew my weapon. Hey, man,
13 was that the vehicle? What's going on? And at that point is
14 when I realized that that vehicle was in the wood line. It
15 was actually disappeared from sight. We couldn't see it from
16 178 so we just started scanning the area trying to locate the
17 vehicle in the woods.

18 Q. Were you present when they found the vehicle?

19 A. Yes, sir, I was. I ended up staying on the 178 side
20 of the wood line. Me and another officer we were going back
21 and forth and I believe another trooper showed up. They
22 ended up going down the Highway 3 side right there at the
23 intersection. They located the vehicle and I could hear them
24 yelling, calling verbal commands to, I guess, the occupants
25 of the vehicle. I remember I said something like, Highway,

1 have you got them? Or something like that. Yeah. So that's
2 when we run around the wood line and actually found where
3 they went in the woods and went up to the car with them.

4 Q. How many occupants were in the vehicle? Did you see
5 them?

6 A. There were two. There was one in the driver's seat
7 and then there was one in the passenger, I want to say it was
8 the passenger rear seat. When I actually went up to the
9 vehicle, the one in the back seat was slumped over. I could
10 see basically this side of him. He was kind of turned away
11 from me. He was slumped over laying in the back seat.

12 Q. Was he unconscious?

13 A. Both of them were unconscious. Neither one of them
14 were responding to me or Highway Patrol while I was there at
15 the car. The driver, I think he was sitting kind of like
16 this (indicating) slumped over and then like I said the guy
17 in the back was slumped over to his left.

18 Q. Did you see the hair of the guy in the back?

19 A. The guy in the back had short hair.

20 Q. What about the driver?

21 A. He had long hair. I think dreadlocks or some sort
22 of locks. He had long hair.

23 Q. Did you go up to vehicle?

24 A. Yes, sir. When I initially made my way back to
25 where Highway was, they were still yelling commands. I

1 waited because at that point they are the contact. I'm
2 trying not to get in their way. After a brief moment when
3 I'm not seeing any movement, I told them, guys, we need to
4 make contact to see what's going on in the car. I approached
5 on the passenger side. Had to kind of pick my way through
6 some bushes and trees. Actually had one of the troopers was
7 covering me because I couldn't do it one handed. I had to
8 break limbs and stuff to climb up to the car. When I got up
9 to the car, like I said, I saw the driver and the passenger
10 and neither one of them were conscious at the time.

11 Q. Did you see anything else in the car that concerned
12 you?

13 A. Yes, sir. As I looked over, I was looking in the
14 passenger front, there's a handgun, a nine millimeter handgun
15 laying down in the passenger seat. It's a couple inches away
16 from the driver's hand where he was kind of laid back and to
17 the right. There's a gun here. Immediately told them, hey,
18 guys, I got a gun. I'm going to reach in because I need to
19 at least secure it or bring it away from the occupants
20 because medical isn't going to come near them while there's
21 unsecured guns.

22 Q. So you said his hand was outstretched on the
23 passenger seat?

24 A. Yes, sir. Kind of laid over to the passenger
25 side.

1 Q. And that gun was inches from his hand?

2 A. Yes, sir. I mean, it's not far.

3 Q. You grabbed the gun?

4 A. Yes, sir. I reached over, grabbed the gun. The
5 magazine was not in it. The magazine was either right there
6 in the seat with it or it might have been between. It was
7 right there in plain sight. I reached in and grabbed the
8 gun. I just kind of told them, heads up and I just kind of
9 reached back and tossed it away from the car.

10 Q. Did you clear it before you tossed it?

11 A. I did not. I just tossed it immediately because we
12 were still - I didn't know if one of them is waking up or the
13 guy in the back seat, you know, he appeared to be
14 unconscious. I don't know if he's faking or what's going on
15 with him. I just immediately discarded the gun away from the
16 car and brought my focus back to the occupants.

17 Q. Did you ever discover if that gun was loaded?

18 A. Yes, sir. Once we got more people to the scene
19 where I felt comfortable getting away from the car, I
20 immediately went back to where I discarded the gun and there
21 was round in the chamber. I, you know, unchambered it. We
22 basically picked up the gun, the round and the magazine and
23 turned it over to the trooper.

24 Q. All right. Can you describe what the weapon looked
25 like?

1 A. Yes, sir. I believe it was a Hi-Point nine
2 millimeter. It's a little bit larger brand of handgun that
3 had some sort of light or maybe a laser attached to it just
4 underneath.

5 Q. What color was it?

6 A. I believe it was black.

7 (Whereupon, State's Exhibit #18 marked for
8 Identification.)

9 BY MR. McNAIR:

10 Q. I'm going to show you what's been marked as State's
11 exhibit number 18. Do you recognize that?

12 A. Yes, sir. That's the weapon.

13 Q. That's the weapon you retrieved from the passenger
14 seat of that vehicle that day, that night?

15 A. Yes, sir. I picked it up with my hand around the
16 trigger guard so I'm not actually near the trigger, picked it
17 up between that and the slide and tossed it. Yes, sir.
18 That's the same one.

19 MR. McNAIR: Your Honor, we offer State's 18 in
20 evidence.

21 MR. MAULDIN: No objection.

22 THE COURT: Without objection State's 18 is in
23 evidence.

24 BY MR. McNAIR:

25 Q. Now, the device under the barrel is what you're

1 referring to some type of laser site or something?

2 A. Yes, sir. I didn't look at it close enough to know
3 if it was a light or a laser, but yes, sir, typically that's
4 where those attachments go.

5 THE COURT: Is that the nine millimeter?

6 THE WITNESS: That's the nine millimeter.

7 BY MR. McNAIR:

8 Q. That's the nine millimeter Hi-Point?

9 A. Yes, sir. Hi-Point should be the name brand. And
10 also just by the way it's shaped that's consistent.

11 Q. And the magazine was separate from the actual
12 pistol?

13 A. Yes, sir. It had been ejected.

14 Q. Were there bullets in the magazine as well?

15 A. Yes, sir. I did never count the actual bullets in
16 the magazine, but there was at least one showing at the
17 top.

18 Q. And one in the chamber?

19 A. Yes, sir. There was one that I also cleared from
20 the chamber. I don't know the specific number, one or two
21 that I saw like on the floor board.

22 MR. McNAIR: That's all the questions I have at this
23 time.

24 THE COURT: Mr. Mauldin, any questions of this
25 officer.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Deputy Mishoe, you said when you were able to observe the occupants in the car, they were both unconscious and slumped over; is that correct?

A. Yes, sir.

Q. And they were unresponsive?

A. Yes, sir.

Q. Did you do any kind of stimulus?

A. No. I called out to them, hey, buddy, are you okay? Something like that and I never got a response from either of them.

Q. Now, the driver was pinned in by a tree limb or something like that --

A. Yes.

Q. -- is that correct?

A. Some sort of limb. It pierced the windshield.

Q. So that was kind of between him and the gun at the time you got it?

A. Yes, sir. It's actually sitting a little higher. I believe his arm might have been under the limb.

MR. MAULDIN: No further questions.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. McNAIR:

1 Q. You testified that his hand was outstretched on the
2 passenger seat, right?

3 A. Yes, sir. I saw his hand and then his arm.

4 Q. So that limb wasn't blocking his hand from being
5 where the gun was?

6 A. No. Like I said, from where it penetrated it was
7 sitting up higher somewhere around his shoulder area.

8 Q. When Mr. Mauldin asked you if he was slumped over,
9 he was upright in the driver's seat, correct?

10 A. Yes, sir. He was upright. He was kind of like
11 leaning back and to the right kind of just like laying like
12 this and his arm out.

13 MR. McNAIR: Okay. Thanks.

14 THE COURT: All right. Thank you very much. Any
15 objection to this officer being excused?

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: Thank you, sir. You're free to go.
18 Will both of you step up real quick.

19 (Side bar off the record.)

20 THE COURT: On the record. Call your next witness.

21 MR. GRAHAM: The State calls Amanda Sucher.

22 Thereupon,

23 AMANDA SUCHER

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Have a seat right up there, ma'am. Once

1 you're seated, state your full name spelling your last
2 on the record, please.

3 THE WITNESS: My name is Amanda Marie Sucher,
4 S-u-c-h-e-r.

5 DIRECT EXAMINATION

6 BY MR. GRAHAM:

7 Q. Ms. Sucher, where are you employed, ma'am?

8 A. Lexington County EMS Public Safety.

9 Q. And how long have you worked for Lexington County
10 EMS Public Safety?

11 A. Two years and ten months.

12 Q. And what do you do there?

13 A. I'm a paramedic.

14 Q. What is a paramedic?

15 A. We're responsible for responding to 911 calls and
16 taking care of critically ill and injured patients, tending
17 to their needs and transporting them to the proper
18 destination for definitive care.

19 Q. In the early morning hours of January 24th, 2014,
20 were you working that morning?

21 A. Yes, sir.

22 Q. Did you receive a call to respond to a motor vehicle
23 accident?

24 A. Yes, sir.

25 Q. What time did that call come into you?

1 A. Approximately -- Well 4:46.

2 Q. And where did you go?

3 A. We got dispatched to 3998 Pooles Mill Road which is
4 right up there at the corner of 178 and Highway 3 where they
5 intersect.

6 Q. And you say we. Was there somebody else with you?

7 A. My partner.

8 Q. What's his or her name?

9 A. Neal Price.

10 Q. What time did you arrive there?

11 A. 4:58.

12 Q. When you got on scene, can you tell the jury what
13 was going on?

14 A. When we arrived on scene, there was officers already
15 there. Fire department was there. We pulled up basically to
16 car in the middle of a bunch of trees. There was a ditch on
17 one side and the tress all around the car and the car was
18 really damaged.

19 Q. Were you able to approach the car right then?

20 A. We were able to got close enough to look into the
21 vehicle, but we were not able to get right up to the
22 vehicle.

23 Q. What could you see from that point looking in the
24 vehicle?

25 A. We could see two occupants in the vehicle. One of

1 which was in the front driver's seat pinned in and the second
2 one was laying in the back seat.

3 Q. Physical description wise were you able to tell
4 anything about the person in the front seat?

5 A. Uhm, just basically he was pinned into the front
6 seat between a branch and like the steering wheel, had kind
7 of long hair, and at that point he was just saying he was
8 hurt.

9 Q. So he was conscious at that time?

10 A. Uhm, yes, he was conscious.

11 Q. How about the back seat passenger?

12 A. Uhm, no, he was not. We were able to see that he
13 was - he was kind of laying slumped over on his left side on
14 the back seat with his face towards the seat, but we were
15 able to watch his back and see that he was taking
16 respirations, but he would not respond to anything that we
17 were doing.

18 Q. What had to happen before you could go treat people
19 in the car?

20 A. Uhm, before we could go treat people in the car, the
21 fire department had to basically cut a path back into the car
22 so we could get our equipment and stuff back in there and
23 they had to cut the back door off the vehicle for us to be
24 able to access the patient in the back seat.

25 Q. And why were you treating the patient in the back

1 seat versus the front seat?

2 A. Because he was unresponsive with respirations that
3 we don't consider adequate respirations. They were only
4 eight per minute. They really should be between 12 and 18
5 per minute and the passenger in the front seat was verbally
6 speaking so we knew that his airway was okay at that point.

7 Q. So after the fire services were able to cut the back
8 passenger door and give you access to the individual in the
9 back, what did you do?

10 A. Uhm, we immediately - we put him in what we call C
11 spine precautions which we basically control their head and
12 their neck to make sure that no big movements are made in
13 case they have a spinal injury. We put a device called a C
14 collar which is a collar that goes around their neck also to
15 hold it in place and we were able to maneuver the patient
16 onto a long spine board which is basically just a big long
17 hard board that we lay somebody on again to protect their
18 spine and moved him out of the vehicle onto our stretcher and
19 into our ambulance.

20 Q. What do you remember about the hair style of the
21 individual in the back seat?

22 A. All I remember is that it was short, kind of fuzzy.
23 That's about it.

24 Q. And the individual in the back seat from your report
25 that's Alexander Clemmons; isn't that correct?

1 A. Yes, sir.

2 Q. Once you got Mr. Clemmons on the board with his neck
3 collar on, what did you have to do next?

4 A. Uhm, we - basically we do what's called a rapid
5 trauma assessment. We basically look head to toe for
6 anything that is going to cause the patient immediate death
7 which would be any severe bleeding, any respiratory problems
8 which we did identify. Also during this we reidentified and
9 were able to place him on some oxygen and we look for any
10 major bones sticking out, any major penetrating trauma to the
11 chest cavity or anything that, basically anything that would
12 cause him immediate life threatening problems.

13 Q. And what did you notice when you did that?

14 A. We just noticed that his respiratory rate was slow.
15 We also noted that his pupils weren't reacting quite as
16 quickly as they would in a normal person, uhm, and we also,
17 uhm, he was not responsive to any kind of what we call
18 stimuli. What we do, we have verbal stimuli which is where
19 when you walk up on somebody and their eyes are closed and
20 you talk to them, they open them and look back at. Painful
21 stimuli is when you cause some kind of pain response.
22 Usually we take our knuckles and rub them right here on their
23 chest and usually if they respond to that, they'll either
24 moan, groan, or look at you, and then we have what's called
25 unresponsive which means we do all those things and they

1 don't react at all and he was unresponsive.

2 Q. When Mr. Clemmons was unresponsive, what did you do
3 next?

4 A. We immediately loaded him into the ambulance and due
5 to the condition that they were in when we got on scene, we
6 already had helicopters coming to transport them to the
7 hospital. So we basically put them in the back of the truck
8 and went ahead and started moving towards the hospital or,
9 I'm sorry, towards the landing zone.

10 Q. Had you started taking vital signs at this point?

11 A. We got our first set of vital signs like as soon as
12 we got into the truck which you will see here in my record
13 and that's when we started, basically started our care. I
14 mean, he went straight from the car onto the stretcher into
15 the truck within a matter of probably a minute, two minutes
16 tops.

17 Q. And how long did it take you to go to the fire
18 station where the landing zone was?

19 A. I think it was about two minutes. Yeah. Two
20 minutes. Then we waited on the helicopter for approximately,
21 six minutes waited for the helicopter.

22 Q. During that time that you were with Mr. Clemmons,
23 can you tell the jury about his blood pressure and his
24 respirations and recordings and what they meant to you?

25 A. Uhm, if you look at his record, we started off, we

1 have a set of vital signs that, uhm, is what we consider
2 normal in a patient which would be just anybody walking and
3 talking with no medical problems, that's what sets the normal
4 range that we look at. His first set of vitals that we took,
5 if you look at them, his blood pressure was 98 over 74.
6 That's a little bit low and that can be indicative of shock
7 or bleeding. His pulse rate was 86 and regular which means
8 he had a regular heart rate. His respiratory was 8 which was
9 low so we assisted him by putting a mask on his face and
10 giving him additional - we let him breath 8 times a minute,
11 but we also would give him a few extra breaths in between.

12 Pupils at that time were equal, but he was
13 unconscious.. We had him on oxygen and this to me is
14 indicative of he's been in a major trauma. He could have a
15 bled so we got an IV started and started running normal
16 saline. It's basically sterile water that we put through an
17 IV catheter into their vein to help raise their, you know,
18 put, replace the volume that's being lost or what they might
19 be bleeding out and help keep that blood pressure up.

20 If you look at my second set of vitals are pretty
21 much the same, but if you look at my third set, uhm, got a
22 blood pressure of 100 over 80. It came up some. Uhm, and
23 everything else was within normal range at that point. And
24 then if you notice, the next two set of vitals his blood
25 pressure plummets. Generally that's indicative of a later

1 sign of shock which basically means we are not replacing
2 fluids fast enough. He's bleeding out faster than we can put
3 it in. Basically his vital signs to me, you know, as we got
4 them in training is saying that this guy is going down hill
5 at this point. I mean, time is of the essence with this.

6 Q. When you get to the landing zone and you're waiting
7 for the helicopter, what are you doing as far as treatment at
8 that point?

9 A. Uhm, treatment at that point we generally will go
10 back over the patient and do what we call a secondary
11 assessment. That's when we go back and look a little more
12 detailed at things. We generally will cut the clothes off
13 the patient at this point and make sure that they don't have
14 any bones sticking out anywhere and it's standard in any
15 trauma basically to get someone completely naked so that we
16 can visualize everything and make sure that we don't miss
17 anything that could be causing them a life threat.

18 (Whereupon, State's Exhibit #19 marked for
19 Identification.)

20 BY MR. GRAHAM:

21 Q. I'll show you this and ask you if you recognize
22 this.

23 A. That would be the jacket that I cut off the
24 patient.

25 Q. How are you able to identify this?

1 A. I remember it from the fuzz around the hood and the
2 orange, and plus one of the things we learn in school is to
3 always do things with a routine, that way we don't forget
4 anything in the heat of the moment and one of the things that
5 I adopted a long time ago is a specific way of cutting
6 clothes off a patient and that's how I cut clothes.

7 Q. Let me show you a photo and ask if you recognize
8 that as being a fair and accurate photo of the jacket that we
9 just discussed?

10 A. Yes, sir.

11 MR. MCNAIR: Your Honor, the State would offer that
12 photo into evidence.

13 MR. MAULDIN: No objection, Your Honor.

14 THE COURT: That's State's 19 in evidence.

15 BY MR. GRAHAM:

16 Q. So Mr. Clemmons had a jacket on that you had to cut
17 off?

18 A. Yes, sir.

19 Q. Do you remember anything about the pants that he was
20 wearing?

21 A. I remember that they were dark in color. They were
22 jeans. And again I cut things off the same way every person
23 every time so I would have a specific way of cutting it.

24 Q. His jeans needed to be cut off as well?

25 A. Yes, sir. We expose everything. We cut everything

1 off.

2 Q. When you cut off the jeans, what, if anything, did
3 you notice?

4 A. We found weapon, a gun underneath his left knee.

5 Q. Let me show you a handgun. It has a safety lock on
6 it because I know you're not too excited about guns. Do you
7 recognize that gun?

8 A. Yes, sir.

9 Q. Okay. Is that the gun?

10 A. Yes, sir.

11 Q. So this gun was found when you cut off the dark
12 jeans that Mr. Clemmons was wearing?

13 A. Yes, sir.

14 MR. McNAIR: Your Honor, the State would offer this
15 into evidence at this time.

16 MR. MAULDIN: No objection, Your Honor.

17 THE COURT: Without objection, that's State's number
18 20 received in evidence.

19 BY MR. McNAIR:

20 Q. Ms. Sucher, after you got Mr. Clemmons' jacket and
21 his jeans off, what did you notice about his physical
22 condition at that time?

23 A. He had some, it's called abdominal distention.
24 Basically what happens is everybody's abdominal cavity is
25 soft and when you bleed into your abdominal cavity, there's

1 nowhere for it to go except for into that space so it makes
2 the abdomen get bigger and it makes it become rigid or harder
3 to the touch and we noticed that that had started to happen
4 with Mr. Clemmons, that he was starting to get some
5 distention and the stiffness in his abdomen.

6 Q. Did you notice anything called posturing?

7 A. When we were taking the patient - after -- Okay.
8 When the helicopter landed, the helicopter crew took over
9 care of that patient while we were still in the back of the
10 ambulance. Once they take over care, my job is to assist
11 them in getting that patient to their helicopter. Uhm, as we
12 got the patient out of the back of the truck and started
13 walking towards the helicopter, uhm, the patient did start to
14 what we call posture. Uhm, when this happens it's generally
15 indicative of a brain injury or traumatic brain injury and
16 what I mean by posturing is it almost looks very, very
17 similar, it looks very similar to a seizure in the aspect of
18 their arms will either curl in and get very, very stiff and
19 their feet included or they'll flex completely out like this
20 (indicating) including their neck and flex back and that's
21 what we call posturing. He did that on the way to the
22 helicopter, yes.

23 Q. And you said that was indicative of what?

24 A. A traumatic brain injury or a head injury. A severe
25 head injury.

1 MR. GRAHAM: Thank you, Ms. Sucher. Please answer
2 any questions the defense has.

3 THE WITNESS: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. MAULDIN:

6 Q. Ms. Sucher, it's been about a year since this
7 happened; is that correct?

8 A. Yes, sir.

9 Q. And you must have responded to maybe a couple of
10 hundred calls since then; is that correct?

11 A. Yes, sir.

12 Q. And when you do these calls, you often do reports;
13 is that right?

14 A. Yes, sir.

15 Q. Okay. Basically for every call you have to do a
16 report?

17 A. Yes, sir.

18 Q. Now, your report for this one did you - you notate a
19 lot of things, but do you notate the hair styles and the
20 clothing of anybody that you --

21 A. No, sir.

22 Q. You don't?

23 A. No, sir.

24 Q. So after hundreds of calls you're saying that you
25 remember the particular clothes and descriptions of these

1 people?

2 A. Yes, sir.

3 Q. Okay. And it was your understanding that when
4 you're treating the fellow, that he was a front seat
5 passenger that landed in the back?

6 A. There was some talk on scene that, uhm --

7 MR. GRAHAM: Objection, Your Honor. Hearsay.

8 THE COURT: Sustained as to any hearsay.

9 MR. MAULDIN: No further questions, Your Honor.

10 MR. GRAHAM: Nothing on redirect, Your Honor.

11 THE COURT: Thank you very much, ma'am. You may
12 step down. Any objections to this witness being
13 excused?

14 MR. GRAHAM: No, Your Honor.

15 THE COURT: David, any objection?

16 MR. MAULDIN: No. No, Your Honor.

17 THE COURT: Okay. Thank you very much. All right.
18 Folks, we're going to break at this time for lunch. I'm
19 going to ask you, if you would, to be back in the jury
20 room by 2:00. That gives you a couple hours for lunch
21 and if you, please, continue to adhere to the
22 instructions to have no conversation about the case with
23 anybody. Don't allow anyone to talk with you. When you
24 come back, we'll get started back at 2:00. Everyone
25 else please remain seated while the members of the jury

1 are excused.

2 (The jury was excused for lunch.)

3 THE COURT: All right. We'll then start back at
4 2:00, and we'll resume with the State's case at that
5 time.

6 (Whereupon, there was a luncheon recess.)

7 THE BAILIFF: All rise. Court is now in session.

8 THE COURT: Okay. Please keep your seats.

9 All right. Anything from the State before we bring
10 the jury out?

11 MR. GRAHAM: No, Your Honor.

12 THE COURT: The Defense?

13 MR. MAULDIN: No, Your Honor.

14 THE COURT: All right. Let's bring them out,
15 please.

16 (The jury returns to the courtroom.)

17 THE COURT: All right. Folks, I hope everyone had a
18 good lunch break and are ready to get started back. If
19 you recall, we were on the State's case when we took the
20 lunch break and so we'll pick up there with the State's
21 next witness.

22 MR. GRAHAM: Thank you, Your Honor. The state calls
23 Neal Price.

24 THE COURT: Sir, if you please come around to be
25 sworn.

1 Thereupon,

2 NEAL PRICE

3 after having been first duly sworn, testified as follows,

4 THE CLERK: Would you please have a seat up here and
5 state your full name spelling your last name for the
6 record please.

7 THE WITNESS: Neal Price, P-r-i-c-e.

8 DIRECT EXAMINATION

9 BY MR. GRAHAM:

10 Q. Neal, were are you employed?

11 A. Lexington County EMS.

12 Q. Is that a full time job or a part-time job?

13 A. I'm part-time.

14 Q. And how long have you had that job?

15 A. August of 2010.

16 Q. What do you do for Lexington County?

17 A. I serve as an advanced EMT.

18 Q. You also have another job as well?

19 A. I do.

20 Q. What is that?

21 A. I work as a medical representative at V.C. Summer
22 Nuclear Plant.

23 Q. In your job -- What's an advanced EMT?

24 A. I serve just as a basically as an assistant to the
25 paramedic. I'm a crew member on an ambulance. Assistant to

1 the paramedic.

2 Q. January 25th of 2014 who was the paramedic that you
3 were working with?

4 A. Amanda Sucher.

5 Q. And did you and Amanda have an opportunity to
6 respond to a motor vehicle accident down in the Swansea area
7 of the county?

8 A. We did.

9 Q. Do you remember that call?

10 A. I do.

11 Q. Do you have your run sheet with you?

12 A. I do, yes.

13 Q. What time did you get there, you and Amanda get
14 there?

15 A. Let's see. We arrived on scene at 4:58 in the
16 morning.

17 Q. As the EMT, do you get to drive or do you get to
18 ride?

19 A. That morning I drove.

20 Q. What was unusual about this call?

21 A. It was the, probably in the amount of resources that
22 were used on this call. Responding to that call. I'll just
23 start from the beginning. As we were sitting in Swansea, I
24 remember Highway Patrol zooming past us and then whenever we
25 actually got the call at 4:46 in the morning, we arrived on

1 scene to find a lot of Highway Patrol officers there and then
2 my captain had also responded and then also putting two
3 people on a helicopter.

4 Q. As a part time advanced EMT have you had a lot of
5 calls like that?

6 A. Uhm, I have only flown two people out in my career
7 since then, since August of 2010 so I haven't actually put
8 that many people on a helicopter and then that was a serious,
9 you know, injured, the patients were quite injured in that
10 call so...

11 Q. When you and Amanda got down there, were you able to
12 immediately get into the vehicle?

13 A. No. When we first arrived there, we parked on the
14 first stretch like it's a four way stop there so we parked
15 and then we followed the fire department in and we had to go
16 around the woods and we arrived at the vehicle that was in
17 the collision and so what I had to do is I kind of - I let my
18 partner kind of look in the windows and see if she could see
19 the patients and then my perspective was to kind of look to
20 see how I could gain access inside the vehicle so I circled
21 the vehicle looking for a way into it to help the
22 occupants.

23 Q. Were you able to find a way in?

24 A. Uhm, after I circled it a couple times and we found
25 the first access on the back rear door, back rear passenger

1 door.

2 Q. Did the fire services help you gain access through
3 there?

4 A. They did.

5 Q. Once you and Amanda had access, what did you all see
6 inside the back?

7 A. Uhm, we found a, uhm, black male lying on his side
8 and he was unresponsive.

9 Q. And that's Alexander Clemmons? That's the
10 individual you and Amanda were treating?

11 A. That's correct.

12 Q. You put a C collar on him and you got him out. What
13 was your job during that time?

14 A. Uhm, I worked on just getting him -- Once we got
15 that door open and I made access to that patient, we put him
16 on a long spine board and then we just began care and got him
17 onto the stretcher and into the ambulance.

18 Q. Do you remember what your job was in providing care
19 to Mr. Clemmons?

20 A. Yes. Uhm, as I - as we got him out, my partner
21 began just assessing him and then I remember that he was
22 barely breathing and in Amanda's notes it says he was
23 breathing eight times a minute so I remember ventilating the
24 patient and so my job was pretty much to maintain his
25 airway.

1 Q. When you say ventilate and maintain an airway, can
2 you tell the jury what you mean?

3 A. Right. What happens, you know, when a person is not
4 breathing normally or adequately, you have to ventilate them
5 using a bag valve mask. It's literally a bag with a valve
6 and you squeeze it and we had it hooked up to oxygen so we
7 were giving him a hundred percent oxygen by ventilating him
8 or giving him the breaths because he couldn't do it
9 himself.

10 Q. So you're up there working around his face and his
11 head?

12 A. Right. I was behind him. I was behind the
13 patient.

14 Q. What do you remember about the hair style of
15 Mr. Clemmons as you were providing care to him?

16 A. Mr. Clemmons' hair style was the frizzy fro type,
17 shorter hair, black hair.

18 Q. Do you remember anything about the driver of the
19 vehicle?

20 A. When I was working on Mr. Clemmons, I was in the
21 back seat so as I was looking forward I remember the driver
22 was, he was yelling to get him out of the vehicle and as far
23 as features, uhm, it's just from the back seat view forward
24 it was just his hair style and it was dreads.

25 Q. Do you remember how long they were?

1 A. I don't.

2 Q. As you took Mr. Clemmons, you and Amanda took him in
3 the ambulance over to the fire station and waited for the
4 helicopter and then got him ready for the helicopter, were
5 you present when his jacket and pants were cut off?

6 A. I was present, yes.

7 Q. When his pants were cut off, what did you all see?

8 A. When Amanda cut his pants off, we found a pistol
9 underneath his left leg.

10 Q. Let me show you what's been marked as State's
11 exhibit number 20 and ask you if you recognize that pistol?

12 A. That's the pistol that we found.

13 MR. GRAHAM. Neal, I appreciate you answering the
14 questions. If you could answer any questions that
15 Mr. Mauldin has. Thank you.

16 MR. MAULDIN: I have no questions for this witness,
17 Your Honor.

18 THE COURT: All right. Any objections to this
19 witness being excused?

20 MR. MAULDIN: No, Your Honor.

21 THE COURT: Thank you very much, sir. You're free
22 to go. Thank you for being here. You may call your
23 next witness.

24 MR. McNAIR: The State calls Jeff Berry.

25 Thereupon,

1 JEFFREY BERRY

2 after having been first duly sworn, testified as follows,

3 THE CLERK: Please, come up here and state you full
4 name spelling your last name for the record.

5 THE WITNESS: Jeffrey Berry, B-e-r-r-y.

6 DIRECT EXAMINATION

7 BY MR. McNAIR:

8 Q. Mr. Berry, where do you work?

9 A. I work for Lexington County Fire Service.

10 Q. Where are you based out of?

11 A. Swansea.

12 Q. Okay. Now, on January 24th, 2014, did you respond
13 to a wreck at the intersection of South Carolina Highway 3
14 and 178?

15 A. Yes, sir.

16 Q. What is the fire department's role in a situation
17 like that?

18 A. Our role is to secure power, secure the vehicle, and
19 then to extricate patients and assist EMS with getting them
20 to where ever they need to go.

21 Q. What was going on when you got to the vehicle?

22 A. When I got to the vehicle, it was heavily into the
23 woods. We had to take a chain saw and cut trees out of the
24 way to get back to the vehicle. Then when we found the two
25 patients inside the vehicle, one in the front seat, one in

1 the rear, then we began extrication of the vehicle to get the
2 patients out.

3 Q. Who did you all begin to try to extricate first?

4 A. We always go for the more critical patient which was
5 the guy in the back seat.

6 Q. What did his condition appear to be?

7 A. His condition, he was unconscious, in and out of
8 consciousness at that time, mainly unconscious.

9 Q. Okay. How about the driver?

10 A. The driver was alert and conscious and screaming in
11 the front seat.

12 Q. What was he talking about?

13 A. He was saying I can't breathe the whole entire
14 time.

15 Q. Okay. Now, as far as a description of the
16 individuals in the vehicle, what do you remember about the
17 driver?

18 A. The one who was in the driver seat had longer hair,
19 something like dreads.

20 Q. Okay. Who were you dealing with primarily?

21 A. Uhm, I was primarily, uhm, we went for the guy in
22 the back seat first. Uhm, I did not help with extrication.
23 They popped the door on the back seat which is simply placing
24 the spreaders on the C post and popping the door open and
25 then we got him out and I helped get him on the spine board

1 and loaded him up in the ambulance and I drove the ambulance
2 to the landing zone.

3 Q. What do you remember about the physical description
4 of the rear passenger who you were dealing with?

5 A. Uhm, he had shorter hair. Uhm, it was kind of, uhm,
6 I guess an afro. Short afro.

7 Q. He didn't have dreads?

8 A. No, sir.

9 Q. Do you remember anything about his clothing?

10 A. Uhm, he had - the only thing I remember is that he
11 had dark, darker jeans on.

12 Q. When you say dark, like dark blue, black?

13 A. Uhm, they would have been more of a dark blue.

14 Q. Okay.

15 (Whereupon, State's Exhibits #21 through #23 marked
16 for Identification.)

17 BY MR. McNAIR:

18 Q. I'll show you what's been marked as State's number
19 21 through 23. Take a look at those.

20 A. (Witness complies.) That's where the first patient
21 was that we transported from the back seat.

22 Q. You're referring to State's 21?

23 A. Yep, State's 21.

24 Q. What's 22?

25 A. State's 22, that would be the C post where we

1 inserted our spreaders to pop the door on that one to get him
2 out. And then 23 would be the whole car.

3 Q. Do all these pictures accurately reflect the way
4 things looked on January 24th, 2014?

5 A. Yes, sir.

6 MR. McNAIR: Your Honor, we would offer State's 21
7 through 23 into evidence.

8 MR. MAULDIN: No objection, Your Honor.

9 THE COURT: Without objection State's 21 through 23
10 are in evidence.

11 BY MR. McNAIR:

12 Q. All right. This is State's 21. What does this
13 show?

14 A. That would be the back seat where we got the first
15 patient out of. He was laying face down on the seat.

16 Q. Which side was his head facing?

17 A. His face was facing into the seat. He was
18 unconscious.

19 Q. Was he leaning one way or the other?

20 A. No. He was laying face down.

21 Q. Okay. All right. State's 22. Was the roof like
22 that when you all first got there?

23 A. No, sir.

24 Q. Is that what the fire department did?

25 A. Yes, we did.

1 Q. Did you have to do that to get access to the rear
2 passenger?

3 A. I was personally not involved when they did that.
4 To do that for the rear passenger? No. We just popped the
5 door for the rear passenger.

6 Q. Okay. Again, the fire department cut the beam in
7 between the front and the rear and popped the roof off of
8 it?

9 A. Yes. There's three posts, but that did not happen
10 until we got the driver out.

11 Q. Okay. Once you got that rear passenger out, where
12 did you take him?

13 A. I took him to Mack Edisto Fire Department where we
14 had a helicopter coming in to pick him up.

15 Q. Okay. Were you with Amanda Sucher and Neal Price?

16 A. Yes. I was driving them.

17 Q. Okay. You drove the ambulance?

18 A. (Witness nodding head.)

19 Q. Okay. Were you present when Mr. Clemmons' clothes
20 were removed?

21 A. I was not.

22 Q. Okay. Do you recall seeing anything they found in
23 Mr. Clemmons' clothes at the LZ?

24 A. Yes. They found a gun on him.

25 Q. Did you see the gun?

1 A. Yes, per I touched it. They handed it to me.

2 Q. I show you State's 20. Is that the gun that you
3 remember seeing?

4 A. Yes, that is.

5 MR. McNAIR: That's all the questions I have for
6 you. Thanks.

7 MR. MAULDIN: I have no questions for this witness,
8 Your Honor.

9 THE COURT: All right. Thank you very much, sir.
10 Any objections to this witness being excused?

11 MR. MAULDIN: No, Your Honor.

12 THE COURT: Thank you very much, sir. You're free
13 to go. Call your next witness.

14 MR. McNAIR: The State calls Matthew Roulette.
15 Thereupon,

16 MATTHEW ROWLETTE
17 after having been first duly sworn, testified as follows,

18 THE CLERK: Have a seat, sir, and once you're seated
19 state your full name spelling your last name on the
20 record, please.

21 THE WITNESS: Matthew Rowlette, R-o-w-l-e-t-t-e.

22 DIRECT EXAMINATION

23 BY MR. McNAIR:

24 Q. Mr. Rowlette, where do you work?

25 A. Lexington County Fire Service.

1 Q. Do you work with Mr. Berry who just testified?

2 A. Yes, sir.

3 Q. How long have you been with the fire department?

4 A. Five years.

5 Q. Do you have a particular position there?

6 A. I'm an apparatus operator.

7 Q. What does an apparatus operator do?

8 A. I operate the apparatus. I'm in charge of driving
9 the truck and operating the pump on the truck.

10 Q. Now, on January 24th of last year did you respond to
11 a wreck at the intersection of 178 and SC 3?

12 A. Yes, sir.

13 Q. What was your involvement in that?

14 A. My involvement was support. I was the third
15 apparatus on the scene. I provided myself and manpowered the
16 assist with patient care.

17 Q. What was going on at the scene when you got there?

18 A. Extrication of the first victim and the packaging
19 and loading of that first victim.

20 Q. When you say the first victim, where were they
21 situated in the vehicle?

22 A. The rear seat, back seat.

23 Q. Okay. Did you help extricate with that
24 individual?

25 A. Uhm, I helped load him. I packaged him onto the

1 spine board and moved him to the ambulance.

2 Q. Do you recall the physical description of that
3 person?

4 A. African American male, short hair. Nothing else.

5 Q. Okay. Did you also deal with the driver?

6 A. I did, yes, sir.

7 Q. Okay. What was his condition when you got on
8 scene?

9 A. The driver?

10 Q. Yes.

11 A. Was conscious. He was talking. He was pinned in
12 the front seat, but he was conscious and talking.

13 Q. Were you able to get to the driver to get him out?

14 A. He was pinned in by a tree, but we did have to
15 extricate him out of the vehicle.

16 Q. How were you able to extricate him?

17 A. Uhm, my role in it was to help get tools to the
18 scene or to the actual vehicle. Uhm, the doors had to be
19 removed on the passenger side of the vehicle and roof had to
20 be removed and also trees had to be cut.

21 Q. Did you have to remove the roof in order to get to
22 the driver?

23 A. Yes, sir.

24 Q. All right. Do you recall anything about the
25 driver?

1 A. I do recall that he had dreadlocks and light in
2 color jeans. That was about all.

3 Q. Okay. Light as in whitish color? Grayish color?

4 A. Light blue denim.

5 MR. McNAIR: That's all the questions I have for
6 you. Thanks.

7 MR. MAULDIN: I have no questions for this witness,
8 Your Honor.

9 THE COURT: Thank you very much, sir. You're free
10 to go.

11 MR. GRAHAM: The State calls Mike Phipps.
12 Thereupon,

13 MICHAEL PHIPPS
14 after having been first duly sworn, testified as follows,

15 THE CLERK: Once you're seated, state your full name
16 spelling your last on the record, please.

17 THE WITNESS: Michael Phipps, P-h-i-p-p-s.

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q. Mr. Phipps, where are you employed?

21 A. Lexington County Sheriff's Department.

22 Q. How long have you worked there?

23 A. Just over 17 years.

24 Q. In your most current job, what do you do now?

25 A. Assigned to the crime scene unit, but currently

1 working in computer forensics, digital forensics.

2 Q. The computer and digital, when you say digital
3 forensics, what does that mean?

4 A. Taking a device that has information on it whether
5 it's a computer, cell phone, a memory card, and trying to
6 extract that information off of it.

7 Q. Back in January of last year in addition to doing
8 digital forensics did you also have a more active role in
9 responding to crime scenes?

10 A. Yes, sir. Being with the crime scene unit I'm also
11 responsible for responding to an incident location where
12 evidence needs to be documented and collected and I was
13 called out on this incident as far as the traffic collision
14 is concerned.

15 Q. Let me show you a stack of photos and ask you do you
16 recognize those?

17 A. Yes, sir, I do.

18 Q. In fact, you took those photos?

19 A. I did.

20 Q. Let me show you another stack and ask you if you
21 recognize those as being photos that you took as well?

22 A. Yes, sir, I took these photographs.

23 MR. McNAIR: Your Honor, the state would offer all
24 of these photos into evidence, I believe, without
25 objection.

1 MR. MAULDIN: No objection, Your Honor.

2 THE COURT: They are numbered what through what?

3 The next one I believe is 24 so we'll start with 24?

4 MR. GRAHAM: Yes.

5 THE COURT: So how many do you have?

6 MR. GRAHAM: 24 through 44, Your Honor.

7 THE COURT: All right.

8 (Whereupon, State's Exhibits #24 through #44
9 received.)

10 BY MR. GRAHAM:

11 Q. Now, Mr. Phipps, when you arrived on scene, what did
12 you find the condition of that vehicle to be and what was
13 your job to be there?

14 A. I responded at the request of our traffic unit. Our
15 traffic unit is trained on accident reconstruction and crash
16 investigation and the crime scene unit has always been a
17 support unit for them during their investigations. They
18 requested that I respond for the purpose of photographing key
19 features that they designated as well as collecting evidence.
20 On arrival I was briefed by one of the traffic units and
21 shown the vehicle. It was still in the tree line and it was
22 heavily damaged.

23 Q. In addition to collecting evidence for the traffic
24 wreck, were you also looking to preserve evidence related to
25 an armed robbery?

1 A. Yes. I was also informed that this incident spawned
2 from a earlier incident that occurred of an armed robbery and
3 there was potentially a link between the two and therefore we
4 were also looking for anything that might be involved with
5 that earlier incident.

6 Q. So when you arrived on the scene knowing that
7 information, what do you do?

8 A. After I was briefed by our traffic division, I also
9 do a survey of the scene to see if I observe anything that
10 they missed because they have been on the scene for quite
11 some time and I have a little bit more time to pick out key
12 features and items so because of the amount of destruction to
13 the vehicle there was some stuff, debris that had been strewn
14 about so not everything was still in the vehicle and being it
15 was still dark I wanted to make sure that we identified those
16 items and secured them so that they wouldn't get trampled or
17 further damaged.

18 Q. Let me ask. This is State's number 15 on the
19 overhead. Do you remember recognize that?

20 A. I do. That's the vehicle in the tree line.

21 Q. In the bottom left corner do you recognize that
22 object?

23 A. It's a book bag.

24 Q. Did you actually photograph that in a close up on
25 State's 24?

1 A. Yes, sir, I did.

2 Q. And then later did you have an opportunity to go
3 through and look at the contents of that bag?

4 A. Yes. Initially the bag was just collected on scene.
5 Uhm, later when we get back to our headquarters in the lab
6 we'll, in the process of packaging that evidence we'll
7 itemize the contents of the book bag.

8 Q. Let me show you State's 25 and ask you if you
9 recognize that?

10 A. I do. That's a shirt that was found.

11 Q. State's number 26, do you recognize that?

12 A. Yes. It's a little dark. I think that's the --
13 Okay. That's the thermal, sort of a thermal underwear top.

14 Q. Where was that item at?

15 A. In was the book bag.

16 Q. State's number 27?

17 A. Some sweat pants that were also in the book bag.

18 Q. State's number 34, what did you find there?

19 A. A cell phone that's in the, I believe, right rear
20 floor board area of the vehicle. It's an LG. Looking at the
21 back of it there on the back it's missing.

22 Q. Later on did you have an opportunity to actually do
23 a digital forensics analysis on that phone?

24 A. I did. I was given search warrants for several
25 electronic devices that were recovered in this incident

1 including that one.

2 Q. What is a digital forensic analysis?

3 A. With cell phones we use hardware and software by a
4 manufacturer that works closely with cell phone companies to
5 extract the information in a forensically sound manner and
6 when we hook the phone to it, we're not adding anything to
7 that phone and we are recovering what you would see on the
8 phone as well as potentially anything that may have been
9 deleted from the phone.

10 Q. Let me show you a photograph and ask if you
11 recognize that photograph?

12 MR. MAULDIN: Which one is that?

13 MR. GRAHAM: (Proffering)

14 BY THE WITNESS:

15 A. I do, yes, sir.

16 MR. MAULDIN: Your Honor, I have a matter of law to
17 take up.

18 THE COURT: All right. Ladies and gentlemen, I'll
19 ask you if you would, please, step back into the jury
20 room while we take up this matter of law and we'll get
21 you right back out. Have no conversation about the
22 case.

23 (The jury goes into the jury room.)

24 THE COURT: All right. Mr. Mauldin, happy to hear
25 from you, sir.

1 MR. MAULDIN: Thank you, Your Honor. I believe as
2 part of the State's case they intend to introduce
3 through this witness photos taken of one of the phones
4 in particular are photos of text messages that were sent
5 out of the phone. I believe one of them says, damn,
6 bro, I just got a nine. And the second one says, and
7 this is Ralf. Our objection to those would be that
8 those are hearsay statements; that they are intended to
9 be admitted for the truth presented. They intend to put
10 in the fact that somebody has just gotten a nine
11 millimeter gun and the second one is saying this is Ralf
12 and they intend to say that's Raphael Pontoo. Your
13 Honor, I don't think they can say for certain if he was
14 actually the one that sent these messages. I think that
15 they are speculative, but they are statements that are
16 being introduced to prove the truth of the matter
17 asserted and we believe that they are hearsay and should
18 not be allowed.

19 THE COURT: Okay.

20 MR. GRAHAM: Your Honor, Mr. Phipps took the phone
21 that was found on the floor. Because of the condition
22 of it he wasn't able to fingerprint or get DNA off of
23 it. It is a Tract phone, a minute phone. He connected
24 it up, downloaded messages, photographs. He cannot say
25 whose phone it is. It was in the car where Mr. Pontoo

1 has been placed. He couldn't download this one. He
2 actually had to photograph it screen by screen and he
3 went into the last sent messages and there are two
4 messages that the State would like to introduce, Your
5 Honor. One was sent at, actually both were sent at 4:27
6 a.m. to the same number so the time is the same for the
7 first two messages. The quote is, it says, damn, bro, I
8 just got a nine. And the last text sent right after
9 that the same minute was, and this is Ralf. I think it
10 is what it is. It's --

11 THE COURT: Hearsay?

12 MR. GRAHAM: I'm sorry.

13 THE COURT: Hearsay?

14 MR. GRAHAM: No, sir. I don't think it's hearsay at
15 all.

16 THE COURT: Why is it not? How does it not fit the
17 definition of hearsay?

18 MR. GRAHAM: It's no different than anything else.
19 It's a picture of what's there. I think it's
20 circumstantial evidence that the jury can draw off of.
21 And the fact that it says and this is Ralf is indicative
22 that it was his client who sent it. I don't think it's
23 different than any other --

24 THE COURT: All right. It's an out of court
25 statement, correct? And you're offering it for the

1 truth of the matter asserted. This is Ralf. What
2 exception does it fit under?

3 MR. GRAHAM: I don't know that it's an out of court
4 -- I don't know that it's a statement. It's a
5 photograph of a text message that's sent. I don't
6 believe that that makes it a statement. It's not
7 repeating what somebody said. The under liability --
8 This message was sent. It's a real message that was
9 sent. I think circumstantially it can be attributed to
10 the defendant because of the signature, and this is
11 Ralf. If it is hearsay, Your Honor, it's the State's
12 contention the fact that it says and this Ralf would be
13 no different than a statement against interest so it
14 would fall under the exception of a statement by a party
15 proponent.

16 THE COURT: Well, that's a real stretch because
17 there's nobody that has attached this phone to
18 Mr. Pontoo other than it was in the vehicle he was in
19 along with five other guys.

20 MR. GRAHAM: None of those individuals are named
21 Ralf. He's the only one that's named Raphael. I think
22 it's circumstantial.

23 THE COURT: I'm trying to get -- I'm trying to think
24 in terms of -- You seem to be saying that because it's a
25 photograph of a text message that it's not hearsay, but

1 then what you're telling me is that words in a document
2 can never be hearsay if you photograph them and that's
3 clearly not true. I mean, I'm not --

4 MR. GRAHAM: If there was a diary that was found
5 that was signed by the person, I believe that it would
6 be admissible. I think it would circumstantial evidence
7 that it would be a statement against interest by that
8 person and I believe that it would be admissible. Now,
9 I agree that it would be stronger if the writing was
10 identified, but there is no way to identify the writing
11 on this one. I mean, I can't --

12 THE COURT: Let me see it.

13 MR. GRAHAM: (Proffering.)

14 THE COURT: I'm going to sustain the objection. I
15 think it is hearsay. I don't think it fits under any
16 exception. I think it is clearly an out of court
17 statement. I think it's clearly hearsay. I'm not aware
18 -- This gentleman's name is Raphael. This says this is
19 Ralf. My name is Thomas. Everybody knows me as Tommy
20 and no one knows me as Tom. So I mean, the phone is in
21 the vehicle. It might be different if he had some way
22 to link this phone to this individual through an
23 account, that the phone was purchased by him. But it's
24 a phone found in a vehicle with five individuals. It's
25 extremely speculative and it's just too much of a reach.

1 I just don't -- That's already been testified to.

2 MR. GRAHAM: I was going to say I don't know - there
3 will be witnesses who will say that that's his nickname
4 that he goes by. If it would make a difference, I could
5 recall them. I don't know if that's going to change
6 Your Honor's opinion.

7 THE COURT: I don't know that it does either.

8 MR. GRAHAM: But our argument then for the record,
9 Your Honor, would be that if it is hearsay, then it's a
10 statement by a party opponent with him saying and this
11 is Ralf which he will be identified later as being his
12 nickname. He was present in the vehicle when it was
13 sent because it was right before the, if you look at
14 time, it's at 4:27 and I can't remember the Highway
15 Patrol time when they activated it, but that would have
16 been the time between when the robbery occurred and it
17 would have been right before the Highway Patrol would
18 have activated their blue lights. So it puts him and
19 those four other people in that vehicle when that phone
20 was being used and being sent. And then we would argue
21 that the last text, and this is Ralf, would go to
22 identify the defendant. And like I said, we do have
23 other witnesses that will say that that's his nickname.

24 THE COURT: Just give me a second.

25 MR. GRAHAM: Judge, maybe what we could do is, or I

1 would suggest at this time is you could take it under
2 advisement and I'll just recall this witness and we can
3 just go ahead and move forward with other testimony and
4 then we can put up the people who will identify that
5 nickname and that will give all of us time to do some
6 research for you.

7 THE COURT: All right. I'll do that. Do you need
8 these?

9 MR. GRAHAM: No.

10 THE COURT: I mean, if you do, if you need them,
11 I'll --

12 MR. GRAHAM: No. I won't need them until that time,
13 Your Honor.

14 THE COURT: Okay. All right. I'll hold onto these.
15 So let's go ahead and bring the jury back in.

16 MR. MAULDIN: Your Honor, could I just step out to
17 the bathroom?

18 THE COURT: Yeah. That's a good idea, David. While
19 the jury is out let's take just a short little break.
20 If anyone needs to use the restroom, go ahead and do
21 that. Sir, if you need to step down, that's fine. Just
22 don't have any conversation about your testimony with
23 anybody, okay?

24 THE WITNESS: Yes, sir.

25 (Short recess.)

1 THE COURT: Back on the record. Everybody ready?
2 Keep in mind, I just want to make it clear where I feel
3 at this time it's not admissible is the connection to
4 this defendant, okay? So that if, you know, and I
5 understand that you would intend then to put in
6 testimony identifying the defendant as Ralf and matching
7 that up, but there were five people in the vehicle so
8 you will need to -- In other words, right now the
9 concern that I have is there's nothing at this point
10 connecting that phone to Mr. Pontoo and so that's what I
11 think is necessary to overcome, okay?

12 MR. GRAHAM: The only, at this time the only
13 evidence that I know that we could offer on that would
14 be people who would identify his name and then I think
15 after Mr. Ruple gets up and testifies, he's going to
16 state that the defendant actually stole the nine
17 millimeter handgun and so I think that that would go
18 into the statement that says, damn, bro, I just got a
19 nine as well as using that as identification.

20 THE COURT: Right. But I don't think there's any
21 testimony in the record currently as to the identity of
22 the individuals in the car.

23 MR. GRAHAM: Not at this time, no. Right, Your
24 Honor.

25 THE COURT: And so that would need to be clarified

1 obviously. And let's say I'm in a car and I happen to
2 be in a car with you, Shawn, you, Robby, and you, David,
3 and another guy named Tom, and me, Tommy. Then that
4 doesn't clarify anything because there's a Tom in the
5 car.

6 MR. GRAHAM: Right.

7 THE COURT: So you see what I'm saying?

8 MR. GRAHAM: Yes, sir.

9 THE COURT: It's going to be as far as from my
10 purposes as far as it fitting under an exception it's
11 going to have to be linked to this individual. So, I
12 mean, you understand what I'm saying?

13 MR. GRAHAM: I do, Your Honor. When we get to that
14 point and whatever evidence we have to offer on that is
15 offered, I'll bring it back up outside the presence of
16 the jury and we can discuss it at that point.

17 THE COURT: All right. So at this point I'm going
18 to sustain the objection and I'll let you continue with
19 this witness with whatever else you've got.

20 MR. GRAHAM: Yes, sir.

21 THE COURT: Okay. Let's bring them back in.

22 (The jury returns to the courtroom.)

23 THE COURT: All right. Mr. Graham, you may continue
24 with your direct examination.

25 MR. GRAHAM: Thank you, Your Honor.

1 BY MR. GRAHAM:

2 Q. In addition to the phone that you found on the floor
3 of that vehicle, did you also take photographs of the
4 interior of the car and collect all the adult sized clothing
5 that you could find?

6 A. I did, yes, sir.

7 Q. Looking at State's number 37, what do we see
8 there?

9 A. That's the rear passenger area of the vehicle and
10 there's two or three outer winter type coats piled in the
11 back seat.

12 Q. State's number 38, that's after the coats had been
13 removed and it looks like they may have actually been put on
14 the head rest of the passenger seat?

15 A. Yes, sir. We moved them out of the way. At that
16 point you can see some smears, reddish stains, smears on the
17 back upholstery.

18 Q. The jackets that you found in that vehicle, let me
19 show you State's 43. Is that one of the jackets that you
20 found?

21 A. It is. Yes, sir.

22 Q. State's 44?

23 A. Yes, sir.

24 Q. And is that a black and gray fleece I believe?

25 A. That's how I described it when I put it into

1 evidence, yes, sir.

2 Q. State's number 39, what is that?

3 A. A black winter type coat.

4 Q. Let me show you a couple other pictures as well.

5 State's number 40?

6 A. Camouflaged ball cap.

7 Q. State's 41?

8 A. I just described that as a hat or cap with ear
9 flaps.

10 Q. State's 42?

11 A. That one I would have to look at. I can't quite --

12 Q. (Proffering.)

13 A. Oh, that's a knitted cap.

14 Q. All those clothes we looked at were clothes that you
15 found and collected from the vehicle?

16 A. Yes, sir.

17 Q. State's number 39, which is, I believe, a black
18 winter jacket with zippers on the left and the right breast
19 pockets?

20 A. Yes, sir.

21 Q. Did you have an opportunity to look in those pockets
22 on State's 39?

23 A. I did in the process again like I described when we
24 get back to headquarters we package the evidence and during
25 that process I found two additional cell phones.

1 Q. So there was one cell phone in one pocket and one in
2 another?

3 A. Yes, sir.

4 Q. Let me show you two photographs and ask you if you
5 recognize these?

6 A. Yes, sir, I do.

7 Q. And those fairly and accurately depict the phones
8 that you found in the pockets of that jacket?

9 A. They do.

10 MR. GRAHAM: Your Honor, the State would offer these
11 into evidence.

12 MR. MAULDIN: No, objection, Your Honor.

13 THE COURT: Without objection they are in evidence.
14 That's 45 and 46.

15 BY MR. GRAHAM:

16 Q. And did you look at these phones as well?

17 A. I did.

18 Q. Now, these phones, were you able to use a different
19 system to look at the information that was on them?

20 A. Yes, sir.

21 Q. What is that? Can you just briefly describe what
22 that is?

23 A. The device that we have at our department is called
24 - it's manufactured by a company called Cellebrite and it's a
25 forensic version of what you may have seen if you went to

1 a company, a cell phone company and purchased a new phone and
2 they ask you if you want your contacts moved over. That same
3 company produces hardware for law enforcement and forensics
4 that instead of just taking information and just moving it to
5 your new phone, it extracts all of that information off of
6 it.

7 Q. Let me show you a document and ask you if you
8 recognize that document?

9 A. I do.

10 Q. Is that a photograph that you were able to retrieve
11 off of a media card on one of those phones?

12 A. Yes, sir.

13 MR. GRAHAM: Your Honor, the State would offer this
14 into evidence at this time.

15 MR. MAULDIN: No objection, Your Honor.

16 THE COURT: Without objection State's 47 is in
17 evidence.

18 BY MR. GRAHAM:

19 Q. Looking at State's 47, that's a photograph that you
20 were able to take off of a media card on one of the phones,
21 correct?

22 A. Yes, sir. That's off of the blue Samsung phone that
23 was recovered from the left breast pocket of the black
24 coat.

25 Q. That's the phone in State's 46?

1 A. Yes, sir.

2 Q. There is a date and a time that is printed below
3 that photograph. Do you recognize that date and time?

4 A. Yes, sir, I do.

5 Q. What is the date and time that's on there?

6 A. November 13th, 2013 at 3:14:44 p.m.

7 Q. So when you located this picture on the media card
8 that was on the blue Samsung in 46, are you able to determine
9 when that picture was taken?

10 A. Yes, sir. That's the time stamp that was on the
11 media for that image.

12 Q. So that picture was taken on November 13th, 2013 at
13 3:14 with 44 seconds p.m.?

14 A. Correct. I would have to look at the original
15 report to see if that was corrected for time zone meaning
16 some things are stored on the phone in what's called UTC time
17 which is a universal time and you have to correct back for
18 that for eastern standard time.

19 Q. So the time may be off by an hour or two, but the
20 date is going to be substantially correct?

21 A. Yes, sir.

22 Q. It would be no more than a day one way or another?

23 A. Right.

24 MR. GRAHAM: Thank you, Mr. Phipps. Please answer
25 any questions the defense has for you.

CROSS EXAMINATION

BY MR. MAULDIN:

Q. Thank you. So you found three jackets in the back of the car; is that correct?

A. Yes, sir.

Q. A green and tan athletic jacket; is that right?

A. Yes, sir.

Q. A black what you called a winter coat and a black and orange winter coat?

A. Yes, sir. That's how I made the distinction between one was all black and one had an orange liner.

Q. And those three hats you found, one was a black knit cap?

A. Yes, sir.

Q. And one was a black cap that had ear flaps and some fur around it?

A. Yes, sir.

Q. Some white fur or whitish gray fur and the other one is the camouflaged ball cap; is that correct?

A. Yes, sir.

MR. MAULDIN: I have no further questions.

THE COURT: Anything further?

MR. GRAHAM: Your Honor, just Mr. Phipps is subject to recall. Other than that, no, Your Honor.

THE COURT: All right. Thank you very much, sir.

1 You may step down. You're still under your subpoena but
2 you're excused at this time.

3 MR. GRAHAM: The State calls Xavier Perdue.
4 Thereupon,

5 XAVIER PERDUE
6 after having been first duly sworn, testified as follows,

7 THE CLERK: Have a seat, please, sir, and once
8 you're seated, sir, state your full name spelling your
9 last on the record, please.

10 THE WITNESS: Xavier Worthington Perdue,
11 P-e-r-d-u-e.

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q. Is it Sergeant Perdue?

15 A. Yes, sir.

16 Q. Where are you employed, sergeant?

17 A. Palmetto Health Richland.

18 Q. What do you do for Palmetto Health Richland?

19 A. Shift supervisor which is the security.

20 Q. Security for the hospital and the buildings around
21 it?

22 A. Yes, sir.

23 Q. Prior to -- And how long have you worked there?

24 A. Two years.

25 Q. Prior to that, what did you do?

1 A. Military for 22 years.

2 Q. What did you do in the military?

3 A. Operations.

4 Q. Were you present and working at the hospital on
5 January 24th in 2014?

6 A. Yes.

7 Q. Did you have occasion to go, I believe, to a triage
8 room?

9 A. Yes.

10 Q. What is a triage room?

11 A. It's a trauma bay where emergency victims come in
12 and they provide them immediate care. It could be surgery or
13 whatever else to keep the person alive.

14 Q. What brought you to that room that day?

15 A. Any time we get a penetrating or GSW which is a
16 gunshot wound victim, we move them in there. I as a
17 supervisor go in there and make sure that it's safe for the
18 patient and the staff. Make sure they don't have nothing
19 that can harm somebody. Make sure nobody is going to try to
20 go into the room while they're providing care.

21 Q. Were you present when the medical staff was taking
22 clothes, cutting the clothes off of a patient at
23 approximately 6:25 a.m. in the trauma room at Palmetto
24 Richland?

25 A. Yes, sir.

1 Q. What happened when you were there?

2 A. When the staff was cutting, removing the clothing,
3 when they turned him over to pull the clothing off, a weapon
4 had fell to the floor, staff stepped back, I came up,
5 retrieved the weapon and cleared it and secured it.

6 Q. So you were actually present?

7 A. Correct.

8 Q. And saw the weapon go off the table and onto the
9 floor?

10 A. Yes, sir.

11 Q. Let me show you a gun and ask you if you recognize
12 this gun?

13 A. Yes.

14 Q. Did you secure the weapon?

15 A. Yes.

16 Q. Ultimately what did you do with it?

17 A. Once I checked it to make sure it was clear, I took
18 it down to the office and put it in - wrote down all the
19 information on the weapon and put it into the safe.

20 Q. And then at some point did you turn it over to the
21 Lexington County Sheriff's Department?

22 A. Correct.

23 Q. Let me show you the gun and ask you if you have a
24 serial number on that gun?

25 A. Yes, it does.

1 Q. Does that match with the records that you kept of
2 the gun that you seized on January 24th from that trauma
3 bay?

4 A. Yes.

5 Q. What is the serial number?

6 A. 54873066.

7 MR. GRAHAM: Your Honor, the State would move this
8 firearm into evidence at this time.

9 MR. MAULDIN: Your Honor, I object. I have a matter
10 of law to take up.

11 THE COURT: All right. Folks, let me get you to
12 step back into the jury room. Please have no
13 conversation about this case.

14 (The jury goes into the jury room.)

15 THE COURT: Yes, sir.

16 MR. MAULDIN: Thank you, Your Honor. My objection
17 is based on relevance. The testimony here is that he
18 was present and the gun was taken off the patient. He
19 didn't say who the patient was or what connection they
20 might have to this case. There's been absolutely no
21 testimony linking the events that he's observed to this
22 case other than he was in the ER and they were cutting
23 clothes off a patient and that he saw the gun.

24 MR. GRAHAM: My next question would have been to do
25 that. Yes. I can ask the question. You can hear the

1 answer, Your Honor.

2 THE COURT: Let's proffer it while the jury is out.

3 (PROFFERED TESTIMONY OF XAVIER PERDUE.)

4 DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q. Sergeant, did you fill out a form related to the
7 recovery of this weapon?

8 A. Yes.

9 Q. In addition to putting the serial number, did you
10 also put the patient number of the individual that the weapon
11 came off of?

12 A. Yes.

13 Q. What is that patient number?

14 A. 016219759.

15 Q. Have you been able to verify who that patient number
16 belongs to?

17 A. Yes.

18 Q. Who is it?

19 A. Raphael Pontoo.

20 Q. Pontoo?

21 A. Pontoo.

22 THE COURT: And that was taken off the defendant in
23 the ER?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Does that resolve your objection?

1 MR. MAULDIN: Your Honor, they haven't established
2 the foundation of that at this time. They were just
3 talking about a patient.

4 THE COURT: No. No. I agree with you, but I'm
5 saying with that proffered testimony, I guess what I'm
6 asking is --

7 MR. MAULDIN: Let me ask him a question.

8 THE COURT: Absolutely.

9 CROSS EXAMINATION

10 BY MR. MAULDIN:

11 Q. You said you verified the patient number belonged to
12 Mr. Pontoo. How did you do that?

13 A. Okay. When they come in, they get a trauma number
14 so they can be expedited to do the blood work and so forth.
15 And then the admissions fill out the information on the sheet
16 for later on and it prints out a face sheet or admission form
17 and it has all the information.

18 Q. So you went and looked at some paperwork and
19 determined that that number was associated with Mr. Pontoo?

20 A. Correct.

21 Q. You don't specifically remember Mr. Pontoo
22 himself?

23 A. No.

24 MR. MAULDIN: I would still object, Your Honor. The
25 foundation that he's laying is based on hearsay as far

1 as what other people wrote in the report and that that
2 number is associated with Mr. Pontoo. I would say the
3 proper foundation has not been laid.

4 THE COURT: What were those records you referred to?

5 THE WITNESS: The admission form, sir. The form has
6 the patient number.

7 THE COURT: Yes. All right. Thank you, sir. I'm
8 going to overrule the objection. I think it would
9 satisfy that question. It's clearly subject to cross
10 examination as well as argument, but I think as far as
11 admissibility I think it's good. All right. Let's
12 bring the jury back in. Wait a minute. Hold up. Guys,
13 let me to talk to you all about this before lunch break.
14 Let's try to do this with every case you all have. We
15 need to pre-mark exhibits. It just takes so much court
16 time in front of the jury. If all these exhibits had
17 been pre-marked, then you could refer to them as State's
18 exhibit this, move it into evidence, and then we don't
19 have to stop and wait and then Steve has to go through
20 everything he's got to go through to mark it in. Do we
21 have a lot of other exhibits we are going to be dealing
22 with? Because if we do, let's pre-mark them because
23 they're not in evidence, but they can at least be marked
24 so that Steve has done what he needs to do and so then
25 if you go to move it in, it's just a matter of, Judge,

1 we move State's this or, Judge, we move Defendant's this
2 in and then we would move it in and we don't have to
3 stop and go through that process.

4 MR. GRAHAM: I think for the next two witnesses we
5 only have four pictures, Your Honor. After that there's
6 probably maybe five more pictures and that's probably
7 it.

8 THE COURT: Let's just, while the jury is out,
9 pre-mark them and if you don't use them, it's okay. You
10 don't have to use them, but at least -- Steve, does that
11 work better for you?

12 COURT REPORTER: Yes, sir.

13 THE COURT: And that way they're marked, we don't
14 have to stop, you don't even have to, at this point you
15 don't even have to show them to Mr. Mauldin. Just get
16 them marked and then we'll deal with them as they come
17 up.

18 (Whereupon, State's Exhibits 48 through 60 marked
19 for identification.)

20 THE COURT: Let's bring the jury back.

21 (The jury returns to the courtroom.)

22 THE COURT: All right. Thank you, ladies and
23 gentlemen. I have overruled the objection. The State's
24 48 is in evidence over objection. You may proceed.

25 MR. GRAHAM: Thank you, Your Honor.

1 DIRECT EXAMINATION CONTINUED

2 BY MR. GRAHAM:

3 Q. Sergeant Perdue, when you were present and saw this
4 weapon and you collected it, you filled out a sheet regarding
5 your seizure of it; is that correct?

6 A. Yes, sir.

7 Q. The patient number that was associated with that gun
8 that you found was who?

9 A. Raphael.

10 Q. Who did that patient number belong to?

11 A. Raphael Pontoo.

12 Q. Pontoo. The gun that's now in evidence, what kind
13 of a gun is it?

14 A. .22 Luger.

15 Q. Is it a semi automatic or a revolver?

16 A. Revolver.

17 Q. What's the difference between a semi automatic and a
18 revolver?

19 A. A revolver rotates and the automatic cocks back.

20 Q. So if we look at State's number 20, is that a semi
21 automatic or a revolver?

22 A. Semi automatic.

23 Q. So this is a semi automatic and what you collected
24 off of Mr. Pontoo's was a revolver?

25 A. Correct.

1 Q. And you said this was a what caliber?

2 A. .22.

3 MR. GRAHAM: Thank you, sergeant. Please answer any
4 questions the defense has.

5 CROSS EXAMINATION

6 BY MR. MAULDIN:

7 Q. You don't specifically remember the identity of the
8 patient other than looking in the hospital records; is that
9 correct?

10 A. Correct.

11 MR. MAULDIN: No further questions.

12 THE COURT: All right. Thank you very much, sir.
13 You may step down. Any objection to this witness being
14 excused?

15 MR. GRAHAM: No, Your Honor.

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: Thank you very much, sir.

18 MR. GRAHAM: The State calls Dr. Janice Ross.

19 Thereupon,

20 JANICE ROSS, M.D.

21 after having been first duly sworn, testified as follows,

22 THE CLERK: Please, have a seat and state your full
23 name spelling your last name for the record.

24 THE WITNESS: Janice Edwards Ross, R-o-s-s.

25 DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q. Dr. Ross, what do you do for a living?

3 A. I'm a forensic pathologist in Newberry, South
4 Carolina.

5 Q. What is a forensic pathologist?

6 A. A pathologist is a doctor. I have an M.D. Went to
7 medical school and then training in the field of pathology
8 which trains us how to diagnose diseases such as cancers. It
9 also - we are trained in how to do an autopsy to find a cause
10 of death. A forensic pathologist does further training to
11 identify patterns of injury pertaining to homicides,
12 suicides, accidents and a lot of cases of unnaturals.

13 Q. Did you have an opportunity to perform an autopsy on
14 Alexander Clemmons?

15 A. Yes.

16 MR. GRAHAM: Your Honor, I can go into, if the
17 defense wants, but I'm going to offer Dr. Ross as an
18 expert in forensic pathology.

19 MR. MAULDIN: I have no objection to her
20 qualifications, Your Honor.

21 THE COURT: Thank you very much. We'll proceed.
22 Dr. Ross is certainly qualified as an expert in the
23 field of forensic pathology.

24 BY MR. GRAHAM:

25 Q. Alexander Clemmons, you performed an autopsy on him,

1 correct?

2 A. Yes.

3 Q. In general terms can you describe how you do an
4 autopsy?

5 A. The body is brought to us in a body bag at the
6 morgue at Newberry County Memorial Hospital. We open the
7 bag. Do photographs and inventory any clothing or personal
8 effects. We then do a sequential autopsy including looking
9 at each organ to identify injuries or natural diseases.

10 Q. What was the medical history that you received
11 because that's also part of your autopsy; isn't that
12 correct?

13 A. Yes, sir.

14 Q. What did you receive regarding Mr. Clemmons as far
15 as when he was hospitalized and the treatment he received?

16 A. I understood that he was in a motor vehicle
17 collision. He was a back seat passenger and unrestrained and
18 didn't have a seat belt on. The accident occurred on January
19 24th, 2014. He was pronounced brain dead on January 26th.
20 I'm sorry. Yeah. January 26th, 2014, and died on the 27th
21 of that month.

22 Q. And then you performed your autopsy the next day on
23 the 28th?

24 A. Correct.

25 Q. External examination of Mr. Clemmons, what did you

1 find?

2 A. Generally mostly just a head injury. We found that
3 the left side of his head had been shaved. There was a
4 surgical incision there which we further identified that a
5 surgeon went in to take out the part of the calvarium which
6 is the top part of the skull in order to relieve pressure in
7 the brain.

8 Q. Were you able -- What about Mr. Clemmons height and
9 weight?

10 A. We measured him at 70 inches in height which is five
11 feet ten inches, and we don't have a scale in the morgue, but
12 we estimated him to be about 150 pounds.

13 Q. You said that part of his scalp had been shaved; is
14 that correct?

15 A. Correct.

16 Q. The remainder of his hair that was on his head, how
17 would you describe that?

18 A. Short, black and curly.

19 Q. You said there was evidence of a closed head injury;
20 is that correct?

21 A. Correct.

22 Q. What evidence did you find? What did you mean by
23 that?

24 A. Closed head injury is an injury of the head being
25 hit by something or the head hitting something without

1 fracturing the skull and without opening the skull. The
2 blunt force injury in this case caused hemorrhage around the
3 brain.

4 Q. Once you're done with your physical, your external
5 examination, do you do an internal examination?

6 A. Yes.

7 Q. Briefly describe what that process is.

8 A. We just look at all the organs in the chest and
9 abdomen and the neck organs and to look for any kind of
10 injuries or natural diseases.

11 Q. On Mr. Clemmons when you performed the internal
12 examination, what did you discover?

13 A. No evidence of any kind of significant injury. He
14 did have heavy lungs, pulmonary edema. That's from the brain
15 death a secondary result of.

16 Q. So to a reasonable degree of medical certainty as a
17 forensic pathologist what is your opinion as to what killed
18 Mr. Clemmons?

19 A. It was a blunt force injury of the head due to the
20 motor vehicle collision.

21 Q. And that blunt force injury to the head caused
22 what?

23 A. It caused hemorrhage around the brain. The brain is
24 in a closed area and any extra blood or any extra hemorrhage
25 takes up space and causes the brain to swell and it also

1 causes pressure on the brain stem which is the center for
2 breathing and for heartbeat so it closes off that part of the
3 brain.

4 Q. So as the brain swells in that confined space, what
5 happens?

6 A. Then you lose heartbeat and respiration.

7 Q. Now, I believe that there was evidence that medical
8 personnel at the hospital had tried to relieve that pressure;
9 is that correct?

10 A. Yes, that was the surgery.

11 Q. What would that have been? What did you find
12 evidence of?

13 A. They opened the, took off the skin and took part of
14 the skull off.

15 Q. And the purpose of that would have been to do
16 what?

17 A. To let the brain swell without that pressure.

18 Q. But that treatment was unsuccessful, correct?

19 A. Correct. It was too late.

20 MR. GRAHAM: Thank you, Dr. Ross. Please answer any
21 questions the defense has for you.

22 THE WITNESS: Thank you.

23 MR. MAULDIN: I have no questions for this witness,
24 Your Honor.

25 THE COURT: All right. Dr. Ross, thank you very

1 much, ma'am. Any objections to Dr. Ross being excused?

2 MR. GRAHAM: No, Your Honor.

3 MR. MAULDIN: No, Your Honor.

4 THE COURT: Thank you very much, ma'am. You're free
5 to go. You may call your next witness.

6 MR. McNAIR: Your Honor, the State calls Detective
7 Todd Garrick.

8 Thereupon,

9 TODD GARRICK

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Once you're seated, state your full name
12 spelling your last please.

13 THE WITNESS: Todd Garrick, G-a-r-r-i-c-k.

14 DIRECT EXAMINATION

15 BY MR. McNAIR:

16 Q. Detective Garrick, how long have you worked for the
17 Sheriff's Department?

18 A. Approximately nine years.

19 Q. How long have you been in major crimes?

20 A. I have been in major crimes right at two years
21 now.

22 Q. Okay. Now, were you assigned to investigate an
23 armed robbery at the Mile High Club on January 24th, 2014?

24 A. Yes, I was.

25 Q. Where is the Mile High Club?

1 A. It's around the Boston Avenue 321 area.

2 Q. Is that near Airport Boulevard?

3 A. Yes, it is.

4 Q. Is that in Lexington County?

5 A. Yes, it is.

6 Q. What's the first thing you did in this case?

7 A. I received a phone call from my sergeant, Sergeant
8 Ruckland, I was at home, asking me to go to the Whetstone
9 Road area. I was informed that there was an armed robbery
10 incident that occurred at the Mile High Club and then later
11 on a vehicle that was reported in the BOLO from that armed
12 robbery was stopped on Whetstone Road which is Highway 3
13 right outside of Swansea.

14 Q. Did you go to where that traffic stop had
15 occurred?

16 A. I did.

17 Q. What was going on when you got there?

18 A. When I got there, there were three individuals in
19 handcuffs on the side of the road.

20 Q. Was the car that had been stopped there?

21 A. No, it was not.

22 Q. Did you talk at with the individuals who had been
23 removed from the vehicle at that time?

24 A. I did.

25 Q. Did you identify who they were?

1 A. I did.

2 Q. What were their names?

3 A. Carlisle Jones, Iquawn Jones and Patrick Johnson.

4 Q. Okay. Did any of those individuals have dreads?

5 A. They did not.

6 Q. Were you able to determine who was actually driving
7 the vehicle or who owned the vehicle before it took off?

8 A. I did.

9 Q. Who was that?

10 A. Carlisle Jones.

11 Q. Now, after talking to those individuals, did you
12 develop a suspect in the armed robbery?

13 A. I did.

14 Q. Who was that?

15 A. Raphael Pontoo.

16 Q. Now, did you actually go to the wreck site as
17 well?

18 A. I did.

19 Q. Okay. Did you see anything at the wreck site or do
20 anything at the wreck site?

21 A. I looked around for a few minutes. They were in the
22 process of trying to get the car out and was in the process
23 of trying to collect whatever evidence that was there.

24 Q. Did you learn who was in the driver seat of the
25 vehicle at the wreck site?

1 A. I did.

2 Q. Who was that?

3 A. Raphael Pontoo.

4 Q. Were you made aware of anything that was recovered
5 there at the wreck site?

6 A. I had some highlights. I knew that a book bag had
7 been recovered there and a pistol.

8 Q. What was the significance of those items?

9 A. That was what was taken from the victim at the
10 club.

11 Q. Okay. After the wreck site, where did you go
12 next?

13 A. I went to Palmetto Health Richland.

14 Q. Who was there?

15 A. That was where Mr. Pontoo was transported to and
16 Mr. Clemmons.

17 Q. All right. Now, did you go to Mr. Pontoo's room in
18 the hospital?

19 A. I did.

20 Q. Did you obtain clothing belonging to Mr. Pontoo at
21 the hospital?

22 A. I did.

23 MR. MAULDIN: Objection, Your Honor. Foundation.

24 THE COURT: Go ahead and question him about that.

25 BY MR. McNAIR:

1 Q. I'm going to show you what's been marked as State's
2 49 and 50. Do you recognize those pictures, what those
3 pictures are of?

4 A. I do.

5 Q. Where did you obtain that clothing?

6 A. From the hospital room that Mr. Pontoo was in.

7 Q. Where was it located in his room?

8 A. At the foot of his bed.

9 Q. Was it loose? Was it in a bag?

10 A. I can't recall. I want to say it was in a bag, but
11 I can't recall at this time.

12 Q. Did you speak to staff in Mr. Pontoo's room?

13 A. I did.

14 Q. Did they indicate that was the clothing that was
15 removed from him?

16 MR. MAULDIN: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained as to any hearsay.

18 BY MR. McNAIR:

19 Q. Okay. So this was at the foot of Mr. Pontoo's
20 bed?

21 A. Correct.

22 Q. Was there any other clothing in that room?

23 A. No, sir.

24 MR. McNAIR: Your Honor, we still move to offer
25 State's 49 and 50.

1 MR. MAULDIN: I object on foundation, Your Honor.

2 THE COURT: Overruled. I'll allow it in evidence.

3 BY MR. McNAIR:

4 Q. State's 49, what does this depict?

5 A. Light colored jeans.

6 Q. These were the pants that were removed from
7 Mr. Pontoo in the hospital?

8 A. Correct.

9 Q. State's 50 is pretty dark. What is that a picture
10 of?

11 A. A black T-shirt.

12 Q. Okay. And that was with the pants in Mr. Pontoo's
13 hospital room?

14 A. Yes, sir.

15 Q. Okay. Did you also obtain clothing belonging to
16 Mr. Clemmons from the hospital?

17 A. I did.

18 Q. Where did you obtain that clothing from?

19 A. From the hospital staff.

20 Q. Let me show you what's been marked as State's
21 exhibit 51 and 52. Do you recognize these items of
22 clothing?

23 A. I do.

24 Q. Is that the clothing you obtained from the hospital
25 belonging to Mr. Clemmons?

1 A. It is.

2 MR. McNAIR: Your Honor, we would offer State's 51
3 and 52 into evidence.

4 MR. MAULDIN: Again, Your Honor, foundation.

5 THE COURT: All right. You want to lay a foundation
6 on that?

7 BY MR. McNAIR:

8 Q. Where did you obtain this clothing from?

9 A. From the hospital staff on the floor where
10 Mr. Clemmons was.

11 Q. You obtained it from Mr. Clemmons' room?

12 A. Not from his room. From the staff.

13 Q. Where was Mr. Clemmons?

14 A. Mr. Clemmons was actually in surgery at the time.

15 Q. So you obtained it from somebody at the hospital?

16 A. Yes, sir.

17 Q. And it was represented to you as being Mr. Clemmons'
18 clothing?

19 A. It was.

20 MR. MAULDIN: Objection, Your Honor. Hearsay.

21 THE COURT: Overruled. I'll allow it in.

22 BY MR. McNAIR:

23 Q. What is this?

24 A. I believe it's a white, green and brown striped Polo
25 type shirt, a black T-shirt. I believe it was a gray

1 T-shirt.

2 Q. Okay. And are these the pants that you obtained
3 from the hospital belonging to Mr. Clemmons?

4 A. I did.

5 Q. What color are those pants?

6 A. They are blue.

7 Q. What condition was Mr. Clemmons in when you got to
8 the hospital? Were you able to talk to him at all?

9 A. I was not. Like I said earlier, he was in
10 surgery.

11 Q. What about Mr. Pontoo?

12 A. He was in the emergency room triage room.

13 Q. Did you actually lay eyes on Mr. Pontoo?

14 A. I did.

15 Q. Was he awake and alert?

16 A. He was.

17 Q. Now, at some point did you meet with the victim of
18 the robbery at the Mile High Club?

19 A. I did.

20 Q. What was his name?

21 A. Jonathan Ruple.

22 Q. When did you first meet with him?

23 A. I first met with him on the 27th of January.

24 Q. I neglected to ask you, but when did you go to the
25 hospital and see Mr. Pontoo and get the clothes?

1 A. It would have been the morning of the 24th.

2 Q. So right after the wreck?

3 A. Yes, sir.

4 Q. So you met with Mr. Ruple the victim on January
5 27th?

6 A. Yes, sir.

7 Q. Where did that meeting occur?

8 A. At the Sheriff's Department, 521 Gibson Road.

9 Q. Did he provide you with a description of the robber
10 at that point?

11 A. He did.

12 Q. And did he actually give you a written statement?

13 A. He did.

14 Q. After he provided you with that information, did you
15 show him a photo lineup?

16 A. I did.

17 Q. What is a photo lineup?

18 A. It's a sheet of paper that has six individuals'
19 pictures on it all close to the description of the person
20 that was described as part of the armed robbery.

21 Q. Are the pictures in color or are they in black and
22 white?

23 A. They are in black and white.

24 Q. How are those photos generated?

25 A. I was given -- I gave the information on Mr. Pontoo

1 to our intel department and they generated the photo lineup.
2 What they do is they go into, for this case they went into a
3 DMV data base and put in the particulars that we were looking
4 for and produced a lineup.

5 Q. All right. Who was present when you showed the
6 lineup to Mr. Ruple?

7 A. Just myself and Mr. Ruple.

8 MR. MAULDIN: Your Honor, I'm going to object to
9 this line of questioning based on the prior motion.

10 THE COURT: All right. Overruled. I'll allow you
11 to continue with the questioning. I note your
12 exception.

13 BY MR. McNAIR:

14 Q. Prior to showing Mr. Ruple the photo lineup, what
15 were your instructions to him?

16 A. I told Mr. Ruple, I was getting ready to show him a
17 photo lineup. I wanted him to take his time to look at the
18 pictures carefully. The person that he was looking for may
19 or may not be on that sheet of paper, but just take his time
20 and if he saw the person, to point it out to me.

21 Q. Did you show him any photos prior to showing him the
22 photo lineup?

23 A. I did not.

24 Q. I'm going to show you what's been marked as State's
25 59 and 60. Are those the photo lineups that you showed Mr.

1 Ruple on January 27th?

2 A. It is.

3 Q. Okay. And how did you -- Are those his initials on
4 there?

5 A. It is.

6 Q. All right. Is Mr. Pontoo contained in that
7 lineup?

8 A. He is.

9 Q. What number is he?

10 A. He's number 4.

11 Q. What number did Mr. Ruple select?

12 A. Mr. Ruple selected number 2.

13 Q. Okay. And those 59 and 60, they look identical.
14 Did you show him two lineups for some reason?

15 A. I did not. I showed him one lineup. He made his
16 selection and then I had the second lineup with me and I just
17 told him to basically copy what he had done on the first copy
18 for my records so I would have that in my file.

19 Q. So were those lineups done back to back or at the
20 same time?

21 A. They were.

22 MR. McNAIR: Your Honor, we would offer State's 59
23 and 60 into evidence.

24 MR. MAULDIN: Subject to prior.

25 THE COURT: Yes, sir. Admitted.

1 BY MR. McNAIR:

2 Q. Now, how certain was Mr. Ruple of his pick?

3 MR. MAULDIN: Objection, Your Honor. Hearsay.

4 THE COURT: Sustained.

5 BY MR. McNAIR:

6 Q. You indicated Mr. Ruple initialed this photo
7 lineup?

8 A. He did.

9 Q. Did Mr. Ruple also write this 50 percent beside
10 number 2?

11 A. He did.

12 Q. Why did he write that?

13 MR. MAULDIN: Objection, Your Honor. Hearsay.

14 THE COURT: Well, yeah. I don't think he can
15 testify as to why somebody did something so...

16 BY MR. McNAIR:

17 Q. Did you instruct Mr. Ruple to write 50 percent
18 beside number 2?

19 A. I did.

20 Q. Why was that?

21 MR. MAULDIN: Objection, Your Honor. Hearsay.

22 THE COURT: He's objecting to anything Mr. Ruple
23 told him as hearsay.

24 MR. McNAIR: I understand.

25 THE COURT: Mr. Ruple is going to testify. He can

1 testify to whatever he testifies to.

2 MR. McNAIR: Okay.

3 BY MR. McNAIR:

4 Q. After Mr. Ruple did this lineup, did you tell him
5 whether or not he had picked out the right person or not?

6 A. I did not.

7 Q. Since this lineup, have you ever showed him a
8 picture of Mr. Pontoo?

9 A. I have not.

10 Q. To your knowledge has Mr. Ruple ever scene
11 Mr. Pontoo in person since this?

12 A. Not to my knowledge.

13 Q. Of course, when you showed him this lineup, he
14 picked out the wrong person. You didn't suggest or hint to
15 him who he should pick out, did you?

16 A. No, sir.

17 Q. Did you ever try to process anything in this case
18 for fingerprints?

19 A. Yes, sir.

20 Q. What was that?

21 A. It was the nine millimeter Hi-Point.

22 Q. Okay. That would be State's 18?

23 A. Correct.

24 Q. Okay. Are you aware if they were able to obtain any
25 fingerprints from that?

1 MR. MAULDIN: Objection, Your Honor. Hearsay.

2 THE COURT: Sustained.

3 BY MR. McNAIR:

4 Q. At some point did you serve warrants on Mr. Pontoo
5 for armed robbery and failure to stop for a blue light
6 resulting in death?

7 A. Yes, sir. Warrants were.

8 Q. What date did you serve those warrants?

9 A. The warrants were secured on the 28th. They were
10 served on Mr. Pontoo on the 29th.

11 Q. Why were they served on the 29th?

12 A. Mr. Pontoo was currently in the hospital at the time
13 and he was being released on the 29th.

14 Q. So Mr. Pontoo was released from the hospital, I
15 guess, several days after this incident?

16 A. Yes, sir.

17 Q. Was he walking?

18 A. He could walk, but he was transported via a
19 wheelchair from his room to my vehicle.

20 MR. McNAIR: Okay. I have no further questions at
21 this point. Please answer any questions Mr. Mauldin may
22 have.

23 THE COURT: Mr. Mauldin.

24 MR. MAULDIN: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MR. MAULDIN:

2 Q. Is it investigator or detective?

3 A. Either one.

4 Q. Either one. So you went to the hospital on the
5 morning of January 24th and you say you picked up some
6 clothes from Mr. Pontoo's room; is that correct?

7 A. That's correct.

8 Q. And that included a pair of jeans and a black
9 T-shirt in the picture. And those items were cut up, weren't
10 they?

11 A. From what I recall I believe so.

12 Q. As far as there were slits up the sides of them --

13 A. Yes, sir.

14 Q. -- that had been cut off. And when you were at the
15 hospital, you made your presence known to the hospital
16 staff?

17 A. Yes, sir.

18 Q. That you were there to see Mr. Clemmons and Mr.
19 Pontoo?

20 A. Yes, sir.

21 Q. And at no point in time did anybody try to give you
22 a gun related to the case?

23 A. No, sir.

24 Q. You had no information about any gun being found?

25 A. Not when I went in the morning.

1 Q. Not when you went to the hospital and picked up the
2 cut off clothes?

3 A. Correct.

4 Q. Now, when you obtained Mr. Clemmons' items, they had
5 certain items that they showed you in the pictures. Weren't
6 there some other items that weren't shown to you in the
7 pictures here today?

8 A. I believe there were other items, yes, sir.

9 Q. There was like a couple of lighters?

10 A. I would have to look at the list. I don't know
11 exactly -- I know he had other things. I couldn't tell you
12 right now exactly what they were.

13 Q. Wasn't there a pair of gloves in there?

14 A. I did not have any gloves, no, sir.

15 Q. He didn't have any or you don't recollect him having
16 any?

17 A. I don't recollect any gloves.

18 Q. Were there any other pants found, like sweat pants
19 and things that you put in the box in evidence?

20 A. There were other clothes. I can't recall without
21 seeing a list exactly what I put in that day.

22 Q. So you can't recall whether or not you put a pair of
23 gloves in the box with Mr. Clemmons' items?

24 A. I don't recall that, sir.

25 MR. MAULDIN: No further questions.

REDIRECT EXAMINATION

BY MR. McNAIR:

Q. Detective Garrick, based on your investigation, were the gloves, the condoms or the lighters significant to your investigation?

A. No, sir.

Q. Were the sweat pants?

A. At the time I was just told I was looking for --

Q. And all that stuff is sitting back here in a box in evidence; is that correct?

A. Correct.

THE COURT: That it?

MR. MAULDIN: I have no further questions.

THE COURT: Thank you very much, sir. You may step down. Call your next witness.

MR. McNAIR: The State calls Jonathan Ruple.

THE COURT: Mr. Ruple, come around to be sworn, sir.

Thereupon,

JONATHAN RUPLE

after having been first duly sworn, testified as follows,

THE CLERK: Have a seat, please, sir. Once you're seated, state your full name spelling your last please.

THE WITNESS: Jonathan Ruple, R-u-p-l-e.

DIRECT EXAMINATION

BY MR. McNAIR:

Q. Mr. Ruple, where do you currently live?

A. Nashville, Tennessee.

Q. How long have you been in Nashville?

A. Since June.

Q. Do you work?

A. Yes, sir.

Q. What's your job?

A. I work at Publix as a grocery clerk.

Q. All right. Is that why you moved to Nashville?

A. I moved there just to get a fresh start.

Q. Where are you from originally?

A. I'm from West Columbia, South Carolina.

Q. Where did you go to high school?

A. I went to Airport High School for a little bit.

Q. Were you living in West Columbia back in January

2014?

A. Yes, sir.

Q. Now, back on January 24th, where did you go that

night?

A. To the Mile High Club.

Q. Where is the Mile High Club?

A. It's off Airport Boulevard.

Q. And did it used to be known by something else?

1 A. It used to be known as The Rock.

2 Q. Okay. So some people still call it The Rock?

3 A. Yes, sir.

4 Q. But now it's the Mile High Club?

5 A. Yes, sir.

6 Q. Is that bar in Lexington County?

7 A. Yes, sir.

8 Q. Why did you decide to go to the Mile High Club on
9 January 24th, 2014?

10 A. My regular spot and my friend had just got back in
11 from being out of the country and celebrating him coming
12 home.

13 Q. What is your friend's name?

14 A. Nick Howard.

15 Q. So you were hanging out with Nick?

16 A. Yes, sir.

17 Q. At some point in time did you go outside to show
18 Nick something?

19 A. Yes, sir.

20 Q. What was that?

21 A. I purchased a gun while he was out of the country
22 and me and him are both into guns and so I decided to show
23 him my pistol I had just got.

24 Q. What type of gun had you purchases?

25 A. A Hi-Point nine millimeter.

1 Q. Where was your gun?

2 A. It was inside of a book bag in the trunk of my
3 car.

4 Q. So where are you and Nick having this
5 conversation?

6 A. At the trunk of my car.

7 Q. And where is your car parked?

8 A. In front of the Mile High Club like right up by the
9 door.

10 Q. Okay. As you were standing by your car showing Nick
11 your gun, are you approached by some other individuals?

12 A. Yes, sir.

13 Q. How many?

14 A. Two.

15 Q. Black or white?

16 A. They were both black.

17 Q. Male or female?

18 A. Both of them males.

19 Q. Did either one of them introduce themselves?

20 A. One person did.

21 Q. What did he say his name was?

22 A. He said his name was Los.

23 Q. Okay. What did Los say?

24 A. He just kind of overheard us talking so he just
25 walked up there and introduced himself and kind of asked us

1 what we were doing.

2 Q. Did you have your gun out at that point?

3 A. I think I did.

4 Q. Well, what do you and Los talk about?

5 A. Guns, of course, cars, girls, music. Just regular
6 guy stuff.

7 Q. Well, at some point do you all, does anybody show
8 you their gun or do you show them your gun?

9 A. They could already see my gun and they had mentioned
10 or Los had mentioned that he had a gun, too, and he showed me
11 his gun and the guy that was with him also said that he had a
12 gun and he pulled his gun out and showed me his gun.

13 Q. Did Los tell you anything about where he had gotten
14 his gun?

15 A. No, sir. He just said he had gotten it that day.

16 Q. He had gotten it the same day?

17 A. Yes, sir.

18 Q. I'll show you State's exhibit 48. Do you recognize
19 that gun?

20 A. Yes, sir.

21 Q. Who had that gun?

22 A. Los.

23 Q. What caliber is it?

24 A. It's a .22.

25 Q. Was there anything special about it that you

1 recall?

2 A. Just the laser pointer.

3 Q. Where is that?

4 A. Right there as you hold the grip and start to get
5 onto the trigger.

6 Q. Okay. What type of gun did the guy with Los have?

7 A. He had a .25 automatic.

8 Q. What did it look like?

9 A. It was chrome plated with pearl handles.

10 Q. This is State's exhibit 20. Does that appear to be
11 the gun the other fellow had?

12 A. Yes, sir.

13 Q. Now, when you were talking to Nick at your car, did
14 you see who you later knew as Los and that other individual
15 nearby before they walked up to you?

16 A. Yeah. Where my car was parked like two spots over
17 they were at a car getting some beer out of the trunk.

18 Q. Were they there while you were talking to Nick and
19 showing Nick your gun?

20 A. Yes, sir.

21 Q. Now, when they walked over and talked to you, did
22 you all hang out for a while?

23 A. Yes. We sat there for about 10 or 15 minutes just
24 talking.

25 Q. About guns? You said rims?

1 A. Yeah, rims, cars, girls, music.

2 Q. Did you all have a beer together?

3 A. Yes, sir.

4 Q. When you all finished I guess hanging out outside,
5 where did everybody put their guns?

6 A. I stuck mine back in my book bag. Instead of
7 putting it in my trunk, I locked it up in the car in the
8 front seat passenger side.

9 Q. Was Los present when you put your gun up?

10 A. Yes, sir.

11 Q. Where did he put his gun?

12 A. In his pants.

13 Q. What about the other fellow?

14 A. In his pants as well.

15 Q. And the other guy, he never - you don't remember his
16 name?

17 A. I'm sorry, I don't.

18 Q. Okay. Now, when you were hanging out with them
19 behind your car, was that a fairly well lit area?

20 A. Yes, sir.

21 Q. Did you get a good look at Los' face?

22 A. Yes, sir.

23 Q. Did you see his face from multiple angles?

24 A. Yes, sir, I do.

25 Q. When you're talking to him, how far away is he from

1 you?

2 A. Approximately two feet.

3 Q. You said you all hung out about 10 or 15 minutes?

4 A. Yes, sir.

5 Q. What type of hair did Los have?

6 A. He had dreadlocks.

7 Q. Could you tell what type of hair the other guy
8 had?

9 A. I could not. He had a hat on.

10 Q. What kind of hat?

11 A. Like a Rastafarian hat.

12 Q. What color was it?

13 A. It was like red, green and yellow.

14 Q. Okay. Like a Jamaican Rastafarian style hat?

15 A. Yes, sir.

16 Q. But you couldn't tell what his hair style was?

17 A. No, sir, I couldn't.

18 Q. Can you describe the clothes that you recall Los
19 wearing?

20 A. He had on like a green puffy jacket, a black T-shirt
21 and like light silver color looking jeans.

22 Q. Okay. What about, do you recall any clothing that
23 the other guy was wearing?

24 A. The other gentleman I just remember his hat and like
25 a green striped shirt.

1 Q. Okay. Let's talk about their size.

2 A. Okay.

3 Q. How big did you think Los was?

4 A. I'm not exactly sure on his height. He was just a
5 little shorter than me.

6 Q. How tall are you?

7 A. Six foot one.

8 Q. How much shorter than you do you think Los was?

9 A. Maybe three to four inches.

10 Q. What would you guesstimate his weight at?

11 A. Possibly 180. Maybe a little bit more.

12 Q. What about the other guy with Los?

13 A. The other guy, he was about - he was a little bit
14 taller. I could he see him more eye to eye, but he was
15 smaller.

16 Q. Like skinnier you mean?

17 A. Yes, skinnier.

18 Q. Okay. So I guess you would say Los, was he more
19 built than the other guy?

20 A. Yeah. He was a little bit more bulky.

21 Q. Okay. Well, after you all finished hanging out
22 outside, where did you all go next?

23 A. We started to walk back in. As we walked back in,
24 you know, he kind of introduced me to some of the people he
25 was with and then we just kind of split up from there. I

1 went to the other side of the bar. He stayed towards the
2 exit.

3 Q. Okay. Did any of the other people he introduced you
4 to have dreads?

5 A. No, sir.

6 Q. Do you remember how many people he introduced you
7 to?

8 A. I'm pretty sure it was four people.

9 Q. Okay. So once you all get in the bar, do you kind
10 of go your separate ways?

11 A. Yes, sir.

12 Q. Do you continue to see him in the bar, the gentleman
13 you know as Los in the bar?

14 A. Yeah. It's an open bar so you can see straight
15 across and I could see him over by the pool tables.

16 Q. How much longer would you say you stayed at the bar
17 after you went inside after from being outside?

18 A. Maybe an hour or two.

19 Q. Was Los in the bar pretty much the whole time you
20 were there?

21 A. Yes, sir.

22 Q. So I guess you saw him on multiple occasions,
23 correct?

24 A. Yes, sir.

25 Q. Did you ever talk to him again?

1 A. Not really until I was leaving.

2 Q. What happened when you were leaving?

3 A. He pretty much just asked me where I was going. I
4 told him I was calling it a night and I walked with Nick
5 outside to his car to go say good-bye to him.

6 Q. Okay. How long did you stay at Nick's car?

7 A. Approximately ten minutes.

8 Q. Then what do you do?

9 A. I go back to my car and get in my car to leave.

10 Q. As you're walking back to your car from Nick's car,
11 do you see Los anywhere?

12 A. I do. He's standing by the exit.

13 Q. Outside?

14 A. Yes, sir. Probably about ten feet away from my
15 car.

16 Q. By himself?

17 A. I don't recall anybody with him.

18 Q. Okay. Did you get in your car?

19 A. Yes, sir.

20 Q. What happened next?

21 A. He approached the passenger side of my car and
22 knocked on the window and I rolled down my window and we're
23 still kind of talking about cars and stuff and I mentioned
24 some rims and he said he wanted to come look at them so I
25 wrote down my number and I gave him my number and he told me

1 he would get in touch with me and stuck his hand out so I
2 went to shake his hand and whenever I shook his hand, he said
3 thanks. I said for what? He just reached down and grabbed
4 my bag and took off running.

5 Q. What did you do?

6 A. I got out of the car and chased him. He was trying
7 to get into another car in the parking lot to leave.

8 Q. Okay. Was that the same car you had seen him
9 standing beside when you first saw him that night?

10 A. Yes, sir, it is.

11 Q. Was that car still in its parking place?

12 A. No, sir. They had actually backed up and were
13 angled towards the exit.

14 Q. All right. Did you catch Los?

15 A. I did. Somebody tried to open the door for him, but
16 whenever I tackled him up against the car, it closed the
17 door.

18 Q. What happened then?

19 A. I tried to grab my bag and I couldn't really grab my
20 bag so I just grabbed him and hit him a couple times and he
21 hit me with my bag and we both kind of fell to the ground and
22 then whenever I jumped up, tried to get him again, he pulled
23 out that revolver right there and stuck it in my face.

24 Q. The same revolver you had seen earlier that night?

25 A. Yes, sir.

1 Q. No mistaking it?

2 A. No mistaking it.

3 Q. What did you do at that point?

4 A. Threw my hands up and told him it wasn't worth my
5 life and turned around to walk away and as the car drove off,
6 I turned around and got the tag number.

7 Q. When he pointed that gun at you, how far away was he
8 from you?

9 A. 10 to 15 feet.

10 Q. After you had just tackled him against the car?

11 A. Yes, sir. Because we had hit the ground.

12 Q. Okay. Did you see anything on you when he pointed
13 the gun at you?

14 A. Yes, sir. I had a red laser dot on me.

15 Q. What were you thinking at that point?

16 A. I was going to die.

17 Q. Did you know whether that gun was loaded or
18 unloaded?

19 A. I had no clue.

20 Q. Were you scared?

21 A. Yeah.

22 Q. As far as you were concerned was that a deadly
23 weapon?

24 A. Yes.

25 Q. When he pointed it at you, did you continue to look

1 at him or what did you do?

2 A. I just turned around because I didn't want to get
3 shot in the face.

4 Q. Did you turn back around at some point?

5 A. Yeah, after I heard the door to the car close and it
6 accelerate off.

7 Q. Okay. Did you get a good look at the vehicle?

8 A. I did.

9 Q. You actually got the tag number?

10 A. Yes, sir.

11 Q. To this day do you remember part of that tag
12 number?

13 A. I remember the last three digits.

14 Q. What are those?

15 A. 222.

16 Q. All right. What kind of vehicle was it, do you
17 remember that?

18 A. It was a Mercury Grand Marquis.

19 Q. What color?

20 A. Like a silverish color.

21 Q. Okay. Now, do you recall after this incident
22 meeting with Detective Garrick at the Sheriff's Department?

23 A. I do.

24 Q. And did he show you a photo lineup at that time?

25 A. Yes, sir, he did.

1 Q. That was after you provided a description of the
2 robber; is that correct?

3 A. Yes, sir.

4 Q. When you looked at that lineup, what did you tell
5 Detective Garrick?

6 A. I told him I wasn't real sure. That I had just
7 narrowed it down to two people.

8 Q. When you say you're not sure, were you not sure that
9 the person was on there, period, or you were just not sure it
10 was those two people that you had narrowed it down to?

11 A. I knew the person was on there, but it was one of
12 the two people.

13 Q. And so is it fair to say you were a hundred percent
14 certain it was one of those two people that you had narrowed
15 it down to?

16 A. Yes, sir.

17 Q. I'll show you State's 60. Do you recognize that?

18 A. Yes, sir, I do.

19 Q. Is that the lineup that Detective Garrick showed
20 you?

21 A. Yes, sir, it is.

22 Q. And are those your initials?

23 A. Yes, sir.

24 Q. Now, prior to showing you that lineup, what did he
25 instruct you to do?

1 A. He just told me to take my time. He said the person
2 may or may not be on this paper. Just to really just take my
3 time and look at it.

4 Q. Okay. Had he shown you any pictures of any suspects
5 prior to this photo lineup?

6 A. No, sir.

7 Q. Had you ever seen the defendant since the incident
8 prior to seeing this photo lineup?

9 A. No, sir.

10 Q. How long did it take you to pick out number 2?

11 A. I'm not exactly sure.

12 Q. Would anything have helped you make a better pick do
13 you think?

14 A. Yes, sir.

15 Q. What did you tell Detective Garrick?

16 A. I told him I couldn't be a hundred percent sure if
17 it was number 2 or number 4 because it was a black and white
18 photo of black men and I couldn't distinguish between the
19 hair colors and the skin tones.

20 Q. So you felt that if you could see a color photo of
21 those folks, you could have picked him out?

22 A. Yes, sir.

23 Q. Sitting here today would you change your pick?

24 A. Yes, sir.

25 Q. Why is that?

1 A. Because whenever I was asked to pick this lineup, I
2 was still pretty much in shock and it's been a year now and I
3 have had time to think about it and every night I go to bed I
4 got the same dream over and over of this man putting a gun in
5 my face and not knowing what's going to happen. All I could
6 see is his face so that face is burned into my brain.

7 Q. So as you sit here today what number would you
8 pick?

9 A. Number 4.

10 Q. Now, obviously did Detective Garrick suggest to you
11 or hint to you who you should pick out when he showed you
12 this lineup?

13 A. No, sir.

14 Q. Did he ever tell you whether or not you had actually
15 picked out the right person or not?

16 A. No, sir.

17 Q. Since the incident, have you ever seen a photo of
18 who was arrested for this?

19 A. No, sir.

20 Q. Have you ever had an opportunity to see who was
21 arrested in person since the incident?

22 A. I saw him yesterday.

23 Q. That was the first time you had seen him since the
24 incident?

25 A. Yes, sir.

1 Q. What did you think when you saw him for the first
2 time in person?

3 A. I wanted to throw up.

4 Q. Do you see him here today in the courtroom?

5 A. Yes, sir, I do.

6 Q. Where is he?

7 A. He's sitting right there (indicating.)

8 Q. Are you pointing at the defendant?

9 A. Yes, sir, I am.

10 Q. How certain are you about that?

11 A. A hundred percent.

12 Q. Other than your nine millimeter, what else did you
13 have in the bag that was stolen?

14 A. I had a pair of sweat pants, a Fox racing shirt,
15 blue thermal shirt, a box of condoms, some cologne. I'm not
16 sure what else was in the bag.

17 Q. I'll show you what's been already admitted as
18 State's exhibit 24. Do you recognize that bag?

19 A. Yes, sir, I do.

20 Q. Is that your bag?

21 A. Yes, sir.

22 Q. State's 25?

23 A. Yes, sir. That's my shirt.

24 Q. That shirt was in your bag?

25 A. Yes, sir.

1 Q. This is kind of hard to see. State's 26. Do you
2 recognize that shirt?

3 A. Yes, sir. That's my blue thermal shirt.

4 Q. Okay. That was in your bag as well?

5 A. Yes, sir.

6 Q. State's 27?

7 A. My sweat pants.

8 Q. Did you give any of this stuff to the man you knew
9 as Los?

10 A. Sir?

11 Q. Did you give any of this to the man you knew as
12 Los?

13 A. Only once I had a gun in my face.

14 Q. I'm going to show you State's exhibit 54. What is
15 this?

16 A. That's my pawn slip for whenever I bought the gun
17 from the pawnshop.

18 Q. Did you buy the gun from the pawnshop?

19 A. Well, I bought it from an individual and he took it
20 to the pawnshop, that way it could be transferred into my
21 name.

22 Q. Okay. So you just did the transfer at a pawnshop?

23 A. Yes, sir.

24 Q. Does that receipt -- What date was that?

25 A. October 9th, 2013.

1 MR. MCNAIR: Judge, we would offer State's 54 into
2 evidence.

3 MR. MAULDIN: No objection.

4 THE COURT: Without objection State's 54 is in
5 evidence.

6 BY MR. MCNAIR:

7 Q. Does that pawn slip contain the serial number of
8 your nine millimeter?

9 A. Yes, sir, it does.

10 Q. What's the serial number of that gun?

11 A. P210464.

12 Q. I'll show you State's 18. Do you know where the
13 serial number is on this gun?

14 A. (Indicating.)

15 Q. All right. Will you read that?

16 A. It says P210462.

17 Q. Okay.

18 A. I'm sorry. That's a 4, the last digit.

19 Q. Okay. Do you recognize this gun?

20 A. Yes, sir.

21 Q. All right. Let's go back to talking about the two
22 individuals you met, Los and the other guy who you didn't
23 know what his name was.

24 A. Yes, sir.

25 Q. Did one of those appear to be, for lack of a better

1 word, the leader of the two?

2 A. Yes, sir.

3 Q. Did one appear to be or did one talk more than the
4 other?

5 A. Yes, sir.

6 Q. Was one more assertive than the other?

7 A. Yes, sir.

8 Q. Who was that?

9 A. That was Los.

10 Q. How would you describe the guy with Los?

11 A. Very quiet, reserved and kind of timid.

12 MR. McNAIR: I believe that's all the questions I
13 have at this time.

14 THE COURT: Mr. Mauldin.

15 MR. MAULDIN: Thank you.

16 CROSS EXAMINATION

17 BY MR. MAULDIN:

18 Q. Now, when you were at the Mile High Club, that's a
19 bar in kind of like a strip mall type place?

20 A. Yes, sir.

21 Q. Okay. And you had parked in front of it?

22 A. Yes, sir.

23 Q. And your car was facing the club away -- You know,
24 your back end was toward the street and your front end was
25 toward the bar?

1 A. Yes, sir.

2 Q. And you had gotten there well after midnight; is
3 that correct?

4 A. I'm not sure what time I got there.

5 Q. Well, you got there after you got off work at
6 Platinum Plus, right?

7 A. I was not working that night.

8 Q. You testified yesterday that you had been drinking
9 and you didn't remember how much you had to drink; is that
10 correct?

11 A. Yes, sir.

12 Q. And that on a scale of 1 to 10, 1 being sober and 10
13 being falling down drunk, you thought you were about 5?

14 A. Yes, sir.

15 MR. McNAIR: Objection, Your Honor. That's a
16 mischaracterization of the question he was asked.
17 Nobody said 10 was falling down drunk.

18 THE COURT: Sustained. On a scale of 1 to 10, 10
19 being drunk, his response is a 5.

20 MR. MAULDIN: Yes, sir.

21 BY MR. MAULDIN:

22 Q. Now, as far as any of the black men that you saw
23 associated with this robber, you didn't know any of them; is
24 that correct?

25 A. That's correct.

1 Q. Okay. And during your conversation with some of
2 these people, you realized you knew kind of the same people
3 at a place called Heartless Entertainment?

4 A. Yes, sir.

5 Q. That's kind of like they do rap music or that kind
6 of thing?

7 A. It's just a music label.

8 Q. At some point during the conversation, did you ever
9 discuss trading guns with any of the individuals?

10 A. Not trading. Talked about possibly buying.

11 Q. What about trading guns for rims for cars?

12 A. Yes, sir. The .22 for the rims.

13 Q. And you said that one of the individuals had - you
14 had described in one statement as a dreadlock hat. Does that
15 mean that he had dreadlocks? What do you mean by that?

16 A. I never saw his hair. It was just the type of hat
17 that somebody with really long dreadlocks might wear.

18 Q. And you said it was green, yellow and red; is that
19 correct?

20 A. Yes, sir.

21 Q. At any point in time when you were talking about
22 being behind your car and people are showing each other their
23 guns and that sort of thing, did you see who you eventually
24 realized to be the driver of the car kind of come out and
25 observe it for a little bit and then go back in?

1 A. I didn't see anybody but the four people at my
2 car.

3 Q. Do you recollect talking to Kyle Taylor around June
4 2nd, 2014?

5 A. I'm not sure.

6 Q. He said he was an investigator and he talked to you
7 about the case and had you sign a statement?

8 A. Okay.

9 Q. Did you tell him that you recollect seeing that
10 person come out while you were showing each other your
11 guns?

12 A. I don't remember.

13 Q. You don't remember? Do you remember telling him
14 that when the robber came and knocked on your window, that
15 you gave him your phone information and he put your
16 information into his phone?

17 A. I don't remember that.

18 Q. Part of the things stolen from you is \$200 in cash;
19 is that right?

20 A. I'm not exactly sure if it was 200 because I only
21 had so much money in my bag and I kept going back to my bag
22 to get money.

23 Q. But it was some amount of money?

24 A. Yes, sir. There was some money.

25 Q. Over 100 but less than 200 depending on how much you

1 spent that night?

2 A. I know that at the beginning of the night I had \$200
3 in my bag.

4 Q. Now, when the person was talking to you at the
5 window, did you notice anybody getting into this Grand
6 Marquis?

7 A. I did not. My attention was focused on the person
8 talking to me.

9 Q. Did you see anybody in the Grand Marquis before they
10 came up to you?

11 A. Like I said, my attention was focused on the person
12 talking to me.

13 Q. But you say when you chased the person to this Grand
14 Marquis, that it was filled up with people?

15 A. I said that the car was backed up facing the exit.

16 Q. Okay. Now, did it have its front pointed toward the
17 road?

18 A. Yes, sir.

19 Q. And you said the chase was about 10 to 15 feet? Is
20 that what you said?

21 A. I'm not sure how far away the car was from mine. I
22 know that they were about two spots over the first time I saw
23 them, and then whenever he took my bag, I chased him back to
24 the car that was pointed towards the exit.

25 Q. Okay. So if your car is pointed toward the club and

1 the other car is pointed toward the exit, did you chase him
2 around the front of the car or the back of the car?

3 A. He took off from the passenger side straight back to
4 the vehicle. I got out of my driver's seat and ran down the
5 driver's side of the car, met him at the back of my car while
6 he was trying to get into the other car.

7 Q. Now, did the robber run to the driver's side of the
8 car or the passenger side?

9 A. He ran to the driver's side because somebody tried
10 to open the door for him.

11 Q. Okay. And during the course of this, did somebody
12 say shoot him and let's go?

13 A. Yes, sir.

14 Q. And you believe that to be the driver of the
15 vehicle?

16 A. Yes, sir.

17 Q. And he had glasses on?

18 A. I don't recall.

19 Q. He had a black jacket on?

20 A. I don't recall.

21 Q. But he wasn't driving the vehicle?

22 A. Yes, sir. It was the person in the driver's seat.

23 Q. Did he get out of the car to say that --

24 A. Yes.

25 Q. -- or did he yell it. And during the struggle, you

1 punched the robber in the face several times; is that
2 correct?

3 A. Yes, sir.

4 Q. And you had punched him such that you say you
5 injured your hand; is that correct?

6 A. Yes, sir. I sprained my left hand.

7 Q. Punching him several times in the face?

8 A. Yes, sir.

9 Q. Do you recall perhaps talking to any of these people
10 inside the bar before you came out to your car to show Nick
11 the gun?

12 A. No, sir.

13 Q. Now, you haven't seen a color version of the photo
14 lineup they have showed you, have you?

15 A. No, sir, I haven't.

16 Q. So you wouldn't know what the skin tone of number 2
17 was?

18 A. No, sir.

19 Q. And that's the one you picked out?

20 A. That's correct.

21 Q. And that was three days after the Mile High Club?

22 A. Yes, sir.

23 MR. MAULDIN: No further questions.

24 THE COURT: Anything on redirect?

25 REDIRECT EXAMINATION

1 BY MR. MCNAIR:

2 Q. Mr. Ruple, you were asked how much you had to drink.
3 On a scale of 1 to 10, you said a 5?

4 A. Yes, sir.

5 Q. Now, at the time that you were leaving, did you feel
6 like you were able to drive?

7 A. Yes, sir. I stopped drinking probably about 45
8 minutes before I decided to actually leave.

9 Q. Okay. And the person who grabbed your bag was the
10 same person who you had been hanging out with earlier in the
11 night, correct?

12 A. Yes, sir.

13 Q. Looked the same way?

14 A. Yes, sir.

15 Q. Now, as far as this gentleman named Kyle Taylor who
16 came to talk to you, did he tell you he was a paid private
17 investigator working for the defense?

18 A. He just said that he was a private investigator and
19 just wanted to make sure the right person got charged.

20 Q. What were you doing when he came out to talk to
21 you?

22 A. I was working on a four wheeler.

23 Q. How long did he stay out there with you?

24 A. Maybe two hours just asking me a bunch of questions
25 over and over and over.

1 Q. Did he keep asking you the same questions over and
2 over?

3 A. Yes, sir, I think so just in different variations.

4 Q. Okay. Did he not like the answers you were giving?

5 A. I'm not sure.

6 Q. About the money you had in your bag, you said it was
7 \$200 cash?

8 A. At the beginning of the night, yes, sir.

9 Q. Were you buying somebody other than yourself drinks
10 as well?

11 A. Yes, sir.

12 Q. Who?

13 A. My friend Nick and one of the girls at the bar.

14 Q. Okay. So you started the night with \$200 in cash?

15 A. In my bag, yes, sir.

16 Q. You don't know how much was left when it was stolen,
17 do you?

18 A. No, sir, I don't.

19 MR. McNAIR: That's all I have. Thanks.

20 THE COURT: All right. Thank you very much, sir.

21 Step down.

22 MR. McNAIR: Judge, can we approach?

23 THE COURT: Yes, please.

24 (Side bar off the record.)

25 THE COURT: Back on the record. All right. You may

1 call your next witness.

2 MR. McNAIR: Your Honor, the State calls William
3 Bennett.

4 Thereupon,

5 WILLIAM BENNETT

6 after having been first duly sworn, testified as follows,

7 THE CLERK: Once you're seated, please state your
8 full name spelling your last name, please.

9 THE WITNESS: Lieutenant William Bennett,
10 B-e-n-n-e-t-t.

11 DIRECT EXAMINATION

12 BY MR. McNAIR:

13 Q. Lieutenant Bennett, you're with the Swansea Police
14 Department; is that correct?

15 A. That's correct.

16 Q. How long have you been with Swansea?

17 A. Going on 11 years.

18 Q. Are you actually from that area as well?

19 A. Well, I'm from Pelion.

20 Q. Okay. Now, how did you become involved in this
21 incident on January 24th, 2014?

22 A. I got dispatched for - they told me Highway Patrol
23 was behind a vehicle they believed was involved with an armed
24 robbery and the Highway Patrolman was waiting for another
25 officer to come back him up before he made a traffic stop on

1 that vehicle so they were coming through my jurisdiction and
2 I ended up getting caught up to him and assisted them with
3 the traffic stop.

4 Q. Where were they when you caught up with them?

5 A. They had just turned onto Highway 3 which is
6 Whetstone Road just off of Savannah Highway which is Highway
7 321.

8 Q. Okay. Had they made it through Swansea at that
9 point?

10 A. They had already come through the main part of town,
11 yes, sir.

12 Q. Okay. When you got behind -- Did you know who the
13 trooper you were assisting, do you know what his name was?

14 A. I did not. I never got his name.

15 Q. Okay. Well, when you got behind him, did he then
16 initiate a traffic stop?

17 A. Once you saw me come up behind him, yes, sir, he
18 initiated a traffic stop.

19 Q. What was your role at that point?

20 A. I was just a back up officer. Once I got out of my
21 car, he was kind of performing a felony traffic stop ordering
22 the occupants out of the vehicle and what I was doing was I
23 was handcuffing each occupant as they got out.

24 Q. Okay. How many people did you all get out?

25 A. We got three out. We got the driver and two

1 passengers.

2 Q. What happened then?

3 A. Once we got those three individuals out, I could see
4 some movement in the car and the car drove away. There were
5 two more passengers in the vehicle. One got in the driver's
6 seat and drove off.

7 Q. Okay. Other than you and the trooper that you were
8 backing up, had anyone else arrived on scene at that point?

9 A. I believe there was another trooper just pulling up
10 as all this was happening.

11 Q. Who took off after the vehicle that took off?

12 A. The trooper that initiated the traffic stop.

13 Q. Okay. So at that point were you left on scene by
14 yourself?

15 A. Yes, sir. I was left with the three occupants who
16 had already been handcuffed.

17 Q. Were you able to identify those individuals?

18 A. I was. I was able to get their names from them.

19 Q. Okay. Did you check their driver's licenses as
20 well?

21 A. I didn't get all that then. I just got ID.

22 Q. Do you recall if any of those individuals had
23 dreadlocks?

24 A. Uhm, no.

25 Q. Do you have a video system in your car?

1 A. Yes, I do.

2 Q. Was it working that night?

3 A. It was working.

4 Q. Audio and video?

5 A. Just the video. The audio portion was not
6 working.

7 Q. Now, have you previously reviewed a DVD from your
8 video that night?

9 A. I didn't until I came up here and met with you all
10 to review the case. That's the first time I watched it.

11 Q. I'll show you State's Exhibit 53. Do you recognize
12 that disk?

13 A. That's a copy that we made for you all.

14 Q. Okay. Are those your initials on that disk?

15 A. Those are my initials.

16 Q. And is this an accurate recording from your video
17 system that night?

18 A. Yes, sir.

19 MR. McNAIR: Your Honor, we offer State's 53 into
20 evidence.

21 MR. MAULDIN: No objection, Your Honor.

22 THE COURT: Without objection State's 53 is in
23 evidence.

24 (Playing audio recording.)

25 BY MR. McNAIR:

1 Q. So is this the trooper's car in front of your
2 vehicle?

3 A. Yes, sir, that's it.

4 Q. Where are you in this video?

5 A. That's me standing at the rear of the trooper's
6 car.

7 Q. Where is in the Highway Patrolman?

8 A. He's in the door frame on his knees using that as
9 cover with his weapon drawn.

10 Q. Who is backing up now in front of him?

11 A. That's the driver of the vehicle.

12 Q. Did you all have him remove his jacket?

13 A. Yes, sir. He did take it off once he got out of the
14 car.

15 Q. What's happening at this point?

16 A. At this point I was placing the driver in
17 handcuffs.

18 Q. Was the time accurate on your system at that time?

19 A. Yes, it was.

20 Q. What time is it based on your recording?

21 A. It's 4:34 a.m.

22 Q. Who was the next person ordered out?

23 A. I don't -- It was one of the passengers. I don't
24 recall his name.

25 Q. Did somebody else arrive on the scene?

1 A. I believe that's the other Highway Patrolman.

2 Q. What happened at that point right there?

3 A. That's when the car drove off and they were getting
4 in their vehicles.

5 Q. Are you on scene by yourself with the three
6 individuals that you all had removed at that point?

7 A. Yes, sir, I was.

8 Q. Where are the jackets that were removed?

9 A. It's hard to see them in that video, but they are up
10 where the vehicle was when the traffic stop was made.

11 Q. Did you actually collect those jackets or did
12 another deputy?

13 A. The Sheriff's Department once the county deputy
14 arrived on scene, he actually picked those jackets up.

15 Q. Do you recall his name?

16 A. That was Deputy Smith.

17 Q. Did you have any other involvement in this case?

18 A. No, I did not.

19 MR. McNAIR: I'm sorry, Your Honor. One more
20 exhibit.

21 (Whereupon, State's Exhibit 61 marked for
22 identification.)

23 BY MR. McNAIR:

24 Q. Let me show you State's Exhibit 61. Now, is that
25 just a still photo obtained from your video?

1 A. That is.

2 MR. McNAIR: Your Honor, we would offer State's 61
3 into evidence.

4 THE COURT: Any objection?

5 MR. MAULDIN: No objection, Your Honor.

6 THE COURT: Without objection State's 61 is in
7 evidence.

8 MR. McNAIR: I don't have any further questions.
9 Thank you.

10 THE COURT: Any cross?

11 MR. MAULDIN: I have no questions for this witness,
12 Your Honor.

13 THE COURT: All right. Thank you very much, sir.
14 You may step down. Any objection to the deputy being
15 excused?

16 MR. MAULDIN: No, Your Honor.

17 THE COURT: Thank you, sir. You're free to go.

18 MR. GRAHAM: I have a ten minute witness, Your
19 Honor.

20 THE COURT: All right. I will hold you to it.

21 MR. GRAHAM: The State calls Samuel Smith.

22 Thereupon,

23 SAMUEL SMITH

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Once you're seated state your full name

1 spelling your last name, please.

2 THE WITNESS: Corporal Samuel Smith, S-m-i-t-h.

3 DIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q. Corporal Smith, where are you employed?

6 A. Lexington County Sheriff's Department.

7 Q. What do you do there?

8 A. I'm assistant patrol supervisor south region patrol
9 division.

10 Q. You wear a uniform and drive a car with a siren on
11 it, right?

12 A. Yes, sir, I do.

13 Q. January 24th, 2014, what did you do at that time?

14 A. I was responding to a assist other agency call where
15 a Highway Patrol and Swansea police department stopped a
16 vehicle believed to be suspect vehicle in an armed robbery
17 that occurred earlier in the evening.

18 Q. By the time you got there, the Highway Patrol was in
19 pursuit of the vehicle and when you arrived on scene, I
20 believe Lieutenant Bennett from Swansea was there with the
21 people in the handcuffs; is that correct?

22 A. Yes, sir, that's correct.

23 Q. And you came on scene to assist him?

24 A. Yes, sir, that's correct.

25 Q. When you got there, how many people did Lieutenant

1 Bennett have in custody?

2 A. He had three.

3 Q. Were you able to determine the identification of the
4 three people that he had in custody?

5 A. By names and date of birth and DL's. I can't
6 identify them without my report.

7 Q. Let me show you a report and ask you if you
8 recognize it as being your report?

9 A. Yes, sir. This is my report.

10 Q. Looking at that report does it refresh your memory
11 as to the identification of the three individuals that you
12 encountered then?

13 A. Yes, sir. A Patrick Johnson, a Carlisle Jones, a
14 Iquawn Jones.

15 Q. Looking on the overhead projector at State's Exhibit
16 number 60, that's a copy of Lieutenant Bennett's video
17 camera. Have you had an opportunity to look at that?

18 A. Yes, sir. I have seen it before.

19 Q. At some point in the video further past this point
20 when you arrived, what does that video show you doing?

21 A. You will see me doing a cursory inspection looking
22 for contraband or items that might have been thrown from the
23 vehicle as well as picking up several jackets that were left
24 behind.

25 Q. Do you remember how many jackets that you retrieved

1 from the road in front of where those individuals are right
2 now in the video?

3 A. I retrieved three jackets, sir.

4 Q. Do you remember, were any of those jackets a green
5 puffy jacket?

6 A. No, sir, they were not.

7 Q. Looking at the video and using your memory, what do
8 you remember those jackets to be?

9 A. Dark in color, but none green and puffy.

10 Q. Of the three individuals there, Carlisle Jones,
11 Patrick Johnson and Iquawn Jones, who did you have the most
12 contact with?

13 A. The gentleman I had the most contact with is going
14 to be the horizontal striped Polo shirt identified as
15 Carlisle Jones.

16 Q. Do you remember the hair style of any of those three
17 individuals?

18 A. I believe Mr. Jones was very short haired, him being
19 the one that I had the most contact with as well as glasses,
20 I believe.

21 MR. GRAHAM: I believe that's all the questions I
22 have. Thank you, Deputy Smith.

23 THE COURT: Any cross?

24 MR. MAULDIN: Thank you.

25 CROSS EXAMINATION

1 BY MR. MAULDIN:

2 Q. Deputy Smith, you didn't document in your report how
3 many jackets you seized or what color they were, did you?

4 A. No, sir. I did not.

5 MR. MAULDIN: No further questions.

6 THE COURT: All right. Thank you very much, sir.

7 You may step down.

8 MR. GRAHAM: Your Honor, if we can approach?

9 THE COURT: Yes, sir, please.

10 (Side bar off the record.)

11 THE COURT: Back on the record. Okay. Ladies and
12 gentlemen, we are going to adjourn for the day. Please
13 continue to do everything that you can do to protect
14 your ability to be fair and impartial and to shield
15 yourself from any improper contact. You can let your
16 family, friends and loved ones know that you're still
17 under an order not to discuss the case and that you do
18 need to be back tomorrow, but just ask for their
19 patience. When it's all over, you will be able to share
20 everything that you would like to share with them, but
21 for them to just continue to be patient if they would
22 please do that. I'm going to ask you -- I was going to
23 start a little earlier tomorrow, but I have got some
24 matters not associated with this case, some other
25 matters that I need to take up first thing in the

1 January 28, 2015

2 * * * * *

3 THE COURT: All right. Is the State ready to
4 proceed then?

5 MR. GRAHAM: The State is ready, Your Honor.

6 THE COURT: The defense ready? Do we need to take
7 up anything?

8 MR. MAULDIN: No. We are ready, Your Honor.

9 THE COURT: All right. Let's bring the jury in
10 then.

11 (The jury enters the courtroom at 9:50 a.m.)

12 THE COURT: All right. Good morning, folks. I hope
13 everyone had a good evening and ready to get started. I
14 apologize. You know, I have been doing this job for
15 about ten years, and you would think I would get better
16 at it. I apologize for the late start this morning. I
17 had a matter that I was going to hear before we got
18 started and then I did what the airlines always do, I
19 double booked and had another matter come in and it just
20 took longer than I thought it would take. So I
21 apologize that we have been delayed getting started.
22 Let me take up a matter before we get any further.
23 Mr. Temple, would you be so kind to serve as the foreman
24 of the jury for me please?

25 MR. TEMPLE: Sure.

1 THE COURT: I'm going to get you and this gentleman
2 to swap chairs and while they are doing that, let me
3 address the panel with regards to that issue as far as
4 the foreperson. Folks, any time you have a group of
5 people, it's just, time has just proven that it's better
6 and it's easier I should say that there is one person
7 that addresses or speaks on behalf of the group. The
8 foreperson's main role is to be the communicator between
9 the jury panel and the Court so that if any time during
10 the course of the trial there is any, if any of you have
11 any questions about anything, then the foreperson would
12 just write out that question and pass it out to me.
13 Depending on the question, I may just respond back in
14 writing or I may bring you out as a panel and respond to
15 the question. But that's the main role of the
16 foreperson so that if I need to communicate with the
17 jury and if I need all of you out here to do that, we'll
18 do that, but there are some times that I can just
19 communicate through Mr. Temple and he will pass it onto
20 the rest of you. That's the first thing.

21 The other thing that the foreperson does, if need
22 be, is to start and stop the deliberations. What I mean
23 by that is that any time you deliberate once you have
24 this case for your consideration I will instruct you
25 that everyone must be present and have the benefit of

1 the discussion. So that if anyone needs to excuse
2 themselves to use the restroom or something of that
3 nature, then the foreperson would then ask that the
4 conversations stop until that person returns and then
5 you would start back the deliberations.

6 I have talked to jurors in the past and it's a rare
7 occasion that this happens, but usually from what I'm
8 told by most juries is once they get the case and the
9 judge says, okay, it's appropriate to begin your
10 deliberations, I would say 99 percent of the time the
11 juries I have spoken with state that the conversation
12 just starts and it just starts flowing. There is that
13 rare occasion though that I have heard them say, you
14 know, we have got word from the bailiff that we could
15 begin deliberations and everybody just stood there and
16 just stared at each other. No one said a word. Well,
17 if that happens, then, Mr. Temple, as the foreperson you
18 need to get the ball rolling so to speak, okay? But
19 like I said, that's a rare occasion when that happens.

20 What is important for you to understand though is
21 this. Your verdict in this case and in all cases tried
22 before this court must be unanimous. You must all agree
23 on the verdict whatever it may be. So having said that
24 to you that tells you that the foreperson's vote, the
25 foreperson's opinions carry no more weight than anyone

1 else. The foreperson has no more authority than anyone
2 else. You're all equal members of the jury. Your vote
3 or your decision in this case must be unanimous.
4 Everyone must be in agreement. So no one person has any
5 more authority or any more credence than anyone else.

6 I tell juries all the time, I think it's your duty
7 to enter into deliberations with an open mind and
8 listening to everybody and considering everybody's
9 thoughts and opinions in making that discussion. So you
10 are all equal members of the jury. It's just that, you
11 know, it's easier to have one person to communicate with
12 from your side to me and from me to you, okay? So thank
13 you for your willingness to serve in that capacity, sir.

14 Folks, we adjourned yesterday and we were still on
15 the State's case and so I will recognize the State for
16 their first witness for today.

17 MR. GRAHAM: The State calls Carlisle Jones, Your
18 Honor.

19 THE COURT: Sir, come around here to be sworn,
20 please.

21 Thereupon,

22 CARLISLE JONES

23 after having been first duly sworn, testified as follows,

24 THE CLERK: Please state your full name spelling
25 your last name for the record.

1 THE WITNESS: Carlisle Jones, J-o-n-e-s.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q. Carlisle, where are you employed?

5 A. Akebono.

6 Q. And what is that?

7 A. A company that make brake pads.

8 Q. Brake pads?

9 A. Mm-hmm.

10 Q. Where is that company located?

11 A. Platt Springs Road.

12 Q. How long have you worked there?

13 A. Five years.

14 Q. Let me mention some names and you tell me what your
15 relationship is and how long you have known them, okay?

16 A. All right.

17 Q. Iquawn Jones?

18 A. Just a friend in the neighborhood. Known him all my
19 life.

20 Q. When you say the neighborhood, what neighborhood are
21 you talking about?

22 A. Neighborhood Chapel Hill on the outside of North.

23 Q. Pull the microphone a little bit closer to you.

24 A. Neighbor on outside of North called Chapel Hill.

25 Q. And that's over in what County?

1 A. Orangeburg.

2 Q. Orangeburg County. And you have known Iquawn all
3 your life?

4 A. Mm-hmm.

5 Q. The night of January 23rd and the morning of the
6 24th of last year, was Iquawn with you?

7 A. Yes, sir.

8 Q. Let me show you State's number 57 and ask you if you
9 recognize the photo on there?

10 A. Yes, sir.

11 Q. Do they fairly and accurately depict the way that
12 Mr. Jones looked that night, that Iquawn looked that night?

13 A. Mm-hmm.

14 MR. GRAHAM: Your Honor, the State would offer
15 what's been previously marked as 57 into evidence.

16 THE COURT: Any objection?

17 MR. MAULDIN: No objection, Your Honor.

18 THE COURT: Without objection State's 57 is in
19 evidence.

20 BY MR. GRAHAM:

21 Q. The picture shows Iquawn with short hair. Is that
22 the way that he looked that night?

23 A. Yes, sir.

24 Q. Patrick Johnson, was he with you that morning of the
25 night of the 23rd and the morning of the 24th as well?

1 A. Yes, sir.

2 Q. He goes by Pat; is that right?

3 A. Pat, yes, sir.

4 Q. How long have you known him?

5 A. All my life.

6 Q. Are you actually related to him?

7 A. Yes, cousin.

8 Q. Your cousin?

9 A. Mm-hmm.

10 Q. Roughly what's the age difference between you two?

11 A. Basically I'm the oldest. I think Patrick like 22
12 or 23.

13 Q. And how old are you?

14 A. I'm 31.

15 Q. What did you call Patrick or what do you call
16 Patrick?

17 A. Nephew.

18 Q. Because of the age difference?

19 A. Mm-hmm.

20 Q. Let me show you another photograph previously
21 pre-marked as State's 56. Do you recognize that?

22 A. Yes. That's Patrick.

23 Q. And that's the way Patrick looked that night?

24 A. That's the way he look now.

25 MR. GRAHAM: Your Honor, the State would offer that

1 into evidence at this time.

2 MR. MAULDIN: No objection, Your Honor.

3 THE COURT: What number is that?

4 MR. GRAHAM: 56, your Honor.

5 THE COURT: State's 56 is in without objection.

6 BY MR. GRAHAM:

7 Q. So this is your cousin who you call nephew and his
8 name is Patrick?

9 A. Patrick. Pat.

10 Q. The hair shows him having short hair, close to his
11 scalp. Is that the way he wore the night of the 23rd and the
12 morning of the 24th?

13 A. Yes, sir. Same way.

14 Q. Let me show you what's been marked State's 55. Do
15 you recognize that?

16 A. Yes, sir. That's me.

17 Q. That's you. Do you recognize both of those
18 photos?

19 A. Yes, sir.

20 Q. Is that how you looked that night?

21 A. Mm-hmm.

22 MR. GRAHAM: Your Honor, the State would offer
23 what's been previously pre-marked as State's 55 into
24 evidence.

25 MR. MAULDIN: No objection, Your Honor.

1 THE COURT: Without objection 55 is in evidence.

2 BY MR. GRAHAM:

3 Q. Now, let me show you State's number 62 and ask you
4 if you recognize that as a picture of Raphael Pontoo?

5 A. Yes, sir.

6 Q. And is that the way he looked like that night?

7 A. Yeah.

8 MR. GRAHAM: Your Honor, the State would offer
9 what's been pre-marked as State's 62 into evidence.

10 THE COURT: Any objection?

11 MR. MAULDIN: No objection, Your Honor.

12 THE COURT: Without objection State's 62 is in
13 evidence.

14 BY MR. GRAHAM:

15 Q. Now, he had dreadlocks that night; is that
16 correct?

17 A. Yes, sir.

18 Q. What's your relationship with him?

19 A. No relationship.

20 Q. How long have you known him?

21 A. Probably about, say probably about - probably about
22 two years now.

23 Q. How did you know him? Through who?

24 A. Through being in the neighborhood.

25 Q. Who was he friends with of the people you were with

1 that night and that morning?

2 A. Alexander, Patrick and Iquawn.

3 Q. What nickname did you know him by?

4 A. Raphael.

5 Q. You know him as Raphael?

6 A. Raphael and hearing him calling him Polo.

7 Q. You heard other people call him Polo?

8 A. Yes, sir.

9 Q. Let me show you State's 47 and ask if you recognize
10 that person?

11 A. Yes, sir.

12 Q. Who is that?

13 A. Kewon.

14 Q. Is that how Kewon looked that night?

15 A. Yes, sir.

16 MR. GRAHAM: Your Honor, the State would offer
17 what's been pre-marked -- No. This is already in
18 evidence, 47.

19 BY MR. GRAHAM:

20 Q. What's your relationship to Kewon?

21 A. Cousin. Basically call him my nephew.

22 Q. How long have you known him?

23 A. All my life.

24 Q. The five of you ended up being together the night of
25 the 23rd and spending time together on the 23rd and on the

1 24th, correct?

2 A. Yes, sir.

3 Q. Do you see Raphael in court today?

4 A. Yes, sir.

5 Q. Where is he?

6 A. Sitting over there (indicating.)

7 Q. That's the defendant over there on the far end with
8 the dreadlocks?

9 A. Yes, sir.

10 Q. That night the five of you together who is the only
11 person that had dreadlocks?

12 A. Raphael.

13 Q. Of those five people, yourself, Pat, Iquawn, Raphael
14 and your nephew Kewon, your cousin Kewon, do you know if
15 anybody used the name Rav or Ralf?

16 A. The only person called him Ralf was me.

17 Q. I'm sorry?

18 A. The only person I heard call him Ralf is me. That's
19 it.

20 Q. Calling him Ralf?

21 A. Yeah.

22 Q. Okay. But as far as other nicknames, Smoke didn't
23 go by the nickname Ralf?

24 A. No.

25 Q. That's not your nickname?

1 A. No.

2 Q. That's not Pat's nickname?

3 A. That's not his nickname.

4 Q. And that's not Iquawn's nickname?

5 A. No.

6 Q. Tell me how you ended up being together with him
7 that night?

8 A. At that night I picked them up from Williston. He
9 was at a friend house, Freddie Jackson.

10 Q. And Williston is where?

11 A. It's in Aiken County going through Springfield and
12 basically I get to see him when everybody was there because
13 there wasn't nothing to do in the neighborhood and I went
14 down there to see what Kewon was gonna do for his birthday
15 because his birthday was coming up and I was out of work
16 because I had a broke ankle so since I was out of work, I was
17 going to take him out for his birthday.

18 Q. So when you ended up over in Williston, how did you
19 get there?

20 A. In my car.

21 Q. What kind of car was it?

22 A. It's a green Mercury.

23 Q. Green Mercury?

24 A. Mm-hmm.

25 Q. That's the car that ended up getting wrecked later

1 the next morning?

2 A. Yes, sir.

3 Q. When you got there, were Iquawn, Pat, your nephew
4 Kewon and Raphael already there?

5 A. Yes, all of them was already there.

6 Q. After you all got together, what did you do?

7 A. I told him I would take him to a little spot in
8 Columbia. We first went to Calloway's, but Calloway's was
9 closed and I said I got one more place and I tried The Little
10 Rock and it was open so we went to The Little Rock.

11 Q. Okay. And is that - that's a bar, nightclub over by
12 the airport?

13 A. Yes, sir.

14 Q. And that's in Lexington?

15 A. Mm-hmm.

16 Q. Now, you said you know that place. How do you know
17 that place?

18 A. Because me and a bunch of my co-workers go out there
19 like on Thursday nights to shoot pool and have a drink and
20 just to hang out.

21 Q. How many times do you think you have been there
22 before that night?

23 A. Probably like 10, 20 times.

24 Q. People there knew you?

25 A. People there know me.

1 Q. People who worked there knew you?

2 A. Uh-huh.

3 Q. So how do you all get from Williston to the bar?

4 A. In my car.

5 Q. Let me show you what's been pre-marked as State's
6 number 58 and do you recognize that?

7 A. Yes, sir.

8 Q. Those are the photos that we just in a few minutes
9 ago for everybody, right?

10 A. Uh-huh.

11 Q. The order that they are in on that diagram, does
12 that show how they were sitting in the car?

13 A. Yes. That's how everybody was sitting from
14 Williston all the way to Columbia.

15 Q. How about after you all left the bar there, was that
16 the same?

17 A. Everybody was sitting the same way.

18 MR. GRAHAM: Your Honor, the State would offer this
19 into evidence at this time.

20 MR. MAULDIN: No objection, Your Honor.

21 THE COURT: What number is that?

22 MR. GRAHAM: This is number 58 previously marked
23 into evidence now, Your Honor.

24 THE COURT: State's 58 is in evidence without
25 objection.

1 BY MR. GRAHAM:

2 Q. Can you explain to the jury how everybody was
3 sitting in your Mercury?

4 A. Me and Iquawn in the front. Raphael sitting behind
5 me. Alexander in the middle and Patrick, he was sitting
6 behind Iquawn.

7 Q. Your car. You were driving, right?

8 A. Yes, sir.

9 Q. When you get to The Rock, the bar that you go to
10 that's near your work, what do you all do there?

11 A. Basically they was shooting pool. Iquawn was
12 shooting pool. Patrick was sitting down at the table and I
13 was talking to some of my co-workers because I was out for a
14 while. I hadn't seen them.

15 Q. So you saw people there that you knew?

16 A. Mm-hmm.

17 Q. And that's who you spent most of your time with?

18 A. Spent most of my time with.

19 Q. How long do you think you were there?

20 A. Probably two or three hours.

21 Q. Were you drinking?

22 A. No, sir.

23 Q. Why weren't you drinking?

24 A. I was on medication.

25 Q. You said something earlier about your foot. What

1 was wrong? You said you had been out of work?

2 A. Yeah. I broke my ankle. I was on medication.

3 Q. Okay. Anything unusual happen in the bar, in the
4 parking lot that caught your attention?

5 A. In the bar it really was just like everybody was
6 getting along, you know?

7 Q. Okay. What was your nephew Kewon doing?

8 A. When we was in the bar, he was just standing around
9 talking with Ralf and two other white guys.

10 Q. Did you know who those white guys were?

11 A. No, sir.

12 Q. How about your nephew Pat?

13 A. He was sitting at the table by his self.

14 Q. Was he drinking?

15 A. No.

16 Q. Was he awake or was he tired?

17 A. He was tired.

18 Q. Do you know why?

19 A. Yeah. He had to go to work.

20 Q. How about Iquawn? What was Iquawn doing?

21 A. He was shooting a game of pool against one of my
22 co-workers.

23 Q. How about Ralf? What was Ralf doing?

24 A. He was over there talking to the white guy.

25 Q. So he and your nephew Kewon were talking in the bar

1 to, you say one white guy or two white guys?

2 A. Two white guys.

3 Q. Anything unusual?

4 A. No. It didn't look unusual to me. I thought maybe
5 they knowed them or something.

6 Q. When they got -- At some point did you go outside?

7 A. Yes, sir. When we was getting ready to leave.

8 Q. Tell me about that. What was going on?

9 A. I seen Ralf. He was bent over in the passenger
10 window of the white guy car talking and I told him I'm about
11 getting ready to go.

12 Q. So when you're doing that, where is everybody
13 else?

14 A. Everybody else, Patrick was already in the car.
15 Everybody else was coming and getting in the car.

16 Q. So Iquawn is already back up in the front seat?

17 A. Yeah.

18 Q. Patrick you said was already, he's back in the back
19 seat passenger side?

20 A. Patrick and Kewon.

21 Q. And Kewon was back in the middle of the back seat
22 where he normally sat?

23 A. Mm-hmm.

24 Q. So what do you say to Ralf?

25 A. About to go.

1 Q. What did he say to you?

2 A. He didn't say nothing.

3 Q. How close is your car to this other car?

4 A. I would say side by side.

5 Q. Okay. And what is he doing at that time?

6 A. Bent over talking to the white guy in the car.

7 Q. Is he on the driver side, Ralf, is he on the driver
8 side or passenger side of that other car?

9 A. Passenger side.

10 Q. Do you know what they're talking about?

11 A. No, sir.

12 Q. Do you see what's going on other than him leaning in
13 the window?

14 A. No. I seen him leaning in the window.

15 Q. Okay. What's the next thing that you noticed
16 happening?

17 A. Well, after that I told him we about to go, I crank
18 out and I'm abouts to pull out and Iquawn said hold. I
19 forgot my jacket. So I pulled the car back in the parking
20 lot and Iquawn went and got his jacket. Then he calm back
21 out. I pulled back in, reverse about to back up and I seen
22 Raphael snatch the bag out the car. Snatch the bag out the
23 car and the white guy came around and he grabbed Raphael.

24 Q. When he grabbed Raphael, what happened?

25 A. They were tussling.

1 Q. You say a bag. Let me show you a picture which is
2 State's number 24 and ask if you recognize that?

3 A. Yes, sir.

4 Q. Is that the bag?

5 A. That's the bag.

6 Q. So you saw the defendant struggling with a white guy
7 over this bag?

8 A. Uh-huh.

9 Q. What's the next thing you noticed?

10 A. Well, they bumped up against the car and that's when
11 I stopped. I seen Raphael did like this (indicating) and
12 pull out a gun.

13 Q. Did you know that he had gun?

14 A. No, sir.

15 Q. Do you know what kind of gun it was?

16 A. No, sir. It was dark and my windows are tinted, but
17 I knew it was a gun by the way he pointed it at him.

18 Q. What did the white guy do when Raphael pointed the
19 gun at him?

20 A. He held his hands up.

21 Q. What were you thinking at that time?

22 A. To leave.

23 Q. Did you leave?

24 A. Yes. I was leaving, but I don't know how my back
25 door came open 'cause my doors automatic lock once you put it

1 in any type of gear.

2 Q. So you're going to leave and some how your back door
3 comes open and you don't know how?

4 A. I don't know how.

5 Q. So what happens as you're trying to leave and the
6 back door comes open and you see Ralf pointing the gun at the
7 white guy?

8 A. He hurry up and jump in the car.

9 Q. When he jumped in the car, what did you do? What
10 did you say?

11 A. I start cussing. I was mad. I told him to get
12 out.

13 Q. Okay. You're cussing and mad. What are you mad
14 about?

15 A. 'Cause number 1, you did something. You robbed
16 somebody where a place I always come hang out at. That look
17 bad on me.

18 Q. What did he say back to you?

19 A. Nothing. He wasn't saying nothing.

20 Q. So what did you do?

21 A. I just pulled off. I told him, okay, we get
22 stopped, I'm just going to tell the police exactly who did
23 it.

24 Q. Did he say anything back to you?

25 A. No. He didn't say nothing. Basically nobody didn't

1 say nothing.

2 Q. That bag that you saw in that picture, did he bring
3 that bag into your car?

4 A. Yes.

5 Q. Do you know what was in that bag?

6 A. No, sir.

7 Q. Where did you all go? And let me ask. When he gets
8 in the car, when Ralf gets in the car, he's in the seat that
9 you --

10 A. Sitting right behind me.

11 Q. Okay. Where do you go? Where do the five of you go
12 now?

13 A. We went to Wendy's and got something to eat.

14 Q. Who went inside to get something to eat?

15 A. Me, Iquawn and Patrick.

16 Q. So who stayed in the car?

17 A. Kewon and Raphael.

18 Q. Do you know what they did while you were inside?

19 A. No, sir.

20 Q. How long were you inside?

21 A. We were in there about a good ten minutes waiting on
22 our food.

23 Q. Let's talk about the physical differences between
24 your nephew Kewon and Ralf, okay? Are they the same height
25 or is one of them taller, one of them shorter?

1 A. I would say Kewon a little shorter than Ralf.

2 Q. How about build wise?

3 A. Ralf way bigger than Kewon.

4 Q. Ralf is way bigger than Kewon?

5 A. Way bigger.

6 Q. How would you describe their demeanor just in how
7 they acted in general?

8 A. Kewon he was just a laid back person and loved to
9 have fun.

10 Q. How about Raphael?

11 A. I really couldn't say. Just know he, through the
12 neighborhood he always in trouble.

13 MR. MAULDIN: Objection, Your Honor.

14 THE COURT: Sustained.

15 MR. MAULDIN: Move to strike.

16 THE COURT: All right. I'm going to --

17 BY MR. GRAHAM:

18 Q. After you all were back in the car at Wendy's --

19 THE COURT: Hold on.

20 MR. GRAHAM: Oh, I'm sorry.

21 THE COURT: Strike that response from the record,
22 please.

23 BY MR. GRAHAM:

24 Q. Where do you go after Wendy's?

25 A. I'm going on my way back home.

1 Q. And where is home?

2 A. Chapel Hill on the outside of North.

3 Q. What happens as you're driving home?

4 A. While we was on the way home coming down 321, got
5 through Gaston, all of a sudden I just seen a car following
6 me. I switched lanes and the car switched lanes, too. We
7 got to the town of Swansea. I seen it was a Highway Patrol
8 behind me.

9 Q. Did you tell anybody in the car that there was a cop
10 behind you now?

11 A. No, sir.

12 Q. What's the next thing that happened?

13 A. We went through the yield part to get on Highway 3,
14 we got on the road probably like a quarter of a mile that's
15 when he turned his blue lights on.

16 Q. When he turned his blue lights on, what did you
17 do?

18 A. Automatically pulled over.

19 Q. What was going on in the car when you pulled over?

20 A. Nothing.

21 Q. Did Ralf say anything?

22 A. No, sir.

23 Q. Okay. You pulled the car over. What happens
24 next?

25 A. Highway Patrol got on the speaker and told the

1 driver get out the car.

2 Q. Okay. So did you do that?

3 A. Yes, sir.

4 Q. As you're getting out of the car, what's the next
5 thing that Highway Patrol tells you to do?

6 A. Take my jacket off and throw it on the ground and
7 lift my shirt up.

8 Q. What kind of jacket were you wearing that night?

9 A. A Jack Daniels.

10 Q. Do you remember the color?

11 A. Black.

12 Q. You back up toward the Highway Patrolman, you get
13 handcuffed and they detain you back there?

14 A. Yes, sir.

15 Q. What's the next thing that happens?

16 A. That's when he was calling the passenger on the
17 driver's side to get out the car.

18 Q. And that would have been who?

19 A. Iquawn.

20 Q. Did Iquawn get out of the car?

21 A. Yes, sir.

22 Q. What happened with him?

23 A. He detained him and started ordering Patrick to get
24 out the car. That would be the next person.

25 Q. So the same thing. Just like you, Iquawn, hands up,

1 jacket off?

2 A. Yeah. Jacket off. He lift his shirt up and turn
3 around and walk towards his voice.

4 Q. And he was brought to the back of the car with you
5 and handcuffed?

6 A. Yes, sir.

7 Q. And you said Patrick was next?

8 A. Patrick was next.

9 Q. Same thing with Patrick?

10 A. Same thing.

11 Q. So when Patrick gets pulled back, he gets handcuffed
12 like you, correct?

13 A. Mm-hmm.

14 Q. Who is still left in your car?

15 A. Kewon and Raphael.

16 Q. And they're in the front seat or the back seat when
17 you got out of the car?

18 A. They was in the back seat.

19 Q. Just like in that diagram we were talking about?

20 A. Yes.

21 Q. When the three of you, yourself, Iquawn and Pat were
22 back at the trooper's car in handcuffs, what's the next thing
23 that happened?

24 A. I just heard my car took off.

25 Q. Did anybody have permission to take your car?

1 A. No. Nobody at all.

2 Q. Do you know whether Patrick or Iquawn had on jackets
3 that night?

4 A. Uh, no. I know Patrick had on a black hoodie.

5 Q. Do you know whether anybody in your group was
6 wearing a green puffy jacket?

7 A. No, sir.

8 Q. Do you know whether Ralf, Raphael had a phone that
9 night?

10 A. No.

11 Q. No, you don't know, or no, he did not?

12 A. No. I don't know if he had a phone or not.

13 Q. How about Kewon?

14 A. No. I ain't even know if he had a phone or not.

15 Q. All right. So your car takes off. You're detained
16 by the police and that's the last that you know about what
17 happened, right?

18 A. Uh-huh.

19 Q. Let me show you some other photos and ask if you
20 recognize any of these. State's number 19. There is a black
21 jacket with an orange lining. Does that mean anything to
22 you?

23 A. No, sir.

24 Q. You don't remember anybody wearing that jacket that
25 night?

1 A. No. I don't remember who wear what.

2 Q. State's number 39, does that jacket mean anything to
3 you?

4 A. No, sir.

5 Q. State's 40 is a camouflaged baseball hat picture,
6 Mossy Oak. Does that mean anything to you?

7 A. Mmm-mmm.

8 Q. State's 41, do you recognize that hat?

9 A. That look like Raphael's.

10 Q. State's number 42 is a knit hat photograph. Do you
11 recognize that?

12 A. That's Kewon.

13 Q. Do you know whether he was wearing it that night?

14 A. I can't remember was he wearing it that night, but
15 done seen him with that hat on.

16 Q. State's 43 is a green athletic jacket. Do you
17 recognize that one?

18 A. Yes. That's my jacket.

19 Q. That's your jacket. When did you get that jacket?

20 A. Earlier that day.

21 Q. Was it in your car?

22 A. Yes. Because me and my girlfriend just got back
23 from the movies.

24 Q. Did you wear it that night?

25 A. Wore it that night.

1 Q. Did you wear it at The Rock?

2 A. No. I just had left it in the car.

3 Q. Did you let anybody wear it?

4 A. No, sir.

5 Q. Do you know if anybody wore it?

6 A. I didn't see nobody with that on.

7 Q. State's 44 is a fleece black and gray jacket
8 photograph?

9 A. That's Kewon.

10 Q. That's Kewon's as well. State's 50 is a black
11 shirt. Does that mean anything to you?

12 A. That don't mean nothing to me.

13 Q. State's 49 is a photograph of a pair of light color
14 jeans. Do you recognize those?

15 A. No.

16 Q. State's 51 is three shirts. Do you recognize any of
17 those shirts?

18 A. One of them.

19 Q. Which one do you recognize?

20 A. The green one.

21 Q. The green striped one?

22 A. Uh-huh.

23 Q. Whose shirt do you recognize that as being?

24 A. That's my nephew Kewon shirt.

25 Q. State's number 52 is a pair of jeans. Do you

1 recognize those?

2 A. It have to be Kewon.

3 Q. The place you are calling The Little Rock, is that
4 also the night club that's also known as the Mile High Club
5 now?

6 A. Yes, sir.

7 MR. GRAHAM: Carlisle, I think that's all the
8 questions that I have. Please answer any questions that
9 Mr. Mauldin has for you. Thank you.

10 THE WITNESS: All right.

11 CROSS EXAMINATION

12 BY MR. MAULDIN:

13 Q. Mr. Jones, you testified about all the people in the
14 car that you knew Raphael the least; is that correct?

15 A. Yes, sir.

16 Q. And that you knew that other people had called him
17 Polo; is that right?

18 A. Yes, sir.

19 Q. Now, you called him Rav; isn't that correct?

20 A. Rav.

21 Q. R-a-v?

22 A. Yeah.

23 Q. That's the way you spell it --

24 A. Mm-hmm.

25 Q. -- when you refer to him. Not Ralf with an L?

1 A. I just call him Rav.

2 Q. Rav, R-a-v?

3 A. Rav.

4 Q. Well, the way you spell it is R-a-v; isn't that
5 correct?

6 A. Yeah.

7 Q. Okay. Now, this place Little Rock, Mile High Club,
8 you went there often after work; is that right?

9 A. Yes, sir.

10 Q. And you knew the people there that worked there and
11 went there; isn't that right?

12 A. Yes, sir.

13 Q. And you knew Mr. Ruple, too, didn't you?

14 A. Mr. who?

15 Q. You knew the white boy that Raphael was talking
16 to?

17 A. No. I hadn't met him before.

18 Q. Didn't you tell Raphael and some of the others that
19 you knew him from being in the bar before?

20 A. No. Never said that.

21 Q. Now, you say you saw Raphael talking to the white
22 guys inside the bar; is that right?

23 A. Yes, sir.

24 Q. And he was with them inside the bar for a period of
25 time; is that right?

1 A. Yes, sir.

2 Q. Did you ever see him with them outside the bar
3 before you all were getting ready to leave?

4 A. They were standing out there right in the doorway.

5 Q. Didn't you go out some time and get some cigarettes
6 from your car and see them talking to them and heard a
7 clicking noise that sounded like a gun to you?

8 A. Yes, sir. That's when I got my cigarettes and came
9 back in, then we left. That's when I told them to come on.
10 We about to go.

11 Q. So you were outside during that conversation with
12 the clicking noise; is that right?

13 A. Yes, sir.

14 Q. Okay. Now, when you were getting ready to go,
15 you're in the parking space and you're faced towards the bar;
16 is that right?

17 A. Yes, sir.

18 Q. And when you describe the bag being taken and
19 everything, you hadn't pulled out of the spot or anything at
20 that point in time. You were getting ready to?

21 A. Actually I was in the motion to back up.

22 Q. You weren't at the exit getting ready to leave?

23 A. No. I was backing up out of my parking spot.

24 Q. So you didn't have your car pointed toward the exit
25 like you were getting ready to make a getaway or anything

1 like that?

2 A. No, sir.

3 Q. Did you get out of the car and tell Raphael shoot
4 him. Let's go?

5 A. No.

6 Q. You were driving the car, weren't you?

7 A. Yes, sir.

8 Q. Okay. Is there a TV in that car?

9 A. A TV?

10 Q. Yes, sir.

11 A. Yeah. My radio had a TV screen on it.

12 Q. In the dashboard?

13 A. Mm-hmm.

14 Q. Now, when you all were leaving, Patrick pulled out a
15 nine millimeter gun, didn't he?

16 A. Patrick? No, sir.

17 Q. And you saw him with the nine millimeter gun, didn't
18 you?

19 A. No, sir.

20 Q. And when you saw him with the nine millimeter, you
21 told him since you got that nine millimeter, you got that
22 nine, I can have the .25 that you've got?

23 A. No, sir.

24 Q. And you said that after you all left The Little Rock
25 or The Mile High Club; is that right?

1 A. No, sir.

2 Q. Now, the State showed you exhibit 43 that you
3 identified as your jacket; is that correct?

4 A. Brand new jacket, yes, sir.

5 Q. And that jacket is green, isn't it?

6 A. Yes, sir.

7 Q. And you were never charged in this incident, were
8 you?

9 A. No, sir.

10 Q. And it's your understanding that you're not going to
11 be charged; isn't that correct?

12 A. Yes, sir.

13 MR. MAULDIN: No further questions.

14 MR. GRAHAM: Nothing else, Your Honor.

15 THE COURT: Thank you very much, sir. You may step
16 down. You need a short break? We're going to take just
17 a short break, folks. Step back into the jury room. If
18 you need anything, let us know, okay?

19 (The jury goes into jury room.)

20 (Short break.)

21 THE COURT: Back on the record. All right. Ready
22 for the jury?

23 (The jury enters the courtroom.)

24 THE COURT: Ladies and gentlemen, ready to proceed.
25 State call your next witness.

1 MR. GRAHAM: The State calls Patrick Johnson.
2 Thereupon,

3 PATRICK JOHNSON
4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please, have a seat in the witness box
6 and state your full name spelling your last name.

7 THE WITNESS: Patrick Johnson, J-o-h-n-s-o-n.

8 DIRECT EXAMINATION

9 BY MR. GRAHAM:

10 Q. Patrick, how old are you?

11 A. 23 years old.

12 Q. You go by Pat?

13 A. Yes, sir.

14 Q. Where are you working now?

15 A. Carmax.

16 Q. What do you do there?

17 A. I detail.

18 Q. Back a year ago at this time January of 2014 where
19 were you working?

20 A. At Amazon.

21 Q. Let me show you State's number 47. Do you recognize
22 that person?

23 A. Yes, sir.

24 Q. Who is that?

25 A. Kewon.

1 Q. What relation to Kewon are you?

2 A. That's by best friend.

3 Q. Are you also related by blood?

4 A. No, sir.

5 Q. Best friend. Do you know his full name?

6 A. Yes, sir.

7 Q. What's his full name?

8 A. Alexander Kewon Clemmons.

9 MR. GRAHAM: Your Honor, I'm going to ask the
10 witness to write the full name across on State's 47.

11 MR. MAULDIN: I don't object to that, Your Honor.

12 THE COURT: All right. You have no objection or you
13 do object?

14 MR. MAULDIN: No, I don't object.

15 THE COURT: Okay.

16 BY THE WITNESS:

17 A. (Witness complies.)

18 BY MR. GRAHAM:

19 Q. Did he have any nicknames?

20 A. Yes, sir.

21 Q. What was his nickname?

22 A. Kewon, Smoke and Chuck.

23 Q. Kewon, Smoke and Chuck. He's your best friend. How
24 long had you all been friends?

25 A. Since we was little boys.

1 Q. State's 55, do you recognize that person?

2 A. Yes, sir.

3 Q. Who is that?

4 A. Carlisle.

5 Q. What relationship is Carlisle to you?

6 A. He's my cousin.

7 Q. You call him uncle?

8 A. Yes, sir.

9 Q. Kewon's picture that you looked at, the night of the
10 23rd and the morning of the 24th, what kind of hair did he
11 have at that time?

12 A. He had the low haircut as the picture looks.

13 Q. How about Carlisle, your uncle?

14 A. Yes. Also a low haircut.

15 Q. Does Carlisle have any other nicknames that you know
16 of?

17 A. They call him Birdman also.

18 Q. State's number 56, that's you?

19 A. Yes, sir.

20 Q. Is that how you looked that night?

21 A. Yes, sir.

22 Q. Low hair like you've got today?

23 A. Low hair, yes.

24 Q. How about your nicknames?

25 A. Pat. That's it.

1 Q. State's number 57, do you recognize Iquawn?

2 A. Yes, sir.

3 Q. What's your relationship to Iquawn?

4 A. Just neighborhood friend.

5 Q. Do you normally hang out with him?

6 A. From time to time.

7 Q. Is that how he looked that night?

8 A. Yes, sir.

9 Q. How about nicknames for him?

10 A. Iquawn, Rooster or Iq.

11 Q. State's number 62, do you recognize that?

12 A. Yes, sir.

13 Q. Who is that?

14 A. That's Raph.

15 Q. Do you see him in the courtroom today?

16 A. Yes, sir.

17 Q. Where is he?

18 A. Sitting over there (indicating.)

19 Q. You called him -- What was his nickname? What are
20 the nicknames he goes by?

21 A. Los, Polo or just Raph.

22 Q. You're saying Raph. Where does the Raph come
23 from?

24 A. From his name, Raphael.

25 Q. Raphael?

1 A. Yes.

2 Q. Have you ever heard him called Ralf?

3 A. No.. No, sir.

4 Q. And is that the way he looked that night?

5 A. Yes, sir.

6 Q. I'm going to get you to write his other nicknames on
7 there, Polo and Los.

8 A. (Witness complies.)

9 Q. Do you know where those names come from?

10 A. No, sir.

11 Q. Earlier the evening of the 23rd, you, your best
12 friend Kewon, Iquawn and Raphael were all together where?

13 A. At Kewon uncle house Kenny.

14 Q. At some point did Carlisle come up?

15 A. No. Not --

16 Q. Not there?

17 A. No. No, sir.

18 Q. At some point before -- You did meet up with
19 Carlisle at some point, right?

20 A. Yes, sir.

21 Q. Prior to meeting up with Carlisle, did any of the
22 people you were with show you any handguns?

23 A. Yes, sir.

24 Q. Who showed you a handgun?

25 A. Raph.

1 Q. Are talking about the defendant sitting over
2 there?

3 A. Yes, sir.

4 Q. What did he show you?

5 A. It was a black handgun. A revolver.

6 Q. Why did he show it to you?

7 A. He said just in case we have any problems.

8 Q. Let me show you State's number 48 and ask if you
9 recognize that?

10 A. Yes, sir.

11 Q. Is that the gun that he showed you?

12 A. Yes, sir.

13 Q. Tell me how Carlisle met up with you all?

14 A. Well, we went to Freddie's house in Williston.

15 Carlisle called me and asked what we had. What we was doing.

16 I told him we was over there, but he wasn't sure if was going

17 to come over but he decided to and that's when I met up with

18 him.

19 Q. Once the five of you all got together, what was your
20 plan?

21 A. My plan was to go home. I had to work the next
22 morning.

23 Q. Where did you live at the time?

24 A. In Chapel Hill which is North, South Carolina.

25 Q. You were at Williston at the time the five of you

1 met up?

2 A. Yes, sir.

3 Q. How far is Williston from Chapel Hill?

4 A. 25 to 30 minutes.

5 Q. Is that the way it worked out?

6 A. Yes, sir.

7 Q. Now, is that the way you worked it out that you got
8 to go home right then?

9 A. No, sir.

10 Q. Why not?

11 A. Carlisle decided to take Kewon out because his
12 birthday was coming up.

13 Q. Where did you all end up going?

14 A. To a place called The Rock.

15 Q. Had you ever been there before?

16 A. No, sir.

17 Q. Did you have any guns on you?

18 A. No, sir.

19 Q. At that time did you know of anybody else other than
20 Raph that had one?

21 A. No, sir.

22 Q. When you're traveling in the car from Williston to
23 that bar, how was everybody seated?

24 A. Carlisle was the driver. Iquawn in the front
25 passenger seat. Raph is behind Carlisle. Kewon is in the

1 middle, and I'm behind Iquawn.

2 Q. Of the five of you, who is the only person that had
3 dreads?

4 A. Raph.

5 Q. How tall are you?

6 A. Five five.

7 Q. Is Raph taller or shorter than you?

8 A. He's taller.

9 Q. How much taller?

10 A. Maybe five or six inches.

11 Q. Is he bigger or smaller than you?

12 A. Bigger.

13 Q. How much?

14 A. Maybe 80 pound.

15 Q. How about Kewon, was he taller or shorter than
16 you?

17 A. Taller.

18 Q. How much taller?

19 A. Three to four inches.

20 Q. Was he heavier or skinnier than you?

21 A. He was heavy.

22 Q. When you compare Kewon to Los, who is taller?

23 A. Raph.

24 Q. Who is heavier?

25 A. Raph.

1 Q. Is it a big difference?

2 A. In weight wise.

3 Q. Weight wise?

4 A. Yes, sir.

5 Q. What happens when you get to the bar?

6 A. We get to the bar. We go in. I sit at the table.

7 As soon as you come into the door there is a table set off to
8 the side by the jukebox. I'm sitting to that table.

9 Carlisle is talking to his former associates at work. Iquawn
10 goes to the second pool table and Raph and Kewon is standing
11 back by the bathroom in the corner.

12 Q. How long do you think you stayed there?

13 A. Maybe a hour.

14 Q. Are you drinking?

15 A. No, sir.

16 Q. Anything unusual happen that you know inside?

17 A. No, sir. Everyone just shooting pool, just drinking
18 and just standing around most of the time. But then I
19 noticed Raph is gone. He went out of the bar maybe two
20 times.

21 Q. Do you know who he went out with?

22 A. No, sir.

23 Q. Did he go out by himself?

24 A. At the time I seen him he went out by his self.

25 Q. How about you. Did you go outside?

1 A. No, sir.

2 Q. What were you doing in the bar?

3 A. I sat at the bar the whole time. When I'm saying
4 the bar, at that table that I sat at coming in, I was at that
5 table by myself the whole time.

6 Q. Did you have to work the next morning?

7 A. Yes, sir.

8 Q. How about your uncle Carlisle, what was he doing in
9 there?

10 A. He was talking to former workers. I guess the guys
11 he works with, a few of them. But he was just standing up
12 the whole time also.

13 Q. How about Iquawn, what was he doing in there?

14 A. He was shooting pool at the second table with a
15 couple.

16 Q. Raphael, did you see him talking to anybody
17 inside?

18 A. No, sir.

19 Q. And then your best friend Kewon, what was he
20 doing?

21 A. He was standing back there by the bathroom in the
22 corner just standing up.

23 Q. Now, were you awake the whole time you were in the
24 bar?

25 A. No, sir.

1 Q. What were you doing?

2 A. I had a -- I was smoking at the table by myself and
3 then I kept putting my head down.

4 Q. Do you know whether Raphael had a cell phone?

5 A. No, sir.

6 Q. How about Kewon?

7 A. No, sir. The last one I know he had was I think he
8 get it from like the food stamp place.

9 Q. Let me show you some pictures of clothes and ask you
10 if you recognize any of them. State's number 43?

11 A. No, sir.

12 Q. Never seen it before?

13 A. No, sir.

14 Q. Did you see anybody wearing it that night?

15 A. No, sir.

16 Q. Did you see anybody with a green puffy jacket on?

17 A. No, sir.

18 Q. State's 44, do you recognize that?

19 A. Yes, sir.

20 Q. Whose jacket is that?

21 A. That's my best friend Kewon's jacket.

22 Q. Do you know whether Kewon was wearing it that
23 night?

24 A. I'm not sure.

25 Q. State's 42 is a photograph of a knit hat. Do you

1 recognize that?

2 A. Yes, sir.

3 Q. Whose hat is that?

4 A. That's Kewon's hat also.

5 Q. Do you know whether he was wearing it that night?

6 A. I'm not sure.

7 Q. State's 41?

8 A. Yes, sir.

9 Q. Do you recognize that hat?

10 A. Yes, sir.

11 Q. Whose hat is that?

12 A. That's Raph's hat.

13 Q. Do you know if he was wearing it that night?

14 A. I'm not sure.

15 Q. Do you know if anybody was wearing it that night?

16 A. I'm not sure.

17 Q. State's 40, ball cap?

18 A. Yes, sir.

19 Q. Do you recognize that one?

20 A. Yes, sir.

21 Q. Whose hat is that?

22 A. That's Kewon hat.

23 Q. Do you know if he was wearing it that night?

24 A. No, sir. I'm not sure.

25 Q. State's 39, do you recognize that?

1 A. Yes, sir.

2 Q. Whose jacket is that?

3 A. That's Raph's jacket.

4 Q. Do you know whether he was wearing it that night?

5 A. I'm not sure.

6 Q. State's 19, have you ever seen that jacket before?

7 A. No, sir.

8 Q. Do you remember what you were wearing that night?

9 A. Yes, sir.

10 Q. What were you wearing?

11 A. I had on a black hoodie with a white T-shirt and
12 some jeans and some black shoes.

13 Q. Do you remember what color the jeans were?

14 A. No, sir.

15 Q. So a black hoodie?

16 A. Yes, sir.

17 Q. With a T-shirt?

18 A. Yes, sir.

19 Q. Jeans and black shoes?

20 A. Yes, sir.

21 Q. How much do you weigh?

22 A. Maybe 140.

23 Q. So of the five people, of you and everybody else,
24 who weighs the least?

25 A. Me. I'm the smallest.

1 Q. You're the shortest and the smallest?

2 A. Yes, sir.

3 Q. Let me show you State's number 49 which is a picture
4 of a pair of jeans. Does that picture mean anything to
5 you?

6 A. No, sir.

7 Q. State's number 50 is a black T-shirt. Does that
8 mean anything to you?

9 A. No, sir.

10 Q. What, if anything, did you know at that time about
11 Kewon having a .25 caliber semi automatic on him?

12 A. I didn't know anything about it.

13 Q. Did you even know that he had gun like that?

14 A. No, sir.

15 Q. State's number 52 is a pair of jeans with a green
16 and white and a black looking design. Do you recognize
17 those?

18 A. Yes, sir.

19 Q. Whose are those?

20 A. Those are Kewon's pants.

21 Q. Do you know whether he was wearing them that
22 night?

23 A. Not sure.

24 Q. What is it about them that makes you know they're
25 Kewon's?

1 A. Because I had seen him with them on. Like when he
2 dressed, he dressed head to toe.

3 Q. He dressed what?

4 A. He dressed head to toe.

5 Q. Head to toe?

6 A. Yes, sir.

7 Q. Let me show you some pictures of shirts in State's
8 51 and ask you if you recognize any of those shirts?

9 A. Yes, sir.

10 Q. Which one do you recognize?

11 A. The black Tapout shirt and the green shirt.

12 Q. So the middle shirt, the black Tapout and the green
13 shirt, that's the striped one?

14 A. Yes, sir.

15 Q. Whose shirts are those?

16 A. Those belong to Kewon.

17 Q. Do you know whether Kewon was wearing them that
18 night?

19 A. No, sir. I'm not sure.

20 Q. When you said earlier he was dressed head to toe,
21 what did you mean?

22 A. As far as in if he have on a red and black hat, for
23 example, his shirt might have red and black and his pants
24 might have red and black and his shoes also.

25 Q. He was color coordinated?

1 A. Yes, sir.

2 Q. What happened when it was time for you all to leave
3 the bar?

4 A. Carlisle came and asked me was you ready to go. I
5 said yeah. I went. We loaded up. Well, I went to the car
6 first and I got in. I got in the back seat. I dozed my head
7 off on the window and everybody is getting in, and Raph was
8 talking to someone but I'm not sure. He was leaning in the
9 car, and then - but I was sleeping and everything. So
10 Carlisle said I'm about to leave you. He's backing out and
11 then all of a sudden a boom hit the back of the car on the
12 driver's side and that's when I woke up and I seen Raphael
13 was tussling with someone and they got each other by the
14 shirts or whatever, and then he gets in the car. Once he
15 gets in the car, he's like he's putting something in his
16 pants and he has a blue bag.

17 Q. Did you actually see him with him a gun at that
18 time?

19 A. No, sir.

20 Q. You say -- You're making motions while you were
21 testifying. What are you talking about?

22 A. Like he - when he's getting in the car, he's putting
23 something under his shirt in this pants, but the bag is over,
24 you know.

25 Q. All right. Let me show you State's 24. Do you

1 recognize that?

2 A. That's the blue bag.

3 Q. So you heard a boom and saw them tussling?

4 A. Yes, sir.

5 Q. And that's Raph?

6 A. Yes, sir.

7 Q. Who is he tussling with?

8 A. This guy right here (indicating.)

9 Q. You recognize him?

10 A. No, sir.

11 Q. Okay. So the person that night, that morning, what
12 do you remember? Who was he tussling with? Was he white or
13 black?

14 A. He was a white guy.

15 Q. Did you know him?

16 A. No, sir.

17 Q. When you say tussling, what were they doing?

18 A. They had grabbed each other and like the bag is
19 between them so they're like reaching at each other, but they
20 got each other like grabbing each other by the shirt.

21 Q. Did you see Raph pull out a gun at that time?

22 A. No, sir.

23 Q. How did the tussling stop?

24 A. I'm not -- I know that this guy right here, he had
25 his hands up like this (indicating.)

1 Q. So after he put his hands up like that, you don't
2 know why he put his hands up?

3 A. No, sir.

4 Q. And then what did Raph do next?

5 A. He's coming back to the car. When he gets in, like
6 when he's going into the car, he's putting something under
7 his shirt and he has the blue bag.

8 Q. Everybody else is already in the car?

9 A. Yes, sir.

10 Q. Looking at State's number 58, is that where
11 everybody was sitting when you all left the club?

12 A. Yes, sir.

13 Q. So which door did Raph come in?

14 A. Behind the driver door. The driver passenger
15 door.

16 Q. Going from low hair to shoulder length dreadlocks,
17 how long does that take to grow out?

18 A. Maybe two to three years.

19 Q. So it takes a while?

20 A. Yes, sir.

21 Q. When Raphael gets back into the car making that
22 motion where he's putting something in his waist and holding
23 that bag in the other hand, what happens?

24 A. Carlisle basically he went off there cussing and
25 he's cussing and basically kind of like arguing and he said I

1 should have left. I said this your car. You do what
2 you want.

3 Q. Was Carlisle happy or mad?

4 A. He was mad.

5 Q. How mad?

6 A. He was basically cursing.

7 Q. At who?

8 A. At Raph.

9 Q. What was Iquawn doing during that time?

10 A. He was just sitting in the front seat.

11 Q. What were you doing?

12 A. Nothing. Sitting in the back seat where I was.

13 Q. How about Kewon?

14 A. He was in the middle also just basically, you know,
15 we know why Carlisle is mad.

16 Q. When Carlisle was cussing at Raphael, did Raphael
17 say anything back?

18 A. No, sir. I'm not sure.

19 Q. Where did you all go from there?

20 A. We stopped -- Carlisle, once we coming up -- Well,
21 we were heading back home now as far as I know, but Carlisle
22 stopped. He asked me did I still want to stop and get
23 something to eat. I told him yeah. So we stopped to the
24 local Pilot.

25 Q. Who went into the store?

1 A. Me, Carlisle and Iquawn went in.

2 Q. And it's a Pilot Gas Station. Is there a food place
3 there?

4 A. Yes. Wendy's.

5 Q. Did you get something to eat?

6 A. Yes, sir.

7 Q. And Carlisle and Iquawn as well?

8 A. Yes, sir.

9 Q. When you got back into the car, how was everybody
10 seated again?

11 A. The same way we came from Williston to The Rock and
12 the same way we headed back.

13 Q. Where did you all go when you left?

14 A. We were headed home.

15 Q. Back to the Chapel Hill area?

16 A. Back to the Chapel Hill area.

17 Q. Anybody say anything about a robbery as you were
18 going down the road?

19 A. No, sir. Everybody is quiet at this time.

20 Q. At some point you all get pulled over by a
21 trooper?

22 A. Yes, sir.

23 Q. Tell me what happens?

24 A. Well, we get pulled over. When he pulls us over, he
25 basically was on the walkie, you know, telling us how he was

1 gonna - say he had like his gun drawn. He will shoot. He
2 ordered Carlisle, the driver, to get out first, and then
3 Iquawn to get out, and then I was next and then after that
4 the car pulled off.

5 Q. So the trooper pulled you out one at a time?

6 A. Yes, sir.

7 Q. First Carlisle?

8 A. First Carlisle.

9 Q. Do you remember whether Carlisle was wearing a
10 jacket?

11 A. No, sir. I'm not sure.

12 Q. So he goes back and the four of you are still in the
13 car, right?

14 A. Yes, sir.

15 Q. What are people talking about?

16 A. Nobody really saying anything.

17 Q. Then who gets out next?

18 A. Iquawn.

19 Q. Do you remember if Iquawn had a jacket?

20 A. I'm not sure.

21 Q. He got pulled out and went back?

22 A. Yes, sir.

23 Q. Anybody talking about anything while that happens?

24 A. No, sir.

25 Q. Did you see any guns in the car at that time?

1 A. No, sir. Just the one that I was shown earlier.

2 Q. But did you see it at that time?

3 A. I didn't see it.

4 Q. And then who gets pulled out next?

5 A. I'm pulled out next.

6 Q. Okay. And you're coming from the back passenger
7 side, right?

8 A. Yes, sir.

9 Q. Are you wearing a jacket?

10 A. No, sir. I'm wearing a black hoodie.

11 Q. So as you're going back, what does the officer tell
12 you to do as far as your clothes?

13 A. As far as my clothes? He tell me to get out. Take
14 off my top layer of clothing, did that and I was told to hold
15 my hands up and back up slowly all the way to the officer.

16 Q. You did that?

17 A. Yes, sir.

18 Q. And you got handcuffed?

19 A. Yes, sir.

20 Q. So after the three of you are handcuffed, who is
21 still in the car?

22 A. Raphael and Kewon.

23 Q. Did you know that the car was going to go driving
24 off?

25 A. No, sir.

1 Q. What's the next thing that happens when you're back
2 there?

3 A. As I'm backing up, the cop as he's putting the
4 handcuffs on me, the car sped off and then he ordered me to
5 kneel down on the ground as Carlisle and Iquawn was.

6 Q. Did you give a statement to the police that morning
7 on the 24th?

8 A. Yes, sir.

9 Q. What did you tell them?

10 A. I told them I was asleep, which I was, but I didn't
11 know anything about what happened or what was going on.

12 Q. Was that the truth or a lie when you told them
13 that?

14 A. It was a lie.

15 Q. Why did you tell them you didn't know anything?

16 A. Because my mother is associated with the defendant's
17 uncle and that put me in the middle of either way it goes
18 somebody is going to be mad with me and I was trying to
19 protect her and protect my friend because I wasn't sure why
20 he stayed in the car.

21 Q. What you're testifying to today, is that the
22 truth?

23 A. Definitely the truth.

24 Q. Why are you telling the truth now?

25 A. Because I've had a son and I've changed and I don't

1 want him growing up telling lies and it was on my conscious,
2 you know, to tell the truth. My best friend lost his life
3 that night or that morning.

4 Q. When you came in to talk to me, I told you that we
5 had no intentions of bringing charges against you; is that
6 correct?

7 A. Yes, sir.

8 Q. Who's the one of you five that robbed that man that
9 night?

10 A. Raphael.

11 Q. It wasn't Carlisle?

12 A. No, sir.

13 Q. It wasn't Iquawn?

14 A. No, sir.

15 Q. It wasn't your best friend?

16 A. Definitely not.

17 Q. Was it you?

18 A. No, sir.

19 Q. You didn't rob that man?

20 A. No, sir.

21 Q. Who had the gun?

22 A. Raph.

23 Q. Who robbed that man?

24 A. Raph.

25 MR. GRAHAM: Thank you, Patrick. Please answer any

1 questions they may have for you.

2 CROSS EXAMINATION

3 BY MR. MAULDIN:

4 Q. So you're saying that you lied on the night of the
5 incident; is that correct?

6 A. Yes, sir.

7 Q. So you're admitting that you're a liar?

8 A. I'm not a liar.

9 Q. If you tell a lie, you're a liar, aren't you?

10 A. No, sir.

11 Q. No? Now, you all left Williston and you thought you
12 were going to go home; is that right?

13 A. Yes, sir.

14 Q. And you fell asleep in the car and when you woke up,
15 you were at the bar?

16 A. Yes, sir.

17 Q. You had no idea you were going there?

18 A. No, sir.

19 Q. As far as you knew that wasn't the plan. The plan
20 was to go home?

21 A. That's what I think. We was going home, sir.

22 Q. And that's a bar that Carlisle visits; is that
23 right?

24 A. Yes, sir.

25 Q. Now, the first time you noticed this blue bag was

1 after you got out of the Pilot, wasn't it?

2 A. No, sir.

3 Q. Do you remember talking to Investigator Kyle Taylor
4 on May 20th of last year?

5 A. Yes, sir.

6 Q. Do you remember signing a statement?

7 A. Yes, sir.

8 Q. And didn't that statement say the first time you
9 noticed the bag was after you got out of the Pilot?

10 A. I'm not sure.

11 MR. GRAHAM: Your Honor, I'm going to object at this
12 time. He's asking him questions. He said that he
13 signed a statement, but he hasn't shown the statement to
14 the witness.

15 MR. MAULDIN: I was getting ready to do that, Your
16 Honor.

17 THE COURT: All right.

18 BY MR. MAULDIN:

19 Q. Would looking at it refresh your recollection?

20 A. Yes, sir.

21 Q. (Proffering.) And in that statement you said that
22 when you got to the Pilot, that's when you saw the blue bag
23 in the car; is that right?

24 A. Yes, sir.

25 Q. Is that a lie, too?

1 A. No, sir.

2 Q. So the first time you saw that bag was after you got
3 out of the Pilot?

4 A. That's the first time -- The first time I saw the
5 blue bag was when we left The Rock.

6 Q. But that statement says that you noticed it when you
7 got out of the Pilot?

8 A. Yes, sir. Like I said, I lied because my mother is
9 involved with that family so I was coming to like, you know,
10 trying to protect her just in case I knew this thing was
11 gonna blow up basically.

12 Q. And your story didn't change until the Solicitors
13 talked to you earlier this month; is that right?

14 A. That's when I decided myself to tell the truth. I
15 came in myself.

16 Q. And they talked to you and they reassured you that
17 they weren't going to charge you with anything; is that
18 right?

19 A. Yes, sir.

20 MR. MAULDIN: No further questions, Your Honor.

21 THE COURT: Anything further for this witness?

22 REDIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. When you came in and spoke with me, at that time the
25 only thing that you had told the police was that you were

1 asleep, right?

2 A. I was asleep, yes, sir.

3 Q. If you would have stuck with that story, do you
4 think you would be testifying today?

5 A. No, sir.

6 Q. Was it an easy thing to come in here today and
7 testify --

8 A. Definitely not.

9 Q. -- and point the finger at somebody you knew?

10 A. No, sir.

11 Q. The easier thing would have been to say you were
12 asleep?

13 A. Yes, sir.

14 Q. And you knew when you came in to speak to me that
15 regardless of what you said, you weren't going to be charged
16 with anything; is that right?

17 A. Yes, sir.

18 Q. You could have said that you robbed somebody and you
19 weren't going to get charged, were you?

20 A. No, sir.

21 MR. GRAHAM: Thank you, Pat.

22 THE COURT: All right. Thank you very much, sir.
23 You may step down.

24 MR. GRAHAM: Your Honor, if we could take a short
25 break and talk about the rest of our case?

1 THE COURT: All right, sir. Ladies and gentlemen,
2 let me get you to step back to the jury room. Have no
3 conversation about the case and we'll get started
4 back.

5 (The jury goes into the jury room.)

6 THE COURT: All right. Let's take a few minutes.

7 (Short break.)

8 THE COURT: Back on the record. All right.

9 Gentlemen, does the State have any additional witnesses?

10 MR. GRAHAM: No, Your Honor.

11 THE COURT: All right. So the State will be resting
12 when the jury comes back out?

13 MR. GRAHAM: Yes, sir.

14 THE COURT: All right. So before the jury comes
15 back out, if the State is going to rest, while the jury
16 is out let's take up any motions at the close of the
17 State's case so we can proceed before the jury comes
18 out, okay?

19 MR. MAULDIN: Thank you, Your Honor. At this time
20 on behalf of Mr. Pontoo I move for a directed verdict on
21 both charges taking my prior objections and motions
22 along with the evidence that's been presented by the
23 State that there hasn't been a sufficient case to
24 present to the trier of fact for the charges of armed
25 robbery and failure to stop for blue light resulting in

1 death.

2 THE COURT: All right. Thank, Mr. Mauldin. I'm
3 going to respectfully deny that. I think it's a factual
4 issue based on the evidence that's been presented as to
5 what the jury would believe and I think it's an issue
6 for the jury to decide. Anything further?

7 MR. MAULDIN: No, Your Honor.

8 THE COURT: All right. Have you talked with Mr.
9 Pontoo about what the defense either intends to do or
10 not do as far as the case?

11 MR. MAULDIN: Yes, Your Honor. I have discussed
12 with him his right to testify and not to testify and
13 it's my understanding that he intends to testify.

14 THE COURT: Mr. Pontoo, let me address that with you
15 at this point, sir. Please stand. Place him under
16 oath, please.

17 Thereupon,

18 RAPHAEL LAMARR PONTOO

19 after having been first duly sworn, testified as follows,

20 THE COURT: Mr. Pontoo, a person who is charged with
21 a criminal offense has a Constitutional right to remain
22 silent. They also have a Constitutional right to
23 testify or to put up a case. Now, before I go any
24 further with Mr. Pontoo, is there any prior history that
25 might be the subject of any impeachment?

1 MR. GRAHAM: He has a 2007 juvenile adjudication,
2 Your Honor, for assault of a high and aggravated nature.
3 So if Your Honor admitted it, it would be subject to the
4 balancing test about the probative value outweighing any
5 prejudicial effect.

6 THE COURT: What year was that?

7 MR. GRAHAM: I believe it was in 2007 so seven years
8 ago now.

9 THE COURT: Do you have a position on that, Mr.
10 Mauldin?

11 MR. MAULDIN: Your Honor, our position would be that
12 the assault of a high aggravated nature, that that crime
13 is not necessarily indicative of dishonesty as far as
14 affecting somebody's credibility and we think that the
15 prejudice of admitting it especially as a juvenile
16 conviction - or it's not a juvenile conviction but far
17 outweighs the probative value.

18 THE COURT: Do you wish to be heard further on that?

19 MR. GRAHAM: I agree. It's not indicative of
20 credibility. It does meet the statutory requirements.
21 It's over a year. Carried a potential of over a year
22 for that charge. It's not what he's charged with today
23 so I don't think there is a prejudicial effect on that.
24 And I would understand if it was an armed robbery and
25 he's being tried for an armed robbery or something like

1 that.

2 THE COURT: All right. I don't think -- I would not
3 allow that. I don't think that it would be appropriate
4 to -- I don't think it's necessarily fair for the jury
5 to consider in a determination of guilt or innocence in
6 this matter.

7 All right. Mr. Pontoo, going back to your right to
8 testify or not testify, a person has a Constitutional
9 right to remain silent. Do you understand that, sir?

10 MR. PONTOO: Yes, sir.

11 THE COURT: Okay. You have talked with Mr. Mauldin
12 about this; is that correct?

13 MR. PONTOO: Yes, sir.

14 THE COURT: Okay.

15 MR. PONTOO: May I have like two or three more
16 minutes to talk to him?

17 THE COURT: Yes. Go ahead.

18 (Defendant conversing with his counsel.)

19 THE COURT: Mr. Mauldin, you all may want to
20 consider, as far as the ruling on the prior history, I
21 was looking at the older rule, the old rule where it
22 made a differentiation between the accused and a
23 witness, but the current rule in South Carolina says
24 that evidence of juvenile adjudication is admissible
25 under this rule if the conviction of the crime would be

1 admissible to attack the credibility of an adult. So
2 I'm changing my ruling. I think it would be subject to
3 impeachment.

4 MR. MAULDIN: So my understanding of your ruling is
5 that the probative value outweighs the prejudice?

6 THE COURT: I think -- I don't -- Yeah. I think it
7 does, in fact, would be appropriate so, and the reason I
8 said you may want to step back and talk because you may
9 need to talk further with Mr. Pontoo about that. Off
10 the record.

11 (Short recess.)

12 THE COURT: Back on the record. All right. Mr.
13 Pontoo.

14 MR. PONTOO: Yes, sir.

15 THE COURT: Have you had enough time to talk with
16 Mr. Mauldin about whatever it was that you needed to
17 speak with him about?

18 MR. PONTOO: Yes, sir.

19 THE COURT: All right, sir. Now, going back to your
20 decision as to whether or not to testify, it's been
21 conveyed to the Court that you do intend to testify; is
22 that correct, sir?

23 MR. PONTOO: Yes, sir.

24 THE COURT: All right. And I'll address that in
25 just a moment, but let me just address the other side of

1 that coin first. A person has a right to remain silent
2 or to not testify and that is a right that you have
3 under the Constitution. In other words, you don't have
4 to prove anything in a case where you are accused of
5 committing a criminal offense. The burden of proof is
6 always on the State and so because you have the right to
7 remain silent and not produce or not have to prove
8 anything, if you chose to do that, I would instruct the
9 jury when I gave them the instructions on the law that
10 the State has the burden of proof in this case and in
11 all criminal cases and that you don't have to prove
12 anything and so the fact that you chose to remain silent
13 is an exercise of that Constitutional right and that the
14 jury cannot consider that at all in their discussions or
15 their deliberations as to your guilt or innocence
16 because it's not appropriate. I would instruct them
17 that the fact that you chose to remain silent could not
18 be discussed in the jury room at all. They're not to
19 consider that. They're only to consider whether or not
20 the State has carried their burden of proof.

21 Now, you do also have the right to testify. You
22 have indicated that at this point you intend to do so.
23 You understand though that if you testify, that you
24 would obviously answer questions posed by Mr. Mauldin,
25 but you would also be required to answer any questions

1 that the State's attorneys would ask you. Do you
2 understand that, sir?

3 MR. PONTTOO: Yes, sir.

4 THE COURT: Okay. Now, it is my understanding that
5 there was a conviction or assault and battery of a high
6 and aggravated nature?

7 MR. GRAHAM: It was an adjudication. It reflects on
8 here, Your Honor, it says assault; assault of a
9 high/aggravated nature. I think it's assault of a high
10 and aggravated nature.

11 THE COURT: All right. That was back in 2007?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: Mr. Pontoo, I don't know if Mr. Mauldin
14 would choose to bring that out or if the State would
15 choose to bring that out, but you understand that they
16 would be allowed to ask you if you had been convicted of
17 that offense. Do you understand that?

18 MR. PONTTOO: Yes, sir.

19 THE COURT: Now, I would not allow them to go into
20 any details. They're not allowed to go into any
21 sentencing. They're not allowed to go into any further
22 questioning about it. They would only be allowed to ask
23 as to whether or not you were, in fact, convicted of
24 that offense and that's the extent of the questioning as
25 far as that goes. Do you understand that?

1 MR. PONTOO: Yes, sir.

2 THE COURT: Okay. Now, understanding all of these
3 things, is it still your intent to testify?

4 MR. PONTOO: Yes, sir.

5 THE COURT: I'm sorry.

6 MR. PONTOO: Yes, sir.

7 THE COURT: Okay. Now, that decision that you have
8 made to testify, has that been your decision, sir?

9 MR. PONTOO: Yes, sir.

10 THE COURT: Has anybody forced you or threatened you
11 or coerced you or made you make that decision?

12 MR. PONTOO: No, sir.

13 THE COURT: All right. Is that a decision that you
14 have made after talking with your attorney and talking
15 with anyone else that you need to discuss it with, is
16 that a decision that you have made of your own free
17 will, sir?

18 MR. PONTOO: Yes, sir.

19 THE COURT: All right, sir. And I would certainly
20 respect that decision and we'll certainly proceed in
21 that fashion. Anything else we need to take up before
22 we bring the jury back out?

23 MR. GRAHAM: Not from the State.

24 THE COURT: Anything further, Mr. Mauldin?

25 MR. MAULDIN: No, Your Honor.

1 THE COURT: All right. Let's bring the jury out.

2 (The jury returns to the courtroom.)

3 THE COURT: Back on the record. Ladies and
4 gentlemen, thank you for the courtesy. If the State
5 will call it's next witness.

6 MR. GRAHAM: The State rests, Your Honor.

7 THE COURT: All right. Thank you very much, Mr.
8 Graham. Folks, the reason that break took a little bit
9 longer than anticipated was Mr. Graham was kind enough
10 to let the Court know during the break that they
11 evaluated their case, that they have reviewed it and
12 that all the evidence they intend to present they have
13 presented and that they would be resting and I
14 appreciate that. Because of that reason by law once the
15 State has rested their case, I'm required to take up
16 matters of law before we proceed any further. So if we
17 would have waited until you came out here now and then I
18 recognized the State and they stood up and said the
19 State rests, then I would have had to turn around and
20 send you all back out and take up these matters of law,
21 but because he gave me the heads up that the State would
22 be resting, I went ahead and took up those matters of
23 law while you were out. So we have done that and so now
24 we're ready to proceed with the case and so we recognize
25 Mr. Mauldin on behalf of the defense.

1 MR. MAULDIN: Thank you, Your Honor. The defense
2 would call Raphael Pontoo.

3 Thereupon,

4 RAPHAEL LAMARR PONTOO

5 after having been first duly sworn, testified as follows,

6 THE CLERK: Please have a seat and state your full
7 name for the record spelling your last name.

8 THE WITNESS: Raphaël Lamarr Pontoo, P-o-n-t-o-o.

9 DIRECT EXAMINATION

10 BY MR. MAULDIN:

11 Q. Raphael, how old are you?

12 A. I'm 21 years old.

13 Q. How do you know Alexander Kewon Clemmons?

14 A. From childhood growing up.

15 Q. And how do you know him?

16 A. Friend of the family.

17 Q. How long have you known him?

18 A. Couple years.

19 Q. And how do you know Carlisle Jones?

20 A. Uhm, from my childhood also.

21 Q. And Patrick Johnson, how do you know him?

22 A. He's my cousin.

23 Q. And Iquawn Jones, how do you know him?

24 A. He's my cousin.

25 Q. Now, January 24th of last year, how did you end up

1 at the bar in West Columbia?

2 A. With Carlisle Jones.

3 Q. How did you get there?

4 A. With Carlisle's car.

5 Q. Okay. Did he drive?

6 A. Yes, sir.

7 Q. Where was it your understanding that you were going
8 to go?

9 A. To Chapel Hill.

10 Q. So it was your understanding you were going back
11 home?

12 A. Yes, sir.

13 Q. When you got to the bar, what did you do?

14 A. I got to the bar, I went in and was sitting at the
15 table.

16 Q. What table are you talking about?

17 A. The same table that Patrick said he was sitting
18 at.

19 Q. Who were you hanging out with at the bar?

20 A. I was by myself and Patrick and me was sitting at
21 the table by ourselves at first.

22 Q. At any point in time did you notice Mr. Ruple, the
23 white fellow?

24 A. Yes, sir. He was speaking with Mr. Clemmons.

25 Q. Where was that happening?

1 A. Uhm, in the corner by the bar.

2 Q. And what did you do when you saw that?

3 A. I seen Mr. - the white guy give Mr. Clemmons a
4 cigarette. I walked up and asked to buy one.

5 Q. Did you get one off of him?

6 A. Yes, sir.

7 Q. Did Carlisle say anything about the white guy while
8 you were standing at the bar?

9 A. He stated nothing about the white guy.

10 Q. What happened after you got the cigarette?

11 A. Patrick walked over and Carlisle walked over, too,
12 standing right there speaking with the guy and then we left
13 from right there and went our separate ways and the white guy
14 went outside and said he was leaving. He went outside and
15 said he was leaving.

16 Q. Now, did anybody have guns that night?

17 A. Yes, sir.

18 Q. Who had guns?

19 A. The beginning of the night Patrick had a .25.

20 Q. Is that the .25 with the pearl handles?

21 A. Yes, sir.

22 Q. That's Patrick Johnson you said had that?

23 A. Yes, sir.

24 Q. Who ended up with that gun?

25 A. When we went outside Alexander.

1 Q. So Alexander ended up with that gun?

2 A. Yes, sir.

3 Q. Now, on the way to the bar in West Columbia did you
4 all stop anywhere first?

5 A. We stopped at the Little Crockett (phonetic) in
6 Wagener.

7 Q. What did you do there?

8 A. Me and Iquawn went in and bought a case of beer.

9 Q. Where was that case of beer kept?

10 A. In the trunk of the vehicle.

11 Q. At any time over the night at the bar did you go out
12 to the vehicle for the beer?

13 A. Yes, sir.

14 Q. What happened when that happened?

15 A. We stepped outside. Me and Alexander opened the
16 door of the bar and as soon as we opened the door, we was
17 going to get a beer, we noticed a red dot pointed directly at
18 us, a laser.

19 Q. What did you make of that?

20 A. That somebody was pointing a gun. We stepped back
21 and Alexander reached for his gun. We walked where the car
22 was and they was parked right beside us.

23 Q. When you say "they", who do you mean?

24 A. The white guy.

25 Q. Was anybody else with him?

1 A. Another white guy.

2 Q. What happened next?

3 A. We was standing right beside each other because the
4 car was right beside each other side by side. We went in the
5 trunk and that's when Alexander went over there looking at
6 the gun. He showed him the gun. That's when all the guns
7 were shown to each other.

8 Q. What were you all talking about?

9 A. The white guy was trying to buy the gun, trade the
10 gun for his gun and Alexander kept refusing. He kept trying
11 to trade him. After that, we went back in the bar.

12 Q. After you went back in the bar, what did you do?

13 A. I started playing pool.

14 Q. Who were you playing with?

15 A. A lady from the bar. A female.

16 Q. Did you notice what the other people in your group
17 were doing at that time?

18 A. No, sir.

19 Q. How long do you think you played pool for?

20 A. Like 10. 10 minutes. At the most 20.

21 Q. At some point in time somebody decided to go; is
22 that right?

23 A. Yes, sir.

24 Q. How did that go down?

25 A. Carlisle stated he was ready to go.

1 Q. Okay. What happened after that?

2 A. Carlisle came out the bar. I followed. He was
3 opening the door. When I come out the bar, the two white
4 guys in the parking lot, it sounded like they were arguing.

5 Q. When you say "two white guys", who do you mean?

6 A. The white guy over there, him and his friend and the
7 female.

8 Q. Did you hear what they were arguing about?

9 A. No, sir. I walked past them. They appeared to be
10 arguing, in an altercation.

11 Q. Then what did you do?

12 A. I went to get in the car and got in the car.
13 Carlisle had a movie on.

14 Q. What kind of car was it?

15 A. Grand Marquis.

16 Q. Okay. You said Carlisle had the radio on or
17 something?

18 A. Movie.

19 Q. Was that on the TV in his dashboard?

20 A. Yes, sir.

21 Q. You and Carlisle were in the car. What happened
22 next?

23 A. We were watching the movie and then like a couple
24 minutes later Iquawn came out and got in the front seat and
25 Kewon and Patrick come out, jumped in the back.

1 Q. Did you notice anything after they jumped in?

2 A. There was a bag between both of them after they
3 jumped in.

4 Q. Did you see how they got that bag?

5 A. No, sir.

6 Q. You have no idea how they got that bag?

7 A. No, sir.

8 Q. Then what did you notice?

9 A. I noticed Patrick pull out a nine millimeter that I
10 noticed was the same as the guy, had his gun that he showed
11 me and Alexander outside his car.

12 Q. And was he showing it to everyone in the car?

13 A. He was showing it to everyone. And Carlisle stated
14 since you got that nine, I can get the .25 now.

15 Q. Meaning Patrick's .25?

16 A. Yes, sir.

17 Q. The one with the pearl handles?

18 A. Yes, sir.

19 Q. Now, did you have a gun at any point during that
20 evening?

21 A. I did have a weapon when I showed, when the guns was
22 being showed at the back of the car, but I gave it to
23 Alexander when I started playing pool.

24 Q. Why did you give it to him when you started shooting
25 pool?

1 A. I had it in my pants and it wasn't fitting right.
2 My pants wasn't tight enough to hold nothing.

3 Q. So you didn't want it to drop out while you were
4 shooting pool?

5 A. Yes, sir.

6 Q. Now, after you all left the bar, where did you go?

7 A. To the Pilot.

8 Q. What happened at the Pilot?

9 A. Patrick, Iquawn, Carlisle get out to get something
10 to eat. I stayed in the car smoking a cigarette, and
11 Alexander, he got out and went into the Pilot also.

12 Q. Okay. Then you all left the Pilot?

13 A. Yes, sir. Everyone came into the car and we left
14 the Pilot.

15 Q. What happened some time after you left the Pilot?

16 A. We get stopped by state trooper police on Highway
17 3.

18 Q. Who gets out of the car first?

19 A. Carlisle.

20 Q. Then who got out of the car?

21 A. Iquawn.

22 Q. Then who?

23 A. Then Patrick.

24 Q. What happened after Patrick got out of the car?

25 A. Alexander stated that he wasn't going to jail. That

1 it was his birthday and that he wasn't going to jail at all
2 and he grabbed the nine millimeter, cocked it back and point
3 the gun at me in his hand and demanded that I drive.

4 Q. What did you do?

5 A. I was in fear for my life. So many thoughts going
6 through my head. I didn't know if he was going to kill me
7 right then and there or shoot at the police, having a gun
8 drawn and in the process of a gun fire fight or just go ahead
9 and pull the trigger. So my first instinct was to drive.

10 Q. Do you have any prior knowledge of Kewon that would
11 actually make you have a valid fear that he might do
12 something?

13 A. Yes, sir. I have witnessed like when we go out,
14 Mr. Clemmons go get into it with people, shoot at people,
15 shooting at cars and all type of serious altercation that
16 lead up to him shooting at people and him being a person that
17 will get very aggressive.

18 Q. So based on that what did you do?

19 A. My first instinct was for my life. I drove.

20 Q. You just wanted to get out of there?

21 A. Yes, sir.

22 Q. And then what happened?

23 A. Well, I was driving. He keep telling me -- He was
24 in the middle between the two seats with the gun. "Get us to
25 Chapel Hill. Get us to Chapel Hill." When I was driving

1 there, he yanked the wheel. I don't know what reason for,
2 but he yanked the wheel. That's the last thing I remember.

3 Q. Would you have driven off if he hadn't done that?

4 A. No, sir.

5 Q. Did you feel like you had any other choice at the
6 time?

7 A. No, sir. I didn't have no other choice. That's how
8 I felt.

9 MR. MAULDIN: I have no further questions. Please
10 answer any questions the Solicitor has for you.

11 CROSS EXAMINATION

12 BY MR. GRAHAM:

13 Q. Your full name is Raphael Lamarr Pontoo?

14 A. Yes, sir.

15 Q. One of your nicknames is Polo?

16 A. Yes, sir.

17 Q. Also Los?

18 A. No, sir.

19 Q. You do not go by Los?

20 A. No, sir.

21 Q. How about Raph?

22 A. No, sir.

23 Q. You don't go by Raph?

24 A. No, sir.

25 Q. How about Ralf?

1 A. No, sir.

2 Q. R-a-l-f?

3 A. No, sir.

4 Q. Anybody in your group go by those names?

5 A. No, sir. Not that I'm aware of.

6 Q. Anybody in your group go by Los?

7 A. No, sir. Not that I'm aware of.

8 Q. So you don't use the name Los and nobody you know
9 that was with you that night uses Los?

10 A. Not that I'm aware of, sir.

11 MR. GRAHAM: Your Honor, I would ask the defendant
12 to take his rubberband off and let his hair down.

13 THE COURT: Okay.

14 BY THE WITNESS:

15 A. (Witness complies.)

16 BY MR. GRAHAM:

17 Q. How long have you had those dreadlocks?

18 A. About three year.

19 Q. It takes about two or three years to grow it that
20 long?

21 A. Yes, sir.

22 Q. That night Carlisle had short hair, didn't he?

23 A. A bald head. Yes, sir.

24 Q. I'm sorry?

25 A. A bald head. But he had on a hat, yeah.

1 Q. But he didn't have dreadlocks though?

2 A. No.

3 Q. And you don't know of any reason why Carlisle would
4 come in and lie to this jury, do you?

5 MR. MAULDIN: Objection, Your Honor. Pitting.

6 THE COURT: I'm sorry?

7 MR. MAULDIN: He's pitting witnesses, Your Honor.

8 MR. GRAHAM: The question was -- I'm sorry, Your
9 Honor.

10 THE COURT: I didn't hear the question.

11 MR. GRAHAM: The question was do you know any reason
12 why Carlisle would come in and lie?

13 THE COURT: All right. Overruled. I'll allow it.

14 BY THE WITNESS:

15 A. You say any reason he will come in and lie?

16 BY MR. GRAHAM:

17 Q. Yes, sir.

18 A. Because he clearly stated he doesn't deal with me
19 like he deals with everyone else in the car.

20 Q. Because why?

21 A. He clearly stated he doesn't deal with me like he
22 deals with everybody else in the car. He want to clear his
23 name after the statements that he was involved.

24 Q. So he came in and lied about you doing a robbery
25 because why?

1 A. Because the statement clearly states he was
2 involved.

3 MR. MAULDIN: I continue to object, Your Honor. And
4 he's also asking for speculation.

5 THE COURT: All right. Sustained as to speculation.
6 He can't speculate as to why anyone would do something.

7 MR. GRAHAM: Thank you, Your Honor.

8 BY MR. GRAHAM:

9 Q. Patrick, you know him from Chapel Hill for years,
10 right?

11 A. Yes, sir.

12 Q. You knew him as Pat?

13 A. Yes, sir.

14 Q. And that's how he looked that night, right, short
15 hair?

16 A. Yes, sir.

17 Q. Didn't have dreads?

18 A. No, sir.

19 Q. Do you know any reason why he would come in and
20 lie?

21 MR. MAULDIN: Objection, Your Honor. Speculation.

22 MR. GRAHAM: I'm asking if he knows, Your Honor, not
23 if he's speculating.

24 THE COURT: If he knows, he can testify. If
25 doesn't, he can say he doesn't.

1 BY THE WITNESS:

2 A. Because he stated that he was his good friend and he
3 was involved in the charge himself.

4 BY MR. GRAHAM:

5 Q. I'm asking if you know a reason?

6 A. I don't. I just stated that because that was his
7 friend and he was involved himself so that's the reason.

8 Q. Iquawn, he was with you that night as well, right?

9 A. Yes, sir.

10 Q. Is that what he looked like that night?

11 A. I'm confused with all of that right there.

12 Q. He didn't have -- It wasn't thick of facial hair?

13 A. Uh-uh.

14 Q. But his afro, he didn't have dreads either, did
15 he?

16 A. No, sir.

17 Q. State's 47, that's Kewon, right?

18 A. Yes, sir.

19 Q. Do you recognize him?

20 A. Yes, sir.

21 Q. That's your friend, right?

22 A. I know him.

23 Q. Can you speak up louder, please?

24 A. I know him, sir. The front of that picture, can I
25 see it clearer?

1 Q. (Solicitor hands picture to the witness.)

2 A. Okay.

3 Q. That's him?

4 A. Yes, sir.

5 Q. Is he your friend or you knew him?

6 A. I knew him. I knew him and he was like basically a
7 friend of the family also.

8 Q. Okay. Was he somebody you would trust?

9 A. To be honest, no.

10 Q. I'm sorry?

11 A. No, sir.

12 Q. You would not trust him?

13 A. No, sir.

14 Q. If he didn't have a gun, would you have been afraid
15 of him?

16 A. Uhm, honestly, probably so, but I'm not a violent
17 type person, sir. I'm not.

18 Q. You're not a violent type person?

19 A. No, sir.

20 Q. Isn't it true that you have a conviction for assault
21 of a high and aggravated nature in 2007?

22 A. Yes, sir. When I was 13 years old.

23 Q. How much do you weigh?

24 A. Right now at this moment?

25 Q. We can start there.

1 A. About 220 pounds. 216.

2 Q. January of last year how much did you weigh?

3 A. About 230.

4 Q. 230?

5 A. Yes, sir.

6 Q. Big and stocky?

7 A. I don't know about stocky. I was big.

8 Q. How tall are you? About five ten?

9 A. Five ten and a half, going on five eleven.

10 Q. Patrick is about five five, right?

11 A. Yes, sir.

12 Q. Weighs about 140, 150, correct?

13 A. About 150.

14 Q. So back then you were six and a half inches taller
15 or five and a half inches taller and 50, 80 pounds heavier?

16 A. Yes, sir.

17 Q. Kewon, how tall was he? About the same height as
18 you?

19 A. He's five ten and a half.

20 Q. He's five ten and a half?

21 A. Yes, sir.

22 Q. How do you know that?

23 A. Because I read it the same way you read it in his,
24 uhm, by the driver's license picture and the height.

25 Q. I'm not asking you what you read. Just compared to

1 your height is he taller or shorter than you?

2 A. About the same height, sir.

3 Q. You would agree with you me that he was, back in
4 January he was about 150 pounds, too? He was skinny, wasn't
5 he?

6 A. I wouldn't say 150 pounds, sir.

7 Q. A lot skinnier than you?

8 A. I was 230. He was about 170, 165.

9 Q. Of the five of you there that night, Carlisle Jones,
10 Patrick Johnson, Iquawn, Kewon and you, you were the only one
11 that had dreadlocks, correct?

12 A. In my statement I understand that Alexander had
13 dreadlocks. He had been growing dreadlocks before me and
14 like the victim said, it was a hat with dreadlocks sticking
15 up under it so therefore he never can state that I saw
16 Alexander with low haircut.

17 Q. My question was you were the only one that had
18 dreadlocks, correct?

19 A. Not to my knowledge because before we met up that
20 night, before I - he kept a hat on the whole time and I never
21 seen up under his hat. The whole time I remember he had
22 dreads so therefore I'm not going to lie and say that he
23 didn't have dreadlocks that night because the whole time I
24 knew him he had dreadlocks, sir.

25 Q. So your testimony is that you don't know whether

1 Kewon had dreadlocks or not?

2 A. My testimony is he had dreadlocks the whole time I
3 knew him before that night and everything so therefore I
4 never noticed him cutting his hair since everyone is saying
5 he didn't have dreadlocks.

6 Q. So he was wearing a hat. What kind of a hat was he
7 wearing?

8 A. Like a knit. Like a little soft hat. It's soft.

9 Q. Do you remember the color?

10 A. At this moment, no, sir.

11 Q. State's 42, do you recognize that?

12 A. Was does that say on there?

13 Q. State's exhibit number 42. I don't know what the
14 writing is on there. You can look at it closer if you want.

15 A. (Indiscernible.)

16 Q. Continue to speak up, please. Do you recognize the
17 hat or you don't?

18 A. No, sir.

19 Q. And Kewon was wearing a hat or not wearing a hat
20 that night?

21 A. He was wearing a hat.

22 Q. He was wearing a hat?

23 A. Yes, sir.

24 Q. And what color was the hat?

25 A. It was a year ago, Your Honor - sir. I can't be

1 Pacific (sic) on what color the hat was. I know it was a
2 soft hat. He had on a hat.

3 Q. And because he was wearing a hat, it's your
4 testimony you don't know whether he had dreadlocks or not?

5 A. Yes, sir. Because the whole time I knew him he had
6 dreadlocks, sir.

7 Q. Prior to that day, that night, that morning, when
8 was the previous time that you saw Kewon?

9 A. Talking about prior to --

10 Q. Prior to the night he died, yes.

11 A. About two weeks prior.

12 Q. Was he wearing a hat then?

13 A. He had dreadlocks then.

14 Q. He had dreadlocks then?

15 A. Yes, sir.

16 Q. So State's number 47 that was taken November 13th of
17 2013 that you said is Kewon, correct?

18 A. Yes, sir.

19 Q. And he doesn't have dreadlocks then, does he?

20 A. Uhm --

21 Q. Does he?

22 A. From that picture but --

23 Q. The question is did he have dreadlocks when this
24 picture was taken?

25 A. Can I see it?

1 Q. (Proffering.)

2 (The witness conversing with the Court off the
3 record.)

4 THE COURT: You can just answer that. That's the
5 response you can give him. Go ahead and you can tell
6 him that.

7 BY THE WITNESS:

8 A. He had his hair pinned back, sir. That's the same
9 way my hair looks when I don't have it down as far as in. It
10 look like the dreads sticking out right there at the top.

11 BY MR. GRAHAM:

12 Q. So it's your testimony that in State's number 47 he
13 has dreadlocks?

14 A. He had dreadlocks the last time I seen him two weeks
15 prior.

16 Q. Now, my question is in State's 47, this photograph,
17 your testimony is that he has his hair pulled back and he has
18 dreadlocks?

19 A. I say do he have his hair pulled back? I'm asking
20 you a question.

21 Q. I get to ask the questions.

22 (The witness conversing with the Court off the
23 record).

24 THE COURT: Well, then the response would be you
25 don't know.

1 BY THE WITNESS:

2 A. I don't know, sir.

3 BY MR. GRAHAM:

4 Q. So you have no idea whether in this picture whether
5 he has dreadlocks or not?

6 A. No, sir. I never seen that picture before.

7 Q. You have never known him to have short hair?

8 A. Uhm, no, sir.

9 Q. You have always known him to have dreadlocks?

10 A. Yes, sir.

11 Q. That night he had a hat on and you don't know
12 whether he had dreadlocks or not?

13 A. No, sir. Because he had dreadlocks prior to that
14 time.

15 Q. Two weeks before it's your testimony that he had
16 dreadlocks, right?

17 A. Yes, sir.

18 Q. You admit that you had -- When that evening started
19 out over at Williston, you had a gun?

20 A. Yes, sir.

21 Q. What kind of gun was it?

22 A. Revolver, sir.

23 Q. A .22 revolver?

24 A. Yes, sir.

25 Q. You carry that on your person?

1 A. You talking about that night?

2 Q. Yeah.

3 A. Or period?

4 Q. That night.

5 A. That night it was in the presence of me, yes, sir.

6 Q. Looking it State's 48, to you recognize that?

7 A. Yes, sir.

8 Q. Is that the .22 revolver that you are talking
9 about?

10 A. Yes, sir.

11 Q. And you carried it on your person that night?

12 A. It was in my presence. It wasn't on me. It was in
13 the car.

14 Q. It was in the car?

15 A. Yes, sir. And then when everyone decided they was
16 gonna leave, uhm, it was in my presence when my ride left at
17 that time. It was in my presence at that time.

18 Q. And it's your testimony that you gave this gun to
19 who?

20 A. Alexander in the bar when I was shooting pool.

21 Q. You gave it to Patrick?

22 A. Alexander in the bar when I was shooting pool.

23 Q. You gave this to Alexander in the bar when you were
24 shooting pool?

25 A. Yes, sir.

1 Q. Of the four people that were with you, Carlisle,
2 Patrick, Iquawn -- Excuse me. Of the three other people
3 besides you and Kewon, you were closest to Iquawn, right?

4 A. Yes, sir.

5 Q. But you didn't give the gun to your friend Iquawn,
6 did you?

7 A. Because he was playing a game of pool himself,
8 sir.

9 Q. You didn't go back out to the car and put it in the
10 car, did you?

11 A. No, sir.

12 Q. So you bring out a gun in a bar and hand it to
13 Patrick? Or excuse me. Kewon?

14 A. Yes, sir, when I was shooting pool.

15 Q. You don't hand it to Patrick. You don't hand it to
16 Carlisle. You hand it to a person that you are afraid of
17 that according to your testimony goes around shooting people
18 and shooting guns; is that correct?

19 A. Correct. Because the bullet never had ammunition in
20 it.

21 Q. The gun never had ammunition in it?

22 A. No, sir. It had -- No ammunition was never found in
23 the weapon or anything, no, sir.

24 Q. So why were you carrying it around? Why did you
25 take it into a bar?

1 A. Because like you said, I didn't trust it being in
2 the car. Anyone could have ammunition in it, put ammunition
3 in it. There's five people in the car with it.

4 Q. So you carried it into the bar for the safety of
5 other people?

6 A. It could be of safety if it had no weapons in it,
7 sir. I mean no bullets in it, sir.

8 Q. My question is, you took it -- Your testimony is
9 that you took it into the bar for the safety of other people?

10 THE COURT: Hold on.

11 (Witness conversing with the Court off the record.)

12 THE COURT: He can continue to ask questions though.
13 You have a lawyer that will watch out for that. He can
14 ask the same question.

15 BY MR. GRAHAM:

16 Q. Your testimony is that you carried this gun unloaded
17 into a bar for the protection of society as a whole so
18 somebody wouldn't take the gun out of the car and put bullets
19 in it and do something bad with it; is that right?

20 A. Yes, sir.

21 Q. And it's your testimony that you gave this gun,
22 instead of putting it back in the car because you were afraid
23 of that, of somebody stealing it and putting bullets in it
24 and hurting somebody, that you gave it to the person out of
25 all these people that you feared the most? That's your

1 testimony, correct?

2 A. Can I say something, sir?

3 Q. No. Answer my question.

4 THE COURT: You can answer his question and then you
5 can explain your answer.

6 BY THE WITNESS:

7 A. I did give the gun to Mr. Clemmons. But to explain
8 my answer is that I didn't deal with Carlisle either so
9 therefore it's not that I feared them. They didn't deal with
10 me on that type of level that me and Iquawn dealt with each
11 other so therefore it wasn't like I just came up and decided
12 to give him a gun just 'cause I'm feared of him. I just was
13 right there and it happened at the time then that I was
14 shooting pool, sir.

15 BY MR. GRAHAM:

16 Q. The question again is you gave this --

17 A. I answered your question, sir.

18 Q. No, you didn't. The question is did you give it to
19 the person you feared the most in the group with you, yes or
20 no?

21 A. Yes, sir.

22 Q. And this gun that you gave to him -- It's your
23 testimony that Kewon and Pat are the ones who took that bag
24 from that white man, right?

25 A. I didn't see them take the bag, but I know they got

1 in the car with the belongings and a bag, sir.

2 Q. Did you know they stole it?

3 A. I didn't see them, any type of event take place. I
4 just know they got in the car with the bag and the
5 belongings, sir.

6 Q. You don't know how they got it, that's your
7 testimony?

8 A. Yes, sir, that's my testimony.

9 Q. But you knew that that bag belonged to -- Do you
10 recognize the bag in State's 24?

11 A. From the car but when they came in. But I didn't
12 know that bag belonged to the white guy. I knew the weapon
13 belonged to the white guy, sir.

14 Q. So you never saw -- It's your testimony that when,
15 and correct me if I'm wrong, you and Kewon went over and
16 talked with the white guy because you were pointing him out
17 earlier, Mr. Ruple, and comparing guns, you didn't see Mr.
18 Ruple put the nine millimeter back in this bag? That's your
19 testimony?

20 A. Yes, sir.

21 Q. Now, you went out to talk with Mr. Ruple --

22 A. Can I stop you? Can I say something there? I
23 didn't go out with intentions to talk to him. We went to the
24 car to get a beer, sir, to clarify your question.

25 Q. When you went out to the car to get a beer, who was

1 with you?

2 A. Mr. Clemmons.

3 Q. Kewon?

4 A. Yes, sir.

5 Q. While you were out there getting a beer, did you and
6 Kewon go over and talk with Mr. Ruple?

7 A. We was parked right beside each other so we was
8 right there talking. Alexander, Kewon walked up first,
9 started talking to the dude and that's when I joined in. We
10 wasn't talking no longer than five minutes at the most.

11 Q. That was before you were playing pool or after you
12 were playing pool? Had you played pool yet by the time you
13 went outside to get a beer?

14 A. No, sir.

15 Q. So when you're outside getting the beer with Kewon,
16 you see Mr. Ruple and his friend talking. They're talking
17 about guns and your testimony is that you and Kewon go over
18 there, correct?

19 A. We walked outside. We didn't, just to clarify,
20 heard them talking about guns. We seen a red laser like I
21 stated when we walked out the door, sir.

22 Q. You see a red laser. But at some point when you're
23 outside you and Kewon walk over to Mr. Ruple and his friend,
24 correct?

25 A. Alexander walks up there and right after I get my

1 beer out, I join them, sir.

2 Q. When you go over there, Mr. Ruple has a nine
3 millimeter handgun, right?

4 A. Yes, sir.

5 Q. With the laser sight, right?

6 A. Yes, sir.

7 Q. Do you recognize this gun? This is State's 18.

8 A. Yes, sir.

9 Q. And it's your testimony that you did not steal this
10 gun, correct?

11 A. No, sir, I didn't.

12 Q. It's your testimony that who stole it?

13 A. Patrick and Alexander got in the car with the bag
14 and Patrick had the gun in his hand, sir.

15 Q. So you saw Patrick pull the gun out of the bag in 24
16 inside the car?

17 A. Yeah. As soon as he got in he was showing everyone
18 the gun and that's when Mr. Carlisle stated since you got
19 that, I can get the .25 because that .25 auto was Patrick's
20 gun.

21 Q. So the .25 auto which is State's 38, you recognize
22 that?

23 A. Yes, sir. That's Patrick's gun. I have seen that
24 before the night prior to the incident.

25 Q. That's Patrick's gun?

1 A. Yes, sir.

2 Q. Did you see that gun that night?

3 A. Uhm, in Williston, yes, sir.

4 Q. Well, you just testified you saw it the night
5 earlier. Is that what you're talking about?

6 A. What that?

7 Q. You saw Pat with this gun the night before?

8 A. No. I just -- What I just stated was I have seen
9 Patrick with that gun before, sir. That's his gun, sir.

10 Q. Did you see it that night?

11 A. Uhm, yes, sir. Patrick had his gun on him, sir.

12 Q. Patrick had his gun on him?

13 A. Yeah. When we was in Williston, he had his gun on
14 him, sir.

15 Q. Okay. So you saw it when? Earlier that night or at
16 the bar?

17 A. Earlier that night in Williston, sir, and then I
18 seen it at the bar when Alexander had it in his belongings
19 when we was outside, sir.

20 Q. Okay. So why did Patrick -- Do you know why Patrick
21 gave his -- It's your testimony that Patrick gave the gun,
22 the .25 to Kewon, correct?

23 A. Correct. But I can't answer the question on how
24 someone else was thinking, why he gave him the gun because I
25 can't determine what's going on in their head or what they

1 had going on, sir.

2 Q. Your testimony is that you brought the .22, it had
3 no bullets and when you were playing pool, you gave it to
4 Kewon, the person you feared most while you were playing
5 pool, right?

6 A. I gave it to him, sir, but you keep stating the one
7 that I feared most. I said that I just don't deal with
8 Carlisle. I don't deal with anyone like I deal with Iquawn.
9 So if that's the case, if you saying that I fear him the
10 most, you should clear the statement that I fear - you should
11 state that I fear everyone if I say that I don't deal with
12 everyone, sir, because --

13 Q. So you fear everybody you don't know? Is that what
14 you're saying about these people?

15 THE COURT: Answer his question.

16 BY THE WITNESS:

17 A. State that again, sir.

18 BY MR. GRAHAM:

19 Q. You fear -- Everybody that you -- You feared
20 everybody you didn't know. You knew Iquawn. You didn't fear
21 him. Carlisle, Patrick and your friend Kewon, you feared
22 them because you didn't really know them? That's your
23 testimony?

24 A. Can I state this?

25 THE COURT: Sure. Answer the question and then

1 explain your answer.

2 BY THE WITNESS:

3 A. Okay. I don't trust them. Like you asked me did I
4 trust them. I don't trust them so therefore like --

5 BY MR. GRAHAM:

6 Q. So it was -- Go ahead. I'm sorry.

7 A. So therefore if I don't trust them, I wouldn't put
8 my life in their hand and I wouldn't know what they are
9 capable of because I don't trust them and like they say, they
10 don't know me that well. Well, they knew me, but they claim
11 they don't deal with me like they say, sir.

12 Q. So Patrick, you don't know him very well so you
13 don't trust him. You wouldn't --

14 A. I didn't say, sir, I didn't say -- I said they claim
15 they don't deal with me like that, sir, so therefore I
16 wouldn't -- I never stated I didn't know Patrick, sir.

17 Q. Okay. Listen to my questions and answer my
18 questions, please. Don't worry about what people said on the
19 stand right now. Is it your testimony that that night you
20 didn't know Pat very well and because you didn't know him
21 very well, you didn't trust him? Isn't that true? That's
22 what you're saying, correct?

23 A. Sir, what I just stated was --

24 Q. Would you please answer yes or no and then you can
25 explain?

1 A. Can you state your question again, sir?

2 Q. That night, that morning, January 23rd, January
3 24th, is it your testimony that you did not know him very
4 well and therefore you did not trust him, true or false?

5 A. I didn't trust him, sir.

6 Q. You did trust him?

7 A. I didn't trust him, sir.

8 Q. You did not trust him. And because you did not
9 trust him, you wouldn't have given him a gun?

10 A. Because --

11 Q. Yes or no?

12 THE COURT: Then you can explain.

13 BY THE WITNESS:

14 A. No, sir. But then again the weapon was unloaded so
15 therefore it wasn't -- I knew he had a weapon prior to his
16 belongings and that he had a weapon himself and to state the
17 fact that, uhm, that - that you're making -- I'll just let
18 you keep going with your questions, sir.

19 BY MR. GRAHAM:

20 Q. The weapon was unloaded. You could have given it to
21 him, right, and you chose not to?

22 A. Yes, sir.

23 Q. According to your testimony. And he was the one
24 that had the .25 so he's already got an armed gun, right?

25 A. Yes, sir. He had the .25.

1 Q. Carlisle, you didn't know him very well and you
2 didn't trust him very well, correct?

3 A. I didn't deal with Carlisle at all.

4 Q. Kewon you gave the gun to, correct?

5 A. Yes, sir.

6 Q. When did you get the gun back?

7 A. I never got the gun back.

8 Q. You never got the gun back?

9 A. No, sir.

10 Q. So this .22, you deny then that this .22 was found
11 on you at the hospital?

12 A. Yes, sir, because I never had a gun on me, sir.

13 Q. Okay. Do you know any reason why Sergeant Perdue
14 from Palmetto Richland would come in and lie about finding
15 this gun on you?

16 MR. MAULDIN: Objection, Your Honor. Speculation.

17 THE COURT: He can answer if he knows. If he don't
18 know, then that's the end of it.

19 BY THE WITNESS:

20 A. State that again, sir.

21 BY MR. GRAHAM:

22 Q. Do you know any reason why Sergeant Perdue would
23 come into this courtroom and lie about finding this gun on
24 you?

25 A. No, sir.

1 (Witness conversing with the Court off the record.)

2 BY MR. GRAHAM:

3 Q. It's your testimony that the last time you saw that
4 .22 that night was when you gave it to Kewon, correct?

5 A. Yes, sir.

6 Q. The last time you saw this .25 that night, who had
7 it?

8 A. Kewon had the .25, sir, in the car.

9 Q. The gun that was put to your head according your
10 testimony that you're saying that Kewon put to your head in
11 the car and made you drive, right?

12 A. Can I say something, sir?

13 Q. Please answer my question.

14 THE COURT: Answer it and then you can explain it.

15 (Witness conversing with the Court off the record.)

16 THE COURT: All right. Rephrase your question.

17 Rephrase it with the response that he gave earlier and
18 if we have to play it back, we can go back and look.

19 BY MR. GRAHAM:

20 Q. The last time you saw the .25 Kewon had the gun; is
21 that correct?

22 A. Yes, sir.

23 Q. The gun that was pulled out, according to your
24 testimony that Kewon pointed at your head, was what gun?

25 (Witness conversing with the Court off the record.)

1 THE COURT: Tell him that.

2 BY THE WITNESS:

3 A. I never stated that he put the gun to my head or
4 pointed it to my head. I said he pointed it at me so where
5 does - where do you get that he put it to my head? I never
6 stated that, sir. So why are - why are you keep saying that?
7 Like what's the reason?

8 BY MR. GRAHAM:

9 Q. I'll ask the questions. The gun that he pulled --
10 (The witness conversing with the Court off the
11 record.)

12 MR. GRAHAM: Judge, can he stop talking to you? I
13 don't think it's appropriate for him to be --

14 THE COURT: You can object and I'll rule on the
15 objection.

16 MR. GRAHAM: Okay.

17 BY MR. GRAHAM:

18 Q. What gun did Kewon put to your head? Excuse me.
19 What gun did he point at you?

20 A. The nine millimeter, sir.

21 Q. Do you know whether that gun was loaded or not?

22 A. He did cock it right there in front of me, sir.

23 Q. Did he say anything to you?

24 A. He demanded me to drive, sir. He said he wasn't
25 going to jail and that it was his birthday. He was going to

1 spend his birthday out and he wasn't going to jail. He
2 demanded me to drive.

3 Q. What was he worried about going to jail for?

4 A. Because of the crime that he and Patrick had like
5 just committed when they came with the bag. I guess that's
6 when the armed robbery took place. I didn't see it so
7 therefore I can't tell you a armed robbery took place.

8 Q. You don't know -- Isn't it true from your testimony
9 that you don't know that there had been any robbery at all;
10 is that true?

11 A. Yes, sir.

12 Q. Yes, you did not know?

13 A. I did not know, sir.

14 Q. So you would have known of no reason why Kewon would
15 have put a gun to - pointed a gun at you and told you to
16 drive, would you?

17 A. That's why I stated it had to be because of their
18 actions, I guess, he felt that him and Patrick had just
19 committed. So therefore, like you right, I didn't know, but
20 --

21 Q. You're guessing?

22 A. Yes, sir.

23 Q. He didn't tell you any reason?

24 A. No, sir. He just demanded me to drive.

25 Q. Did you ask him?

1 A. No, sir. I was in a state of shock and fear for my
2 life and so many thoughts were running through my head, that
3 was my first instinct.

4 Q. So from what you knew at the time according to your
5 testimony that Kewon pointed the gun at you you didn't know
6 any crime had been committed; isn't that true?

7 A. No, sir. I never seen a crime get committed, sir.

8 Q. So you would have known of no reason for him to pull
9 a gun, point it at you and tell you to drive and talk about
10 going to jail, correct?

11 A. Yes, sir.

12 Q. Yes, sir, you would have had no reason? You didn't
13 know?

14 A. Correct, sir. Correct.

15 Q. And you didn't bother to ask him any questions
16 according to your testimony, correct?

17 A. No, sir. Due to the fact that I was fear for my
18 life and it happened so fast and I ain't never been in a
19 situation like that before.

20 Q. State's 58, do you recognize all the people in
21 there?

22 A. Yes, sir.

23 Q. That's a diagram of how everybody was sitting in
24 Carlisle's car, correct?

25 A. Yes, sir.

1 Q. Carlisle was the driver; is that correct?

2 A. Yes, sir.

3 Q. Iquawn was the front seat passenger; is that
4 correct?

5 A. Yes, sir.

6 Q. Pat was the rear seat passenger side behind
7 Iquawn?

8 A. Yes, sir.

9 Q. Kewon was in the middle in the back seat, correct?

10 A. Yes, sir.

11 Q. And you were in the back on the driver's side behind
12 Carlisle?

13 A. Yes, sir.

14 Q. Isn't it true that not once but twice during the
15 traffic stop that you tried to bolt out of the back driver
16 side door?

17 A. No, sir.

18 Q. You never opened --

19 A. Can I state something? No, sir. And due to that
20 fact and the audio never stated or heard the officer tell
21 anyone to shut the door.

22 Q. Do you know any reason why that trooper would come
23 in and lie?

24 A. Uhm, to be honest, no, sir. But to be honest I feel
25 like audio itself should show that if someone was trying to

1 open the door, he stated he told them to shut the door, why
2 isn't it on camera or on audio and why is he the only one
3 that see that out of everyone?

4 Q. It's your testimony that you did not try to open
5 that door and get out of the car, correct?

6 A. Yes, sir.

7 Q. You admit that that's where you were seated though
8 from the time that you left the Mile High Club, The Rock --

9 A. Yes, sir.

10 Q. -- until the time you got stopped?

11 A. Yes, sir.

12 Q. And it's your testimony that at the stop after
13 Carlisle, Iquawn and Patrick were taken out of the car, at
14 that time Kewon pulled the nine millimeter out, pointed it at
15 you and told you to climb over into the front seat?

16 A. He demanded me to drive.

17 Q. And demanded that you drive?

18 A. He demanded me to drive. That's when my first
19 instinct was fear for my life, I jumped into the driver's
20 seat and left the scene, sir, not at my own will.

21 Q. So you did that because you were afraid of him?

22 A. I was at gunpoint, sir. I didn't know how you would
23 reacted if you were at gunpoint in that situation and so many
24 thoughts are running through your head. You feel fear for
25 your life, you know --

1 Q. Do you know any reason why Kewon according to your
2 story didn't just jump over and drive?

3 A. Because -- Uhm, I don't really know. I know he had
4 a couple drinks, but I wouldn't state. I don't know why he
5 wouldn't do it himself. Like I said, I stated I didn't know
6 if his intention was to shoot me or shoot at the police or --
7 All that raced through my mind at the same moment so that was
8 my first instinct and that was his demand to drive.

9 Q. When you say he pointed the gun, did he have the gun
10 out and pointed it around or did he point it at you?

11 A. I was the only one in the car. He pointed it at me
12 when he cocked the gun back, sir. He just had the trigger
13 and said, bro, I'm not going to jail. It's my birthday.
14 Uhm, I'm going to be out, bro. Drive.

15 Q. Did he say he was going to shoot you?

16 A. I feared he wouldn't have cocked the gun back and
17 put one in the chamber if he wasn't going to attempt to shoot
18 me or attempt to discharge the firearm.

19 Q. Did he ever threaten to shoot you?

20 A. In other words, no. He just demanded me to drive
21 and when he cocked the gun back and pointed it at me, sir.

22 Q. So he stays in the back seat and you climb over into
23 the front and you take off?

24 A. I was in the front. He was in the middle between
25 the seats like sitting up in between the middle of the seats,

1 sir.

2 Q. He was in the back leaning between the seats?

3 A. Yes, sir.

4 Q. And you drove the car?

5 A. Yes, sir.

6 Q. And was it your testimony that the troopers caused
7 the wreck? Is that what I heard you say?

8 A. I never stated that, sir.

9 Q. Now, tell me what happened when you lost control?

10 A. He grabbed - he grabbed the wheel of the car and
11 that's the last thing I remember. He called my name. He
12 said, Polo, and he grabbed the wheel of the car and that's
13 when I lost control.

14 Q. You don't know why he grabbed the wheel?

15 A. No, sir. That's the last thing I remember. He
16 grabbed the wheel and the car went straight into - straight
17 off the road and that's the last thing I remember.

18 Q. Do you go by the nickname Ralf?

19 A. No, sir.

20 Q. Do you go by the nickname Raph?

21 A. No, sir.

22 Q. State's exhibit number 50, do you recognize those,
23 that black T-shirt?

24 A. No, sir.

25 Q. You do not recognize it?

1 A. No, sir.

2 Q. Do you deny that you were wearing it --

3 A. Can I see it again, sir?

4 Q. Sure (proffering.)

5 (Witness conversing with the Court off the record.)

6 MR. GRAHAM: Your Honor, I'm going to object to him
7 speaking with you.

8 BY THE WITNESS:

9 A. Is that the front of the shirt cut out? Is that
10 part there cut out of the shirt? If you could just --

11 BY MR. GRAHAM:

12 Q. Do you recognize the shirt, yes or no?

13 A. I'm asking you because I'm not sure if it had
14 something on it and it look like the front of the shirt is
15 cut out. There's a part missing.

16 Q. I don't know. I would agree that it looks like it
17 was cut. What kind of shirt were you wearing that night?

18 A. It was a black shirt with a red and silver like --

19 Q. Were you wearing --

20 A. -- red and silver like design on the shirt.

21 Q. So you were wearing a black shirt with red and
22 silver design?

23 A. Yes, sir.

24 Q. State's 49, do you recognize that?

25 A. That's the pants they say they found on me, sir.

1 Q. So those are the pants that you wore that night?

2 A. I don't truthfully remember of the way it were. I
3 can't say.

4 Q. Are they your pants?

5 A. I just stated I don't remember, Mr. Graham.

6 Q. So you don't remember what kind of pants you were
7 wearing that night?

8 A. No, sir.

9 Q. The LG phone that was found on the floor board, is
10 that yours?

11 A. No, sir. That - that would be particularly the cell
12 phone the other witness said that is a food stamp phone that
13 was provided that he knew that was Mr. Clemmons' phone. He
14 stated that Mr. Clemmons had a food stamp phone and that's
15 the food stamp phone he said was there, sir.

16 Q. I'm not asking you to repeat anybody else's
17 testimony. I'm asking do you recognize this phone?

18 A. No, sir.

19 Q. State's number 51, do you recognize any of the
20 shirts contained in there?

21 A. I recognize that green shirt.

22 Q. The green striped shirt?

23 A. Yes, sir.

24 Q. You recognize that shirt?

25 A. Yes, sir.

1 Q. Whose shirt is that?

2 A. That's Alexander's shirt.

3 Q. Is that the shirt that he was wearing that night?

4 A. From my recall I remember him having on a jacket,
5 but he could have had it on along with - he could have had on
6 any one of those shirts. They said they found three shirts
7 on him so I can't recall. I can't recall, sir.

8 Q. You recognize the green striped shirt as being
9 Kewon's. You don't know whether he was wearing it that night
10 or not, correct?

11 A. Yes, sir.

12 Q. State's 52 is a pair of jeans with a design with a
13 green, white and black stripes. Do you recognize that as
14 belonging to Kewon?

15 A. No, sir.

16 Q. You do not recognize it as belonging to him?

17 A. I don't recognize them pants at all, sir.

18 Q. I'm sorry?

19 A. I don't recognize them pants at all, sir.

20 Q. You don't recognize the pants at all. State's 19,
21 that's the jacket that Kewon was wearing that night, correct?

22 A. Yes, sir.

23 Q. State's number 43, do you recognize that jacket?

24 A. No, sir.

25 Q. State's 59, do recognize that jacket?

1 A. No, sir.

2 Q. What were you wearing that night?

3 A. I can't recall, sir. It was a year ago.

4 Q. It was cold, wasn't it? It was January.

5 A. I don't know if it was cold that night or what, sir.
6 It's been a year. I can't recall the weather.

7 Q. Kewon was wearing that jacket that we looked at in

8 19. What kind of jacket were you wearing?

9 A. Me? I don't remember wearing a jacket, sir.

10 Q. Did you have on a green puffy jacket?

11 A. No, sir. There was never a green puffy jacket found
12 or any type of green puffy jacket in the car.

13 Q. I'm not asking what the police found in the car.

14 I'm asking you if you wore a green puffy jacket?

15 A. No, sir.

16 Q. Isn't it true that by the time you were cut out from
17 behind the steering wheel, you had no jacket on; isn't that
18 true?

19 A. Yes, sir.

20 Q. So you weren't wearing a jacket that night?

21 A. I don't recall wearing a jacket, sir.

22 Q. I'm sorry?

23 A. I don't recall wearing a jacket so, no, I wasn't
24 wearing a jacket.

25 Q. So you did not have a jacket that night?

1 A. No, sir.

2 Q. You admit you were driving the car. It's your
3 contention that you only did it because you were afraid you
4 were going to be shot, correct?

5 A. Yes, sir.

6 Q. It's your contention that Patrick and Kewon took
7 that bag and you don't know how they took it, correct?

8 A. Yes, sir. The only thing I seen them was with the
9 weapon and the bag when they got into the car.

10 Q. And at that time when they got into the car and any
11 time after, the last time you saw the .22 who had it?

12 A. Alexander, sir.

13 Q. Kewon had the .22 --

14 A. Yes, sir.

15 Q. -- because you had given it to him and you never got
16 it back, correct?

17 A. Yes, sir.

18 Q. And it's your contention that Patrick had the .25?

19 A. Uhm, when Iquawn -- When Kewon gave -- Uhm, when
20 Kewon gave the .22 outside -- I know he had the .25 outside
21 so therefore I didn't see him give Patrick the gun so
22 therefore I'm not going to say Patrick had the gun because I
23 never seen Alexander give him back the gun, sir, so therefore
24 I'm not going to lie on the stand under oath that I seen him
25 give him back the gun, sir.

1 Q. The last time you saw the .22 you gave it to Kewon
2 and that was the last time you saw it, correct?

3 A. Yes, sir.

4 Q. The last time you saw the .25 Pat had it?

5 A. No, sir.

6 Q. Who had the .25 the last time you saw it?

7 A. I stated the last time I seen the .25 was outside at
8 the white guy's car. Alexander had the .25, sir.

9 Q. So the last time you saw the .25 Kewon had it?

10 A. Yes, sir, at the car.

11 Q. All right. So now Patrick never had any gun,
12 correct?

13 A. I stated he gave -- I don't know how -- Patrick had
14 the gun in the beginning of the night in Williston, sir.

15 Q. And at some point, you don't know how he gave it to
16 Kewon?

17 A. Yes, sir.

18 Q. So by the last time you saw the .22 and the .25
19 Kewon had both of them?

20 A. Yes, sir.

21 Q. It's your story that you did not commit a robbery,
22 correct?

23 A. Yes, sir.

24 Q. It's your testimony under oath that Kewon and Pat
25 came in with that blue bag and you don't know how they got

1 it?

2 A. Yes, sir.

3 Q. It's your testimony that after the troopers pulled
4 out Carlisle, Patrick and Iquawn and you were left in the
5 car, that Kewon pulled a gun and threatened you, pulled that
6 nine millimeter and threatened your life with it and told you
7 to drive?

8 A. Demanded me to drive, sir.

9 Q. And it's your testimony that you drove and at some
10 point Kewon said your name Polo?

11 A. Yes, sir.

12 Q. Grabbed and yanked the wheel and then you crashed?

13 A. That's the last thing I remember.

14 Q. Do you remember talking to Investigator Garrick at
15 the hospital on January 24th, 2014?

16 A. He came in and I stated I didn't want to talk to
17 him.

18 Q. Isn't it true that you told him I don't remember?

19 A. No, sir. I just stated I didn't want to talk to
20 him.

21 Q. You deny that you told him either that I don't know
22 anything about this or I don't remember? You deny that?

23 A. I deny that. The only thing I stated is I didn't
24 want to talk to him.

25 Q. That you did not -- All you said -- Your testimony

1 is all you said was you did not want to talk to him?

2 A. Yes, sir.

3 Q. You admit that you had the opportunity to speak with
4 him and tell him the story that you testified to today?

5 MR. MAULDIN: Objection, Your Honor. Fifth
6 Amendment.

7 THE COURT: I'm sorry. I was looking at something
8 else. What was the question?

9 MR. GRAHAM: I asked him do you admit that you had
10 the opportunity to tell that officer the story that day?

11 THE COURT: He can answer that.

12 BY THE WITNESS:

13 A. Uhm, I could have, yes, sir.

14 BY MR. GRAHAM:

15 Q. I'm sorry?

16 A. I could have, yes, sir, but I didn't want to talk to
17 him, sir.

18 Q. Isn't it true that when you spoke with Mr. Ruple,
19 you saw his nine millimeter handgun?

20 A. Uhm, he had it out as soon as we walked out the bar.
21 When we walked up, him and his friend was --

22 Q. And isn't it true that you showed him your .22?

23 A. I showed him a .22, yes, sir.

24 Q. Your .22?

25 A. Yes, sir.

1 Q. And isn't it true that Kewon showed him his .25?

2 A. Patrick's .25, yes, sir.

3 Q. And isn't it true that you saw Mr. Ruple put that
4 gun, his nine millimeter back in that blue bag?

5 A. No, sir. I stated to you earlier that I never seen
6 the blue bag until they got back into the car.

7 Q. Isn't it true that as Mr. Ruple was leaving the bar
8 you asked him where he was going?

9 A. That's not true.

10 Q. You deny that?

11 A. Yes, sir.

12 Q. Isn't it true that when he went outside, you walked
13 outside and posted up outside the door to watch him?

14 A. That's not true.

15 Q. Isn't it true that as you saw him go back to his car
16 you went over and you knocked on the window?

17 A. That's not true.

18 Q. You deny that?

19 A. Yes, sir. That's not true.

20 Q. Isn't it true that when he rolled down the window,
21 you talked to him about rims, music and girls and things like
22 that? Do you deny that as well?

23 A. I deny that as well.

24 Q. Isn't it true that you grabbed the bag out of the
25 car?

1 A. No, I did not grab the bag.

2 Q. Isn't it true that he came out and got in a fight
3 with you and punched you?

4 A. I deny that.

5 Q. You deny that?

6 A. Yes, sir.

7 Q. Isn't it true that at that point you drew that .22,
8 you pointed it at Mr. Ruple and you activated the red laser
9 beam on his chest? You deny that or admit it?

10 A. I deny that as well.

11 Q. You admit or deny that Mr. Ruple at that point put
12 his hands up and told you to take it?

13 A. I deny that as well.

14 Q. Do you admit or deny that you came into the car with
15 the blue bag?

16 A. I deny that as well.

17 Q. When you got stopped by the police, do you admit or
18 deny that you tried to bail out of the back of that car?

19 A. You talking about --

20 MR. MAULDIN: Asked and answered, Your Honor.

21 THE COURT: Overruled. Go ahead.

22 BY MR. GRAHAM:

23 Q. Do you admit or deny that you tried to get out of
24 the car?

25 A. Get out of the car?

1 Q. At the car stop that you tried to open the back
2 door?

3 A. Yeah. I deny that. I never tried to open that back
4 door.

5 Q. Isn't it true that you did the robbery, you had the
6 gun and --

7 A. No, sir.

8 Q. -- you're the one that drove that car?

9 A. That's not true.

10 Q. Isn't it true that you ran driving that car of your
11 own will at 104, 108 miles an hour to get away from the
12 police because you didn't want to get caught with that stolen
13 nine millimeter and that .22 on you?

14 A. No. I deny that, sir.

15 Q. Isn't it true that you caused the death of Kewon?

16 A. That's not true.

17 MR. GRAHAM: I don't have any other questions, Your
18 Honor.

19 THE COURT: Answer any questions your attorney may
20 have.

21 REDIRECT EXAMINATION

22 BY MR. MAULDIN:

23 Q. The Solicitor asked about whether or not Mr. Ruple
24 had punched you several times; is that correct?

25 A. Yes, sir.

1 Q. Let me show you what's been marked as Defense
2 exhibit 1. Does that fairly and accurately depict how you
3 looked on the day of January 24th, 2014 at the hospital?

4 A. Yes, sir.

5 MR. MAULDIN: Move this into evidence, Your Honor.

6 MR. GRAHAM: At this point -- I have never seen the
7 photo until this moment.

8 THE COURT: You need to look at it?

9 MR. GRAHAM: I would object based on relevance.

10 THE COURT: Okay. Deny on relevance. It's
11 relevant.

12 BY MR. MAULDIN:

13 Q. Do you have any facial injuries in that picture that
14 would indicate somebody striking you in the face several
15 times?

16 A. No, sir.

17 THE COURT: That's Defense 1?

18 MR. MAULDIN: 1.

19 THE COURT: Defense 1 in evidence over objection.

20 MR. MAULDIN: No further questions.

21 MR. GRAHAM: Your Honor, I do have a question. I
22 have got a photo that I'm trying to get, if I could have
23 just a moment.

24 THE COURT: Sure. Do you want to show that to
25 defense counsel and then we'll let you go and do what

1 you need to do?

2 RECROSS EXAMINATION

3 BY MR. GRAHAM:

4 Q. I'm going to show you a picture and ask you if you
5 recognize that as being taken while you're wearing that
6 collar brace the day or two after this incident? Is that
7 you?

8 A. Yes, sir.

9 MR. GRAHAM: Your Honor, the State would offer this
10 into evidence.

11 THE COURT: Any objection?

12 MR. MAULDIN: No objection, Your Honor.

13 THE COURT: All right. That will be State's exhibit
14 63, I believe.

15 MR. GRAHAM: Thank you, Your Honor.

16 BY MR. GRAHAM:

17 Q. State's number 63, that's the left side of your
18 face, right?

19 A. Yes, sir.

20 Q. And you agree that this was taken a day or two after
21 this incident happened, correct?

22 A. I can't agree. I can't tell you when that picture
23 was taken.

24 Q. You've got your collar brace on, correct?

25 A. But understand, I can't tell you who took that

1 picture or when that picture was taken, sir.

2 Q. You don't know when this picture was taken?

3 A. No, sir. I never remember anyone taking no picture
4 of me or anything like that, sir.

5 MR. GRAHAM: Your Honor, I would ask for the
6 previous testimony. I think he admitted earlier that
7 this was taken, that this was accurate for a day or two
8 after this incident.

9 THE COURT: That's right. That was the testimony.
10 BY THE WITNESS:

11 A. Is that the same picture from -- Is that the same
12 picture?

13 BY MR. GRAHAM:

14 Q. Just answer my questions.

15 A. Is that the same picture?

16 THE COURT: Clearly it's not the same picture.

17 BY THE WITNESS:

18 A. I stated -- That's the picture right there.

19 THE COURT: It's a different angle.

20 BY MR. GRAHAM:

21 Q. That is you, correct?

22 A. Yes, sir.

23 Q. You previously testified moments ago that this
24 picture was accurate as of two or three days after this
25 incident, correct?

1 A. I never seen that picture. I never stated that
2 picture - that picture right there was accurate, sir.

3 Q. You did on the stand a few minutes ago. You deny
4 saying that?

5 A. I stated I seen that picture right there, sir. That
6 picture right there.

7 Q. When I held this picture in front of your face, did
8 you admit that this picture was accurate to the way you
9 looked two or three days after the incident? Do you deny
10 doing that?

11 A. You just asked me --

12 Q. Please answer my question and then you can explain.

13 A. I'm not --

14 THE COURT: All right. That's enough. Read back
15 and look back at the testimony if that's what we need to
16 do.

17 MR. GRAHAM: Your Honor, I'd ask that the court
18 reporter pull that back up, please.

19 THE COURT: Steve, can you do that for me, please.
20 Just read the testimony where Mr. Graham asked --

21 (The portion of the testimony requested was read
22 back.)

23 THE COURT: Thank you. Let's move on.

24 BY MR. GRAHAM:

25 Q. The mark on your face, do you agree that there's a

1 mark on the left side of your face, correct?

2 A. The same kind of marks that's on my back still to
3 this day, yes, sir.

4 Q. My question is the mark on your face.

5 A. Yes, sir.

6 Q. You don't have that mark on your face now, do you?

7 A. No, sir.

8 Q. Would you look straight ahead so the jury can see
9 the left side of your face?

10 A. (Witness complies.)

11 MR. GRAHAM: That's all, Your Honor. Thank you.

12 THE COURT: All right.

13 BY THE WITNESS:

14 A. May I state that --

15 THE COURT: No, sir. You may step down. Call your
16 next witness.

17 MR. MAULDIN: The defense rests.

18 THE COURT: All right. Folks, the defense has
19 rested and at this point I will be taking up matters of
20 law at the close of the defense's case and I'm going to
21 excuse you to go to lunch. I would ask if you would,
22 please be back, I'm going to ask if you would to make it
23 a little bit quicker than we normally do. I'm going to
24 ask if you would please be back at 2:15 so that gives
25 you about an hour and twenty minutes if you leave right

1 now. Please do that. Do not have any, allow anyone to
2 talk with you about the case. Do not discuss the case
3 with anybody and we'll see you back here at 2:15.

4 (The jury was excused for lunch.)

5 THE COURT: At this time I'll take up any motions at
6 the close of the evidence.

7 MR. MAULDIN: Thank you, Your Honor. At this time I
8 would renew my motions for directed verdict on behalf of
9 Mr. Pontoo based on the same grounds as my prior motion
10 and also with the extra evidence that's been presented.

11 THE COURT: All right. Thank you. Mr. Mauldin,
12 I'm going to deny the motion. Again, I think this is
13 clearly a factual issue for the jury to decide based on
14 the testimony and the evidence that's been presented.
15 So does the State have anything?

16 MR. GRAHAM: Your Honor, I was considering putting
17 up Detective Garrick to reply to him denying -- I asked
18 him. He said he didn't remember and he denied that and
19 said that he didn't want to talk to him so I was going
20 to put him up. I didn't know when you wanted us to do
21 that.

22 THE COURT: Well, that would be after the jury comes
23 back from lunch I would think. Anything further with
24 regards to motions at the close of the State's case?

25 MR. MAULDIN: No, Your Honor.

1 THE COURT: When you all sent us the requested
2 charge, did you copy each other on that? Do you all
3 have that?

4 MR. MAULDIN: I have a charge on duress that I sent
5 after the defendant testified. I knew they would be in
6 the courtroom. I do have a paper copy.

7 THE COURT: Okay. Go ahead and hand that to them
8 then, David, so they can get that and we'll start back
9 then at 2:15, okay?

10 (Whereupon, there was a luncheon recess.)

11 BAILIFF: Keep your seats. Court is now in session.

12 THE COURT: All right. Mr. Graham?

13 MR. GRAHAM: We have one short reply witness,
14 Detective Garrick, and then we're ready for closing,
15 Your Honor.

16 THE COURT: All right. Before we get -- Folks, if
17 you all would come and get a copy of this. This is a
18 draft of a charge. It's not in final form or anything
19 like that. And then we can talk about it after you
20 finish with your reply witness. All right. Let's bring
21 the jury in, please.

22 (The jury returns to the courtroom.)

23 THE COURT: All right. Ladies and gentlemen, I have
24 taken up the matters of law that I needed to take up and
25 the State has indicated they have a short reply witness

1 and I'm going to recognize the State now.

2 MR. McNAIR: Your Honor, the State calls Detective
3 Garrick.

4 THE COURT: All right. Detective Garrick, if you
5 would please come around and, sir, you are still under
6 oath from your earlier testimony.

7 THE WITNESS: Yes, sir.

8 (DETECTIVE TODD GARRICK RECALLED.)

9 REDIRECT EXAMINATION CONTINUED

10 BY MR. McNAIR:

11 Q. Detective Garrick, after the incident on January
12 24th, did you have the opportunity to meet with Mr. Pontoo?

13 A. I did.

14 Q. Where was that?

15 A. At the emergency room of Palmetto Richland Hills
16 Hospital.

17 Q. What date was that?

18 A. The morning of January 24th.

19 Q. Prior to meeting with Mr. Pontoo, did you read him
20 his rights?

21 A. I did.

22 Q. And how did you do that?

23 A. I have a card on me that I keep on me to read
24 rights.

25 Q. Would you read that for the record, please?

1 A. You have the right to remain silent. Anything you
2 say can and will be used against you in a court of law. You
3 have the right to talk to an attorney and have him or her
4 present with you while you are being questioned. If you
5 cannot afford to hire an attorney, one will be appointed to
6 represent you before any questioning if you wish. You can
7 decide at any time to exercise these rights and not answer
8 any questions or make any statements. Do you understand each
9 of these rights that I have explained to you? And having
10 these rights in mind do you wish to talk to us now?

11 Q. All right. Did he appear to understand those
12 rights?

13 A. He did.

14 Q. Did he have any questions about his rights?

15 A. He did not.

16 Q. Did he have any physical or mental condition that
17 prevented him from understanding those rights?

18 A. No, sir.

19 Q. What, if anything, did you ask him at that point?

20 MR. MAULDIN: And, Your Honor, I would just restate
21 my prior objection pre-trial.

22 THE COURT: All right, sir.

23 BY THE WITNESS:

24 A. I came in and introduced myself to him. Read him
25 his rights and then just began to ask him what had happened

1 that morning that caused him to be there or if he could tell
2 me what happened.

3 BY MR. McNAIR:

4 Q. What, if anything, did he say about what happened?

5 A. He really didn't say anything. He was very
6 argumentative. Just kept saying he didn't know anything.
7 Didn't remember.

8 Q. Was he happy to see you?

9 A. He was not.

10 Q. Was he eager to tell you his story?

11 A. He was not.

12 Q. Did he mention anything about Kewon Clemmons putting
13 a gun to his head?

14 A. He did not.

15 Q. Did he mention anything about anybody else being
16 involved in an armed robbery?

17 A. He did not.

18 MR. McNAIR: Thank you.

19 THE COURT: Any cross?

20 MR. MAULDIN: No, Your Honor.

21 THE COURT: Thank you very much, sir. You may step
22 down.

23 MR. GRAHAM: Your Honor, the State rests it's case
24 in reply.

25 THE COURT: All right, sir. Okay. Folks, I have

1 just a brief matter to take up with the attorneys. I
2 hate to do this to you. I know you just got settled in
3 and I know the life of a juror tends to be much like a
4 yo-yo, in and out and up and down, but if you could
5 please step into the jury room for just a moment. I
6 need to take up a couple matters and then I'll bring you
7 out and then we'll proceed.

8 (The jury goes into the room.)

9 THE COURT: All right. I'll give you all a moment
10 to look through that and then we can talk about it.

11 Is there anything from the State regarding the
12 charge?

13 MR. GRAHAM: I don't know that it matters but I
14 don't know that there's any contention on the charge on
15 expert witness. I don't know whether we -- It's not in
16 there, but I honestly don't know that we need it. Since
17 he's saying it was under duress, I don't think there is
18 any contention that her testimony really, I guess, is
19 not that important.

20 THE COURT: Yeah. You know, I forgot about Dr.
21 Ross. Yes. I think you're right. I don't know that
22 it's an issue.

23 MR. GRAHAM: The other issue that I say when looking
24 through here, Your Honor, is the duress quote, I
25 believe, is an affirmative defense and I think that the

1 defendant has to prove that by the preponderance of the
2 evidence.

3 THE COURT: Is that not in there?

4 MR. GRAHAM: I have a copy out of the -- I think the
5 language that the defense proposes is from Judge
6 Anderson. I have a copy of the, I don't know if it's
7 the Circuit Court bench book, but the bench book and
8 under the duress language it has it is Constitutionally
9 permissible to place the burden of proving affirmative
10 defenses such as duress by a preponderance of the
11 evidence on the defendant as long as the defendant is
12 not required to negate an element of the defense which I
13 think would apply in this case and it's citing a U.S.
14 Supreme Court case Dixon versus The United States which
15 is 126 Supreme Court 2437.

16 THE COURT: Let me tell you what I have got here.
17 It says the defendant has raised the defense of coercion
18 or duress. Coercion or duress is when a person makes
19 another person commit a crime against someone else's
20 person or property by the threat of immediate physical
21 violence. The coercion or duress must be present,
22 imminent and of the type to create a well grounded fear
23 of death or serious bodily harm if the act is not done.
24 The fear of injury must be reasonable. Coercion or
25 duress is not a defense if there is any reasonable way

1 other than committing the crime for the defendant to
2 escape the threat of harm. The defendant must prove the
3 defense of duress by a preponderance or greater weight
4 of the evidence.

5 That's the charge that I have got here in the bench
6 book. I used the one that -- Right. That's not what
7 they've got because you used the one that Mr. Maudlin --
8 Right. As to that issue, Mr. Graham --

9 MR. GRAHAM: Yes, Your Honor?

10 THE COURT: -- satisfy the concern you had with the
11 coercion or duress charge? In other words, I would
12 propose to substitute what I just read to you for what's
13 in there.

14 MR. GRAHAM: Yes, Your Honor. I think that would be
15 appropriate. Thank you.

16 THE COURT: All right. Mr. Mauldin, do you want to
17 be heard on that? I think what I have -- What's in the
18 charge you have got is what you presented to the Court
19 and Lauren put that in there or our bench book has that
20 language, but it has the additional language that
21 Mr. Graham mentioned.

22 MR. MAULDIN: Your Honor, I do believe that that is
23 the law of South Carolina, however, I would still object
24 that it is burden shifting and the defendant shouldn't
25 have to prove anything and object to it as his right to

1 a trial under the Sixth Amendment and Article 1 Section
2 14 of the State Constitution and take an exception to
3 Your Honor's ruling.

4 THE COURT: Okay. And I'm going to note your
5 objection and your exception, but I am going to use that
6 language. I think it is appropriate under our law. Was
7 there anything else from the State regarding the charge
8 as a whole?

9 MR. GRAHAM: No, Your Honor.

10 THE COURT: All right. Mr. Mauldin, I certainly
11 have noted your objection on that situation. Is there
12 anything else as far as the charge goes that we need to
13 talk about or does it look okay?

14 MR. MAULDIN: The rest of it looks fine.

15 THE COURT: Okay. All right. Well, let's do this:
16 I know we just started back, but any time the jury is
17 out is a good opportunity. We'll take a short break.
18 If anyone needs to step out and use the restroom or grab
19 a drink of water, go ahead and do that and let's do it
20 quickly and come back.

21 (Short break.)

22 THE COURT: Back on the record. Is the State ready
23 to proceed with closing argument?

24 MR. GRAHAM: Ready, Your Honor.

25 THE COURT: The defense?

1 MR. MAULDIN: Ready, Your Honor.

2 THE COURT: Okay. Bring the jury in, please.

3 (The jury returns to the courtroom.)

4 THE COURT: Ladies and gentlemen, we have now
5 reached a portion of the case where the attorneys are
6 going to have an opportunity to address you with what we
7 typically refer to as closing arguments. Now, what is
8 important for you to understand is, you recall when we
9 started this case I talked to you briefly about their
10 opening statements and one of the things I told you
11 about their opening statements was that what they tell
12 you in their opening statements is not evidence because
13 they're not under oath. They are simply conveying to
14 you what they believe the evidence will show. Well,
15 that same premise applies to their closing arguments.

16 The evidence in this case is closed. The evidence
17 is what you heard here from the witness stand and the
18 exhibits which came in during the course of the trial.
19 That's the evidence in this case. But this is the
20 opportunity for the attorneys to argue to you what they
21 think or what they believe the evidence in this case has
22 shown and so even though it's not evidence in the case,
23 it's important that you listen carefully and give them
24 your undivided attention as they give you their
25 perspective as to what the evidence in this case has

1 shown.

2 Once they have concluded their closing remarks to
3 you, I will then give you the charge on the law which
4 you will have with you in the jury room and you will
5 then be in a position to have the case for your
6 consideration, okay? So if you please would give each
7 of the attorneys your undivided attention as they
8 address you with their closing arguments.

9 Mr. Mauldin.

10 MR. MAULDIN: Thank you.

11 Where is the money? A lot of people talk about
12 follow the money. Mr. Ruple said he had money taken
13 from his bag. Well, where is it? Did they found it
14 anywhere in the car? In the bag? At the hospital?
15 It's just disappeared. It's disappeared like a lot of
16 other things in this case. You hear talk about how the
17 video with no visual. I got a video with no audio.
18 It's disappeared just like this Rasta dreadlock hat.
19 This green, red, yellow. You didn't see that in any of
20 these pictures. Where is that? It's disappeared like
21 this green puffy jacket that you hear about that the
22 robber wore. The only green jacket they found in that
23 car belonged to Carlisle. The only puffy jacket they
24 found in that car belonged to Kewon according to the
25 witnesses even you believe them. But he was sure there

1 was a green puffy jacket and there is no green puffy
2 jacket to be found.

3 The focus is on Raphael because of Kewon's death.
4 There's some kind of disconnect here. Some officers
5 testify that Raphael is unconscious, slumped over.
6 You've got some saying that he's alert and talking. Who
7 are we going to believe? What are we going to believe?
8 You have these officers and these EMS personnel coming
9 in and testifying about specific details of the people
10 and they generated reports over a year ago. They didn't
11 put any of these details in their reports. They have
12 answered hundreds of calls since then, but here a year
13 later they are able to do that. And they are wanting to
14 help that State. They work for the State. I understand
15 that. But you need to carefully scrutinize that and
16 take what you can because the focus is on Raphael. It
17 certainly hasn't been on Carlisle Jones or Patrick
18 Johnson.

19 If you are believe Mr. Ruple, that car was
20 positioned to be in a getaway. Mr. Jones got out of
21 that car and said shoot him. Let's go, and somebody
22 opened that door. Well, they didn't testify that any of
23 that happened. And if they believe Mr. Ruple, they
24 would have charged these people with some kind of
25 accessory crime or something like that, but they didn't

1 get charged and they're not going to be charged.
2 They're not going to be charged because the State spoon
3 fed them a story because their focus is on Raphael. The
4 focus is on him because Mr. Clemmons died.

5 One of them admits he's lied, but he's not a liar.
6 The other one has been to that bar. Knows people in the
7 bar. Ruple says he goes to that bar all the time. How
8 do they not know each other if they're both in there all
9 the time? Ruple says that the one that they assumed to
10 be Clemmons is taller than Raphael. Everyone else says
11 that he's shorter.

12 The stories are inconsistent with each other,
13 Patrick's and Carlisle's and they're inconsistent with
14 Mr. Ruple's because none of that happened. If the State
15 believed Ruple, they would have charged these other
16 people. Mr. Ruple had been drinking. He'll admit he
17 was a five on a scale of ten. A lot of times you have
18 people DUI they only say they've had two beers. They're
19 not going to admit how much they have had to drink and
20 how that affects their perception. He's drinking and
21 messing around with a gun in the parking lot of a bar.
22 He's talking about trading the gun for other guns or
23 trading guns for rims. Talking about Heartless
24 Entertainment and rap music.

25 He remembers Raphael because he had the only

1 distinguishing characteristic out of them. He had the
2 long hair and that's why he remembers him. He runs
3 after a guy that he says takes his bag. He knows the
4 guy has a gun and he runs after him? Does that make any
5 sense? It doesn't. He just focused on the dreadlocks.
6 He knew about the dreadlocks and they all talked about
7 dreadlocks, dreadlocks, dreadlocks. But there is no
8 green puffy jacket. There's no red, white and yellow
9 hat, and there is no money. The State didn't believe
10 them. They didn't charge these other people and you
11 shouldn't believe them either.

12 Let's talk about trading guns for rims or other
13 guns. I submit to you that he traded his stuff for some
14 drugs or something in that club before they left.
15 Traded with Patrick or Kewon or somebody.

16 MR. McNAIR: Objection, Your Honor. There's no
17 evidence of that whatsoever.

18 MR. MAULDIN: It can be inferred from the evidence,
19 Your Honor.

20 THE COURT: Sustained. You can't just argue facts
21 that are not in evidence.

22 MR. MAULDIN: Something happened where Patrick and
23 Kewon ended up with the guy's stuff. And then there's
24 an argument outside the club. They're upset over
25 something. It's a real possibility that that gun got in

1 that car by some other means and that is that Patrick
2 brought it in the car. The focus is on Raphael because
3 of Mr. Clemmons' death. And it is a tragedy that he
4 died, but it is a tragedy of his own making. The State
5 has presented no evidence whatsoever at all about what
6 happened inside that car. They want you to speculate
7 about what happened and that's not any kind of proof
8 whatsoever. The only evidence about what happened in
9 that car from the time it left to the time it crashed is
10 what Mr. Pontoo said on the stand and that's all you
11 have to go on.

12 They found the gun in the car. You heard that they
13 tested the gun for prints, but they didn't have the
14 print examiner come in and tell you what they found.
15 You can infer from that that it's not good for them. If
16 it was Mr. Pontoo's prints, you know they would have had
17 an expert in here to testify that, yeah, I found the
18 prints and they're Mr. Pontoo's, but they didn't do
19 that. Mr. Pontoo felt like he had no other choice at
20 the time. Mr. Clemmons pulled out the gun. He didn't
21 know if he was going to be harmed. He knew from prior
22 experience that Mr. Clemmons could be violent.
23 Mr. Clemmons could have shot at the police. He didn't
24 want to be in that situation and any reasonable person
25 in that situation would have believed that the only

1 thing they could do was to get out of there.

2 Alex had the gun in his hand. When the car went off
3 the road into the woods, he dropped it in the front seat
4 and they haven't shown you or proved anything different.
5 Raphael felt like he had no other choice. And the State
6 has offered nothing to disprove this.

7 Look at the evidence. Don't jump to conclusions.
8 Keep an open mind and find Raphael Pontoo not guilty.

9 THE COURT: Thank you, Mr. Mauldin. Mr. McNair.

10 MR. MCNAIR: May it please the Court.

11 Ladies and gentlemen, I had something I had planned
12 to say to you all earlier this morning and then after
13 hearing Mr. Pontoo testify earlier, I couldn't help but
14 think about a saying that my dad used to have. He would
15 say when somebody was trying to tell him a story that
16 just didn't make sense, he would say the facts speak so
17 loudly I can't hear what you're saying. Mr. Pontoo is
18 as trapped by the facts of this case as he was in that
19 vehicle that night. He can ignore them, he can try and
20 distort them, he can try and twist them, but he can't
21 change them. And what you heard coming out of his mouth
22 was a figment of his imagination. That has no basis in
23 the facts.

24 Ladies and gentlemen, a man that would risk his life
25 and everybody else's life on the road that night to get

1 away, do you not think that type of man would tell a
2 lie? What does a lie mean to a man like that? He'll do
3 anything to get away. And who easier to blame than the
4 one man who is no longer here to speak for himself. The
5 man whose life he's responsible for taking. Everybody
6 is at fault but him. Did you hear him get up there. I
7 don't know who had what gun or who stole what. It was
8 everybody but him. Everybody is lying but the one man
9 who has the most to lose today in this courtroom. Him
10 (indicating.) Is he believable? He'll do whatever it
11 takes to get away. He's proven that with his actions
12 that night. All he cares about is himself. He wanted
13 that nine millimeter and he wanted to get away. That's
14 all he cares about now.

15 There is not one person who came in this courtroom
16 and pointed the finger at Kewon Clemmons or anybody else
17 but him. Are you going to believe him over all these
18 other people? EMS folks who didn't know him from Adam's
19 house cat. Troopers. Law enforcement. Even the
20 Palmetto Richland Hospital, they're in on this grand
21 conspiracy he's thought up in his twisted mind. They
22 planted the .22 on him they got off of him at the
23 hospital. Are you kidding me?

24 Fairy tales don't belong in this courtroom. Facts
25 do. Facts come from that witness stand. They don't

1 come from somebody's imagination. What are the facts of
2 this case? Jonathan Ruple said the robber had shoulder
3 length dreads. He got the tag number of the vehicle
4 that the robber got into. We know the robber is in that
5 vehicle. Five people left in that vehicle from the Mile
6 High Club. Five people were in that vehicle when it was
7 stopped by Trooper Lee. Who is the only person in that
8 car with dreads? He can wish Kewon Clemmons had dreads
9 all day long, but he didn't. There is nobody that came
10 in here and said that Kewon Clemmons had dreads. What
11 about all those paramedics? Neal Price. Amanda Sucher.
12 Officer Mishoe. Carlisle. Patrick. The firefighters.
13 They all said Kewon Clemmons had short hair.

14 Everybody remembered the driver of that vehicle had
15 dreads though, didn't they? I don't think anybody said
16 anything different about the driver. That was
17 consistent throughout. And that picture of Mr. Clemmons
18 that's in evidence, you can look at it. That picture
19 was taken in November of 2013. You think you can grow
20 shoulder length dreads in a few months? Mr. Pontoo said
21 it took him two or three years to grow his. Mr. Ruple
22 said the robber's name was Los.

23 Let's go back to the dreads for one second. Trooper
24 Snider got close enough behind that vehicle. He said he
25 had those pursuit spotlights where he could see into the

1 vehicle. He could tell the driver had long hair. He
2 saw the passenger poking his head up every now and then.
3 He didn't see the passenger holding a gun to Mr.
4 Pontoo's head. Now, ladies and gentlemen, if you
5 seriously believe that, that Mr. Clemmons forced him to
6 drive and pointed a gun at him, find him not guilty.
7 Find him not guilty and we will give him back that brand
8 new .22 revolver he had.

9 MR. MAULDIN: Objection, Your Honor.

10 THE COURT: What's the objection? Come on up.

11 (Side bar off the record.)

12 THE COURT: Back on the record. Sustained on
13 that.

14 MR. McNAIR: Mr. Ruple said the robber's name was
15 Los. Now, he got up there. Of course, he's read his
16 discovery. He denied that was one of his nicknames.
17 Why would anybody make that up? Patrick said he went by
18 Polo, Los, Raph, Raphael. By his own admission there
19 was nobody else in that car that went by the nickname
20 Los. He was the only one with that nickname. Kewon
21 Clemmons went by Kewon, Smoke and I think Patrick said
22 Chuck. Why would Mr. Ruple make that up? Why would he
23 say it was somebody other than who it was? He had no
24 motive to frame Mr. Pontoo. He had never met him before
25 in his life.

1 Mr. Ruple said the robber had light silver color
2 pants and a black T-shirt. What was cut off of Mr.
3 Pontoo at the hospital? Those light color pants and a
4 black T-shirt. But he can't remember his own clothes on
5 the stand today? Give me a break. If one of you all
6 saw an article of your clothes, wouldn't you remember
7 you owned that? He doesn't have a memory of that? It's
8 too long ago. It's a year. He'll say anything, ladies
9 and gentlemen. It does not mean a thing for him to put
10 his hand on that Bible and swear to tell the truth. He
11 will do whatever it takes to get away.

12 You heard from the fireman Matthew Rowlette that
13 when he pulled Pontoo out of that wrecked car, he had
14 light color pants on. Kewon Clemmons had on dark pants.
15 Those dark jeans. Patrick recognized them. Amanda
16 Sucher, the paramedic. Jeff Berry the firefighter.
17 Both of them testified Mr. Clemmons had on dark pants.

18 Mr. Ruple said the gun that was pulled on him was a
19 .22 revolver with a laser sight, the exact same gun
20 found in Mr. Pontoo's pants at the hospital. The exact
21 same place Mr. Ruple said Mr. Pontoo put the gun after
22 they showed each other their guns. The same place
23 Patrick said he saw Mr. Pontoo putting the gun as he was
24 getting back into the car. And are we to believe like I
25 said earlier that Sergeant Perdue from Palmetto Richland

1 is in on this grand conspiracy to plant a gun on Mr.
2 Pontoo? That's ridiculous.

3 Mr. Ruple said the robber stole his blue Swiss army
4 book bag containing his clothing that he identified on
5 the stand and his nine millimeter Hi-Point pistol. All
6 that's found in the vehicle. I guess he's admitting
7 that now. He's acknowledging, yes, that was in the
8 vehicle. But, of course, he wasn't the one who took it.
9 But isn't it ironic to you that that night after that
10 car wreck that went airborne across an intersection,
11 went through all those trees, that pistol, that nine
12 millimeter is inches from his out stretched hand? Is
13 that just bad luck? Or did he have that gun in his hand
14 when he wrecked? Just fell out. What was he planning
15 on doing with that gun? During that traffic stop when
16 his door opened up twice, what was he planning on doing
17 that night? How far was he going to take things to get
18 away that night?

19 As far as fingerprinting that gun, what good would
20 that do? If we found his fingerprints on it, all the
21 defense would say is, oh, yeah, he touched it, but he
22 didn't steal it. He handled it. That doesn't prove
23 anything. Why do we need fingerprints? We've got so
24 many people who saw him steal it.

25 What about that green puffy jacket? What's odd to

1 me, you can watch the video if you want, when they
2 pulled out Patrick, Carlisle and Iquawn Jones, they all
3 had them remove their jackets. Their three jackets are
4 on the side of the road. None of them were green.
5 Kewon Clemmons' jacket that was cut off by Amanda Sucher
6 was black with an orange liner. Who is the only man who
7 didn't have a jacket on by his own admission? Isn't
8 that funny? They stopped at McDonalds prior to getting
9 stopped. If you had just committed armed robbery,
10 wouldn't you want to get rid of the clothing that could
11 identify you? It's the middle of January. He's the
12 only man without a jacket.

13 What about Patrick Johnson, Carlisle Jones? Mr.
14 Ruple wasn't the only witness to this. Carlisle Jones
15 said the same thing from day one. He immediately from
16 day one said that's the man right there. Didn't want
17 him to get back in his car and he shouldn't have let him
18 get back in his car, but they weren't charged. Patrick
19 Johnson wasn't charged. Carlisle wasn't charged. And
20 Patrick, he's in a real pinch. His mom is dating
21 somebody related to the defendant. He's between two
22 families. He was in a real bad spot. The last place he
23 wanted to be was here testifying today because he's
24 going to upset some people and that's why he didn't tell
25 the truth initially. He didn't tell the truth because

1 he is also protecting his friend at the time, Mr.
2 Pontoo. But I submit to you he has no motive to lie
3 here today. What he did was a tough thing for him to
4 do.

5 It's always ironic to me, too, when the defense
6 tries to discredit people we call to the stand as
7 witnesses. We don't choose witnesses out of thin air.
8 We don't have that luxury. Our witnesses are chosen by
9 defendants when they commit crimes. He wants to make it
10 look like they're lying with us with and we pick them
11 and they're State's witnesses. We don't pick our
12 witnesses. Mr. Pontoo picked our witnesses that night.
13 I submit to you, ladies and gentlemen, they were telling
14 the truth because what they say is consistent. The only
15 person who is not consistent, the only person whose
16 story is not consistent is the man with the most to
17 lose.

18 Ladies and gentlemen, this isn't a perfect world.
19 There is no perfect case. You and I can see the same
20 thing. We remember different things about it.
21 Everybody has a little different perception and memory
22 of things, but minor inconsistencies do not equal
23 reasonable doubt. The big facts, the inescapable facts
24 in this case point in one direction and that's towards
25 the defendant. Don't lose the forest for the trees.

1 Use your common sense. You all have a bunch, a
2 multitude of life experiences that gives you a powerful
3 ability to separate fact from fiction and determine what
4 the truth is in this case. Use that. Use it to guide
5 you just like you do in your every day life. Determine
6 what's reasonable and what's not.

7 There is a decision making principle called Occam's
8 Razor. I don't know if you all have ever heard of it.
9 I think it originated in the 1800's. But essentially
10 what it says is that when you are faced with competing
11 explanations for how something happened, you should
12 choose the explanation that requires you to make the
13 fewest assumptions. We're not asking you to make many
14 assumptions in this case. The defense is asking you to
15 not believe anybody who has testified and just believe
16 the words of that man right there (indicating.) Is that
17 reasonable?

18 The Judge is going to instruct you on the law when I
19 finish talking so I'll talk to you a little bit about it
20 now. As you know, he's charged with armed robbery,
21 failure to stop resulting in death. Armed robbery, it
22 is what you think it is, but a legal definition is
23 taking and carrying away the personal property of
24 another person with the intent to deprive the owner of
25 possession while armed with a deadly weapon or

1 displaying what the person being robbed perceives as a
2 deadly weapon. It doesn't matter that the gun was
3 loaded or not, if it was loaded or not. It doesn't
4 matter if it was a toy gun, if Mr. Ruple perceived it as
5 a deadly weapon. It doesn't matter if the gun even
6 worked. And you heard him testify. He saw that laser
7 beam on his chest and he thought he was going to die
8 that night. He touched the gun earlier that night. To
9 him he perceived that as a deadly weapon. And it
10 doesn't matter if you pulled the weapon prior to taking
11 the bag or it doesn't matter if you have to pull the
12 weapon at some point in order to get away with the bag.
13 It's all the same. It's still armed robbery.

14 Failure to stop for a blue light. That's pretty
15 self explanatory, too. The defendant was driving a
16 motor vehicle on a public roadway, Highway 3, 178,
17 public roadways. He was signaled to stop by a law
18 enforcement vehicle by means of a siren or flashing
19 lights. You heard Trooper Snider. He had his sirens on
20 and his flashing lights and his pursuit lights and he
21 didn't stop. He just sped up. And the defendant did
22 not stop and death resulted. You heard from Dr. Ross.
23 Kewon Clemmons died January 27th as a result of trauma
24 sustained from that motor vehicle collision. There's no
25 doubt about that.

1 We have the proof of the elements of this crime
2 beyond a reasonable doubt. Everybody has heard that
3 term, but a lot of people will have misconceptions about
4 what that really means. What it does not mean is that
5 we have to prove things to you to an absolute certainty.
6 That does not exist in this world. We do not have to
7 prove things to you beyond any and all doubt or to the
8 exclusion of every possibility the defense may bring up.
9 What it means is that you are firmly convinced of this
10 defendant's guilt based on the evidence. Firmly
11 convinced. And if you are firmly convinced he's guilty,
12 you have taken an oath to find him guilty.

13 Ladies and gentlemen, just like Mr. Graham said in
14 opening we are all here because of one man's choices.
15 Because of one man's choices a family is going to be
16 forever impacted by the loss of their son Kewon
17 Clemmons. And Jonathan Ruple will probable always
18 remember the day he thought he was going to die.

19 MR. MAULDIN: Objection, Your Honor. Appealing to
20 the jury's passion. Prejudice.

21 THE COURT: Overruled.

22 MR. McNAIR: His choices have brought us all here.
23 But ladies and gentlemen, the last choice is yours. All
24 I can ask is that you speak the truth and you find him
25 guilty. Thank you.

1 THE COURT: Thank you, Mr. McNair.

2 Folks, when we began the trial, I told you that you
3 were the judges of the facts and so during the course of
4 this trial while the attorneys have been presenting the
5 evidence to you, it's been appropriate for me to be
6 there on the bench out of the way and allow them to do
7 that because you're the fact finders. But we have now
8 reached the portion of this trial where you and I are in
9 this together. You as the judges of the facts and me as
10 the judge of the law and so I come down to be with you
11 to give you the law that is applicable in this case.
12 I'm going to read this verbatim so I don't misquote
13 anything or leave anything out.

14 Mr. Foreman and members of the jury, you have heard
15 the evidence and the arguments of both parties. I am
16 now going to explain to you the law which applies to
17 this action.

18 The indictments charge the defendant Raphael Lamarr
19 Pontoo with the offenses of failure to stop for a blue
20 light resulting in death and armed robbery. I remind
21 you that the fact that the defendant was arrested,
22 charged and indicted in this case is not evidence in
23 this case and it cannot be considered by you as evidence
24 of guilt nor does it create any presumption or inference
25 of guilt. The indictments are simply the formal written

1 instruments which contains the charges made against the
2 defendant. They are the formal documents by which this
3 case has been brought into court.

4 Now, I will give you a copy of these instructions in
5 written form to have with you in the jury room. During
6 your deliberations you may refer to these instructions
7 to guide you in your decision making. However, you must
8 consider these instructions as a whole and not follow
9 some parts and ignore others.

10 Now, the defendant has pled not guilty to these
11 indictments and that plea puts the burden on the State
12 to prove the defendant guilty. A person charged with
13 committing a criminal offense in South Carolina is never
14 required to prove him or herself innocent. I charge you
15 that it is an important rule of law that the defendant
16 in a criminal trial no matter what the seriousness of
17 the charge may be will always be presumed to be innocent
18 of the crime for which the indictment was issued unless
19 guilt has been proven by evidence satisfying you of that
20 guilt beyond a reasonable doubt. This presumption of
21 innocence does not end when you begin your
22 deliberations, but it accompanies the defendant
23 throughout the trial until you reach a verdict of guilt
24 based on evidence satisfying you of that guilt beyond a
25 reasonable doubt. The presumption of innocence is not a

1 mere legal theory. It's not just a legal phrase but it
2 is a substantial right to which every defendant is
3 entitled unless you the jury are satisfied from the
4 evidence of the defendant's guilt beyond a reasonable
5 doubt.

6 So, what is a reasonable doubt in the law? Some of
7 you may have served as jurors in civil cases where you
8 were told that is it only necessary to prove that a fact
9 is more likely true than not true such as by the greater
10 weight or the preponderance of the evidence. In
11 criminal cases the State's proof must be more powerful
12 than that. It must be beyond a reasonable doubt. Proof
13 beyond a reasonable doubt is proof that leaves you
14 firmly convinced of the defendant's guilt.

15 Now, there are very few things in this world that we
16 know with absolutely certainty. And in criminal cases
17 the law does not require proof that overcomes every
18 possible doubt. If, based on your consideration of the
19 evidence, you are firmly convinced that the defendant is
20 guilty of the crimes charged, you must find the
21 defendant guilty. If, on the other hand, you think
22 there is a real possibility that the defendant is not
23 guilty, then you must give the defendant the benefit of
24 that doubt and find him not guilty.

25 I remind you that during this trial you and I have

1 certain duties to perform. As the trial Judge it is my
2 responsibility to preside over the trial of this case
3 and I also have the duty to rule on the admissibility of
4 the evidence offered during the course of this trial. I
5 have the additional duty to charge you the law
6 applicable to this case. It is your duty as jurors to
7 accept and to apply the law as I now state it to you.
8 If you already have any idea as to what the law is or
9 what the law ought to be and it does not agree with what
10 I now tell you that the law is, you must abandon your
11 idea because you are sworn to accept the law and to
12 apply the law exactly as I state to you.

13 As I told you at the start of this case, the jury is
14 the sole and the exclusive judge of the facts in this
15 case. The law does not allow me to have an opinion
16 about the facts. This is a matter solely for you, the
17 jury, to determine. As jurors it is your duty to
18 determine the effect, value, weight and truth of the
19 evidence presented during this trial. To determine the
20 facts in this case you're going to have to evaluate the
21 credibility or the believability of the witnesses.
22 Credibility simply means that. It means believability.
23 It becomes your duty as jurors to analyze and to
24 evaluate the evidence and to determine which evidence
25 convinces you of its truth. You the jury can believe as

1 much or as little of each witness' testimony as you
2 think is proper.

3 You should also assess the credibility of each of
4 the witnesses. You may consider whether any witness has
5 exhibited to you any interest, bias, prejudice or other
6 motive in this case. You may also consider the
7 appearance and the manner of a witness while on the
8 witness stand. You do not determine the truth merely by
9 counting the number of witnesses presented by each side.
10 Throughout this process you have but one objective and
11 that is to find the truth regardless of its source.

12 Now, there are two types of evidence that are
13 generally presented during a trial. There is direct
14 evidence and there is circumstantial evidence. Direct
15 evidence is the testimony of a person who claims to have
16 actual knowledge of a fact such as an eye witness.
17 Circumstantial evidence is proof of a chain of facts and
18 circumstances which indicate the existence of a fact.
19 The law makes absolutely no distinction between the
20 weight or value to be given to either direct or to
21 circumstantial evidence. Nor is there a greater degree
22 of certainty required of circumstantial evidence than of
23 direct evidence. You should weigh all of the evidence
24 in this case. If after weighing all of the evidence you
25 are not convinced of the guilt of the defendant beyond a

1 reasonable doubt, then you must find the defendant not
2 guilty. If, however, after weighing all of the evidence
3 you are convinced of the guilt of the defendant beyond a
4 reasonable doubt, you would then find the defendant
5 guilty.

6 Now, the indictments in this case allege two
7 different offenses against the defendant. Those charges
8 are failure to stop for a blue light resulting in death,
9 and armed robbery. Each indictment charges a separate
10 and distinct offense. You must decide each indictment
11 separately on the evidence and the law applicable to it
12 uninfluenced by your decision as to any other charge or
13 indictment. The defendant may be convicted or may be
14 acquitted on any or all of the offenses charged. You
15 will be asked to write a separate verdict of guilt or
16 not guilt for each indictment.

17 Now, he's charged in this case with failure to stop
18 for a blue light resulting in death. In order to prove
19 this crime the State must prove beyond a reasonable
20 doubt that the defendant was driving the motor vehicle
21 on a road, street or highway of this state; that the
22 defendant was signaled to stop by a law enforcement
23 vehicle by means of a siren and/or flashing light, and
24 that the defendant did not stop. An official signal
25 requiring a motorist to stop may be a siren or flashing

1 lights, but both are not required. An attempt to
2 increase speed of a vehicle or in some other manner
3 avoid the pursuing law enforcement vehicle when signaled
4 by a siren and/or flashing light may be considered as
5 evidence of failure to stop for a blue light. However,
6 it is merely an evidentiary fact to be taken into
7 consideration by you along with the other evidence in
8 this case and is to be given whatever weight that you
9 think it should receive. If you find that the State has
10 proved beyond a reasonable doubt that the defendant
11 failed to stop for a blue light and his actions resulted
12 in the death of another, that would satisfy the elements
13 of the offense of failing to stop for a blue light
14 resulting in death.

15 Now, he is also charged with armed robbery and in
16 order to prove this offense the State must first prove
17 beyond a reasonable doubt that the defendant took
18 personal property from the person or presence of another
19 person. Property is in the presence of a person if it
20 is within the person's reach, inspection, observation or
21 control so that the person could, if not overcome with
22 violence or prevented by fear, could maintain or keep
23 possession of that property. The State must also prove
24 beyond a reasonable doubt that the defendant carried the
25 property away intending to permanently deprive the owner

1 of the property and to keep the property for the
2 defendant's own use. The slightest removal of the
3 property or the complete possession of the property even
4 for an instant by the defendant is sufficient to show a
5 taking and carrying away of the property. The taking
6 and the carrying away of the property must have been
7 done with violence or by putting the owner of the
8 property in fear of violence.

9 Now, the crime of robbery has occurred not only if
10 the perpetrator uses force or intimidation to take the
11 property, but also if force or intimidation is used to
12 retain the property immediately after the taking or to
13 carry away the property or to facilitate escape. A
14 taking is not complete until the perpetrator has
15 neutralized any immediate interference with his or her
16 possession. The crime of robbery is not completed at
17 the moment the stolen property is in the possession of
18 the robbers but may be deemed to continue during their
19 attempt to escape.

20 Finally, the State must prove beyond a reasonable
21 doubt that the defendant was armed with a deadly weapon
22 or what reasonably appeared to be a deadly weapon during
23 the robbery. A deadly weapon is any article, instrument
24 or substance which is likely to cause death or great
25 bodily harm. Whether an instrument has been used as a

1 deadly weapon depends on the facts and circumstances of
2 each case. The following are examples of instruments
3 which may be considered deadly weapons. A pistol, a
4 shotgun, a rifle, a dagger, a knife, a slingshot or
5 metal knuckles. A gun may be a deadly weapon even if
6 it's not operable.

7 Now, the defendant has raised the defense of
8 coercion or duress. Coercion or duress is when a person
9 makes another person commit a crime against someone
10 else's person or property by the threat of immediate
11 physical violence. The coercion or the duress must be
12 present, imminent and of the type to create a well
13 grounded fear of death or serious bodily harm if the act
14 is not done. The fear of injury must be reasonable.
15 Coercion or duress is not a defense if there is any
16 reasonable way other than by committing the crime for
17 the defendant to escape the threat of harm. The
18 defendant must prove the defense of duress by a
19 preponderance or greater weight of the evidence. A
20 preponderance of the evidence is evidence which, when
21 taken as a whole, shows that a fact is more likely to be
22 proved than not proved.

23 Now, Mr. Foreman and ladies and gentlemen of the
24 jury, as you retire to begin your deliberations I want
25 to express to you the hope that each of you will be

1 mindful of the importance of your responsibility. As a
2 presiding officer of this Court I'm vitally concerned
3 that whatever verdict you find will be the result of
4 your going into the jury room and confining your
5 consideration to the evidence and to the law that you
6 have heard in this courtroom weighing it fairly and
7 impartially as I have every confidence you will do.
8 Your verdict in this case cannot be based on sympathy,
9 compassion, prejudice or emotion or some other
10 consideration that's not found in the evidence.
11 Remember, your verdict in this case must be unanimous.

12 Now, Mr. Temple, the verdict form in this case will
13 be in the front of the notebook here in the flap and the
14 verdict form is simple. As I told you in the
15 instructions, there are two indictments. There are two
16 charges that you must consider and there is no
17 significance to the order that I put them in. I just
18 put them in the order of the indictment numbers. So the
19 first I have on here is the failure to stop for blue
20 light resulting in death. You will consider the
21 evidence as it relates to that charge and you will write
22 your verdict whether it be either not guilty or guilty.
23 The same with the armed robbery. You will consider
24 those two charges separately. You'll just, if you
25 would, note the verdict of the jury for each of those

1 and it's just a matter of checking the selection. And
2 then if you will sign it as the foreman. Once you have
3 arrived at a unanimous verdict as to both indictments,
4 if you will just knock on the door and let the bailiff
5 know that you have reached a unanimous decision, we'll
6 bring you out and receive your verdict.

7 Now, I'm going to ask you, if you would, when you
8 step back into the jury room to not begin deliberations
9 immediately. I'm going to send you out to the jury
10 room. I'm going to discuss with the attorneys the
11 charge to make sure that I didn't leave anything out.
12 If I need to bring you back out to recharge you or to
13 add anything, I'll do that. If the charge is good as
14 is, we'll take the exhibits, this notebook and we'll
15 send them back into the jury room. Your cue to begin
16 deliberations is when you have received the evidence,
17 okay? So if you would, please, step back into the jury
18 room and await these items.

19 (The jury goes into the jury room.)

20 THE COURT: All right. Are there any exceptions or
21 objections to the charge from the State?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: Mr. Mauldin, I certainly note your
24 exception on the duress charge.

25 MR. MAULDIN: And I'm renewing that now, Your Honor.

1 THE COURT: And you're going to renew that at this
2 time and I want to note that objection and exception to
3 that. Are there any other objections or exceptions
4 other than that?

5 MR. MAULDIN: No, Your Honor.

6 THE COURT: Okay. Guys, if you all don't mind, if
7 you would come up and get with Steve and make sure that
8 everything that's supposed to be up here is here. I
9 have got 63 State's exhibits and one defense exhibit.
10 Just verify that.

11 (The jury commenced its deliberations at 3:57 p.m.)

12 * * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

* * * * *

1
2 THE COURT: All right. If I can have your
3 attention, folks. I've got - the foreman, Mr. Temple,
4 sent this note out and I'll just read it verbatim. It
5 says, "Jurors are requesting to see the video of car
6 chase and vehicle running off the road. Mark Temple."
7 So are we set up on that? Is it ready to go or do we
8 need a warm-up?

9 MR. GRAHAM: I've got it.

10 THE COURT: The video is back there, I think.

11 MR. GRAHAM: I can cue the video before they come
12 out. Otherwise we're just going to have to play through
13 it until, or fast forward to it until we get to the
14 point that they're looking for.

15 THE COURT: Do you have any idea where it's at?

16 MR. GRAHAM: I don't.

17 THE COURT: That's fine. Do me a favor, Dee. Go
18 back there and tell them that we need them to pass out
19 to us the video they want to watch and that we're
20 setting it up. Steve, I'll just go ahead and ask you to
21 mark this as a Court's exhibit, please.

22 (Whereupon, Court's exhibit number 3 marked for
23 identification.)

24 MR. GRAHAM: Judge, we are ready.

25 THE COURT: Let's go ahead and bring the jury out,

1 please.

2 (The jury enters the courtroom at 4:45 p.m.)

3 THE COURT: All right. Ladies and gentlemen, I got
4 your message and I think we have the video cued up to
5 where you had indicated and we'll start that now. Let
6 me just say this: If at any time you want the video
7 either rewound or stopped or whatever, you just let us
8 know because we're here to accommodate you. Can
9 everyone see over that podium? Is that podium in the
10 way? Okay. All right. You want to dim the lights.

11 (Playing video.)

12 THE COURT: Is that good? All right. Thank you,
13 ladies and gentlemen. You can return to your
14 deliberations.

15 (The jury returned to the jury room to continue
16 their deliberations at 4:53 p.m.)

17 THE COURT: All right. We'll be at ease while they
18 continue their deliberations.

19 (Recess during jury deliberations.)

20 THE COURT: Back on the record. All right. Ladies
21 and gentlemen, I have been informed that the jury has
22 reached a verdict. I don't know what that is. I'm only
23 told that they have a verdict. We don't know what the
24 verdict is so I sit here just as you as far as being in
25 the dark, but I do know this. Folks, I realize that

1 cases always carry emotional ties and I get that, but
2 having said that, a jury's verdict in any case whether
3 it be a case such as this or a civil case or any type of
4 case, it deserves to be received in a professional
5 manner. So if you think that you are unable to handle
6 the verdict whether it falls the way you feel it should
7 or whether it falls the way you feel it shouldn't, if
8 you don't think you're going to be able to receive it in
9 a professional manner without any outburst or any
10 comments, then you need to step out of the courtroom
11 because if there are any disturbances or any outbursts
12 or anything that would cause this jury to not have their
13 verdict received in a professional way, then that person
14 won't be going home tonight because I will hold you in
15 contempt of court. I'm giving you warning now that I
16 will not tolerate any disturbances in court and so if
17 you don't think you can handle that, whatever it may be,
18 then you should step out. Now, is the State ready to
19 receive the jury's verdict?

20 MR. GRAHAM: The State's ready, Your Honor.

21 THE COURT: Is the Defense ready?

22 MR. MAULDIN: Yes, Your Honor.

23 THE COURT: All right. Please bring the jury in.

24 (The jury returns to open court to report its
25 verdict at 6:10 p.m.)

1 THE COURT: All right. Mr. Temple, has the jury
2 reached a unanimous verdict, sir?

3 MR. TEMPLE: Yes, we have, Your Honor.

4 THE COURT: If you would, please, pass that to the
5 bailiff for me.

6 (The bailiff passes the verdict to the Clerk, the
7 Clerk passes the verdict to the Court.)

8 THE COURT: Thank you. All right. Madam Clerk, if
9 you would please publish the verdict of the jury.

10 THE CLERK: Indictment 2014-GS-32-1408 and
11 2014-GS-32-1409. The State versus Raphael Lamarr
12 Pontoo. As to indictment 2014-GS-32-1408, charge,
13 failure to stop for blue light resulting in death, we
14 the jury find the Defendant Raphael Lamarr Pontoo guilty
15 of failure to stop for blue light resulting in death.

16 As to indictment 2014-GS-32-1409, armed robbery, we
17 the jury find the Defendant Raphael Lamarr Pontoo guilty
18 of armed robbery. Both are so signed by the foreperson
19 Mr. Temple dated January 28th, 2014. Mr. Foreman,
20 ladies and gentlemen of the jury, if this is your
21 verdicts, please indicate each of you by raising your
22 right hand.

23 (All jury members raise their right hand.)

24 THE CLERK: All hands raised, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, I want

1 to thank you for your service. It's not often as I said
2 before that you get called to serve on jury duty and
3 when you do get called, oftentimes it's even less odds
4 that you actually get selected to sit on a panel so what
5 you have done this week in your service to the community
6 has been an honorable service, a great service, and it's
7 one that many people will never have. I've said it
8 before. I said it to a jury panel earlier today. I'm
9 59 years of age and I have never even been summoned for
10 jury duty except for once and it was after I was already
11 on the bench and obviously I couldn't serve. So I have
12 never had the opportunity to do what you have done here
13 this week and I regret that because it's something that
14 I think would be interesting and would be a service to
15 give. It's not easy work and you understand that having
16 done it this week. This will conclude your service for
17 the week. We have some other matters that we're going
18 to take care of, but they don't involve the need for a
19 jury. They're non jury matters and so we had the panel
20 come in this afternoon for a case that we thought that
21 we would be trying after this case, but that case has
22 resolved so we have nothing left on the docket other
23 than other non jury matters so your service is
24 concluded. You don't have to call back. You don't have
25 to come back. Madam Clerk has work excuses for you if

1 you need those this evening and you will also receive a
2 small check for your service this week. So in a moment
3 I'm just going to excuse you and you're free to go, if
4 that's what you choose to do.

5 I always tell members of the jury you're the ones
6 who did the work and just in a moment we're going to
7 proceed, but if you want to stay for sentencing, you're
8 certainly invited to do that. Some folks do. Some
9 folks don't. Some folks want to go home and so it
10 doesn't matter. You're going to be free to go if you
11 choose to, but if you want to remain, we're going to
12 proceed to that in just a moment and you're welcome to
13 stay for that. So I want to thank you again for your
14 service this week. If you are going to be leaving,
15 please, the badges that you have there, if you would
16 please leave them with the bailiff before you head out.
17 All right. Is the State ready to proceed with
18 sentencing?

19 MR. GRAHAM: Yes, Your Honor.

20 THE COURT: Is the Defense ready? Do you have
21 anything? We are going to get you, Mr. Temple, to sign
22 the indictment as the foreman.

23 All right. Mr. Mauldin, I will be more than happy
24 to hear from you on behalf of Mr. Pontoo and then
25 obviously if Mr. Pontoo would like to address the Court

1 or anyone else on his behalf.

2 MR. MAULDIN: Yes, sir. First at this time I would
3 make a motion for a new trial for Mr. Pontoo on the
4 charges and I base that on my prior motions and
5 objections both individually and taken accumulatively
6 that he should have a new trial based on that.

7 THE COURT: All right. And I certainly note your
8 motion. I'm going to respectfully deny it at this
9 point. I think that the verdict is consistent with the
10 evidence that was presented and would respectfully deny
11 the motion. Yes, sir.

12 MR. MAULDIN: Thank you, Your Honor. Mr. Pontoo is
13 21 years old. Present in court at this moment is his
14 mother Rosalind Pontoo and his uncle Freddie Portafield.
15 He has had other members of the family here this week to
16 support him. An aunt Mary Middleton, his father Marvin
17 Jones and his fraternal twin brother Dariel. He's from
18 the Gloverville area of Aiken, South Carolina
19 originally. He attended Midland Valley High School. He
20 did not graduate, but he has been going to Denmark Tech
21 for a couple of years to get his GED in general
22 management degree. He has worked in the past, Your
23 Honor, at a gas station in West Columbia. That was in
24 the 2011/2012 period of time. He does have one son,
25 [REDACTED] who is about a year and a half old now. His son

1 and mother live in Orangeburg.

2 He's been in jail just one day shy of a year, Your
3 Honor, 364 days. I have instructed Mr. Pontoo not to
4 talk. We understand the jury's verdict. When you take
5 a look at the facts of the case, obviously it is a very
6 tragic case, but from the facts it doesn't appear that
7 the individual involved actually went in with the
8 intentions of pointing a gun at somebody and stealing
9 even though it became an armed robbery after a
10 confrontation and a gun was pulled, at least to the jury
11 panel, but it wasn't somebody that went in and stuck a
12 gun in somebody's face to get the property, but it
13 eventually did and I don't think that there was any
14 intention to cause the death of another individual
15 although reckless behavior unfortunately did result in
16 that. We would hope you would take that into
17 consideration.

18 His age, I believe his prior record, other than the
19 juvenile conviction that the Solicitor had mentioned
20 earlier is a malicious injury to property, and his lack
21 of a serious prior record. I believe his mother
22 Rosalind wanted to address the Court as well.

23 THE COURT: Sure. I'm more than happy to hear from
24 her or anyone else on his behalf. Yes, ma'am.

25 ROSALIND PONTTOO: Thank you. I just want to say

1 that Raphael has been given an opportunity to correct
2 his life. I mean, I know this has been a learning
3 experience for him and I just ask the Court to take into
4 consideration his age and the fact that he was trying to
5 better himself and I'm sorry that, you know, the
6 circumstances didn't allow him to continue onto what he
7 originally started to do, but he do has family that do
8 love him and would like to see the best for him and I
9 just ask for leniency.

10 THE COURT: All right. Thank you very much, ma'am.
11 Anyone else?

12 MR. MAULDIN: No. That's all, Your Honor.

13 THE COURT: All right. Solicitor?

14 MR. GRAHAM: Thank you, Your Honor. His prior
15 record as his attorney said, Your Honor, was the
16 juvenile conviction for assault of a high and aggravated
17 nature in 2007. The only other conviction on his rap
18 sheet is a malicious injury to personal property less
19 than two thousand which was from June of 2013. The .22
20 caliber handgun that he had that night, Your Honor, at
21 the bar and I guess that witnesses said that they saw
22 earlier in the night, that gun was stolen that day on
23 January 23rd, 2014 at 3:30 in the afternoon from a
24 hardware store in Wagener, South Carolina. It was a
25 black male and a black female that was in there and

1 nobody has been charged with that. But however many
2 hours later Mr. Pontoo has that gun with him, the gun
3 that was used in the armed robbery.

4 Your Honor saw the video of the high speed chase.
5 The speeds with which Mr. Pontoo chose to drive, over a
6 hundred miles an hour, endangering people, passing
7 double yellow lines, at least two cars he passed while
8 he was driving. He was coming up, even if he hadn't
9 lost control, he was coming up to a four way stop which
10 the testimony showed there was an officer that was
11 coming to that intersection in response to the pursuit,
12 he didn't care and I just ask that you take all of those
13 things into consideration. You have heard the case and
14 give him an appropriate sentence. I know that on behalf
15 of Kewon's family, his uncle Ricky wanted to address the
16 Court.

17 THE COURT: All right, sir. Yes, sir.

18 RICKY CLEMMONS: My name is Ricky Clemmons. I'm
19 Alexander Clemmons uncle and I just wanted to speak on
20 his behalf just to inform you that he did went to high
21 school and completed high school. He later then applied
22 to Greenville Technical College and there he wasn't
23 really focused, but he went back and reapplied at
24 Greenville Tech and he did get accepted back after two
25 weeks of his death and, you know, he was raised by my

1 mother along with my other sisters and brothers and he
2 was not a violent type person, you know, as far as in
3 the community. We never had no problems with him in
4 high school getting in trouble or anything in the
5 community.

6 THE COURT: All right. Thank you very much for
7 being here.

8 MR. GRAHAM: I believe that's all from the State,
9 Your Honor.

10 THE COURT: All right. Let me ask you all something
11 real quick.

12 (Side bar held off the record.)

13 THE COURT: Back on the record.

14 This is always by far the hardest part of my job.
15 To the family of the young man that lost his life I
16 don't even know where to begin to tell you how sorry I
17 am that you are here. The tragedy is that a young man
18 lost his life and now another young man is going to lose
19 a significant part of his. And then to Mr. Ruple, you
20 know, an event that is so catastrophic in a person's
21 life that it requires you to leave your home and move to
22 another state, not that it required it, but it's
23 something that you needed to do and you're haunted by it
24 and will be for some time. It doesn't make any sense.
25 It's all, you know, it's foolishness. It's silliness.

1 It is what it is.

2 Mr. Pontoo, you're fortunate that other innocent
3 folks were not hurt or killed or that you survived.
4 But, ladies and gentlemen, sentencing is such a
5 difficult task. We have sentencing ranges that state
6 law gives us and I try to look at that when I impose
7 sentence. I try to be thoughtful in my sentencing and
8 not just give somebody a maximum sentence and be done
9 with it unless it requires that. And so I look at a lot
10 of factors when I decide on sentencing. I look at
11 someone's prior record. I look at the facts and
12 circumstances surrounding the various charges. I think
13 when the legislature gives us a range, that there's a
14 reason for that. I think we're supposed to consider
15 those types of things.

16 If I have got a young man in Mr. Pontoo's case, he's
17 got a minimal prior record. If Mr. Pontoo had a prior
18 armed robbery in his past, a couple of burglaries and is
19 someone who has just absolutely lived his life on the
20 wrong side of the law, then I would feel like he
21 deserves to be up at the upper end of the range if not
22 the top of the range. So I take these types of things
23 into consideration.

24 I explain that mainly for the family of the victim
25 and for the victim who is here to just give you some

1 idea on how I arrive at the sentences that I decide on.
2 It's not arbitrary and I tell folks all the time I don't
3 expect you to necessarily agree with my sentence. All I
4 can tell you is that it is what I think is appropriate
5 and just under the circumstances here and that's one
6 person's opinion and thought.

7 So having said that, with regards to indictment
8 number 2014-GS-32-1409, that's the armed robbery charge,
9 the sentence of the Court is that you be committed to
10 the State Department of Corrections for a period of 10
11 years.

12 On indictment 2014-GS-32-1408, the failure to stop
13 for a blue light involving a death the sentence of the
14 Court is that you be committed to the State Department
15 of Corrections for a period of 20 years. Those
16 sentences are to run consecutive to each other and
17 you're to be given credit for the 364 days that you have
18 served. Good luck to you, sir.

19 Ladies and gentlemen, for those of you who aren't
20 familiar with the justice system and sentencing, when
21 you have more than one offense, the Court has the option
22 to run matters concurrently or consecutively.
23 Concurrently would be, for example, on the sentence that
24 I imposed here would essentially be a 20 year sentence.
25 It would be the 20 year sentence and a 10 year sentence

1 but they would run together at the same time.

2 Consecutive is that, and I don't know what order
3 Mr. Pontoo will have to do these sentences, but he'll be
4 required to serve one sentence and complete that
5 sentence before he then begins serving the second
6 sentence. So in essence it's a 30 year sentence. Both
7 of these are non parolable offenses and a non parolable
8 offense simply means this, that it's not technically non
9 parolable, but it essentially is in that an individual
10 who is convicted under these charges is required to
11 serve 85 percent of the sentence before they're eligible
12 for consideration of early release. So that's just a
13 brief explanation of the sentence that the Court imposed
14 in this case. If you have any other questions, the
15 family, there are plenty of folks that can answer those
16 questions for you and for the victim.

17 Ladies and gentlemen of the jury, if you have any
18 questions, I'll be happy to answer those, if you have
19 any. But anyway, that's the sentence of Court and that
20 concludes these matters so court will be in recess until
21 9:30 tomorrow morning.

22 (The jury was excused.)

23 END OF PROCEEDINGS AT 6:30 P.M.

24

25

WITNESSES

S.C. Highway Patrol Headquarters

J G Snider

Law Enforcement Case #: 14001334

DSG

ARREST WARRANT NUMBER

2014A3210200152

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6/9/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS3201408

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JUNE TERM 2014

THE STATE

vs.

Raphael Lamarr Pontoo

CDR #: 2398

Indictment for

Failure to stop for blue light result death

§ 56-05-0750(C)(2)

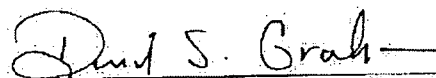
DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Failure to stop for blue light result death
COUNTY OF LEXINGTON	)	
	)	§ 56-05-0750(C)(2)

At a Court of General Sessions, convened on May 2014, the Grand Jurors of Lexington County present upon their oath:

That **Raphael Lamarr Pontoo** did in Lexington County, South Carolina on or about January 24, 2014 willfully, knowingly and unlawfully fail to stop a motor vehicle, while driving said motor vehicle on a road, street or highway of this State when J G Snider a law enforcement officer with the SC Highway Patrol signaled and sounded his siren and/or turned on his flashing blue light, and when driving he did perform an act forbidden by law or neglected a duty imposed by law in the driving of the vehicle that resulted in the death of Alexzander Clemons. In violation of § 56-5-750 (C) (2), Code of Laws of South Carolina, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

Raphael Lamarr Pontoo

AKA: _____

Race: Black Sex: M Age: 21

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Failure to stop for a blue light, death results

INDICTMENT/CASE#: 2014GS3201408

A/W#: 2014A3210200152

Date of Offense: 1/24/2014

S.C. Code §: 56-05-0750(C)(2)

CDR Code #: 2398

SENTENCE SHEET

0 - 25 years

☐ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-0750(C)(2) of the S.C. Code of Laws, bearing CDR Code # 2398

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

1/6/50
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-65-32-1409
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for 364 days time served

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(I) (Vehicle Assessment) \$40/ea. \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5

3% to County (if paid in installments) \$

TOTAL \$ 130

Clerk of Court/ Deputy Clerk Beth Carrico

Court Reporter: Steve Salinas

SCCA 217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2141

Sentence Date: 1-28-2015

WITNESSES

Lexington County Sheriffs Department

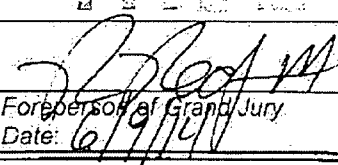
Bryan Todd Garrick

Law Enforcement Case #: 14001334

DSG.

ARREST WARRANT NUMBER

2014A3210200151

ACTION OF GRAND JURY

 Foreperson of Grand Jury

Date: 6/9/14

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS3201409**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS
JUNE TERM 2014**THE STATE****vs.****Raphael Lamarr Pontoo**

CDR #: 0139
Indictment forArmed Robbery, robbery while armed with
a deadly weapon.

§ 16-11-0330(A)

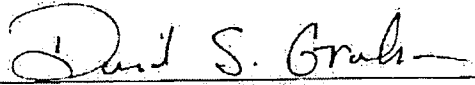
DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Armed Robbery, robbery while armed with a
COUNTY OF LEXINGTON	)	deadly weapon
	)	
		§ 16-11-0330(A)

At a Court of General Sessions, convened on May 2014, the Grand Jurors of Lexington County present upon their oath:

That **Raphael Lamarr Pontoo** did in Lexington County, South Carolina on or about January 24, 2014 knowingly and willfully while armed with a deadly weapon and/or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed, to wit: a .22 caliber pistol did feloniously take from the person or presence of Jonathan Ruple, by means of force, threats or intimidation goods or monies being described as follows: \$200.00 in US currency and/or a 9mm pistol and/or clothing with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.
Raphael Lamarr Pontoo

AKA: _____
Race: Black Sex: M Age: 21

DL#: _____ SID#: _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or 1wd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Dev S. Gish 11650
Solicitor SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 ~~days/months/years~~ ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____ plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-65-32-1408
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit for 364 days time served

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS: _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL		\$130

Clerk of Court/ Deputy Clerk Bill Parry
Court Reporter: Steve Leland
SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3201409

A/W#: 2014A3210200151

Date of Offense: 1/24/2014

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

10-30 years

☐ CONVICTED OF or ☐ PLEADS

☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or 1wd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant SC Bar# _____

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 ~~days/months/years~~ ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____ plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2014-65-32-1408
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. Credit for 364 days time served

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel
§ 47.12 requires \$500 be paid to Clerk
during probation

Presiding Judge _____

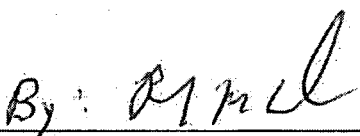
Judge Code: 2141

Sentence Date: 1-28-2015

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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."

August 24, 2016

By: 

DONALD L. MCCUNE, JR.
Associate Attorney

Savage Law Firm
15 Prioleau Street
Charleston, SC 29401
(843) 720-7470

Robert M. Dudek
Chief Appellate Defender

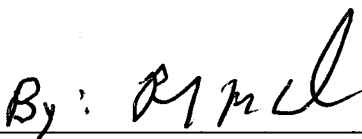
South Carolina Commission on
Indigent Defense Division of Appellate
Defense PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the 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."

August 24, 2016

By: 

DONALD L. MCCUNE, JR.
Associate Attorney

Savage Law Firm
15 Prioleau Street
Charleston, SC 29401
(843) 720-7470

Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
AUG 24 2016
SC Court of Appeals