

**RECEIVED**

**SEP 27 2019**

**S.C. SUPREME COURT**

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**ORIGINAL**

\_\_\_\_\_  
Certiorari to Florence County

Honorable Michael G. Nettles, Circuit Court Judge

\_\_\_\_\_  
LARRY BRAYBOY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002171

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

LARA M. CAUDY  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

LINDSEY MCCALLISTER  
Assistant Attorney General  
Rembert Dennis Bldg, Room 519  
1000 Assembly Street  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

# INDEX

|                                                                                          |     |
|------------------------------------------------------------------------------------------|-----|
| INDEX .....                                                                              | i   |
| TRIAL TRANSCRIPT DATED AUGUST 24-26, 2009 .....                                          | 1   |
| FINAL BRIEF OF APPELLANT .....                                                           | 465 |
| FINAL BRIEF OF RESPONDENT .....                                                          | 477 |
| <u>STATE V. BRAYBOY</u> , OPINION NO. 5060 (S.C. Ct. App. filed December 12, 2012) ..... | 488 |
| PETITION FOR REHEARING.....                                                              | 496 |
| ORDER DENYING PETITION FOR REHEARING .....                                               | 502 |
| PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS .....                            | 503 |
| RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS ..                     | 515 |
| ORDER DENYING PETITION FOR WRIT OF CERTIORARI TO THE COURT OF<br>APPEALS .....           | 528 |
| APPLICATION FOR POST-CONVICTION RELIEF .....                                             | 529 |
| AMENDED APPLICATION FOR POST-CONVICTION RELIEF .....                                     | 539 |
| RETURN AND PARTIAL MOTION TO DISMISS.....                                                | 541 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED JANUARY 31, 2018 .....                   | 549 |
| ORDER OF DISMISSAL.....                                                                  | 605 |
| INDICTMENT .....                                                                         | 619 |
| SENTENCE SHEETS .....                                                                    | 622 |

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF FLORENCE ) COURT OF GENERAL SESSIONS

3  
4 STATE OF SOUTH CAROLINA, )  
5 PLAINTIFF, ) TRANSCRIPT  
6 -VS- ) OF  
7 LARRY BRADLEY BRAYBOY, ) RECORD  
8 DEFENDANT. ) 09-GS-21-398

9  
10 August 24-26, 2009  
11 Florence, South Carolina

12 B E F O R E:

13 THE HONORABLE THOMAS A. RUSSO, JUDGE, and a jury.

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

15  
16 FITZLEE MCEACHIN  
17 Assistant Solicitor  
Attorney for the State

18  
19 BARBARA PRATT and SHANNA JONES-BURGESS  
ESQ.  
Attorneys for the Defendant

20  
21 KEISHA REED  
22 Circuit Court Reporter

23 Transcribed by Pamela E. Green, Circuit Court Reporter  
24  
25

I N D E XWITNESSESPAGE

|                                      |     |
|--------------------------------------|-----|
| Jury Selection                       | 9   |
| Motions                              | 35  |
| Opening by the Court                 | 53  |
| Opening by Mr. McEachin              | 60  |
| Opening by Mrs. Pratt                | 65  |
| CHAPPELL McMILLIAN, JR.              |     |
| Direct examination by Mr. McEachin   | 70  |
| Cross-examination by Mrs. Pratt      | 85  |
| Redirect examination by Mr. McEachin | 95  |
| GARY McMILLIAN                       |     |
| Direct examination by Mr. McEachin   | 100 |
| Cross-examination by Mrs. Pratt      | 112 |
| Redirect examination by Mr. McEachin | 134 |
| Recross examination by Mrs. Pratt    | 136 |
| TONY GREEN                           |     |
| Direct examination by Mr. McEachin   | 144 |
| Cross-examination by Mrs. Pratt      | 151 |
| Redirect examination by Mr. McEachin | 164 |



|    |                                      |             |
|----|--------------------------------------|-------------|
| 1  | <u>WITNESSES</u>                     | <u>PAGE</u> |
| 2  |                                      |             |
| 3  | JERRY GAINES                         |             |
| 4  | Direct examination by Mr. McEachin   | 164         |
| 5  | Cross-examination by Mrs. Pratt      | 195         |
| 6  | Redirect examination by Mr. McEachin | 212         |
| 7  | SANDY THOMPSON                       |             |
| 8  | Direct examination by Mr. McEachin   | 216         |
| 9  | Cross-examination by Mrs. Pratt      | 222         |
| 10 | Redirect examination by Mr. McEachin | 230         |
| 11 | JOHN STEWART                         |             |
| 12 | Direct examination by Mr. McEachin   | 231         |
| 13 | Cross-examination by Mrs. Pratt      | 238         |
| 14 |                                      |             |
| 15 | Motions                              | 247         |
| 16 |                                      |             |
| 17 | ROBIN TURNER                         |             |
| 18 | Direct examination by Mr. McEachin   | 278         |
| 19 | Cross-examination by Mrs. Pratt      | 302         |
| 20 | Redirect examination by Mr. McEachin | 316         |
| 21 | ROGER TILTON                         |             |
| 22 | Direct examination by Mr. McEachin   | 319         |
| 23 | Cross-examination by Mrs. Pratt      | 321         |
| 24 |                                      |             |
| 25 |                                      |             |

|    |                                    |             |
|----|------------------------------------|-------------|
| 1  | <u>WITNESSES</u>                   | <u>PAGE</u> |
| 2  |                                    |             |
| 3  | QUENNEL BROWN                      |             |
| 4  | Direct examination by Mr. McEachin | 325         |
| 5  | Cross-examination by Mrs. Pratt    | 343         |
| 6  | DANNY GRAHAM                       |             |
| 7  | Direct examination by Mr. McEachin | 354         |
| 8  |                                    |             |
| 9  | Motions                            | 363         |
| 10 | Closing by Mrs. Pratt              | 379         |
| 11 | Closing by Mr. McEachin            | 395         |
| 12 | Charge by The Court                | 422         |
| 13 | Question from the Jury             | 441         |
| 14 | Verdict                            | 448         |
| 15 | Motions                            | 448         |
| 16 | Sentencing                         | 463         |
| 17 | Certificate                        | 464         |
| 18 |                                    |             |
| 19 |                                    |             |
| 20 |                                    |             |
| 21 |                                    |             |
| 22 |                                    |             |
| 23 |                                    |             |
| 24 |                                    |             |
| 25 |                                    |             |

|    |                         |                            |           |           |
|----|-------------------------|----------------------------|-----------|-----------|
| 1  | <u>E X H I B I T S</u>  |                            |           |           |
| 2  | <u>NOS.</u>             | <u>DESCRIPTION</u>         | <u>ID</u> | <u>EV</u> |
| 3  | <u>State's Exhibits</u> |                            |           |           |
| 4  |                         |                            |           |           |
| 5  | S-1                     | Shotgun                    | 9         | 187       |
| 6  | S-2                     | Wallet, gloves, oil bottle | 9         | 183       |
| 7  | S-3                     | Brown hat                  | 9         | 183       |
| 8  | S-4                     | Black Hat                  | 9         | 191       |
| 9  | S-5                     | Shotgun shell              | 9         | 187       |
| 10 | S-6                     | Stocking Cap               | 9         | 183       |
| 11 | S-7                     | Large Map                  | 9         | 232       |
| 12 | S-8                     | Map                        | 9         | 167       |
| 13 | S-9                     | Map Drawing                | 9         | 73        |
| 14 | S-10                    | Jacket                     | 9         |           |
| 15 | S-11                    | Jacket                     | 9         |           |
| 16 | S-12                    | Photograph                 | 9         | 81        |
| 17 | S-13                    | Photograph                 | 9         | 81        |
| 18 | S-14                    | Photograph                 | 9         | 82        |
| 19 | S-15                    | Photograph                 | 9         | 189       |
| 20 | S-16                    | Photograph                 | 9         | 109       |
| 21 | S-17                    | Photograph                 | 9         | 109       |
| 22 | S-18                    | Photograph                 | 9         | 184       |
| 23 | S-19                    | Photograph                 | 9         | 184       |
| 24 | S-20                    | Photograph                 | 9         | 189       |
| 25 | S-21                    | Photograph                 | 9         | 193       |

| 1  | <u>NOS.</u> | <u>DESCRIPTION</u> | <u>ID</u> | <u>EV</u> |
|----|-------------|--------------------|-----------|-----------|
| 2  |             |                    |           |           |
| 3  | S-22        | Photograph         | 9         | 189       |
| 4  | S-23        | Photograph         | 9         | 189       |
| 5  | S-24        | Photograph         | 9         | 193       |
| 6  | S-25        | Photograph         | 9         | 193       |
| 7  | S-26        | Photograph         | 9         | 171       |
| 8  | S-27        | Photograph         | 9         |           |
| 9  | S-28        | Photograph         | 9         |           |
| 10 | S-29        | Photograph         | 9         | 171       |
| 11 | S-30        | Photograph         | 9         | 171       |
| 12 | S-31        | Photograph         | 9         | 193       |
| 13 | S-32        | Photograph         | 9         |           |
| 14 |             |                    |           |           |
| 15 |             |                    |           |           |
| 16 |             |                    |           |           |
| 17 |             |                    |           |           |
| 18 |             |                    |           |           |
| 19 |             |                    |           |           |
| 20 |             |                    |           |           |
| 21 |             |                    |           |           |
| 22 |             |                    |           |           |
| 23 |             |                    |           |           |
| 24 |             |                    |           |           |
| 25 |             |                    |           |           |

|    |             |                             |           |           |
|----|-------------|-----------------------------|-----------|-----------|
| 1  | <u>NOS.</u> | <u>DESCRIPTION</u>          | <u>ID</u> | <u>EV</u> |
| 2  |             | <u>Defendant's Exhibits</u> |           |           |
| 3  | D-1         | Photograph                  | 152       |           |
| 4  | D-2         | Photograph                  | 152       |           |
| 5  | D-3         | Photograph                  | 152       | 153       |
| 6  | D-4         | Sketch                      |           | 161       |
| 7  |             |                             |           |           |
| 8  |             |                             |           |           |
| 9  |             |                             |           |           |
| 10 |             |                             |           |           |
| 11 |             |                             |           |           |
| 12 |             |                             |           |           |
| 13 |             |                             |           |           |
| 14 |             |                             |           |           |
| 15 |             |                             |           |           |
| 16 |             |                             |           |           |
| 17 |             |                             |           |           |
| 18 |             |                             |           |           |
| 19 |             |                             |           |           |
| 20 |             |                             |           |           |
| 21 |             |                             |           |           |
| 22 |             |                             |           |           |
| 23 |             |                             |           |           |
| 24 |             |                             |           |           |
| 25 |             |                             |           |           |



## P R O C E E D I N G S

(Whereupon, a bench conference was held out of the hearing of the jury followed by State's Exhibit Nos. 1 through 32 being marked for identification purposes only at this time.)

THE COURT: All right. Ladies and gentlemen, I'm gonna, at this time, recognize the State to call their first case and we'll go about the business of selecting this, our first jury, and, as I told you, at the conclusion of, of this process, once we have this jury impaneled, I'll excuse the balance of you for the day, and then, and then I'll give you a little bit more information about that when we get to that time.

But at this time, solicitor.

MR. CLEMENTS: Thank you, Your Honor.

Please the Court.

Your Honor, the first case is going to be tried by Assistant Solicitor Fitzlee McEachin. It is the State of South Carolina vs. Larry Brayboy, Brayboy and the Indictment Number is Indictment 2009-GS-21-398, and, Your Honor, I'll, I'll defer now to Mr. McEachin.

THE COURT: Thank you, Solicitor.

Ladies and gentlemen, you, you've heard the solicitor, Solicitor Clements, just announce that the

1 State is calling for trial the State of South Carolina vs.  
2 Larry Bradley Brayboy. Mr. Brayboy is charged under the  
3 Indictment 2009-GS-21-398, which is a multiple count  
4 indictment, and he's charged under this indictment with  
5 these, these allegations of criminal acts, and what I want  
6 you to understand before I go into these is that, to this  
7 indictment, to these charge on this indictment,  
8 Mr. Brayboy has pled not guilty and that plea of not  
9 guilty places the burden of proof on the State to prove  
10 the allegations contained in these indictments.

11 I am going to read to you the charges that  
12 Mr. Brayboy is accused of and what I want you to  
13 understand is that the allegations that are contained in  
14 this indictment are not, in any way, evidence of the  
15 charges that are listed here. This is simply the legal  
16 document that brings this case into court, and these are  
17 merely allegations at this point.

18 On this indictment Mr. Brayboy is charged with armed  
19 robbery and the indictment alleges that in Florence  
20 County, on or around December the 6<sup>th</sup> of 2008, that  
21 Mr. Brayboy did violate Section 16-11-330(a) and 16-1-60  
22 of the South Carolina Code of Laws, 1976 as amended, in  
23 that, while armed with a deadly weapon or while alleging,  
24 either by action or words, that he was armed while using a  
25 representation of a deadly weapon or any object which a



1 person present during the commission of the robbery would  
2 reasonably believed to have been a deadly weapon, to wit,  
3 a pistol, did feloniously rob Gary McClary and/or Chappell  
4 McMillian, by means of force or intimidation, goods or  
5 monies of the said Gary McClary and or Chappell McMillian.  
6 To wit, the defendants, while armed with a firearm, did  
7 take money and personal belongings from these victims.

8 Mr. Brayboy is also charged, under another count on  
9 this indictment, that on or about, in Florence County,  
10 December the 6<sup>th</sup>, 2008, did violate Section 16-3-910 and  
11 16-1-60 of the South Carolina Code of Laws, as amended, in  
12 that he did unlawfully seize, confine, decoy, kidnap,  
13 abduct, and/or carry away Gary McClary and/or Chappell  
14 McMillian by means whatsoever without authority of law and  
15 by the use of force by holding the victims at gun point  
16 and not allowing them to leave the incident location.  
17 That is the charge involving the, the kidnapping  
18 allegation.

19 And then the third allegation is that of assault and  
20 battery of a high and aggravated nature, and that  
21 allegation is as follows: That Larry Bradley Brayboy, did  
22 violate, in Florence County, on December the 6<sup>th</sup>, 2008,  
23 common law and Section 17-25-30 of the South Carolina Code  
24 of Laws as amended in that he did commit an assault and  
25 battery upon Gary McClary and Chappell McMillian

1 constituting an unlawful act of violent injury to the  
2 person of said Gary McClary and Chappell McMillian  
3 accompanied by circumstances of aggravation. To wit, in  
4 that they, he did strike the victims on the head with the  
5 firearm causing the victims to seek, to have to seek  
6 medical attention.

7 Now, those are the allegations that the State has  
8 brought against Mr. Brayboy to which he has pled not  
9 guilty.

10 Is there any member of the jury panel who knows  
11 anything about these charges that I just read to you that  
12 occurred on or around ecember the 6<sup>th</sup> of 2008, if so,  
13 please stand.

14 (Juror responds.)

15 PROSPECTIVE JUROR: Your Honor, I don't know anything  
16 about this specific incident you're talking about, but I  
17 was assaulted and I think that the Court and the attorneys  
18 ought to know that.

19 THE COURT: All right. All right. And Mr.---

20 PROSPECTIVE JUROR: And my wallet was taken.

21 THE COURT: All right. Then, but Mr. Nettles, let me  
22 ask, while, while I have you here on that, that issue,  
23 would that, in any way, affect your ability to be fair and  
24 impartial, sir?

25 PROSPECTIVE JUROR: Your Honor, I don't think so, but

1 I, I, I, you know, I don't know.

2 THE COURT: Okay. All right. Well, I tell you, with  
3 regards to this particular case, then, Mr. Nettles, I'm  
4 gonna excuse you from service on this trial. It may be  
5 that, that we can certainly use you on another matter.  
6 But I'm gonna excuse you from service on this trial, sir.

7 PROSPECTIVE JUROR: Okay. And I'm, I'm taking a  
8 personal holiday. So, I'm gonna stick around and watch.

9 THE COURT: Well, thank you, sir. All right. Great.  
10 That sounds wonderful.

11 MR. MCEACHIN: Your Honor, may we approach?

12 THE COURT: Yeah.

13 (Whereupon, a bench conference was held in the  
14 presence of the jury, but out of the hearing of the jury.)

15 THE COURT: I need to make a correction that, that I,  
16 I misread, ladies and gentlemen, and that is that,  
17 regarding the armed robbery charge that I first read to  
18 you, that the deadly weapon that is alleged to have been  
19 in possession at the time of the crime was that of a  
20 shotgun. Not a pistol. I don't know if that changes  
21 anyone's response to the question.

22 Is there any member of the jury panel who knows  
23 anything about this case, if so, please stand.

24 (No response.)

25 THE COURT: All right. Now, ladies and gentlemen,

1 I'm gonna give the attorneys an opportunity to introduce  
2 themselves to you. So, if you'd please give them your  
3 undivided attention.

4 Mr. McEachin.

5 MR. MCEACHIN: Thank you, judge.

6 Ladies and gentlemen, my name is Fitzlee McEachin. I  
7 represent the State in this matter, and seated with me  
8 here is Lieutenant Roger Tilton and Investigator Jerry  
9 Gainey. They will be the lead investigators in this case.  
10 They'll be sitting with me here today. I also have other  
11 law enforcement that the judge will tell you about in a  
12 minute.

13 THE COURT: All right. Thank you, sir.

14 Mr. Brayboy, ladies and gentlemen, is, is represented  
15 by Mrs. Pratt.

16 Mrs. Pratt, I'll give you this opportunity to  
17 please---

18 MRS. PRATT: Thank you, Your Honor.

19 Good morning. My name is Barbara Pratt. I practice  
20 in Conway, South Carolina in Horry County and a little bit  
21 here in, in Florence and Marion. Seated with me is Shanna  
22 Jones-Burgess, who is my co-counsel in this matter. She  
23 also practices in Horry County.

24 THE COURT: Thank you very much, ma'am.

25 Now, ladies and gentlemen, with regards to Mr.

1 McEachin, is there any members of the jury panel related  
2 by blood, connected by marriage, or who has any close  
3 personal or business relationship with Mr. McEachin, if  
4 so, please stand.

5 (No response.)

6 THE COURT: Thank you. There are none.

7 Is there any member of the jury panel who is related  
8 by blood, connected by marriage, or who has any close  
9 business or personal relationship or who has either been  
10 represented by Mrs. Pratt or Mrs. Burgess in the past, if  
11 so, please stand.

12 (Juror responds.)

13 THE COURT: Yes, ma'am. All right. Can I get your  
14 name please?

15 PROSPECTIVE JUROR: Angela Jones.

16 THE COURT: All right, Mrs. Jones. Give me one  
17 second, give me one moment there if you would please.

18 THE CLERK: Seventy.

19 THE COURT: All right. Mrs. Jones, you're Number 70,  
20 and what relationship, Mrs. Jones, do you think you have  
21 to---

22 PROSPECTIVE JUROR: Well, I, I don't necessarily  
23 consider if you, it as really personal, but I do know the  
24 young gentlemen. He's a former student. He came, came  
25 through the schools I formerly worked at and I know his

1 parents and his family very well.

2 THE COURT: All right. And, and you're referring to  
3 Mr. Brayboy?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: All right. Mrs. Jones, if I may, let me  
6 ask, while, while you're up, the fact that, that, that you  
7 know Mr. Brayboy or members of his family in this  
8 capacity, would that, in any way, affect your ability to  
9 be fair and impartial if you were selected as a member of  
10 this panel?

11 PROSPECTIVE JUROR: No, it wouldn't. It would be  
12 somewhat hard personally. I don't know how it's gonna pan  
13 out. But according to what's written on your wall, what's  
14 written here, I believe I could serve.

15 THE COURT: All right.

16 PROSPECTIVE JUROR: But it might, you know, I don't  
17 know what, sitting here looking at that, it would mean.

18 THE COURT: All right. All right. Thank you very  
19 much, Mrs. Jones.

20 Well, let me ask, while, while we're on this, on, on  
21 Mr. Brayboy, Mr. Brayboy, if you would -- Mrs. Pratt, I'm  
22 gonna get you to introduce Mr. Brayboy to the members of  
23 the jury.

24 MRS. PRATT: My client, Larry Brad Brayboy, from Lake  
25 City.

1 THE COURT: All right. Thank you very much, Mr.  
2 Brayboy. You may have a seat.

3 (Defendant complies.)

4 THE COURT: Ladies and gentlemen, is, is there any  
5 member of the jury panel, and I've heard from Mrs. Jones,  
6 is there any member of the jury panel who's related by  
7 blood, connected by marriage, or who has any close  
8 business or personal relationship with Mr. Brayboy, if so,  
9 please stand.

10 (No response.)

11 THE COURT: All right. Thank you. There are none.

12 Now, ladies and gentlemen, I'm, I'm going to call out  
13 a list of names. These are possible witnesses that may  
14 testify during the course of the trial. They may or they  
15 may not. But the question that I just asked you regarding  
16 Mr. Brayboy, that same question would apply to any of  
17 these witnesses, and, and that is simply this, is there  
18 any member of the jury panel related by blood, connected  
19 by marriage, or who has any close business or personal  
20 relationship with any of these people whose names I'm  
21 about to call out. If that question applies and you hear  
22 a name, please stand. Continue to listen, if you would,  
23 ladies and gentlemen, cause there are several, excuse me,  
24 several names here and it may be that that question  
25 applies to more than one of these individuals.

1           Keeping that question in mind, these are possible  
2 witnesses that may testify during the course of this case.

3           Gary McClary.

4           And if any of these witnesses are in the courtroom,  
5 if you would please stand and face the members of the  
6 jury.

7           (Witness stands.)

8           THE COURT: Chappell McMillian, Jr.

9           (Witness stands.)

10          THE COURT: Jerry Gaaney.

11          (Witness stands.)

12          THE COURT: Roger Tilton.

13          (Witness stands.)

14          THE COURT: Danny Graham.

15          Sandy Thompson.

16          Roy Crosby.

17          John Stewart.

18          Tony Green.

19          Robin Turner.

20          Is it Quennell Brown?

21          MR. MCEACHIN: That's correct, Your Honor.

22          THE COURT: Quennell Brown.

23          Thank you, gentlemen. You may have a seat.

24          (Witnesses comply.)

25          THE COURT: Any member of the jury panel related by



1 blood, connected by marriage, or have any close business  
2 or personal relationship with any of the individuals whose  
3 names I have called?

4 (No response.)

5 THE COURT: Thank you. There are none.

6 Is there any member of the jury panel who has ever  
7 been; had a case prosecuted either against yourself or any  
8 member of your family by the Twelfth Circuit Solicitor's  
9 Office, which represent Florence and Marion Counties, if  
10 so, please stand.

11 (Juror responds.)

12 THE COURT: Mrs. Jones, is that correct?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: All right. It was -- was it a member of  
15 your family, Mrs. Jones?

16 PROSPECTIVE JUROR: My nephew a few years ago.

17 THE COURT: All right, ma'am. And, and that  
18 individual was prosecuted by the Twelfth Circuit  
19 solicitor's office?

20 PROSPECTIVE JUROR: I believe. I'm not quite sure,  
21 but it was up here.

22 THE COURT: All right. Well, ma'am, the fact that  
23 you've had that experience in your family, would that, in  
24 any way, affect your ability to be fair and impartial in  
25 the trial of this case?

1 PROSPECTIVE JUROR: No, it would not.

2 THE COURT: All right. Thank you very much,  
3 Mrs. Jones. You may have a seat.

4 Is there any member of the jury panel or -- oh, I'm  
5 sorry. Yes, ma'am, your name?

6 PROSPECTIVE JUROR: Mary Daniels, Juror Number 30.

7 THE COURT: All right. And, Mrs. Daniels, a member  
8 of your family?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Prosecuted by the Twelfth Circuit Office?

11 PROSPECTIVE JUROR: I think so.

12 THE COURT: All right. Ma'am, the fact that you've  
13 had that experience in your family, would that, in anyway,  
14 affect your ability to be fair and impartial both to the  
15 state as well as to the defense?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you very much. Ma'am, you may have  
18 a seat.

19 Is there any member of the jury panel or a member of  
20 your family who has any currently pending criminal charges  
21 in either Marion or Florence County, if so, please stand.

22 (No response.)

23 THE COURT: Thank you. There are none.

24 Is there any member of the jury panel who has been a  
25 victim or had a member of a family who is a victim of a

1 violent crime, if so, please stand.

2 (Jurors respond.)

3 THE COURT: Thank you. There are none.

4 Oh, I'm sorry. I apologize.

5 Your name, ma'am?

6 PROSPECTIVE JUROR: Miriam Guthrie.

7 THE COURT: All right. Mrs. Guthrie, give me one  
8 moment please.

9 THE CLERK: Juror Number 52, Judge.

10 THE COURT: All right. Juror Number 52.

11 Mrs. Guthrie, yourself or a member of your family?

12 PROSPECTIVE JUROR: My brother was murdered---

13 THE COURT: All right.

14 PROSPECTIVE JUROR: ---in 1992 in Texas.

15 THE COURT: Okay. Ma'am, the fact, the fact that  
16 you've had that experience in your family, would that, in  
17 any way, affect your ability to be fair and impartial  
18 hearing the evidence giving both the State and the defense  
19 a fair hearing?

20 PROSPECTIVE JUROR: I don't believe so.

21 THE COURT: All right. Thank you, ma'am. You may  
22 have a seat.

23 Yes, ma'am, your name?

24 PROSPECTIVE JUROR: My name is Sandra Montgomery. My  
25 mother was murdered here in Florence in 2001.

1 THE COURT: All right. Mrs. Montgomery?

2 PROSPECTIVE JUROR: The case was never solved.

3 THE CLERK: 85, Judge.

4 THE COURT: Juror Number 85, yeah.

5 Mrs. -- would that, Mrs. Montgomery, would that, in  
6 any way -- would, would that affect your ability to be  
7 fair and impartial during the trial of this case, ma'am?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: All right. Thank you very much, ma'am.  
10 And yes, ma'am, can I get your name?

11 PROSPECTIVE JUROR: Cindy Davis.

12 THE COURT: Mrs. Davis.

13 All right. Juror Number 31.

14 Mrs. Davis, yourself or a member of your family?

15 PROSPECTIVE JUROR: A member of my family.

16 THE COURT: All right. Ma'am, the fact that you've  
17 had that experience in your family, would that, in any  
18 way, affect your ability to be fair and impartial if you  
19 were selected as a member of this panel?

20 PROSPECTIVE JUROR: I don't think so.

21 THE COURT: I'm sorry.

22 PROSPECTIVE JUROR: I don't think so.

23 THE COURT: All right. Thank you very much, ma'am.

24 And Mrs. Jones, that---

25 PROSPECTIVE JUROR: Yes, sir, it applies to me as

1 well.

2 THE COURT: All right. And, and would that  
3 experience have, have any affect on or would or do you  
4 think it would, in any way, interfere with your ability to  
5 be fair and impartial?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Thank you, Mrs. Jones.

8 Ladies and gentlemen, is there any member of the jury  
9 panel or a member of your family who is employed in any  
10 law enforcement office, if so, please stand.

11 Thank you.

12 (Jurors respond.)

13 THE COURT: Yes, ma'am, your name, please?

14 PROSPECTIVE JUROR: Christie Nowlin.

15 THE COURT: All right. Mrs. Nowlin, your, you, you  
16 have a family member who's a judge over in --?

17 PROSPECTIVE JUROR: Lake City.

18 THE COURT: Lake City.

19 All right. A magistrate, is that correct?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: All right. Would that, in any way,  
22 affect your ability to be fair and impartial, ma'am?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Thank you very much.

25 THE CLERK: She's 100.

1 THE COURT: Juror Number 100.

2 And yes, sir?

3 PROSPECTIVE JUROR: Could you repeat the question?

4 THE COURT: I just said if, if, if you or any member  
5 of your family is employed by a law enforcement  
6 department.

7 PROSPECTIVE JUROR: Yes, sir, I have a cousin in  
8 Kingstree.

9 THE COURT: In Kingstree?

10 Is, is it---

11 PROSPECTIVE JUROR: Sheriff's Department.

12 THE COURT: All right. Can I get your name, sir?

13 PROSPECTIVE JUROR: Theron McFadden, 83.

14 THE COURT: All right. Juror Number 83, Mr.  
15 McFadden.

16 Would, would that, sir, in any way, affect your  
17 ability to be fair and impartial?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Thank you very much, Mr. McFadden.

20 Ladies and gentlemen, is there any member of the jury  
21 panel who is either a member of or a contributor to any  
22 organization whose goal or existence involves the  
23 combating or the combating crime or involved in things  
24 such as, for example, MADD, Mother's Against Drunk  
25 Driving, Citizens Against Violent Crime, CAVE I think is

1    what that is, any of those organizations, or as a  
2    contributor to South Carolina Troopers Association, the  
3    Fraternal Order of Police, any of those organizations that  
4    are designed to support or enhance law enforcement?

5           Is there any member of the jury panel related, or  
6    excuse me, any member of the jury panel a member or a  
7    contributor to those organizations?

8           (Jurors respond.)

9           THE COURT: Yes, ma'am.

10          PROSPECTIVE JUROR: I have a brother that is  
11    statewide speaker for MADD in Mississippi and my nephew  
12    was killed by a drunk driver.

13          THE COURT: All right. And can I get your name  
14    again, ma'am?

15          PROSPECTIVE JUROR: Miriam Guthrie.

16          THE COURT: Mrs. Guthrie.

17          All right. Mrs. Guthrie, would that, in any way,  
18    affect your ability to be fair and impartial if you were  
19    selected as a member of this panel?

20          PROSPECTIVE JUROR: No, sir.

21          THE COURT: Thank you very much. You may have a  
22    seat.

23          Yes, sir.

24          PROSPECTIVE JUROR: I contribute to the Florence  
25    county sheriff's office.

1 THE COURT: All right. And, Mr. Huggins, is that  
2 correct?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Mr. Huggins, would that, in any way,  
5 affect your ability to be fair and impartial if you were  
6 selected as a member of this panel, sir?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Thank you very much, Mr. Huggins.

9 THE CLERK: Number 60.

10 THE COURT: Number 60. Juror number 60.

11 Ladies and gentlemen, you know, obviously, if, if, if  
12 you haven't gathered by now, the purpose of all these  
13 questions are simply this, and our purpose always, in, in  
14 court, is to be able to impanel jurors who can listen to  
15 the evidence that's presented during the case and weigh  
16 that evidence giving both the State of South Carolina and  
17 the defendant at the bar a fair and an impartial trial.

18 Is there any member of the jury panel who knows of  
19 any reason why, if you were selected on this panel, that  
20 you would not be able to give both the State and the  
21 defense a fair trial, if, if, if so, please stand.

22 (No response.)

23 THE COURT: Thank you. There are none.

24 Any further questions from the State?

25 MR. MCEACHIN: Just one from the State, Your Honor.



1 You asked if anyone knew or has a close social or personal  
2 relationship with the defendant, but I don't believe you  
3 asked about his family members.

4 THE COURT: Oh, okay. All right. Thank you, sir.

5 MR. MCEACHIN: Thank you, Judge.

6 THE COURT: I asked y'all asked about Mr. Brayboy,  
7 but I do think Mrs. Jones answered that question that you  
8 mentioned because I think she mentioned his, his family,  
9 but is there any member of the jury panel who is related  
10 by blood, connected by marriage, or who has any close  
11 personal or relation, business relationship with any  
12 member of Mr. Brayboy's family, if so, please stand.

13 (No response.)

14 THE COURT: Thank you. There are none.

15 Anything further, Mr. McEachin?

16 MR. MCEACHIN: That's it from the State, Your Honor.

17 THE COURT: Anything further from the defense?

18 MRS. PRATT: Your Honor, when I introduced myself I  
19 did not state that I had formerly practiced under the last  
20 name of Krug, K-R-U-G, in Horry County.

21 THE COURT: All right. That ring anybody's bell as  
22 far as having Mrs. Pratt represent you or whatever?

23 (No response.)

24 THE COURT: Thank you, Mrs. Pratt.

25 MRS. PRATT: Thank you, Your Honor.

1 THE COURT: All right. Anything further then from  
2 the defense?

3 MRS. PRATT: No, sir.

4 THE COURT: Ladies and gentlemen, we have entered  
5 into the new age of technology and we use to pull your  
6 names out of a cylinder right here randomly, and, and we  
7 pull your name, and you'd come forward when your name was  
8 called. What we do now is everything's computerized. All  
9 your names are in the computer and, and you've been  
10 assigned a juror number. What the computer does, is,  
11 Madam Clerk can punch a button and the computer takes all  
12 your names and completely and random scrambles them and  
13 puts them back on a list in random order.

14 And what we'll do now is we'll take that list and  
15 we'll start at the top, and she'll call your name. And if  
16 you hear your name, you'll come forward as always, and if  
17 you'll come and just stand next to this microphone and  
18 just face the back of the courtroom. At that point she  
19 will confer and ask the State something along the lines of  
20 what say you for the State. The State will have an  
21 opportunity to either excuse you or to present you. If  
22 the State excuses you you'll go back and have your, have a  
23 seat, and we'll go to the next name. If the State  
24 presents you, Madam Clerk will then recognize the defense  
25 and ask what say you for the defense, and the defense will

1 have the opportunity as well to either excuse you or to  
2 seat you. If, if the defense excuses you, you'll go and  
3 have a seat. If the defense seats you, then you'll come  
4 and you'll have a seat in the jury box and you'll be a  
5 member of the jury panel, and we'll go through that  
6 process until we've selected our jurors.

7 The strikes are five and ten. When you hear your or  
8 if you hear your name, please bring with you everything  
9 that you've brought to court. If you brought a pocketbook  
10 or a book, an umbrella, a coat, whatever, because it may  
11 be that when you come forward you may not be returning to  
12 your seat. You may be sitting over here.

13 So, please make sure to bring with you anything  
14 you've brought to court. Listen carefully. If you hear  
15 your name called, just come forward, come around here, and  
16 have a, and stand here, like I said, and face the back of  
17 the courtroom.

18 All right. Ladies and gentlemen, I always, I always  
19 like to tell the, the jury, and I don't know whether it  
20 matters or not, but as you all are aware, you were  
21 assigned a juror number when you, you came in. When the  
22 computer takes your names and, and randomly throws them  
23 back in a random order, it also changes the numbers cause  
24 what happens on our sheet, the sheet that the, the lawyers  
25 will be, you'll be selected from, you may of been Juror

1 Number 88 as far as juror number, but you may appear as  
2 Juror Number 6 on this roster because when it scrambles  
3 the names it, it just lists them one through however many.  
4 And so, it completely reassign numbers.

5 So, the number that you hear Madam Clerk call out is  
6 not necessarily your juror number. So, that's why I say  
7 you listen for your name. When she calls your name, if  
8 you'll come forward.

9 All right. State ready to proceed with jury  
10 selection?

11 MR. MCEACHIN: State's ready, Your Honor.

12 THE COURT: Defense ready?

13 MRS. PRATT: Defense is ready, Your Honor.

14 THE COURT: All right. Please give Madam Clerk your  
15 attention then.

16 (Whereupon, a jury panel was selected at this time.)

17 THE COURT: One alternate please.

18 MR. MCEACHIN: One and two, Your Honor?

19 THE COURT: Yes. Yes, sir.

20 (Whereupon, an alternate juror was selected at this  
21 time.)

22 THE COURT: All right. Does the State have any  
23 motions regarding jury selection?

24 MR. MCEACHIN: None from the State, Your Honor.

25 THE COURT: Anything from the defense regarding jury

1 selection?

2 MRS. PRATT: The Court's indulgence for one moment.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 MRS. PRATT: We have no motions, Your Honor. Thank  
6 you.

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

8 (Whereupon, the jurors that were not selected were  
9 excused at this time.)

10 THE COURT: All right. With regards to my panel  
11 here, let me tell you or give you some instruction. I'm  
12 going to, in just a moment, I'm going to excuse you for  
13 lunch and, and send you on, on the lunch break and then  
14 we'll, we'll begin the trial after, after lunch. What I  
15 would ask you to do is any time you're around the  
16 courthouse if you would have those, those stickers on.  
17 That signifies as a juror in, in a, an active juror in a  
18 trial. And so, it lets the lawyers and the people know  
19 that you're involved in the case so that they, you know,  
20 don't speak around you or, or, or approach you in any way.

21 What I'm gonna ask you if you would do, during the  
22 lunch break, is to have no conversation with anybody about  
23 this case. What's important, and, and the reason you're,  
24 you're valuable as jurors, as you sit here, is you know  
25 nothing about this case other than what I've shared with

1 you this morning when I went over that indictment. And  
2 that's the way it should be, and it needs to remain that  
3 way.

4 Your decision on this case, whenever you reach that  
5 point of making a decision, should be based solely on the  
6 evidence that was presented during the course of this  
7 trial and the things that you've heard in this courtroom.  
8 That, that is what you base your decisions on. So, it's  
9 improper to obviously have anyone discuss the case with  
10 you outside this crime.

11 If anyone does attempt to speak with you about the  
12 case, just let them know that you're a juror and you're  
13 not allowed to talk about it. That should do it. If it  
14 doesn't, if they persist, if, if you'll get their name,  
15 let me know who that is, I'll make sure that it doesn't  
16 happen again.

17 I'm gonna ask you if you would be back here, be back,  
18 back in your jury room at 2:15. That gives you an hour  
19 and a half for lunch. If you would be back in, in the  
20 jury room at 2:15 we'll, we'll get started shortly after  
21 that.

22 When you come back from lunch, when you come up the  
23 elevator, just come, come straight into courtroom. The  
24 jury room, and Ms. Joe or someone will be here, is, is  
25 right back through this door, and, and they'll, they'll

1 have you placed there. If you need something to drink or  
2 whatever, we'll, we'll, we'll have some refreshments and  
3 things for you. But what I'm gonna do then is, is to not  
4 delay you any further is I'm gonna excuse you to leave  
5 straight from here to lunch and come, report back to the  
6 jury room at 2:15.

7 Now, when, when you report back, the, the instruction  
8 that I've give you to have no conversation with anyone  
9 about the case, oddly enough, that includes each other.  
10 So, when you report back, you know, introduce yourselves  
11 to each other, you know, get to know each other, but don't  
12 talk about the case at all. The, the rule is, is that  
13 you're not allowed to talk with anybody about the case  
14 until you've received all the evidence, you've heard from  
15 the attorneys their closing arguments, and I've charged  
16 you on the law, and that even includes amongst yourselves.  
17 The only time that you'll talk about this case amongst  
18 yourselves is when you get ready to deliberate.

19 okay. So, if you would, how's the hallway look?

20 Is it pretty clear?

21 BAILIFF: It's okay.

22 THE COURT: All right. Everyone else remain seated.

23 Ladies and gentlemen, you're free to go. We'll see  
24 you back at 2:15.

25 (Whereupon, the jury was excused for the lunch

1 break.)

2 THE COURT: All right. Anything we need to take up  
3 before we break for lunch?

4 I imagine we, we'll, we'll be back say around -- do,  
5 do -- any, any motions we have to take up before we start?

6 MRS. PRATT: We do have some motions, Your Honor. It  
7 could be handled after lunch if the Court wishes to come  
8 back.

9 THE COURT: All right. Why don't we, why don't we  
10 report back here at 2:00 and we'll, we'll pick up with  
11 those motions then and take care of those matters.

12 That sound good?

13 MR. MCEACHIN: Sounds good to the State, Your Honor.

14 THE COURT: All right. Well, we'll, we'll then  
15 reconvene at two o'clock.

16 MRS. PRATT: Thank you, Your Honor.

17 (Whereupon, Court was in recess for the lunch break.)

18 THE COURT: All right. What I'm gonna do, guys, is  
19 I've instructed these gentlemen to let us know when a  
20 juror -- you got any out there?

21 BAILIFF: Yeah, we got one out there now.

22 THE COURT: Go ahead and let them come through.

23 BAILIFF: Let them come through?

24 THE COURT: Yeah, please.

25 (Pause.)



1           THE COURT: All right. And Donald or somebody is  
2 gonna hold them out in the hallway so that they don't just  
3 walk in on us. So, let's go ahead -- we may have to start  
4 and stop to let jurors come through. But we'll, we'll go  
5 ahead and deal with whatever pretrial motions we've got to  
6 deal with. And just for the record, let, let me go ahead  
7 and let's put on the record that I think during the, prior  
8 to jury selection the State made a motion to amend the  
9 indictment regarding Count One, which was the armed  
10 robbery charge, to amend that to read, regarding the, the  
11 deadly weapon where it says, to wit, a pistol. That was  
12 amended to read to wit, a shotgun.

13           And that -- is that correct, Mr. MCEACHIN?

14           MR. MCEACHIN: That's correct, Your Honor.

15           THE COURT: That was the only amendment to the  
16 indictment.

17           Is that, that correct as well?

18           MR. MCEACHIN: That's correct, Your Honor.

19           THE COURT: All right. And, Mrs. Pratt, there was no  
20 objection to that amendment?

21           MRS. PRATT: Your Honor, we did not object to that  
22 amendment based on the fact that the, all of our  
23 discussions, all of the pretrial negotiations and  
24 discussions that we had had indicated that the State's  
25 case against my client has to do with a shotgun rather

1     than the pistol.

2           THE COURT: Right.

3           MRS. PRATT: And we were on notice for that.

4           THE COURT: Okay. All right.

5           MRS. PRATT: So, we do not object to that in any way.

6           THE COURT: But I know that, that we do have some,  
7     some other matters that we need to take up at this time,  
8     is that correct?

9           MRS. PRATT: Yes, Your Honor, that is correct.

10          THE COURT: All right.

11          MRS. PRATT: The first motion that I would make, Your  
12     Honor, would be a motion to sequester the witnesses. The  
13     issue in this case has to do with comparing the stories.  
14     There's really no forensic evidence. And so, it would be  
15     imperative to, proper due process for my client, that the  
16     witnesses be sequestered from each other.

17          MR. MCEACHIN: Your Honor, the State has no objection  
18     to that motion.

19          THE COURT: All right. And obviously---

20          MS. MCEACHIN: And we ask that it also apply to any  
21     defense witnesses.

22          THE COURT: Sure. It applies to all witnesses.

23          But, if I'm not mistaken, the only witness you  
24     indicated, if, if, if any, would, would be your client, is  
25     that correct?

1 MRS. PRATT: That's correct, Your Honor.

2 THE COURT: And he certainly has the right to be  
3 present. And so -- but we will do that. We'll, we'll  
4 sequester any witnesses.

5 Now, Mr. McEachin, that would, that would, that  
6 sequestration process will begin prior to opening  
7 statements.

8 MR. MCEACHIN: Thank you, Your Honor.

9 THE COURT: That's right.

10 MR. MCEACHIN: And the State would ask, of course,  
11 that the two victims in the case be allowed to stay in the  
12 courtroom as well as my investigator.

13 THE COURT: Yeah, correct. The victims and the lead  
14 investigator.

15 MR. MCEACHIN: Thank you, Judge.

16 MRS. PRATT: Your Honor, my concern about the victims  
17 being present during their testimony is that they are  
18 separate fact witnesses. They are a different location.  
19 And while I understand that victims have the right to hear  
20 the testimony, I would ask that the second victim not be  
21 present while the first victim is testifying simply  
22 because that's the whole point of the sequestration --

23 THE COURT: All right.

24 MRS. PRATT: -- to keep them from comparing and, and  
25 changing, not intentionally, but changing their stories

1 because of, of that.

2 I understand about the detective and I understand  
3 that he is going to be testifying, according to the  
4 solicitor, fourth.

5 MR. MCEACHIN: That's correct.

6 MRS. PRATT: After another fact witness. So, I don't  
7 see the same problem between his testimony and the other  
8 police officer since they'll be after his.

9 THE COURT: All right.

10 MRS. PRATT: But I am very concerned about those  
11 victims.

12 MR. MCEACHIN: And, Your Honor, I, I feel the victims  
13 have a right to be here to hear all the testimony put  
14 before the Court. They are the victims in the case.

15 THE COURT: Well, but the, the issue that I'm  
16 concerned about is the whole purpose of sequestration and  
17 that is one witness spring-boarding off of another one,  
18 and I, I think, I mean I think I, they're entitled to be  
19 here for all the testimony. But I think, with regards to  
20 the two of them, I think I'm going to uphold the  
21 sequestration with regards to not having -- in other  
22 words, obviously once the first victim testifies, he or  
23 she can remain in the courtroom when the second one comes  
24 in.

25 MR. MCEACHIN: That's, that's what I was gonna ask,

1 Your Honor.

2 THE COURT: Sure.

3 MR. MCEACHIN: As it pertains to those two, at least  
4 have the sequestration lifted once they've testified.

5 THE COURT: Absolutely. Absolutely. And I'll do  
6 that with any witness.

7 Is there, is there any reason to continue it through  
8 the trial?

9 MRS. PRATT: What would happen if the State decided  
10 again to recall a witness in rebuttal and they have sat  
11 throughout, Your Honor, would that defeat the purpose---

12 THE COURT: Well, they're bound by their earlier  
13 testimony. I mean -- which is -- I don't mind continuing  
14 it throughout the trial if, if that's -- but the victims,  
15 I'm not gonna keep the victims out the entire trial.

16 MRS. PRATT: And I understand that, Your Honor. I  
17 would ask that the other victim, the other witnesses  
18 remain outside the courtroom simply in the event that the  
19 solicitor determines that he needs to recall someone in  
20 rebuttal.

21 THE COURT: Okay. All right. Anything else?

22 MRS. PRATT: On that issue?

23 THE COURT: Yeah.

24 MR. MCEACHIN: Nothing from the State, Your Honor.

25 MRS. PRATT: Nothing.

1 THE COURT: All right. Anything on the next matter?

2 MRS. PRATT: Your Honor, as we discussed in chambers,  
3 the next matter that we would be moving would be to  
4 prevent anyone referring to the clothing of the two  
5 co-defendants by the names of the owner in the presence of  
6 the victims. As I've stated, my concern is that that's  
7 really the only thing that these victims may, if at all,  
8 be able to identify, and if we use the names of the  
9 defendants in regards to the clothing, then they will  
10 know, the victims will per se know that, that it doesn't  
11 belong to my client, and that is not something, that is  
12 something that I want them to be able to determine by  
13 looking at the clothing as to whether they recognize it or  
14 not.

15 THE COURT: Or if at all.

16 MRS. PRATT: If at all.

17 THE COURT: If at all.

18 MRS. PRATT: Exactly, Your Honor, and my  
19 understanding is they are the -- not only do we have  
20 clothing in jackets, which have been marked as State's  
21 Exhibit 10 and 11, but we also have some clothing that the  
22 co-defendants actually wore from the jail and that we have  
23 now been able to remove from them and that I may be able  
24 to use, if I choose to do so, to show the victims. And  
25 so, I would ask that those items all just simply be

1 referred to as Defendant A being Mr. Turner and Defendant  
2 B being Mr. Brown for purposes of the record.

3 THE COURT: Solicitor.

4 MR. MCEACHIN: Your Honor, I, I don't object to the,  
5 to not being able to call the defendants by their names.  
6 I do feel like it may become a little confusing when you  
7 start labeling them A and B.

8 THE COURT: Well, I don't know the -- obviously I  
9 don't have any idea what the facts are in this case and/or  
10 the order of witnesses and who's going to be referring to  
11 this clothing. I understand Mrs. Pratt's concern about  
12 not using the name of, of a co-defendant.

13 Are you going to have fact witnesses that you're  
14 putting up prior to the victim's testifying?

15 MR. MCEACHIN: Your Honor, I have two victims. The  
16 order of, of my first four witnesses is the two victims, a  
17 fact witness, and Investigator Gainey.

18 THE COURT: Well, is it -- is that not a moot point  
19 then if the two victims are his first two witnesses?

20 MRS. PRATT: Then I would be showing the victims  
21 possibly clothing.

22 THE COURT: Correct.

23 MRS. PRATT: Are the victims in the courtroom right  
24 now?

25 MR. MCEACHIN: They should be sitting right back in

1 the office. I, I could get them.

2 MRS. PRATT: I just realized that that would blow  
3 the---

4 THE COURT: Well -- but my point is, my point is do  
5 you -- and I'm not trying to preclude you, Mr. McEachin,  
6 from doing anything you choose to do.

7 MR. MCEACHIN: Yes, sir.

8 THE COURT: But I, I got the impression that you were  
9 the one that was going to be involved with the clothing.

10 MRS. PRATT: Yes, sir.

11 THE COURT: And if that's his first two witnesses,  
12 and you, and you examine them as to those, those items,  
13 then, at that point, they've testified, they're done. I  
14 don't know who else would be referring to the clothing.  
15 Even, but even if later on, say an officer referred to Jim  
16 Beam as wearing these clothes, the, the victims have  
17 already testified.

18 MRS. PRATT: All right, sir. So, that would mean  
19 that -- I guess the person I'm then mostly precluding from  
20 saying whose clothes they are would be the solicitor. He  
21 couldn't say I want you to look at Jim Beam's shoes again.

22 THE COURT: Right. You got to, you got to watch him.

23 MRS. PRATT: Yeah, I'm -- no, I, I---

24 THE COURT: Do you see what she's saying?

25 MR. MCEACHIN: I think, I think that's fine as far as



1 the victims go, Your Honor. But the law enforcement that  
2 arrested them, I can certainly ask them whose clothes they  
3 were.

4 THE COURT: Absolutely. Absolutely. And that's,  
5 that's what I'm trying -- what I'm trying to do is I'm  
6 trying to give Mrs. Pratt what she's looking for for that  
7 protection, but allow you to continue to prosecute your  
8 case.

9 MR. MCEACHIN: Your Honor, the State will refrain  
10 from mentioning anything about the co-defendant's names  
11 if -- I have to choose the questions about the clothes. I  
12 don't intend to do that.

13 THE COURT: Sure.

14 And so, Mrs. Pratt, my point being, and I want to  
15 make sure that I'm, I'm protecting what your concern, and  
16 that is this, if Mr. McEachin calls the two victims as his  
17 first two witnesses and they, they, they testify and then  
18 they go through your cross, then any witnesses subsequent  
19 to them who might relate that clothing to an individual,  
20 at that point it's, it's moot for your purpose.

21 MRS. PRATT: Absolutely, Your Honor. My main concern  
22 is---

23 THE COURT: If the victims are done, they're off the  
24 stand.

25 MRS. PRATT: The victims and the fact witness, Mr.

1 Green, I guess cause he -- those would be the only ones.  
2 Absolutely.

3 THE COURT: But obviously law enforcement can testify  
4 to whatever it is they observed and what they saw and what  
5 they did, yeah.

6 MRS. PRATT: Sure.

7 THE COURT: Okay.

8 MRS. PRATT: Your Honor, the next two motions I guess  
9 that I have have to do with Detective Gainey and his  
10 potential testimony. I believe the solicitor's already  
11 cautioned him about this, but for the record I would like  
12 to make a motion that would prevent Detective Gainey from  
13 testifying about anything that Michael Cooper or any other  
14 person that's not going to be present to testify may have  
15 told him. I realize that's just a hearsay ruling. But in  
16 regards to Mr. Cooper, much of the information regarding  
17 clothing and so forth that Detective Gainey would of  
18 received came from that witness and that witness is not  
19 present and will not be testifying.

20 MR. MCEACHIN: That's correct, Your Honor.

21 MRS. PRATT: The other issue in regards to Detective  
22 Gainey would be to, a motion in limine now to keep him  
23 from giving any opinion as to or conclusions that he may  
24 draw from facts that he's been given from other witnesses,  
25 and I do that in an abundance of caution because I believe

1 that it's impossible to unring a bell once something's  
2 been said. So, I---

3 THE COURT: Sure.

4 MRS. PRATT: I would be asking for that ahead of  
5 time.

6 THE COURT: And again -- and we've talked about this,  
7 and, Mr. McEachin, I would stress again, and not, not just  
8 Officer Gainey, but any, any witness, unless they're  
9 qualified as an expert in a particular field, they're not  
10 allowed to give their opinion testimony. They can  
11 certainly state what facts they have seen, observed, or  
12 heard obviously outside of hearsay. But as far as drawing  
13 a conclusion as to those, that would be improper  
14 obviously.

15 MR. MCEACHIN: Certainly, Your Honor.

16 MRS. PRATT: Your Honor, my last motion is a motion  
17 to, in limine, to keep the evidence---

18 THE COURT: Mrs. Pratt, I apologize. I just want --  
19 are there some jurors out in the hallway?

20 BAILIFF: Yes, sir.

21 THE COURT: All right. Let's, let's stop right here  
22 for just a moment. Y'all have a seat. Let's bring them  
23 on through. I'm sorry. I felt like someone had to be  
24 standing out there or else they just ignored my 2:15  
25 request.

1 MRS. PRATT: I'm sure they would not do that, Judge.

2 THE COURT: Well, you're very kind, but---

3 (Pause.)

4 THE COURT: Okay. Mrs. Pratt, you may continue.

5 (Pause.)

6 THE COURT: All right. Mrs. Pratt.

7 MRS. PRATT: Thank you, Your Honor.

8 Your Honor, my last motion is a motion in limine to  
9 prevent the, any evidence of flight as evidence of guilt  
10 being raised in this case. I base this motion, although I  
11 am well aware of the case law which says that, that it's  
12 well settled that flight can be considered as evidence of  
13 guilt, I'm very concerned in my research in the case law  
14 that the normal set of facts for that is someone who is  
15 running from the scene or running from an officer who's  
16 trying to stop them in a traffic stop, for example.

17 My client was not arrested until several weeks later  
18 from the incident. I believe he was actually arrested on  
19 January the 1<sup>st</sup> of 2009, and the incident occurred on  
20 December the 6<sup>th</sup> of 2008. That protracted period of time  
21 I believe has explanations, but could be used by the State  
22 to try to place a higher, a higher amount of guilt on  
23 that, on that particular fact. I'm not sure if I'm  
24 wording that right, but give it more weight than it might  
25 necessarily need to have. And because of that, Your

1 Honor, I believe that it would be more prejudicial than  
2 probative to be using that evidence or that fact as  
3 evidence of guilt and I would ask the Court order that  
4 that not be argued.

5 THE COURT: Solicitor.

6 MR. MCEACHIN: Your Honor, may I approach?

7 THE COURT: Yes, sir.

8 MRS. PRATT: I hand the Court the case of The State  
9 vs. Nathaniel Thomas Grant. Your Honor, this case is  
10 directly on the point as far as it pertains to the flight  
11 and the risk thereof, and I would agree that, that Your  
12 Honor would not be allowed to or permitted to charge the  
13 jury as far as flight's concerned, but I would draw the  
14 Court's attention to the last paragraph on the last page,  
15 top of the page where Justice Littlejohn expressly said  
16 the charge of flight often has a potential of creating  
17 more problems than solutions. While we no longer  
18 recognize or sanction that, this charge by the judge, we  
19 recognize the evidence of flight remains proper. We also  
20 recognize that it is often times appropriate for counsel  
21 to argue to the jury the inferences growing out of flight.

22 Your Honor, the State's position is in this case  
23 flight is, is certainly probative, and I'm not sure -- I  
24 mean it's obviously prejudicial. All evidence is  
25 prejudicial. But I don't, I don't think that the

1 prejudicial nature of it outweighs, outweighs the  
2 probative value of it, Your Honor.

3 MRS. PRATT: If I may, Your Honor?

4 THE COURT: Yes, ma'am, let me just give this, give  
5 this one quick read here.

6 (Pause.)

7 THE COURT: Yes, ma'am.

8 MRS. PRATT: Your Honor, factually Grant is different  
9 from this case. Factually, in Grant, we actually have the  
10 officers coming to apprehend him to the house. The  
11 defendant in this case or the appellate sees the officers,  
12 slams the door, and runs. Those are not the facts that we  
13 have in this case today. I don't believe that any officer  
14 is going to say that they came to Mr. Brayboy's home, that  
15 he looked out, peeked, slammed the door and ran. That --  
16 those aren't our facts. The, the facts are that he, he  
17 was not arrested for a long period of time, and I think  
18 that that's what makes this such, such a problematic type  
19 of evidence.

20 MR. MCEACHIN: Your, Your Honor, if I may reply to  
21 that.

22 Certainly, in, in cases where the U.S. Marshals have  
23 to go to other states to get individuals, that evidence is  
24 admissible and that often, in times, is a month or two  
25 months later. That is admissible in Court as far as

1 evidence of flight is concerned. And again, Your Honor's  
2 obviously not permitted to charge it, but I certainly  
3 think it is probative and I don't, and I'm speaking only  
4 from my own knowledge, but I'm not sure of any case out  
5 there that says evidence of flight is inappropriate given  
6 a particular length of time.

7 THE COURT: You're, you're, you're both referring --  
8 I'm assuming you're referring to what you would be able to  
9 argue to, to the jury when that time approaches, if  
10 that---

11 MR. MCEACHIN: Your Honor, my understanding is she  
12 doesn't want to allow the officer to testify as to where  
13 he was caught and the manner he was caught.

14 MRS. PRATT: That's correct. As well as arguing it,  
15 and I would submit that argument would have to include  
16 opening as well as closing.

17 THE COURT: Well, I'd have to then have you offer  
18 that testimony because I don't know how I can rule on that  
19 until I hear it. I don't, I don't know what he intends to  
20 offer and I, you know, obviously I can't judge whether  
21 something's prejudicial until I hear it. So, I would, I  
22 would -- but I'm trying to understand, Mrs. Pratt, where,  
23 under any circumstance, would it be improper for a, a  
24 witness, in this case I assume a law enforcement officer,  
25 to testify as to the facts surrounding the apprehension or

1 the taking into custody of, of, of an individual. It may  
2 be, it may be -- and your argument maybe is totally  
3 irrelevant. It may be that having benefited from it being  
4 explained, and, again, I don't know anything about these  
5 fact.

6 It could be that, you know, it might fit right into  
7 your defense. We didn't know anything about it. There  
8 wasn't anything to run from. We weren't running. Just  
9 happened to come to us and arrest us. But I don't know.  
10 I don't know what the facts are. So, I can't determine  
11 whether or not it's, it's prejudicial over any probative  
12 value. You know, I don't know if, if y'all want to  
13 capsulize it and give me some indication of what that  
14 testimony is gonna be or if you want to actually proffer  
15 it for the record.

16 MR. MCEACHIN: Judge, the testimony that we'll be  
17 presenting, and the officer is actually here today and we  
18 would like to proffer it, but, in sum, the defendant, like  
19 Mrs. Pratt said, was caught approximately I guess about  
20 three weeks after the incident occurred. He was at a  
21 friend's house when the officers got to the house. They  
22 received consent from the homeowner to search the house,  
23 went in the house, came to a bedroom, the bedroom door was  
24 locked, knocked on the door, the door was opened by  
25 another individual. The officer searched the room and



1 then they found the defendant lying underneath the bed,  
2 and that's, that's, in essence, what the officer can  
3 testify to.

4 MRS. PRATT: Lying under the bed isn't flight. But  
5 my concern is the length of time.

6 THE COURT: But nobody said it was.

7 MRS. PRATT: Yeah, but my concern is the length of  
8 time and whether the, the State will argue that, the fact  
9 that it's three weeks later is flight. And if so, then  
10 back towards that end is, is an admission of guilt or  
11 guilty knowledge as the case law says.

12 THE COURT: Well, and, again, I, I, I don't know what  
13 the State would attempt to argue, but whatever they argue,  
14 you, you, you have the other side of the coin, and that is  
15 simply that, that lying under the bed isn't flight. And  
16 you, you can further argue that if he was certainly that,  
17 that concerned about it he wouldn't even be in this town.  
18 I mean, I mean you can argue a real flight. But, but I  
19 don't think that precludes the State from, at least,  
20 posing their argument. And, and if certainly -- if that's  
21 the testimony, I would certainly allow that testimony.

22 MRS. PRATT: Judge, that would be all of our motions  
23 at this time, Your Honor. If I could ask Mr. McEachin  
24 something.

25 THE COURT: Okay.

1 MRS. PRATT: May we approach, Your Honor?

2 THE COURT: Sure.

3 (Whereupon, a bench conference was held at this  
4 time.)

5 THE COURT: Anything we need to take up before we  
6 start?

7 MRS. PRATT: No, Your Honor.

8 THE COURT: Other than what we've already taken up.  
9 All right. So, we're ready for the members of the  
10 jury?

11 Ms. Joe, would you ask the members of the jury to  
12 join us please.

13 (Whereupon, the jury returns to the courtroom at this  
14 time.)

15 THE COURT: All right. Ladies and gentlemen, I want  
16 to thank everybody for being here and it being timely. I  
17 apologize for those of you that had to stand in the  
18 hallway for a little bit. I was taking up a few motions  
19 pretrial that we could get out of the way so that the  
20 trial could go along a little quicker and I, so I needed  
21 you, needed you to wait a little bit before I brought you  
22 through. But I appreciate your patience.

23 What I'm gonna do at this time, I'm gonna ask, if you  
24 would, would be to give Mrs. O'Hare your attention. She  
25 is going to place you under your oath for your role as

1 jurors in this trial.

2 So, Mrs. O'Hare.

3 (Whereupon, the jury panel was sworn.)

4 THE COURT: All right. Let's see. Ladies and  
5 gentlemen, we are about to begin the trial of this case of  
6 the State of South Carolina versus Larry Bradley Brayboy.  
7 Before I begin this trial or before we begin this trial,  
8 let me tell you that this trial will probably be very  
9 different from what you may expect. Most people's  
10 experience with regards to jury trials is what they've  
11 seen on television or read in books or seen in the movies.  
12 And as you well know from that experience, all of those  
13 trials are filled with intense action and rivetting  
14 circumstances and, and high drama. That's Hollywood.

15 Now, during the course of this trial, while any of  
16 those things may be the case during the course of this  
17 trial, what you need to understand and keep in mind is  
18 that this trial is not for your entertainment. This trial  
19 is a fundamental part of our democracy. It is a search  
20 for the truth and an effort to make sure that justice is  
21 done between the parties that are before the Court.

22 Searching for the truth and making sure that justice  
23 is done is often times repetitive, slow, and deliberate.  
24 Very much the opposite of what your experience may of been  
25 through television or books or movies.

1           This courtroom, ladies and gentlemen, is a place of  
2 honor that is dedicated to the protection and the  
3 preservation of citizen's rights through what many have  
4 called the greatest justice system ever created. The  
5 attorneys that appear before you are advocates for the  
6 parties that they represent. But first and foremost, they  
7 are officers of the Court. They are sworn to uphold the  
8 integrity and the fairness of our judicial system and to  
9 help you in your search for the truth.

10           You should expect them to be professional, competent,  
11 and ethical in the representation of their client's  
12 interest. Remember that you have just taken an oath to  
13 try this case and to reach a fair and just verdict. So,  
14 you're also expected to be professional, reasonable, and  
15 ethical in the performance of your duties.

16           I have no doubt in my mind that you'll do just that.  
17 I want to thank you for taking on this role in your system  
18 of justice in this, in this state.

19           What I'm gonna tell you now is intended to serve as  
20 an introduction to the trial of the case. These remarks  
21 that I'm making to you are not a charge on the law. I  
22 will, however, instruct you on the law that is applicable  
23 to this case at the end of this trial before you begin  
24 your deliberations. What I'm gonna go over now is merely  
25 an explanation of the procedure that we're going to follow

1 so that you may better understand what is happening during  
2 the course of this trial.

3 Now, in this case, the defendant, Mr. Brayboy, is  
4 charged by an indictment which was filed with this Court.  
5 It is a three count indictment and in this indictment he  
6 is charged with the crimes of armed robbery, kidnapping,  
7 and assault and battery of a high and aggravated nature.  
8 The elements of these charges will be further explained to  
9 you when I charge you on the law later in the case. This  
10 indictment, however, ladies and gentlemen, is simply the  
11 charge by which this case is brought into court, and is  
12 not, in any sense, evidence of any of the allegations  
13 which it contains.

14 The defendant has pled not guilty to this indictment  
15 and the State, therefore, has the burden of proving each  
16 of the elements of the indictment beyond a reasonable  
17 doubt. It will be your duty, ladies and gentlemen, to  
18 decide whether or not the State has met that burden. Your  
19 purpose, as jurors, is to find and to determine the facts  
20 in this case. You are the sole judges of the facts.

21 If, at anytime, during the course of this trial I  
22 make any comment regarding the facts, please disregard  
23 those comments because only you, the members of the jury,  
24 can decide what the facts are in this case. You are to  
25 determine the facts from the testimony that you hear and

1 any other evidence that may be introduced in the court.  
2 It is up to you to determine any inferences which you feel  
3 may properly be drawn from that evidence. It is  
4 especially important that you perform your duty of  
5 determining the facts diligently and conscientiously  
6 because ordinarily there's no way to correct an erroneous  
7 determination of facts by a jury.

8 Now, on the other hand, but with equal emphasis, the  
9 same law that makes you the judges of the facts makes me  
10 the judge of the law. The law, as given by the Court, is  
11 the only law that you may consider. You must accept it  
12 and follow it even if you disagree with it. I'm not  
13 allowed to tell you what the facts are in this case, and  
14 you, on the other hand, aren't allowed to disagree with me  
15 about what the law is or what you feel it should be. Your  
16 job is take the law as I give it to you, apply it to the  
17 facts as you find the facts to be from the testimony of  
18 witnesses and any other evidence that comes in during the  
19 course of the trial. After doing that, you will then  
20 apply that law to those facts in determining your verdict,  
21 a true and a just verdict under the solemn oath you've  
22 just taken as jurors.

23 Now, until I advise you to begin your deliberations  
24 you're not to have any conversation with anybody about  
25 this case. After the case has been submitted to you, you

1 then must only discuss it within the confines of your jury  
2 room.

3 Now, it's important, ladies and gentlemen, that you  
4 keep an open mind and that you not decide any issue in  
5 this case until all of the evidence has been presented,  
6 the parties have had their opportunity to address you with  
7 their closing arguments, and I have instructed you on the  
8 law in this case. It is your solemn responsibility to  
9 determine the guilt or the innocence of the defendant, and  
10 your verdict must be based solely on the evidence that is  
11 presented during the course of this trial and on the law  
12 as I give it to you.

13 Now, in a moment the solicitor, Mr. McEachin, will  
14 have an opportunity to address you with what we call an  
15 opening statement. In it he will explain to you what the  
16 issues in this case are or at least what he believes the  
17 issues in this case are. Once he concludes his opening  
18 remark, then Mrs. Pratt, on behalf of the defendant, will  
19 have an opportunity to address you as well with an opening  
20 statement although she's not required to present anything.

21 what the attorneys tell you and what you need to  
22 understand and what the attorneys tell you in their  
23 opening statements is not evidence. It is, it is simply  
24 what they contend the evidence in this case will be. The  
25 evidence in this trial, the evidence that you will

1 consider in determining, in determining the facts will be  
2 presented to you by the testimony of sworn witnesses from  
3 this witness stand and/or any exhibits which may come in  
4 during the course of the trial.

5 Now, as we go through this trial, from time to time  
6 you may hear one of the attorneys say something along  
7 these lines, Your Honor, I believe we've got a question of  
8 law that we need to take up with the Court or Judge, may  
9 we approach the bench to discuss a matter with you.  
10 During those times I, I might find it necessary to ask you  
11 to step into your jury room.

12 Well, the reason for this is simply this. Often  
13 times when I'm discussing matters of law with the lawyers,  
14 in, in discussing a matter of law, in determining whether  
15 a particular law applies or not, it, it may be necessary  
16 for me to make some comments about the facts in regard to  
17 a ruling. As I told you a little while ago, I'm not to  
18 have any influence over you about the facts in this case.  
19 So, to protect you from that, to protect you from being  
20 unduly influenced by anything that I say with regards to  
21 my rulings, I may ask you to step into your jury room so  
22 that I can freely discuss a matter of law with the lawyers  
23 without, in any way, intruding into your role as judges of  
24 the facts.

25 In determining what the true facts are in a case, you



1 have to decide whether or not the testimony of a witness  
2 is believable. It's going to be my responsibility to rule  
3 as a matter of law as to whether certain testimony is  
4 admissible at all or not. But once testimony is admitted,  
5 whether or not you believe it is solely up for you to  
6 decide.

7 In deciding whether to believe a witness, you have  
8 the right to consider the interest that a witness has, the  
9 bias of any witness, the opportunity for the witness to  
10 have seen the matters and the things about which that  
11 witness testifies, and the way a witness acts on the  
12 witness stand. You have the right, ladies and gentlemen,  
13 to consider anything that is in the record that will help  
14 you to evaluate the testimony of witnesses.

15 That means that it is your duty to pay close  
16 attention to the witnesses, observe the witnesses, and  
17 listen to the witnesses. Pay attention to the attorneys  
18 and to the Court, and try not to let your mind wonder.  
19 But give strict attention to the testimony in this case  
20 and any other evidence that may come in during the course  
21 of the trial, to the arguments of counsel, and to the  
22 charge on the law that the Court will give you. Once  
23 you've done that you'll be in a position to take those  
24 facts as you find them to be, apply the law to those facts  
25 as I give it to you, and reach a verdict that speaks the

1 truth.

2 In a moment I'm gonna recognize the attorneys for  
3 their opening statements. I want you to give them your  
4 undivided attention. As I indicated to you, what they  
5 tell you is not evidence. But it's important that you pay  
6 attention and you listen. And once they have completed  
7 their opening statements, we'll then proceed with the  
8 trial of the case.

9 But before I recognize the attorneys, let me ask,  
10 with regards to the State, Mr. McEachin, are there any  
11 objections or exceptions to the Court's opening remarks to  
12 the jury?

13 MR. MCEACHIN: None from the State, Your Honor.

14 THE COURT: Mrs. Pratt, anything from the defense  
15 regarding the opening---

16 MRS. PRATT: None from the defense, sir.

17 THE COURT: Thank you, ma'am.

18 All right. Ladies and gentlemen, please give the  
19 lawyers your undivided attention as they present to you  
20 their opening remarks.

21 Mr. McEachin.

22 MR. MCEACHIN: Thank you, Judge.

23 May it please the Court, Mrs. Pratt.

24 Ladies and gentlemen of the jury, on the night of  
25 December 6<sup>th</sup>, 2008, just before eleven o'clock p.m., they

1 were at the Pizza Hut in Lake City right there on Ron  
2 McNair Boulevard, Gary McClary and Chappell McMillian, two  
3 employees of Pizza Hut, were finishing up their shift.  
4 They're on the late shift. They were finishing up their  
5 evening shift.

6 Gary was in the kitchen breaking down the kitchen.  
7 He's a cook back then. He was breaking down the kitchen  
8 and cleaning up the kitchen. Chappell, at the time, was  
9 a, was a bus boy. So, he was cleaning up the dining room  
10 area. Traffic had slowed down. There wasn't much left  
11 going on. So, they were cleaning up for the end of the  
12 night. Gary, being back in the kitchen busing down the  
13 table, prepping down everything where the ingredients are,  
14 it was that time when he saw the first masked gunman come  
15 in the back of the store, ran by him.

16 Now, Gary will testify that afterwards two more  
17 followed in after that particular gunman. Now, the first  
18 gunman ran up and grabbed Chappell McMillian. That gunman  
19 had a shotgun. The gunman that stayed in the back with  
20 Gary McClary had a pistol. All these gunmen were masked.

21 The question or the two questions that you and the  
22 jury are gonna have to answer are one, why did this  
23 incident happen, how did it happen, and the second, who  
24 are these masked gunmen.

25 Ladies and gentlemen, my name is Fitzlee McEachin. I

1 represent the County of Florence and the State of South  
2 Carolina in this matter. The defendant in this case,  
3 Larry Bradley Brayboy, he's charged with three crimes,  
4 armed robbery, kidnapping, and assault and battery with  
5 intent to kill. Now, as an assistant solicitor in this  
6 case, it's my job and it's my duty, and it's my obligation  
7 to prove to you beyond a reasonable doubt that the  
8 defendant is guilty of all three of those charges.

9 Now, you can ask yourself what is a reasonable doubt.  
10 That means I have to prove my case to y'all beyond that  
11 doubt which would cause a reasonable man to hesitate to  
12 act.

13 Does that mean I have to prove my case to y'all  
14 beyond all doubt?

15 No.

16 I have to prove it to you beyond a reasonable doubt.

17 Now, there are a number of ways to prove a case.  
18 Mainly in the form of evidence. They're two types of  
19 evidence that I'm gonna use in this case to prove to you  
20 the case.

21 The first being exhibits. That's your hard evidence,  
22 your tangible evidence, things you can look at, you can  
23 feel, you can see, you can smell. Those are called  
24 exhibits. They're gonna be plenty of exhibits in this  
25 case for y'all to look at, to touch, to feel, to see.

1           The other form of the evidence is called testimony  
2   and testimony evidence is the evidence that's gonna come  
3   from right here, from the witnesses that are in this case.  
4   They're gonna go up there and they're gonna tell you what  
5   they say, what they, what happened that night as far as it  
6   pertained to what they actually saw.

7           Now, taking that evidence that you hear from that  
8   witness stand and taking these physical hard pieces of  
9   evidence called exhibits, the State's gonna ask you to  
10   return a verdict. Now, in doing so, you're gonna have to  
11   listen to testimony from a bunch of witnesses. This is a  
12   complicated case, and when you have a complicated case you  
13   often have more witnesses.

14          So, who are you gonna hear from on the State's side  
15   of things?

16          Well, you're gonna hear from Gary McClary, one of the  
17   victims. He was there that night. He was employed. He  
18   was in the kitchen, in the back of the kitchen where the  
19   gunman came in. You're gonna hear from Chappell  
20   McMillian. He's the other employee there that night. He  
21   was the one in the dining room area. You're gonna hear  
22   from lead investigator Jerry Gainey in this case.  
23   Investigator Gainey's sitting right there.

24          He's gonna tell you what he found out in the case.  
25   You also gonna hear from Lieutenant Roger Tilton with the

1 Lake City Police Department, his involvement in the case,  
2 as well as Officers Danny Graham, Sandy Thompson, and John  
3 Stewart. You're gonna hear from all of them. They're all  
4 officers from the Lake City Police Department.

5 In addition, you're gonna hear from another fact  
6 witness, another employee that was there that night by the  
7 name of Tony Green. Now, Tony was there and he was  
8 working at the Pizza Hut that night, but he was actually  
9 outside the store when all this was transpiring, and  
10 you're gonna hear what he saw and what he witnessed.

11 And then, finally, ladies and gentlemen, they're two  
12 final witnesses that you're gonna hear from. You're gonna  
13 hear from Quennell Brown and you're gonna hear from Robin  
14 John Turner. Those two individuals were in the Pizza Hut  
15 that night. Those two individuals were masked that night,  
16 and those two individuals came in the back door that  
17 night, and they're gonna tell you what happened, and how  
18 it happened, and why, how it happened, and what led up to  
19 it happening.

20 And once you hear all of those witnesses that I just  
21 mentioned, and once you see all that physical evidence,  
22 all those hard exhibits, it's the State's contention and  
23 it's our belief that there's only one verdict you can  
24 return and that is a verdict of guilt as to armed robbery,  
25 kidnapping, assault and battery of a high and aggravated

1 nature against the defendant, Larry Bradley Brayboy.

2 I want to thank y'all in advance for the time and  
3 consideration you're gonna put into this case. This is an  
4 important case to the State of South Carolina. It's an  
5 important case to the County of Florence and it's an  
6 especially important case to the defendant. This is his  
7 day in court. This is his, this is his one shot at it.

8 All I can ask is that you take all the evidence that  
9 you get from that witness stand and from the exhibits and  
10 you take, and you take a little common sense back to that  
11 jury room when you go back there, and when you do that,  
12 all that we can ask you to do, as the State, is to return  
13 a verdict that speaks the truth. It's our opinion that  
14 that verdict will be one of guilty.

15 Thank you.

16 THE COURT: Thank you, Mr. McEachin.

17 Mrs. Pratt.

18 MRS. PRATT: May it please the Court?

19 THE COURT: Yes, ma'am.

20 MRS. PRATT: Good afternoon.

21 Ladies and gentlemen, it is always a mistake to jump  
22 to a conclusion and decide that something is a certain way  
23 before you've gotten all the evidence, and I think what  
24 you're gonna hear in this case is that that's exactly what  
25 happened. The lead investigator in this case, Detective

1     Gainey, made a decision basically the night that this  
2     incident happened as to who he believed was involved in  
3     this crime and he never looked any further.

4             You'll find that there are a lot of glaring holes in  
5     what should have been tested and evaluated. You'll find  
6     there's differences in the stories. I mean I appreciate  
7     the solicitor mentioning Gary McClary saying that there  
8     were more than two people. But we've got a witness, the  
9     other victim, that in a statement to Detective Gainey said  
10    there's only two.

11            So, one of the things you're gonna need to be  
12    figuring out is are they two, are there three, who they  
13    were, who did what, and that actually, thank heavens, is  
14    your province. Just as Judge Russo told you in his  
15    opening remarks, it's your job to take the evidence that  
16    you hear and synthesize it with the law to figure out what  
17    the truth is.

18            There are a few things that the solicitor touched on  
19    that I'd like to talk to you about too. The first thing I  
20    want you to consider and watch all the way through this  
21    trial is the credibility of the witnesses, what did they  
22    have the opportunity to see, what, how much time, what are  
23    they really firm about, just all of those things that you  
24    would use if you were talking to your children or someone  
25    else in trying to determine what the truth is.



1           The second thing that you need to consider is just  
2   what bias or what someone might have to gain by testifying  
3   in a certain way.

4           If a co-defendant testifies, is he gonna get a deal?  
5           Is he going to gain some kind of benefit out of this?

6           I think you're gonna hear testimony and evidence  
7   about those issues, and you -- well, all you need to do is  
8   bring your common sense to the jury room. Think about it  
9   the way that you would evaluate a situation between say  
10   your children. You've got three children and a broken  
11   vase on the floor and one of them says he did it and the  
12   other one said she did it and the other one says I wasn't  
13   even there. You have to figure out what the truth is by  
14   looking at all of the evidence and I know you'll do that.

15           Now, Brad Brayboy has pled not guilty. That means he  
16   has said he didn't do this, and right now he stands in  
17   front of you clothed in a presumption of innocence, which  
18   is guaranteed to him, and that's not just a fancy phrase.  
19   That's not a constitutional technicality that we always  
20   hear about that people get aggravated about.

21           It is a very very important right. Every one of us  
22   stands clothed in a presumption of innocence and we have  
23   the right to claim, to claim that innocence in a  
24   courtroom. It is the State's job to remove that  
25   presumption of innocence by presenting evidence to you

1 which is beyond a reasonable doubt.

2 well, think of the presumption of innocence as being  
3 the, the robe that your church choir wore yesterday  
4 morning, and it cloaks somebody completely. I've got a  
5 short jacket. so, it doesn't work as well. But think of  
6 this as being a robe of righteousness that clothes the  
7 defendant.

8 The State has to remove it completely. Not just one  
9 sleeve, not just half this sleeve and half that sleeve,  
10 but completely, beyond a reasonable doubt, in order for a  
11 conviction to occur. And a reasonable doubt, as Solicitor  
12 McEachin said, is the kind of doubt that would make a  
13 reasonable person hesitate to act. Something that makes  
14 you go okay, you know, it stops you for a second. That's  
15 the kind of doubt.

16 I think you're gonna see an awful lot of doubt. I  
17 think you're gonna see an awful lot of confusion and  
18 conflicting stories in this case, and I believe that you  
19 are going to, to see, by the end of this, that Brad  
20 Brayboy is not just innocent in a constitutional sense,  
21 but he is not guilty in a factual sense too.

22 I thank you very much for your time. My name is  
23 Barbara Pratt and I practice in Horry County as you know,  
24 and I'm very proud to be here in Florence representing  
25 Brad Brayboy. I thank you for your kind attention, and

1 we'll, we'll try not to keep you too, too frustrated and  
2 tired. But we just want you to pay attention to what's  
3 going on and we thank you for that, both Brad and I do.

4 THE COURT: Thank you, Mrs. Pratt.

5 Mr. McEachin, you may call your first witness, sir.

6 MR. MCEACHIN: Thank you, Your Honor. The State will  
7 have to get the witness.

8 THE COURT: Sure.

9 Okay. Ladies and gentlemen, if you'll just please  
10 excuse us. We -- all the courtrooms around the State,  
11 they'll have a room right outside the courthouse where,  
12 where the witnesses can be and they can be brought in.  
13 Unfortunately we, we don't have that luxury. And so, we  
14 have to go down the hall and get witnesses and bring them  
15 over here. So, please excuse that little bit of a delay.

16 Mr. McEachin, let me get you and Mrs. Pratt up here  
17 real quickly.

18 Sir, you can come right around.

19 Y'all wait.

20 If you would, sir, you come around. Y'all wait right  
21 there.

22 No, you go ahead and put him under oath and let him  
23 have a seat.

24 CHAPPELL MCMILLIAN, having been first  
25 duly sworn, testified as follows:

Chappell McMillian - Direct examination  
by Mr. McEachin

70

1 THE CLERK: Okay. Please be seated right there in  
2 the witness chair.

3 THE COURT: Thank you, sir. You may have a seat.  
4 Y'all approach real quick.

5 (Whereupon, a bench conference was held out of the  
6 hearing of the jury at this time.)

7 THE CLERK: If you will, sir, state your name for the  
8 record.

9 THE WITNESS: Chappell McMillian, Jr.

10 DIRECT EXAMINATION

11 BY MR. MCEACHIN:

12 Q Chappell, how old are you?

13 A Twenty-two.

14 Q And what is your current occupation?

15 A Dishwasher.

16 Q Okay. And Chappell, I'm gonna ask you to speak up so  
17 that this gentleman in the very back can hear you. okay.  
18 I need you to speak up a little bit.

19 Are you a student?

20 A Yes, sir.

21 Q Where are you a student?

22 A At Francis Marion University.

23 Q Okay. Now, you said you're a dishwasher.

24 where, where are you a dishwasher?

25 A I'm a dishwasher at Pizza Hut.

Chappell McMillian - Direct examination  
by Mr. McEachin

71

1 Q And how long have you been a dishwasher at Pizza Hut?

2 A Roughly two years.

3 Q Okay. And, and which Pizza Hut are you a dishwasher  
4 at?

5 A At the Pizza Hut in Lake City.

6 Q Okay. And, and where is exactly is that?  
7 where's it located?

8 A I couldn't give you the actual address.

9 Q What street's it on?

10 A I think it's on McNair, McNair Street.

11 Q Okay. Okay. So, you said you had been working  
12 there, you been working there for two years, is that  
13 correct?

14 A Yes, sir.

15 Q And that would mean that you, back in December of  
16 2008, last year you were working there?

17 A Yes, sir.

18 Q Okay. Were you working on the night of December the  
19 6<sup>th</sup>, 2008?

20 A Yes, sir.

21 Q And on that -- were you working the day shift, the  
22 night shift, which shift were you working?

23 A The night shift.

24 Q Okay. And as far as the Pizza Hut's concerned --  
25 what, what day of the week was that?

1 Do you remember?

2 A I remember it was a Saturday.

3 Q Okay. And how late does Pizza Hut stay open on a  
4 Saturday night in Lake City?

5 A Around midnight.

6 Q Midnight?

7 A Uh-huh. (Affirmative).

8 Q Okay. And who all was working with you that night?  
9 Do you remember?

10 A Yes, it was Michael Cooper, Tony Green, Gary McClary,  
11 and, and myself.

12 Q Okay. So, it was the four of y'all working that  
13 night?

14 A Yes, sir.

15 Q Okay. Do you recall, as a matter of fact -- Your  
16 Honor, may I approach?

17 THE COURT: Yes, sir.

18 Q Showing the witness what's been marked as State's  
19 Exhibit No. 9 for identification purposes.

20 Do you recognize this?

21 A Yes, sir.

22 Q And what, what, what is this?

23 A A diagram of Pizza Hut.

24 Q Okay. All right. And going back to the evening of  
25 December the 6<sup>th</sup>, 2008, can you tell the jury what

Chappell McMillian - Direct examination  
by Mr. McEachin

73

1 happened right around 11:00 p.m. that night?

2 A Yes, sir, the store was pretty much empty for, for  
3 about an hour. So, I decided to take a rest over in the  
4 dining hall, and at 10:50 I awoke to, to a man walking,  
5 walking up to me from the back with a shotgun, and he told  
6 me to come over to him, and it was then he smacked me in  
7 the head with the, with the barrel of, of a shotgun.

8 Q Okay. And where did he come from?

9 A He came from the back.

10 Q From the back of the store?

11 A Yes, sir.

12 MR. MCEACHIN: Okay. Your Honor, at this time I'd  
13 move State's Exhibit No. 9 into evidence with the  
14 stipulation that it's not to scale.

15 THE COURT: All right. Any objection?

16 MRS. PRATT: No objection.

17 THE COURT: All right. Without objection.

18 (Whereupon, State's Exhibit No. 9 was received into  
19 evidence at this time.)

20 MR. MCEACHIN: Your Honor, may I have the witness  
21 step down?

22 THE COURT: Yes, you may.

23 Q All right. Chappell---

24 THE COURT: Sir, I'll get you to step down, and if  
25 you would, make sure -- now, Mr. McEachin, if you would,

1 put your witness on that side---

2 MR. MCEACHIN: Yes, sir.

3 THE COURT: ---facing Miss Reed.

4 MR. MCEACHIN: Yes, sir.

5 THE COURT: And sir, you're gonna be kind of away  
6 from the court reporter. So, when you answer any  
7 questions, if you would just speak very loudly if you  
8 would please, sir.

9 All right, sir?

10 WITNESS: Yes, sir.

11 THE COURT: All right. You may step down.

12 Q All right. You can come on down here, and I'm gonna  
13 have you---

14 MRS. PRATT: Your Honor, may I move over to this  
15 side?

16 THE COURT: Yeah, sure, y'all move where you, where  
17 you can get a good view.

18 Q Chappell, I'm gonna have you stand right here. All  
19 right.

20 THE COURT: Mrs. Burgess, if you need to, you're,  
21 you're more than happy to -- you're more than welcome to  
22 do that.

23 (Witness comes down from the stand.)

24 Q Stand right here to this side. I'm gonna ask you a  
25 few questions.



Chappell McMillian - Direct examination  
by Mr. McEachin

75

1           Now, can you tell the jury where exactly you were  
2   in the Pizza Hut around 11:00 p.m.?

3   A     Around 11:00 p.m. I was sleeping. I was pretty much  
4   dozing off in this booth right here where the man with the  
5   shotgun came in, came in from the back. I could see him  
6   right here coming toward, as -- he stopped here and he  
7   told me to come towards him and I followed him and that's,  
8   and that's where he struck me with the shotgun.

9   Q     Okay. Now, after he, he hit you in the head with the  
10   shot -- what part of the gun did he hit you in the head  
11   with?

12   A     The barrel.

13   Q     Okay. Once he hit you in the head with the barrel of  
14   the shotgun, where did he take you?

15   A     He, he took me all the way to the back to where right  
16   here is where the manager's office is at, and that's where  
17   I found another gunman and my friend, and my friend, Gary  
18   McClary, on the back.

19   Q     Okay. Other than you and Gary, how many other  
20   individuals did you see in the Pizza Hut?

21   A     I only saw two.

22   Q     That's the individual that has the shotgun?

23   A     Uh-huh. (Affirmative).

24   Q     And you also just testified that an individual had a  
25   pistol on Gary.

1           Those are the only two individuals you saw, is that  
2 correct?

3       A     Yes, sir.

4       Q     Okay. Once they got -- and Gary -- where was Gary at  
5 this time?

6       A     Gary was right exactly where I was right -- just  
7 near, just near by the manager's office.

8       Q     Okay. And once they got you there, what did y'all do  
9 or what were y'all, what were y'all told to do?

10      A     First he pulled me all, he pulled me all the way to  
11 where the cash register is at and he told, and he ordered  
12 me to, to open it.

13      Q     Who ordered you to do that?

14      A     The man with the shotgun.

15      Q     The man with the shotgun.

16            Okay. And, and what happened?

17      A     After just hitting random keys and such, he just  
18 pulled me, he just pulled me to the back and he told both  
19 me and Gary to take off our clothes.

20      Q     Okay. Stepping back just a little bit so the jury  
21 understands, what, what were -- what do you recall the  
22 robbers looking like?

23            what were they wearing that night?

24      A     They were wearing dark clothing and the man with the  
25 shotgun was wearing a ski mask while the, while the other

Chappell McMillian - Direct examination  
by Mr. McEachin

77

1 one had like a silk stocking over his face.

2 Q Okay. All right. Did you notice anything else about  
3 them?

4 Could you recognize them at all?

5 A No, sir.

6 Q Had you ever seen them before?

7 A No, sir.

8 Q Not that you could, not that you can recall?

9 A Hu huh. (Affirmative).

10 Q All right. And once you went to the cash register,  
11 where did he take you from there?

12 A After he saw that I couldn't, that I couldn't open  
13 the cash register, he just pulled me all the way to the  
14 back and he told me and Gary to both take off our clothes.

15 Q Okay. Could you please show the jury on the diagram  
16 where he took y'all?

17 A Exactly the same place he took me before.

18 Q And, and what did you say they told y'all to do?

19 A To take off our clothes.

20 Q Okay. And did y'all, did y'all do that?

21 A Yes, sir.

22 Q Okay. And once y'all did that, what was the next  
23 thing that occurred?

24 A While I was taking off my clothes, just my shirt,  
25 shoes, anything except my pants, I emptied out my pockets.

1 They took my wallet, keys, and a cell phone, and then,  
2 then by that time the cops arrived.

3 Q Okay. So, your wallet was taken?

4 A Yes, sir.

5 Q Your keys were taken?

6 A Yes, sir.

7 Q Your cell phone was taken?

8 A Yes, sir.

9 Q Was anything else taken from you?

10 A No, sir.

11 Q Okay. And once they took that stuff from you, what  
12 happened next?

13 A The cops arrived and I couldn't see where they went,  
14 but after waiting, waiting for a second to see if, to  
15 listen if they were still there, I went -- me, me and Gary  
16 went all the way up to the front to, to the entrance to  
17 where we saw the police.

18 Q Okay. And what happened as y'all were walking  
19 towards the entrance?

20 A The police could see us, the police could see us  
21 through the window here. They told us to lie on, lie down  
22 on the ground.

23 Q Okay. And did y'all do that?

24 A Yes, sir.

25 Q Okay. You can, you can have a seat back in the

Chappell McMillian - Direct examination  
by Mr. McEachin

79

1 witness box.

2 A (Witness returns to the stand.)

3 Q At, at any point in time did you feel like you could  
4 leave the Pizza Hut?

5 A No, sir.

6 Q And why is that?

7 A They -- for, for one thing, they couldn't -- they  
8 never, they never told me that I could leave, and I never,  
9 I never tried.

10 Q Okay. As far as you and, you giving them your wallet  
11 and everything like that -- well, strike that question.

12 Once the officers came up to you, what, if anything,  
13 did you do or what did you tell them?

14 A They wanted to know if I was, if I was the robbers or  
15 the, or the victims.

16 Q Okay. And what did, what did you respond with?

17 A I told them that I was one of the employee here at  
18 Pizza Hut.

19 Q Okay. At any point in time during the robbery was,  
20 was Gary ever in a physical altercation with one of the  
21 defendants?

22 A Yes, while we were in the middle of undressing  
23 ourselves, one of the robbers struck him in the back of  
24 the head.

25 Q Okay. Do you know which one that was?

1           who struck him in the back of the head?

2     A     It was the man with the shotgun.

3     Q     He struck Gary in the head as well?

4     A     Uh-huh. (Affirmative).

5     Q     So, he struck you in the head and he struck Gary in  
6     the head?

7     A     Yes, sir.

8           MR. MCEACHIN: Beg the Court's indulgence for just a  
9     moment.

10          (Pause.)

11    Q     All right. Chappell, I'm just gonna show you these  
12    pictures for identification purposes only. I want you to  
13    clip through them and tell me if you recognize those.

14    A     Yes, sir, I recognize them.

15    Q     Okay. Now, I'm gonna hand you what's marked, what's  
16    been marked as State's Exhibit No. 12.

17          Can you please tell the jury what that is?

18    A     That was, that was the wound I received from the,  
19    from the bank, I mean from the robber.

20    Q     Okay. I'm gonna hand you State's Exhibit No. 13.

21          Can you please tell the jury what that is?

22    A     That's a closer, that's a closer shot of the wound I  
23    received.

24    Q     Do, do those pictures fairly and accurately  
25    portray the way you looked that evening?

Chappell McMillian - Direct examination  
by Mr. McEachin

81

1 A Yes, sir.

2 MR. MCEACHIN: Okay. Your Honor, at this time I  
3 would move State's 12 and 13 into evidence.

4 THE COURT: Any objection?

5 MRS. PRATT: No objection to 12 and 13, Your Honor.

6 THE COURT: Huh?

7 MRS. PRATT: No.

8 THE COURT: All right. No objection to 12 and 13.

9 (Whereupon, State's Exhibit Nos. 12 and 13 were  
10 received into evidence at this time.)

11 Q All right. Now, I'm gonna hand you what's been  
12 marked as State's Exhibit No. 14.

13 Can you please relay to the jury what that is?

14 A That's the Pizza Hut that I work out.

15 Q Okay. And is that a fair and accurate portrayal of  
16 the Pizza Hut that you work at?

17 A Yes, sir.

18 MR. MCEACHIN: Your Honor, I'd also move State's  
19 Exhibit No. 14 into evidence.

20 MRS. PRATT: Your Honor, in regards to Exhibits 14,  
21 13 -- 14, 15, I don't believe that this is the proper  
22 witness to sponsor them in since he did not take the  
23 pictures.

24 THE COURT: It's a picture of the Pizza Hut.

25 MRS. PRATT: I understand, Your Honor. They're,

1 they're a few pictures there.

2 MR. MCEACHIN: Your Honor---

3 THE COURT: He's only, he's only asking to admit one  
4 right now.

5 MR. MCEACHIN: That's correct, Your Honor, and he's  
6 testified that that fairly and accurately portrays the  
7 Pizza Hut. The photographer isn't necessary as long as he  
8 can say that.

9 MRS. PRATT: I'll withdraw my objection as to that  
10 particular photograph, Your Honor.

11 THE COURT: All right. So, that would be State's 14,  
12 14, which is a photo of the Pizza Hut. That's without,  
13 without objection.

14 MR. MCEACHIN: Thank you, Judge.

15 (Whereupon, State's Exhibit No. 14 was received into  
16 evidence at this time.)

17 MR. MCEACHIN: Judge, may I publish these to the  
18 jury?

19 THE COURT: Yes, sir.

20 Q And, Chappell, how did you say it was that you  
21 sustained that particular injury?

22 A When I walked over to the, when I walked over to the  
23 robber and he smacked me in the forehead.

24 Q Can you tell the jury where the pictures of you were  
25 taken?



Chappell McMillian - Direct examination  
by Mr. McEachin

83

1 A It was taken at the Lake City, Lake City Emergency  
2 Hospital.

3 Q And how did you get to the emergency hospital?

4 A I was driven there by, by ambulance.

5 Q Okay. Now, you told the jury that you had certain  
6 things taken from you.

7 A Yes, sir.

8 Q Did you ever receive any of those items back?

9 Did you ever receive your, receive your wallet, your  
10 keys, or your cell phone back at any time?

11 A I only received my keys.

12 Q You received your keys back.

13 What about your wallet and your cell phone?

14 A No, they were, they were still lost.

15 Q To this day have you received them back?

16 A No, sir.

17 Q Okay. Chappell, what is -- what was in your wallet?

18 What was the contents of your wallet?

19 A There was, there, there was my bank debit card, my  
20 driver's license, Social Security number, and \$300 worth  
21 of, \$300 to pay the remainder of my tuition for college.

22 Q Okay. And all those things were, were taken?

23 A Yes, sir.

24 Q And never returned?

25 A Yes, sir.

1 MR. MCEACHIN: Beg the Court's indulgence just a  
2 moment, Your Honor.

3 THE COURT: All right.

4 (Pause.)

5 MR. MCEACHIN: May we approach, Your Honor?

6 THE COURT: Yes, sir.

7 (Whereupon, a bench conference was held out of the  
8 hearing of the jury at this time.)

9 Q All right. Mr. McMillian, I'm showing you what's  
10 been marked as State's Exhibit No. 1.

11 Do you recognize that?

12 A Yes, sir.

13 Q And what is that?

14 A That's the shotgun from the robbery.

15 Q Is this, is this the weapon that was used when you  
16 got struck in the head?

17 A Yes, sir.

18 Q Is this also the weapon that was used when Mr.  
19 McClary got struck in the head?

20 A Yes, sir.

21 Q And your wallet was taken by the, by the gunman, is  
22 that correct?

23 A I couldn't see who took it, sir. I kept my head down  
24 on the ground.

25 Q Okay. But your wallet was taken, is that correct?

Chappell McMillian - Cross-examination  
by Mrs. Pratt

85

1 A Yes, sir.

2 Q Thank you. Please answer any questions Mrs. Pratt  
3 may have for you.

4 THE COURT: Mrs. Pratt.

5 CROSS EXAMINATION

6 BY MRS. PRATT:

7 Q Mr. McMillian, how tall are you?

8 A Six foot two.

9 Q All right. And how much do you weigh?

10 A Around 145-pounds.

11 Q Pretty slender then, huh?

12 A Uh-huh. (Affirmative).

13 Q All right. And you stated I believe that the gunman  
14 with the shotgun walked you back into the area of the  
15 manager's office, is that right?

16 A Yes, ma'am.

17 Q Do you remember whether the gunman was taller than  
18 you or shorter than you?

19 A No, sir, I couldn't remember it.

20 Q Okay. Do you remember if he was heavier or lighter?

21 A No, ma'am.

22 Q All right. Were you looking down most of the time?

23 A Yes, ma'am.

24 Q Okay. And while you were looking down, did you  
25 happen to see anything -- and, you know, I know it's hard,

1 but think as hard as you can.

2 what do you remember at all about the pants or shoes  
3 or the jacket?

4 A All that I remember was they were wearing some dark  
5 clothing, but I can't, I can't describe it any further  
6 than that.

7 Q When you say just dark clothing, I mean can you, can  
8 you think -- but, but the jacket itself, do you remember  
9 anything about the jacket?

10 A No, ma'am.

11 Q The lights were on at the Pizza Hut, right?

12 A Yes, ma'am.

13 Q Okay. You hadn't closed down. So, you had full  
14 lights on, and actually in that Pizza Hut you had several  
15 track lightings that go from the front back to the back,  
16 correct?

17 A Yes, ma'am.

18 Q Okay. But you don't remember if the jacket was black  
19 or brown or blue?

20 A No, ma'am, it was just dark.

21 Q And the jeans that the or the pants I guess I should  
22 say that the, the man with the shotgun was wearing, do you  
23 remember whether they were dark or faded or had any cuts  
24 or anything at all about them?

25 A No, ma'am.

Chappell McMillian - Cross-examination  
by Mrs. Pratt

87

1 Q And you don't remember anything about shoes?

2 A No, ma'am.

3 Q Well, I know it would be pretty frightening for you.  
4 It would be hard to remember some things like that.

5 I'm gonna put up the State's Exhibit, I believe it  
6 was No. 9, and ask you to come back down, if you would,  
7 and help me for a little bit with this.

8 (Witness comes down from the stand.)

9 Q And I'm gonna hand you some post-it tabs, and ask you  
10 if you can mark first for me where you were seated when  
11 the, when the man came in.

12 A I was---

13 MR. MCEACHIN: Your Honor, I'd object. This exhibit  
14 already's been moved into evidence.

15 MRS. PRATT: Your Honor, the post-it notes are  
16 removable. I simply want to be able to see it.

17 THE COURT: Right. They're not permanent.

18 MR. MCEACHIN: Okay. I apologize, Your Honor.

19 THE COURT: Yeah.

20 MR. MCEACHIN: I thought they were the little  
21 circular ones.

22 MRS. PRATT: Hu-huh. (Negative).

23 THE COURT: Okay.

24 Q The sticky part is the non-white part by the way.

25 Can you mark for me where you were when the man with

1 the shotgun came in?

2 A Where I was?

3 Q Yes.

4 A Right---

5 Q Okay. I'm sorry.

6 A Right here.

7 Q Okay. You were seated in this booth, and that's the  
8 booth that's closest to the front door, is that correct?

9 A Yes, ma'am.

10 Q All right. And the register that you were talking  
11 about them wanting you to open, where is it?

12 A Right here.

13 Q All right. Now, is there not a register over by the  
14 front door?

15 A Yes, ma'am.

16 Q But that's not the register that, that he asked you  
17 to open, is that right?

18 A No, ma'am.

19 Q So, he came up to you here at this, at this booth and  
20 he hit you right away?

21 A No, ma'am, it was when I was walking towards him.

22 Q Okay. Where was he then when you were walking  
23 towards him?

24 I'm sorry.

25 A He was right here.

Chappell McMillian - Cross-examination  
by Mrs. Pratt

89

1 Q And you were here at the booth?

2 A Yes, ma'am.

3 Q Okay. And what did he say to you?

4 A He gestured, he gestured and told me to come over to  
5 him.

6 Q That nicely?

7 A No, no, it was more forcefully.

8 Q Okay. And you came over towards him?

9 A Yes, ma'am.

10 Q Okay. You didn't try to come out the front door  
11 here?

12 A No, ma'am.

13 Q So, you're here by this register.

14 Now, is there a, a wall -- what is this that's  
15 marked?

16 A Oh, that's -- that is a, that is a wall where, where  
17 the register and the table where we cut the pizzas are at.

18 Q All right. Would this be a wall all the way to the  
19 ceiling or waist high or counter high or where, what---

20 A Pretty much this height.

21 Q Here?

22 A Uh-huh. (Affirmative).

23 Q All right. So, from this booth -- he calls you from  
24 here?

25 A Uh-huh. (Affirmative).

1 Q All right. Did you get at all a good look at him?

2 A No, ma'am.

3 Q Okay. And now when he called you over there, when  
4 did he hit you?

5 A Right when I walked over to him.

6 Q All right. And where would Gary be at this point?

7 A He would of been all the way in the back like  
8 somewhere in here.

9 Q Okay. Now, is that, is that the back area?

10 A Yes, that's -- this area here is pretty much where  
11 the manager's office is at and that's where he was.

12 Q Okay. What is this?

13 A Oh, that's -- that would be the make table.

14 Q That's where you make the pizzas?

15 A Yes, ma'am.

16 Q All right. That would be like a, a table with  
17 ingredients above it?

18 A Yes, ma'am.

19 Q Okay. And does this wall here go all the way to the  
20 ceiling?

21 A Yes, ma'am.

22 Q Okay. So, anything that happens behind it wouldn't  
23 be seen by the front, is that right?

24 A No, ma'am.

25 Q And this is a walkway across here?



Chappell McMillian - Cross-examination  
by Mrs. Pratt

91

1 A Yes, ma'am.

2 Q Is this accurate where the back exit is?

3 Isn't there a little more space?

4 A No, ma'am.

5 Q There's not?

6 There's the -- the back exit is actually flush  
7 against the back wall of the Pizza Hut?

8 A Yes.

9 Q Okay. And you are saying that Gary was in this  
10 little indentation here between what looks like a wall and  
11 what the cooler is, is that right?

12 A Yes.

13 Q Would you put a pink marker there for where Gary is?

14 A (Witness complies.)

15 Q And you saw another gunman.

16 Where was that gunman?

17 A This gunman was, was right here right across where  
18 Gary was at.

19 Q Okay. Right against the edge of where the, what you  
20 call the make table, is that right?

21 A Yes, ma'am.

22 Q Okay. So, he's -- the other gun -- yeah, let's put  
23 a---

24 A A mark?

25 Q Sure.

1 All right. And did you always stay in this area in  
2 front of the make table?

3 A Yes, ma'am.

4 Q Okay. Now, as far as this particular gunman goes,  
5 did you have an opportunity to see anything of his  
6 clothing?

7 A No, ma'am.

8 Q Did you look at their feet?

9 You were looking down I know.

10 Did you look at their feet at all?

11 A No, ma'am, I was looking at the ground that's just  
12 right below my feet. Just directly down.

13 Q Okay. All right. You can return. Thank you. You  
14 can return to the stand.

15 (Witness returns to the stand.)

16 Q Before you gave your statement on tape to Detective  
17 Gainey, how many people did you talk to about what  
18 happened that night?

19 A Just my -- just Gary and the police.

20 Q Okay. And the police, do you remember which officers  
21 those would of been?

22 A I can't -- right here. Well, I recognize the police  
23 officer right behind me. He's the one I gave the  
24 statement to.

25 Q He's the one that took your taped statement, is that

Chappell McMillian - Cross-examination  
by Mrs. Pratt

93

1 right?

2 A Yes, ma'am.

3 Q And you might of spoken to some other officers?

4 A Yes, ma'am.

5 Q Okay. Did you speak to Gary about what happened  
6 before Gary or you gave your statements?

7 A I only, I only spoke to him a little, a little bit  
8 after the whole ordeal was over and the police were  
9 checking the Pizza Hut and we're sitting in the lobby  
10 next, next to the cashier and next to the front exit.

11 Q And that would be normal to, to be -- this was a  
12 momentous occasion, right?

13 So, it would be normal for you to be talking to him,  
14 telling him what, what you saw or felt, correct?

15 A Uh-huh. (Affirmative).

16 Q Okay. You said you only got your car keys back, is  
17 that right?

18 A Yes, ma'am.

19 Q Did you every have any activity after this on your  
20 cell phone?

21 A Can you please repeat the question?

22 Q Sure. Let me explain that better.

23 When you got your cell phone bill, did it show that  
24 it, the phone had been used after it was taken from you?

25 A I believe it, I believe it was.

1 Q Okay.

2 A I remember, I remember somewhere that the police  
3 tracked a cell phone number.

4 Q From your cell phone?

5 A Yes, ma'am.

6 Q Did, did you you -- and you got a bill for that?  
7 I mean where it showed up.

8 A I only know -- my dad, he keeps the bills to himself.

9 Q Okay. All right. And anybody use your debit card?

10 A Not that I know of.

11 Q All right. Are you aware of any use of your identity  
12 in anyway after this?

13 A No, ma'am.

14 Q Okay. Thank you very much.

15 And with the Court's permission, Your Honor, I'll  
16 remove---

17 THE COURT: All right.

18 MRS. PRATT: ---the stickers from here.

19 THE COURT: That's fine.

20 Q Mr. McMillian, you told Detective Gainey and you told  
21 us here today you only saw two gunmen, correct?

22 A Yes, ma'am.

23 MRS. PRATT: Thank you very much. I have nothing  
24 further.

25 MR. MCEACHIN: Briefly, Your Honor.

Chappell McMillian - Redirect examination  
by Mr. McEachin

95

1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY MR. MCEACHIN:

4 Q Okay. I'm gonna slide this closer to you so you  
5 don't have to get up.

6 when you were in the back, can you see back behind  
7 here when you were up front?

8 A No. No, sir.

9 Q What about back here?

10 A No, sir.

11 Q Okay. When the gunman first came in, could you see  
12 back in those areas?

13 A No, sir.

14 Q Okay. So, do you know if anything was going on back  
15 in those areas?

16 A No, sir.

17 Q Okay. At any point were you able to see back in  
18 those areas?

19 A No, sir.

20 Q Okay. Thank you.

21 No further questions, Your Honor.

22 MRS. PRATT: No recross, Your Honor.

23 THE COURT: All right. Thank you very much, sir.  
24 You may step down.

25 THE COURT: Can y'all approach real quick?

1           (Whereupon, a bench conference was held in the  
2 presence of the jury, but out of the hearing of the jury.)

3           THE COURT: All right. Ladies and gentlemen, I'm  
4 just gonna, even though we got started late, y'all have  
5 been here on time, and, so, we're gonna take a short  
6 break, give y'all an opportunity to stretch your legs, use  
7 the restroom. If you need something to drink or something  
8 to nibble on or whatever, just let us know. When you  
9 retire back to your jury room, I'm gonna ask you, if you  
10 would, to do something for me. A couple of things.

11           The first is something I'll tell you every time you  
12 leave the courtroom, and that is please have no  
13 conversation about the case. Now, you've heard some  
14 testimony. You, you start -- we've started to get into  
15 the case. It's very important that you do not discuss  
16 anything, even amongst yourselves, about the case at this  
17 point. Talk about anything else you want.

18           One of the things I'm gonna ask you to do for me when  
19 you go back is to elect or select a foreperson for the  
20 jury. Let me tell you a little bit about the role of the  
21 foreperson. The, the foreperson is, is the, basically the  
22 person that will communicate with the Court for -- if the  
23 jury should have a question of anything, the foreperson  
24 would be the one to write the question out and, and send  
25 it out to the judge and, and deal with those questions if

1 there are any.

2 The foreperson's other, other role is to basically  
3 start and stop the deliberations. Whenever you have a  
4 group of people who are discussing anything, you need  
5 somebody to say okay, let's go ahead and start our  
6 discussions and you need -- and you'll also hear me tell  
7 you that once you begin your deliberations it's very  
8 important that all of you are present for the  
9 deliberation. So that if someone has to use the restroom  
10 and excuse themselves from the room, the foreperson would  
11 then say okay, let's stop, stop the deliberations until  
12 they return, and then when they return, start back.

13 I will tell you that the foreperson's role on a jury  
14 is of no greater significance than any other person on the  
15 jury. Your verdict, whatever it may be, must be  
16 unanimous. So, all 12 of you must agree on that verdict.  
17 So, a foreperson's vote carries no more weight or no more,  
18 you know, importance than anyone else's. You're 12 equal  
19 people when it comes to deliberating and deciding this  
20 case. It's just when you have a group of people, somebody  
21 needs to, to be the one that the Court communicates with.

22 Okay. Now, when you come back out -- well, once  
23 you've, once you've done that, once you've -- I use to try  
24 to make it easy for juries and I would just appoint a  
25 foreperson. But the last, last time I tried to appoint a

1 foreperson, I asked a young lady if she'd be willing to  
2 serve and she very respectfully declined. So then I had  
3 another name. So, I asked this other gentleman if he  
4 would be willing to serve. He respectfully declined. So,  
5 I just took a shot at a third one, and she respectfully  
6 declined. And so, I said okay, here's the deal. We've  
7 got to have one, y'all pick it, and I sent them back and  
8 let -- and from that day on I've never appointed a grand,  
9 a foreperson. I ask you to do it.

10 If, you know, don't, don't be concerned about the  
11 role if you're nominated to do it or if you are elected to  
12 do it. It, it is not that big a deal. It simply is I  
13 need somebody to be the contact person between the, the  
14 jury and the Court.

15 So, once you've elected that person, whoever it is,  
16 if they would just write their name on a piece of paper  
17 and pass it out. Ms. Joe will make sure you have that.  
18 I'd appreciate it. And then, like I said, if you need  
19 anything, drink wise, snack wise, whatever, let us know.  
20 We'll just take about a ten minute break, and then we'll  
21 start back.

22 Okay. So, everyone remain seated.

23 Ladies and gentlemen of the jury, you're excused.

24 (Whereupon, the jury retires to the jury room.)

25 THE COURT: All right. We will take about ten, maybe



1 fifteen minutes. Okay.

2 MRS. MCEACHIN: Thank you, Judge.

3 (Whereupon, a short recess was taken.)

4 THE COURT: Okay. Y'all ready?

5 MR. MCEACHIN: State's ready, Your Honor.

6 MRS. PRATT: Defense is ready, Your Honor.

7 THE COURT: All right. Bring the jury out please.

8 (Whereupon, the jury returns to the courtroom.)

9 THE COURT: All right. Mr. Taylor, I -- you have my,  
10 either my congratulations or condolences, whichever one,  
11 whichever one you want to take. No, I'm just, I'm just  
12 kidding. Thank you for your willingness to serve as the  
13 foreman of the Grand Jury, Grand Jury, of, of the jury  
14 panel here.

15 Ladies and gentlemen, if you recall, we, we, Mr.  
16 McEachin was still on the State's case when we took that  
17 break. And so, at this time I would recognize him for his  
18 next witness.

19 Mr. McEachin.

20 MR. MCEACHIN: Thank you, Your Honor.

21 The State would call Gary McClary to the stand.

22 THE COURT: Mr. McClary, if you would please come  
23 around to be sworn, sir.

24 GARY MCCLARY, being first duly  
25 sworn, testified as follows:

1 THE CLERK: Please be seated and state your full name  
2 for the record.

3 THE WITNESS: Gary Matthew McClary.

4 DIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q Okay. Gary, how old are you?

7 A Twenty-three.

8 Q And where do you live?

9 A Kingstree, South Carolina.

10 Q Do you have any family?

11 A Yes.

12 Q Tell the Court about your family.

13 who, who, who all's in your family?

14 A Well, I have a two year old son.

15 Q Does he live with you?

16 A Yes.

17 Q Okay. What's your occupation, Gary?

18 A I'm a cook.

19 Q Okay. And where are you a cook?

20 A Pizza Hut in Lake City.

21 Q How long have you been a cook at Pizza Hut in Lake  
22 City?

23 A A year.

24 Q Okay. And how long have you -- has that been your  
25 total time of employment there, about a year?

Gary McClary - Direct examination  
by Mr. McEachin

101

1 A As of August, yeah.

2 Q Okay. So, August 2008 is when you started?

3 A Yes.

4 Q Okay. And, and we're here today because of the  
5 events that took place on December the 6<sup>th</sup>, 2008.

6 Do you remember that day?

7 A Yes, sir.

8 Q Now, which shift were you working that day?

9 Were you working the day shift or the evening shift?

10 A Evening shift.

11 Q Okay. And can you please relay to the jury --  
12 actually I'll take a step back.

13 What time do y'all close on the evening shift?

14 A Ten o'clock. Friday and Saturdays, 12:00.

15 Q So, Friday and Saturday night y'all close at  
16 midnight?

17 A Yes.

18 Q Okay. Can you please tell the jury what happened at  
19 approximately 11:00 p.m. on the night of December the 6<sup>th</sup>  
20 and please speak up so this, so this young lady back here  
21 can hear you?

22 A Okay. Well, it was a normal night, you know, after  
23 around like -- it was pretty steady. Around ten o'clock  
24 it started getting real slow. Caught up with everything,  
25 all the side work, and whatnot. Around like close to

1 11:00 I was cleaning up like where I made the pizzas and  
2 Chappell, he was, he was up front like asleep. The  
3 manager and the other -- well, the delivery driver was out  
4 on delivery, and two other employees, they had just walked  
5 out to smoke a cigarette out the front door.

6 Q Okay. And who were those employees?

7 A Michael Cooper and Tony Green.

8 Q So, at that particular time there were only four of  
9 y'all there?

10 A Yes.

11 Q Okay.

12 And, and, Your Honor, may I have the witness step  
13 down?

14 THE COURT: Yes, sir.

15 Mr. McClary, when you step away from the witness  
16 stand, would you -- it takes you a little further away  
17 from Miss Reed, the court reporter. So, if you would,  
18 please speak up when you're down there.

19 Okay?

20 THE WITNESS: Yes, sir.

21 (Witness comes down from the stand.)

22 Q Stand on this side a moment, Gary.

23 All right. Now, you say you were finishing up your  
24 side work, and where were you at around eleven o'clock?

25 A I was right here.

1 Q Okay. And what were you doing -- what, what is that,  
2 first of all, where you were standing?

3 A That's the, the make table where we make the pizzas.

4 Q Okay. And that's where the cook -- that's your  
5 station?

6 A Yes, that's right.

7 Q Okay. And what were you doing while you were  
8 standing at the make station?

9 A At that time I already had everything put up and I  
10 was just wiping the table down.

11 Q Okay. And what, what was the next -- what did you  
12 notice while you were standing there?

13 A The back door, which is like right here, you know,  
14 kind of in eye shot, like three guys had just walked in  
15 like wearing like dark colors and --.

16 Q Okay. And where did they walk in from?

17 A From the back room.

18 Q How, how quickly did they come in?

19 A Sort of stealthy.

20 Q Okay.

21 A You know, kind of low.

22 Q Okay. Were they crouching down?

23 A Yeah, sort of.

24 Q Okay. And what did you say they were wearing?

25 A Dark colors like jackets.

1 Q Okay. well, did they have anything on their heads or  
2 about their face?

3 A Yes.

4 Q Okay. what was that?

5 A Stocking caps.

6 Q Okay.

7 A Knit hats.

8 Q Okay. Now, you say three of them came in, is that  
9 correct?

10 A Yes.

11 Q Okay. where did they go?

12 Can you show the jury, with your finger, just show  
13 them, show us where they went?

14 A Well, it all kind of happened pretty quickly, but  
15 like I think -- well, two of them like went around this  
16 way. One of them came straight around here where I was.

17 Q Okay. And did that individual have anything with  
18 him?

19 A Yes.

20 Q What did he have with him?

21 A A pistol.

22 Q Okay. what about the other two, did you see them?

23 A Yes.

24 Q All right. And where did they go once they went down  
25 the hallway there?

1 A Well, I didn't really see. Like it kind of shocked  
2 me and like I saw the one, and the other two I guess they,  
3 they came around like looking around the store, walk in  
4 the restrooms, something, and they came around front.

5 Q Okay. How far would you say -- all right. Did you  
6 see anything in either of their hands?

7 A Yes.

8 Q What did you see?

9 A A shotgun in one and then another pistol in the  
10 other.

11 Q Okay. And where did the individual with the shotgun  
12 go?

13 A Chappell was sitting right here.

14 Q Right.

15 A And he was asleep and the guy brought me up here and  
16 said something like I get money out the cash register.

17 Q Okay.

18 A And that's the first time I really say Chappell and  
19 the guy with the shotgun.

20 Q Okay. And where were they when you saw them?

21 A Standing about right here.

22 Q Okay. Okay.

23 A Like the first thing I saw when I came up here, he  
24 hit Chappell in the forehead with the shotgun with the  
25 butt of the gun.

1 Q The butt of the gun.

2 Okay. And you said they took you to the register?

3 A Right.

4 Q And the fellow who took you to the register, what did  
5 he tell you to do?

6 A Open the register, open the safe. He was insisting I  
7 was the manager.

8 Q Okay. Were you able to do that?

9 A No.

10 Q Okay. Once, once you were unable to do that, what  
11 happened next?

12 A They took us to the back like right here, little  
13 office space, and got all our wallet, my wallet, my cell  
14 phone, Chappell's cell phone, money, wallet, keys.

15 Q Okay. During that process, what, if anything, else  
16 happened?

17 A Well, after we give them everything, they insisting  
18 we took our clothes off and we was kind of crouched down.  
19 The one guy with the pistol hit me on top of my head.

20 Q Okay. Now, when you were hit on the top of your  
21 head, were you looking up, where you looking down, which  
22 way were you looking?

23 A I was looking down.

24 Q Okay. Towards the floor?

25 A Well, I was kind of -- yeah, yeah.



1 Q Okay.

2 A Towards the guy's feet.

3 Q And they asked y'all to undress.

4 Did y'all do that?

5 A We were trying to.

6 Q Okay.

7 A Like taking my shirt off, but before I could take  
8 anything else off, he, that's when he hit me.

9 Q Okay. And show the jury again one more time where  
10 y'all were standing while all this was going on.

11 A Right here.

12 Q Okay. Once you were hit, what happened?

13 A I just kind of fell over to the side and the guy that  
14 actually, the guy that hit me, he said there's the police  
15 outside, and they saw like through the window out here.

16 Q Okay.

17 A And then they ran out.

18 Q Which way did they run out?

19 A Through the back door.

20 Q Okay. And once they got out, went out -- once they  
21 went around that corner, did you see them again?

22 A After they left?

23 Q Right.

24 A No.

25 Q Okay. That was the, that was the last time you saw

1     them?

2     A     Yeah.

3     Q     Okay. Once they left, what happened next and you can  
4     have a seat up here.

5             (Witness returns to the stand.)

6     A     Okay. Once they left, me and Chappell kind of, you  
7     know, just got ourselves together and he ran to the -- he  
8     was going to the front and this was maybe ten seconds or  
9     so after they left.

10    Q     Right.

11    A     I just real quickly went to the back door and took  
12    the mop out. There was like a mop propping the door open  
13    and I just pushed it out real quick and I went right  
14    behind Chappell.

15    Q     Okay. So, you were right behind Chappell and what  
16    happened as you were following Chappell?

17    A     That's when the, the cops were there. So, you know,  
18    they had guns pointing at us.

19    Q     Okay.

20    A     We just laid down.

21    Q     Okay. And after they found out that y'all were the  
22    victims, what happened to you or where did you go?

23    A     They just told us to lay down. They searched all  
24    around the area and everything.

25    Q     Okay. And then once you got up, where did y'all go

1 once y'all left there?

2 A We sat in the front lobby.

3 Q Okay. And at any point did y'all leave the Pizza  
4 Hut?

5 A Yes, after---

6 Q Where did y'all go when y'all left the Pizza Hut?

7 A We went outside and there was like an ambulance and  
8 police and everything. So, we sat there for a minute and  
9 we left to, to go to the hospital.

10 Q Did y'all go by ambulance or how did y'all get there?

11 A Ambulance, yes, sir.

12 MR. MCEACHIN: Approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 Q Gary, I'm showing you what's been marked as State's  
15 Exhibit 16 and 17 for identification purposes.

16 Do you recognize those photograph?

17 A Yes, sir.

18 MRS. PRATT: No objection, Your Honor.

19 MR. MCEACHIN: All right. The State would move these  
20 into evidence.

21 THE COURT: Without objection.

22 What numbers are those?

23 MR. MCEACHIN: 16 and 17, Your Honor.

24 THE COURT: Okay.

25 (Whereupon, State's Exhibit Nos. 16 and 17 were

1 received into evidence at this time.)

2 Q And Gary, just, just so the jury understands, what  
3 are those pictures off?

4 A That's me I believe at the police station.

5 Q Okay. And was before or after you went to the  
6 hospital?

7 A That was after.

8 Q Okay. And there's something on your shirt there,  
9 what's that on your shirt?

10 A Blood.

11 Q And where did that blood come from?

12 A From the wound. It was like pouring down my face and  
13 my neck.

14 Q Okay. And where, where exactly were you hit in the  
15 head?

16 A Right here.

17 Q Okay. And if look at picture number or Exhibit  
18 No. 17, the next one, can you please tell the jury what  
19 that is?

20 A That's, that's the wound right there.

21 MR. MCEACHIN: Okay. Your Honor, at this time may I  
22 publish these to the jury?

23 THE COURT: Yes, sir.

24 Q Gary, you said your wallet -- and what else was taken  
25 from you other than your wallet?

1 A My cell phone.

2 Q Okay. Did you receive those items back that night?

3 A No, not that night.

4 Q Did receive them back at all?

5 A With -- well, yes, actually I got my wallet back that  
6 night I believe.

7 Q Okay. What about your cell phone?

8 A They had to hold that for evidence. There was some  
9 calls made on them.

10 Q Okay. But you did receive it back that night?

11 A Yes.

12 Q Do you know where---

13 A No.

14 Q ---that was found?

15 A No, no, I mean I received the wallet. The cell phone  
16 I got back like a week later.

17 Q Okay. Do you know where your wallet was found?

18 A No, on one of the guys --

19 Q Okay.

20 A -- is what they said.

21 MRS. PRATT: Objection and motion to strike, Your  
22 Honor, if he only knows that from what someone told him.

23 THE COURT: What, what was the question?

24 MR. MCEACHIN: I simply asked him if he knew where  
25 his wallet and -- I simply asked him if he knew where his

1 wallet was found.

2 THE COURT: All right. And do you have personal  
3 knowledge of where it was found?

4 WITNESS: On one of the guys. On the robbers.

5 THE COURT: Okay. And your, and your objection is  
6 that that was what someone told him?

7 MRS. PRATT: Yes, Your Honor.

8 THE COURT: He didn't testify to that.

9 MR. MCEACHIN: He didn't testify what anybody told  
10 him, Your Honor.

11 THE COURT: He was asked where his wallet was found.  
12 He said on one of the robbers. He didn't testify that  
13 someone told him that. You certainly---

14 MRS. PRATT: Your Honor, my question would be how he  
15 would know otherwise.

16 MR. MCEACHIN: She can, she can ask that on  
17 cross-examination.

18 MRS. PRATT: I will, Your Honor.

19 THE COURT: Okay.

20 Q All right. Thank you. Please answer any questions  
21 Mrs. Pratt may have.

22 CROSS-EXAMINATION

23 BY MRS. PRATT:

24 Q Mr. McClary, how do you know that it was found on one  
25 of the robbers?

Gary McMillian - Cross-examination  
by Mrs. Pratt

113

1 Did you see it come out of the pocket?

2 A No, I didn't.

3 Q Okay. So, you don't really know that, do you?

4 You've been told that?

5 A By police officers.

6 Q Sure.

7 And that, that doesn't make it true, does it?

8 A Not necessarily.

9 Q Okay. That's better.

10 Then, Your Honor, renew my objection and motion to  
11 strike.

12 THE COURT: All right.

13 MRS. PRATT: Thank you, Your Honor.

14 Q Mr. McClary, how long had you been working that  
15 night?

16 A Since about five o'clock.

17 Q Okay. And were you pretty busy?

18 A Pretty steady for a little while. No, not---

19 Q Regular Saturday night?

20 A Yeah.

21 Q Okay. And you stated that you were -- about, about  
22 the time of this incident, you were at the pizza I guess  
23 the make table, is that right?

24 A That's right.

25 Q And Mr. McClary, I'm gonna ask you to come back down

1 again.

2 (Witness comes down from the stand.)

3 Q I'm gonna give you some post-it notes. The clear  
4 side's what sticks, and I'm gonna ask you just a couple  
5 of questions.

6 Okay. Where were you -- if you would put a post-it  
7 note exactly where you were standing when the, the  
8 incident began.

9 A Right here.

10 Q Okay. And where -- which way were you facing?

11 A I was facing that way.

12 Q All right.

13 A Towards the table.

14 Q The -- be, behind the table, is, is that a wall or is  
15 it a wall all the way to the ceiling or a short wall?

16 A Yeah, this is the table. This is like the wall.  
17 Yeah, it's short.

18 Q How, how tall is that wall?

19 All the way to the ceiling?

20 A Yes.

21 Q Okay. And the item that's a block across from it, is  
22 that a wall all the way to the ceiling as well?

23 A What?

24 Q This, this over here.

25 A Yes.



Gary McMillian - Cross-examination  
by Mrs. Pratt

115

1 Q Okay. So, this is all the way to the ceiling, the  
2 protuberance that's close to where it says back exit, and  
3 then this behind the make table is all the way to the  
4 ceiling, correct?

5 A Yes.

6 Q Okay. And you were standing there when you said you  
7 saw some gunmen coming?

8 A Right.

9 Q Which -- okay. Tell me where they came in and where  
10 the first one went.

11 A Back door. The first one went straight around this  
12 like, you know, out of view, but this way.

13 Q Okay. And once he was out of your view did you see  
14 him again?

15 A Yeah.

16 Q Okay. So, we've got one going that direction, and  
17 then where did the next one go?

18 A The next one, the next one came to me. The third  
19 one, you know, still went that way.

20 Q Okay. So, the second one came to you.  
21 would you put a post-it where he was?

22 A When?

23 Q When he came to you.

24 A (Witness complies.)

25 Q All right. And you said -- did you look at him?

1 A Yes.

2 Q All right. How tall are you?

3 A 6'1".

4 Q And about how much do you weigh?

5 A 155.

6 Q Okay. Was the person that came to you taller than  
7 you or shorter than you?

8 A He's probably a little shorter.

9 Q And you're 6'1"?

10 A Yeah.

11 Q Okay. And was he heavier than you or thinner than  
12 you?

13 A Well, he had on a big jacket. So, I can't really  
14 say.

15 Q Okay. Can you tell me something about the jacket  
16 itself?

17 A It's like a, kind of like a police issue jacket.  
18 Kind of like a flight jacket sort of. Real puffy.

19 Q Okay. And it was real puffy.

20 Did it have like seams or quilting kind of markings  
21 on it?

22 A I can't really say.

23 Q Okay. Like was it puffy in, in pillow kind of  
24 marks---

25 A Oh, no, ma'am.

Gary McMillian - Cross-examination  
by Mrs. Pratt

117

1 Q ---or just all one?

2 A Yeah, just like altogether, yeah.

3 Q Okay. All right. And did you notice anything else  
4 about that person?

5 A He had on a knit cap.

6 Q And do you remember what color it was?

7 A Black.

8 Q Okay. And what else do you remember?

9 A Like an auburn and a brown colored like stocking cap  
10 or something all over, all the way over his face.

11 Q When you say stocking cap, do you mean like a pair of  
12 say panty hose or do you mean something else?

13 A Yeah, a pair of panty hose, stocking cap.

14 Q All right.

15 A But most likely he had a pair of panty hose.

16 Q All right. And were they beige or black?

17 A Like brownish.

18 Q Okay. All right. And do you remember anything about  
19 the shoes that that person would have been wearing?

20 A No.

21 Q You didn't look at his feet?

22 A I looked down, but, you know, it could of been  
23 anything.

24 Q Okay. They weren't real distinctive shoes?

25 A No.

1 Q Okay. All right. So, that would be the gunman that  
2 primarily was concerned with you.

3 Did he have a weapon?

4 A Right. Yes.

5 Q What did he have?

6 A A pistol.

7 Q Okay. And then you said there was a third gunman?

8 A Yes.

9 Q Okay. Tell me about him.

10 Where did he go?

11 A Well, pretty much this same guy that came to me, when  
12 he came in the store, he was with me the whole time. You  
13 know, he dragged me up front to where the safe and cash  
14 register is and he drug me to the back.

15 Q So, you were focused on him, right?

16 A Not really focused on him, but --.

17 Q Well, well, you were looking at something other than  
18 the guy with the gun?

19 A Well, I was kind of looking down the whole time. I  
20 mean I was scared. He had a gun.

21 Q Okay. That's fair.

22 So, you, you're, you're paying -- you're with him.

23 Okay. So, I asked you about the third guy.

24 What did you see about him?

25 A Well, I saw the three come in. He came to me. You

Gary McMillian - Cross-examination  
by Mrs. Pratt

119

1 know, I'm looking down. You know, I'm scared and all. He  
2 brings me up front. The first thing I see when I come  
3 like right around here is the guy with the shotgun. He  
4 hits Chappell. Like, you know, as soon as I come around  
5 here I just see him hit him with the butt of the gun like  
6 right here.

7 Q Okay. Put a sticky there.

8 A (Witness complies.)

9 Q So, you're saying that he hit Chappell over near the  
10 other register that was near the front door, right?

11 A Well---

12 Q Up here?

13 A ---on this side of the, the counter.

14 Q All right. Not over here near you?

15 A No.

16 Q But over here?

17 Okay. And what do you remember about that gunman?

18 A He had like a, pretty much like the same thing, kind  
19 of a big jacket. I mean that's all I really remember.

20 Q Okay.

21 A He had like a stocking cap on, ski mask, something.

22 Q He had something over his face?

23 A Yeah.

24 Q You can't describe it though?

25 A Right.

- 1 Q So, you don't know whether it was brown or black?
- 2 A No.
- 3 Q You don't know what kind of panty hose?
- 4 A I'm sure it was black. I remember like all of them
- 5 had on black hats.
- 6 Q Okay. All right. So, you've got one gunman here at
- 7 the pink post-it, and you've got a gunman here, and I was,
- 8 I was asking you about the third guy.
- 9 Where did you see him?
- 10 A Like I just saw him -- like I said, I was looking
- 11 down most of the time. I just saw him like a couple
- 12 random points like running around, you know, checking the
- 13 back like around here where the restroom is.
- 14 Q Okay. Did you stay all the time right here in this
- 15 general area with this fellow?
- 16 A No, just back here, to the front for a while where
- 17 the register and the safe is, and back here.
- 18 Q Okay. And this wall, how tall is it?
- 19 A That's just this high.
- 20 Q Okay. And these restrooms, obviously they go all the
- 21 way to the ceiling?
- 22 A Yes.
- 23 Q So, if there was somebody here, you wouldn't be able
- 24 to see him from here, would you?
- 25 A Not from the table, no. But when they came up front,

Gary McMillian - Cross-examination  
by Mrs. Pratt

121

1 yes.

2 Q okay. And did you -- when you are looking in this  
3 direction, you can't see someone over here, right?

4 A From over here?

5 Q Uh-huh. (Affirmative).

6 A I can see them walking -- oh, from over here, no.

7 Q okay. And along this wall, what, what is along that  
8 wall as far as paint or shelving or whatever?

9 A Just like a, a dishwasher back here, a, a freezer, a  
10 table.

11 Q Okay. And the dishwasher, what's it made out of?

12 A Stainless steel.

13 Q Okay. And the freezer, what's it made out of?

14 A Steel.

15 Q Okay. Y'all have to polish those?

16 A No.

17 Q No, really?

18 You have to clean them?

19 A Yeah.

20 Q Oh, okay. All right. And your walk-in cooler,  
21 what's it, what's the door on it made from?

22 A I believe steel.

23 Q Okay.

24 A Tin maybe.

25 Q Do you have any, any doors in that area?

1 A What area?

2 Q Back through here.

3 A Throughout this whole section right here?

4 Q Uh-huh, like is there anything blocked off with a  
5 door so that the customers can't see any of that?

6 A From, from out here?

7 Q Yeah.

8 A All you can really see from like the dining area, you  
9 can see all back -- honestly this is like a, a little  
10 inaccurate.

11 Q Okay. Tell me how it's inaccurate.

12 A I mean it's just a -- this is a little more -- this  
13 isn't really a -- this is not as aligned with where the  
14 table is right here. It's like just a little -- there's a  
15 little more space to see back there like while we're  
16 making pizzas and stuff.

17 Q Okay.

18 A You can see back there to the, where the dishwasher  
19 is. You can see all of that from up front.

20 Q Okay. All right. What can, what can you tell me  
21 about the third person that you say is there?

22 A Well, I mean I'm looking down most of the time. So,  
23 I just saw them -- like at one point I saw three come in  
24 and at the one, one time when he, when he brought me up  
25 here, there's this guy who's behind me, I see this guy



Gary McMillian - Cross-examination  
by Mrs. Pratt

123

1 with the shotgun hit Chappell and I get a glimpse of this  
2 guy walking back there towards the restroom like as if to  
3 look and see if anyone's in here.

4 Q So, if Chappell was hit here, he would of been able  
5 to see this guy too, wouldn't he?

6 He's right in his line of vision?

7 MR. MCEACHIN: Objection, Your Honor. Speculation.

8 THE COURT: Sustained.

9 Q Let me rephrase the questions.

10 Is there anything blocking the view from where you  
11 said Chappell was to where this other restroom is?

12 A No, there's nothing blocking it, no, ma'am.

13 Q All right. If you want to take the witness stand  
14 again.

15 (Witness comes from the stand.)

16 Q Mr. McClary, do you, do you remember giving a -- oh,  
17 I can't see it. Let me move this back.

18 Okay. Do you remember giving a taped statement to  
19 Detective Gainey here?

20 A Yes.

21 Q All right. And do you remember telling him that it  
22 all happened so fast?

23 A Yes.

24 Q It happened in a second, a minute or two?

25 A Right.

1 Q Okay. And that there were people moving back and  
2 forth and all around?

3 A Uh-huh. (Affirmative).

4 Q Do you remember saying that?

5 A Yes.

6 Q Okay. And you remember saying that people came, that  
7 you saw two people most of the time, correct?

8 A Right.

9 Q Okay. And I think in your statement you actually  
10 said that there were just two instances maybe where you  
11 thought you saw three people?

12 A Yes.

13 Q Okay. And you've got no distinguishing between this  
14 third person and the other people, right?

15 You don't remember anything specific about that  
16 person?

17 A Repeat the question again.

18 Q Is there anything that makes you distinguish that  
19 third person from the other two or did he look just the  
20 same as them?

21 A Yeah, more or less.

22 Q Okay. So, how do you know for sure that there was  
23 really a third person and it wasn't one of the other  
24 people moving back and forth and moving around here?

25 A Well, cause this guy is on my back I mean, you know,

Gary McMillian - Cross-examination  
by Mrs. Pratt

125

1 right behind me. The first thing I see when I go up  
2 there, I see Chappell get hit by the guy with the shotgun  
3 and -- all right. When I go up front, the first thing I  
4 see is the guy go to the bathroom, go towards the  
5 bathroom. I just get a, a glimpse of it. And then  
6 there's -- then I look to the left and there's Chappell  
7 and the guy with the shotgun.

8 Q And the person here couldn't be the same guy coming  
9 back, checks here to see if anyone is there, and the same  
10 guy coming over to where Chappell was?

11 A No.

12 Q Absolutely positive?

13 A Right.

14 Q And you're saying that he came around this way, not  
15 past you?

16 Around by the cooler and, and the other register?

17 A Right.

18 Q Okay. But he can't really come through here, can he?  
19 Isn't this blocked off right here where the register  
20 is?

21 A Oh, no, no. It's like a---

22 Q There's a pizza oven right here, isn't there?

23 A Okay. Like a -- you see where the walk-in door is,  
24 the door on the walk-in?

25 Q Okay.

1 A A little below that, right there, the oven starts  
2 about right there.

3 Q Okay.

4 A Well, a little low right next to the table, and it  
5 ends pretty much where that wall is.

6 Q This wall?

7 A Yes, and---

8 Q Okay.

9 A And if you're behind the counter, you can just walk  
10 around and go to the front. There's nothing blocking it.

11 Q From here?

12 A Like if you walk into the front and go straight to  
13 the, the back right there -- no, no, no. In the front  
14 door and walk -- yeah, you can walk right behind the  
15 counter.

16 Q Doesn't this actually cut back some?

17 It's more like an L-shape---

18 A Yeah.

19 Q ---than straight?

20 Okay. So, this isn't accurate here either, is it?

21 A No, it's just---

22 Q Okay. And there's an L-shape and someone would have  
23 to come all the way around and come around this way to get  
24 at Chappell, right?

25 A No. All right. You see through the back door and

Gary McMillian - Cross-examination  
by Mrs. Pratt

127

1 where the yellow post-it is? straight to the yellow---

2 Q This green one?

3 A I mean the, the pink one.

4 Q Oh, the pink one. Okay.

5 A And you -- I mean you can just go straight through  
6 there into the first booth right there.

7 Q But he didn't, right?

8 I mean not from your testimony, isn't that right?

9 A No. Where -- all right. Where the pink one is, you  
10 don't have to go all the way around the, the counter to  
11 get up there.

12 Q Okay. But you're saying that the person that hit  
13 Chappell had to have come this direction to get to here,  
14 right?

15 A Right, around---

16 Q He didn't come past you?

17 A No.

18 Q Okay. So, he did not come this way?

19 A No, I'm sorry. I meant where the, where the yellow  
20 post-it was. Okay. Like around where the main---

21 Q You were the yellow post-it, weren't you?

22 A I mean, I mean the pink. I'm sorry.

23 THE COURT: All right. Excuse me. Have the witness  
24 step down and show you exactly what he did.

25 MRS. PRATT: Thank you, Your Honor.

1 THE COURT: This is going nowhere.

2 MRS. PRATT: Okay. I'm sorry, Your Honor.

3 (Witness comes down from the stand.)

4 A Well, you can easily---

5 THE COURT: You need to speak louder.

6 A Well, you can easily just come around the back  
7 through here and around the front.

8 Q But if he had done that you would of seen him?

9 He would of gone right past you?

10 A This guy grabbed me -- like I'm at the edge of the  
11 table.

12 Q Right.

13 A So, I mean there's plenty of space right there.

14 Q So, you don't know where the shot, the guy with the  
15 shotgun went?

16 He didn't go past you, right?

17 A No.

18 Q He went over here?

19 A He went, he went this way. I mean he could of went  
20 behind me.

21 Q You don't know?

22 A No.

23 Q And you don't know if he actually came this  
24 direction?

25 A No.

Gary McMillian - Cross-examination  
by Mrs. Pratt

129

1 Q And you don't know if he actually is the same person  
2 that you think's the third person cause you weren't  
3 watching, were you?

4 A No, I wasn't watching them as they walked around, but  
5 at that one time I got a glimpse of them. I looked on my  
6 right and there's the one going towards the bathroom. I  
7 looked to the left and there's the one that hit  
8 Chappell---

9 Q Okay.

10 A ---while there's the third one behind me.

11 Q All right. And you're saying that the fellow that  
12 hit Chappell had to come either around the register near  
13 the front door or right past you to get to this point to  
14 hit Chappell, is that right?

15 A Right.

16 Q But he didn't come close enough to you that you, here  
17 that you saw him at the make table?

18 A No.

19 Q Okay. And you can't tell me anything that's  
20 distinguishing about him different from the other guys?

21 A Not really. Just -- well, no.

22 Q Do you have any mirrors here so that you can see  
23 people that are coming in the front entrance?

24 A No.

25 From?

1 Q Anywhere back here.

2 A Mirrors, no.

3 Q Okay. Is there anything that that shines a  
4 reflection so that if you're back near the make table and  
5 somebody comes in the entrance that you can see that  
6 somebody's coming in?

7 A Well, you can see them across the, like across here,  
8 yeah, you can see them. You can see from a little space,  
9 a little bit back here you can see who's coming in from  
10 the front. If you're at the make table you can see the  
11 front.

12 Q Okay. Go back.

13 (Witness returns to the stand.)

14 Q Who hit you?

15 A His name?

16 Q No.

17 Did he -- what did the person who hit you have?

18 A A pistol.

19 Q A pistol.

20 Okay. So, it was not the man with the shotgun that  
21 hit you?

22 A No.

23 Q And the whole incident, about how long did it  
24 actually take?

25 A It took about a minute, a minute, minute and a half



Gary McMillian - Cross-examination  
by Mrs. Pratt

131

1 maybe.

2 Q Okay. And at the time that the, the, one of the  
3 people says it's the cops, where were you?

4 A The pink post-it right here, like right above there  
5 in the little, where the cooler is.

6 Q Okay.

7 A The space above that.

8 Q The manager's office?

9 A Right, the -- that space between the office and the  
10 make table.

11 Q Okay. And if you were in the manager's office, you  
12 couldn't---

13 A No, not in the office.

14 Q Oh, just in front of the door of it?

15 Maybe you better come back down again. I'm sorry.

16 THE COURT: It's right here. You can lean over to it  
17 if you want.

18 Q Move it closer to you. I'm not trying to confuse  
19 you.

20 A Right here.

21 Q All right. So, when they said they were the police,  
22 you were right in kind of the walkway area right there  
23 beside the make table?

24 A Yes, and they were like in-between the two walls.

25 Q Okay. In-between the two walls here?

1 A Yes, we were right in front of them.

2 Q And you saw two guys go out the back door?

3 A Yes.

4 Q You never saw the third guy though, did you?

5 A Yeah. No, the two guys that were standing in front  
6 of us, they went out and the other guy was like where the  
7 walk-in is, he went behind them.

8 Q You saw that?

9 A Yes.

10 Q You didn't tell Detective Gainey that, did you, in  
11 your statement?

12 A Well, I was like that -- I was still kind of shell  
13 shocked from it.

14 Q And who have you talked to since about what you saw  
15 that night?

16 A A few people.

17 Q Okay. Did you talk to the, the other two people that  
18 were there that night?

19 A Yes.

20 Q And did -- and how many times have you talked to the  
21 police about this?

22 A The, the one time that night. I may have talked to  
23 them again. Well, I went up there a couple times since  
24 then. I don't think I talked to them in detail or  
25 anything.

Gary McMillian - Cross-examination  
by Mrs. Pratt

133

1 Q Okay. And did they ask you a lot of questions about  
2 whether they were two or three?

3 A I don't remember.

4 Q All right. Do you remember anything about the pants  
5 that the robbers were wearing?

6 A It was just dark colors.

7 Q Okay.

8 A Maybe jeans or something.

9 Q Do you remember anything distinctive about them?

10 A No, not really.

11 Q Okay. And you've already told me I think that you  
12 don't remember anything distinctive about the shoes?

13 A No.

14 MRS. PRATT: Okay. Beg the Court's indulgence.

15 (Pause.)

16 Q When you were -- when, when the, one of the robbers  
17 said it's the police and they decided to bolt out the back  
18 door, where were you again?

19 You were where the, beside where the pink post-it is?

20 A Yes.

21 Q Okay. Where was Chappell?

22 A He was to my left.

23 Q All right. And were y'all facing, both of you facing  
24 forward?

25 A Yes.

1 Q Okay. So, you weren't actually looking at the back  
2 door?

3 A Yeah.

4 Q You were facing backwards?

5 A Oh, oh, I'm sorry. I meant -- we were facing like --  
6 we were facing that way. We was right here facing that  
7 way.

8 Q Okay.

9 A And they were standing right there facing us.

10 Q All right.

11 A So, they were -- you know, they saw the police. So,  
12 they were facing like the front and you can see the front.

13 Q All right. One of the guys with the shotgun saw the  
14 police, is that right?

15 A No, the guy that was in front of me, the one that hit  
16 me said, he's the one that said he saw the police outside.

17 MRS. PRATT: Okay. All right. I have nothing  
18 further. Thank you. Those are all my questions.

19 THE COURT: Mr. McEachin.

20 MR. MCEACHIN: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. MCEACHIN:

23 Q Gary, is there any doubt in your mind that there were  
24 three robbers there that night?

25 A No.

Gary McMillian - Redirect examination  
By Mr. McEachin

135

1 Q You saw how many people there that night, robbers?

2 A Three.

3 Q You testified during cross-examination that the, the  
4 robber that, that had the pistol that hit you was wearing  
5 a flight type jacket?

6 A Yes.

7 MR. MCEACHIN: Beg the Court's indulgence, Your  
8 Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q All right. I'm gonna show you what's been marked  
12 as State's Exhibit No. 11 for identification purposes.  
13 Take a look at that for me for a moment.

14 Do you recognize that at all?

15 A Yes.

16 Q And what is that?

17 A That appears to be one of the jackets the guys had  
18 on.

19 Q And you testified on cross-examination that one of  
20 the fellows was checking the back area, and by back area,  
21 are you talking about this area back here?

22 A Right.

23 Q Sorry.

24 You're talking about this area back here, correct?

25 A Yes.

1 Q Okay. And at that time where were the other two  
2 fellows?

3 A One was, you know, he grabbed me. He had me up, up  
4 front.

5 Q okay.

6 A well, taking me up front.

7 Q And where was the other one?

8 A He was probably, he was probably on his way up there  
9 also.

10 Q okay. And is there any question whatsoever in your  
11 mind that there were less than three individuals there?

12 A No, sir.

13 MR. MCEACHIN: Thank you. No further questions, Your  
14 Honor.

15 RECROSS EXAMINATION

16 BY MRS. PRATT:

17 Q Mr. McClary, you testified that you recognized this  
18 jacket.

19 which person had this on?

20 A The one that hit me probably.

21 Q Probably?

22 A I'm not, I'm not really sure, but I remember  
23 specifically seeing a black flight jacket.

24 Q So, you don't really know which person?

25 A Exactly which one, no.

1 Q Okay. And are you, are you telling the solicitor  
2 that you could watch all three of them simultaneously  
3 while one person had hit you on the head and was trying to  
4 get you to open the register?

5 A Well, he didn't hit me on the head when he was, when  
6 I was at the register.

7 Q But my question is can you watch all three people  
8 simultaneously when you've been---

9 A I can't watch them, no.

10 Q No.

11 Okay. So, you don't really know -- from any given  
12 time, you're watching one person, the one beside you,  
13 isn't that right?

14 A Right.

15 Q Okay. And whatever else you see or don't see, you  
16 don't really focus on that, do you?

17 A But it's kind of -- at, at the one time or I know  
18 this guy's right here behind me and it's like I, I turn --  
19 when I go up front I see one guy running towards the  
20 bathroom, and I instantly turn to the, look to the left  
21 and there's the other guy that hits Chappell in the  
22 head---

23 Q Okay.

24 A ---as soon as I look that way.

25 Q But you're really not tracking them and there's

1 people -- in your statement to Detective Gainey, you say  
2 that there's people going back and forth and back and  
3 forth?

4 That's what you're seeing, correct?

5 A Yes.

6 Q Okay. But you can't distinguish one person really  
7 from the other, can you?

8 A Not really.

9 Q Okay. Thank you.

10 THE COURT: All right. Mr. McClary, thank you very  
11 much, sir. You may step down.

12 WITNESS: Okay.

13 THE COURT: All right. Ladies and gentlemen, we're  
14 going to recess for the afternoon. The, the instruction I  
15 gave you earlier regarding, at lunch regarding not having  
16 conversation with anyone, that, that still stands, but it,  
17 but it takes it to another level when you go home because  
18 each of you will probably have either friends or family  
19 members or loved ones who are gonna want to know how, how  
20 did it go today, did you get picked on a jury. You can  
21 tell them you were picked, but that's where you need to  
22 end it.

23 They're gonna want to know what kind of case is it,  
24 who does it involve, and what I need for you to do, and  
25 this is so important, this is, this is the foundation of



1 our, our system of justice, and that is that you jurors  
2 are not influenced by anyone at all about anything  
3 involving this case. And the way you avoid that is you,  
4 you tell whoever will ask I am not allowed to talk about  
5 the case at all. I can't even tell you what the charge  
6 is. I'm not to tell you a thing except to let you know  
7 that I will tell you everything you want to know when it's  
8 over. But up until that point you can't have any  
9 discussion because if, if you say something as innocent as  
10 well, it's an armed robbery case, it or it's an armed  
11 robbery case at Pizza Hut, and leave it at that,  
12 somebody's liable to say something to you that would have  
13 some affect on your ability to be fair and impartial.

14 So, the best way to do it is to just basically say I  
15 have been selected on a jury, we're in the middle of the  
16 trial, and I can't talk about it. Please respect that.  
17 But please do know that I'll tell you all you want to know  
18 when it's over. And, and let -- and hopefully everybody  
19 will just leave it at that and you'll go on and have a  
20 nice evening.

21 As you probably were able to determine from today,  
22 jury service is not physically taxing muscularly, but it  
23 is mentally. To the extent you can get a good nights rest  
24 tonight, please try to do that. If you would be in your  
25 jury room at 9:30 in the morning, and when you get back in

1 the morning, if you'd come straight to the jury room, be  
2 in the jury room at 9:30, and we'll get started very, very  
3 quickly after you arrive.

4 I hope everyone has a good evening and ask everyone  
5 else to please remain in the courtroom, while members of  
6 the jury, you're excused for the evening, and we'll see  
7 you back at 9:30.

8 (Whereupon, the jury was excused for the day.)

9 THE COURT: All right. Anything before we adjourn  
10 for the evening?

11 MR. MCEACHIN: Nothing from the State, Your Honor.

12 MRS. PRATT: I would simply ask that my defendant be  
13 allowed to remain out during the trial, Your Honor.

14 THE COURT: He's currently on bond?

15 MRS. PRATT: Yes, he is, Your Honor. He'll be  
16 staying with his family who has posted his bond.

17 MR. MCEACHIN: Your Honor, no objection. I would ask  
18 that you go over the trial in absence --

19 THE COURT: Sure.

20 MR. MCEACHIN: -- as set forth in State versus  
21 Caroline Jackson.

22 THE COURT: Sure.

23 Now, Mr. Brayboy, your attorney has requested that,  
24 that you remain on bond. I guess technically, once a jury  
25 is sworn, your bond is exhausted and, and you, you are,

1 you're in custody until the trial ends. But your attorney  
2 has made the request that you remain on bond and the State  
3 does not object to that and I'm gonna allow you to do.

4 What I need for you to understand, sir, is this  
5 though. Every defendant that comes into court has the  
6 right to be present for their trial. However, what you  
7 need to do, what you do need to understand though is that  
8 this trial has begun, and that whether or not you show up  
9 tomorrow, this case is going to go forward so that if you,  
10 for whatever reason, are unable to attend tomorrow, the  
11 case will proceed in your absence.

12 Do you understand that, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And, and I'm, I'm gonna talk to you at  
15 greater length at another time regarding your role in the  
16 case. But as far as just discussing with you the, the  
17 fact that your, of your right to be present for the trial,  
18 your right is, is, in fact, in place and you do have the  
19 right to be present, but you can waive that right by not  
20 attending. And if you do not attend, the, the trial will  
21 proceed in your absence.

22 You are, however, required to attend as a condition  
23 of your bond as well as the fact that this trial, the jury  
24 is sworn and this trial has begun. And so, if you fail to  
25 attend, there will be a bench warrant issued for your

1 arrest and you will be then picked up on that bench  
2 warrant. In other words, all of this to say that it is  
3 very important that you be here tomorrow, and I have no  
4 indication at all that you won't be. It's just out of an  
5 abundance of caution I need you to understand the  
6 importance that you be here and that you also understand  
7 that should you not show up that this trial will proceed  
8 in your absence.

9 You understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Anything before we adjourn?

12 MR. MCEACHIN: Nothing, nothing further from the  
13 State, Your Honor.

14 MRS. PRATT: No, sir.

15 THE COURT: All right. Then we will then reconvene  
16 at 9:30.

17 (Whereupon, the proceedings were concluded for the  
18 day to be reconvened on August 25, 2009.)  
19  
20  
21  
22  
23  
24  
25

1 Tuesday, August 25<sup>th</sup>, 2009

2  
3 THE COURT: All right. Anything we need to take up  
4 before we begin from the State?

5 MR. MCEACHIN: Nothing at this time, Your Honor.

6 THE COURT: Anything from the defense that we need to  
7 take up before we start?

8 MRS. PRATT: Nothing from the defense, Your Honor.

9 THE COURT: All right. Everybody ready to go then?

10 MRS. PRATT: Yes, sir.

11 MR. MCEACHIN: Yes, sir.

12 THE COURT: You have your next witness?

13 MR. MCEACHIN: We do, Your Honor.

14 THE COURT: All right. Ms. Joe, if you would, ask  
15 the members of the jury to join us please.

16 (Whereupon, the jury returns to the courtroom.)

17 THE COURT: Morning, ladies and gentlemen. I hope  
18 everyone had a nice evening last night and a good morning  
19 so far this morning.

20 If you recall, we were in the midst of the State  
21 presenting their case when we adjourned court yesterday.

22 And, so, at this time I would recognize Mr. McEachin  
23 for his next witness.

24 MR. MCEACHIN: Thank you, Judge.

25 The State would call Tony Green to the stand.

Tony Green - Direct examination  
by Mr. McEachin

144

1 THE COURT: Mr. Green, if you would please come  
2 around, sir.

3 TONY GREEN, being first duly  
4 sworn, testified as follows:

5 THE CLERK: Please be seated and state your full name  
6 for the record.

7 THE WITNESS: Tony Anthony Green.

8 DIRECT EXAMINATION

9 BY MR. MCEACHIN:

10 Q All right. Tony, I'm gonna ask that you speak up so  
11 this woman on the very back can hear you.

12 Okay?

13 A All right.

14 Q All right. Tony, how old are you?

15 A Twenty-seven.

16 Q And where do you live?

17 A Lake City.

18 Q In Lake City?

19 A Yeah.

20 Q What's your occupation?

21 What do you do for a living?

22 A I work at Pizza Hut. I'm a cook.

23 Q Could you speak up just a little bit?

24 A I'm a cook. I work at Pizza Hut.

25 Q Okay. And which Pizza Hut do you work at?

Tony Green - Direct examination  
by Mr. McEachin

145

1 A Lake City.

2 Q Okay. And how long have you been employed with the  
3 Pizza Hut in Lake City?

4 A About four years.

5 Q About four years?

6 A Yes.

7 Q Okay. Were you working at the Pizza Hut back in  
8 December of last year?

9 A Yes, sir.

10 Q Okay. And were you working on the day of the  
11 December the 6<sup>th</sup> of 2008?

12 A Yes, sir.

13 Q Were you working the day or the evening shift?

14 A The evening.

15 Q Okay. Can you relay to the jury what happened that  
16 evening right around 11:00 p.m.?

17 A Yes, sir, me and a manager stepped outside to smoke a  
18 cigarette. And while I was outside smoking it, we turned  
19 around and seen a guy, it appeared to be a black male,  
20 holding a gun. And after we see the guy in the store, we  
21 ran across the parking lot to the gas station.

22 Q Okay. And, Tony, I'm gonna have you step down if  
23 it's all right with the judge.

24 THE COURT: Sure.

25 (Witness comes down from the stand.)

1 Q And, Tony, I'm gonna have you stand on this side over  
2 here so the court reporter can get everything. All right.  
3 And make sure you stand kind of to the side so everybody  
4 on the jury can see.

5 You say you and the manager stepped outside to smoke  
6 a cigarette, is that correct?

7 A Yes, sir.

8 Q Can you show us where on that diagram y'all were  
9 standing when you smoked the cigarette?

10 A In here. The front entrance.

11 Q Okay. And on that side of the Pizza Hut are there  
12 windows?

13 A Yes, sir.

14 Q Okay. And you testified that you saw, y'all, you saw  
15 a man with a gun?

16 A Correct.

17 Q Where did you see him?

18 A Standing about here.

19 Q Okay. So, where were you standing when you saw him?

20 A Here.

21 Q Okay. And there's a window right there?

22 A Correct.

23 Q Okay. And could you tell what type of, what type of  
24 gun it was?

25 was it a handgun or was it a different type of gun?



Tony Green - Direct examination  
by Mr. McEachin

147

1 A It was pretty long. Probably a shotgun.

2 Q Okay. Okay. And you can have a seat back in the,  
3 back in the witness stand.

4 (Witness returns to the stand.)

5 Q How many, how many individuals, other, other than  
6 your coworkers, did you see in the store that night?

7 A One.

8 Q Just one individual and that was the individual you  
9 just testified about, is that correct?

10 A Correct.

11 Q Okay. And just to backtrack a little bit, who all  
12 was working with you that night at the Pizza Hut?

13 A Michael Cooper, Chappell, Mr. Gary. That's it.

14 Q Okay.

15 A Just the four of us.

16 Q Okay. And once you saw the gunman, what did you do?

17 A Ran.

18 Q Where did you run?

19 A To the station, the gas station across the parking  
20 lot.

21 Q Okay. All right. Tony, I'm gonna show you what's  
22 been marked as State's Exhibit No. 8.

23 Do you recognize this?

24 Can you recognize this?

25 Just take a second if you need to to get your

1 bearings.

2 A This is Main Street, right?

3 Q Uh-huh. (Affirmative).

4 A I don't.

5 Q Okay. Well, that's fine.

6 COURT REPORTER: You need to speak up.

7 WITNESS: Yes, ma'am.

8 MR. MCEACHIN: He said he doesn't think he recognized  
9 it.

10 Q Okay. Well, that's fine.

11 As far as you saying you ran to the, to the gas  
12 station, what type gas station was it?

13 A The name of the station was Amoco.

14 Q Amoco Station.

15 And where is the Amoco Station in relation to the  
16 Pizza Hut?

17 A Right next to a -- Sonic is on one side.

18 Q Right.

19 A And the Amoco Station is on the other side.

20 Q Okay. Step down for me for just a moment.

21 (Witness comes down from the stand.)

22 Q So, just in using that diagram, which side is the  
23 Amoco Station on?

24 A It would be this side.

25 Q It would be on that side.

1           And how far away from the -- you can have a seat back  
2 up there on the witness stand.

3           (Witness returns to the stand.)

4       Q     How far away from the Pizza Hut is the Amoco Station?

5       A     About 60 feet. Probably that.

6       Q     Okay. And once, once you got to the Amoco Station,  
7 what did you do?

8       A     We went inside the station and we seen the officer  
9 stand -- well, I didn't know the officer. He did and we  
10 told him that our store was being robbed and he told us to  
11 wait there while he go and check it out.

12       Q     Okay. So, do you know who the officer was that,  
13 that, that y'all spoke with?

14       A     Yes, sir.

15       Q     And who was that?

16       A     That guy. The gentleman sitting there. I don't know  
17 his name.

18       Q     This individual sitting right here?

19       A     Yeah.

20       Q     Okay. And you -- what did you, what did you tell  
21 Investigator Gainey?

22       A     That the store was being robbed.

23       Q     Okay. Did you tell him any, any details, any  
24 specifics?

25       A     When he questioned me, I didn't went into detail. I

1 just said the store was being robbed.

2 Q Okay. And once y'all told Investigator Gainey, what  
3 did he do?

4 A Oh, he told us to wait there while he doing---

5 Q Okay. All right. Mr. Green, you can't testify as to  
6 what somebody else told you. You can testify as to  
7 actions, but not what someone else told you.

8 A Oh, well, he told me -- he actually told me to wait  
9 there.

10 Q Okay. Okay. And did y'all stay at the Amoco  
11 Station?

12 A Yeah, for a short period of time.

13 Q Okay. And then what did you do?

14 A Then we went back into the parking lot of the Amoco  
15 Station where we could look across and see the store.

16 Q Okay. And as far as this incident is concerned, did  
17 you have any, did you make any other observations about  
18 it?

19 what else did you see, if anything?

20 A That was it. I mean just seeing the gunman and  
21 confirming that the two guys that they did have in the  
22 store was actually employees.

23 Q Okay.

24 A That was after he went to check it out.

25 Q Okay. And, and let's, let's maybe clarify that a

Tony Green - Direct examination  
by Mr. McEachin

151

1 little bit.

2 You say police, what are you referring to there?

3 When you say the two guys who are actually police,  
4 who are you referring?

5 A No, I was saying the cop, the guy that standing  
6 there, he asked us -- well, he asked me is that---

7 Q You can't, you can't say what he asked you.

8 But when you say the two police -- who are the two  
9 police you're referring to?

10 A It wasn't two police.

11 Q Okay. I misunderstood then.

12 A Oh, okay.

13 Q Okay. So, once you came outside in the parking lot  
14 of the Amoco Station, did you witness or observe anything  
15 else?

16 A No, sir.

17 Q That was it?

18 A No, sir.

19 Q Okay. Thank you very much. Please answer any  
20 questions the defense may have for you.

21 CROSS-EXAMINATION

22 BY MRS. PRATT:

23 Q Good morning, Mr. Green.

24 A Good morning.

25 MRS. PRATT: Beg the Court's indulgence for just a

1 minute.

2 THE COURT: Yes, ma'am.

3 (Whereupon, three photographs were marked as  
4 Defendant's Exhibit No. 1 through 3 for identification  
5 purposes only at this time.)

6 Q Okay. Mr. Green, I'm gonna show you a photo which is  
7 now been marked as Defendant's Exhibit No. 3 for  
8 identification, and ask if you recognize the, what is  
9 pictured in that photo.

10 A Yeah.

11 Q What is that?

12 A It's the store that I work at, Pizza Hut.

13 Q That's, that's the Pizza Hut in Lake City?

14 A Yes.

15 Q And other than an arrow that's been drawn on it, is  
16 it the way that the store looks today and looked back in  
17 December?

18 A Yes, ma'am.

19 Q All right.

20 MRS. PRATT: I'd like enter this as Defense Exhibit.

21 THE COURT: Any objection to the---

22 MR. MCEACHIN: Without objection, Your Honor.

23 THE COURT: ---Defense Exhibit?

24 Is that No. 1?

25 MRS. PRATT: It's No. 3 actually.

Tony Green - Cross-examination  
by Mrs. Pratt

153

1 THE COURT: Three. Okay.

2 (Whereupon, Defendant's Exhibit No. 3 was received  
3 into evidence at this time.)

4 Q All right. Now, Tony, take a look at that for a  
5 moment.

6 Were you -- the parking lot area that you can see at  
7 the base of that---

8 A Yes, ma'am.

9 Q ---were you on the Pizza Hut side of the little  
10 boulevard like green area or on the Amoco side?

11 A When?

12 Q Well, no, that's a good question. Let me rephrase my  
13 question.

14 When you were smoking, where were you on that photo?

15 A I was actually standing on the sidewalk right in  
16 front of the---

17 COURT REPORTER: You've got to speak up.

18 A I was actually standing on the sidewalk right here.

19 Q Kind of where the arrow is?

20 A Yes.

21 Q Okay. So, you were on the sidewalk right there in  
22 front of the three windows that are in a row?

23 A Yes, ma'am.

24 Q Is that right?

25 A Correct.

1 Q All right. And you said you -- what did you see?

2 A I see a guy holding a gun. It appeared to be a  
3 shotgun.

4 Q All right. And I think you, when you were looking at  
5 the State's Exhibit No. 9, you stated that, get this close  
6 to you, that he was somewhere say about---

7 A Right there. Right here.

8 Q Here -- he was closest to the register that's closest  
9 to the, the coolers and the restrooms, but in front of  
10 this kind of counter area, right?

11 A Yes.

12 Q But closer to that then closer to the other side, is  
13 that right?

14 A Correct.

15 Q Okay. All right. And, so, you ran across the  
16 parking lot you said about the same distance again from  
17 one end of the parking lot to the Amoco Station, is that  
18 right?

19 A Correct.

20 Q Okay. And there you ran into Detective Gainey?

21 A Yes, ma'am.

22 Q Okay. And you've been working at the Pizza Hut for  
23 -- may I publish this to the jury, Your Honor?

24 THE COURT: Yes, ma'am.

25 MRS. PRATT: Thank you.



Tony Green - Cross-examination  
by Mrs. Pratt

155

1 Q You've been working for the Pizza Hut for four years,  
2 have you?

3 A Correct.

4 Q Okay. And, so, you're very familiar with its layout?

5 A Yes, ma'am.

6 Q Would you come down for a moment and take a look at  
7 this diagram that's State's 9 with me?

8 (Witness comes down from the stand.)

9 Q Are there some things on this diagram that are  
10 inaccurate as far as the shapes of things or the distances  
11 of things?

12 A Probably so.

13 Q Probably -- you need to speak up just a tad.

14 A Probably so cause it's a little inaccurate.

15 Q Okay. I want to direct your attention to this area  
16 around the entrance.

17 Okay. Are there things in this area which are  
18 inaccurate?

19 A No, ma'am.

20 Q No.

21 So, you would tell me that this area is not L-shaped?

22 A It is. It is. It's L-shaped.

23 Q Okay.

24 A It is

25 Q All right. I'm gonna take a post-it note and put a

1 piece of paper over it here and see if you can trace, and  
2 I'll line it up with the back wall, and see if you can  
3 just trace what it ought to look like for me. Okay. Let  
4 me get my little stickies that will come right back off.

5 All right. So, I'm gonna line this up with the back  
6 wall and the edge of, how about the edge of the, what's  
7 marked as the garbage and that way we'll know where to  
8 mark it. Okay. Put one over here and I know I didn't ask  
9 you to be an artist. But if you can, can mark for me what  
10 ought to be different about this area here.

11 A Just the inside?

12 Q Yeah.

13 A Okay. It's a little L-shape---

14 COURT REPORTER: You've got to speak up.

15 Q You have to speak a little louder for her.

16 A Here, it's like an L-shaped and it's a cash register  
17 here and it's a warmer here where you warm the pizza up.

18 Q Okay. And this is -- is this wall accurate?

19 A Yeah, the wall's accurate.

20 Q Okay. That's the corner of the wall there.

21 So, is there room for someone to walk through this  
22 area?

23 A Yes, ma'am.

24 Q All right. And is that where the delivery guy  
25 normally comes to pick up the pizzas and go back out the

Tony Green - Cross-examination  
by Mrs. Pratt

157

1 front door?

2 A Yes, ma'am.

3 Q Okay. Is it a large area or just room for one person  
4 to pass?

5 A It depends on the size of the person.

6 Q Well, you or me.

7 A Yeah, me and you can pass through it.

8 Q Both of us?

9 A Yes.

10 Q Okay. But a larger person, just one?

11 A No.

12 Q Okay. Can you draw in this wall which I think you  
13 were saying was windows---

14 A Yeah.

15 Q ---and show me where the windows are? Okay.

16 A (Witness complies.)

17 Q Okay.

18 A And it's just two windows---

19 COURT REPORTER: I didn't hear that.

20 Q Two windows?

21 A Yeah.

22 THE COURT: Okay. Listen. Sir, I know you're soft  
23 spoken, but this lady has to take down everything that's  
24 being said.

25 WITNESS: Oh, I'm sorry.

1 THE COURT: And I, I can't hear you at all. Speak  
2 like we're outside in the middle of a busy intersection.  
3 Okay?

4 WITNESS: All right.

5 THE COURT: You won't offend anybody by speaking  
6 loud.

7 Okay.

8 Q Okay. I'm gonna show you what's been entered as  
9 Defendant's No. 3, and I think that's the area that you're  
10 drawing, is it?

11 A Yes, ma'am.

12 Q Okay. So, would you show me and the jury which, how  
13 this corresponds to that?

14 Are there---

15 A Well, actually it is there---

16 Q Okay. Go ahead and fix that for me then.

17 A (Witness complies.)

18 Q Okay. So, we've got three windows and you were by  
19 the middle window?

20 A Yeah.

21 Q Okay. Over here smoking?

22 A No, closer, closer to the window.

23 Q Closer to the window and you saw basically then  
24 straight through---

25 A Yes, ma'am.

Tony Green - Cross-examination  
by Mrs. Pratt

159

- 1 Q ---to just outside my paper?
- 2 A Yes, ma'am.
- 3 Q And that would be where the man with the shotgun
- 4 was---
- 5 A Yes, ma'am.
- 6 Q ---when you saw him?
- 7 A Yes, ma'am.
- 8 Q All right. Was anybody standing with him?
- 9 A No, ma'am, he was by himself.
- 10 Q By himself?
- 11 A Yes, ma'am.
- 12 Q All right. And do you remember, when you came out,
- 13 where Chappell was?
- 14 A Chappell was sitting in the booth, the first booth.
- 15 Q Okay. Right by the door?
- 16 A Yes, ma'am.
- 17 Q All right. And you saw the gunman over about here?
- 18 A Yes, ma'am.
- 19 Q All right. And this is -- where on the diagram is
- 20 your kitchen area?
- 21 A This will be considered the kitchen. From here back
- 22 is the kitchen area.
- 23 Q Okay. This is -- what's this here?
- 24 A This is actually the make table where we prepare the
- 25 pizzas at.

1 Q All right. Are there -- sometimes in restaurants  
2 there are mirrors around to keep people from bumping into  
3 each other.

4 Are there any mirrors in the Pizza Hut?

5 A No, ma'am.

6 Q Okay. Are there any surfaces along this wall that  
7 are not concrete?

8 A No, ma'am, there's no concrete in the back.

9 Q No concrete?

10 A No, ma'am.

11 Q Okay. What have you got along the back wall?

12 You need to speak up just a tad though remember.

13 Your outside voice.

14 A We -- in the, in the very back?

15 Q Yes, sir.

16 A We have a table where we prepare the, where we  
17 prepare the dough and we have a rack, and it's another  
18 freezer, and we have like a little miniature table on the  
19 side.

20 Q Okay. So, this is not a wide open area all the way  
21 across?

22 There's stuff all along here, is that right?

23 A Yeah, all back here.

24 Q Okay. All right. If you want to sit back down for a  
25 minute.

Tony Green - Cross-examination  
by Mrs. Pratt

161

1 (Witness returns to the stand.)

2 MRS. PRATT: Your Honor, I would ask that this we  
3 entered as Defense 4.

4 MR. MCEACHIN: No objection, Your Honor.

5 THE COURT: Defense 4. All right. Without  
6 objection.

7 (Whereupon, the sketch was marked as Defendant's  
8 Exhibit No. 4 and received into evidence at this time.)

9 Q Do you remember anything distinctive about, besides  
10 the shotgun obviously, about the guy that you saw?

11 A He appeared to have something over his head and he  
12 was in black.

13 Q Okay. He was in all, all black?

14 A Right.

15 Q Do you recognize -- do you remember anything about  
16 his clothing?

17 A No.

18 Q Okay. And your windows there are tinted to a degree,  
19 aren't they?

20 I mean they're not white clear?

21 They're sun screened in some way?

22 A Yeah.

23 Q Okay. Who was suppose to take the trash out that  
24 night?

25 A Mr. Gary.

1 Q All right. Are you ever involved in taking the trash  
2 out?

3 A Well, I do on occasion sometimes. It's depending on  
4 what I'm doing that night, that particular night.

5 Q Okay. But that particular night, Gary McMillian was  
6 suppose to, I mean Gary McClary, I'm sorry, was suppose to  
7 take the trash out, is that right?

8 A Correct.

9 Q Okay. Is it a common practice to leave the back door  
10 propped open with a mop?

11 A No.

12 Q No?

13 A No.

14 Q Y'all don't normally do that at all?

15 A No.

16 Q Okay. And is it a common practice -- there's a, a  
17 gate on this diagram that comes into that back fenced  
18 area, is that gate normally opened or closed at night?

19 A Closed.

20 Q Closed at night?

21 A Yes, ma'am.

22 Q Okay. And behind the Pizza Hut, there's kind of a  
23 roadway, maybe a dead-end, is that right?

24 A Correct.

25 Q Okay. It's like a -- is it single laned kind of



Tony Green - Cross-examination  
by Mrs. Pratt

163

1 thing?

2 A It's wide enough for the cars.

3 Q Okay. But it dead-ends at the end, doesn't it?

4 A Yeah.

5 Q Okay. Is that an area that people, there's a, that  
6 people use?

7 A Yeah.

8 Q Cars come into the parking lot from there?

9 A Yeah.

10 Q And people walk along there?

11 A Yes, ma'am.

12 Q Okay. And they'll come into Sonic from there as  
13 well?

14 A Yeah.

15 Q Is there an entrance into the Amoco parking lot from  
16 there?

17 A No.

18 Q Okay. So, you can't get into it from there?

19 A No.

20 MRS. PRATT: Okay. With the Court's indulgence.

21 (Pause.)

22 MRS. PRATT: I have nothing further. Thank you,  
23 Mr. Green.

24 MRS. MCEACHIN: Just, just briefly, Your Honor.

25 THE COURT: Yes, sir.

1     REDIRECT EXAMINATION

2     BY MR. MCEACHIN:

3     Q     You, you testified you saw the individual inside the  
4     store.

5     A     Yes.

6     Q     How long was it before you, you ran to the Amoco  
7     Station?

8     A     Maybe a split second.

9     Q     Thank You.

10           No further questions, Your Honor.

11           THE COURT: All right. Thank you very much, sir.  
12     You may step down.

13           MR. MCEACHIN: Your Honor, the State would call  
14     Investigator Jerry Gainey to the stand.

15           THE COURT: All right. Mr. Gainey, if you'd come  
16     around please, sir.

17                                 JERRY GAINERY, being first duly  
18     sworn, testified as follows:

19           THE CLERK: Please be seated and state your full name  
20     for the record.

21           WITNESS: My name is Jerry Louis Gainey.

22     DIRECT EXAMINATION

23     BY MR. MCEACHIN:

24     Q     All right. Investigator Gainey, I don't think  
25     anybody's gonna have any trouble hearing you.

Jerry Gainey - Direct examination  
by Mr. McEachin

165

1 Investigator Gainey, what's your occupation?

2 A Investigator for Lake City Police Department.

3 Q And how long have you been an investigator with the  
4 police department in Lake City?

5 A Two and a half years.

6 Q And prior to being an investigator with the Lake City  
7 Police Department, what did you do?

8 A I was working at the Sheriff's Department in  
9 Williamsburg County as an investigator.

10 Q And how long had you done that?

11 A For about seven or eight years over at the  
12 Williamsburg County Sheriff's Department.

13 Q Okay. And what is the total amount of time you have  
14 spent in law enforcement?

15 A Twenty-one years.

16 Q Okay. Now, you said you been an investigator for  
17 Lake City for about two and a half years, is that correct?

18 A Yes.

19 Q So, in December in 2008, were you an investigator  
20 then?

21 A Yes, I was.

22 Q Were you on call on the evening of December 6<sup>th</sup>,  
23 2008?

24 A Yes.

25 Q Okay. And on that night, can you please relay to the

1 jury what, if anything, happened or any calls you may have  
2 received around 11:00 p.m. that night?

3 A Well, I was parked at the Amoco Station, which is  
4 called the B.P. Station straight across from the Pizza  
5 Hut. And as I was inside the building, two gentlemen came  
6 inside the building from the Pizza Hut. A gentleman by  
7 the name of Mike and another gentleman, gentleman, by the  
8 name of Tony.

9 Q Okay. Investigator Gainey -- beg the Court's  
10 indulgence just a moment.

11 May I approach the witness, Your Honor?

12 THE COURT: Yes.

13 Q Investigator Gainey, I'm gonna show you what's been  
14 marked as State's Exhibit No. 8.

15 Do you recognize this, this image?

16 A Yes.

17 Q Okay. And what does it depict?

18 A It's the layout of Lake City town area.

19 Q Okay. And can you identify where the Pizza Hut is in  
20 this one?

21 A The Pizza Hut is right here.

22 Q Okay.

23 MR. MCEACHIN: Your Honor, at this time I would move  
24 State's Exhibit No. 8 into evidence.

25 MRS. PRATT: Without objection, Your Honor.

Jerry Gainey - Direct examination  
by Mr. McEachin

167

1 Q Detective Gainey, can I have you---

2 THE COURT: It's admitted without objection.

3 MR. MCEACHIN: I apologize, Your Honor.

4 (Whereupon, State's Exhibit No. 8 was received into  
5 evidence at this time.)

6 Q Investigator Gainey, could I have you step down  
7 please?

8 (Witness comes down from the stand.)

9 Q Now, Investigator Gainey, can you please show the  
10 jury where the Pizza Hut is in this picture?

11 A Right here.

12 Q Okay. And where is the Amoco Station?

13 A The Amoco Station is right here.

14 Q Okay. Now, you say that two individuals from the  
15 Pizza Hut came to you at the Amoco Station?

16 A Yes.

17 Q What, if anything, did Tony Green tell you?

18 A He came over and said that they were being robbed and  
19 I asked him did you see an individual. He said he saw a  
20 guy with a gun inside the Pizza Hut.

21 Q Okay. And once he did that, what did you do?

22 A I had him to stay right there and I called  
23 immediately to central dispatch so that they could get me  
24 some help to where I was at.

25 Q Okay. And did you leave the Amoco Station?

1 A Yes, I left my patrol car there and I went straight  
2 to the back where the wooden fence at.

3 Q Okay. And just to back step right quick,  
4 Investigator, where is that Pizza Hut located?

5 A It's in the city limits of Lake City. If you're on  
6 52 coming into Lake City from Florence side, and the  
7 street's there, Kelly Street, and right, right there at  
8 the Sonic. It's the Sonic, then the Pizza Hut, then the  
9 B.P. Station.

10 Q And which county is that in?

11 A It's in Florence County.

12 Q Okay. Now, can you show the jury kind of which, the  
13 direction you walked when you left the Amoco Station?

14 A The Amoco, excuse me, the Amoco Station is sitting  
15 here. B.P., B.P. Station is here. I left there, went out  
16 here, went straight across to the back at an angle right  
17 here to the back of the, where the wooden fence is  
18 located.

19 Q Investigator, I'm gonna have you stand right there  
20 for just a second.

21 I'm going to show you State's Exhibit No. 9 here.

22 Can you show the jury where exactly you went when,  
23 when you went to Lake, when you went to the Pizza Hut?

24 A Right here. This is the back area where the wooden  
25 fence is located---

Jerry Gainey - Direct examination  
by Mr. McEachin

169

1 Q Okay.

2 A ---where the gate is right here.

3 Q Okay. And when you got there, was the gate opened at  
4 all?

5 A About a foot.

6 Q So, can you just show the jury with your hand about  
7 how wide it was?

8 A About this, about this wide right here.

9 Q And were you inside or outside of the gate?

10 A I was on the outside.

11 Q Okay. Once you were in that position, what happened  
12 next?

13 A By the time I got to my position when I called for  
14 help, two officers arrived, Sergeant Thompson and Officer  
15 Carter.

16 Q Okay. And, and where did they go when they got  
17 there?

18 Investigator---

19 A I was---

20 Q ---I'm gonna make sure, you don't, you don't have  
21 that pen open, do you?

22 A No, no.

23 Q Okay.

24 A It's not, it's not open. I was positioned here on  
25 the outside of the front, and Officer Thompson and

1 Corporal Carter came in from the side right here.

2 Q Okay. Now, once they got there and once you were in  
3 that position, what happened next?

4 A Sergeant Thompson, I had him to come up further so he  
5 can see on the inside. When he came on the inside and  
6 saw, he called the radio out and say he saw two  
7 individuals.

8 Q Okay. And, and at this time you were still standing  
9 where?

10 A I was still was right here at the, at the same gate.

11 Q Okay. Okay. And you can have a seat back in the  
12 witness box.

13 (Witness returns to the stand.)

14 Q Investigator Gainey, I'm gonna show you what's been  
15 marked as State's Exhibit 26, 29, and 30.

16 Can you identify those?

17 A Yes, I can.

18 Q And what do those three pictures depict?

19 A Exhibit 26 is the, the back area, the fencing area  
20 where the, the storage freezer on the outside. Exhibit 29  
21 is where -- it's the same area, but have the garbage cans  
22 exposed to it. Exhibit 30 is the picture standing from  
23 the outside with the gate closed, the back area of the  
24 Pizza Hut.

25 Q Okay. And, investigator Gainey, who took these



1 pictures?

2 A I did.

3 Q And one minor question about those.

4 Can you please tell the jury what the date on those,  
5 on that, on that picture was?

6 A December the 7<sup>th</sup>.

7 Q So, that was the day after the robbery?

8 A Yes.

9 Q Okay. And from that vantage point, it -- does that  
10 fairly and accurately depict the vantage point from where  
11 you were standing the night before?

12 A Yes.

13 MR. MCEACHIN: And, Your Honor, at this time I would  
14 move State's Exhibits 26, 29, and 30 I believe into  
15 evidence. That's correct, Your Honor.

16 MRS. PRATT: May I look at those exhibits one more---

17 MR. MCEACHIN: Sure.

18 MRS. PRATT: I'm not sure which ones those are.

19 No objection, Your Honor.

20 THE COURT: That's 26, 28, 29, and 30?

21 MR. MCEACHIN: That's 26, 29, and 30, Your Honor.

22 THE COURT: That's 26, 29, and 30.

23 MR. MCEACHIN: Yes, sir.

24 (Whereupon, State's Exhibit Nos. 26, 29, and 30 were  
25 received into evidence at this time.)

1 Q Investigator Gainey, I'm gonna hand you what's been  
2 marked as State's Exhibit 30.

3 Would -- can you please tell -- kind of show it to  
4 the jury and tell them what it is.

5 A This is the back area of the, the Pizza Hut and this  
6 is the gate.

7 Q Actually, Investigator Gainey, if it's all right with  
8 the judge I'm gonna have you step down. I think it's  
9 probably kind of hard for people in the back to see the  
10 picture.

11 THE COURT: Sure.

12 A I'm gonna use my pen again. It's not open.

13 (Witness comes down from the stand.)

14 Q Okay.

15 A This right here is the back fenced area of the Pizza  
16 Hut gate, and this is the gate right here where I pushed  
17 open and where I was standing right here.

18 Q And can you show the jury on this diagram, which is  
19 State's Exhibit 9, what that picture coincides with?

20 A This right here the picture that coincides of the,  
21 the gate back here at the back area of the wooden fence.

22 Q Okay. I'll take that from you and now I'm gonna show  
23 you State's Exhibit No. 26.

24 Can you step right up here and tell the jury what,  
25 what that depicts?

1 A This is the inside area of the back of the Pizza Hut  
2 area. This right here is I think an in-door freezer area  
3 where they keep the food I guess, a lot of those items  
4 that they use, and this is an open fence right back there  
5 at the door beyond this part back here where you can't  
6 see.

7 Q Okay. And when you say door, that's the door to the  
8 what?

9 A Inside of the Pizza Hut.

10 Q It's the actual restaurant?

11 A Right.

12 Q Okay. And, finally, I'm gonna show you State's  
13 Exhibit No. 29.

14 Could you please explain to the jury what that is?

15 A This right here also right here is the storage shed  
16 area where I was pointing on the other exhibit and this is  
17 the garbage can area right here.

18 Q And can you show -- I apologize.

19 Can you please show the jury how that correlates  
20 with, with the diagram?

21 A Okay. Yes, this right here is the storage shed back  
22 on this diagram here and this is the garbage cans. It's  
23 the back area here on that part.

24 Q Okay. Thank you.

25 A Thank you.

1 Q You can have a seat right there and I appreciate it.  
2 (Witness returns to the stand.)

3 Q Now, when you were standing back there and after,  
4 after the other officers had arrived, what did you  
5 witness?

6 A When I was standing in the back and Sergeant  
7 Thompson---

8 Q And you, and you can't say anything that Sergeant  
9 Thompson said.

10 A Right. Right.

11 Q But what, what did you witness?

12 A Shortly after that there was a guy coming from the  
13 back side of the corner in all black.

14 Q Okay.

15 A And what I done then is yell for him to freeze and  
16 to get down on the ground and he did so.

17 Q Okay. And, again, I'm gonna show you State's Exhibit  
18 No. 26. I'm also gonna have you step down.

19 A Yes, sir.

20 (Witness comes down from the stand.)

21 Q When you say you saw a guy coming out of the back,  
22 can you show the jury, on the diagram, where he was coming  
23 from?

24 A Back of the diagram -- this is the back door. I saw  
25 him coming out from this area here. This area.

Jerry Gainey - Direct examination  
by Mr. McEachin

175

1 Q And I'm gonna hand you State's Exhibit No. 26, does,  
2 does that---

3 A Yes.

4 Q Explain to the jury how that, that picture---

5 A The back door to the Pizza Hut going into the  
6 restaurant is here. The gentleman came out running from  
7 this area here.

8 Q Okay. Now, did you have a clear view to the back  
9 corner of the building from where you were standing?

10 A Yes, from where I was I could see everything from  
11 this angle in here.

12 Q So, it'd be fair to say that, that the diagram's a  
13 little off there?

14 A Yes, it is cause this right here, the garbage can  
15 right here was a little bit further up.

16 Q Okay. And when, when you saw the individual come  
17 around the corner, what, if anything, did you notice about  
18 him?

19 A Well, when I first saw him and I was looking at the  
20 hands to see whether the weapon was in his hand.

21 Q Did you notice any weapons in his hands?

22 A Didn't see anything in his hands.

23 Q Okay. And when did you first notice that individual?

24 A Well, as soon as he came around the corner.

25 Q And once he came around the corner, what did you do?

1 A I yelled for him to freeze, to get down on the  
2 ground, put his hand behind his hand.

3 Q Okay. And did he, and did he comply with your order?

4 A Yes, he did.

5 Q And once he was down on the ground, what was the next  
6 action you took or what was the next thing you did?

7 A Well, I stayed there with him keeping my eyes on him  
8 and to make sure everything else is clear.

9 Q Okay. And how did you know everything else was  
10 clear?

11 A See Officer Cosby, along with other officer, came out  
12 of the back end of the Pizza Hut.

13 Q And now, did they come out of the same area where  
14 this individual came out of?

15 A Yeah, yeah, they went in by the front door area to  
16 clear it out.

17 Q Okay.

18 A And when I saw them coming out the back door and  
19 everything else I know it was safe for me to go in.

20 Q Okay. And once -- so, you went in after you say them  
21 come out?

22 A Yes, I did.

23 Q And, and what did you do?

24 A I put the cuffs on him and arrested him and carried  
25 him to the patrol car.

Jerry Gainey - Direct examination  
by Mr. McEachin

177

1 Q Okay. And did you, did you pat him down?

2 A Yes, I did.

3 Q Did you find anything on him?

4 A Not on him.

5 Q Okay. What about in the area where he was, was there  
6 anything on the ground in that area?

7 A There was, there was a stocking cap -- there was a  
8 stocking cap laying down on the ground and a hat.

9 Q Okay. And just so the jury, jury understands it,  
10 where exactly was he laying down as shown by State's  
11 Exhibit No. 9?

12 A He was laying down by the, between the garbage can  
13 area and the storage unit area place.

14 MR. MCEACHIN: Okay. Beg the Court's indulgence for  
15 just a moment, Your Honor.

16 (Pause.)

17 Q I'm gonna show you State's Exhibit No. 29, and if you  
18 can show the jury on that exhibit where exactly the, the  
19 individual was, was laying down on the ground.

20 A He was laying down here, right between here, this  
21 area.

22 Q All right. And once you went in and handcuffed him,  
23 you said -- what, what did you find on the ground beside  
24 him?

25 A It was a stocking cap like laying on sort of the

1 right side kind of near the, the storage unit area.

2 Q How close, how close to him was that stocking cap  
3 would you say?

4 A It might of been three to four foot from him.

5 Q Okay. And once you went in and arrested him, what  
6 was the next thing you did with that particular  
7 individual?

8 A Took him to the patrol car and, and had him to sit  
9 there until the other unit came there.

10 Q During the course of your investigation, were you  
11 able to determine who that individual was?

12 A Yes, Quennell Brown.

13 Q And once you had Mr. Brown or Quennell Brown in the  
14 patrol car, what was the next thing that occurred?

15 Q Sergeant Thompson drove up in the car with Officer  
16 Brown with the, another subject in the, which his name is  
17 Robin Turner.

18 Q Okay. And once -- you said they drove up in a car,  
19 where, where -- do you know where they came from?

20 A Well, really they was over there next to the hospital  
21 area.

22 Q Okay. Now, once they got back, did you have any  
23 interaction with the other individual, Robin Turner?

24 A Yes, I did. When he came back in I took him out to  
25 the patrol car, and I patted him down, and took some items.



Jerry Gainey - Direct examination  
by Mr. McEachin

179

1 off of him.

2 Q Okay. You can have a seat in the box, sir.

3 (Witness returns to the stand.)

4 MR. MCEACHIN: Beg the Court's indulgence for just a  
5 moment.

6 THE COURT: Yes, sir.

7 Q Investigator Gainey, I'm first gonna show you what's  
8 been marked as State's Exhibit No. 3.

9 Do you recognize that?

10 A Yes, I do.

11 Q And what is that?

12 A This is a hat that was on the ground.

13 Q And where, where was that hat located?

14 A It was in front of the storage room near the back  
15 door area of the Pizza Hut.

16 Q So, it was in the fenced in area?

17 A Yes, it was.

18 Q Okay. Next I'm gonna show you State's Exhibit No. 6.  
19 Can you identify that?

20 A Yes, this is a stocking cap.

21 Q And where was that located?

22 A It was found back in the fenced in area behind the  
23 restaurant.

24 Q Okay. So, both of these items, State's Exhibit 3 and  
25 State's Exhibit 6, were found in the back area of the

1 restaurant?

2 A Yes, it was.

3 Q And you testified earlier that, that there was a  
4 brown stocking, stocking cap and I believe a toboggan  
5 found near the individual Brown, is that correct?

6 A Yeah, Brown -- the stocking cap is right beside  
7 Brown.

8 Q Okay.

9 A The, this cap was found near the back door area of  
10 the restaurant as they were coming out.

11 Q Okay. And are you the one who collected that  
12 evidence?

13 A Yes.

14 Q Okay. And once you collected it, what did you do  
15 with it?

16 A What I done, I took it and put in my trunk---

17 Q Okay.

18 A ---so I could go ahead and mark everything and give  
19 it to the evidence officer.

20 Q Okay. And were you the one who delivered it to the  
21 evidence office?

22 A Yes.

23 Q I'm also gonna show you what's been marked as State's  
24 Exhibit No. 2 for identification purposes.

25 Can -- do you recognize what that is?

1 A Yes, I do.

2 Q And what is that?

3 A This is some item that I took off of Robin Turner.  
4 It's a wallet, a doo rag. It was a, it was a set of  
5 gloves and, as well.

6 Q Okay.

7 A And then a bottle of oil.

8 Q Bottle of what?

9 A Oil, cologne.

10 Q Okay. Okay. In addition to those items, was  
11 anything else found on the individual Turner?

12 A Okay. There also was -- it was, it was two wallets  
13 and cell a phone---

14 Q Okay.

15 A ---also with them two.

16 Q And did you -- were you able to determine whose  
17 wallets and cell phone those were?

18 A Yes, one of the wallet was, was, belonged to  
19 Mr. Robin Turner. The other one belonged to I think Gary  
20 McClary---

21 Q Okay.

22 A ---along with the cell phone.

23 Q So, so, the second wallet and the cell phone belonged  
24 to who again?

25 A To Gary McClary.

1 Q Okay. And were those returned to---

2 A Yes.

3 Q ---Mr. McClary?

4 A Yes, it was.

5 Q Okay.

6 MR. MCEACHIN: Your Honor, at this time the State  
7 would move State's Exhibit Nos. 6, 2, 3, and 6 into  
8 evidence.

9 MRS. PRATT: May we approach the bench, Your Honor?

10 THE COURT: Yes.

11 (Whereupon, a bench conference was held in the  
12 presence of the jury, but out of the hearing of the jury.)

13 Q Quick follow-up question for you, Investigator  
14 Gainey, who placed these items in these bags?

15 A I did.

16 Q Okay. And when did you place those items in that  
17 bag?

18 A The same night after I finished the scene.

19 Q Okay.

20 A When I picked them up I put them in the bag.

21 Q Okay. Did anybody else go into that trunk other than  
22 you?

23 A Just me.

24 Q Just you.

25 MR. MCEACHIN: Okay. Your Honor, at this time I

Jerry Gainey - Direct examination  
by Mr. McEachin

183

1 would move State's 2, 3, and 6 into evidence.

2 MRS. PRATT: Without objection.

3 THE COURT: Without objection, State's 2, 3, and 6 --  
4 what is 2?

5 MR. MCEACHIN: Two, Your Honor, is the items found in  
6 Defendant Turner's pockets.

7 THE COURT: All right. Three is the hat?

8 MR. MCEACHIN: Three is the brown hat.

9 THE COURT: The stocking cap?

10 MR. MCEACHIN: That's correct, Your Honor.

11 (Whereupon, State's Exhibit Nos. 2, 3, and 6 were  
12 received into evidence at this time.)

13 Q Now, Investigator Gainey, once, once both individuals  
14 were taken into custody, what was the next thing you did?

15 A Oh, what I done was took pictures of the whole entire  
16 scene --

17 Q Okay.

18 A -- before I left the area.

19 Q Did you go inside the store?

20 A Yes, I did. I went inside and took photos of the  
21 inside of the store.

22 MR. MCEACHIN: Approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 Q Investigator Gainey, did you take those pictures?

25 A Yes, I did.

1 Q Okay. And when were those pictures taken?

2 A December the 7<sup>th</sup>.

3 Q Now, they were taken on the 7<sup>th</sup>.

4 Were they taken the next day when these other  
5 pictures were taken or were they taken that night?

6 A Taken that night.

7 Q Okay. And what do those pictures depict?

8 A These are some clothes that belonging to the victim  
9 that they had on lying on the floor.

10 Q Okay. Let me see those real quick.

11 All right. Investigator Gainey, I'm gonna have you  
12 step down one more time.

13 (Witness comes down from the stand.)

14 MR. MCEACHIN: Your Honor, at this time I would move  
15 State's 18 and 19 into evidence.

16 MRS. PRATT: Without objection, Your Honor.

17 THE COURT: All right.

18 (Whereupon, State's Exhibit Nos. 18 and 19 were  
19 received into evidence at this time.)

20 Q Investigator Gainey, take a look at those and can you  
21 show the jury where on that diagram that area is?

22 A It is up in this area here.

23 Q Okay. Thank you. You may have a seat.

24 (Witness returns to the stand.)

25 Q Now, in addition to taking photographs, was there any

Jerry Gainey - Direct examination  
by Mr. McEachin

185

1 other evidence collected at the scene?

2 A Yes, there was a shotgun also was collected and there  
3 was another hat also was collected on the other side of  
4 the fence.

5 Q Okay. And can you describe how that shotgun looked?

6 A It's -- the barrel had gray tape and everything on  
7 it.

8 Q Now, I'm sorry.

9 A Not the barrel. The handlebar.

10 Q All right.

11 A The handlebar of the gun was like sort of like a  
12 sawed-off, sawed-off shotgun.

13 Q So, so, the stock of the gun?

14 A The stock on the gun was taped up with gray tape or  
15 something.

16 Q Okay.

17 A Duct tape.

18 Q Okay. Okay. And where did you -- and sorry. I know  
19 I just had you sit back up there.

20 Would you come down one more time?

21 (Witness comes down from the stand. )

22 Q Can you show the jury where that, where that weapon  
23 was found?

24 A It was found behind the storage unit here. It's the  
25 fence area and the storage area was between it up here.

1 Q Okay. All right. Thank you.

2 (Witness returns to the stand.)

3 Q At this time, Investigator Gainey, I'm gonna show you  
4 what's been marked as State's Exhibit No. 1 for  
5 identification purposes.

6 Can you identify that?

7 A Yes.

8 Q And what is that?

9 A The shotgun that was found at the, behind the storage  
10 area.

11 Q And when, when that shotgun was found, who took  
12 possession of it?

13 A I did.

14 Q And who logged it into evidence?

15 A I did.

16 Q Okay.

17 A To -- I log everything down and I gave it, turn it  
18 over to Lieutenant Tilton.

19 Q And he's, he's y'all's evidence custodian?

20 A Yes, he is.

21 Q Okay. When you, when you first got this shotgun,  
22 investigator, did you check it to see if it was loaded?

23 A Yes.

24 Q Was it?

25 A Yes, it was.



Jerry Gainey - Direct examination  
by Mr. McEachin

187

1 Q I show you what's been marked as State's Exhibit No.  
2 5 for identification purposes.

3 Do you recognize that, Investigator Gainey?

4 A Yes, I could.

5 Q And what is that?

6 A That's the shell that was inside the shotgun.

7 Q Okay. And were you the one who put the shell in that  
8 bag?

9 A Yes, I did.

10 Q And were you the one who turned it into the evidence  
11 locker?

12 A Yes.

13 MR. MCEACHIN: Okay. Your Honor, at this time I  
14 would move State's Exhibits 1 and 5 into evidence.

15 MRS. PRATT: Without objection.

16 THE COURT: All right. State's 1 and State's 5.

17 (Whereupon, State's Exhibit Nos. 1 and 5 were  
18 received into evidence at this time.)

19 Q Investigator Gainey, I'll have you step down and take  
20 this out for me.

21 (Witness comes down from the stand.)

22 Q And it's not loaded right now, is that correct?

23 A No, it's not loaded.

24 Q Okay.

25 A And this is the stock.

1 Q Okay. If you'll just set that right down here for  
2 me. That's fine.

3 (Witness returns to the stand.)

4 Q Investigator Gainey, did you also take pictures of  
5 where that gun was found?

6 A Yes, I did.

7 Q All right. Investigator Gainey, I'm gonna show you  
8 what's been marked as State's Exhibits 15, 20, 22, and 23.

9 Can you identify those photographs?

10 A Yes, I can.

11 Q Who took those photographs, Investigator Gainey?

12 A I did.

13 Q Okay. And what do those photographs depict?

14 A This is the---

15 Q And I apologize, investigator. When you're  
16 describing what they depict, please say what exhibit  
17 number they are for the court reporter.

18 A Okay. Exhibit No. 15, that's the shotgun. I took it  
19 on the ground between the storage shed and the fenced  
20 area. Exhibit No. 20 is a picture showing where the back  
21 door to the restaurant and the fenced in area, the storage  
22 shed and the fenced in area. Exhibit No. 22 is another  
23 picture of the shotgun between the storage shed and the  
24 fenced area. Exhibit No. 23 also is another picture of  
25 the shotgun against the storage shed and the fenced in

Jerry Gainey - Direct examination  
by Mr. McEachin

189

1 area.

2 Q And you said you're the one who took those pictures?

3 A Yeah, I did.

4 MR. MCEACHIN: Okay. Your Honor, at this time I'd  
5 move State's Exhibits 15, 20, 22, and 23 into evidence.

6 MRS. PRATT: No objection, Your Honor.

7 THE COURT: All right. Without objections.

8 (Whereupon, State's Exhibit Nos. 15, 20, 22, and 23  
9 were received into evidence at this time.)

10 Q Okay. Investigator Gainey, was there any other  
11 evidence that was recovered at the scene?

12 A If I'm not mistaken I think it was a cap, a black cap  
13 I think was recovered.

14 Q Okay. And where was that recovered from?

15 A On the outside fenced area on the other side of the  
16 fence near the Sonic.

17 Q Okay. So, how about step down for me real quick and  
18 just show the jury where that black cap was located.

19 (Witness comes down from the stand.)

20 A On the other side of this fenced in area is the  
21 restaurant area for the Sonic, the drive-through area, and  
22 the cap was right on this, on this side right here. It  
23 was back over on this side over here where the restaurant  
24 area at.

25 Q Thank you. You can have a seat.

1 A Just about right up in here to tell you the truth.

2 (Witness returns to the stand.)

3 Q All right. Investigator Gainey, I'm gonna show you  
4 what's been marked as State's Exhibit No. 4.

5 Can you identify that?

6 A Yes, I can. This is the black cap that was, for  
7 the -- a cap, a hat.

8 Q And, and that's the one you said you found in this  
9 area?

10 A Yes.

11 Q Okay. And did you put it into that bag?

12 A Yes, I did.

13 Q And did you log it into evidence?

14 A Yes, I did.

15 MR. MCEACHIN: Okay. Your Honor, at this time I'd  
16 move State's Exhibit No. 4 into evidence.

17 THE COURT: Any objection to State's 4?

18 Q Investigator Gainey?

19 THE COURT: Excuse me. Hang on.

20 Any objection to State's 4?

21 MRS. PRATT: I had a small objection. I think he's  
22 gonna clear it up---

23 MR. MCEACHIN: I was gonna clarify.

24 MRS. PRATT: ---on a follow-up question.

25 Q Investigator Gainey, did you pick up this hat?

Jerry Gainey - Direct examination  
by Mr. McEachin

191

1 A Yes, I did.

2 Q Off the ground?

3 A Yes.

4 Q Okay.

5 MRS. PRATT: No objection.

6 THE COURT: All right. Without objection.

7 MR. MCEACHIN: That was State's 4, Your Honor.

8 (Whereupon, State's Exhibit No. 4 was received into  
9 evidence at this time.)

10 Q Investigator Gainey, once you took the pictures and,  
11 and retrieved all the evidence from the scene, what was  
12 the next thing you did?

13 A The two person that we had captured, we took them to  
14 the police department and I interviewed them.

15 Q You interviewed -- who, who did you interview?

16 A Quennell Brown and Robin Turner.

17 Q Okay. And backtrack just for a minute back, back to  
18 Mr. Brown, you said you saw him come from the back area?

19 A Yes, I did.

20 Q Okay. And you said you saw his hands, did he have  
21 anything in his hands?

22 A No.

23 Q Did you ever see him throw anything?

24 A No, I did not.

25 Q So, once you got him to the station, did you

1 interview him?

2 A Yes, I did.

3 Q Okay. And, and at any time were those two  
4 individuals together?

5 A No, we kept them separate.

6 Q And that was at all times?

7 A Yes.

8 Q Okay. When you interviewed him, did you, did you  
9 read them their Miranda rights?

10 A Yes, he was. They was Mirandized.

11 Q Okay. And what happened once you read them their  
12 Miranda rights?

13 Now, don't tell me anything they said, but did they  
14 give statements?

15 A Yes, they did.

16 MR. MCEACHIN: Okay. Beg the Court's indulgence for  
17 just a moment, Your Honor.

18 (Pause.)

19 Q After you interviewed the two of them, did you  
20 have -- was there any other involvement with the case that  
21 you had?

22 A That was all.

23 Q Okay. And I apologize. I, I failed to, to go over  
24 this with you. I'm gonna show you what's been marked as  
25 State's Exhibit 4, excuse me, 24, 25, 21, and 31.

Jerry Gainey - Direct examination  
by Mr. McEachin

193

1       Investigator Gainey, take a look at those and tell me  
2       if you can identify those photographs.

3       A     Yes, Exhibit No. 21 is a picture of the side door to  
4       the restaurant where the fenced in area at and the storage  
5       shed at. Exhibit 24 also is the picture of the back door  
6       of the restaurant and the fenced in area facing the  
7       highway area, which is inside the fence. Also No.,  
8       Exhibit 25 is another picture of the, the fenced in area  
9       of the back door, I mean of the, where the back door at,  
10      where the air conditioner at. Exhibit 31 is the back door  
11      to the restaurant. I think that's it.

12      Q     And who took these pictures?

13      A     I did.

14           MR. MCEACHIN: Your Honor, at this time I'd move  
15      State's Exhibits 21, 24, 25, and 31 into evidence.

16           MRS. PRATT: Without objection, Your Honor.

17           THE COURT: All right. Without objection.

18           (Whereupon, State's Exhibit Nos. 21, 24, 25, and 31  
19      were received into evidence at this time.)

20      Q     All right. Investigator Gainey, I believe this will  
21      be the last time. If you would, step down.

22           (Witness comes down from the stand.)

23      Q     Can you show State's Exhibit 24 to the jury and I'm  
24      gonna move this up so they can see as well, and describe  
25      to them where that is on the diagram.

1 A Okay. Right in here is the -- this picture right  
2 here is taken in the front of it, the inside of it, this  
3 fenced in area right back here.

4 Q Okay. And what, and what is that on the left side of  
5 the picture?

6 A Okay. This is the Sonic area over this side.

7 Q I'm sorry. Not the diagram.

8 State's Exhibit 24, what's that's on the left-hand  
9 side of State's Exhibit 24?

10 A If -- this is the door right here. This is the door  
11 coming from out the restaurant area.

12 Q Okay.

13 A Right here.

14 Q And this is the fenced in area right here.

15 Q And State's Exhibit No. 31, can you please tell the  
16 jury what that is and how it correlates to the diagram?

17 A Exhibit 31 is the door that's right here.

18 Q Okay. Thank you, Investigator Gainey.

19 (Witness returns to the stand.)

20 MR. MCEACHIN: Beg the Court's indulgence for just a  
21 moment, Your Honor.

22 (Pause.)

23 Q Investigator Gainey, in addition to you, what other  
24 officers were out there that evening?

25 A There was Sergeant Thompson, Officer Stewart,



Jerry Gainey - Direct examination  
by Mr. McEachin

195

1 Corporal Crosby, Officer Brown, Officer Watson, some  
2 officers from the sheriff's department also came out. So,  
3 Chief Billy Brown came afterward and, and Assistant Chief  
4 Bobbie Williams.

5 Q Okay. And was that everyone as far as law  
6 enforcement's concerned?

7 A Yes, as far as I can recall at the time.

8 Q Okay. Thank you very much. Please answer any  
9 questions the defense may have for you.

10 CROSS-EXAMINATION

11 BY MRS. PRATT:

12 Q Okay. Good morning, Detective Gainey.

13 A Good morning.

14 Q How are you this morning?

15 A Fine.

16 Q Okay. On the night in question, you were over at the  
17 Amoco Station, is that right?

18 A Yes, ma'am.

19 Q Were you inside the Amoco Station or outside in your  
20 patrol car?

21 A Inside.

22 Q Okay. And you, I believe you stated that Michael  
23 Cooper, Michael Cooper and Tony Green came running over to  
24 you?

25 A Yes, ma'am.

1 Q All right. And as soon as they came to you you made  
2 a radio communication, correct?

3 A Yes, I did.

4 Q Do you remember what time that was?

5 A No, ma'am, not at the time.

6 Q Okay. And how far is the Lake City Police Department  
7 from the Pizza Hut and the, excuse me, the Sonic?

8 A On a drive from the Pizza Hut you can get there to  
9 the police department in less than a minute.

10 Q A couple blocks?

11 A Yes.

12 Q Is it -- let me show you State's Exhibit 8, and ask  
13 if the police department might be on there, is it?

14 A No, ma'am, it's not.

15 Q Okay.

16 A This is Kelly Street here.

17 Q Okay. Come down and we'll show the jury here.

18 (Witness comes down from the stand.)

19 Q Okay.

20 A This is Kelly Street and the police department is  
21 further down here to the left.

22 Q Okay. And come on this side.

23 The dead-end that I was talking about earlier when I  
24 was talking, questioning Mr. Green, would that be on this  
25 map marked as Salem Street, is that right?

Jerry Gainey - Cross-examination  
by Mrs. Pratt

197

1 A Yes.

2 Q Okay.

3 A Right here and this is the dead-end and the Pizza Hut  
4 is there.

5 Q All right. And the police department is up here  
6 where all this---

7 A Yes, where all of that's at.

8 Q Okay. All right. So, you were here at the Amoco  
9 Station?

10 A Yes.

11 Q Were you closer to the, where the pumps are or closer  
12 to this?

13 A I was parked right here, on the side right here where  
14 you can see my car parked from here to the Pizza Hut.

15 Q Okay. And from there you've got kind of a line sight  
16 to the, the front entrance area there of the Pizza Hut,  
17 correct?

18 A Yes.

19 Q And the gate that comes into the back fenced area?

20 A Right.

21 Q Okay. And you stated that you came across -- you're  
22 blocked. I'm sorry. You came across from the Amoco  
23 station and you went---

24 A Straight. I went diagonal, straight to the back to  
25 the fenced in area. That's the only way I feel that they

1 could of went in.

2 Q Okay. And on this map the fenced in area would be  
3 right close to where the Red Roof is, correct?

4 A Yes.

5 Q The Pizza Hut itself, it's not as big as this whole  
6 courtroom, is it?

7 A No, ma'am.

8 Q Would you say that it's about half the size of the  
9 courtroom or three-quarters of the size?

10 A No, inside, inside the building?

11 Q The whole building.

12 It's, it's tiny, isn't it?

13 A At that -- cause it's bigger than a, it's bigger than  
14 the Pizza Hut.

15 Q Okay. And, and this, this -- it might take up say  
16 half of this, half way back, from the front to the back?

17 A Possibility.

18 Q Okay. All right. So -- and you're over at the  
19 Amoco?

20 A Yes.

21 Q Okay. All right. Let me have you step back up.

22 (Witness returns to the stand.)

23 Q Could you see -- you were standing, I believe you  
24 said, at the back gate?

25 A Yes.

Jerry Gainey - Cross-examination  
by Mrs. Pratt

199

- 1 Q Okay. And the gate was open?
- 2 A It was, yes.
- 3 Q Now, that fence is not a fence that you can see
- 4 straight through, is it?
- 5 A They got little cracks in it where you can see.
- 6 Q Yes, I, I understand that, but you can't see straight
- 7 through. They're kind of overlapping wood, aren't they?
- 8 A They got -- well, they cracks up in it.
- 9 Q Right.
- 10 A Yes.
- 11 Q But they're, they're like, they're like an
- 12 overlapping back and forward?
- 13 A Yes.
- 14 Q So that there's one slat on the front of, of the
- 15 piece, the crossbar and one on the back?
- 16 A I can't recall on that part.
- 17 Q Okay. Maybe I'm -- Okay. Let me rephrase my
- 18 question, and it's not overlapping back and forth, is it,
- 19 it's side-by-side?
- 20 A No, it's side-by-side.
- 21 Q But there's cracks between them?
- 22 A Yes.
- 23 Q There's small cracks?
- 24 A Yes.
- 25 Q And the boards themselves have, how -- what kind of

1 boards would those be?

2 A I couldn't---

3 Q One-by-fours or---

4 A I couldn't even tell you.

5 Q Okay. All right. That's fair.

6 And you said that you left your patrol car over there  
7 at the Amoco, is that right?

8 A Yes, I did.

9 Q Was there any other officer that was with you in your  
10 patrol car?

11 A Just me.

12 Q Okay. From where you were, which officers could you  
13 see that came in response to your call?

14 A Sergeant Thompson and Corporal Crosby.

15 Q And those were the only officers that you could see?

16 A That came, that came to me at the time. The first  
17 officers that got to me.

18 Q Okay.

19 A Then, then later the other officers, I saw them when  
20 they rolled up.

21 Q Okay. So, you saw Thompson and Crosby?

22 A Right.

23 Q And they were coming to the front entrance I think  
24 you said?

25 A Yes.

Jerry Gainey - Cross-examination  
by Mrs. Pratt

201

1 Q And then what -- who was the next -- you're still  
2 back at the back gate.

3 A Yeah.

4 Q Who was the next officer you saw?

5 A John Stewart and Brown.

6 Q Stewart and Brown?

7 A Yeah.

8 Q Okay. And where did they come from?

9 A I can't remember exactly which side they came, but I  
10 know they was on the other side of the fence, came around  
11 the other side of the fence area.

12 Q Okay. So, you -- until they came around the corner  
13 to where you were at the gate, that back gate, you didn't  
14 know where they were located, correct?

15 A They came straight -- the area where I was in the  
16 back area of the fence, that's when they came where I was  
17 at.

18 Q Okay.

19 A And then they was walking their self around on the  
20 other side, towards the other side.

21 Q And you couldn't see where they were once they get to  
22 the other side?

23 A No, once they left me and I didn't know exactly where  
24 they was.

25 Q Okay. And you have been the chain person in an awful

- 1 lot of pieces of evidence here, haven't you?
- 2 A Yes, ma'am.
- 3 Q Okay. What areas did you search for evidence?
- 4 A What area?
- 5 Q Uh-huh. (Affirmative.)
- 6 A The fenced in area and the outside perimeter.
- 7 Q Are those the only areas that you searched?
- 8 A Yes, I did. Besides take a photo inside the
- 9 restaurant.
- 10 Q Did you search inside the shed?
- 11 A Yes, we looked inside of it.
- 12 Q Did you personally, that's my question---
- 13 A Yes, yes, I did.
- 14 Q ---go inside the shed?
- 15 A Yes, I did.
- 16 Q Did you personally go into the dumpster?
- 17 A No, I didn't went inside the dumpster.
- 18 Q Did you go anywhere off the grounds of the Sonic and
- 19 the Pizza Hut that, meaning the parking areas?
- 20 A No, I didn't.
- 21 Q Who all did you interview in regards to this crime?
- 22 A Roger Turner and Quennell Brown.
- 23 Q Did you interview any of the witnesses that have
- 24 already testified?
- 25 A Well, yes, I did also interviewed them.



Jerry Gainey - Cross-examination  
by Mrs. Pratt

203

1 Q All right. Did you interview Chappell McMillian?

2 A Yes, I did.

3 Q And Gary McClary?

4 A I did.

5 Q Tony Green?

6 A I did.

7 Q Okay. At the scene before you did the formal  
8 interviews with Mr. Turner and Mr. Brown, did you speak to  
9 them at the scene?

10 A Did I speak to?

11 Q Turner and Brown.

12 A Turner and Brown.

13 At the scene?

14 Q Uh-huh. (Affirmative).

15 A No, I did not.

16 Q You did not.

17 Did they attempt to, to speak to you at the scene?

18 A Yes, they did.

19 Q Okay. And were you the only person that took  
20 pictures of the scene, all of these pictures that have  
21 been moved into evidence?

22 A Yes.

23 Q All right. Did you move any of these items before  
24 taking the pictures?

25 A No, ma'am, everything was taken where they, where

1 they were left to.

2 Q Did you move anything around them?

3 A No, ma'am.

4 Q I'm gonna show you what has been entered into  
5 evidence as State's Exhibit 15 and State's Exhibit 22 and  
6 ask you to take a look at both of those.

7 Those are both pictures of the shotgun, correct?

8 A Yes, it is.

9 Q Why is one easier to see than the other?

10 A Because when I took a picture on the first one it did  
11 not look clear. When I came back the second time and I  
12 adjust my camera and took it again.

13 Q You have a digital camera?

14 A Yes.

15 Q So, you could see the picture on the little screen?

16 A Yes. Yes.

17 Q And how long between those two photos?

18 A Well, I couldn't tell you. But they's back-to-back.

19 Q Okay. In picture 22, which is the darker one, there  
20 appears to be some kind of a rack or something laying  
21 down.

22 Is that -- that was laying down against the fence  
23 when you took the picture of the shotgun?

24 You didn't move it?

25 A No, I didn't touch anything. I just took the picture

Jerry Gainey - Cross-examination  
by Mrs. Pratt.

205

1 like where it was.

2 Q And this picture, that would be the same rack, but  
3 laying down?

4 A Right.

5 Q On 15?

6 A Right. This right here, see it's a portion of this  
7 right here where this one at right here. I don't -- this  
8 was not moved. It's just that, I just kind of got a  
9 little closer and took it from this part right here. The  
10 only thing you see is just a portion of what's in Exhibit  
11 No. 22.

12 Q Okay. And I'm gonna show you State's Exhibit 31,  
13 which is the back door, and that's been entered into  
14 evidence too.

15 Is there something holding that door open?

16 A There's a broom handle.

17 Q All right. Did you put the broom handle there?

18 A No, ma'am.

19 Q Okay. Was it like that when you came into the fenced  
20 area?

21 A Yes.

22 Q Okay. And were these picture taken after Thompson  
23 and Crosby, I think you said, had cleared the Pizza Hut  
24 and come out the back door?

25 A Yes.

1 Q On Exhibit 21, the debris and boxes that are there,  
2 were those there exactly as they were the---

3 A Yes.

4 Q ---the night of the incident?

5 A Yes, it was.

6 Q You're a detective with Lake City, correct?

7 A Yes, I am.

8 Q As part of -- is it part of your duty to actually  
9 check evidence for any forensic type of leavings or I  
10 guess, I guess for want a better word, things like  
11 fingerprints or hairs or other identification types of  
12 things?

13 A Yes, if needed.

14 Q If needed?

15 A Yes.

16 Q Okay. Did you test any of these items for  
17 fingerprints?

18 A No, ma'am, I did not.

19 Q You did not check the shotgun?

20 A No, ma'am.

21 Q Didn't check the barrel of the shotgun?

22 A For prints?

23 Q Yes.

24 A No, ma'am, I did not.

25 Q or the stock?

Jerry Gainey - Cross-examination  
by Mrs. Pratt

207

- 1 A Did not.
- 2 Q Or the shell?
- 3 A No prints were taken at all.
- 4 Q Didn't check anything.
- 5 When you took these items that you found and you put
- 6 them in your trunk, did you put them in your trunk in some
- 7 kind of bag?
- 8 I'm assuming you didn't use a B.E.S.T. Bag for it.
- 9 You had some other kind of bag.
- 10 A No, the same bag -- I keep these in my car.
- 11 Q So, these bags that say evidence property are -- you
- 12 have them in your trunk?
- 13 A Yes.
- 14 Q Okay. But you did not ever, for example, check this
- 15 shell?
- 16 A For prints, no, I did not.
- 17 Q Okay. And you didn't check the gun at all?
- 18 A No, ma'am.
- 19 Q Okay. Have you been trained in taking fingerprints
- 20 in the 20 some years?
- 21 A Yes, I have.
- 22 Q So, you know how to do that and you did not do that?
- 23 A No, ma'am.
- 24 Q Did you take, say the caps, and send them to SLED to
- 25 see if there were any hairs or D.N.A. reading?

1 A No, ma'am, no forensics done at all.

2 Q Nothing.

3 So, there's no official report that connects any of  
4 these items to any of the three people that y'all say were  
5 involved in this crime, correct?

6 A That's correct.

7 Q Okay.

8 A No forensics.

9 Q And that was your decision?

10 A Yes.

11 Q All right. And would it -- how long after Mr. Brown  
12 and Mr. Turner went to Lake City Police Department did you  
13 stay at the scene?

14 A Probably no more than about 15 or 20 minutes.

15 Q So, you weren't actually at the Lake City Police  
16 Department when Mr. Brown and Mr. Turner arrived, correct?

17 A No, I wasn't.

18 Q So, you really don't know if they were ever together,  
19 do you?

20 A I was---

21 Q Of your own knowledge.

22 A Of my own knowledge, no.

23 Q Okay. You know that they left the Pizza Hut in  
24 separate cars, is that right?

25 A That's correct.

Jerry Gainey - Cross-examination  
by Mrs. Pratt

209

1 Q But you don't know if they were together in the  
2 booking area?

3 A No, I do not know.

4 Q You do not know if they were together in the little  
5 alleyway where the cars let people before they get into  
6 the booking area, correct?

7 A Do not know.

8 Q I guess -- is that a sally port or sally way?

9 A Sally port, yes.

10 Q Sally port?

11 A Yes.

12 Q And about what time did you get to the Lake City  
13 Police Department?

14 A I couldn't tell you the time at all.

15 Q It's pretty early in the morning though, wasn't it?

16 A Yes, ma'am.

17 Q Or late at night, whichever way you look at it.

18 After leaving the scene, did you go straight to the  
19 Lake City Police Department?

20 A Yes, I did.

21 Q Okay. Were any other items of evidence given to you  
22 by anyone else other than what we're dealing with here  
23 that have already been put into evidence?

24 A No, it wasn't.

25 Q What other responsibilities did you have in this

1 incident?

2 A That's all. Besides---

3 Q That's all that you did?

4 A Besides interviewing. That's all.

5 Q Okay. Did you actually go to -- were you the officer  
6 that went to the Brayboy home on Williamsburg Avenue that  
7 night?

8 A Yes, I did.

9 Q Okay. So, you did have another responsibility?

10 A Yes.

11 Q About what time did you go there?

12 A I couldn't even tell you what time it was.

13 Q Okay. And, and that home on Williamsburg Avenue is,  
14 is a fairly nice home, correct?

15 A Yes, it is.

16 Q It's upper middle class?

17 A Yes.

18 Q Good size lot, circular driveway?

19 A Yes.

20 Q And you've met both of Brad's parents?

21 A Yes, I did.

22 Q And they're both educated, good people, correct?

23 A That's correct.

24 Q Seated here in the courtroom, aren't they?

25 A Yes.



Jerry Gainey - Cross-examination  
by Mrs. Pratt

211

1 Q All right. Seated back here in the---

2 MR. MCEACHIN: Your Honor, at this time I'm just  
3 gonna object to the relevance of this line of questioning.

4 THE COURT: Sustained.

5 Unless you can show some relevance to this case, I  
6 mean that line of questioning.

7 MRS. PRATT: I'll move on, Your Honor. Thank you.

8 Q When did you run or were you the person that ran the  
9 criminal histories on Mr. Turner and Mr. Brown?

10 A No, I did not.

11 Q You were not the person that ran those?

12 A No, ma'am.

13 Q So, the, the night of the incident you didn't know  
14 anything about Mr. Turner and his background, did you?

15 A No, just only what he told me.

16 Q Okay.

17 MRS. PRATT: Court's indulgence.

18 (Pause.)

19 Q And as I understand from your testimony, you only,  
20 from where you were standing at the gate---

21 A Yes.

22 Q ---saw one defendant?

23 A Yes.

24 Q And that was Mr. Brown?

25 A Yes.

1 MRS. PRATT: Thank you. I have nothing further.

2 MR. MCEACHIN: Just a couple redirects, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MCEACHIN:

5 Q You just testified on cross-examination that you went  
6 by the Brayboy's residence that night, is that correct?

7 A Yes.

8 Q Approximately what time would you say that was?

9 A It was late. I couldn't say what time it was, but I  
10 know it was late.

11 Q Would you say before or after 6:00 a.m.?

12 A It had to of been before 6:00.

13 Q Okay. And was the defendant home that night?

14 A No, he wasn't.

15 Q Okay. On cross-examination you were asked who all  
16 you interviewed and you stated that you interviewed both  
17 of the victims, Gary McClary and Chappell McMillian, is  
18 that correct?

19 A That's correct.

20 Q In interviewing Chappell McMillian, what did he say  
21 was taken from him?

22 A His wallet, along with \$300 in it, and his keys, and  
23 his cell phone.

24 Q Okay. And you also testified on cross-examination  
25 that you searched the area within the Pizza Hut grounds

Jerry Gainey - Redirect examination  
by Mr. McEachin

213

1 and also right there at the Sonic, but you didn't check  
2 anywhere else, did you?

3 A No, no other place.

4 Q And you also stated that you, you were the one who  
5 searched the defendants, correct?

6 A Yes.

7 Q Okay. In doing any of that searching, was Mr.  
8 McMillian's wallet recovered?

9 A No.

10 Q What about his cell phone?

11 A It wasn't.

12 Q All right. Going back to the question that was just  
13 asked to you about the only individual you say was, was  
14 Quennell Brown.

15 That's correct, right?

16 A That's correct.

17 Q Okay. And once you saw him, what did you tell him to  
18 do?

19 A I told him to freeze and get down on the ground and  
20 put his hands behind his head.

21 Q Okay. And once he did that, did -- were any other  
22 officers there with you?

23 A There was, on the front area. On the side area---

24 Q Okay.

25 A ---Sergeant Thompson and I was in the area.

1 Q All right. And, and once you had him on the ground,  
2 what did you do?

3 A I stayed and kept my eye on him.

4 Q Okay. Was anyone else informed that he was on the  
5 ground?

6 A Yes, I informed Sergeant Thompson that he was there  
7 on the ground.

8 Q And how did you do that?

9 A By radio.

10 Q Okay. And you did that when in the process?

11 A Shortly after I heard a radio broadcast.

12 Q Okay. But it was, it was right after he had come  
13 into the back area?

14 A Yes.

15 Q Okay. Thank you. No further questions,  
16 investigator.

17 THE COURT: Anything further?

18 MRS. PRATT: Nothing further.

19 THE COURT: Thank you very much, sir. You may step  
20 down.

21 WITNESS: Thank you.

22 THE COURT: I'm gonna take a short break here at this  
23 time, ladies and gentlemen. I ask you to step back into  
24 your jury room. Please have no conversation about the  
25 case at all. If you need anything, let Ms. Joe know and

1 we'll make sure you get that, and we'll be back out in  
2 about ten minutes.

3 (Whereupon, the following takes place outside the  
4 hearing of the jury.)

5 THE COURT: All right. We'll be in recess then for  
6 about ten to fifteen minutes.

7 (Whereupon, a break was taken.)

8 THE COURT: All right. You ready to proceed?

9 MR. MCEACHIN: State's ready, Your Honor.

10 MRS. PRATT: Defense is ready, Your Honor.

11 THE COURT: All right. Please ask the jury to join  
12 us, Ms. Joe.

13 MR. MCEACHIN: Your Honor, I would---

14 THE COURT: Oh, wait, wait a minute, Ms. Joe.

15 MR. MCEACHIN: Your Honor, I failed to ask the Court  
16 this earlier, but the State would ask the, the witness,  
17 Tony Green, be released from his subpoena.

18 MRS. PRATT: And I do not object to that, Your Honor.

19 THE COURT: All right. Mr. Green?

20 Where's Mr. Green?

21 MR. MCEACHIN: He's sitting back there.

22 THE COURT: Mr. Green, you're free to go. Thank you  
23 very much, sir.

24 All right.

25

1 (Whereupon, the jury returns to the courtroom at this  
2 time.)

3 THE COURT: All right. Ladies and gentlemen, we're  
4 ready to proceed at this point.

5 Mr. MEachin, you may call your next witness, sir.

6 MR. MCEACHIN: Thank you, Judge.

7 The State would call Sergeant Sandy Thompson.

8 SANDY THOMPSON, being first duly  
9 sworn, testified as follows:

10 THE CLERK: Please be seated and state your full name  
11 for the record.

12 THE WITNESS: Sandy Thompson.

13 DIRECT EXAMINATION

14 BY MR. MCEACHIN:

15 Q Sergeant Thompson, can you please tell the jury what  
16 your occupation is?

17 A I'm a shift supervisor on patrol, Lake City Police  
18 Department.

19 Q And how long have you been with the Lake City Police  
20 Department?

21 A About two and a half years.

22 Q And prior to being with the Lake City Police  
23 Department, what did you do?

24 A I was the chief of police in Hemmingway.

25 Q Okay. Can you please tell the jury, in a, in a

Sandy Thompson - Direct examination  
by Mr. McEachin

217

1 number of years, how many total years have you been  
2 involved in law enforcement?

3 A Eighteen.

4 Q Okay. And you said you've been with Lake City for  
5 how long?

6 A Two and a half years.

7 Q Okay. So, in December of last year, 2008, you had  
8 been with the Lake City Police Department?

9 A Yes, sir.

10 Q Okay. Were you working on the night of December the  
11 6<sup>th</sup>, 2008?

12 A Yes, sir.

13 Q Okay. And do you remember responding to a call that  
14 evening?

15 A Yes, sir.

16 Q And what was that call in reference to?

17 A We received a call on the radio in reference to a  
18 armed robbery at Pizza Hut.

19 Q Once you received that call, what did you do?

20 A I went -- I left from where I was at and went to the  
21 front of the Pizza Hut and parked in the parking lot and I  
22 walked up to the Pizza Hut.

23 Q Okay. Was anyone with you?

24 A Corporal Crosby.

25 Q Okay. So, y'all were together?

1 A He was in the car beside me getting out of the car,  
2 yes, sir.

3 Q And do you know who made the call to respond to the  
4 Pizza Hut?

5 A Investigator Gainey.

6 Q Okay.

7 MR. MCEACHIN: Judge, may I have the witness step  
8 down?

9 THE COURT: Yes, sir.

10 (Witness comes down from the stand.)

11 Q Sergeant Thompson, if you would, stand on this side  
12 so that the court reporter can hear everything you say.

13 A All right, sir.

14 Q All right. Sergeant Thompson, now you said you  
15 responded to the Pizza Hut.

16 Once you received the call, how long do you think it  
17 was before you got to the Pizza Hut?

18 A I'd say a minute or less.

19 Q Okay. And where had you been prior to that?

20 A I was on---

21 Q Where were you when you received the call?

22 A I was on 52 South.

23 Q Okay. So, you were actually on patrol that night?

24 A Yes, sir.

25 Q Okay. So, once you responded, how about show the



Sandy Thompson - Direct examination  
by Mr. McEachin

219

1 jury where you ended up?

2 A When I first pulled into the parking lot, myself and  
3 Corporal Crosby, we parked in the parking lot right here.

4 Q Okay.

5 A And we got out of the car from there and walked  
6 towards the door, entrance door. And then as we got  
7 closer I looked inside and couldn't see anything or  
8 anybody. That's when I told Corporal Crosby to -- when I  
9 got about right here I could see some people back here.

10 Q Okay. And how could you see them?

11 A Through this -- there's a window right here.

12 Q Right where that booth is?

13 A Yes, sir, so you can see straight through to the  
14 back right here.

15 Q Okay. And when you looked inside, who or what could  
16 you see?

17 A When I looked through the window the first time I saw  
18 somebody standing there with a black ski mask on.

19 Q Okay.

20 A And---

21 Q And, and once, once you saw that individual, what did  
22 you do?

23 A When I saw the subject with the black ski mask on I  
24 radioed and told them they was still in the building.

25 Q Okay. And then what did you do?

1 A As I got closer, some -- I made contact with the one  
2 with the black ski mask on right in here. He looked up  
3 and saw me.

4 Q Okay.

5 A And when he saw me he took off running and another  
6 subject behind me, behind him took off behind him.

7 Q How many total individuals did you see inside the  
8 store?

9 A Two.

10 Q And were both of those individuals wearing ski  
11 masks---

12 A Yes.

13 Q ---or masks?

14 Okay. Once you saw the individual running towards  
15 the back door, what did you do?

16 A I called on the radio and let them know that they  
17 were on their way out the back door.

18 Q And when you did that, what, if anything, did you  
19 hear or see?

20 A I didn't, I didn't see anything here. Everything  
21 went across the street. Somebody radioed and said they  
22 were across the street.

23 Q Okay. Was there any other radio contact once you  
24 radioed that they were going out the back door?

25 A Investigator Gainey made the contact also.

1 Q And what did, what did Investigator Gainey say?

2 A He said that he had one down in the back.

3 Q Okay. And in-between your calling him when they were  
4 running out the back door and making that call, how much  
5 time went by between that call and the call from  
6 Investigator Gainey?

7 A It was within seconds probably.

8 Q Okay. And, and what did Investigator Gainey say?

9 A That he had one down in the back.

10 Q Okay. When you looked inside with it, and saw the  
11 gentleman with the ski mask, did you see any type of  
12 weapons on him?

13 A No, sir, I did not.

14 Q Okay. And can you show the jury one more time where  
15 you saw those individuals?

16 A If you look through there, there's a big window here  
17 where the booths are. Look straight through the booth  
18 beyond the counter and they were right in here, right in  
19 this area right here.

20 Q And is there any doubt in your mind that there were  
21 two of them?

22 A No doubt, no.

23 Q Okay. And you said that one of them looked up?

24 A One of them looked up and saw me.

25 Q And, and what happened after that?

Sandy Thompson - Cross-examination  
by Mrs. Pratt

222

1 A They took off and went in the back. The other one,  
2 the second one went behind him.

3 Q Okay. You can have a seat now.

4 (Witness returns to the stand.)

5 Q All right. Thank you, Sergeant Thompson. Please  
6 answer any questions the defense may have for you.

7 CROSS-EXAMINATION

8 BY MRS. PRATT:

9 Q Sergeant Thompson, do you remember what, what time  
10 you received that dispatch?

11 A Not exactly, no, ma'am.

12 Q Would it be on your incident report?

13 A It would be close, yes, ma'am. The time would be  
14 close.

15 Q Okay.

16 A Yes, ma'am, it's on my incident report.

17 Q And what time do you have on your incident report?

18 A 22:56 or 58 I believe.

19 Q 22:58.

20 So, for those of us that aren't military, that'd be  
21 10:58?

22 A Yes, ma'am.

23 Q Is that right?

24 A Yes, ma'am.

25 Q Okay. And you said you were on 52 South?

Sandy Thompson - Cross-examination  
by Mrs. Pratt

223

1 A Yes, ma'am.

2 Q Do you know -- let me show you what has been marked  
3 as State's 8. If you want to come down and let me see if  
4 you can show me kind of where you were. Come down this  
5 way.

6 (Witness comes down from the stand.)

7 Q The Pizza Hut would be here?

8 A I'd be looking further back here. I wasn't -- I was  
9 on patrol, but I was within that crossroad here. I was  
10 working this block here. I was coming back here.

11 Q Okay. But you were right on 52?

12 A I was, I was on 52, yes, ma'am.

13 Q All right. And you said it took you about a minute?

14 A About a minute or less, yes, ma'am.

15 Q Okay. And you parked near the front really up at the  
16 front corner of the building kind of back a bit from where  
17 the front door was, is that right?

18 A Yes, ma'am, it had to be -- if you're pulling off 52,  
19 it has a big parking lot and I probably stopped in the  
20 parking lot off of 52, Highway 52.

21 Q Okay. Close to the front door there are a couple of  
22 handicapped spots with a ramp, would you have been on the  
23 street side of those handicapped spots that are right in  
24 front of that front door?

25 A Yes, ma'am.

1 Q Okay. So, you're at least four or five parking spots  
2 away from the front door area?

3 A Yes, ma'am.

4 Q Okay. And you testified that you saw through the  
5 window at that front booth, and that's where you saw the  
6 two gunmen?

7 A One of them -- yes, ma'am, front windows at the  
8 booth, yes, ma'am.

9 Q Okay. Did you search any areas of the scene for  
10 evidence?

11 A The back area, yes, ma'am.

12 Q What area in the back did you search?

13 A Where the, where the back door was and the utility  
14 room was.

15 Q Okay. Tell me exactly what areas you looked in.

16 A The back area where the, the gates open, the fence  
17 opens up in the back area or the back door of the Pizza  
18 Hut.

19 Q Okay. So, you looked all the way through that?

20 A Yes, ma'am.

21 Q Did you look inside the shed?

22 A I don't recall whether I did or not, ma'am.

23 Q Did you go into the dumpster?

24 A No, ma'am.

25 Q Okay. Did you interview anyone in this case?

Sandy Thompson - Cross-examination  
by Mrs. Pratt

225

1 A No, ma'am.

2 Q Did you speak to either a Mr. Turner or Mr. Brown,  
3 the two defendants, co-defendants?

4 Did you talk to them at the scene?

5 A No, ma'am.

6 Q Did they try to talk to you?

7 A No, ma'am.

8 Q Were you present when Mr. Gainey, Detective Gainey  
9 took the pictures of the scene?

10 A Some of them, yes, ma'am.

11 Q All right. Do you remember if anything was moved  
12 around before he took those pictures?

13 A Not to my knowledge, no, ma'am.

14 Q Okay. Would you normally be responsible for sending  
15 any items at all to SLED?

16 You were the lead, the lead person that wrote the  
17 first incident report, correct?

18 A You're correct on the lead person on the report, but  
19 no, ma'am, I would not send anything to SLED.

20 Q Okay. That wouldn't have been your responsibility?

21 A No, ma'am.

22 Q How long did you stay at the scene?

23 A Between when it was all over with, I don't know how  
24 long that was. Maybe an hour or hour and a half. I don't  
25 know.

- 1 Q All right. And after what you've described, you  
2 looked for evidence and what else did you do?  
3 Do you have any other responsibilities?  
4 A I transported Mr. Turner from where he was caught  
5 back to the scene.  
6 Q How did you get to where Mr. Turner was caught?  
7 Did they call you or what happened?  
8 A Yes, ma'am.  
9 Q Okay.  
10 A The officers that caught him called and said we got  
11 him in custody and I went and picked him up.  
12 Q And where was that?  
13 A Between the Pizza Hut and the hospital, which may of  
14 been two blocks away basically.  
15 Q Come on down.  
16 (Witness comes down from the stand.)  
17 Q I feel like I'm on Let's Make A Deal.  
18 Okay. This is the Pizza Hut.  
19 Where's the hospital?  
20 A The hospital's up here.  
21 Q This is the hospital over here?  
22 A Yes, ma'am.  
23 Q Okay. What would this be?  
24 A Give me a minute. I have to focus on this.  
25 Will you excuse me, ma'am?



Sandy Thompson - Cross-examination  
by Mrs. Pratt

227

1 Q Sure.

2 A That's a building. This is the building here. You  
3 got the Pizza -- you got the -- Kelly Street. Sumter  
4 Street. Forest Street right here. This is the building  
5 right here. The hospital is right here

6 Q Okay. So, you came all the way from the Pizza Hut  
7 here over to then where in the hospital?

8 A Right behind the -- right here on Mercy Street. From  
9 here to here.

10 Q Here or over here by the hospital?

11 A So, when we say by the hospital, this is Mercy Street  
12 right here. From here to here.

13 Q All right. And these are some buildings at the  
14 hospital that are like a pharmacy or other doctors type  
15 offices, aren't they?

16 A That's correct. This is a street. This is a motel.  
17 This is a motel.

18 Q Oh, okay. That's a motel?

19 A Yes, ma'am.

20 Q Got you.

21 And you picked up Mr. Turner somewhere over in this  
22 area?

23 A About right here, yes, ma'am. Right in the edge,  
24 right in the edge of these woods right here.

25 Q Right on the edge of the woods?

- 1 A Yes, ma'am.
- 2 Q Okay. This is a C.P.A.'s office, is it?
- 3 A Yes, ma'am.
- 4 Q Okay. So, right here behind the C.P.A.'s office?
- 5 A The road here between the C.P.A. and the road here.
- 6 Q Okay. All right. And you transported him back?
- 7 A Back to the Pizza Hut, yes, ma'am.
- 8 Q All right. How long did he sit at the Pizza Hut---
- 9 A Can I sit back down?
- 10 Q ---before getting -- yes, sir. Sorry.
- 11 How long did he sit at the Pizza Hut before he was
- 12 taken to the Lake City Police Department?
- 13 A Approximately 20 or 30 minutes maybe. I don't, I'm
- 14 not sure.
- 15 Q All right. Did you talk to him at all while he was
- 16 there?
- 17 A No, ma'am, he was in the back of my car, caged, seat,
- 18 and I did not talk to him. The windows was up. I did not
- 19 talk to him.
- 20 Q All right. In your police cars, do you have like
- 21 audio or video recordings of people in the backseat?
- 22 A Yes, ma'am.
- 23 Q Did you have the audio or video on that night?
- 24 A No, ma'am.
- 25 Q And after you left the scene, where did you go?

Sandy Thompson - Cross-examination  
by Mrs. Pratt

229

1 A To the city jail.

2 Q Were you involved in booking in the subject?

3 A No, ma'am.

4 Q Okay. Did you have any other responsibilities in  
5 this incident at all?

6 A No, ma'am.

7 Q Did you find any of the evidence that has been  
8 admitted into evidence?

9 A I found the shotgun.

10 Q All right. And the shotgun was between the fence and  
11 the shed, right?

12 A Yes, ma'am.

13 Q Okay. Were you the one that notified the chief and  
14 the assistant chief to come to the scene?

15 A Yes, ma'am.

16 Q Okay. Did you have any responsibility of calling  
17 anyone else?

18 A Yes, ma'am, I called the blood hounds from the  
19 sheriff's Office also.

20 Q Called the blood hounds.

21 okay. With the court's indulgence.

22 (Pause.)

23 Q Can you give me an approximate idea of how long you  
24 were at the scene before you went over near the hospital  
25 to get Mr. Turner?

1 A Roughly five minutes, eight minutes. Five to eight  
2 minutes.

3 Q Okay. I have nothing further. Thank you very much.

4 REDIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q Sergeant Thompson, just one question for you.

7 why did you call the blood hounds?

8 A I was the sergeant over the shift and every time we,  
9 every crime scene we call for an ambulance, they are at --  
10 the sheriff will give us the dog and the dogs we use them  
11 every scene pretty well.

12 Q And why did you use them in this particular case?

13 A Cause it was an armed robbery and it was people  
14 running.

15 Q Okay. Thank you very much. No further questions.

16 THE COURT: Thank you very much, sir. You may step  
17 down.

18 MR. MCEACHIN: Your Honor, we'd ask that Sergeant  
19 Thompson be released from his subpoena.

20 MRS. PRATT: And I have no objection to that, Your  
21 Honor.

22 THE COURT: All right. Thank you very much. You're  
23 free to go.

24 MR. MCEACHIN: May we approach, Judge?

25

John Stewart - Direct examination  
by Mr. McEachin

231

1 (Whereupon, a bench conference was held in the  
2 presence of the jury, but out of the hearing of the jury.)

3 MR. MCEACHIN: Your Honor, the State would call  
4 Officer John Stewart.

5 JOHN STEWART, being first duly  
6 sworn, testified as follows:

7 THE CLERK: Please be seated and state your full name  
8 for the record.

9 THE WITNESS: John Stewart.

10 DIRECT EXAMINATION

11 BY MR. MCEACHIN:

12 Q All right. Officer Stewart, can you please tell the  
13 jury what your occupation is?

14 A Police officer for the City of Lake City.

15 Q And how long have you been so employed?

16 A Been employed two years with Lake City.

17 Q Okay. And prior to that, what did you do?

18 A I was a police officer for the City of Hartsville.

19 Q Okay. And what's your total -- how many total years  
20 have you been in law enforcement?

21 A Coming up on almost seven years.

22 Q All right. And you said -- how long have you been on  
23 Lake City?

24 A Two years.

25 Q And that means that you're with them last December,

1 December 28, I mean, excuse me, December of 2008?

2 A Yes, I was.

3 Q Were you on duty on the night December 6<sup>th</sup>, 2008?

4 A I was.

5 Q Okay. On that particular evening, do you remember  
6 receiving a, a call at all around the eleven o'clock hour?

7 A Yes, I did.

8 Q And what was that call in reference to?

9 A It's in reference to a 10/74, which was a robbery at  
10 the Pizza Hut.

11 Q Okay. And where is the Pizza Hut located?

12 A It's located on Ron McNair Boulevard.

13 Q Officer Stewart, I'm gonna show you what's been  
14 marked as State's Exhibit No. 7.

15 Can you identify that?

16 And just take a second if you need to.

17 A It was at the Pizza Hut.

18 Q Yeah, if you, if you can.

19 A It was right here.

20 MR. MCEACHIN: Okay. Your Honor, at this time I  
21 would move State's Exhibit No. 7 into evidence.

22 MRS. PRATT: I have no objection to this exhibit.

23 THE COURT: All right. Without objection, State's 7.

24 (Whereupon, State's Exhibit No. 7 was received into  
25 evidence at this time.)

John Stewart - Direct examination  
by Mr. McEachin

233

1 Q If I could get you to step down for me please,  
2 Officer Stewart.

3 (Witness comes down from the stand.)

4 Q All right. And just stand right here and speak up so  
5 the court reporter can hear you.

6 A Okay.

7 Q And also stand so all the jurors can see where you're  
8 pointing to.

9 A All right.

10 Q Can you show the jury about where the police  
11 department would be in that picture?

12 A The police department should be located back over  
13 here.

14 Q Okay. And what about, what about the Pizza Hut?

15 A The Pizza Hut is located right here.

16 Q Okay. And on that evening, where were you when you  
17 received the call?

18 A I was at the police department.

19 Q Okay. You were at the police department?

20 A Yes.

21 Q Was, was there anyone at the police department with  
22 you?

23 A Yes, other officers at the police department with me.

24 Q Okay. And when you received the call, what, what did  
25 you do?

1 A I initially jumped in my unit and headed towards the  
2 Pizza Hut.

3 Q Okay. And did anyone ride with you?

4 A Lead Officer Watson rode with me.

5 Q Okay. And once y'all got to the Pizza Hut -- you can  
6 return to the stand at this time.

7 (Witness returns to the stand.)

8 Q Once y'all got to the Pizza Hut, where did you go?

9 A I came upon the backside of the Pizza Hut.

10 Q Okay.

11 A Where we was responding, I should of been back in  
12 here.

13 Q And did you park your car back there?

14 A Yes.

15 Q Okay. And once you parked your car, what did you do?

16 A Immediately I ran to the front of the Pizza Hut on  
17 the Sonic side---

18 Q Okay.

19 A ---and I took a position right here.

20 Q All right. And can you show the jury one more time  
21 where you positioned yourself?

22 A I positioned myself right here right on this corner.

23 Q Okay. And what, if anything, did you notice when you  
24 got to that corner?

25 A When I got to that corner I could look inside and I



John Stewart - Direct examination  
by Mr. McEachin

235

1 could see one of the employees laying down on the floor.

2 Q Okay. And where was he laying down on the floor?

3 A He was right here in this particular area right here.

4 Q Okay.

5 A I could see him laying down on the floor.

6 Q Okay. And at that time the other officers already  
7 been on the other side?

8 A Yes.

9 Q Okay. Do you know if any other officers had already  
10 entered the building at that time?

11 A I wasn't certain if they had entered the building at  
12 that time.

13 Q Okay. What was the next thing that happened after  
14 you looked inside?

15 A Oh, when I looked inside I heard some noise. And  
16 when I heard that noise, I was right here, I, I looked up,  
17 stepped out a little bit, and I saw a subject coming over  
18 the fence.

19 Q Okay. And once that subject came over the fence,  
20 what did the subject do?

21 A He immediately started running towards me. I had my  
22 weapon on me drawn. I pointed it at him and told him to  
23 stop.

24 Q And what did he do?

25 A He ran past me.

1 Q And where did he go?

2 A When he ran past me he ran across Highway 52---

3 Q Okay.

4 A ---into the Market Gas Station, and I immediately  
5 started pursuing him on foot. Another officer who was  
6 actually behind him at that time---

7 Q Okay.

8 A ---we ran across Highway 52 through the Market Gas  
9 Station parking lot. There's a hotel there. At the back  
10 end of the hotel, I think it was a Holiday Inn, we went  
11 through that parking lot up into some grass and up into a  
12 little grassy wooded area.

13 Q Okay. Now, I'm gonna show you what's been marked as  
14 State's Exhibit No. 8. This is just a blown-up model of  
15 what I've already shown you. I'll, I'll let you take a  
16 second to get your bearings.

17 A Okay.

18 Q Once you've got it let me know and I'm gonna ask you  
19 to show the jury how and what you did when you followed  
20 that individual.

21 A Okay. You want me to point that out?

22 Q Yes, please.

23 A All right. We started here at the Pizza Hut. He ran  
24 across the Pizza Hut through this area right here. We  
25 came down Sumter Street and then into the back side of

1 this hotel and then up into this area right over here.

2 Q And is that where the individual was apprehended?

3 A Yes, he was.

4 Q Okay. Who pursued that individual?

5 A Myself and another officer.

6 Q Okay. And you testified that when you saw him come  
7 over the fence you drew down on him with your weapon---

8 A Yes.

9 Q ---and the minute he went passed you followed after  
10 him, is that correct?

11 A Yes, sir.

12 Q Okay. At any point in time did you every look back  
13 towards the Pizza Hut after that individual passed you?

14 A No, I didn't.

15 Q Okay. And once he was apprehended, what did y'all  
16 do?

17 A At that time he was apprehended. He was outran by  
18 the other officers---

19 Q Okay.

20 A ---and he was returned back to the Pizza Hut.

21 Q Okay. And do you know or did you come and find who  
22 that individual was that y'all arrested?

23 A Later on after he was arrested.

24 Q Okay. All right. You can have a seat.

25 (Witness returns to the stand.)

1 Q Now, Officer Stewart, once you started heading back  
2 towards the Pizza Hut, what else, if any involvement,  
3 did you have with this case?

4 A Oh, we went inside to clear the building.

5 Q Okay. And when you went inside to clear it, just  
6 kind of let the jury know what you do when you go inside  
7 to clear a building.

8 A We went inside to make sure that the other suspects,  
9 while, while they were inside the building, to try to get  
10 them into custody, clear it, make sure it was safe. We  
11 will actually go inside. By that time officers had  
12 already been inside the building and they had already  
13 cleared it. So, when I walked to the back, they already  
14 had one suspect already handcuffed at the back. He was  
15 laying down on the ground.

16 Q Okay. And once you cleared the building, did you  
17 have any other involvement?

18 A No.

19 Q Okay. Thank you very much. Please answer any  
20 questions the defense may have for you.

21 A Yes, sir.

22 CROSS-EXAMINATION

23 BY MRS. PRATT:

24 Q Okay. Officer Stewart, do you, do you remember about  
25 what time you received this call to come to the Pizza Hut?

John Stewart - Cross-examination  
by Mrs. Pratt

239

- 1 A I don't remember the exact time, no, I don't.
- 2 Q Okay. But it was -- the call that you heard was from
- 3 Detective Gainey, was it?
- 4 A I believe it was a call over the radio.
- 5 Q Which would be dispatch then?
- 6 A It was called by another officer over the radio.
- 7 Q Oh, okay. Do you remember if it was Sergeant
- 8 Thompson or---
- 9 A It may of been Sergeant Thompson, but I'm not sure.
- 10 Q Okay. That's fair. And as soon as you got that
- 11 call, you got, jumped in your patrol car and you came
- 12 over?
- 13 A Yes, I did.
- 14 Q And you brought Officer Watson with you, did you?
- 15 A Yeah, we both were standing outside.
- 16 Q Okay. All right. And I'd like you to come down and
- 17 I want to kind of get a feel from you and I'm gonna let
- 18 you use a red marker and give me an idea, if you can, of
- 19 what you saw at the scene in regards to the officers.
- 20 (Witness comes down from the stand.)
- 21 Q I know this is not as good as the drawing that is
- 22 State's Exhibit 9. But consider the lower right corner to
- 23 be the front entrance, the upper right corner to be the
- 24 gate that goes into the back fenced area.
- 25 A Uh-huh. (Affirmative).

1 Q The upper left to be the back fenced area on the  
2 Sonic side, and the front to be the fenced area at the  
3 Sonic side near the 52.

4 Can you show me where you were with a red X?

5 A When I initially came inside---

6 Q Yes.

7 A ---or where I parked my vehicle at?

8 Q Let's do both.

9 A Okay.

10 Q Start with where you parked the unit and just---

11 A I came in from back here.

12 Q Okay.

13 A Immediately jumped out my unit and ran here.

14 Q Okay.

15 A Was positioned right here.

16 Q All right. And Watson that was with you, where was  
17 he?

18 A I couldn't tell you where Watson was at. I never  
19 paid attention to Watson. I initially got out the car and  
20 I ran this.

21 Q All right.

22 A I didn't pay attention to where Watson was going.

23 Q Now, he would of gotten in the car back here  
24 somewhere though when he got out, right?

25 A He would have.

John Stewart - Cross-examination  
by Mrs. Pratt

241

1 Q Cause that's where your car was?

2 A Yes.

3 Q All right. And do you know where Segreant, Detective  
4 Gainey or Sergeant Thompson were?

5 A No, I was just taking up a position on the side of  
6 the building.

7 Q All right. And---

8 A I didn't see anybody on this side when I initially  
9 pulled in. So, I took a position on this side. That's  
10 why I ran that way.

11 Q Okay. And you, your job was to watch that fenced  
12 area and look for somebody and you saw someone, didn't  
13 you?

14 A Yes, I did.

15 Q And you immediately took off across 52?

16 A Yes.

17 Q Okay. I'm just gonna make a little X.

18 That's where the gate would have been, is that right?

19 A I believe so.

20 Q And around here might be about where the front door  
21 is?

22 A Yes.

23 Q Okay. All right. Well, wait a minute. All right.  
24 Let me do one other thing.

25 All right. This is State's Exhibit 8. Can you --

1 and, and if you'll kind of have your back over there so  
2 that the jury can see.

3 A Okay.

4 Q And all the way over to the other side.

5 You left the Pizza Hut chasing I believe Mr. Turner,  
6 is that right?

7 Is it Mr. Turner that you caught?

8 A I believe so.

9 Q Okay. So, you left the Pizza Hut from this corner?

10 A Right over here---

11 Q Okay.

12 A ---on the Sonic side right here. On the Sonic side.

13 Q On the Sonic side?

14 A Yes.

15 Q Okay. This would be The Market?

16 A Yes.

17 Q So, you came -- did you go behind The Market to chase  
18 him or in front?

19 A No, we came directly across 52, me and the other  
20 officer that was pursuing him, we came directly across 52  
21 and went directly through the parking lot down Sumter  
22 Street and just parked it in the back part of this parking  
23 lot to right up in here and that's where the other officer  
24 apprehended him at.

25 Q Okay. Okay. And back behind this parking lot, there



John Stewart - Cross-examination  
by Mrs. Pratt

243

1 is a dumpster area for the, is it the Lake City Motel?

2 A Yes, now it's the Lake City Motel. Maybe it was  
3 something else at that time.

4 Q Maybe the Holiday Inn?

5 A Yes.

6 Q Okay. So, there was a, a dumpster back in this area?

7 A There was, but we never went towards that dumpster.  
8 We came directly there and across here.

9 Q Okay.

10 A Almost in a straight line, but it wasn't  
11 directly in a straight line. But we never came towards  
12 that part of the dumpster. We went directly this way.

13 Q And there's a stand of bushes right here, isn't  
14 there, and over here as well?

15 A I assume. You can't see it. It looks like it.

16 Q And you came through -- did you have to go through  
17 any bushes or kind of overlook any berm?

18 A It was, it was still straight. It was still  
19 straight.

20 Q Okay. Straight into this bush area here?

21 A Yes.

22 Q And did you come behind the C.P.A. office when you  
23 finally caught Mr. Turner?

24 A The other officer apprehended Mr. Turner. I kind of  
25 stumbled a little bit and he was still on him.

- 1 Q well, you were running pretty fast I imagine?
- 2 A Yes.
- 3 Q Okay. So, where did you stumble and, and the other
- 4 officer chase after him?
- 5 A Back up in here.
- 6 Q Okay. So, you're back here and the other officer
- 7 keeps going and catches him somewhere in this area?
- 8 A I'm assuming. I don't know for certain.
- 9 Q You don't know?
- 10 A Not for sure.
- 11 Q Did -- when you stumbled, did you see if they went
- 12 towards, behind the C.P.A. area, is that right?
- 13 A They just kept running. It was dark out there and
- 14 there's no lights back there. So, they just kept running.
- 15 Q Okay. And no question that there's a whole lot of
- 16 bush and woods area all through that area, right?
- 17 A Yes.
- 18 Q Okay. You contacted Sergeant Thompson, did you, to
- 19 come get Mr. Turner?
- 20 A I think it was the other officer that made the
- 21 contact with him.
- 22 Q Okay. And you didn't have any kind of transport
- 23 duties or have anybody in your car, correct?
- 24 A No, I, I went back towards the Pizza Hut.
- 25 Q Okay. Where did you go after you left the scene?

John Stewart - Cross-examination  
by Mrs. Pratt

245

1 A After we left Pizza Hut?

2 Q Uh-huh. (Affirmative).

3 A I believe I might of went back to the station.

4 Q And did you have any other duties in regards to this?

5 A No.

6 Q Okay. And you're not sure where officer Watson was,  
7 right?

8 A No.

9 Q And there was Officer Crosby was there.  
10 Do you know where he was?

11 A I can't tell you about them. I was taking up a  
12 position on that side of the road.

13 Q Okay. And I think, is it Chief Brown and Assistant  
14 Chief Williams or have I got that swapped?

15 A It's Chief Brown and Assistant Chief Williams.

16 Q Okay. Do you know where they were?

17 A No.

18 Q Okay. You only know basically where you were and the  
19 officer that chased, ran with you, who was Officer Brown,  
20 is that right?

21 A Yes.

22 Q Okay. And you're not sure where any of the other six  
23 officers were?

24 A No, I didn't see nobody on that side. That's why I  
25 took the position on that side.

1 Q Okay. That's all I have for you. Thank you.

2 MR. MCEACHIN: No redirect, Your Honor.

3 THE COURT: Thank you, sir. You may step down.

4 MR. MCEACHIN: I's ask that the witness be relieved  
5 from his subpoena, Your Honor.

6 MRS. PRATT: And I have no objection, Your Honor.

7 THE COURT: All right. Thank you very much, sir.

8 Let me get the attorneys to approach please.

9 (Whereupon, a bench conference was held in the  
10 presence of the jury, but out of the hearing of the jury.)

11 THE COURT: Ladies and gentlemen, I was just speaking  
12 with Mr. McEachin and Mrs. Pratt, and it, it appears the  
13 next witness would, could possibly take us beyond our  
14 lunch hour. Well, not the whole lunch hour, but take us  
15 beyond where we want to start the lunch break. So, we're  
16 gonna go ahead and break at this time for lunch. It's  
17 about 12:16, 12:17. If you would, if you would, be back  
18 in your jury room at two o'clock. Okay. Give you a  
19 little bit of extra time for lunch, and, and we'll resume  
20 at that point.

21 Please, ladies and gentlemen, if you would, keep in  
22 mind you're not to have any discussion with anybody about  
23 the case. You're not to talk with anyone about the case  
24 and not allow anyone to discuss the case with you.

25 If everyone else would please remain seated.

1           Members of the jury, you're free to go, but please be  
2 back at two o'clock in your jury room.

3           (Whereupon, the following takes place outside the  
4 presence of the jury.)

5           THE COURT: All right. Anything before we break?

6           MR. MCEACHIN: Your Honor, we can probably take it up  
7 once we get back. There, there will be a couple matters  
8 we have to address prior to the co-defendant's testifying.

9           THE COURT: Well, let's go ahead and take them up  
10 while we're here---

11          MR. MCEACHIN: Okay.

12          THE COURT: ---if you're prepared to.

13          MR. MCEACHIN: Certainly, Your Honor.

14          THE COURT: Let's do that and --.

15          MR. MCEACHIN: Your Honor, as far as the  
16 co-defendant's prior records are concerned, I think there  
17 may be some question as to what, what is admissible and  
18 what is not admissible. But at this time, Your Honor, the  
19 state would like to kind of go over that with you---

20          THE COURT: Sure.

21          MR. MCEACHIN: ---Your Honor, and also with Mrs.  
22 Pratt.

23          THE COURT: Okay.

24          MR. MCEACHIN: Okay. As far as Co-Defendant Brown is  
25 concerned, the only thing that I see on his record that

1 can come out is an assault and battery of a high and  
2 aggravated nature charge back in 2005, and that's the only  
3 thing that I see on his record that would be admissible I  
4 believe.

5 THE COURT: Do you concur with that, Mrs. Pratt?

6 MRS. PRATT: Your Honor, that's the only -- there are  
7 two disorderly conducts from 2004 where he received fines  
8 and I don't know that, that those would come in.

9 THE COURT: They would not.

10 MRS. PRATT: He was on -- I believe he was still on  
11 probation from this incident, the probation from the  
12 ABHAN, and I may question him about that. But I don't see  
13 any other convictions.

14 MR. MCEACHIN: I don't know how the probation is  
15 relevant, Your Honor.

16 THE COURT: I'm not sure you're, you're gonna be able  
17 to go into that. You know, I don't know that you're gonna  
18 be able to go in -- for impeachment purposes, you're  
19 allowed to ask him if he was convicted of assault and  
20 battery of a high and aggravated nature back in '05 and  
21 that's it. You're not, you're not allowed to ask him what  
22 sentence did you receive or what --.

23 MRS. PRATT: Well, Your Honor, I think it's  
24 significant that, as to his flagrant disregard for the law  
25 that he would---

1 THE COURT: He's not on trial here.

2 MRS. PRATT: I understand. But he was on probation  
3 for three years and still committing, frankly several  
4 different crimes that obviously would not come in such as  
5 another public disorderly, a CDV, and a trespass, and  
6 obviously those would not be admissible. But if the Court  
7 does not wish me to ask about that I, I will not.

8 THE COURT: Well, I, I think -- well, I mean I'm just  
9 following the ruling. I think the Rule is, for  
10 impeachment purpose, you're allowed to ask them about  
11 their convictions, but not the details surrounding it.

12 MRS. PRATT: Yes, Your Honor.

13 THE COURT: And that's all on Mr. Brown.  
14 So, what else, what else you got?

15 MR. MCEACHIN: Yes, sir, moving on to Robin Turner,  
16 Your Honor, it will be the State's position and it  
17 probably would help if I handed Your Honor a copy of the  
18 N.C.I.C.

19 THE COURT: All right.

20 MR. MCEACHIN: This is the right one.

21 THE COURT: All right. This is on Mr. Turner?

22 MR. MCEACHIN: The Co-Defendant Turner, that's  
23 correct, Your Honor. The State's position is the first  
24 charge that will be admissible is a common law robbery  
25 that happened in 2000.

1 THE COURT: All right. That, that would clearly be  
2 admissible.

3 MR. MCEACHIN: The next would be a possession of  
4 stolen vehicle that occurred in 2006, and it looks like he  
5 actually also had a receiving stolen goods in 2006. I  
6 believe that would be admissible, Your Honor, and that  
7 would be the extent of what I believe is admissible as far  
8 as Mr. Turner's concerned.

9 MRS. PRATT: Your Honor, it would be our position  
10 that the possession of a sawed-off shotgun conviction that  
11 he had February 11<sup>th</sup> of 1998 would also be admissible  
12 because part of his sentence was three years probation and  
13 he would of still been on probation within the ten year  
14 window. We believe that that conviction would be one that  
15 should be able to be used, be used to impeach him.

16 Also, Your Honor, he does have a crime of moral  
17 turpitude, false information to police, in September of  
18 1997, and we believe that that would be an item that could  
19 be used to impeach. In 2005, November 28<sup>th</sup> of 2005, he  
20 was convicted for unlawful carrying of a weapon. He  
21 received one year suspended to one year probation. We  
22 believe that that would be proper impeachment.

23 THE COURT: Why, why would that be proper?  
24 It doesn't carry more than a year.

25 MR. MCEACHIN: It carries up to a year, Your Honor.



1 MRS. PRATT: Okay.

2 THE COURT: Yeah, that one, that one would not be---

3 MRS. PRATT: I'm sorry.

4 THE COURT: ---admissible.

5 MRS. PRATT: I based it on that one. I apologize for  
6 that, Your Honor, and, Your Honor, he is currently -- part  
7 of the plea agreement that he has, which will be used  
8 obviously in information given, is the unlawful carrying  
9 of a weapons charge from May the 3<sup>rd</sup> of 2008. He has  
10 entered into a plea agreement and signed an admission of  
11 guilt on that, but has not yet entered the plea in court  
12 or been sentenced. Since it is a basis or part of the  
13 deal in this, and also it is, it is something where he is  
14 admitted to guilt and is simply waiting for the process,  
15 we would argue that that unlawful carrying of a weapon,  
16 which is a federal charge with a stipulation of ten years,  
17 would also be something we can ask him about.

18 MR. MCEACHIN: Your Honor, only so far as the plea  
19 agreements. Because it is the nature of the plea  
20 agreement, I believe that probably would be proper.

21 THE COURT: That kind of opens that door, doesn't it?

22 MR. MCEACHIN: Yes, sir, it's pretty interesting.  
23 But as far as, and if, and if I may address -- I think  
24 Your Honor's already addressed the unlawful pistol  
25 question and the state would concur that it carries only

1 up to a year, and, therefore, wouldn't be admissible.

2 THE COURT: Right.

3 MR. MCEACHIN: If I may, Your Honor, with regard to  
4 the sawed-off shotgun charge, Mr. Turner pled -- I'm  
5 sorry. I'm looking at the wrong one. Mr. Turner pled  
6 guilty to that charge on February 11, 1998, and received a  
7 two year sentence suspended to three years of probation.  
8 It's the, it's the State's position that, upon entering  
9 that plea, and I'm, I'm familiar with the Rule 609, Your  
10 Honor, and, and it's actually a twofold argument. I  
11 believe that the time period has lapsed on that, Your  
12 Honor, since it occurred 19, in February of 1997.

13 I understand the defense's position that the  
14 probation tolls it, but I don't believe that would be the  
15 case, Your Honor. I think if he received a jail sentence  
16 right then, I believe that, up until the end of that jail  
17 sentence, that would perhaps toll that. I don't believe a  
18 probationary sentence tolls it.

19 In addition, Your Honor, or in a, in a separate and I  
20 guess distinct argument, certainly I think, given the  
21 nature that the shotgun is the weapon that is in question  
22 in this case, would obviously increase the prejudicial  
23 weight of that particular conviction. Should Your Honor  
24 choose to allow it and because of the probationary  
25 sentence, the State would request that it only be referred

1 to as a weapons charge and not possession of a sawed-off  
2 shotgun.

3 THE COURT: All right. I'm looking at 609 and it  
4 tells how you determine the time, and it says that  
5 evidence of a conviction under this rule is not admissible  
6 if a period of more than ten years has elapsed since the  
7 date of the conviction or of the release of the witness  
8 from the confinement imposed for that conviction,  
9 whichever is the later date, and, of course, unless the  
10 Court determines, in the interest of justice, that, and  
11 the probative value of the conviction is supported by  
12 specific facts and circumstances.

13 Now, I'm happy to entertain any, any case law that  
14 expounds on that, but that doesn't seem to indicate that a  
15 term of probation would count.

16 MRS. PRATT: Your Honor, when a person is on  
17 probation they are subject to---

18 THE COURT: They're not confined.

19 MRS. PRATT: Well, I guess it depends on how you  
20 define confined because they are---

21 THE COURT: I don't define it as being on probation.

22 MRS. PRATT: I understand, Your Honor, and if I can  
23 look for some case law over the lunch hour---

24 THE COURT: Sure. Absolutely.

25 MRS. PRATT: ---I believe that it does include that

1 because you are still being controlled by the Department  
2 of Corrections and because you're on probation---

3 THE COURT: And I would think---

4 MRS. PRATT: ---subject to being recalled.

5 THE COURT: And I would think that that would be made  
6 clear in the rule if that's what was the intent. But it  
7 specifically uses the term confinement, not under  
8 supervision, and it could of, they could of just have  
9 easily used or of the release of the witness from any  
10 confinement and/or supervision. And, and I'm not saying  
11 you're wrong. I'm saying that, just based on the rule, I  
12 would, I would not consider the probation term to be  
13 confinement. But you may find case law to the contrary.

14 MRS. PRATT: And if I may, one thing that perhaps the  
15 solicitor did not mention, Mr. Turner was violated on his  
16 probation in regards to the possession of the sawed-off  
17 shotgun on December the 8<sup>th</sup> of 1998 and served two years.  
18 So, that would be confinement for the possession of a  
19 sawed-off shotgun---

20 THE COURT: If he was confined---

21 MRS. PRATT: ---within the ten year period.

22 THE COURT: You're correct. If he was confined.

23 MRS. PRATT: And it's in the N.C.I.C. that Your Honor  
24 is, is reviewing. If you look after the common law  
25 robbery, which was an armed robbery pled down, it included

1 a lot of other charges very similar to today's---

2 THE COURT: None of that matters.

3 MRS. PRATT: ---which I'm assuming the Court's not  
4 gonna let me to into.

5 THE COURT: Mrs. Pratt, none of that matters.

6 MRS. PRATT: I know. But I'd love to, Your Honor.

7 THE COURT: Sure you would.

8 MRS. PRATT: But the charge---

9 THE COURT: You'd like to put the co-defendants on  
10 trial instead of your client. I understand that.

11 MRS. PRATT: I believe that should, that should have  
12 been done.

13 THE COURT: But that's not, that's not what you're  
14 allowed to do.

15 MRS. PRATT: I understand. But if the Court reviews  
16 the December 8<sup>th</sup>, 1998, violation of probation you see  
17 that he received two years and that was for the probation  
18 from possession of the sawed-off shotgun.

19 THE COURT: That seems to be correct, Mr. McEachin.

20 MR. MCEACHIN: Well, that being the case, Your Honor,  
21 the State would request that if, if, in fact, it is  
22 allowed, that the weapons charge be referred to only as a  
23 weapons charge and not possession of a sawed-off shotgun  
24 given the nature that this case does revolve around a  
25 shotgun, Your Honor. The rule also states that

1 interest -- I mean it could be admitted, but that the  
2 probative value of the conviction supported by specific  
3 facts and circumstances substantially outweighs the  
4 prejudicial affect. I believe that, that the probative  
5 value of possession of a sawed-off shotgun nearly ten  
6 years ago is, is highly prejudicial. And if the  
7 conviction should come in, Your Honor, I would, I would  
8 request that it termed as, as far as -- it be termed in  
9 the language of a weapons charge as opposed to possession  
10 of a sawed-off shotgun. I just think that prejudices the  
11 jury's opinion about the case, Your Honor.

12 MRS. PRATT: And, Your Honor, the whole point is I  
13 wouldn't want it in if it wasn't prejudicial. I think  
14 the, the State actually said that earlier in an argument  
15 that we had in this very case. The truth is the truth.  
16 what he had was a sawed-off shotgun. what there was in  
17 this charge in this case today is a sawed-off shotgun. I  
18 don't know why we have to sanitize for a witness who has a  
19 blatant history of violation of the law like this one so  
20 that it doesn't look too prejudicial to the State's case.

21 THE COURT: You -- would you, would you agree we  
22 sanitize it if it was your client that had that  
23 conviction?

24 MRS. PRATT: There's a difference between a defendant  
25 and a witness, Your Honor. In asking the question, I

1 think, for a defendant, I might be more concerned about  
2 the due process issues. But a witness is a witness. It's  
3 not a defendant.

4 So, yeah, I probably would want it that way. But  
5 that doesn't mean I'd agree for, that it should be for a  
6 witness, which is a different type of witness. My  
7 defendant has no choice. By the way, he doesn't have that  
8 kind of charge.

9 THE COURT: Well, I know. I understand that.

10 MRS. PRATT: But this, this witness has a choice to  
11 testify or not to have his charges come in as they are.

12 THE COURT: Here's the, here's the danger in that,  
13 Mrs. Pratt, and I'm not saying I agree with the State. I,  
14 I don't know yet to be honest with you. But here's the  
15 danger I see in that.

16 what would preclude you then from standing up in  
17 front of that jury and saying Mr. Turner has already shown  
18 y'all that his weapon of choice is a sawed-off shotgun.

19 MRS. PRATT: Uh-huh. (Affirmative).

20 THE COURT: So, because he had one then, he had one  
21 on this night and that's improper. You -- there's,  
22 there's no way in any level that would be proper if it was  
23 a defendant who had that option, but you're saying simply  
24 because it's a witness you can then direct a jury in that  
25 fashion against a, a witness. In other words, if he was

1 guilty then he's got to be guilty now.

2 MRS. PRATT: And, Your Honor, I will agree, in a  
3 motion in limine or a ruling by the Court, not to make  
4 that particular argument that he had a shotgun, then he  
5 had a shotgun now. No, I won't say I won't say that the  
6 boy likes gun and has had crimes, convictions for them for  
7 over ten years. But I will, if the Court wishes me to be  
8 bound not to use that argument, I'd be glad to do that to  
9 have the true nature of his conviction come in.

10 THE COURT: Well, again, again, I've not made this  
11 decision. I'm, I'm gonna give y'all, over the lunch  
12 break, the opportunity for you to, to do some research.  
13 For -- let me, let me go back.

14 First of all, I think the conviction, the fact that,  
15 that he's got the conviction it comes in. Now, whether or  
16 not it's gonna be couched as a weapons conviction or  
17 actually a possession of a sawed-off shotgun conviction  
18 is, is the question that I'm gonna deal with over the  
19 lunch break, and I'll give you any opportunity that you,  
20 if you can, to do any research to, to find out to support  
21 your position on that.

22 MR. MCEACHIN: Thank you.

23 THE COURT: Each of you if you'd like.

24 So, we got that issue that, that I haven't ruled on  
25 yet other than, than the convictions coming in.



1           Are there any other convictions that, that we've left  
2 hanging there cause I mean I don't want to leave anything  
3 hanging?

4           MRS. PRATT: The false information to police in '97,  
5 Your Honor.

6           THE COURT: Well, that's clearly outside the ten  
7 years.

8           MRS. PRATT: But I believe, as a crime of moral  
9 turpitude, the Court could decide---

10          THE COURT: It's still outside the year, it's still  
11 outside the ten year.

12          MRS. PRATT: I believe that because -- the Court has  
13 the ability to go beyond the ten years under the rule if  
14 they feel it's more probative than prejudicial.

15          THE COURT: Okay. I'll look at that as well then.

16          MR. MCEACHIN: Your Honor, the State will only say  
17 that that was 12 years ago that appears to be. Almost,  
18 almost right at 12 years, Your Honor. Obviously it's  
19 outside of the time limit and the State would argue that,  
20 under 609(b), it would not be admissible for purposes of  
21 this trial. It's a magistrate level offense as well, Your  
22 Honor.

23          MRS. PRATT: But it is a crime of moral turpitude.

24          THE COURT: Okay. That, that doesn't matter---

25          MRS. PRATT: Those are the two issues.

1 THE COURT: ---I mean as far as -- that has no  
2 bearing on the ten year. It goes back to determining the,  
3 the weight, probative versus prejudicial.

4 We talked about the common law robbery?

5 MR. MCEACHIN: Yes, sir, the state would concede  
6 that's---

7 THE COURT: Right. Okay. I just wanted to make  
8 sure.

9 MRS. PRATT: And, Your Honor, I obviously will not  
10 state that it was an armed robbery pled down. But just  
11 what the conviction was itself.

12 THE COURT: Absolutely. That's correct.

13 okay. All right. Well, those two issues I'll, I'll  
14 mull over during the lunch break and we'll, we'll -- I'll  
15 let you know, and, of course, I'll hear from you as well  
16 if you find anything in support of your relative  
17 positions.

18 MR. MCEACHIN: Okay. Thank you, judge.

19 MRS. PRATT: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. MCEACHIN: What time would you like us back,  
22 Judge?

23 THE COURT: Let's, let's get back, let's get back  
24 about say quarter till so we can take up these issues.  
25 well, I'll tell you what, let's get back at two o'clock.

1 MR. MCEACHIN: Okay.

2 THE COURT: Cause then we're gonna have to keep them  
3 out in the yard there and, you know, at two o'clock they  
4 should all be back there, and then we can get out and  
5 resolve these issues.

6 MR. MCEACHIN: Thank you, Judge.

7 THE COURT: Okay.

8 MRS. PRATT: Thank you, Your Honor.

9 (Whereupon, a lunch break was taken.)

10 THE COURT: Okay. The, the first witness that you're  
11 gonna call, Mr. MEachin, is it Mr. Turner or is it the  
12 other gentleman?

13 MR. MCEACHIN: Mr. Turner, Your Honor.

14 THE COURT: You have to call Mr. Turner first. I was  
15 waiting to get some, maybe some other input I'm --  
16 because, to be honest with you, I don't, I don't find the  
17 question to be very clear. Well, on one of the issues.

18 The first -- let me address the first, the first  
19 issue and that being the false information to police. I'm  
20 not gonna allow that. That's outside the 12 years. I've  
21 not been shown any reason to, to allow it, to, to waive  
22 that ten year and, and allow it in. And so, I, I -- we're  
23 not gonna deal with that.

24 The issue that was the more interesting issue and the  
25 more questionable issue that I have is, is that of the

1 conviction for the possession of a sawed-off shotgun. And  
2 the reason obviously that that is an issue that is of  
3 higher concern is because that's, that's a, that is a very  
4 issue in this case. I have absolutely no question that if  
5 it were a conviction that Mr. Brayboy had and he was  
6 facing this dilemma, it wouldn't be a dilemma. I would  
7 not allow you to ask regarding the sawed-off shotgun.

8 So, whether that protection extends to a witness is,  
9 is questionable at least in my mind at this point and I'm  
10 taking, I'm taking in the reasoning or at least I'm trying  
11 to think to, to it's logical conclusion and, and why do we  
12 not want, in the case of the defendant, why do we not want  
13 the jury to hear that type of impeaching type evidence.  
14 And the reason is, is because we expect and we want the  
15 jury to base their decision solely on the facts that are  
16 presented during the course of this trial that occurred on  
17 this date and not on some issue that occurred in a  
18 previous conviction.

19 The purpose of impeachment is simply to determine  
20 whether or not someone is believable or not, and it should  
21 have nothing to do with they did it once, they must of  
22 done it again. That's the, that's the very thing the  
23 Court intended to avoid when it passed that, that, that  
24 ruling that -- and the main one we saw when it first came  
25 down was we would have a defendant that was facing a

1 distribution of crack charge, you know, second offense and  
2 they had a prior distribution charge. Years ago we use to  
3 be able to ask, isn't it true that you were convicted of  
4 distribution of crack four years ago. Of course, now the  
5 Court, the Court said that that prejudicial affect greatly  
6 outweighs any probative value because it causes a jury to,  
7 to, to possibly make a decision not based on the evidence  
8 that was presented during the course of this trial, but on  
9 something that occurred in the past.

10 So, that's, that's the whole situation involving a  
11 defendant. I don't know that that changes simply because  
12 it's a witness in a trial. Again, the purpose of being  
13 able to go into someone's criminal history is, is to  
14 solely place into or place open for question their  
15 credibility, their believability. Not that their actions  
16 of earlier time are conforming with their actions now.

17 And, and, so, I, I feel that allowing Mr. Turner to  
18 be questioned that he has a prior conviction for  
19 possession of a sawed-off shotgun, with that being a  
20 direct issue involved in this case, is highly prejudicial  
21 to a jury in determining, in determining someone's  
22 credibility. I think they can determine the same  
23 credibility by understanding that he was convicted of a  
24 weapons charge. Whether he's convicted of a weapons  
25 charge or whether he's convicted of possession of a

1     sawed-off shotgun shouldn't have any affect regarding his,  
2     his credibility as a witness.

3             And so, I'm, I am inclined to, to not allow the, the  
4     actual, actual charge, the possession of a sawed-off  
5     shotgun. But I'm, I'm sharing with you my inclination.  
6     I've not ruled and I'm, I'm certainly open to listening to  
7     anything that you may have come up with during the break.  
8     I'm just, just wanted to lay out for you my thought  
9     process. So, if anyone has any issue regarding that.

10            MR. MCEACHIN: Your Honor, if I may for the State.  
11     The State would, would concur in your reasoning. And  
12     while we didn't find a case directly on point, we did find  
13     a case, of course, that deals with a, with a defendant.  
14     Not necessarily a witness. But it's the case -- and I, if  
15     I may approach, Your Honor?

16            THE COURT: Yes, sir.

17            MR. MCEACHIN: This is the case of State versus  
18     Elmore, and while it's not directly on point because it is  
19     dealing with a, a defendant and not a witness, I, I did  
20     note, in the final footnote of the opinion, the South  
21     Carolina Court of Appeals, Judge Kittredge, did cite,  
22     which I think is, is very on point for this particular  
23     issue, that a permissible approach advocated by the Fourth  
24     Circuit Court of Appeals is to allow the prosecutor to ask  
25     the witness the existence of prior criminal conviction.

1 THE COURT: All right. Hold on, hold on, hold on. I  
2 apologize and I'm reading along with you. Keshia is as  
3 good a court reporter as there is in the state and I don't  
4 think she can take that down. That's too fast. Slow it  
5 down.

6 MR. MCEACHIN: Sorry about that.

7 THE COURT: That's okay. We, we all do it. All of  
8 us read faster than we talk. So, but go ahead and put  
9 that on the record.

10 MR. MCEACHIN: Certainly, Your Honor. Again, this  
11 is, this is -- the case is State versus Elmore, 368 S.C.  
12 230, 628 S.E.2d 271. It's a 2006 opinion by the Court of  
13 Appeals, and in the fifth footnote, Judge Kittredge  
14 indicated that one permissible approach advocated by the  
15 United States Fourth Circuit Court of Appeals was, is to  
16 allow the prosecutor to ask the witness about the  
17 existence of a prior similar conviction under Rule  
18 609(a)(1) without disclosing to the jury the nature of the  
19 prior offense.

20 Now, again, Your Honor, this, this case deals with,  
21 with defendants and I did not find a case directly on  
22 point as far as it pertains to witnesses. But kind of in  
23 following with what the Court has already stated, Your  
24 Honor, I, I was also thinking it through to its logical  
25 conclusion, and the reason that attorneys are allowed to

1 ask defendants or witnesses about prior convictions goes  
2 towards the credibility of the witness, goes, and it's  
3 used for impeachment purposes.

4 I think that once you bring up a prior conviction of  
5 a similar, similar bad act, I think that that goes not so  
6 much for impeachment, but more so to go to show action and  
7 conformity therein. And I think once that's shown it  
8 takes it out of the realm of impeachment, and, again,  
9 tries to -- it goes more towards the, the conformity of  
10 that defendant to his prior conduct in the, in the present  
11 case.

12 I think once the court does the balancing test in  
13 Rule 403, it's the state's contention that the probative  
14 value of that particular conviction is substantial  
15 outweighed by the prejudicial affect. The same ends, if,  
16 in fact, the ends of, of bringing up the conviction in the  
17 first place are for impeachment purpose, the same ends can  
18 be met by simply allowing the defense to question or the  
19 state to question the witness not as to the offense of  
20 possession of a sawed-off shotgun. But it can be couched  
21 in terms of a weapons violation or possession of a weapon,  
22 and that same end is met as far as there is a conviction.  
23 The defendant has admitted the conviction. It's simply  
24 changing it off, changing the word, sawed-off shotgun,  
25 which I think is the prejudicial word here, and it's just



1 simply replacing it with the word less of a prejudicial  
2 affect, but increases the -- to keep the probative value  
3 the same, and that's the State's position, Your Honor.

4 THE COURT: All right. Would y'all hold that  
5 thought?

6 I need to step back here real quick.

7 (Pause.)

8 THE COURT: Mrs. Pratt, I apologize. You were about  
9 to share your wisdom with the Court and I had to run take  
10 that call.

11 So, be happy to hear from you, ma'am.

12 MRS. PRATT: And I'm not so sure it's wisdom, but I  
13 appreciate the compliment from the bench, Your Honor.

14 Your Honor, the concern that I have is that, that  
15 Rule 609 makes a distinction between witnesses and the  
16 accused and obviously there is a distinction between the  
17 two parties, I mean the two types of witnesses. The  
18 defendant, when he takes the stand, is a different kind of  
19 witness and a regular witness also has constitutional  
20 protections and a due process protection, which I think is  
21 really what is implicated in Elmore to make sure that we  
22 don't allow the jury to convict someone based on that  
23 similarity of charges and I agree.

24 However, I think that the, the higher duty to a  
25 defendant, which we also see by the way in, in Rule 404(b)

1 and Lyle situations as well about a prior bad act, is  
2 different with a witness. The State has the choice of  
3 calling a witness or not. The witness has a choice of  
4 deciding to testify or not. The protection is different  
5 because of that opportunity that they have to determine  
6 that they do not wish to testify.

7 We see that, that there is a, I think a different  
8 necessity of protection by the Court. Certainly the  
9 defense -- all evidence has to be tested between probative  
10 and prejudicial, not just the defense evidence, and I  
11 understand that, but I think the duty is higher when it  
12 may implicate the due process rights of a defendant.

13 My position, I think the, that the statements of a  
14 judge are, that you've made are correct, that it is a  
15 discretionary situation for you to balance, and I think  
16 that's a balancing that has to be made. I would ask that  
17 if the Court did determine that the word sawed-off shotgun  
18 should not be used because of the similarity, that the  
19 Court consider using the word firearm rather than just  
20 weapon. And the reason I say that is that this is a  
21 firearm that he had. If -- the, the jury could decide  
22 that a weapon was brass knuckles or some other kind of  
23 item that could be used, and I do not want them to miss  
24 the point, which I think is the true statement of  
25 Mr. Turner's record, that he began messing with guns back

1 in 1998. And I think that they have a right at least to,  
2 to know that that is the crime for which he was convicted  
3 at that point. But if the Court wishes, if the Court is  
4 too, is concerned that the word sawed-off shotgun ring too  
5 many bells, then I would ask for the word firearm rather  
6 than weapon.

7 THE COURT: All right.

8 MR. MCEACHIN: Your Honor, the State would concede  
9 that, obviously the Court can choose to do that firearm is  
10 a more accurate description, and the State would be fine  
11 with that.

12 THE COURT: All right. And I'm literally -- I'm  
13 looking at something here. I was looking at the rule  
14 again, and, and let me go ahead and add this just for the  
15 record regarding the, the earlier crime that I talked  
16 about that was 12 years out, the filing a false police  
17 report. The rule also provides that, that evidence of a  
18 conviction more than ten years old, as calculated herein,  
19 is not admissible unless the proponent gives to the  
20 adverse party sufficient advanced written notice of intent  
21 to use such evidence to provide the adverse party with a  
22 fair opportunity to contest so, and, and I don't think  
23 that was done either. So---

24 MRS. PRATT: Are you saying that I had -- are you  
25 saying that I didn't give him notice of that, Your Honor?

1 THE COURT: I, I've just -- I've not been informed  
2 that you have. I don't know.

3 MRS. PRATT: Let me look at my Brady motion and see  
4 if it's in there cause I don't think I looked for that  
5 earlier either.

6 THE COURT: Well, it wouldn't -- doesn't sound like  
7 that's gonna be something that would just be in a general,  
8 general Brady motion. The rules says that you have to  
9 give the adverse party sufficient advance written notice  
10 of intent to such evidence. In other words, evidence  
11 beyond the ten years of that conviction. That's just  
12 another basis for my ruling. It's not the only basis.

13 MRS. PRATT: And I don't see it in my, my Brady  
14 motion and I know I did not---

15 THE COURT: With regards to the---

16 MRS. PRATT: Of course, I've received these Friday  
17 afternoon at five o'clock. So, that's part of the reason  
18 for that.

19 THE COURT: Sure. I'm gonna allow you to, to go into  
20 the prior conviction, but I'm going provide or limit that  
21 it be referenced simply as a prior conviction for an  
22 unlawful possession of a firearm, and, of course, as with  
23 all impeachment type evidence of this nature, you simply  
24 can, can ask if he has, in fact, been convicted and not go  
25 into any details regarding the conviction. It is simply

1 that. And, and just for the record also, in regards to my  
2 ruling, I was -- in looking a little further at the, at  
3 the Elmore case, which you passed up, in the footnote, in  
4 the case of United States versus Boyce, the Supreme Court  
5 seems to hold that the closer a prior conviction comes to  
6 the issues in a case or to the issue in a particular case,  
7 it seems to hold that the closer it is in nature to that  
8 the higher the prejudicial affect becomes, and, and it  
9 goes on to cite Boyce, the Boyce approach. It says it  
10 still requires that a meaningful balancing of the  
11 probative value and the prejudicial affect before  
12 admission of the prior conviction. Although the prejudice  
13 occasioned by the similarity of the prior crime, to the  
14 crime charged is, is removed.

15 It, it, it holds that, though that you have to make  
16 that, that test. You have to, you have to run that  
17 balancing test, and that's, and that's what I did in, in  
18 ruling on this matter is because the issue is, is so  
19 similar to the issue in this case that I believe it takes  
20 a jury away from simply valuing the credibility of the  
21 witnesses and, and, and goes further to actually holding  
22 that a, a witness may of conformed his conduct to the  
23 prior conduct simply because it existed.

24 Now, let's see, the Court even stated in, I think  
25 also in Elmore it mentions that one method to reduce the

1 prejudicial value is for the parties to stipulate that the  
2 jury be informed only that the defendant has a prior  
3 felony conviction without revealing the nature of, of the  
4 offense. And I'm, I'm not inclined to, to take it to that  
5 level.

6 If, if this were -- if, if this were a charge that,  
7 that Mr. Brayboy was dealing with, I would probably take  
8 it to that next step, to that level of simply allowing it  
9 to be used simply as a prior felony conviction. But  
10 anyway -- so, what we'll do is, is allow those crimes that  
11 we discussed to be used for impeachment purposes and  
12 appropriately for the limited use that, regarding  
13 credibility.

14 Anything else we need to take up then before we  
15 proceed?

16 MR. MCEACHIN: I believe that's it, Your Honor.

17 MRS. PRATT: I do have one motion, Your Honor.

18 THE COURT: Yes, ma'am.

19 MRS. PRATT: In reviewing over the lunch break the  
20 statements by both Mr. Turner and Mr. Brown, I have some  
21 concerns that they may not understand the limitations of  
22 404(b) and Lyle and they may try to bring in prior  
23 conversations that they may have had or that they may  
24 allege occurred between them and Mr. Brayboy about other  
25 incidents of criminal activity.

1 I would be making a motion at this time to keep any  
2 of those types of statements out under Lyle and 404(b) and  
3 ask that the, the solicitor caution them in regards to  
4 that. I understand that if there are statements in  
5 regards to this incident or transaction occurring in this,  
6 like that day of December the 6<sup>th</sup> and 7<sup>th</sup>, then I  
7 understand that those would be probably admissible.

8 THE COURT: Right.

9 MRS. PRATT: But if they tried to say, for example,  
10 we plan to---

11 THE COURT: We thought about hitting the McDonald's.

12 MRS. PRATT: ---hit a little lady on the head back  
13 three weeks ago or something that that would, since it's  
14 not the subject of a conviction, obviously it would be not  
15 admissible and I'd ask that cautioning instruction take  
16 place.

17 THE COURT: And I don't know what the statements are,  
18 but---

19 MR. MCEACHIN: Your Honor, the State would agree for  
20 the most part. Certainly anything I think that was said  
21 or done that evening I think should be admissible. The  
22 Co-Defendant Brown, Your Honor, also indicate that he was  
23 with Mr. Brayboy. I'm just trying to think through this  
24 real quick, Your Honor. I apologize.

25 (Pause.)

1           MR. MCEACHIN: I guess, Your Honor, I'm not, I'm not  
2   real sure if this is even a violation of Lyle as in a  
3   prior bad act. There is an indication that Co-Defendant  
4   Brown will testify that he was with Mr. Brayboy when the  
5   shotgun in question was purchased, and I don't know if  
6   that falls within 404 or not. I don't, I don't---

7           THE COURT: I don't---

8           MR. MCEACHIN: And that's what I---

9           THE COURT: You know, that's simply a fact statement.

10          MR. MCEACHIN: Okay. And, and if, if -- other than  
11   that I have no objection to keeping everything prior to  
12   this day out with---

13          THE COURT: Here, here -- the bottom line is this and  
14   I think this is what Mrs. Pratt was trying to say, and  
15   correct me if I'm wrong, and that simply is this, is  
16   conversations -- you know, if there were any conversations  
17   involving other crimes or doing something else, which --  
18   that would not be appropriate. You know, conversations  
19   about, about this, this act, you know, obviously that's  
20   different. But, but if they're talking about, you know,  
21   let's go hit, let's go hit this McDonald's over here.  
22   Well, no, we'll, we'll take care of McDonald's later on.  
23   Let's, let's, let's focus on what we're doing here  
24   tonight.

25          You see what I'm saying?



1           You know, that's, that's inappropriate.

2           MR. MCEACHIN: All right. Your Honor, with, with  
3           that being said, there will be testimony that night they  
4           originally intended to go to the I.G.A., and the I.G.A.  
5           was closed and locked, and they went to the Pizza Hut  
6           after that. I think that that's in the same course of  
7           conduct and I think that that should, that would be  
8           admissible.

9           THE COURT: Well, that, that was all done in the  
10          planning of what eventually occurred?

11          MR. MCEACHIN: That all happened within about, I  
12          would say well within a three hour period.

13          MRS. PRATT: Your Honor, if I may?

14          THE COURT: Y'all have the benefit of the statements.  
15          I haven't seen these things. I don't know what's in them.

16          MRS. PRATT: If, if I might, the statement that I was  
17          concerned about was a statement in the tape by Mr. Brown  
18          that he and Mr. Brayboy had been spending some time for a  
19          while planning prior robberies, and that statement I'm  
20          very concerned about keeping out because I don't think  
21          that it has anything to do with this incident. I would  
22          also say that any statement in regards to planning a  
23          robbery say at the I.G.A., which is I think what Mr. Brown  
24          says, correct, or is it---

25          MR. MCEACHIN: I think it was Mr. Turner who actually

1 said that.

2 MRS. PRATT: One of them, one of the two said  
3 something about an I.G.A. I believe. I have a problem  
4 with them bringing in some other statement about some  
5 other robbery. While I understand they can talk about the  
6 fact that they planned it, and I get the idea absolutely  
7 that if he purchased a gun with him, that's a factual  
8 statement. But I think the plans of something else would  
9 be more prejudicial than probative and have a lot more of  
10 the Lyle and 404(b) implications in this situation.

11 THE COURT: Well, again, y'all have the benefit of  
12 the statements. I don't. But if you're saying -- I mean  
13 if the statement is something along the lines of we, we,  
14 we had planned to go and, and actually we had planned to  
15 go rob the I.G.A., but when we got there it was closed and  
16 so we changed gears and went to the Pizza Hut, that would  
17 be appropriate. I'm not saying -- I mean I don't know  
18 what the statement is. But a statement of that nature  
19 would, would not be improper.

20 I agree with what you're saying, Mrs. Pratt, about  
21 planning prior crimes or other crimes.

22 MR. MCEACHIN: Your Honor, the State would agree with  
23 that as well. We don't have any intention, as a matter of  
24 fact, if Your Honor were, I'd be happy to admonish the  
25 co-defendants before they speak not to mention anything

1 about any prior acts prior to that evening. I'll be happy  
2 to do that. I will be happy to relay that. And, and  
3 also, Your Honor, just, just for the record, the  
4 co-defendants, both of them are represented. Both of them  
5 will have their attorneys up here with them.

6 THE COURT: I know Mr. Lawson represents one of them.  
7 Who represents the other one?

8 MR. MCEACHIN: Karen Parris.

9 THE COURT: Okay. All right. Go ahead and discuss  
10 what you want to discuss.

11 MRS. PRATT: Your Honor, I appreciate your ruling and  
12 I guess what we'll, I'll have to do is make my objections  
13 very quickly if something like that seems to be coming in.

14 THE COURT: Well, if they go down that road, yeah.

15 MRS. PRATT: You know, if they start to do that  
16 because I don't see in the statement that was the taped  
17 statement I was given from Mr. Turner any mention of that.  
18 So -- but I believe that that's something that, that might  
19 have been said. I think that -- I can't remember. Brown,  
20 it might have been Brown. But either way.

21 THE COURT: Okay.

22 MRS. PRATT: Thank you, Your Honor.

23 THE COURT: All right. We ready?

24 MR. MCEACHIN: I believe so, Your Honor.

25 MRS. PRATT: Defense is ready, Your Honor.

1 THE COURT: All right. Ms. Joe, ask them to join us.

2 MR. MCEACHIN: Your Honor, may we approach?

3 THE COURT: Yes, sir.

4 (Whereupon, a bench conference takes place out of the  
5 hearing of the jury while the jury is coming into the  
6 courtroom.)

7 MR. MCEACHIN: Your Honor, the State would call Robin  
8 John Turner to the stand.

9 THE COURT: Mr. Turner, if you would please---

10 ROBIN TURNER, being first duly  
11 sworn, testified as follows:

12 THE CLERK: Please be seated right there in the  
13 witness chair.

14 (Witness complies.)

15 THE CLERK: State your full name for the record.

16 THE WITNESS: My name Robin John Turner.

17 DIRECT EXAMINATION

18 BY MR. MCEACHIN:

19 Q All right. Mr. Turner, I'm gonna need you to speak  
20 up, speak slow, and speak audibly so everybody in the jury  
21 panel can hear you.

22 All right?

23 A Yes, sir.

24 Q All right. Mr. Turner, how old are you?

25 A I'm 29, sir.

1 Q And where do you live?

2 A Marion County.

3 Q Where in Marion?

4 A On Gibson Street, [REDACTED].

5 Q Okay. And Mr. Turner, is it correct in stating that  
6 you currently have pending charges with the U.S.

7 Attorney's Office?

8 A Yes, sir.

9 Q Okay. And have you also signed a plea, a plea  
10 agreement or a proffer agreement with their office?

11 A Yes, sir.

12 Q Okay. And can you relay to the ladies and gentlemen  
13 of the jury what the terms or the basic terms of that  
14 proffer agreement are?

15 A Yes, sir, the terms is if I cooperate with the Court  
16 and I get a ten year plea sentence for my federal charges  
17 cause I have federal charges.

18 Q And, and that, that's something that you entered into  
19 with the U.S. Attorney's Office?

20 A Yes, sir.

21 Q Now, for testifying here today in state court you're  
22 also receiving a benefit, isn't that correct?

23 A Yes, sir.

24 Q And what's that benefit?

25 A That my -- all state charges will be dismissed.

1 Q Okay. And that's in addition to you having to serve  
2 a sentence in Federal Court, correct?

3 A Yes, sir.

4 Q Okay. Now, Mr. Turner, we're here today because of  
5 an incident or the robbery that occurred on December the  
6 6<sup>th</sup>, 2008.

7 Are you familiar with that?

8 A Yes, sir.

9 Q Okay. Focusing on that day in particular, not  
10 necessarily the evening, but on that day, what were you  
11 doing on December 6<sup>th</sup>, 2008?

12 A Well, I was at my mom's residence. My sister was on  
13 the phone with her boyfriend at the time, Brad Brayboy.

14 Q Okay. And where's your mother's residence?

15 A [REDACTED] Gibson Street.

16 Q And that's where you---

17 A Marion, yes, sir.

18 Q So, that was where you lived?

19 You lived with your mother?

20 A Yes, sir.

21 Q Okay. Okay. Go ahead.

22 A And they was on the phone talking and she had came  
23 around and she said that Brad asked where I was and she  
24 put me on the phone with him. Me and him started talking  
25 to him and asking me could I come to Lake City.

Robin Turner - Direct examination  
by Mr. McEachin

281

1 Q Okay.

2 A I was like sure.

3 Q Now, now, you, you said your sister was on the phone  
4 with who?

5 A Brad Brayboy.

6 Q Okay. Now, are you -- do you know who the defendant  
7 in this case is?

8 A Yes, sir.

9 Q Okay. And who is that?

10 A Brad Brayboy.

11 Q Okay. So, you know him as Brad Brayboy?

12 A Yes, sir.

13 Q All right. So, you spoke to him on the phone and  
14 what did he ask you to do?

15 A To come to Lake City.

16 Q Okay. And once you received that phone call, what  
17 did you do?

18 A I went to look for a ride to Lake City.

19 Q Okay. And, again, how, how did this whole  
20 conversation transpire?

21 How did your sister know him?

22 A Now that I'm not quite sure of. She knew him for a  
23 little while, you know what I'm saying.

24 Q Okay. Were they in a relationship?

25 A I would say some, somewhat, yes, sir.

1 Q Okay. And, and, and he was originally on the phone  
2 with your sister and not you?

3 A Yes, sir.

4 Q Okay. So, once you, once you got a ride, where did  
5 you go?

6 A To Lake City and I got dropped off probably about two  
7 or three blocks behind I.G.A. in Lake City.

8 Q Okay. And you know which I.G.A. that is?

9 A The one across from Safeway. Safeway on, across 52.

10 Q Okay. And once you got dropped off there, where did  
11 you go?

12 A After we met up with Brayboy I went to this little  
13 club. It was like a little hole in the wall.

14 Q And where did you meet up with, with the defendant?

15 A On some street. He was standing on the corner of the  
16 street.

17 Q Okay. And, and how did you know he was gonna be  
18 there?

19 A Cause he was on the phone with my sister---

20 Q Okay.

21 A ---on the way there.

22 Q Okay. And was your sister in the car with you on  
23 your way there?

24 A Yes.

25 Q Okay. So, you were dropped off where he was?



Robin Turner - Direct examination  
by Mr. McEachin

283

1 A Yes, sir.

2 Q Okay. And then once you met up with him, where did,  
3 where did the two of y'all go?

4 A We walked to this little club, some little hole in  
5 the wall.

6 Q Do you know the name of it?

7 A No, sir.

8 Q Okay. Once y'all got to that club, what did y'all  
9 do?

10 A We met up with our other co-defendant, Brown.

11 Q You know him as Brown.

12 Did you -- have you ever met the other co-defendant  
13 before, Brown?

14 A No, sir.

15 Q You'd never met him before?

16 A No, sir.

17 Q That was the first time you'd ever met him?

18 A Yes, sir.

19 Q Okay. Once y'all met up with him, where did y'all  
20 go?

21 A We walked back to Brayboy house.

22 Q And, and where is that located?

23 A Probably about two blocks from the little club.

24 Q From the little club, and where -- do you know where  
25 the club is?

- 1 A No, sir, I'm not that familiar with Lake City.
- 2 Q Okay. Approximately how far would you say is it from
- 3 where you were dropped off and where you met up with
- 4 Brayboy?
- 5 A Ten to fifteen minutes.
- 6 Q Ten or fifteen minutes?
- 7 A Walking distance.
- 8 Q Walking distance?
- 9 A Yes, sir.
- 10 Q Okay. So, you said y'all left there and then y'all
- 11 went where?
- 12 A To his house, to his residence.
- 13 Q Okay. And did you know where that is?
- 14 A Not really. Like probably about a block, block and a
- 15 half from the club.
- 16 Q From the club?
- 17 A Yes, sir.
- 18 Q Okay. Once y'all were inside -- and, and who was
- 19 with you at this time when y'all left the club?
- 20 A It was me, Brayboy, and Brown.
- 21 Q How long did y'all stay at the club before you left?
- 22 A Probably about five minutes if that.
- 23 Q Okay. Now, did you go in the club?
- 24 A Yes, sir.
- 25 Q And, and, and Brayboy went in the club with you?

Robin Turner - Direct examination  
by Mr. McEachin

285

- 1 A Yes, sir.
- 2 Q And y'all got Brown?
- 3 A Yes, sir.
- 4 Q And then y'all left about five or ten minutes later?
- 5 A Yes, sir.
- 6 Q Okay. And you said when y'all left y'all went to
- 7 Brayboy's house.
- 8 What did y'all do when y'all got to Brayboy's house?
- 9 A We went in and started out -- some game playing on
- 10 the TV. Brayboy went in the back to his room. His son
- 11 being in there. He played with his son for a little while
- 12 and then he grab a backpack and then we left.
- 13 Q Okay. Now, when you say he played with his son and
- 14 he grabbed a backpack, who are you referring to?
- 15 A Brayboy.
- 16 Q Okay. What was Brown doing at this time?
- 17 A We was right there in the living room watching same
- 18 game, a game be on TV.
- 19 Q So, both of y'all were watching television?
- 20 A Yes, sir.
- 21 Q Okay. Did you know if anybody else was at the house
- 22 that night?
- 23 A Yes, sir.
- 24 Q Who was there?
- 25 A His father or his stepfather one.

1 Q Okay. You said something about his son.

2 A Yes, sir.

3 Q About how old is Brayboy's son?

4 A Probably about -- I'd say he about four, five.

5 Q Once y'all, once he picked up the backpack, did he  
6 come back in the den?

7 A Yes, sir.

8 Q I assume y'all were in -- were y'all in the living  
9 room?

10 A Yes, sir.

11 Q Okay. And once he came back in there, what did y'all  
12 do?

13 A We left.

14 Q Where did y'all go?

15 A We walked up the street probably about two blocks  
16 from his house to his grandma, grandmother house, some way  
17 he got a grandmother house that's vacant, nobody stays in  
18 it.

19 Q Okay. And, and you said that's about how far from  
20 his house?

21 A Probably about two, two or three blocks. It's about  
22 another ten or fifteen minutes.

23 Q Okay. Now, once you, once you got to the  
24 grandma's house, what did y'all do there?

25 A That's when he put the backpack in the little garage

1 underneath a little garage. He got a little room, some  
2 kind of a parking garage that got a little shelf, where a  
3 little door go to it.

4 Q Okay. Okay. And once y'all dropped it off, what did  
5 y'all do?

6 A We went to the store, Safeway, and they got them a  
7 beer.

8 Q Okay. And after y'all got a beer from the Safeway,  
9 where did y'all go?

10 A We went back to the street cause like, where the  
11 grandma stay at.

12 Q Okay. And where is that in relation to the safeway?  
13 How far is the Safeway from that?

14 A I say probably about two blocks. It's all in walking  
15 distance.

16 Q So, it's all -- all these places you're talking about  
17 are right there together?

18 A Yes, sir.

19 Q Okay. Now, once y'all walked back to the corner or  
20 back to the street by his grandmam's house, you said  
21 where -- did y'all stay in the street or did y'all go to  
22 the house?

23 A Stand on the corner at the stop sign.

24 Q Okay. What did y'all do while y'all were at the  
25 corner?

1 A We drunk the beer and talked.

2 Q Okay. After y'all -- did y'all ever leave the  
3 corner?

4 A Yes, sir, when we went back to his grandma's house.

5 Q Okay. So, y'all went back to his grandma's house?

6 A Yes, sir.

7 Q And what did y'all do when y'all went to his  
8 grandma's house?

9 A That's when we got the, the black toboggans, the  
10 skullies, and stuff.

11 Q Okay. And where were those?

12 A In the backpack in the little utility room up in the  
13 garage.

14 Q Okay. So, those were in the backpack?

15 A Yes, sir.

16 Q All right. And who all got one of those?

17 A Me, Brayboy, and Brown.

18 Q All three of y'all did?

19 A Yes, sir.

20 Q Okay. And once y'all got those at his grandmama's  
21 house, did y'all ever leave the grandmama's house?

22 A Yes, sir.

23 Q Where did y'all go?

24 A We started walking next to I.G.A.

25 Q All right. And, and what were y'all doing walking by

Robin Turner - Direct examination  
by Mr. McEachin

289

1 the I.G.A.?

2 A We was gonna rob I.G.A.

3 Q All right. And tell the jury about that.

4 A All right. There was so many officers coming from 52  
5 over there by Safeway. It's a little trailer park that's  
6 up on there. It's suppose to be real hot with the police.  
7 So, the managers was in there counting their money, and  
8 this was my whole purpose of suppose to been coming to  
9 Lake City without me knowing at the time, you know what  
10 I'm saying.

11 So, any way, make a long story short, it didn't, it  
12 didn't go down, you know what I'm saying. The managers  
13 done had jumped in the truck from I.G.A. and left, you  
14 know what I'm saying.

15 Q So, there was nobody at the I.G.A. at the time?

16 A No. So, after that we crossed 52 and started walking  
17 the back road. We went across 52, cross over one street,  
18 and started walking downtown Lake City.

19 Q Okay. All right. When you say y'all started walking  
20 towards downtown, the I.G.A., was this the I.G.A. kind of  
21 on the outskirts of town?

22 A It's right across from the Safeway.

23 Q Okay.

24 A I'm not too familiar now with Lake City.

25 Q Okay. How many times had you been to Lake City

1 before?

2 A That, that was my first time.

3 Q Okay. Now, once y'all started heading downtown, what  
4 did y'all have with you at that time?

5 A I had a pistol on me. Brayboy had a shotgun, a  
6 sawed-off shotgun with duct tape.

7 Q Where did you get the pistol from?

8 A I been hauling this pistol with me, you know what I'm  
9 saying, for my protection, you know what I'm saying. I  
10 always had a pistol, carry a pistol.

11 Q So, did you bring it with you from Marion?

12 A Yes, sir.

13 Q Okay. And what did you say Brayboy had with him?

14 A A sawed-off shotgun.

15 Q Now, where did he get that?

16 A From some friend house. He had like a house. He  
17 went and got it from a house.

18 Q Okay. At what point did he do that?

19 A Right before he went, we went got, we went to his  
20 grandmother's house.

21 Q Right before you went to grandma's house the first  
22 time or the second time?

23 A The first time.

24 Q Okay. Now, you said y'all were walking downtown.  
25 where were y'all headed?



1 A Just downtown and then he mentioned something about  
2 Pizza Hut. Now, I ain't with robbing no Pizza Hut, you  
3 know what I'm saying. You go to jail for messing with the  
4 big stores like that right there. But we kept on walking  
5 downtown, kept on walking. Then when we got downtown we  
6 walked into the McDonald's. We argued in the bathroom at  
7 the McDonald's. Then we came back cause when we first  
8 walked through the parking lot, when we got downtown, we  
9 seen a dark skinned dude in Pizza Hut counting the money,  
10 counting, you know what I'm saying, through the window.

11 Q Right.

12 A But when we went in Pizza Hut he wasn't in there, you  
13 know what I'm saying.

14 Q Okay. Now, once y'all went to McDonald's and used  
15 the bathroom, where did y'all go from there?

16 A Back across the street to the Pizza Hut parking lot.

17 Q Okay. And once y'all were in the Pizza Hut parking  
18 lot, where did y'all go?

19 A Inside Pizza Hut through the fence.

20 Q All right. Mr. Turner, I'm gonna have you step down  
21 here so we can show the jury exactly where that was.

22 (Witness comes down from the stand.)

23 Q All right. I'll have you stand right here and speak  
24 that way so the court reporter can take down everything  
25 you say.

1 All right. There's the Pizza Hut.

2 Where did y'all go in the Pizza Hut?

3 A We went through the back part.

4 Q All right. So, y'all went in through the -- was  
5 there a gate back there?

6 A Yes, sir, to the garbage containers and stuff. It's  
7 a little latch that's open. It just goes in the ground.  
8 You just lift it up and slide it open and the fence come  
9 open.

10 Q So, was the gate opened or closed when y'all got back  
11 there?

12 A Closed.

13 Q It was closed, but it didn't have a lock on it, is  
14 that what you're saying?

15 A It didn't have a Master lock. It had a lock, but it  
16 had kind of the lock that you lift up from the ground.

17 Q Okay. So, it had, it had one of those polls that it  
18 will slide down into a little hole in the ground and stay  
19 closed, but if you lift up the poll it's gonna open up?

20 A Yes, sir.

21 Q All right. So, y'all -- what did y'all do when y'all  
22 got to that back gate?

23 A Put our masks on and then we walked on in and we came  
24 in through the back door. The back door had a mop or  
25 something holding the back door.

- 1 Q who was with you at the time?
- 2 A Me, Brayboy, and Brown.
- 3 Q All three of y'all were there?
- 4 A Yes, sir.
- 5 Q Okay. And you said you walked, y'all walked in
- 6 through the, through the back gate?
- 7 A Yes, sir.
- 8 Q And then how long were y'all in that little back area
- 9 back there?
- 10 A Probably a minute, a minute and a half and then we
- 11 was in the building.
- 12 Q Okay. And what did y'all do while y'all were in that
- 13 back area that minute, minute and a half?
- 14 A Oh, putting on ski masks and stuff.
- 15 Q Okay. And what was everybody wearing that night?
- 16 A Black stockings, black toboggans, stocking cap, and
- 17 the little black gloves.
- 18 Q Okay. And what about apparel wise?
- 19 A Dark color.
- 20 Q Okay. All right. And now, can you show the jury
- 21 where y'all went into the Pizza Hut?
- 22 A Yes, we went in right here.
- 23 Q Okay. And once y'all went inside, who went where?
- 24 A I came right here and then it was a, a light skinned
- 25 dude tall, the victim there, behind me. The first one, he

1    came right up in here and the other one we put in here  
2    somewhere. Brayboy went somewhere. I don't know where he  
3    went. He went up off in the dining room somewhere.

4    Q    okay.

5    A    And I had the other victim back in the back there.

6    Q    okay. And when you went into the store, did any of  
7    y'all have any weapons?

8    A    Yes, sir, I had my pistol.

9    Q    And did anybody else have any weapons?

10   A    Yes, sir, Brayboy had his shotgun.

11   Q    All right. What about Quennell Brown, did he have  
12   any weapons?

13   A    No, sir.

14   Q    He didn't have a weapon on him?

15   A    No, sir.

16   Q    okay. All right. Once you went up to, to the victim  
17   that you went up to, what did you do?

18   A    I told him to get down on the ground, lay down on the  
19   floor.

20   Q    okay. And, and what were the other two defendants  
21   doing there with you?

22           What was Brayboy doing?

23   A    Brayboy had went and got the other one from I guess  
24   in the booth in this way cause he had him in the dining  
25   room over there. And when I, when I looked up, I seen him

Robin Turner - Direct examination  
by Mr. McEachin

295

1     bleeding because he had blood coming from his forehead.

2     So, I---

3     Q     who, who did you see bleed?

4     A     The other, the other victim.

5     Q     The other victim?

6     A     Yes, sir.

7     Q     Okay. And can you show the jury, again, show me  
8     which route each of y'all took in when y'all came in the  
9     back door?

10    A     When I came in I came around here like a counter or  
11    something right here.

12    Q     Right.

13    A     And the other victim I caught, he was standing up in  
14    here. The victim I caught, he was standing up in here.

15    Q     Right.

16    A     So, I made him come back over here at that time.  
17    Brayboy went around up in the dining room somewhere.

18    Q     Okay. And what about Brown, where was Brown?

19    A     Brown was up in this.

20    Q     All right. And which way did Brayboy go?  
21    what was the route he took?

22    A     I can't say for sure cause I know he just kept  
23    straight when he came back with a dude. So, he had to  
24    came from the dining room---

25    Q     All right.

1 A ---cause I had the other victim right here.

2 Q And you say he came back with an individual.

3 who was the individual he came back with?

4 A That man right there with the glasses.

5 MR. MCEACHIN: Okay. Please have the record reflect  
6 that the witness has identified Chappell McMillian as the  
7 individual that was brought back by his Co-Defendant  
8 Brayboy.

9 THE COURT: All right.

10 Q Okay. Once he brought him back, what did y'all do  
11 next?

12 A That's when he told them to get me naked and stuff.

13 Q Okay. And at any point in time did y'all take  
14 anything from them?

15 A The wallets and cell phone.

16 Q All right. Who took what?

17 A The wallets and the cell phone, I had the wallet and  
18 the cell phone.

19 Q From who?

20 A From both of them.

21 Q You had it from both of them?

22 A Yes, sir.

23 Q Okay. And how did you get those?

24 A When we, when they start stripping, they had put  
25 everything on, like I say, on the little counter right

Robin Turner - Direct examination  
by Mr. McEachin

297

1 here. After they put it on the counter, I grabbed it.

2 But I didn't grab it till somebody say something about the  
3 police and that's when I run out the back and stuff.

4 Q Okay. And who, who went out the back first?

5 A Me. I'm assuming me.

6 Q Okay. And when you went out the back, did you know  
7 where the other two defendants were at that time?

8 A No, sir.

9 Q You just, you just ran?

10 A Yes.

11 Q Okay. And once you went out the back, where did you  
12 go?

13 A Straight across the fence.

14 Q You jumped the fence?

15 A Yes, sir.

16 Q And then once you went over the fence, where did you  
17 run?

18 A Straight across the field.

19 Q So, you went -- can you show the jury on there where  
20 you went?

21 A Yes, sir, came out the back door, jumped the fence.  
22 Sonic right here. I turned and went straight across the  
23 street.

24 Q Okay.

25 A The officer was coming from the bottom of the fence

1 right here.

2 Q Okay. And when you saw that officer, what did you  
3 do?

4 A Kept running.

5 Q Okay. And did you run across 52?

6 A Yes, sir.

7 Q Okay. And once you crossed 52, where did you go?

8 A About, probably about two blocks to the, to the, to  
9 the right and then I got caught with, by another officer.

10 Q You were caught by another officer?

11 A Yes, sir.

12 Q Okay. And once you were caught by that officer --  
13 well, let me, let me take a step back a minute.

14 what happened with the gun you had with you?

15 A I tossed it.

16 Q Where did you throw it?

17 A There's some woods. There's some woods. Just threw  
18 it as far as it would go.

19 Q Before or after you got across 52?

20 A After.

21 Q Okay. And then you say you were caught.

22 All right. Did you throw anything else other than,  
23 other than the gun?

24 A No.

25 Q All right. Once you were caught, what happened to



Robin Turner - Direct examination  
by Mr. McEachin

299

1 you?

2 A I was arrested, arrested and they brought me back to  
3 the scene.

4 Q Okay. What happened when you got brought back to the  
5 scene?

6 A The officer pulled his car right up in here. Another  
7 officer had Brown in the car up in here somewhere and  
8 stood out. He kept on searching the place an ambulance  
9 came. Apparently that was for one of the victims. Then  
10 after that we was transported to Lake City Police.

11 Q Okay. When you were transported, were y'all  
12 transported -- were you -- and, and who was, who was the  
13 other guy that was there that was caught?

14 A Brown.

15 Q Brown.

16 Were, were the two of y'all transported together or  
17 separate?

18 A Separate.

19 Q In two separate cars?

20 A Yes.

21 Q At any time did you have an opportunity to speak with  
22 him, Brown?

23 A No, sir.

24 Q At any time during that whole thing?

25 A No, sir.

1 Q Okay. What about after it happened?

2 A No, sir.

3 Q Okay. When you ran out of the Pizza Hut, you said  
4 you didn't see either of the other two co-defendants,  
5 correct?

6 A Yes, sir, at first I did -- I seen them, I seen one  
7 of them take off when I jumped the fence coming out.

8 Q Right. Right.

9 A And that's, that's the only time.

10 Q When you said you saw them take off, was that inside  
11 or outside the fence?

12 A It's still inside the fence.

13 Q Okay.

14 A We went out that place for storage.

15 Q Okay. So, you saw them -- did you, did you ever,  
16 once you started running, did you ever turn around and  
17 look back?

18 A No, not after I started running.

19 Q You just went straight?

20 A Yes.

21 Q So, you don't know what happened to the other two  
22 co-defendants?

23 A No.

24 Q Okay. You can have a seat back up there.

25 A All right, sir.

Robin Turner - Direct examination  
by Mr. McEachin

301

1 (Witness returns to the stand.)

2 Q Once you got to the police station that night, what  
3 happened when you were there?

4 A They started interrogating me, asking me all kind of  
5 questions and stuff.

6 Q All right. Who, who, who asked you the questions?

7 A The officer right there.

8 Q Okay. And before he asked you any questions, did he  
9 go over the Miranda rights with you?

10 A Yes, sir.

11 Q And did you agree to talk to him?

12 A Yes, sir.

13 Q Okay. And what did you tell him that night?

14 A What happened.

15 Q Okay. And who did you say went into the Pizza Hut  
16 that night?

17 A Me, Brayboy, and Brown.

18 Q Okay. And who did you say was carrying the shotgun  
19 that night?

20 A Brayboy.

21 Q Mr. Turner, before we get too much further into it,  
22 you do have a criminal record, isn't that correct?

23 A Yes, sir.

24 Q And just need to let the jury know about that.

25 In 1998 you were convicted of unlawful possession of

1 a firearm, correct?

2 A Yes, sir.

3 Q And then in 2000 you had a common law robbery, is  
4 that correct?

5 A Yes, sir.

6 Q All right. In 2006 you had two charges, possession  
7 of stolen vehicle and receiving stolen goods, is that  
8 correct?

9 A Yes, sir.

10 Q Okay. Mr. Turner, to the best of your ability, have  
11 you told the jury what you recall happened on the evening  
12 of December 6<sup>th</sup>, 2008?

13 A Yes, sir.

14 Q All right. Thank you very much. Please answer any  
15 questions the defense attorney may have for you.

16 CROSS-EXAMINATION

17 BY MRS. PRATT:

18 Q Okay. Good afternoon, Mr. Turner.

19 A Good afternoon.

20 Q Mr. Turner, at the present time you have a contract  
21 with the government, don't you?

22 A Yes, ma'am.

23 Q You have a contract that has been signed by you and  
24 your attorney and the U.S. Attorney, Carrie Fisher, is  
25 that right?

Robin Turner - Cross-examination  
By Mrs. Pratt

303

- 1 A Yes, ma'am.
- 2 Q And that's a federal charge that you have?
- 3 A Yes, ma'am.
- 4 Q Okay. And that federal charge that you have is for a  
5 weapons charge, correct?
- 6 A Yes, ma'am.
- 7 Q And in your plea agreement it says that, doesn't it?
- 8 A Yes, ma'am.
- 9 Q Okay. And that charge actually occurred May 3<sup>rd</sup>,  
10 2008, before this incident, correct?
- 11 A Yes, ma'am.
- 12 Q All right. Possession of a firearm, right?
- 13 A Yes, ma'am.
- 14 Q Okay. And in that contract, that deal that you have  
15 with the government, you state that you will cooperate  
16 with the Twelfth Circuit Solicitor's Office as well?
- 17 A Yes, ma'am.
- 18 Q Okay. So, part of your deal in getting the  
19 stipulated time, which is less time than what you might  
20 get, right, is to cooperate here, correct?
- 21 A Yes, ma'am.
- 22 Q And if you hadn't made this deal, you'd be standing,  
23 you'd be sitting over here, wouldn't you?
- 24 A Yes, ma'am.
- 25 Q And you'd be looking at possibly doing time on this

1 charge and possibly federal charge too, right?

2 A Yes, ma'am.

3 Q Okay. So, this has a big benefit for you, doesn't  
4 it?

5 A Yes, ma'am.

6 Q Okay. You getting up here on the witness stand and,  
7 and saying these things about Brad Brayboy, it's got a  
8 benefit for you, correct?

9 A No, ma'am, I'm just here to tell the truth.

10 Q Okay. So, if this deal was not in place you wouldn't  
11 be up there?

12 A Yes, ma'am, I still would be here.

13 Q You would?

14 A Yes, ma'am.

15 Q Oh, okay. All right. So, you would do this without  
16 the deal?

17 A Yes, ma'am, cause I'm telling the truth.

18 Q So, should we tell the U.S. Attorney's Office that  
19 you don't want this deal?

20 A No, ma'am.

21 Q Oh, no, I better not do that, right?  
22 Okay.

23 MR. MCEACHIN: Objection, Your Honor.

24 THE COURT: Sustained.

25 Q Let's talk about your prior record.

Robin Turner - Cross-examination  
By Mrs. Pratt

305

1           You have a criminal history going back ten years from  
2   the date of this incident, right?

3   A     Yes, ma'am.

4   Q     Unlawful possession of a firearm?

5   A     Yes, ma'am.

6   Q     Common law robbery?

7   A     Yes, ma'am.

8   Q     And then possession of stolen goods?

9   A     Yes, ma'am.

10   Q     And possession or receiving stolen goods and  
11   possession of a stolen vehicle, right?

12   A     Yes, ma'am.

13   Q     So, you've got a record for firearms, robbery, and  
14   stealing, right?

15   A     Yes, ma'am.

16   Q     Okay. Spreading out over ten years, right?

17   A     Yes, ma'am.

18   Q     Okay. Including this charge that you have a deal  
19   with the U.S. Attorney's Office on, right?

20   A     Yes, ma'am.

21   Q     Okay. Now, the night of the incident you went --  
22   once you were caught by Officer Brown -- and whereabouts  
23   were you caught?

24           Do you remember?

25   A     Sort of on down below the apartment complex or the

1 motel or something. Not too far. About two blocks, a  
2 block and a half.

3 Q Okay. Near a bunch of woods, right?

4 A Somewhat.

5 Q Woods where you tossed the pistol?

6 A Yes, ma'am.

7 Q Okay. Woods where you tossed other things, right?

8 A No, ma'am.

9 Q Oh, you didn't toss anything else?

10 A No, ma'am.

11 Q Oh, okay. I thought you told the assistant solicitor  
12 that you had both wallets?

13 A Yes, ma'am.

14 Q So, were you found with both the victim's wallet?

15 A Yes, ma'am.

16 Q You were?

17 A Yes, ma'am.

18 Q Okay. All right. You were found near the woods,  
19 right?

20 A Yes, ma'am.

21 Q And as soon as you got in the car with Officer Brown  
22 or at least I should say with Officer Thompson, who picked  
23 you up, you started trying to cut a deal, didn't you?

24 A No, ma'am.

25 Q Isn't it true that you started talking to the other



Robin Turner - Cross-examination  
By Mrs. Pratt

307

1 officers, including Chief Brown and Assistant Chief  
2 Williams, trying to tell, tell them your story and cut  
3 some kind of a deal?

4 A No, ma'am.

5 Q You didn't say to Detective Gainey in your statement  
6 like I been saying to the whole, like I been saying to the  
7 other officers, like I told all the rest of the officers,  
8 you know what I'm saying, the captain or whoever he  
9 thought I been lying, you know what I mean?

10 You didn't talk to all those other people trying to  
11 cut a deal?

12 A I talked to them, but I wasn't trying to cut a deal  
13 with them.

14 Q You weren't?

15 Well, why would you talk to them?

16 A Cause they were trying to act like I know where I was  
17 when I tell them I wasn't from Lake City. That's what  
18 that was about. All -- they were trying to get me to tell  
19 them specific places in Lake City when I couldn't.

20 Q Oh, so, it had nothing to do with the robbery?

21 It had to do with whether you knew where you were?

22 A Yes, ma'am, cause I was explaining to them how the  
23 whole situation had took place. They wanting me to call  
24 the name of the street, the name of the little club we  
25 been too. I couldn't name that.

1 Q So, when you said, like I told all the rest of the  
2 officers, you know what I'm saying, the captain or whoever  
3 he thought I been lying, you know what I mean, the whole  
4 time I been telling the truth, you were only talking about  
5 where you were and not your involvement in the robbery?

6 A Yes, ma'am.

7 Q Okay. All right. And right from the beginning,  
8 right from the beginning you tried to tell them that you  
9 weren't up there in Lake City for any kind of robbery, is  
10 that right?

11 A Yes, ma'am.

12 Q But that's not the truth, is it?

13 A No, ma'am.

14 Q Okay. You planned to rob in Lake City?

15 A No, ma'am, that's what---

16 Q You brought, you brought a pistol to Lake City?

17 MR. MCEACHIN: Your Honor, I'd, I'd ask that he be  
18 allowed to answer the question once she's asked it.

19 MRS. PRATT: I'm sorry. I'm sorry.

20 THE COURT: Yes, ma'am.

21 Q If I could repeat then where I was before I, I  
22 interrupted him and I apologize for interrupting you. You  
23 said -- I was saying you planned to come to Lake City to  
24 plan to be in a robbery, is that right?

25 A No, ma'am.

1 Q So, you just brought a pistol?

2 A Like I was telling you, I always carry a pistol for  
3 my protection, my own personal protection. That's why so  
4 many guns on my record. Only cause of my own protection,  
5 you know what I'm saying. That's why I carry guns.

6 That's why I had a gun on me that night. Me leaving out  
7 of Marion coming to a place I don't know nothing about,  
8 anything could of happened to me, you know what I'm  
9 saying. Somebody could of tried to rob me. That's my  
10 only protection. That's the only reason I carry a gun.

11 Q You got a license for that gun?

12 A No, ma'am.

13 Q All right. And if you're not planning to do  
14 something wrong, you don't need to have a gun, do you?

15 A For my protection.

16 Q You carry a gun to church?

17 A For my protection.

18 Q At church?

19 A Yes, ma'am.

20 Q Really?

21 A Yes, ma'am.

22 Q And in your statement to Detective Gainey you told  
23 him that you didn't have any kind gun, right?

24 A Yes, ma'am.

25 Q And you told him that you didn't, didn't have

1 anything to do with this robbery, that you heard something  
2 about the police and I believe your phrase is I hauled,  
3 excuse me, ass, is that right?

4 A Yes, ma'am.

5 Q That's what you told Detective Gainey?

6 A That's right.

7 Q So, you lied to Detective Gainey?

8 A Yes, ma'am.

9 Q Okay. You lied to him.

10 You say it so matter of factly, did it, didn't it  
11 bother you that you were lying to the police?

12 A No, ma'am, cause I already been caught.

13 Q So, you just told him that you had nothing to do with  
14 anything?

15 A Yes, ma'am.

16 Q But you sure were willing to blame it on Brad and on  
17 Mr. Brown, right?

18 A No, ma'am, on all, on all of us. All this was  
19 been -- all of us been there. Brad just didn't get  
20 caught. He must of been hiding in the garbage car or  
21 something. That's the only way he didn't get caught. But  
22 all of us been there. He the one that called me. I don't  
23 know Brown.

24 Q Must of been hiding in the garbage can.

25 You think that's, that's something that happened?

Robin Turner - Cross-examination  
By Mrs. Pratt

311

1 A It's possible.

2 Q Cause the fact is you jumped over a fence and you got  
3 caught, and Mush, Mr. Brown, laid down by a dumpster and  
4 he got caught, and you're trying to say though that Brad  
5 was there, but just somehow he didn't get caught, is that  
6 right?

7 A Oh, he was there.

8 Q The fact of the matter is, Mr. Turner, is you had the  
9 shotgun and you went in first and you hit Chappell  
10 McMillian and you took his wallet?

11 A Yes, I took his wallet.

12 Q And---

13 A But I didn't hit him.

14 Q You took Mr. McMillian's wallet, but you didn't hit  
15 him?

16 A And the victim can also verify that I had a pistol.

17 Q And---

18 A I did state that I had a pistol, ma'am. I wasn't the  
19 one with the shotgun, no, ma'am.

20 Q Well, now how's the victim gonna know if you had some  
21 kind of mask over your face?

22 A He know whether or not -- I guarantee they'll know  
23 whether it was a shotgun or a pistol.

24 Q Okay. But what I'm suggesting and saying to you is  
25 you're the one that had the shotgun?

- 1 A Oh, no, ma'am.
- 2 Q You didn't have the shotgun?
- 3 A No, ma'am. No, ma'am.
- 4 Q You had a pistol?
- 5 A Yes, ma'am.
- 6 Q But you did take the wallets?
- 7 A Yes.
- 8 Q Two wallets?
- 9 A Yes, ma'am.
- 10 Q And you took cell phones?
- 11 A Yes, ma'am, one cell phone, yes, ma'am.
- 12 Q Okay. And you said you didn't have a shotgun?
- 13 A No, ma'am.
- 14 Q And Mr. Brown didn't have a pistol?
- 15 A No, ma'am.
- 16 Q All right. All right. Do you remember telling
- 17 Detective Gainey in that statement the little dude, the
- 18 little short dude I was telling you about put the wallet
- 19 in my jacket, I ain't know when he put it in my jacket?
- 20 A Yes, ma'am, I remember that.
- 21 Q So, you lied to Detective Gainey, didn't you?
- 22 A Yes, ma'am, I admit that, yes, ma'am.
- 23 Q Okay. You felt the hand go in my pocket, but by that
- 24 time I was running out, right?
- 25 That's what you said to Detective Gainey?

Robin Turner - Cross-examination  
By Mrs. Pratt

313

1 A Yes, ma'am.

2 Q You said you didn't do anything, I couldn't do  
3 anything, I just hauled ass, right?

4 A Yes, ma'am, that's what I said.

5 Q Okay. And it didn't bother you to do that?  
6 That came right out of your mouth to Detective  
7 Gainey, didn't it?

8 A Yes, ma'am.

9 Q And all the way through this statement, isn't it true  
10 that five or six times you said I'm being real with you,  
11 man, I ain't lying, I tell you the truth, I'm being real  
12 with you?

13 A Yes, ma'am.

14 Q Over and over you tell him you're telling the truth,  
15 but you're lying, aren't you?

16 A Yes, ma'am.

17 Q So, are you lying then or were you lying now?

18 MR. MCEACHIN: Objection, Your Honor, argumentative.

19 THE COURT: Sustained.

20 Q Are you lying now, Mr., Mr. Turner?

21 A No, ma'am.

22 Q Okay. Cause it makes a, a difference for you to tell  
23 this story today, doesn't it?

24 A I'm here to tell the truth.

25 Q Okay. Did you tell Detective Gainey that Mush,

1 Mr. Brown, had on dark jeans?

2 A Yes, ma'am.

3 Q Okay. And did you describe Brad as having a hoodie  
4 with some fur around the head?

5 A I don't recall that.

6 Q You said you did not tell him that?

7 A No, I say I don't recall that. I didn't say I didn't  
8 tell him. I say I don't recall that.

9 Q Well, then what was Brad wearing?

10 A A ski mask just like the rest of us. Black hats, he  
11 the one give us the hats with 8-4-3 on it.

12 Q But you did not tell Detective Gainey about a hoodie  
13 with some fur around it?

14 A No, ma'am, I didn't say I didn't tell him. I say I  
15 can't recall that.

16 Q Would it surprise you that nobody saw someone with a  
17 hoodie and fur around it?

18 MR. MCEACHIN: Objection, Your Honor. It's been  
19 asked and answered multiple times.

20 MRS. PRATT: That's a different question, Your Honor.

21 THE COURT: It is, it is a different question.  
22 Overruled.

23 MRS. PRATT: Thank you, Your Honor.

24 A Ma'am?

25 Q Would it surprise you that no one say a hoodie with



Robin Turner - Cross-examination  
By Mrs. Pratt

315

1 fur around it?

2 A No, ma'am.

3 Q Okay. Did you tell Detective Gainey that Brad's  
4 homeboy worked at Pizza Hut?

5 A Yes, ma'am, that's what he told me.

6 Q Oh, he did?

7 A Uh-huh. (Affirmative).

8 Q He tried to say -- you, you're saying that, that  
9 Brad said of these victims was his homeboy?

10 A Yes, ma'am, he told me that on the way walking.

11 Q All right. And when you got there and went in, the  
12 door was propped open with a mop, right?

13 A Yes, ma'am.

14 Q Okay. And several times in your statement to  
15 Detective Gainey you said you did not have a gun, right?

16 A Yes, ma'am.

17 Q Okay. What did you do with the pistol?

18 A I threw it.

19 Q Where?

20 A In the woods.

21 Q You throw other things in the woods too?

22 A No, ma'am.

23 Q You sure about that?

24 A Yes, ma'am.

25 MRS. PRATT: Court's indulgence.

1 (Pause.)

2 Q Mr. Turner, do you recognize this jacket?

3 A Yes, ma'am.

4 Q Is that your jacket?

5 A Yes, ma'am.

6 Q Pretty big jacket, isn't it?

7 A Yes, ma'am.

8 Q You could hide a shotgun under there, couldn't you?

9 A Yes, ma'am.

10 Q But you're saying you didn't have a shotgun, is that  
11 right?

12 A Yes, ma'am.

13 Q And it's got deep, deep pockets, doesn't it?

14 A Yes, ma'am.

15 Q Lots of room to put all kinds of things in, is that  
16 right?

17 A Yes, ma'am.

18 MRS. PRATT: Court's indulgence for a moment.

19 (Pause.)

20 MRS. PRATT: I have nothing further. Thank you.

21 MR. MCEACHIN: Briefly, Your Honor.

22 THE COURT: Yes, sir.

23 REDIRECT EXAMINATION

24 BY MR. MCEACHIN:

25 Q Mr. Turner, how many people did you go into with that

Robin Turner - Redirect examination  
by Mr. McEachin

317

1 night at the Pizza Hut?

2 A Three of us.

3 Q Three subjects?

4 A Subjects---

5 MRS. PRATT: Your Honor, I object to this if it's  
6 not---

7 THE COURT: Hold on.

8 MRS. PRATT: ---if it's not related to my  
9 cross-examination.

10 MR. MCEACHIN: It certainly does, Your Honor.

11 THE COURT: You, you've talked about who all was in  
12 the Pizza Hut on several occasions.

13 MRS. PRATT: I'm sorry, Your Honor. I didn't mention  
14 numbers. That was my concern.

15 THE COURT: All right. Overruled.

16 MR. MCEACHIN: Thank you, Judge.

17 Q And who were those three people?

18 A Me, Brayboy, and Brown.

19 Q Okay. How many people were in the Pizza Hut when you  
20 got in there?

21 A Two, two victims behind me.

22 Q And what were all of y'all wearing?

23 A I was wearing blue jeans with black and red shirt  
24 with a black jacket. Brayboy was wearing dark colored  
25 clothes. Mush was wearing some black Dickies with some

1 white and blue Air Forces.

2 Q And one last thing, Mr. Turner.

3 A Yes, sir.

4 Q Do you see Brad Brayboy in this courtroom today?

5 A Yes, sir.

6 Q And where is he?

7 A Sitting right there.

8 MR. MCEACHIN: Please have the record reflect that  
9 the witness has identified the defendant, Your Honor.

10 THE COURT: All right.

11 MR. MCEACHIN: No further questions.

12 THE COURT: So noted.

13 Anything further, ma'am?

14 MRS. PRATT: No, Your Honor.

15 THE COURT: Thank you very much, sir. You may step  
16 down.

17 All right. You may call your next witness.

18 MR. MCEACHIN: Thank you, Judge.

19 The State will call Lieutenant Roger Tilton to the  
20 stand.

21 THE COURT: All right.

22 MR. MCEACHIN: It may take us a second to get him.

23 THE COURT: All right.

24 MR. MCEACHIN: He's out in the hall.

25 THE COURT: Sure.

Roger Tilton - Direct examination  
by Mr. McEachin

319

1 ROGER TILTON, being first duly sworn,  
2 testified as follows:

3 THE CLERK: Please be seated and state your full name  
4 for the record.

5 THE WITNESS: Roger Tilton.

6 DIRECT EXAMINATION

7 BY MR. MCEACHIN:

8 Q Okay. Lieutenant Tilton, what's your occupation?

9 A I am a lieutenant investigator for the City of Lake  
10 City.

11 Q And how long have you been employed with the City of  
12 Lake City?

13 A Ten years.

14 Q Okay. Prior to your employment with the City of Lake  
15 City, where did you work?

16 A I've worked for the Florence County Sheriff's Office  
17 and the Coward Police Department.

18 Q Okay. What is the total amount of time you have  
19 spent serving in, in a law enforcement capacity?

20 A I've been in law enforcement for 13 years.

21 Q And what, what was your position or role back in  
22 December of 2008?

23 A I am the supervisor over the detective unit for the  
24 City of Lake City.

25 Q Okay. And did you have occasion to have any

1 involvement with an armed robbery that took place on  
2 December 6<sup>th</sup>, 2008?

3 A Yes, sir, I interviewed one of the suspects the  
4 following day.

5 Q And which suspect was it that you interviewed?

6 A Quennell Brown.

7 Q Okay. In speaking with Suspect Brown, can you kind  
8 of just tell the jury how that process goes?

9 A I took him into the interview room, turned the  
10 recorder on, Mirandized him, he signed his waiver of  
11 rights form stating he did not want an attorney, and then  
12 I questioned him about the robbery and, and his part and  
13 any other part anybody else played in it.

14 Q So, he, he waived his rights?

15 A Yes, sir.

16 Q And he gave you a statement?

17 A He did.

18 Q Other than your taken a statement from that  
19 individual, did you have any other involvement with the  
20 case?

21 A I had no other involvement in it.

22 MR. MCEACHIN: Okay. Beg the Court's indulgence for  
23 just a moment, Your Honor.

24 (Pause.)

25 Q Lieutenant Tilton, what is the procedure at the Lake

Roger Tilton - Direct examination  
by Mr. McEachin

321

1 City Police Department for when there are multi defendants  
2 arrested at one time as far as transportation and contact  
3 with one another in that concern?

4 MRS. PRATT: Your Honor, I'm gonna object to this  
5 question unless he can speak to what actually happened in  
6 this case.

7 MR. MCEACHIN: Your Honor, I can ask him what the  
8 procedure was.

9 THE COURT: Overruled. He can ask him what procedure  
10 they followed, and then he can discuss whether or not his  
11 procedure conformed with that.

12 MRS. PRATT: Thank you, Your Honor.

13 Q The procedure is that if there's more than one  
14 defendant they're transported separately and they're  
15 placed in separate cells so they can not speak or see each  
16 other during their jail time.

17 Q And do you have any personal knowledge of, of how  
18 that was handled in this case?

19 A I was not there that night, no.

20 Q Okay. Thank you very much. Please answer any  
21 questions the defense may have for you.

22 CROSS-EXAMINATION

23 BY MRS. PRATT:

24 Q Is it Detective Tilton?

25 A Yes, ma'am

1 Q Detective Tilton, in your incident report you state  
2 that this was another statement by Mr. Brown.

3 Was this the second statement by Mr. Brown?

4 A There was a, there was a first statement from me, but  
5 the second statement that he made to law enforcement he,  
6 he made, he made one to Detective Gainey the night prior.  
7 But I wasn't there for that one.

8 Q Okay. All right. So, Mr. Brown's second statement  
9 is the one that you took?

10 A Yes, ma'am.

11 Q Okay. And tell me about the Lake City Police  
12 Department.

13 What is the holding area like?

14 A We have a sally port that the patrol car pulls into.  
15 We have two gates on each side that close that they're  
16 taken into the booking area where there's a booking desk,  
17 a fingerprint machine, and a camera where we photograph  
18 them, book them in into the computer, and then  
19 fingerprinting them, and then we have three male cells and  
20 two female cells.

21 Q And cells are -- the three male cells are all along  
22 the same wall?

23 A We have one large cell commonly known as the drunk  
24 tank for most police departments, and then we have two  
25 separate cells on the other side of the hallway.



Roger Tilton - Cross-examination  
by Mrs. Pratt

323

1 Q All right. And if two people were booked at the same  
2 time, wouldn't they come into booking together?

3 Isn't that possible?

4 A It's possible, yes, ma'am.

5 Q Okay. And you don't anything about this particular  
6 incident?

7 A I wasn't there that night, no, ma'am.

8 Q Thank you very much.

9 THE COURT: Anything further?

10 MR. MCEACHIN: No redirect, Your Honor.

11 THE COURT: Thank you very much, sir. You may step  
12 down please.

13 MR. MCEACHIN: Your Honor, the State would ask that  
14 Lieutenant Tilton be released from his subpoena.

15 MRS. PRATT: I have no objection, Your Honor.

16 THE COURT: All right. You're free to go, sir.  
17 You may call your next witness.

18 MR. MCEACHIN: May we approach, Your Honor?

19 THE COURT: Yes, sir.

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

22 THE COURT: All right. All right. Ladies and  
23 gentlemen, we're gonna take a short break this afternoon  
24 here. If you need anything in the back let us know.  
25 Please have no conversation about the trial and we'll

1 start back in about ten minutes.

2 Everyone else remain seated.

3 Ladies and gentlemen, you're excused.

4 (Whereupon, the following takes place outside the  
5 presence of the jury.)

6 THE COURT: All right. Be in recess about ten  
7 minutes.

8 MR. MCEACHIN: Thank you, Judge.

9 (Whereupon, a short break was taken.)

10 THE COURT: All right. Are we ready to proceed,  
11 solicitor?

12 MR. MCEACHIN: The State is ready, Your Honor.

13 THE COURT: Mrs. Pratt, defense ready?

14 MRS. PRATT: Defense is ready, Your Honor.

15 THE COURT: All right. Ms. Joe.

16 (Whereupon, the following takes place within the  
17 presence of the jury.)

18 THE COURT: All right. Solicitor, you may call your  
19 next witness, sir.

20 MR. MCEACHIN: Thank you, judge.

21 The State would call Quennell Brown to the stand.

22 THE COURT: Mr. Brown, if you would please come  
23 around here to the stand, sir.

24 QUENNEL BROWN, being first duly  
25 sworn, testified as follows:

Quennell Brown - Direct examination  
By Mr. McEachin

325

1 THE CLERK: Please be seated in the witness chair.

2 (Witness complies.)

3 THE CLERK: State your full name for the record.

4 THE WITNESS: Quennell Astonia Brown.

5 DIRECT EXAMINATION

6 BY MR. MCEACHIN:

7 Q Mr. Brown, how old are you?

8 A Twenty-five.

9 Q All right. Mr. Brown, I'm gonna ask you speak up so  
10 everybody in the jury panel can hear you. Okay. Just  
11 lean up close to that microphone.

12 How old are you?

13 A Twenty-five.

14 Q Okay. And where, where do you live?

15 A In Lake City.

16 Q Whereabouts in Lake City?

17 A Park Avenue.

18 Q Okay. And before we get too far into it, as, as part  
19 of your testifying here today, I made you a plea offer, is  
20 that correct?

21 A Yes, sir.

22 Q And what's that offer?

23 A Attempted robbery, armed robbery.

24 Q So, I'm dropping your armed robbery charge to  
25 attempted armed robbery, correct?

1 A Yes, sir.

2 Q And I'm also dropping the kidnapping charge, is that  
3 correct?

4 A Yes, sir.

5 Q Okay. And also before we get too far, I just want to  
6 talk about your criminal record briefly.

7 You had an assault and battery high and aggravated  
8 nature back in 2005, is that correct?

9 A Yes, sir.

10 Q Okay. Now, Mr. Brown, the reason we're here today is  
11 because of the incident that took place on the armed  
12 robbery that took place on December 6<sup>th</sup>, 2008.

13 Are you familiar with that?

14 A Yes, sir.

15 Q And do you know the defendant in this case?

16 A Yes, sir.

17 Q And who's the defendant?

18 A Larry Brayboy.

19 Q And do you see Mr. Brayboy here in the courtroom  
20 today?

21 A Yes, sir.

22 Q And where is he seated?

23 A To my left.

24 Q What's he wearing?

25 A A white dress shirt with a tie.

Quennell Brown - Direct examination  
By Mr. MEachin

327

1 Q Okay. And can you point him out for us?

2 A Yes, sir.

3 Q Please do so.

4 A Yes.

5 MR. MCEACHIN: Okay. Please have the record reflect  
6 that the witness has identified Larry Brayboy, Your Honor.

7 THE COURT: All right. So reflected.

8 Q All right. All right. And, Mr. Brown, how do you  
9 know the defendant?

10 A We use to hang together.

11 Q How long have you known him?

12 A About ten years, eight years.

13 Q Okay. And you said -- how long have you lived in  
14 Lake City?

15 A All my life.

16 Q Okay. And when did you first meet Mr. Brayboy?

17 A I moved to -- in the early 90's.

18 Q Okay. So, you've know him since the early 90's?

19 A Yes, sir.

20 Q Okay. Would you consider yourself friends?

21 A Yes, sir.

22 Q Okay. Let's take it back to December the 6<sup>th</sup>, 2008.  
23 What were you doing on that day?

24 A I was at my house for a little while up until like  
25 the early afternoon.

1 Q Okay. And what did you do in the early afternoon?

2 A I decided to go to the Brayboy residence.

3 Q Okay. And when you went to his residence, who was  
4 there?

5 A Him and his family.

6 Q Okay. About what time was this?

7 A Maybe six o'clock, 6:30.

8 Q Okay. And what did you do when you were there?

9 A Just talk, did the usual, just asked what he was  
10 doing.

11 Q Okay. And did you leave, did you leave his house?

12 A Yes, sir.

13 Q Where did you go?

14 A Me and Brayboy went to eat at this little juke joint  
15 over on Greer Avenue.

16 Q Okay. So, you and, and the defendant went to a  
17 little juke joint you say called the Eagle's Nest?

18 A Yes, sir.

19 Q Okay. Does that have another name?

20 Does it go by something else?

21 A Yeah, Manigo's.

22 Q Okay. And once y'all got there, what did y'all do?

23 A We sat outside for a little while and just talked  
24 until he decided he had to go somewhere.

25 Q Okay. And do you know where he had to go?

Quennell Brown - Direct examination  
By Mr. McEachin

329

- 1 A No, sir.
- 2 Q Okay. And what did you do when he said he had to go?
- 3 A I stayed at the Eagle's Nest.
- 4 Q Okay. And how long did you stay there?
- 5 A At least two hours.
- 6 Q Okay. And did you see the defendant again that
- 7 night?
- 8 A Yes, sir.
- 9 Q When did you see him?
- 10 A He returned back with Co-Defendant Turner.
- 11 Q Okay. And when you, when they came back, what, what
- 12 did y'all do when they came back?
- 13 A We left and went to his house.
- 14 Q How long, how long do you think the period of time
- 15 was when they got back to the Eagle's Nest to when y'all
- 16 left the Eagle's Nest?
- 17 A It was two hours and when we came back we went, we
- 18 left straight out and we came.
- 19 Q So, right when he came back with Turner y'all left?
- 20 A Yes, sir.
- 21 Q Okay. And when y'all left there where did you go?
- 22 A To his house. To Brayboy's house.
- 23 Q Okay. And once you -- when y'all got to Brayboy's
- 24 house, what did y'all do when y'all got there?
- 25 A We sat -- I sat in the front room, me and Turner,

1 with his father while he went in his room.

2 Q Okay. And what were y'all doing in the front room?

3 A Watching TV.

4 Q Okay. And do you recall what was on TV?

5 A A football game.

6 Q Okay. And where was Brayboy at this time?

7 A In his room.

8 Q Okay. How long did y'all stay at Brayboy's house?

9 A Twenty to thirty minutes.

10 Q Okay. And when y'all left Brayboy's house, where did  
11 y'all go?

12 A We walked to the Safeway on Ron McNair Boulevard.

13 Q Okay. What, what did y'all do when y'all left the  
14 Safeway?

15 A Walked to a place at the corner of Vermont Street.

16 Q Okay. Are you familiar with Mr. Brayboy's  
17 grandmother?

18 A Yes, sir.

19 Q Do you know where she lives?

20 A Yes, sir.

21 Q Where does she live?

22 A At the corner of Wilmont Street and Cash Avenue.

23 Q Okay. So, how far away is that from where y'all  
24 were?

25 A Probably less than a quarter mile probably.



Quennell Brown - Direct examination  
By Mr. McEachin

331

1 Q Okay. Now, when y'all were standing on the corner,  
2 what did y'all do?

3 What were y'all doing on the corner?

4 A Just out there talking.

5 Q And how long do you think y'all stayed at the corner?

6 A Probably 45 minutes.

7 Q Okay. And what did y'all do when y'all left the  
8 corner?

9 A I left him, him and Turner at the corner and I walked  
10 across Ron McNair Boulevard.

11 Q Okay. And where were you going?

12 A To my friend girl's house.

13 Q Okay. And where does Chris live?

14 A On Morris Street.

15 Q On Morris Street.

16 And beg the Court's indulgence for just a moment,  
17 Your Honor.

18 (Pause.)

19 Q Mr. Brown, I'm gonna have you step down and stand  
20 right here and make sure you keep your voice up so the  
21 court reporter can get everything.

22 All right. I'm gonna let you take a look at that map  
23 for a minute and kind of get your bearings, and I want you  
24 to tell us if, is Chris' house is on that street, and if  
25 it's not, where it would be.

- 1 A This is Morris Street.
- 2 Q Make sure you keep your voice up.
- 3 why don't you show the jury where Morris Street is?
- 4 A This is Morris Street right here.
- 5 Q And, and is that the street that Chris lives on?
- 6 A Yes, sir.
- 7 Q Okay. So -- and make sure you keep your voice up.
- 8 How about stand on this side for me? Make sure all the
- 9 jurors can see. Stand right there.
- 10 All right. Now, you said you went to Chris' house.
- 11 what did you do when you got to Chris' house?
- 12 A I knocked on the door, but no one answered the door.
- 13 Q Okay. And where did you go when you left Chris'
- 14 house?
- 15 A I start walking toward home taking a route of going
- 16 toward uptown.
- 17 Q Okay. Can you kind of show the jury how you started
- 18 heading that way?
- 19 A Yes, sir, I took this right right here. This is
- 20 Westover Street. I took the sand road to here.
- 21 Q I need you to speak up just a little bit.
- 22 A I went past these trailer park and this is a trailer
- 23 park right here.
- 24 Q Okay.
- 25 A Kept straight. This is, this is Main Street. Right

Quennell Brown - Direct examination  
By Mr. McEachin

333

1 here is the south side of Main Street. It's a gas  
2 station, Pizza Hut, and I started walking through the  
3 parking lot.

4 Q Now, I want to make sure you see -- what street is  
5 that right there?

6 A This one right here is Ron McNair Boulevard.

7 Q Okay. So, now show the jury again where you were  
8 going.

9 A I was going -- I left this -- okay. Chris house be  
10 this way.

11 Q Okay.

12 A Okay. So, I start walking. This right here would be  
13 the sidewalk right here.

14 Q Right.

15 A So, I made a left on Westover Street and took it all  
16 the way down to Marion Street, and once I got to Marion  
17 Street I took a right up to Ron McNair Boulevard. This  
18 right here should be the gas station. I just took right  
19 through there right to the gas station.

20 Q Okay. And where were you headed?

21 A To my house.

22 Q Okay. And where is your house located on that map if  
23 you can kind of show us and it may not be on there?

24 A This is the road I usually take, which is Kelly  
25 Street.

1 Q Okay.

2 A This road right there at the end of Kelly Street by  
3 the police department.

4 Q Okay. And that's, that's the route you normally take  
5 to your house?

6 A I don't see my street on here though.

7 Q Okay. So, on that route, did you, where did you pass  
8 by on your way to your house?

9 A I passed by the Pizza Hut. I passed by the gas  
10 station.

11 Q Okay. You can have a seat on the stand at this time,  
12 Mr. Brown.

13 (Witness returns to the stand.)

14 Q When you were passing the Pizza Hut and the gas  
15 station, what, if anything, did you notice or who, if  
16 anyone, did you notice?

17 A I recognized the Co-Defendant Turner.

18 Q Okay. And, and taking a step back, had you ever met  
19 Co-Defendant Turner before that night?

20 A No, sir.

21 Q That was the first time you'd ever met him?

22 A Yes, sir.

23 Q Okay. And the first time you had seen him and that  
24 was at the Eagle's Nest?

25 A Yes, sir.

Quennell Brown - Direct examination  
By Mr. McEachin

335

1 Q Okay. And where did you see Co-Defendant Turner?

2 A Standing at the gate at the Pizza Hut.

3 Q Okay. I'm gonna have you step down one more time for  
4 me, Mr. Brown.

5 (Witness comes down from the stand.)

6 Q And make sure everybody on the jury can see you.

7 Okay. Stand right there and make sure you speak up so  
8 the court reporter can hear you.

9 All right. As you're walking by, where did you see  
10 Co-Defendant Turner standing?

11 A Right here. This the -- the kind of drawing kind of  
12 different a little, but it be like right here over by the  
13 fence.

14 MR. MCEACHIN: Okay. Beg the Court's indulgence for  
15 just a moment, Your Honor.

16 (Pause.)

17 Q Mr. Brown, I'm gonna show you what's been marked as  
18 State's Exhibit 30.

19 Do you recognize that?

20 A Yes, sir.

21 Q Okay. And what is that?

22 A That's the area where I saw him at.

23 Q Okay. And could you show that to the jury?

24 A (Witness complies.)

25 Q All right. Can you show the jury where Mr. Turner

1 was standing?

2 A Right there.

3 Q Okay. And once you saw him -- I'll take that back  
4 from you.

5 Once you saw him, what did you do?

6 A I walked up to him.

7 Q Okay. And what happened next?

8 A I saw a pistol and the shotgun.

9 Q All right. Who had the pistol?

10 A Mr. Turner.

11 Q who had the shotgun?

12 A Mr. Brayboy.

13 Q All right. And what did that shotgun look like?

14 A Brown shotgun with duct tape on the end.

15 Q Okay. And had you ever seen that shotgun before?

16 A Yes, sir.

17 Q When?

18 A A week -- probably a week or two before that when he  
19 first got it.

20 Q When who, when who first got it?

21 A Brayboy.

22 Q You were with him when he first got the shotgun?

23 A Yes, sir.

24 Q Okay. Once you saw him behind the fenced in area  
25 with those weapons, what did you do?

Quennell Brown - Direct examination  
By Mr. McEachin

337

1 A I decided to walk off.

2 Q Okay. And as you're walking off, what did you do?

3 A Turned back around.

4 Q And what did you do when you turned around?

5 A Walked to the fence.

6 Q Walked back to the fence?

7 A Yes, sir.

8 Q Where, where -- when you say you walked to the fence,  
9 where did you walk to?

10 A It was open. This fence right here was opened at the  
11 time. I just walked right through it.

12 MR. MCEACHIN: Please let the record reflect he's  
13 holding up State's Exhibit No. 30.

14 Q So, you walked through that fence?

15 A Yes, sir.

16 Q So, you walked in the area behind the Pizza Hut?

17 A Yes, sir.

18 Q Okay. And once you walked in there, what did y'all  
19 do?

20 Were they still in there?

21 A Yes, sir.

22 Q And what did y'all do?

23 A Mr. Turner and Brayboy in the store and the victims  
24 was laying on the ground.

25 COURT REPORTER: I can't hear him.

1 A I noticed Brayboy and, and Turner with them, had the  
2 victims laying on the ground.

3 Q Okay. Now, when you walked in the back fence area,  
4 where did y'all go into the store?

5 A In the back exit.

6 Q Okay. That's where y'all went in.

7 Okay. And did you see the two of them go in ahead of  
8 you?

9 A No, sir.

10 Q You did not?

11 A No.

12 Q Okay. When you walked inside, what did you see?

13 A I saw the, my two co-defendants, Brayboy and Turner,  
14 and the two victims.

15 Q Okay. And where were they?

16 A In the back area, which---

17 Q Can you show the jury on there where they were?

18 A It will be in this area right here.

19 Q Okay. And what was going on at that time when you  
20 saw them?

21 A They had the hostage spread out on the floor at gun  
22 point.

23 Q Okay. And at that time did Brayboy have anything in  
24 his hands?

25 A Yes, he had a weapon.



Quennell Brown - Direct examination  
By Mr. McEachin

339

- 1 Q what weapon did he have in his hands?
- 2 A A shotgun.
- 3 Q okay. And did Turner have anything in his hands?
- 4 A Yes, sir.
- 5 Q what did he have in his hands?
- 6 A A pistol.
- 7 Q okay. And you're sure about that?
- 8 A I'm positive.
- 9 Q okay. Now, what happened after you saw this?
- 10 A I heard the police say freeze, which was Detective
- 11 Gainey.
- 12 Q okay. Where were you, where were you when you heard
- 13 that?
- 14 A Right here.
- 15 Q okay. And had you come back out into the yard at
- 16 all?
- 17 A Yes, sir.
- 18 Q okay. And once you heard Detective Gainey, what did
- 19 you do?
- 20 A I stopped walking in that direction back to where I
- 21 heard the voice at.
- 22 Q okay. At any time did you have a weapon?
- 23 A No, sir.
- 24 Q okay. Grab a seat.
- 25 (Witness returns to the stand.)

1 THE COURT: All right. I'm gonna, I'm gonna make a  
2 deal with the lawyer. I'm not gonna allow another witness  
3 off the stand if they cannot speak loudly.

4 MR. MCEACHIN: Yes, sir.

5 THE COURT: We've got to have a record and Miss Reed  
6 is having a very difficult time.

7 MR. MCEACHIN: I understand, Your Honor. I  
8 apologize.

9 Q Mr. Brown, I'm gonna show you what's been marked as  
10 State's Exhibit No. 1.

11 Do you recognize that?

12 A Yes, sir.

13 Q What is that?

14 A It's the shotgun.

15 Q And who had this shotgun?

16 A Brayboy.

17 Q You're positive about that?

18 A Yes, sir.

19 Q Any question in your mind about that?

20 A No, sir.

21 Q Okay. Now, once you were laying down on the ground  
22 in the back, what happened with you?

23 A I layed down and all of a sudden I heard a shotgun  
24 fell against the ground.

25 Q Okay. Where did hear that?

1 A On my right side, which would be like directly in  
2 front of the walk-in or the storage area or the storage  
3 building.

4 Q Okay. By the storage building?

5 A Yes, sir.

6 Q Did you, at anytime, see your Co-Defendants Turner or  
7 Brayboy after you had come out of the store?

8 A Yes, sir, I saw them jumping the fence.

9 Q Okay.

10 A Turner was first and Brayboy was second.

11 Q Okay. And, of course, once they got over the fence  
12 did you see them again?

13 A No, sir.

14 Q Okay. Now, what happened next as far as your, as far  
15 as your concern?

16 A I guess they gave chase to the two co-defendants.

17 Q Now, I don't, I don't want to know what happened with  
18 the co-defendants. I want to know what happened with you.  
19 what happened as far as you are concerned?

20 A Oh, I was arrested.

21 Q Okay. And once you were placed -- you were placed in  
22 handcuffs?

23 A Yes, sir.

24 Q Once you were placed in handcuffs, where were you  
25 taken?

- 1 A To the police car.
- 2 Q Okay. And were you put in the police car?
- 3 A Yes, sir.
- 4 Q Okay. And what, what else happened to you that  
5 night?
- 6 A I was interviewed by the two detectives.
- 7 Q You remember who interviewed you?
- 8 A Yes, sir, Detective Gainey earlier that night, and  
9 the next morning Detective Tilton.
- 10 Q Detective Tilton.
- 11 And was anybody with Detective Tilton when you were  
12 interviewed that next day?
- 13 A Yes, sir, Detective Gainey.
- 14 Q Okay. So, they were both with you the next day?
- 15 A Yes, sir.
- 16 Q And did you give them a statement?
- 17 A Yes, sir.
- 18 Q And did they read you your rights?
- 19 A Yes, sir.
- 20 Q And did you still agree to give them a statement?
- 21 A Yes, sir.
- 22 Q Okay. And after that, had you -- was there any other  
23 involvement with you whatsoever?
- 24 A No, sir.
- 25 Q Mr. Brown, thank you so much for your testimony.

Quennell Brown - Cross-examination  
by Mrs. Pratt

343

1 Please answer any questions the defense may have for you.

2 A Yes, sir.

3 CROSS-EXAMINATION

4 BY MRS PRATT:

5 Q Okay. Mr. Brown, you're known as Mush, right?

6 A Correct.

7 Q And you have known Brad Brayboy and his family for  
8 ten years?

9 A Yes, ma'am.

10 Q Okay. And there's no question that you've been  
11 offered a deal by the State, correct?

12 A Yes, ma'am.

13 Q All right. And you're gonna be pleading to a lesser  
14 included offense of attempted armed robbery, correct?

15 A Correct.

16 Q All right. And they're not gonna press the  
17 kidnapping charge on you, right?

18 A Correct.

19 Q And when you do that plea, you're gonna expect the  
20 solicitor to say that you complied with the deal, right?

21 A Yes, sir. Yes, ma'am. Excuse me.

22 Q That's okay.

23 You're gonna expect him to say good things about you,  
24 not say bad things about you, correct?

25 A He can say what he want to.

1 Q All right. But you'd be mad?

2 It wouldn't be what you expect if he got up there and  
3 said you that deserved the maximum or something different,  
4 correct?

5 A Yes, ma'am.

6 Q Okay. All right. So, you're expecting something  
7 different out of this, and you already also have a  
8 criminal record for assault and battery of a high and  
9 aggravated nature?

10 A Yes, ma'am.

11 Q Okay. And that's just from 2005?

12 A Yes, ma'am.

13 Q All right. Now, it seems to me that, that you're  
14 saying that the night of this incident you're basically  
15 just walking by, is that right?

16 A Yes, ma'am.

17 Q Okay. You weren't -- you didn't get with them, you  
18 didn't put on any masks, you didn't do anything, is that  
19 what you're saying?

20 A Yes, ma'am.

21 Q So, you were not with Brad and Mr. Turner putting on  
22 masks or putting on gloves or anything?

23 A No, ma'am.

24 Q Okay. All right. You're just walking around town  
25 from Chris' house back to the Pizza Hut?

Quennell Brown - Cross-examination  
by Mrs. Pratt

345

1 A Well, actually that's the shortest route, two miles  
2 from Chris house.

3 Q Okay. You didn't go to the McDonald's with them?

4 A No, ma'am.

5 Q You didn't go talk -- okay. And you're just walking  
6 by and you see "Artist" as you call him, Mr. Turner,  
7 right?

8 A Yes, ma'am.

9 Q Okay. So, you see, see Artist and you say that he's  
10 at the back gate?

11 A Yes, ma'am.

12 Q Okay. And you decide you're gonna walk by?

13 A Yes, ma'am.

14 Q Okay. But then you turn around and you come back,  
15 don't you?

16 A Yes, ma'am.

17 Q And you went into that Pizza Hut, didn't you?

18 A Yes, ma'am.

19 Q Now, isn't it true that you went in with a pistol  
20 into that Pizza Hut?

21 A No, that's not true.

22 Q It's not true that you went in with a pistol.

23 You didn't go in right after Robin Turner with a  
24 pistol and use it on one of these victims?

25 A That's not true.

1 Q You didn't have -- you didn't go in.

2 Did you come in and come around the area of the  
3 register over to the restrooms?

4 A No, ma'am.

5 Q You didn't go anywhere around there?

6 A No, ma'am.

7 Q And, in fact, in your testimony, isn't it true that  
8 you say that you just basically stood at the door?

9 A Correct.

10 Q So, if you were standing at the door -- I'll bring  
11 this to you. You're standing at the door. Point to me  
12 where you're standing.

13 A (Witness complies.)

14 Q And you never came in any further?

15 A No, ma'am.

16 Q So, the victims couldn't have seen you there, right?

17 A Not with their face laying to the ground they  
18 couldn't.

19 Q Okay. So, it would be your belief that the victims  
20 didn't see you at all, is that right?

21 MR. MCEACHIN: Objection, Your Honor.

22 Q Let me say it this way. Did you---

23 THE COURT: Sustained.

24 Q You believe you were in a place where you could not  
25 be seen?



quennell Brown - Cross-examination  
by Mrs. Pratt

347

1           You believe?

2     A     Well, actually if they, if they head was turned they  
3     would of saw me. They scared. And so they had left out.

4     Q     Okay. How many times have you actually given a  
5     statement to the police?

6           How many times have you talked?

7     A     Just once.

8     Q     Just one time.

9     A     (Witness nods affirmatively.)

10    Q     Well, that's not exactly true, is it?

11           Isn't it true that you talked to Detective Gainey  
12    right there on the scene?

13    A     No, ma'am, I didn't talk to Detective Gainey at the  
14    scene.

15    Q     You didn't?

16    A     I mean yeah, Detective Gainey.

17    Q     Okay.

18    A     He just read, read my rights and asked me who I was.  
19    That was all.

20    Q     Yeah, you talked to him on, at the scene, right?

21    A     Well, just he asked me my name and stuff like that.

22    Q     Okay. And you talked to him and Detective Tilton the  
23    next day?

24    A     Correct.

25    Q     And since that time you've talked to people from the

1 state, haven't?

2 You've talked to police officers?

3 A No, ma'am.

4 Q Have you talked to the solicitor?

5 A Just once.

6 Q Okay. So, you've talked to people about your  
7 testimony today, haven't you?

8 A Yes, ma'am.

9 Q All right. And when you were talking to Detective  
10 Gainey the first time, did he say something to you like  
11 Mush, where's Brad, we know Brad's here?

12 Did he say something like that to you?

13 A I tell him he might be at home. But I couldn't give  
14 him no specific as to where he be at, where he be at.

15 Q Okay. Cause no question Detective Gainey expected  
16 Brad to be with you, right?

17 He expected that?

18 A What you mean what he expected?

19 Q I'll change the question. I'll change the question.  
20 Never mind.

21 In your first statement to Detective Gainey did you  
22 tell him that you had been walking by the Pizza Hut and  
23 that you had seen Artist behind the trash can?

24 A Yes, ma'am.

25 Q And that they went in, but you didn't go in at all?

Quennell Brown - Cross-examination  
by Mrs. Pratt

349

1 A Not at that moment.

2 Q Okay. But you were found inside the fence, weren't  
3 you?

4 A Yes, ma'am.

5 Q And then you changed your statement when you talked  
6 to Detective Tilton and Detective Gainey, didn't you?

7 A No, ma'am.

8 Q In that statement didn't you admit that you went in?

9 A Yes, ma'am, I, I always admit that I went in.

10 Q And that they told you that you were gonna get some  
11 money out of this?

12 A Yes, it was offered to me.

13 Q Were you afraid of Artist?

14 A No, ma'am.

15 Q I mean he's a big guy with a gun, right?

16 A Yes, ma'am.

17 Q Would you do what Artist said if he told you to do  
18 something?

19 A No, ma'am.

20 Q You wouldn't?

21 When you say that you saw both of these people jump  
22 the fence, how quickly did that happen?

23 A Right when Brayboy say that the police was out there,  
24 and right after I heard Detective Gainey say for me to get  
25 down.

1 Q I'll rephrase my question.

2 How -- you saw them -- you say, said I believe that  
3 you saw them jump the fence?

4 A Yes, ma'am, as I was backing up toward, toward, once  
5 when I heard Detective Gainey. That's when both of them  
6 ran. I had seen Artist jump the fence and I also caught a  
7 glimpse when Brayboy was climbing the fence with the gun  
8 in his hand.

9 Q Okay. And it was like bam, bam, right?

10 A Yes, ma'am.

11 Q Bam, bam, no time in-between?

12 A No, ma'am.

13 Q All right. Are you aware that Mr. Turner said that  
14 you put the wallet in his pocket?

15 MR. MCEACHIN: Objection, Your Honor. Pitting  
16 witnesses.

17 THE COURT: Sustained.

18 MRS. PRATT: I withdraw the question. I apologize,  
19 Your Honor.

20 Q Did you take any of the goods that belonged to these  
21 victims?

22 A No, ma'am.

23 Q You didn't touch anything?

24 A No, ma'am.

25 Q Didn't touch a wallet?

Quennell Brown - Cross-examination  
by Mrs. Pratt

351

1 A No, ma'am.

2 Q Didn't touch a cell phone or a set of keys?

3 A No, ma'am.

4 Q Nothing.

5 And I don't know if I'm clear on this, are you saying  
6 that when you first saw Robin Turner or Artist that he was  
7 outside the gate at the Pizza Hut---

8 A Right.

9 Q ---or at the back door of the Pizza Hut?

10 A He was at the gate at Pizza Hut.

11 Q Okay. And you followed him into the back door?

12 A Well, actually they was already in when I came out.  
13 When I turned around on my own, they was already in the  
14 store.

15 MRS. PRATT: Court's indulgence.

16 (Pause.)

17 Q Did you tell Detective Tilton and Detective Gainey  
18 that you were promised some money?

19 A Yes, ma'am.

20 Q When did that conversation take place?

21 A Right there on the scene.

22 Q Well, didn't you just say that they were already in  
23 the Pizza Hut when you backed up and came back around?

24 A Yes, ma'am.

25 Q So when did you have this conversation with them

1 then?

2 A Right when I came back, when I turned around on my  
3 own, when I walked through the door.

4 Q But I thought you said that they were already inside  
5 when you poked your head in and they had the victims down  
6 on the ground?

7 A Yes, ma'am, but right then that's when I was offered  
8 it. If I would of helped they would of give it to me.

9 Q So, while the victims are on the ground, you're  
10 saying that that's when they what, turned to you and said  
11 we'll give you some money?

12 A Yes, ma'am, I was asked to help by Brayboy.

13 Q I see.

14 And you're saying that both victims were on the  
15 ground at that spot that you pointed to between the make  
16 table with the, with the defendants over them?

17 A Yes, ma'am.

18 Q And you're saying actually you were not the guy with  
19 the pistol?

20 A Correct.

21 Q And you are saying that Artist was not the guy with  
22 the shotgun?

23 A Correct, he didn't have the shotgun.

24 Q Okay. And you did not have a mask on?

25 A No, ma'am.

Quennell Brown - Cross-examination  
by Mrs. Pratt

353

1 Q So, you came around where the victims could of seen  
2 you, but you didn't have a mask on?

3 A Yes, ma'am.

4 Q All right. I've got no questions.

5 MR. MCEACHIN: No further questions. Thank you,  
6 Mr. Brown.

7 THE COURT: Thank you, sir. You may have a seat  
8 please.

9 MR. MCEACHIN: Your Honor, I ask that he be released  
10 from his subpoena.

11 THE COURT: Sure.

12 You may call your next witness.

13 MRS. PRATT: Your Honor, I would ask that he not be  
14 released from his subpoena.

15 THE COURT: He's, he's not released to go anywhere.

16 MRS. PRATT: Okay.

17 MR. MCEACHIN: Your Honor, the State would call  
18 Officer Danny Graham.

19 THE COURT: All right. Officer Graham.

20 MRS. PRATT: May we approach?

21 THE COURT: Yes, ma'am.

22 (Whereupon, a bench conference was held in the  
23 presence of the jury, but out of the hearing of the jury.)

24 DANNY GRAHAM, being first duly  
25 sworn, testified as follows:

1 THE CLERK: Please be seated and state your full name  
2 for the record.

3 THE WITNESS: My name is Danny Graham.

4 DIRECT EXAMINATION

5 BY MR. MCEACHIN:

6 Q Officer Graham, what's your occupation?

7 A I work as a lead sergeant at the Lake City Police  
8 Department.

9 Q And how long have you been employed with the Lake  
10 City Police Department?

11 A Three years, three and a half years approximately.

12 Q Okay. Prior to working with the Lake City Police  
13 Department, who did you work with?

14 A Florence County Sheriff's Office, Lynchburg Police  
15 Department, and Lake City Police Department. This is my  
16 second time with Lake City.

17 Q Okay. How many total years of law enforcement  
18 experience do you have?

19 A A little over 14.

20 Q A little over 14.

21 Okay. Can you please tell the jury what some of the,  
22 the different things you do as a, as a sergeant in the  
23 Lake City Police Department?

24 What's, what are the different roles you have as a  
25 sergeant?



Danny Graham - Direct examination  
by Mr. McEachin

355

1 A One of my primary roles I answer some service calls.  
2 I have two officers that work under me. I supervise them.  
3 We work any things as far as wrecks, criminal domestic  
4 violence calls, any kind of calls for service. I am in  
5 charge of scheduling as far as any activities. Many  
6 things for service calls anything that, that will involve  
7 police involvement.

8 Q Okay. And as, as part of that, as service, service  
9 calls and stuff, do you serve warrants on individuals?

10 A Yes, I do.

11 Q Okay. And are you familiar with the armed robbery  
12 that took place on December 6, 2008?

13 A Yes, I am.

14 Q And did you have any involvement with that case?

15 A Not the initial case. The back part of it.

16 Q Okay. Can you explain to the jury what you, what you  
17 mean by that?

18 A Okay. The initial case happened which involved two  
19 other officers, Sergeant Thompson and Corporal Crosby. My  
20 involvement was in that I did the arresting of one of the  
21 persons that was named or believed they had participation  
22 in that robbery.

23 Q Okay. Who did you arrest?

24 A Larry Brayboy.

25 Q Okay. And what I want to talk to you about a little

1 bit is the circumstances surrounding that arrest.

2 A Okay.

3 Q And how did you first come to find out or, or what  
4 are the circumstance surrounding how you found out about  
5 Mr. Brayboy?

6 A I was on duty I think it was the first of July,  
7 January of this year. I was dispatched, received a call,  
8 I took the call from a female.

9 Q Okay. And you can't say what anybody else told you.

10 A Okay.

11 Q Okay.

12 A Okay.

13 Q Okay. As a result of that phone call, what did you  
14 do?

15 A The impression I got was the subject was located in  
16 the county. So, I got assistance from a county officer.  
17 I checked to see was the person in the N.C.I.C., which he  
18 was. The information I got, verified that information, it  
19 was correct, and there was a description of a car, cars at  
20 the, at the house.

21 Q Okay. You can't, you can't say anything about what  
22 somebody else told you.

23 A All right.

24 Q Upon speaking to the county officials, what did you  
25 do?

Danny Graham - Direct examination  
by Mr. McEachin

357

1 A I went---

2 Q Where did you go?

3 A I went to Eugene Street.

4 Q Okay. And once you got there, what did you do?

5 A I got consent to go inside the house.

6 Q Okay. And who did you receive consent from to go  
7 inside the house?

8 A The person, the owner of the house at the time, Mrs.  
9 Burgess.

10 Q Okay. And please relay to the jury how y'all went  
11 into the house.

12 what was, what was the procedure y'all used?

13 A We knocked on the door, asked the person was this the  
14 Burgess residence. She said yes. She indicated that she  
15 was the owner of the house. Deputies asked her could we  
16 have consent to come inside the house and search for a  
17 certain individual. She gave the consent and we went  
18 through each room until we got to a room that was locked.

19 Q Okay. How long would you say you spent inside the  
20 house before you came to that locked room?

21 A Three to five minutes.

22 Q Okay. And how many, how many officers were there?

23 A I think it was -- I know it was myself and two other  
24 officers, two county officers.

25 Q Okay. So, you and, and two sheriff deputies?

1 A That's correct.

2 Q Okay. And you say you came to this room that the  
3 door was locked.

4 What did you do when you came to that room?

5 A We knocked on the door and identified ourselves.

6 Q Okay. So, once you're, you're inside the house, you  
7 knocked on the door, and what did you say?

8 What was your exact language?

9 A The county officer said this is Florence County  
10 Sheriff's Office.

11 Q Okay. And once that occurred, what, what was the  
12 next thing that happen?

13 A We just went in the room and I'd say 20 or 30 seconds  
14 later, a black male individual opened the door.

15 Q Okay. So, you're saying 20 to 30 second later he  
16 came and opened the door?

17 A That's correct.

18 Q Okay. When he opened the door, did you, did you get  
19 a pretty good look at the room?

20 A Yes, sir.

21 Q How big was the room?

22 A I'd say 12 by 12, 10 by 12, somewhere in there.

23 Q Okay. So, was it as big as this circular area right  
24 here in the courtroom?

25 A A little smaller.

Danny Graham - Direct examination  
by Mr. McEachin

359

1 Q Okay. And the individual that opened the door, do  
2 you know who that individual was?

3 A I think it was the son of the lady that, that allowed  
4 us to search the house.

5 Q Okay. And when he opened the door, what did he do?

6 A He stepped back and let us come in.

7 Q Okay. And how was that room configured?

8 I mean is there a bed in there?

9 How's it configured?

10 A It was two bedrooms I believe. One directly at the  
11 door and one that he was, got to open the door and let us  
12 enter. At the far end to the left there was a closet.

13 Q Okay. Now, you said they're two bedrooms. They're  
14 two---

15 A Two beds.

16 Q Two beds in the room?

17 A Correct.

18 Q Twin beds?

19 A Yes, sir.

20 Q Okay. And then you said at the far end of the room,  
21 what was it?

22 A The closet to the left.

23 Q Okay. And who all went into that room once the door  
24 was opened?

25 A It was myself and one other county officer.

1 Q Okay. And once y'all went into the room, what did  
2 y'all do?

3 A We looked at places that a person can conceal  
4 themselves.

5 Q Where was the first place you looked?

6 A The closet.

7 Q Okay. Did you see anyone in the closet?

8 A No, I did not.

9 Q Okay. Once you came out of the closet, where was the  
10 next place you checked?

11 A We saw, looked under the beds.

12 Q Okay. And please relay to the jury what, if  
13 anything, you found as your search progressed.

14 A As I moved the bed, I saw what seemed to be a body  
15 part, and I lift the bed up and the individual was laying  
16 on the floor.

17 Q And do you know who the individual was that was  
18 laying on the floor?

19 A Mr. Brayboy.

20 Q And do you recognize Mr. Brayboy?

21 A Yes, sir, I do.

22 Q Is he in the courtroom here today?

23 A Yes, he is.

24 Q Where is he?

25 A He's sitting right there between two ladies.

Danny Graham - Direct examination  
by Mr. McEachin

361

1 Q And what's he wearing?

2 A Wearing looks to be a light gray shirt and a necktie.

3 MR. MCEACHIN: Your Honor, please have the record  
4 reflect the witness has identified the defendant.

5 THE COURT: Okay. So noted.

6 Go ahead.

7 Q Okay. At any point in time did Mr. Brayboy come out  
8 from under the bed prior to y'all going in the room?

9 A No, he didn't.

10 Q Okay. You said you saw a body part.

11 which body part did you see?

12 A It was his hand.

13 Q Okay. And once you saw the hand, what did you do?

14 A I told him to come from under the bed.

15 Q Okay. And, and, and at that time was he placed under  
16 arrest?

17 A That's correct.

18 Q Okay. And who transported him?

19 A I transported him.

20 Q Okay. And once you -- where did you transport him  
21 to?

22 A To my, our police department.

23 Q Okay. And other than that, did you have any other  
24 involvement in this case?

25 A No, I did not.

Danny Graham - Direct examination  
by Mr. McEachin

362

1 Q Okay. Thank you so much, Officer Graham. Please  
2 answer any questions the defense may have for you.

3 MRS. PRATT: I have no questions for this witness.

4 THE COURT: All right. Thank you very much.  
5 Officer, you may step down, sir.

6 MR. MCEACHIN: Your Honor, we would ask that Officer  
7 Graham be released from his subpoena.

8 MRS. PRATT: And I do not object to that, Your Honor.

9 THE COURT: All right. Thank you very much, sir.  
10 Appreciate it.

11 Yes, sir.

12 MR. MCEACHIN: Your Honor, the State rests.

13 THE COURT: All right. Ladies and gentlemen,  
14 typically what would occur at this point is I would send  
15 you back to your jury room, and then I have to entertain  
16 various motions from counsel at the close of the State's  
17 case. But it's ten minutes till 5:00, and, so, I'm going  
18 to excuse you for the balance of the day.

19 Ask you, if you would, to please honor your oath and  
20 have no conversation with anybody about the case. I would  
21 imagine and I would anticipate that you would probably get  
22 this case tomorrow for your consideration. So, you can  
23 tell friends, family, and loved ones this evening that  
24 you'll have plenty to talk about tomorrow night, but that  
25 this evening they need to honor your request that they



1 not, in other words, that you are not able to discuss the  
2 case with them and they need to respect that.

3 Please try to get a good nights rest. I'm gonna ask  
4 you, if you would, I'm gonna be selecting a jury for  
5 another case that's gonna begin when we conclude this one.  
6 And so, I'm gonna have that jury panel come in first thing  
7 in the morning.

8 So, I'm gonna ask you, if you would, be here at 10:30  
9 in the morning, okay, instead of 9:30. So, if you would  
10 plan on being in your jury room at 10:30 in the morning  
11 we'll get started soon thereafter.

12 Okay. So, everyone else in the courtroom please  
13 remain seated while the members of the jury are excused.

14 (Whereupon, the following takes place outside the  
15 hearing of the jury.)

16 THE COURT: All right. At this time I will entertain  
17 any motions at the close of the State's case.

18 MRS. PRATT: Your Honor, at this time we would make a  
19 motion for a directed verdict of not guilty in this  
20 matter. The, the evidence which has been produced by the  
21 State is thin at best by co-defendants who have been  
22 offered a deal with no forensics set-up, no ID from any of  
23 the victims. We believe that the State has not produced  
24 sufficient evidence to let this matter go to the jury on  
25 each of the counts of armed robbery, kidnapping, and

1 ABHAN, and we would respectfully request for a directed  
2 verdict.

3 THE COURT: All right. Thank you, Mrs. Pratt. I'm  
4 gonna respectfully deny the motion. Again, the jury is  
5 the judges of the facts. They weigh the evidence and give  
6 it whatever credibility that they feel is appropriate, and  
7 the Court is only concerned at this point with the  
8 existence of evidence, whether it's thin or not. There is  
9 some evidence whereby I believe a jury could find, and I  
10 think it is appropriate matter for the jury's  
11 consideration.

12 Anything else at this time?

13 I do want to discuss with you regarding Mr. Brayboy's  
14 intentions on whether or not he's going to put up a case  
15 or have you had an opportunity to review that information  
16 with him?

17 MRS. PRATT: I have discussed it with him very  
18 briefly, Your Honor, but I, I -- that was prior to the  
19 testimonies of the two co-defendants, and I would  
20 appreciate the Court allowing us to discuss it this  
21 evening and let him make a decision in the morning.

22 THE COURT: All right.

23 MRS. PRATT: If that would be acceptable since it's  
24 so close to five o'clock.

25 THE COURT: Yeah, well, I'm -- yeah, that's fine.

1 All right. Let me do this though. Let's -- if, if  
2 y'all would, would, would be here by ten o'clock so that  
3 at the conclusion of drawing that jury -- well, I tell you  
4 what. Why don't y'all plan to be here at 9:30 for the  
5 simple reason is I don't know what's gonna happen with  
6 that case tomorrow. I have -- I've been told it's going  
7 forward. I assume it still is. But if, come morning,  
8 that they decide not to, then we can deal with our issues  
9 before we proceed with this trial.

10 Okay.

11 MRS. PRATT: Thank you, Your Honor.

12 MR. MCEACHIN: Certainly, Your Honor.

13 THE COURT: So, we'll do that.

14 Anything, any other matters that we need to take up  
15 this evening before we adjourn for the afternoon?

16 MR. MCEACHIN: Nothing from the State, Your Honor.

17 MRS. PRATT: Nothing from the defense, Your Honor.

18 THE COURT: All right. Okay. Well, we will then  
19 reconvene at 9:30 in the morning, and this case will begin  
20 as soon after we get that other matter selected.

21 MR. MCEACHIN: Thank you, Judge.

22

23 (Whereupon, Court was in recess for the evening.)

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Wednesday, August 26<sup>th</sup>, 2009

THE COURT: Okay. Let's, let's turn our attention back here then to this case.

If I recall yesterday the State rested. I took whatever motions that were at the close of the State's case.

And so now, Mrs. Pratt, well, I would turn our attention to the defense and inquire as to whether or not the defense intends to put up any testimony.

MRS. PRATT: It is my understanding, Your Honor, that my client does not wish to testify. We do not intend to present any other evidence.

THE COURT: All right.

MRS. PRATT: I believe that I did enter two exhibits into evidence.

THE COURT: Yes, ma'am.

MRS. PRATT: Other than that, Your Honor, we would not be presenting any evidence.

THE COURT: All right. Mr. Brayboy, let me address you just briefly, sir, about your decision to not testify, which, which is absolutely fine. I just want to make sure you understand.

Okay. You have indicated to Mrs. Pratt that you intend to not testify, is that correct, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Is that your decision, Mr. Brayboy?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, you understand that, that, as a  
5 matter of fact, I've prepared a, a jury charge that I'm  
6 going to charge the jury on the law, and what I will do is  
7 I will add to that charge that, that, the fact that you  
8 have chosen not to testify, that is a fact that this jury  
9 cannot take into consideration at all. I would, I would  
10 explain to them that it is your constitutional right and  
11 that the fact that you have exercised that constitutional  
12 right, they can not penalize you for that.

13 I would also instruct the jury that the fact that you  
14 have chosen not to testify is a factor that they could not  
15 even talk about in the jury room. That the State carries  
16 the burden of proof and that you don't have to prove  
17 anything.

18 You understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And I will instruct them that. I will  
21 instruct them that you have no burden to prove anything,  
22 that the State carries all the burden regarding proof, and  
23 their burden is beyond a reasonable doubt.

24 Now, having said that though, let me also explain to  
25 you do you understand that you have the right to testify

1 if you chose to you?

2 Do understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I've, I've, I've discussed with both of  
5 the attorneys in the case and it is my understanding that  
6 you don't have any prior criminal record that would be  
7 admissible before this jury. In other words, if you  
8 decided to take the stand, the State, there's, there's no  
9 prior criminal activity that the State would be able to  
10 question you about.

11 Is that correct, Mr. McEachin?

12 MR. MCEACHIN: No. No, sir, Your Honor. The State  
13 would contend that there is one offense on his record that  
14 would be admissible in court.

15 THE COURT: All right. And what is, what would, what  
16 would that be?

17 MR. MCEACHIN: And I apologize, Your Honor. It's a  
18 breach of trust.

19 MRS. PRATT: It's a magistrate level and we would  
20 argue that it would obviously be more, more prejudicial  
21 than probative. It is a magistrate situation where he  
22 signed for a guilty plea uncounseled.

23 MR. MCEACHIN: That occurred on -- the, the plea took  
24 place on June the, I believe it was the 6<sup>th</sup>, 2006, Your  
25 Honor, and obviously that's a crime of, of dishonesty in,

1 in the State's opinion, breach of trust. And given that  
2 fact, I believe that it would, in fact, come out.

3 MRS. PRATT: And, again, my argument, Your Honor, on  
4 that, first of all, Magistrate Court level. Even though  
5 it might be considered a crime of moral turpitude, the way  
6 that he entered the plea was to actually sign a form that  
7 I'll show to the Court that says he gave up his right to  
8 be represented by an attorney and entered a guilty plea.

9 THE COURT: I'm not sure an uncounseled plea matters  
10 for purposes of this. It certainly would have some  
11 bearing if it was an enhancement crime, but I don't think  
12 it has any bearing as to whether or not he has a  
13 conviction for a crime of dishonesty.

14 MRS. PRATT: I understand. But I think it does go to  
15 prejudicial versus probative and whether he understood  
16 what he was doing at that time.

17 THE COURT: Well, let me, let -- for, for purposes of  
18 this matter we're dealing with right here, Mr. Brayboy,  
19 let me, let me, let me just assume that the Court would  
20 allow that. In other words, if you took the stand,  
21 Mr. McEachin would be allowed to ask you about that, but  
22 he would not be allowed to ask you about any details.  
23 Simply all he would be able to do is ask you is it true  
24 that you have been convicted of a breach of trust, and  
25 that's just simply as far as he could go.

1           You understand that?

2           THE DEFENDANT: Yes, sir.

3           THE COURT: He would not be able to ask you about any  
4 details about it or anything of that nature. But you  
5 would be, if you did decide to take the stand, you would  
6 be open to cross-examination. In other words, if you took  
7 the witness stand, your lawyer would ask you questions.  
8 But when she concluded her questioning, Mr. McEachin, on  
9 behalf of the State, would have the opportunity or the  
10 right to ask you questions as well and you would be, be  
11 required to answer his questions also.

12          Do you understand that?

13          THE DEFENDANT: Yes, sir.

14          THE COURT: Okay. Now, whether or not a defendant,  
15 in a, in a criminal matter, testifies or doesn't testify  
16 is, is a decision that must be made by the individual.  
17 You have two outstanding lawyers who are with you, and,  
18 and it is their job, as your attorneys, to counsel you, to  
19 give you their thoughts and their opinion as to whether or  
20 not you should take the stand. But the decision, the  
21 final decision, the, the one that matters must come from  
22 you.

23          Now, you have indicated to the Court that you do not  
24 intend to testify, and I asked you was that your decision,  
25 and you've indicated that it was.



1           Has anyone placed any pressure on you or forced you  
2           in anyway to arrive at that decision?

3           THE DEFENDANT: No, sir.

4           THE COURT: Okay. This decision to not take the  
5           stand has been freely and voluntarily entered into by you,  
6           is that correct?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: Okay. You have discussed it with your  
9           attorneys though, is that right?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Okay, sir. Thank you very much. You may  
12          have a seat.

13          In, in light of that, Mrs. Pratt, what I, what I  
14          would propose, if, if the defense has no objection and,  
15          Mr. McEachin, oif the State has no objection, is to, while  
16          we're right now on the record outside the jury's presence,  
17          allow Mrs. Pratt to rest and let me take up motions at the  
18          close of, of all the evidence right now so that when the  
19          jury comes out, of course, for purposes of them, Mrs.  
20          Pratt, I would recognize you and allow you to rest on the  
21          record, but then we could move right into closing  
22          arguments without having to bring them out, let you rest,  
23          send them back out, and take up those motions.

24          MRS. PRATT: Certainly, Your Honor.

25          THE COURT: All right.

1 MR. MCEACHIN: The State has no objection to that.

2 THE COURT: Okay. So, Mrs. Pratt, am I correct then,  
3 the defense rests?

4 MRS. PRATT: That is correct, Your Honor. The  
5 defense rests and at this time, Your Honor, we would renew  
6 our motion for directed verdict and every other motion  
7 that we or objection that we made throughout the trial in  
8 view of a further motion for a directed verdict, directed  
9 verdict of not guilty.

10 THE COURT: All right. And I'm gonna respectfully  
11 deny, deny that motion. I think that this is a matter for  
12 the jury to decide, to decide and that there's at least  
13 the existence of evidence whereby a jury could possibly  
14 find. And so, I'm going to respectfully deny that motion,  
15 but certainly preserve that for you and any objections  
16 that you've made throughout the course of the trial.

17 Now, with regards to the jury charge, I, I did give  
18 each of you a proposed charge and it was my understanding  
19 that, Mr. McEachin, you had requested a, a charge  
20 regarding the fact of a witness testifying having a prior  
21 criminal record does not preclude that person from  
22 testifying and that that criminal record goes strictly to  
23 the issue of believability.

24 MR. MCEACHIN: Correct, Your Honor.

25 THE COURT: All right. And I have, and I have added

1 that, and I don't -- there's no objection to that, is that  
2 correct?

3 MRS. PRATT: That's correct, Your Honor.

4 THE COURT: Now, you did ask for the hand of one  
5 being the hand of all.

6 Do you have anything further that you want to present  
7 to the Court on that?

8 I've done a little bit of looking into it. I don't  
9 believe, in this case, that that is appropriate.  
10 Mr. Brayboy is, is not being prosecuted as an accomplice.  
11 He's being prosecuted as a principle in the matter, and,  
12 and even though I don't know that that exclusively  
13 prohibits that charge, I just think, based on the facts of  
14 this case, that, that, that would not be an appropriate  
15 charge. So, I'm not gonna charge you, but would certainly  
16 preserve any exceptions you would have to that.

17 MR. MCEACHIN: Certainly, Your Honor, and the, and  
18 the State has actually looked at it again and concurs with  
19 Your Honor's decision.

20 THE COURT: Okay. Now, other than that,  
21 Mr. MCEachin, is that -- is everything else regarding that  
22 charge okay with the State?

23 MR. MCEACHIN: Your Honor, the State did have an  
24 opportunity to review the proposed charge that Your Honor  
25 did last night and all those charges look good. Again,

1 Your Honor, the only additions we would ask at this time  
2 is for the, the charge on prior records of witnesses.

3 THE COURT: And I, and I did add that and I think I  
4 added the one, the very one you discussed.

5 MR. MCEACHIN: Yes, sir.

6 THE COURT: So, I think that's there.

7 Mrs. Pratt, anything then further regarding the  
8 defense regarding the charge?

9 MRS. PRATT: No, Your Honor, since the Court has  
10 determined not to charge the hand of one is the hand of  
11 all, we have no further charge to request.

12 THE COURT: All right. Well, what I'm gonna do then  
13 is we'll bring the jury out. I will instruct them and let  
14 them know that, remind them of where we're at in the case,  
15 that the State has rested, and now would, would recognize  
16 you, Mrs. Pratt, allow you to, to then close before the  
17 jury on the record, and then I'll explain to them that  
18 we're gonna be moving into final argument.

19 I am -- I don't, I don't, I don't tend to limit  
20 lawyers with regards to their closing. I, I, I just  
21 remind them that, that this wasn't a three week case.  
22 This wasn't a nine month case. So, arguing for two and  
23 three hours is certainly not appropriate. But I want you  
24 to take whatever time you need, and I, as long as it's  
25 within reason, will not interrupt you, and I probably

1 won't interrupt you anyway. I'll just assume you're gonna  
2 be reasonable with your time, and then when you conclude  
3 I'll, I'll give them the charges.

4 Is there any objection from either the State or the  
5 defense with the Court coming down and giving the charge  
6 at the podium there?

7 MRS. PRATT: None from the defense, Your Honor.

8 MR. MCEACHIN: None from the State, Your Honor.

9 THE COURT: Okay. All right. Well, then---

10 MR. MCEACHIN: Your Honor, the State, one last note,  
11 the State would request that we have, both from the State  
12 and defense, have an opportunity to look at the verdict  
13 form prior to it going to the jury.

14 THE COURT: Sure.

15 MR. MCEACHIN: Thank you, Judge.

16 THE COURT: Well, let's, let's do that now because  
17 I'm going to explain that form to the jurors during my  
18 charge. So, let me get you a copy of that.

19 (Whereupon, a bench conference was held at this  
20 time.)

21 THE COURT: All right.

22 MRS. PRATT: Before we bring the jury back in, I had  
23 informed him that the normal practice that I am use to is  
24 that, once the jury has the case, then the defendant is in  
25 the custody of the Sheriff's office.

1 THE COURT: That is correct.

2 MRS. PRATT: And I know that you are going to be  
3 using this courtroom for another trial.

4 Is there any place where he can sit with me and his  
5 family here in the courthouse with the sheriffs while we  
6 await the verdict?

7 Matter of fact, I don't even know where I would be  
8 sitting frankly.

9 THE COURT: Well, you know, it's a public forum. I  
10 have no objection to, to people sitting back in the  
11 audience there, you know, just like any other person just  
12 as long as you're quiet and not disturbing the other  
13 trial. I'd like -- and I don't, I don't mind that.

14 MRS. PRATT: Including my defendant?

15 THE COURT: I don't have a problem with that as long  
16 as law enforcement --.

17 OFFICER: Yes, sir, and we'll be in here.

18 THE COURT: Okay. It's just I don't have anywhere  
19 else I can send you is the, is the problem.

20 MRS. PRATT: That's fine, as long as we can stay  
21 together in a group.

22 THE COURT: Sure. You can sit back anywhere you want  
23 and be back there. I don't have a problem.

24 MRS. PRATT: Great. Thank you so much, Your Honor.

25 THE COURT: You welcome.

1 State ready to proceed then?

2 MR. MCEACHIN: State is ready, Your Honor.

3 THE COURT: Defense?

4 MRS. PRATT: Defense is ready, Your Honor.

5 THE COURT: Ms. Joe, would you ask the members of the  
6 jury to join us please?

7 (Whereupon, the jury returns to the courtroom.)

8 THE COURT: Ladies and gentlemen, if you recall, at  
9 the end of the evening, the State had rested their case.  
10 And, so, we're back here in the morning.

11 And, so, at this time I would recognize Mrs. Pratt on  
12 behalf of the defense.

13 MRS. PRATT: Your Honor, the defense would rest.

14 THE COURT: All right. Thank you very much, ma'am.

15 Ladies and gentlemen, the defense has rested as well.

16 And, so, all of the evidence that you're gonna have in  
17 this case is, is in. And, so, now, we have reached the  
18 point of the trial where the lawyers are gonna have an  
19 opportunity to address you with one final time with what  
20 is commonly referred to as closing arguments or final  
21 summation.

22 Just as I told you, with regards to their opening  
23 statements, what the lawyers have to tell you is not  
24 evidence. I just told you that the evidence has been  
25 closed now. And, so, the evidence in this case is the

1 testimony that you heard during the course of this trial  
2 from witnesses who took that witness stand and from any  
3 exhibits which have come in during the course of this  
4 trial. But it is vitally important that you listen to the  
5 lawyers as they address you with their final summation.

6 This is their opportunity to tell you or to try to  
7 convince you what they believe the evidence showed, and  
8 you give them whatever consideration that, that, that you  
9 feel is appropriate. Once the lawyers have had the  
10 opportunity to address you with their closing remarks,  
11 then I will give you the law that is apply, applicable to  
12 this case and that you are to apply to the facts as you  
13 find the facts to be.

14 I know there are several exhibits. You've had the  
15 opportunity to view some of them, some of them you maybe  
16 not, maybe not have had your hands on. What you need to  
17 understand is though, once I've given you the charge on  
18 the law and once the case is yours to decide, all of these  
19 exhibits will be back in the jury room with you. You'll  
20 have an opportunity to handle them a little closer. The  
21 only item that, that won't go back into the jury room is,  
22 is the shotgun itself. But everything else you'll have  
23 back there with you. And, and as I said, once they  
24 conclude, I'll give you the law and then the case will be  
25 yours to decide.



1           So, having said that, please, if you would, give the  
2           lawyers your undivided attention as they present their  
3           final summation.

4           Mrs. Pratt.

5           MRS. PRATT: May it please the Court?

6           THE COURT: Yes, ma'am.

7           MRS. PRATT: Give me a moment to set up over here.

8           (Pause.)

9           MRS. PRATT: Good morning, ladies and gentlemen.

10          On the night of December the 6<sup>th</sup> of 2008, and the  
11          early morning hours of December the 7<sup>th</sup>, 2008, the two  
12          employees at the Pizza Hut were robbed. There's no  
13          question about that. And in the early morning hours of  
14          the 7<sup>th</sup>, Detective Larry Gainey interviewed the two men  
15          that were found at the scene. He decided at that time  
16          that my client, Bradley Brayboy, was involved in this  
17          crime, and at that point he stopped investigating.

18          It's a mistake, it's a big mistake to settle on a  
19          conclusion before you gather all of the evidence. You're  
20          suppose to gather the evidence first and then draw your  
21          conclusion from that. That's what you, as the jury, are  
22          gonna do here today. You're going to examine the evidence  
23          and determine what the result should be. That's what a  
24          verdict is all about.

25          Now, I think it's, being on a jury is really hard. I

1 think you must be tempted to do what Willie Nelson sings  
2 about and just shot them all and let God sort it out. But  
3 that's not what you're allowed to do. Your job is to sift  
4 the facts, to separate the wheat from the shaft, and to  
5 come up with that kernel of the truth.

6 We don't have a question and we're not arguing that  
7 there wasn't an armed robbery or a kidnapping or an ABHAN.  
8 We believe that the evidence shows very clearly that Brad  
9 Brayboy was not involved in what Artist and Mush did that  
10 night, and what I want to do is go through the testimony  
11 of some of the witnesses and point out some things to you,  
12 the things that I thought were important.

13 Let me say this that what I speak to you, if your  
14 remembrance is different, you'll have the opportunity to  
15 request the court reporter to play back some of the  
16 testimony. So, you can do that in determining the truth  
17 because your job is to determine the truth.

18 The first thing I want to point out to you is the  
19 fact that there's so many things that the police could  
20 have done to make your job easier and to find the truth in  
21 this case. It is absolutely amazing that there were no  
22 fingerprints even tested. I can understand that there  
23 would be some concern about gloves or some other thing or  
24 maybe even whether the duct tape is gonna hold a  
25 fingerprint. I don't know. But there's a barrel of a gun

1 and there's a shotgun shell and there were no  
2 fingerprints.

3 We have two hats and a stocking cap. That's three  
4 items that were on people. None of those were tested. No  
5 hairs were taken for comparison. SLED does that. There  
6 was nothing taken as far as D.N.A. from those, and if  
7 you've got a hair with a root you can get D.N.A. Nothing  
8 was done that would make your job easier, because as  
9 Detective Gainey testified himself, he didn't think it was  
10 necessary. So, he just didn't do it.

11 And another problem in this case is that there was  
12 never a really good thorough search done of the  
13 surrounding areas. You know, Artist himself testified  
14 that he threw the pistol, but the pistol hadn't been  
15 found. Other items weren't found. I think, when I went  
16 through with the officers as to what areas they searched,  
17 I don't think anybody climbed into the dumpster, and  
18 there's other areas.

19 Do we know that a proper search was even done or was  
20 this what we would consider a rush to judgment?

21 Somebody drew a conclusion, decided what had  
22 happened, stopped there.

23 One of the things that also came out in testimony is  
24 that Detective Gainey did not run an N.C.I.C. or which is  
25 a criminal history on either of the two co-defendants at

1 all. That was done later. So, at the time that he's  
2 listening to them, he doesn't know anything about them  
3 unless he knows some things about Mush because Mush lived  
4 in Lake City. So, he doesn't know the record that you  
5 know about Robin Turner that he has a record for  
6 possession of a firearm from ten years ago, a common law  
7 robbery, and current charges that are federal in nature  
8 for possession of a weapon.

9 But let's go through just some of the things that the  
10 witnesses said, and what I want to do is kind of do a, a  
11 little chart here, and I'm gonna have a one, a two, and a  
12 three because it's not a math quiz. But numbers are  
13 important in this case. Absolutely essential I think  
14 you'll find.

15 The first witness that you heard from was Chappell  
16 McMillian. Okay. And Chappell tells you that he saw two  
17 people. He says that he woke up, he was called over  
18 toward the make table, right, and got hit on the head  
19 there, and he ever only saw two people.

20 The next witness that you heard from was Gary  
21 McClary. Gary tells you that he saw three people, but he  
22 has one going around the back or maybe coming around to  
23 the restrooms. Now, that testimony's different from what  
24 Artist said, who, by the way, is the only other person  
25 that says there were three of them inside and that far in,

1 and I would submit to you that the, that the testimony of  
2 Tony Green of where the windows were in the Pizza Hut near  
3 the front door, and that's on one of the, the exhibits  
4 that you have, the Defense 3, which was entered into  
5 evidence, those tinted windows could cause a reflection.  
6 There's lots of reflective surfaces in the Pizza Hut.

7 I think that we have to be fair to the victims and,  
8 and say that their focus was on the one that had the gun  
9 closest to them. That makes sense. That's who they  
10 focused on. So, Chappell focused on the fellow with the  
11 shotgun. Gary focused on the fellow with the pistol.

12 The next witness that you heard from was Tony Green  
13 and Tony tells you he only saw one because he looked  
14 through the window and that was all he saw.

15 Detective Gainey saw one person and caught one  
16 person. That's a one. Sergeant Thompson, he was the  
17 officer near the front door, said he saw two people with  
18 masks. Stewart, my writing's getting shakier as I get  
19 lower, I hope you can read it, Officer Stewart, who was  
20 the officer that caught Artist, only saw one.

21 So, those are, are witnesses that aren't the  
22 co-defendants, and we have one person out of all of those  
23 that sees three. We've got two co-defendants, Artist, who  
24 says three. Three people all wearing masks, right, all  
25 wearing stocking caps, and then Mush, Quennell Brown, who

1 I'm not sure exactly what he was admitting to, whether it  
2 was two or three, it was kind of in the middle because he  
3 kind of said well, I sort of kind of went in, I maybe went  
4 this far, maybe I didn't, I backed out. So, I'm gonna put  
5 him kind of at a two and a half just to be fair cause he's  
6 on both sides of it.

7 So, that tells you what the witnesses actually  
8 testified to. There's a couple of other numbers that I  
9 think are real significant. We have two hats, right, two  
10 hats. We have one stocking. We know that the keys, one  
11 set of keys, was found, and we know that, according to the  
12 exhibit, the State's Exhibit 2, which are the items that  
13 were found in Mr. Turner's pocket, which you can look at,  
14 and we actually opened for you, but from that, two wallets  
15 were found, but one of them belonged to Gary McClary and  
16 the other belonged to Mr. Turner. So, we have one wallet  
17 that's found.

18 Now, what's interesting about the wallets?

19 Artist said he took both victims' wallets.

20 Do you remember him saying I had two wallets and a  
21 cell phone, two wallets and a cell phone?

22 I asked him a couple of times about that, two wallets  
23 and a cell phone. But they only found one that belonged  
24 to a victim.

25 Well, what does that tell you?

1           It tells you that Artist has said he's thrown out a  
2 pistol and he had a wallet that's gone. So, he had an  
3 opportunity to get rid of an awful lot of things as he  
4 ran, as he ran, and let's talk about Robin Turner and  
5 Quennell Brown. These are some interesting people.

6           The thing I wanted you to do, when you remember Robin  
7 Turner and you remember Quennell Brown, is you need to  
8 remember their deal and remember their record. Quennell  
9 Brown had a deal for attempted armed robbery, no  
10 kidnapping, no ABHAN. And Robin Turner, I mean he must of  
11 won the lottery cause his are all gone because he's  
12 pleading to some federal charges, and that's because  
13 they're suppose to testify today.

14          So, remember that. When the judge talks to you about  
15 credibility and bias and tells you that you have the right  
16 to consider what might make somebody tell a lie, but  
17 that's one of the things that might make them tell a lie,  
18 I don't know, you know, getting out of going to jail for a  
19 long time.

20          Now, what we do know about Artist?

21          One of the things he told me on cross-examination was  
22 he always carries a weapon. Even carries a weapon to  
23 church for protection. And it doesn't seem to bother him  
24 to lie because he sure lied all through his statement to  
25 Detective Gainey that night, the statement, by the way,

1     which is the one that gets Brad even involved in this  
2     case. He lied all the way through it, and let's talk  
3     about the way lies work.

4         The first night he tells Detective Gainey four or  
5     five times that he was telling the truth and being real.  
6     He wasn't gonna lie to them. He'd already told all the  
7     other officers. He was gonna tell the truth and be real.  
8     He didn't know nothing about a robbery ahead of time.

9         what did he tell on the stand here?

10        That he planned a robbery with two other people.  
11     That they'd gotten toboggans and masks and they'd all  
12     walked together. He told Detective Gainey I didn't have a  
13     gun. He tells you from here he had a pistol and he tossed  
14     it. He tells Detective Gainey, and excuse me for using  
15     the word that's in there, that he didn't do shit. But he  
16     tells you from there that he hit a victim. He tells  
17     Detective Gainey I heard the police coming and I hauled  
18     ass.

19        He tells you here that's not what happened. He hit a  
20     victim. He scooped up all the stuff, two wallets and a  
21     cell phone. He tells Detective Gainey the short dude put  
22     the items in his pocket cause he ain't took shit, right,  
23     and yet he tells you that he took two wallets and a cell  
24     phone. He tells Detective Gainey he doesn't know who has  
25     that other wallet. He tells us he took the wallet.



1           The interesting thing, when you start looking at it,  
2   is you start comparing what Artist said to what Mush said.  
3   There's so many differences in the story there. For me,  
4   the interesting part is that the story was the same until  
5   you get to the Safeway. They went to the Manigo and shot  
6   some pool, drank some beer. They went back to Brad's  
7   house where his daddy was and watched a football while  
8   Brad spent some time with his son. Then they leave to go  
9   towards the Safeway and somehow the stories just part like  
10   the Red Sea. They just split completely apart.

11           Quennell Brown says he left. Artist says Mush was  
12   there. Mush said he did nothing. Artist said he walked,  
13   got masks, toboggan and gun. This is about what Mush did.  
14   Mush says he didn't have a mask or a stocking cap on.  
15   Artist said all three of them had masks and stocking  
16   masks. And by the way, this really makes no sense.

17           why would you go to a robbery without a mask or a  
18   stocking cap if you were really gonna be involved in a  
19   robbery?

20           And why was he found with Exhibits 3 and 6, these two  
21   items, dark brown cap, stocking mask, found in the back  
22   fenced in area right beside the dumpster, right beside the  
23   shed, right beside when Quennell Brown, Mush, was lying?

24           why was he found with them right by them?

25           Two hats, one stocking.

1           Mush wants you to believe that he didn't go in or  
2 maybe he didn't go past the door and Artist said they all  
3 walked in. Mush wants you to believe that he not only  
4 heard the shotgun, hit the ground, but he also saw Brad  
5 jump the fence with a shotgun. So, he's got conflict all  
6 the way through, even his own story, and, you know, my, my  
7 mother use to tell me that a liar has to have a good  
8 memory because they got to remember the story they told.

9           Interesting too that both of those stories are  
10 different in most respects than what our victims told us.  
11 Our victims told us that most of the incident, most of  
12 the, the stuff that went on happened with two people right  
13 there by the make table, and I submit to you that those  
14 two people are Artist and Mush.

15           Now, why would they choose Brad?

16           Why would they try to blame it on Brad?

17           Let's point out a couple of things that I think are  
18 important here. The last place that these people were  
19 seen in public was at the Manigo with Brad. So, if  
20 somebody saw them and reports to the police that's the  
21 person to pick, the last semi-public place that they were  
22 all three in was Brad's own house. So, if somebody asked  
23 one of the family members or somebody on the street who  
24 they saw, that's the place where all three of them were  
25 together. It makes sense, if you're gonna blame it on

1 somebody else, then you're gonna blame it on the other  
2 person you're with earlier in that evening.

3 Did they have a chance to get their stories straight?

4 Well, I submit to you that there were lots of times  
5 that those two had an opportunity to talk to each other.  
6 First of all, they had all the time -- if you believe  
7 Artist, they had all the time in the world walking over to  
8 the Pizza Hut to say now, look, if the police come, don't  
9 you put me in the middle of this. You make sure you say  
10 it was Brad, Mush. Don't you put me in this cause I carry  
11 a gun for protection.

12 They had time at the back door to renew that  
13 statement because, remember, Mush tried to tell you that  
14 that was when they offered him some money. They had time  
15 then. But I submit to you that there's only a couple of  
16 minutes from the time you see the police till the time  
17 they get out the door for them to have talked, but they  
18 could have said quite easily anything about now, don't you  
19 forget, I carry a gun, you blame Brad, I wasn't here, I'm  
20 in Marion tonight.

21 And at the Lake City Police Department, while they  
22 said that there is a policy, a policy that says they  
23 shouldn't be together, we don't know that they weren't  
24 together in booking. We don't know that a gun sign or a  
25 hand sign wasn't passed. We don't know that the cells

1 that they were in weren't side-by-side and able to  
2 communicate through those steps. We just don't know that  
3 before they gave taped statements or before Mush gave a  
4 second statement to Detective Tilton the next day.

5 Now, the solicitor may say to you, and I don't know  
6 what he's gonna say -- and, you know, I hate doing this  
7 because I don't get the last word and I, any one of my  
8 three husbands would tell you that I love to get the last  
9 word. But the solicitor may say, and I'm just guessing,  
10 that there was missing stuff. Okay. The other wallet,  
11 the cell phone, and, so, obviously, and the pistol that  
12 they never found, obviously somebody else had it. It's  
13 got to be Brad. Brad ran with that stuff. He may also  
14 tell you that the fact that Brad was found hiding under a  
15 bed when they came to arrest him on New Year's Day at his  
16 friend's house indicates that he's guilty.

17 Well, I would tell you that, that there may be plenty  
18 of reasons why a young black male would not want to come  
19 to the door and be arrested. Especially on New Year's  
20 Day.

21 A point that's important there is he wasn't in  
22 Augusta Georgia or Brownsville Tennessee or Texas I mean.  
23 Brownsville Texas or Gatlinburg Tennessee. He was right  
24 there in Lake City on New Year's Day when that happened.  
25 You know, the key to this case is really simple answers,

1 very simple answers because there's a, a philosophical  
2 rule called Occam's Razor that says that you, the simplest  
3 result or explanation is probably the right one.

4 So, let's talk about one last thing. Let's consider  
5 this to be the Pizza Hut grounds, and let's consider this  
6 to be the building with the fence, and I'm not an artist.  
7 You can tell. I, I went to law school. We've got a shed  
8 and we've got a dumpster and I would ask that when you go  
9 back in your room and you take a look at the State's  
10 Exhibit 9 that we knew was not to scale, look at the  
11 pictures to show exactly where these things are because I  
12 think that you'll decide, by looking at the pictures, that  
13 the storage unit and the garbage are not exactly in those  
14 locations. They're a little off the fence. The cooler  
15 doesn't quite come back that far. Just look at the  
16 pictures and be sure.

17 But let's talk about what happened that night and I  
18 swear I can't imagine a worse situation for being a robber  
19 than this one. I just can't picture it.

20 Because what we have like right next door at the  
21 Amoco which is 60 feet away?

22 We've got a police officer and Detective Gainey tells  
23 you that he came and he stationed himself right here at  
24 the back gate, right, and he's watching there. Detective  
25 Thompson tells you that he pulled up and put his police

1 car somewhere in the front area. we had talked about the  
2 parking spaces that are the handicapped parking spaces in,  
3 in front of there.

4 Now, I'll submit to you that he didn't put it in  
5 there and turn off all the lights. He had his headlights  
6 on. He had his blue lights on. He had everything  
7 flashing. As much light as he could put on the scene.  
8 And he walked from here to about here. Remember. He put  
9 a little, right close to where those three windows were.  
10 And he had somebody with him, remember, Detective Crosby.

11 Didn't he say he had Crosby with him?

12 So, we've got this side pretty well covered. Well,  
13 John Stewart, who was the track star that caught Artist,  
14 said he came from the Lake City Police Department about  
15 two blocks away. He pulled in here, parked his car  
16 somewhere around here, and immediately came and put  
17 himself right there. And he brought somebody with him.  
18 He brought Watson with him.

19 So, we've got Thompson. We've got Crosby somewhere  
20 over here. I don't know exactly where. We've got Stewart  
21 here. We've got Watson starting somewhere out here, but I  
22 don't exactly where he ends up. Okay. And we got  
23 somebody from the Florence Sheriff's Department, and  
24 nobody said exactly where they were. But they pulled up  
25 somewhere around here too. So, we've got somebody from

1 the Sheriff's Department somewhere.

2 Every side of this building was covered within  
3 minutes. It was, in fact, Detective Gainey gets to the  
4 back door before somebody even sounds the alarm inside.  
5 Because but, if you remember, it was when they saw  
6 Thompson and looked up and looked him in the eye that they  
7 went the police and started bolting out. So, by that  
8 point Gainey is already here. Thompson is already here.  
9 Crosby's over here. Stewart is on the way, maybe already  
10 there. We don't have exact times for that part. But he  
11 said it was less than a minute.

12 Now we got a back door right here. We've got Mush  
13 coming out and he runs this way, and we got Artist running  
14 out and he runs that way. And immediately he starts  
15 running. Stewart and -- oh, I missed Brown. Brown's over  
16 here somewhere. Follow him. We've still got Gainey  
17 catching Mush. We still got Watson somewhere in the back  
18 area here. It defies belief to imagine that a third guy  
19 got out with the police car's lights flashing here, police  
20 car lights flashing here, Brown and, and the, whatever,  
21 however they got here, that a third person got out and  
22 somehow got away. It just defies belief.

23 The police surrounded this place. They've caught the  
24 two robbers. There were two robbers. There were two  
25 hats. There are two guilty people and they have them.

1 They have those two.

2 It just didn't happen the way that Artist and Mush  
3 would have you believe. Remember in my opening I said he  
4 did it, he did it, I wasn't even there. Mush wants you to  
5 believe that he really wasn't there. Artist wants you to  
6 believe that Brad is the one that had the shotgun when  
7 you've got a guy that's got a record and carries a gun all  
8 the time.

9 Wouldn't he naturally be the one that would carry the  
10 shotgun and be the big dog or the alpha male or whatever  
11 you want to call it marching in first?

12 And he's the one from Marion. He's the one that had,  
13 you know, figures nobody's gonna know who he is.

14 It just didn't happen the way they said it. Brad was  
15 not present. He did not commit this armed robbery, this  
16 kidnapping, or this ABHAN.

17 We have two masks and two hats. We have two robbers,  
18 two caught, two guilty.

19 The judge is gonna charge you about the law. He's  
20 gonna talk to you about reasonable doubt and I've already  
21 talked to you a little bit about reasonable doubt. I'm  
22 gonna let the judge tell you what reasonable doubt is  
23 because the law is suppose to be, take that from the  
24 judge. But I will say that you have to remember you must  
25 be firmly convinced, firmly convinced, no hesitation that



1 Brad's, that Brad is, has guilt before you return a guilty  
2 verdict.

3 This case has so many holes, so many unanswered  
4 questions, so many conflicting stories that we believe and  
5 we ask that you find Brad Brayboy not guilty.

6 Thank you.

7 THE COURT: Thank you, Mrs. Pratt.

8 Mr. MCEachin.

9 MR. MCEACHIN: Thank you, Your Honor.

10 May it please the Court?

11 THE COURT: Yes, sir.

12 MR. MCEACHIN: Counselor.

13 Ladies and gentlemen of the jury, it's, it's  
14 interesting that, that Mrs. Pratt said that, that I'd be  
15 the last one to speak. That's not exactly true. The  
16 truth of the matter is the 12 of y'all will be the last  
17 ones to speak. When y'all return y'all's verdict, that  
18 will end the case. It's your verdict that ends. It's  
19 your verdict that's the last spoken word in the case, and  
20 it will be your verdict that makes sure the ends of  
21 justice are met.

22 Now, I wanted to, I want to thank y'all because, at  
23 the beginning of trial, I thanked you in advance for the  
24 time, consideration, and the effort you put forth in this  
25 case, and I've paid attention to you while Mrs. Pratt was

1 asking questions. Of course, while I was asking I was  
2 paying attention to the witness. But I noticed that y'all  
3 were paying careful attention to everything that was said,  
4 everything that came from the witness stand and all the  
5 exhibits.

6 I want to thank y'all for that. I want to thank  
7 y'all for that because the importance in this case. I  
8 told you that it's important not only to the State of  
9 South Carolina and the County of Florence, but it's also  
10 important to the defendant that sits over there, Larry  
11 Brayboy.

12 As far as the jury's concerned, Winston Churchill  
13 once said that the greatest duty that one can do for their  
14 country, other than serving in the armed forces during the  
15 times of war, is to serve on the jury, and I tend to agree  
16 with that, and I think Mrs. Pratt probably would too, and  
17 it's because of that that we selected the 12 of y'all. We  
18 determined, through both of us, that y'all would be the 12  
19 fairest and most impartial jurors. Y'all will be the ones  
20 that take that, everything into consideration, and apply,  
21 as the judge gives you the law in the case, which he'll do  
22 after I'm through.

23 That being said, let's, let's focus on the facts of  
24 the case and let's see if we can't put the pieces of this  
25 puzzle together because, you see, a criminal trial is very

1 similar to a jigsaw puzzle. Every piece of the testimony,  
2 every exhibit you have is a piece to that puzzle. And if  
3 you look at them only as to that specific individual, only  
4 to that one piece of evidence, well, you can't see the  
5 whole puzzle, you can't see the whole picture. All you  
6 can see is that one little piece, and it might give you  
7 some idea of what the case is about, but it's not gonna  
8 show you the whole picture.

9 So, when you're making your determination as the  
10 jury, you have to take all the evidence into account. The  
11 testimony and the exhibits. You got to take everything  
12 into account. Not on a one-by-one piece like she showed  
13 you on that board right there. If it were up to the  
14 defense, they, they'd look at one piece and say well,  
15 here's, here's the reason that doesn't work. They'd take  
16 up one of these exhibits here and say well, this is, this  
17 is why there's reasonable doubt.

18 Ladies and gentlemen, what I'm asking y'all to do is  
19 to take all the testimony you've heard on that stand.  
20 Take all these exhibits. When you put them all together,  
21 you put the pieces of the puzzle together, and the glue  
22 that binds those pieces is your common sense. Everybody's  
23 got common sense and I'm gonna ask y'all to use that  
24 common sense.

25 That was a, that was a very good closing argument.

1 That was very good. But let me talk to y'all about what I  
2 recall from the case and see if y'all remember it the way  
3 I do.

4 We'll start with the witness and I'll go in  
5 chronology order. The first witness that the State put  
6 forth, Chappell McMillian, the young man sitting right  
7 there. Y'all saw him get on the stand. Y'all heard him  
8 testify.

9 Now, what are, what are the things that, that, that  
10 Chappell told you?

11 He said he was dozing at the front of the store. It  
12 was about 11:00 p.m. that night. He said that, as he was  
13 dozing, he awoken and looked back and there was a guy with  
14 a shotgun. The guy with the shotgun motioned him to him.

15 And right when he walked up to him, what, what  
16 happened to Chappell?

17 Anything said to him?

18 No, he got hit straight in the forehead with the  
19 barrel of that gun. Got hit in the forehead with the  
20 barrel of the shotgun.

21 Now, Chappell did say he only saw two men, two  
22 gunmen. That was correct what the defense said. What the  
23 defense didn't bring up though was that Chappell  
24 testified, and y'all heard him testify that he couldn't  
25 see anything in this back area right here. He could not

1 see what was going on in that back area.

2 well, who else testified about something else?

3 Quennell Brown did.

4 what did Quennell Brown tell y'all?

5 He said yeah, I was in there, but I was right back  
6 here.

7 There's your third person. You got Turner here, you  
8 got Brayboy here, and you got Brown back here. Chappell  
9 McMillian said he saw two people. That's, that's what he  
10 said. But he also said he couldn't see anybody back here.

11 You got to take all the evidence into account. You  
12 got to take all the evidence into account.

13 Chappell, Chappell also told you he never felt like  
14 he could leave, and that's important because one of the  
15 elements, and the judge will talk to you about this, of  
16 kidnapping is that the individual be confined and not be  
17 able to leave the place where they are. Chappell  
18 testified on the stand that he didn't feel like he had the  
19 ability to leave.

20 When Chappell was asked who was holding him there he  
21 said it was the guy with the shotgun. Chappell and Gary  
22 said they couldn't identify the individuals. They were  
23 wearing masks. But we had other witnesses in this case  
24 who did identify, identify the individual, and they  
25 identified the individual with the shotgun.

1           Moving on to Gary's testimony, Gary's sitting right  
2 over there too. He's the other victim in this case. Gary  
3 testified numerous times on cross-examination when the  
4 defense was asking him, also when I asked him, is there  
5 any question in your mind that there were three gunmen in  
6 that store. No. He was asked three or four times and  
7 each time he said no, that there were three gunmen in  
8 there. I saw three people. I saw them.

9           So, she was right on there. Gary did see three  
10 people. That's what he testified to. That's what he  
11 testified to. He testified that the guy with the shotgun  
12 was right here. He saw somebody else right here and he  
13 felt somebody behind him right here.

14           Well, does that change anybody's story so far?

15           He said he felt somebody behind him right here.  
16 Quennell Brown was still back here. Quennell Brown is  
17 still back here. Turner and Brayboy.

18           Mrs. Pratt also asked a number of the witnesses, and  
19 particularly the ones that worked at the, at the Pizza  
20 Hut, well, there were mirrors in there, weren't there, and  
21 there were shiny subjects, objects. Each of them said no,  
22 there weren't any mirrors in the store. There weren't any  
23 mirrors in the store. There weren't any mirrors in the  
24 store because -- and, and she, she mentioned it earlier,  
25 something about reflections. If there aren't any mirrors

1 there aren't gonna be any reflections. They're three  
2 people in that business.

3 Now, something that should be said about both of  
4 these victims. Both of these victims had guns in their  
5 faces, and I don't know about y'all, but if I had a gun in  
6 my face I might not be able to remember everything exactly  
7 like it happened. I probably wouldn't be focusing on  
8 that, and I think that may very well been the case here  
9 too. But you've got to take every piece of evidence and  
10 put it together.

11 Gary was struck in the head as well, and he said  
12 what -- how many defendants did Gary say he saw run out  
13 that back door? --

14 He said he saw three run out there. Three of them.  
15 He also said he never felt like he could leave.

16 Now we get to Tony Green. Tony is also one of the  
17 employees at the Pizza Hut, and Tony, Tony tells us that  
18 he was outside with another, another employee of the Pizza  
19 Hut. He was standing right about here. And if y'all  
20 remember, I'll show you Defense Exhibit No. 3. She had  
21 him draw this picture, and I'm not real sure how it goes.  
22 Y'all will be able to take it back there with you and put  
23 it back together.

24 But he -- I believe it went something like that. He  
25 showed you where the windows were, and he had a view and

1 he said he saw a guy with a shotgun. He said he did only  
2 see one person. That's all he said he saw.

3 And I asked him, I said well, what did you do when  
4 you saw that person?

5 He said I saw the gun and I ran. He took off. He  
6 went straight over to the Amoco Station.

7 And who did he run into at the Amoco Station?

8 Investigator Gainey.

9 He's the one who told Investigator Gainey what was  
10 happening over at the Pizza Hut. He didn't stick around  
11 to see if anybody else with a gun was gonna come around.  
12 He saw one gunman and he went to get help for his two, his  
13 two fellow employees that were inside the store.

14 Now, getting to Investigator Gainey -- and, and I do  
15 apologize, y'all. I know I've been looking at this  
16 notepad a lot. There's a lot here and I can't remember  
17 all of it. But getting to Investigator Gainey. He was at  
18 the Amoco Station that night when Tony Green and the other  
19 employee ran up to him. Tony told him, look, we're  
20 getting robbed over at the Pizza Hut.

21 Investigator Gainey, what did he do?

22 Walked out the door, started walking towards the  
23 Pizza Hut, and radioed in for backup. Said there's a  
24 robbery going on at the Pizza Hut.

25 And as he was doing that, Sergeant Sandy Thompson,



1     Stewart, and Brown, who were at the police station, which  
2     if you look at this diagram it's up here, and if you look  
3     at one of the maps, it's, it's kind of up in this area  
4     right here is where the police station is, which isn't  
5     that far from the Pizza Hut. It's about two blocks. It's  
6     about two blocks from the Pizza Hut. At that time, all of  
7     these officers were converging on the Pizza Hut, and I  
8     believe Watson was also with Stewart at the time.

9             And as they all converged, Investigator Gainey said  
10     where did he?

11             He ran straight to the back gate right here.

12             And what did he do?

13             He posted up on the back gate. He was the first one  
14     there. He posted up on the back gate.

15             What happened next?

16             Well, Thompson and Crosby got there.

17             Now, where were Thompson and Crosby?

18             Thompson and Crosby are right here in this front  
19     entrance.

20             And I said well, now, what did you do, Investigator  
21     Gainey?

22             He said well, I was, I was securing the back area,  
23     the back area, the area where we come to find out that's  
24     where the defendants went in and that's where they came  
25     out.

1       And I said well, what, what happened while you were  
2 standing there?

3       He said well, one of them came out.

4       And who was that?

5       That was Quennell Brown that came out.

6       I said what did you do?

7       I told him to get down on the ground. I told him to  
8 get down on the ground.

9       what happened next?

10       Well, there was a radio transmission. Sandy Thompson  
11 testified that he made a radio transmission. At the same  
12 time Quennell was on the ground in the back Sandy Thompson  
13 was making a radio transmission where he said they're  
14 running out the back, they're running out the back because  
15 at that point Brayboy and Turner had seen the officers  
16 outside. And when they saw them, they ran out the back.

17       what did Investigator Gainey and what did Sandy  
18 Thompson testify to?

19       The minute he said they're running out the back,  
20 Investigator Gainey radioed back I've already got one on  
21 the ground.

22       well, if he's already got one on the ground, who are  
23 the two that Sandy Thompson saw running out the back?

24       Three. They're three of them. One of them's already  
25 on the ground. Two of them are running out the back.

1 Sandy Thompson saw those two. Quennell Brown's already on  
2 the ground in the back, ladies and gentlemen.

3 Now, once he had him on the ground I asked  
4 Investigator Gainey what did he do with them?

5 He said well, he, he -- after they secured the  
6 store -- and, and there was a little confusion about where  
7 Watson was. If you remember, Investigator Gainey's  
8 testimony was that both Crosby and Watson were the ones  
9 who went to the store, and they're the ones who came out  
10 of this back exit, and at that time Quennell Brown was on  
11 the ground and Gainey was in the back of the store right  
12 here. Once they came out the back, that's when they, when  
13 they secured Quennell Brown and took him and that's when  
14 they began securing the whole area, everybody around here.

15 Now, Investigator Gainey, later that evening, once  
16 Robin Turner had been captured, took him back to the  
17 station. I'll talk to y'all about that a little bit more  
18 in a minute.

19 But let's go to John Stewart. John Stewart's an  
20 important, important individual here. Stewart testified  
21 that he was right here by this emergency exit. He parked  
22 his car up here and he was by this emergency exit, and I  
23 asked him what he noticed. He said well, I was standing  
24 there and all of a sudden somebody came over the fence.

25 I said what did you do?

1 He said well, I drew down on him.

2 I said and what did they do?

3 They ran past me, ran cross 52.

4 I said all right, and what did you do?

5 He said I chased him.

6 Did anybody chase him with you?

7 Yeah, Simon Brown did. Another officer with the Lake  
8 City Police Department at the time chased him.

9 Did y'all eventually catch him?

10 Yeah, we caught him about two blocks out past 52.

11 And what did y'all do with him?

12 Well, Brown and Thompson had come by at that point  
13 and Thompson took him back to the scene.

14 All right. And who -- did you determine who that  
15 individual was?

16 Well, yeah, we come to find out that individual is  
17 Robin Turner.

18 Well, now, let's see. Robin Turner was the first one  
19 they saw come over the fence, and once he ran by, Stewart  
20 and Brown went after him. Now, if Watson's going through  
21 the store with Crosby, Watson can't be up here. So, I  
22 don't know if there's anybody back there or not. There  
23 was no testimony at to it. But I don't know if there's  
24 anybody back there or not.

25 Well, what did Brown tell y'all?

1           who did Brown say was the first person over the  
2 fence?

3           Robin Turner was the first person over the fence.  
4 Once Robin Turner's over the fence, you got two officers  
5 chasing him.

6           who did he say jumped over the fence next?

7           Brayboy. Brayboy went over the fence next. Two  
8 officers chasing him.

9           who's back there to see if Brayboy's there?

10          Stewart said he never looked back. He never turned  
11 around. Once he saw that subject go he was after him. He  
12 never looked back. I asked him specifically did you ever  
13 look back. He said no, I never looked back.

14          Something else that was, that was actually mentioned  
15 in closing is that, that Brown said he, Brayboy jumped the  
16 fence with a shotgun. That was not the testimony of  
17 Brown. Brown's testimony was Brayboy started climbing the  
18 fence, threw the gun, and then went over the fence. That  
19 was Brown's testimony. Not that he climbed over the fence  
20 with the shotgun.

21          Now, Stewart runs after him. They catch Turner and  
22 they bring him back to the scene. And once they bring him  
23 back to the scene, Gainey's the one who, who frisks him  
24 and checks him.

25          And what does he find in his pocket?

1           well, he finds the stuff in State's Exhibit 2. Finds  
2   some gloves and it looks like, kind of like a doo rag, a  
3   wallet, a wallet that you see in here is actually Mr.  
4   Turner's wallet, and he finds Gary McClary's wallet, and  
5   Gary gets his wallet back that night.

6           And I asked, I asked pretty much all the officers  
7   that were at the scene that night, were Turner and Brown  
8   ever put together?

9           No, they were never put together.

10          Were they put in separate cars?

11          Yeah, they were put in separate cars.

12          Okay. And then I asked Lieutenant Tilton, what's the  
13   procedure when you grab two co-defendants at one location,  
14   how do you handle it?

15          He said, well, they stay separated at all times  
16   throughout the process, and he did say they may, I believe  
17   on cross-examination, they may of had a chance to run into  
18   each other, but he said the procedure is to keep them  
19   separated, and that's what happened that night as far as  
20   we know.

21          Now, before I get into the co-defendants, I think  
22   there's something important that we all need to find,  
23   realize here.

24          And in looking at the three co-defendants, what is  
25   the common factor, or more aptly put, who is the common

1 factor between the three of them?

2 Turner testified he'd never been to Lake City before.

3 How did he end up in Lake City that day?

4 His sister, who was in a relationship with Larry  
5 Brayboy, was on the phone with Brayboy, and Brayboy said  
6 he wanted to speak with Turner. Turner got on the phone.  
7 Brayboy says come on over to Lake City. Turner rode over  
8 there with his sister. They dropped him off on the  
9 corner. That's how Brayboy, Brayboy and Turner connect.  
10 There's the connection there.

11 Now, what about Brown and Brayboy?

12 They've been friends for ten years. Quennell Brown  
13 testified to that. He testified they had been friends for  
14 ten years. They hung out, did things together.  
15 Apparently they even bought a shotgun together at one  
16 point. There's the connection between Brown and Brayboy.

17 Now, where's the connection between Brown and Turner?

18 There's not one. There is no connection there.  
19 Without Brayboy, Brown and Turner never meet one another.  
20 That's important to know, ladies and gentlemen. That's  
21 important to know.

22 Now, in speaking about Mr. Turner, he has a criminal  
23 record. I don't dispute that. I don't dispute that.  
24 Quennell Brown has a charge on his record. Don't dispute  
25 that.

1           If I could of brought choir boys up here to testify I  
2 would have. Choir boys aren't the type of individuals who  
3 go into stores with guns. You got to use what you have,  
4 ladies and gentlemen, and that's what I did in this case.  
5 I used the two co-defendants. I used them.

6           Now, Mrs. Pratt brought up a deal that I had with  
7 them. Well, one thing that we need to note here is  
8 Quennell Brown is gonna be suspended. I think he  
9 testified ten years in the federal penitentiary. He's  
10 gonna be suspended to ten years in the federal  
11 penitentiary.

12           And as for Quennell Brown, he's pleading to attempted  
13 armed robbery. He's pleading to attempted armed robbery.  
14 So, as far as them getting off scott free, that is not the  
15 case.

16           Now, let's talk about Mr. Turner's testimony. Again,  
17 the only time he said he had ever been to Lake City was  
18 that night.

19           And why did he go?

20           Because he got a call from Larry Brayboy.

21           He got over there and where did he go?

22           Well, once I got there, I met up with Brayboy on the  
23 corner. We went over to the Eagle's Nest.

24           Okay. And what was at the Eagle's Nest?

25           Well, we were meeting somebody else there.



1           Who were you meeting there?

2           At the time I didn't know who he was.

3           Had you ever met him before?

4           No, I'd never met him before.

5           That was Quennell Brown they met.

6           And what did Quennell Brown told us?

7           He said well, yeah, Brayboy and I were at the Eagle's  
8 Nest earlier that night, and Brayboy said he had to leave.  
9 But then he came back with another guy.

10          Well, did you know who, who he was at the time?

11          No, I didn't know who he was at the time.

12          Come to find out, that was Robin Turner. So, they  
13 met back up at the Eagle's Nest and that's where all of  
14 this started to transpire. They met back up at the  
15 Eagle's Nest, and from the Eagle's Nest they said they  
16 went to Brayboy's house and Turner testified that Brayboy  
17 got a backpack with some things in it.

18          Well, what did both Brown and Turner testify to?

19          And this may be a small, small thing, but what did  
20 they both testify to?

21          They both testified they sat in the den and watched a  
22 game. That's a minute detail. That's a minute detail.  
23 It's important, it's important cause it's such a minute  
24 detail, and they both said the same thing there.

25          So, what did they do when they left there?

1        well, they left there and they went to, I believe  
2        they went by Brayboy's grandmama's house, which, according  
3        to Turner, was about a ten minute walk.

4        what did they do when they got to Turner, I mean  
5        Brayboy's grandmama's house?

6        well, they dropped a bag off.

7        where did they go then?

8        well, then we went to Safeway.

9        All right. And once, and once you went to Safeway,  
10       what did y'all do?

11       well, we went back to the corner?

12       what corner?

13       The corner over there by his grandmama's.

14       All right. And what did y'all do once y'all were  
15       there?

16       well, we hung out for a little bit.

17       And then what did y'all do?

18       well, then we decided we'd go rob the I.G.A.

19       Okay. What happened when you got to the I.G.A.?

20       well, the manager already left. It was closed. So,  
21       we didn't, we didn't do that.

22       what did y'all do?

23       we started walking uptown.

24       so, they said they started walking uptown.

25       And where did they go when they walked uptown?

1 Right to Pizza Hut. That's where they headed. They  
2 said they made a stop at McDonald's to use the bathroom.  
3 But where they ended was at the Pizza Hut. And that's  
4 where this happens. They say they walked into the back  
5 gate right here.

6 Now, according to Turner, they walked in the back  
7 gate, put on the masks, and go right in.

8 What did you do, Turner?

9 Well, I went straight to the guy that was back here  
10 in the back, Gary McClary.

11 And what did you do?

12 Well, I held him my, up at gun point.

13 Okay. And what did Brayboy do?

14 Well, Brayboy ran around this way and he came out  
15 here and he got this other guy.

16 All right. And what happened?

17 Well, didn't really see what happened up front.

18 But what did he say?

19 What did he say about Chappell McMillian when Brayboy  
20 and him came back?

21 He said he was bleeding from the forehead. He was  
22 bleeding from the forehead. Bleeding from the forehead.

23 Okay. And then what happened?

24 Well, we held them up at gun point.

25 And what did y'all do?

1 well, we told them to get naked.

2 okay. What, if anything, did they take?

3 well, they told us they took wallets. Turner told us  
4 he took wallets from both victims, cell phone, and I think  
5 some keys he said. Took them and ran.

6 well, now, who was back there with you at the time?

7 He said he and Brayboy were back here at the time.

8 He and Brayboy were back here at the time.

9 okay. What did y'all do?

10 well, we were telling them that, to give us all their  
11 stuff and get naked and we, that's when we looked up and  
12 we saw the police.

13 what did y'all do when y'all saw the police?

14 well, we took off.

15 All right. And what happened?

16 well, we jumped, I jumped the fence.

17 Once you jumped the fence, did you ever look back?

18 No.

19 Did you ever see anybody outside?

20 well, yeah, I saw, I saw Quennell Brown running this  
21 way, running this way.

22 That makes sense. That's what everybody's testified  
23 to. Quennell Brown going this, Turner jumps the fence.  
24 still somebody in the store. still somebody in the store.

25 Another important thing I want y'all to think about

1 is these two were never together after, after the arrest  
2 according to the testimony. There was some testimony they  
3 didn't know. But as far as we know, there were never  
4 together. One of them was arrested in the back, and one  
5 of them was arrested across the street.

6 Now, if, if Robin Turner and Quennell Brown don't  
7 know one another, they've never known one another, but  
8 they both know Brayboy, why would they not place the blame  
9 on one another?

10 Why would they place the blame, the blame on Brayboy?

11 If Quennell Brown's been friends with him for ten  
12 years, why he is gonna place the blame, the blame on  
13 Brayboy?

14 If Robin Turner's sister in a relationship with  
15 Brayboy, why are they gonna place the blame, the blame on  
16 Brayboy?

17 It doesn't make sense. It doesn't make sense, and  
18 that's what I was going to when I said that's a minute  
19 detail. They didn't have time to talk after they were  
20 arrested about what happened. Well, let me go talk, let  
21 me go talk about it. That's what I was talking about, the  
22 football game.

23 I mean how, how would they know that unless they were  
24 there, unless they were there?

25 It's a small fact, but it's an important fact that

1 links things together, and that's what this case is about.  
2 It's about linking all the testimony together and putting  
3 all the exhibits together.

4 Now, Turner admits, admit that he had a pistol. He  
5 said yeah, I had the pistol. He admitted to it here in  
6 court. Here in front of y'all he said I had the pistol.  
7 He had it.

8 Well, who had the shotgun?

9 Brayboy had the shotgun.

10 Who else said Brayboy had the shotgun?

11 Quennell Brown said Brayboy had a shotgun.

12 As a matter of fact, Quennell Brown was asked have  
13 you seen that shotgun before?

14 Well, yeah, I've seen it before.

15 When?

16 Well, a couple weeks prior. I was with him when he  
17 bought it, when he bought it. And I'll just show y'all  
18 the handle. I don't want to pull, to pull this actual  
19 weapon out. That's how they described it, duct tape  
20 around the handle. Duct tape around the handle.

21 It's all about putting these pieces together, ladies  
22 and gentlemen. If you take them one at a time, there may  
23 be an issue. But if you put them together -- and the  
24 reason for that is different people have different vantage  
25 points, and different people see different things. But

1 when you add all those together, you get a clear picture.  
2 You get a clear picture.

3 Now, as far as Quennell Brown's concerned, we've  
4 talked about him for the most part. Now, he says he came  
5 in and he stood right back here in the back. Well, that  
6 goes along with Chappell McMillian's story saying he only  
7 saw two, two guys in there cause if he's in the back, and  
8 Chappell said I couldn't even see in the back. Well,  
9 that, that rings true. That sounds, that sounds accurate  
10 according to Chappell McMillian's testimony. He said I  
11 stood back there.

12 well, what, what happened when you're standing?

13 well, I wasn't back there that long.

14 what happened?

15 He said Brayboy offered me the money to stay.

16 Then what happened?

17 well then I left.

18 what happened when you left?

19 That's when Gainey got him on the ground. Gainey got  
20 him on the ground and he stayed there until he was placed  
21 under arrest and taken to Lake, Lake City Jail.

22 Friends with Brayboy for ten years, ten years, and  
23 the defense wants you to believe that the guy he met  
24 earlier that night, he's gonna take a greater friendship  
25 with him than he is with a guy he's known for ten years.

1 That's what the defense wants you to believe.

2 They both spoke with investigators and this is  
3 important. They both spoke with investigators.

4 And who did they say, without having a chance to talk  
5 with one another, and this is prior to them even being  
6 charged, who did they say had the shotgun when they were  
7 invest, when they were asked by investigators the next  
8 day?

9 The next day, prior to any offers being made, they  
10 both said Brayboy had a shotgun. That wasn't something  
11 that came up later down the road. That wasn't something  
12 that happened right before trial. They told the  
13 investigators that the very next day, that Brayboy was the  
14 one with the shotgun, and that there were three of them in  
15 the store.

16 And, finally, ladies and gentlemen, I want to talk to  
17 y'all about Officer Danny Graham's testimony. If y'all  
18 remember correctly, Officer Graham was the last person who  
19 took that stand, and I asked him if he had any involvement  
20 with the case, and he said yeah. His involvement with the  
21 case was he arrested Brayboy.

22 Where did he find Brayboy?

23 Did he find him at his house?

24 No, he wasn't at his house.

25 Well, where did he find him?



1           He found him at somebody else's house.

2           Okay. Where was he in that house?

3           Well, after looking through the house about four  
4 minutes, we came to a bedroom door that was locked.

5           Okay. And what did y'all do?

6           When we knocked on that bedroom door we announced we  
7 were law enforcement.

8           What happened?

9           If y'all, if y'all remember correctly, he said that  
10 bedroom was not the size of this circular area.

11          Once they knocked on the door, I said then what  
12 happened?

13          And he said it took between 20 and 30 seconds. One,  
14 two, three, four, five, six, seven, eight, nine, ten,  
15 eleven, twelve, thirteen, fourteen, fifteen, sixteen,  
16 seventeen, eighteen, nineteen, twenty. It took somebody  
17 at least that long to go up and unlock that door.

18          Who unlocked the door?

19          Well, it was the woman who, who lived at the house,  
20 it was her son.

21          Okay. What did y'all do when y'all went in that  
22 room?

23          Well, we went and looked around and looked in the  
24 closet.

25          Did y'all find anything?

1           We didn't find anything in the closet.

2           What did you do next?

3           Well, as I was walking out I saw something.

4           I asked him what did you see?

5           I saw a body part.

6           What kind of a body part?

7           I saw a hand.

8           Where did you see the hand?

9           Where did you see the hand?

10          Underneath the bed. Underneath the bed.

11          You know, this, this reminds me of the old adage the  
12 guilty flee where none pursue.

13          He flipped the mattress up.

14          And who was under that bed?

15          The defendant, Larry Brayboy, was underneath that  
16 bed. He wasn't in his house. It was behind a locked door  
17 underneath somebody else's bed.

18          That's the testimony of this case, ladies and  
19 gentlemen. If you put it all together it make sense. If  
20 you look at it piece by piece it may not. But if you put  
21 it all together, if you use a little common sense, it  
22 makes plenty of sense, and that's how the picture turns  
23 out.

24          So, what happened that night?

25          Three individuals, Quennell Brown, Robin Turner, and

1 Larry Brayboy walked in this back door, through this back  
2 gate, into this back door. Larry Brayboy was armed with a  
3 shotgun. Quennell, Quennell Brown, according to him and  
4 Turner, had no gun, which is strange because why would  
5 Turner back somebody up and say well, no, he didn't have a  
6 gun. He doesn't even know the guy. And then Robin Turner  
7 admitted that he had a pistol and that he held him up, and  
8 Robin Turner was the one who told you that Brayboy was the  
9 one who brought Chappell McMillian back to the back.

10 And once they did that, they all ran. And whether,  
11 depending on how you want to look at it, unfortunately for  
12 Mr. Turner and Mr. Brown, they were caught at the scene.  
13 Brayboy wasn't caught at the scene.

14 Defense counsel wants to make a big deal well, there  
15 were only two things found, two things found.

16 well, if he didn't get caught at the scene, couldn't  
17 he have the stuff in his pocket?

18 Couldn't he have taken it with him?

19 That's not too, too much of a stretch. Two things  
20 were found at the scene. Two individuals were caught at  
21 the scene. One individual wasn't. He probably took the  
22 stuff with him.

23 That's the story you see. That's what you see when  
24 you put all these pieces together. Three people went in  
25 there. They went in there, and an individual with this

1 shotgun, that man right there, Larry Brayboy.

2 Ladies and gentlemen, in a, in a moment the judge  
3 will charge you the law that applies to this case. He's  
4 gonna charge you the law on armed robbery. He's gonna  
5 charge you the law on kidnapping, and he's gonna charge  
6 you the law on assault and battery ohigh and aggravated  
7 nature.

8 All I can do, as the solicitor in this case, is ask  
9 that you take all the evidence, you take, take the  
10 testimony, or take these exhibits back there, and you take  
11 your common sense with you, you take the law, and once you  
12 do that, all I can ask is that you return a verdict that  
13 speaks the truth. One that makes sure the ends of justice  
14 are met, and it's the State's contention that that verdict  
15 is a verdict of guilty on all counts against the defendant  
16 Larry Brad Brayboy.

17 Thank y'all.

18 THE COURT: Thank you, Mr. McEachin.

19 Ladies and gentlemen, just give me one second.

20 (Pause.)

21 THE COURT: Mr. Foreman, and members of the jury, I  
22 come, I come down here to give you the charge on the law  
23 for a couple of reasons. During the course of this trial,  
24 as I indicated to you early on, you remember me telling  
25 you that you are the judges of the facts of this case, and

1 I'm not to have any influence over you at all regarding  
2 that, that duty.

3 So, it's appropriate that, during the time that the  
4 attorneys are doing their job here presenting the evidence  
5 to you, that I remained out of the way. But we've now  
6 reached the portion of this trial where you and I are in  
7 this together. You, as the judges of the facts, and me,  
8 as the judge of the law. So, I think it's appropriate  
9 that I come down and, and join you to give you the, the  
10 law that's applicable in this case, and the other reason  
11 is that merely, such a legal reason, it's just simply that  
12 it's more friendly and nicer to talk to people  
13 face-to-face then to do it from up there. So, I come down  
14 here to give you the charge on the law.

15 And, Mr. Foreman, I will tell you that, that the  
16 charge, as I give it to you, ladies and gentlemen, I'm  
17 gonna read it verbatim. That -- I will also send this  
18 back into the jury room and you'll have this with you as  
19 well when you go back to deliberate.

20 So, if I could have your attention please. Mr.  
21 Foreman, and members of the jury, the State of South  
22 Carolina charges the defendant, Larry Bradley Brayboy,  
23 with the offenses of armed robbery, kidnapping, and  
24 assault and battery of a high and aggravated nature. You  
25 should distinctly understand that the indictment just

1 contain allegations by the State and it confesses  
2 jurisdiction in this matter to this Court and is in no way  
3 to be considered as evidence. The only evidence in this  
4 case is the testimony from the witness stand and the  
5 exhibits that have be introduced.

6 Now, to this indictment, the defendant has had pled  
7 not guilty, which places upon the State the burden of  
8 proving the defendant guilty beyond a reasonable doubt. A  
9 person charged with committing a criminal offense in South  
10 Carolina is never required to prove him or herself  
11 innocent.

12 I charge you that it is a vital and important rule of  
13 law that a defendant, in a criminal trial, no matter how  
14 great or serious the offense with which he or she is  
15 charged may be, must always be presumed innocent until his  
16 or her guilt has been proved beyond a reasonable doubt.  
17 This presumption of innocence remains with a defendant at  
18 all times throughout this trial, and it's only removed  
19 when and if the State has proved guilt beyond a reasonable  
20 doubt.

21 So, the burden of proof is, is upon the State to  
22 establish evidence to your satisfaction the guilt beyond a  
23 reasonable doubt of this defendant here on trial, and to  
24 establish the guilt beyond a reasonable doubt as to each  
25 and every element of the crimes that have been charged.

1           So, what is a reasonable doubt in the law?

2           A reasonable doubt is the kind of doubt that would  
3           cause a reasonable person to hesitate to act. Proof  
4           beyond a reasonable doubt is proof that leaves you firmly  
5           convinced of the defendant's guilt. There are very few  
6           things in this world that we know with absolute certainty,  
7           and in criminal cases the law does not require proof that  
8           overcomes every possible doubt.

9           If, based on your consideration of the evidence, you  
10          think there is a real possibility that the defendant is  
11          not guilty, you must give the defendant the benefit of the  
12          doubt and find him not guilty. If, on the other hand, you  
13          are firmly convinced that the defendant is guilty of the  
14          crime that is charged, you must then find the defendant  
15          guilty.

16          There are two types of evidence which are generally  
17          presented during a trial. That is direct evidence and  
18          circumstantial evidence. Direct evidence is the testimony  
19          of a person who claims to have actual knowledge of a fact  
20          such as an eye witness. It is evidence which immediately  
21          establishes the main fact to be proved.

22          Circumstantial evidence is proof of a chain of facts  
23          and circumstances indicating the existence of a fact. It  
24          is evidence which immediately establishes collateral facts  
25          from which the main fact can be inferred. Circumstantial

1 evidence is based on inference and not on personal  
2 knowledge or observation.

3 Now, the law makes absolutely no distinction between  
4 the weight or the value to be given to either direct or  
5 circumstantial evidence. Nor is a greater degree of  
6 certainty required of circumstantial evidence than of  
7 direct evidence. You should weigh all of the evidence in  
8 this case. After weighing all of the evidence, if you are  
9 convinced of the guilt of the defendant beyond a  
10 reasonable doubt, then you must find him guilty. However,  
11 if, after weighing all of the evidence, you are not  
12 convinced of the guilt of the defendant beyond a  
13 reasonable doubt, then you must find him not guilty.

14 Mr. Foreman, and members of the jury, under the  
15 Constitution of South Carolina you are the finders of  
16 facts in this case. I do not have the right to comment  
17 upon the facts or even to express any opinion I might have  
18 as to the facts nor may I suggest in any way what I may  
19 think about the guilt or innocence of the defendant. You  
20 should form no opinion in that regard from anything I may  
21 have said or by any ruling I may have made.

22 You are also the judges and the sole judges of the  
23 credibility or the believability of the witnesses who have  
24 testified in this case. In passing upon their  
25 credibility, you may consider many things such as the



1 demeanor or the manner of testifying, was the witness  
2 forthright or hesitant, whether the witness had a reason  
3 to be biased, whether a witness' testimony was  
4 contradicted on the one hand or corroborated or supported  
5 on the other, what was the witness' opportunity for  
6 observation and knowledge of the matters about which they  
7 testified.

8       You do not decide this credibility or believability  
9 by simply counting the number of witnesses. You may  
10 believe a small portion of a witness' testimony and  
11 disregard regard the larger or vice versa. You may  
12 believe one witness against many or one, or many against  
13 one. All of these things you'll consider bearing in mind  
14 that you should give the defendant the benefit of any  
15 reasonable doubt if such doubt exists after you have  
16 considered all of the evidence in this case.

17       I charge you that a person who has a past criminal  
18 record is competent to testify during a trial. A past  
19 record does not affect the ability of that witness to  
20 testify. A past record may only be considered by you, if  
21 at all, in determining the witness' believability.  
22 Remember, you are the sole judges of the facts in this  
23 case and of the believability of any of the witnesses that  
24 testify.

25       Now, I further instruct you, and I emphasize, the

1 fact that the defendant in this case did not testify is  
2 not a factor for you to consider or to be considered by  
3 you in any way in your deliberation and in your  
4 consideration on the question of guilt or innocence of the  
5 defendant. It must not be considered by you in any manner  
6 whatsoever.

7 A defendant has the constitutional right to remain  
8 silent, and the assertion of this right must not be  
9 considered you in your deliberation. And I repeat, under  
10 your oath, you are to draw no conclusion whatsoever from  
11 the fact that the defendant in this case did not testify.  
12 The fact that this defendant did not testify should not  
13 even be discussed in the jury room.

14 The burden of proof, as I told you, is on the State.  
15 The defendant is not required to prove his innocence. The  
16 burden of proof remains on the State to prove guilt beyond  
17 a reasonable doubt.

18 Now, during this trial, ladies and gentlemen, items  
19 were received or introduced into evidence as exhibits.  
20 These exhibits will be sent back to the jury room to help  
21 you in your deliberations. You may examine these exhibits  
22 if you think they will help you in your deliberations. In  
23 reaching your verdict, you may consider only testimony and  
24 exhibits that were received into evidence. Certain things  
25 are not evidence and you must not consider them in

1 determining what the facts are in this case, and I'm gonna  
2 list some of them for you.

3 For example, arguments and statements by the lawyers  
4 are not evidence. What they have said in their opening  
5 statements and closing arguments and at other times during  
6 the course of the trial is intended to help you to  
7 interpret the evidence. But it is not, in and of itself,  
8 evidence.

9 Questions and objections by the lawyers are not  
10 evidence. Attorneys have a duty to object when they  
11 believe a question or an exhibit is improper under the  
12 rules of evidence. You should not be influenced by either  
13 the objection or my ruling on it. If the objection was  
14 sustained, you would ignore the question and answer, or if  
15 the objection was overruled, then treat the answer as you  
16 would any other.

17 Anything that you may have seen or heard when this  
18 court is not in session is not evidence. You are to  
19 decide the case solely on the evidence that was received  
20 during the course of this trial. Anything that was  
21 ordered stricken from the record and that the jury was  
22 ordered to ignore is not evidence, and it is not to be  
23 considered by you in your deliberation of the facts.

24 Now, as I told you before this case started, the same  
25 constitution that makes you the finders of the facts makes

1 me the sole and only instructor on the law. You must  
2 accept, as correct, the law that I'm about to charge you  
3 and apply to the law the evidence as you find it and reach  
4 your verdict. Please put aside any conception you may of  
5 had as to what the law is or should be before you came  
6 here today and accept the law as I instruct it to be. And  
7 for your purposes and your duties as jurors in this case  
8 today, you should not be concerned about what the law  
9 ought to be or what you feel the law should be. Only what  
10 I charge you the law is now in this state.

11 As I instructed you at the beginning of the trial,  
12 the evidence from which you are to decide the facts of  
13 this case consists of sworn testimony of witnesses, both  
14 on direct and cross-examination regardless of who called  
15 the witness, the exhibits which have been received into  
16 evidence, and any stipulations or facts which the parties  
17 have agreed to are to be true and correct.

18 Now, the defendant is charged with armed robbery. In  
19 order to prove the offense of armed robbery, the State  
20 must first prove, beyond a reasonable doubt, that the  
21 defendant took personal property from the person or  
22 presence of another person. Property is in the presence  
23 of a person if it is within the person's reach,  
24 inspection, observation, or control so that the person  
25 could, if not overcome with violence or prevented by fear,

1 keep possession of the property.

2 The State must also prove, beyond a reasonable doubt,  
3 that the defendant carried the property away intending to  
4 permanently deprive the owner of the property and to keep  
5 the property for the defendant's own use. The slightest  
6 removal of property or the complete possession of the  
7 property, even for an instant by the defendant, is  
8 sufficient to show a taking and carrying away of property.  
9 The taking and the carrying away of property must have  
10 been done with violence or putting the owner of the  
11 property in fear of violence.

12 Finally, the State must prove, beyond a reasonable  
13 doubt, that the defendant committed the robbery while  
14 armed with a pistol, dirk, shotgun, slingshot, metal  
15 knuckles, razor, or other deadly weapon or while alleging,  
16 either by action or words, that he was armed while using  
17 the representation of a deadly weapon or any object which  
18 a person present during the commission of the robbery  
19 could have reasonably believed was a deadly weapon. A  
20 deadly weapon is any instrument or substance which is  
21 likely to cause death or great bodily harm. Whether an  
22 instrument has been used as a deadly weapon depends on the  
23 facts and the circumstance of each case. I do -- I will  
24 instruct you that a gun may be a deadly weapon even if  
25 it's not operational.

1           Now, the defendant is also charged with kidnapping.  
2   The State must prove, beyond a reasonable doubt, that the  
3   defendant knowingly and unlawfully seized, confined,  
4   decoyed, kidnapped, abducted, or carried away another  
5   person without the authority of law. To do a thing  
6   unlawfully is to do it willfully against the law.  
7   knowingly means with knowledge, consciously, not  
8   accidentally. And to seize means to take hold of suddenly  
9   or forcefully. Confine means to limit, restrict, or  
10   enclose within bounds, imprison, or shut or keep in.  
11   Kidnap is to remove a person against his will by unlawful  
12   force or by fraud. Abduct means to carry off secretly or  
13   by force for an illegal purpose. And carry away means to  
14   remove.

15           Now, ladies and gentlemen, the State does not have to  
16   prove that the defendant did all of these things.  
17   Instead, if you find, beyond a reasonable doubt, that the  
18   defendant did any of these things, then you may find the  
19   defendant guilty of the kidnapping.

20           Something done without authority of law is something  
21   which the law does not sanction, does not permit, allow,  
22   or condone, or provide justification for. A kidnapping  
23   does not have to be for any personal or monetary gain or  
24   any illegal purpose. But it may be for any reason  
25   whatsoever.

1        Lastly, the defendant is charged with assault and  
2        battery of a high and aggravated nature. Assault and  
3        battery of a high and aggravated nature is an unlawful act  
4        of violence or an unlawful act of violent injury to the  
5        person of another which was accompanied by circumstances  
6        of aggravation. An assault occurs when a person  
7        unlawfully attempts or offers to commit a violent injury  
8        upon another person and had the present ability to  
9        complete the attempted injury. An assault is the  
10       intentional creation of a reasonable fear of immediately,  
11       of immediate bodily harm.

12       It is not necessary that the attempted injury or harm  
13       actually take place. For example, if I walked up to you,  
14       and when we are within arm's reach I draw back to hit you,  
15       that is an assault. A battery is the unlawful touching of  
16       another person by a person who has committed the assault.  
17       An unlawful touching can be caused by a part of the  
18       accused body or by any object that the accused puts into  
19       motion. A battery is the completion of the assault by  
20       using or applying force to another person, however slight,  
21       in a rude, angry, or resentful manner without legal  
22       justification for doing so. Using my earlier example, if  
23       I carry through with the assault by actually hitting you,  
24       then that is a battery.

25       The State must also prove a circumstance of

1     aggravation. Circumstances of aggravation include the use  
2     of a deadly weapon, the intent to commit a felony, the  
3     infliction of serious bodily injury, a great disparity  
4     between the ages or the physical conditions of the  
5     parties, a difference in the genders of the parties, the  
6     purposeful infliction of shame or disgrace, and the  
7     resistance of lawful authorities. These are all examples  
8     of circumstances of aggravation.

9             Now, Mr. Foreman, and ladies and gentlemen of the  
10     jury, as you retire to begin your deliberations, I want to  
11     express to you the hope that each of you will be mindful  
12     of the importance of your responsibility. You are not  
13     called upon to serve as jurors very often, and the proper  
14     performance of the duty requires each of you to reach the  
15     height of freeing your mind of all improper influences.  
16     You and I are acting for the community, and that is why we  
17     must see to it that the trial is fair and this verdict is  
18     just.

19             You've observed, as the presiding officer, this Court  
20     is always addressed as Your Honor. For the reason is not  
21     because of the person wearing this robe, but that this  
22     Court is entrusted with the honor of this community, the  
23     honor of this State, and the honor of this country in  
24     seeking that every case tried here receives fair and  
25     impartial justice.



1           Now, you, the jury, you take into your care the  
2       preservation, and the honor of this community, and the  
3       honor of this State, and the honor of this country.  
4       Please do not get the idea I'm trying to implicate to you  
5       how I might think you should decide this case. As I've  
6       already told you, under the laws of the State of South  
7       Carolina, you, the jury, are the sole judges of any  
8       questions of fact. It will be highly improper for me to  
9       influence you in the performance of that duty.

10           However, as the presiding officer of this court, I am  
11       vitally concerned that whatever your verdict that you find  
12       will be the result of you going into the jury room and  
13       confining your consideration to the evidence and the law  
14       that you've heard in this courtroom, weighing it fairly  
15       and impartially, as I have every confidence you will do.

16           Everyone is entitled to justice in this case. Both  
17       the State and the defendant all are entitled to justice.  
18       Nothing more. Nothing less. Your verdict in this case  
19       can not be based on sympathy, compassion, prejudice, or  
20       emotion, or some other consideration that is not found in  
21       the evidence. This Court is of the confirmed opinion that  
22       whatever verdict you reach will represent truth and  
23       justice for all of the parties involved here. And  
24       remember, ladies and gentlemen, your verdict must be  
25       unanimous. All of you must agree on whatever verdict you

1 reach.

2 Mr. Foreman, when you get the exhibits and this  
3 notebook will come back there with it, you'll find in the  
4 front cover of the notebook a verdict form. After you  
5 have reached a verdict, you will then fill out the verdict  
6 form and sign it as the foreman.

7 The verdict form, ladies and gentlemen, it's, it's a  
8 simple form. There's no magic to it or anything of that  
9 nature. Please give no significance at all into the order  
10 in which the forms of the verdict appear on the sheet.  
11 It's just anytime you, you list more than one item you  
12 have to list one before the other.

13 But what you'll do is you'll go through the evidence  
14 and then you'll address the, the allegations. The first  
15 is as to armed robbery, and you'll decide whether or not  
16 the defendant is guilty or not guilty of armed robbery.

17 And, Mr. Foreman, you'll then reflect that decision  
18 on the form.

19 The next issue you'll discuss, or discuss them in any  
20 order you want, but the three things you will determine is  
21 whether or not he is not guilty or guilty of armed  
22 robbery, not guilty or guilty of kidnapping, and not  
23 guilty or guilty of assault and battery of a high and  
24 aggravated nature. Those are the three charges that  
25 you'll need to consider, and there's no requirement,

1 there's no requirement at all. Whatever the jury's  
2 decision is on armed robbery, you'll, you'll list that.  
3 Whatever the jury's decision is on kidnapping, you'll list  
4 that. Whatever the jury's decision is on assault and  
5 battery of a high and aggravated nature, you'll list that.  
6 And as I said, each of those must be a unanimous decision.

7 Now, what I'm gonna do is I'm gonna get you to step  
8 back into your jury room.

9 And, Mr. Foreman, don't begin deliberations quite  
10 yet. What I'm gonna do is I'm gonna review quickly with  
11 the lawyers to make sure I didn't leave anything out. If  
12 I missed anything in the charge, I'll bring you back out  
13 and I'll charge you whatever it is I may of, I may of  
14 missed. If the charge is, is acceptable as I've given it  
15 to you, what I'll do is I'll collect all of this evidence  
16 and then this notebook and I'll send those back to you.

17 Mr. Foreman, your que to begin deliberations will be  
18 when you receive the exhibits and the notebook. That's  
19 the que to begin deliberations.

20 Okay. Also I know that Madam Clerk ordered lunch for  
21 everyone, and what we'll do is, y'all can handle that  
22 however you want, but we'll send your lunch in as soon as  
23 it gets here. And if you want to deliberate during lunch,  
24 that's fine. If you want to stop your deliberations and  
25 eat, however y'all want to do it. But we'll, we'll

1 certainly deliver that into you as soon as it arrives.

2 so, if you would, please step back into your jury  
3 room, and don't begin your deliberations until you receive  
4 the exhibits and the notebook.

5 (Whereupon, the following takes place outside the  
6 presence of the jury.)

7 THE COURT: All right. Are there any exceptions or  
8 objections to the charge regarding, from the State?

9 MR. MCEACHIN: Your Honor, the State would, at this  
10 time, renew our request to charge the hand of one is the  
11 hand of all. In listening to the charge on armed  
12 robbery---

13 THE COURT: Now, you agreed with me a minute ago.

14 MR. MCEACHIN: I understand, Your Honor, and, and in  
15 listening to you relay the charge for armed robbery to the  
16 jury, and I did, and I did review it last night, and I  
17 apologize, Your Honor, there is a language that the State  
18 must prove beyond a reasonable doubt that the defendant  
19 carried away the property intending to permanently deprive  
20 the owner of the property and to keep the property for the  
21 defendant's own use. The slightest removal of the  
22 property or the complete possession of the property, even  
23 for an instance, for the defendant sufficient show of  
24 taking and carrying away of the property.

25 Co-Defendant Turner testified that he, in fact, took

1 the property, Your Honor. However, under the law of our  
2 state, if he did, in fact, take the property and Mr.  
3 Brayboy didn't, the fact that Mr. Brayboy didn't, he would  
4 still be guilty of armed robbery. But this armed robbery  
5 charge does not cover that. The hand of one is the hand  
6 of all would, in fact, cover that.

7 MRS. PRATT: Your Honor, I would respectfully  
8 disagree with the solicitor. As, as we discussed in  
9 chambers, the, the State's whole case has been that  
10 Mr. Brayboy had the weapon and went in with the intent to  
11 rob. That's not a hand of one is the hand of all. That's  
12 not accomplice. I understand that he's saying that there  
13 was testimony that Turner took the items, but it's all  
14 taken of one piece if you believe the statements of  
15 Mr. Turner.

16 It's not an accomplice situation where one person has  
17 a gun and shoots a person, and, therefore, everyone else  
18 is guilty, the hand of one is the hand of all. This is a  
19 situation where the State's entire case has been  
20 predicated on the fact that, that Mr. Brayboy had a gun,  
21 that he planned a robbery, that he was right in the thick  
22 of it with all of them together. And I think if you state  
23 hand of one is the hand of all, it's going to allow a  
24 lesser standard of what, what connection they would have  
25 to have, and it just doesn't fit the facts. It doesn't

1 fit what's been presented.

2 THE COURT: Well, no one testified, if I'm not  
3 mistaken, no one testified that Mr. Brayboy took anything.

4 MRS. PRATT: Well, Your Honor, the -- Mr. -- I hope I  
5 get your names right on the victims. I'm sorry. Mr.  
6 McMillian's cell phone is still missing.

7 Now, Robin Turner said over and over two wallets and  
8 one cell phone. That's still another cell phone that  
9 would of had to have been taken by either Brayboy or  
10 Brown. Obviously our contention is that it was -- that it  
11 was Brown. But that's been the State's whole case is that  
12 Brayboy took these items, and he even argued that if  
13 anything's missing it's cause Brayboy took off with it.

14 MR. MCEACHIN: That's inaccurate, Your Honor. I  
15 never made that argument.

16 MRS. PRATT: You did say that he would have items in  
17 his pocket and was gone if I remember correctly.

18 MR. MCEACHIN: That is inaccurate. I never said  
19 that, Your Honor.

20 THE COURT: I'm, I'm gonna stick to my earlier ruling  
21 regarding that charge. I don't, I don't, I don't think  
22 it's appropriate under these facts.

23 MR. MCEACHIN: Your Honor, may I submit this as a  
24 Court's Exhibit?

25 THE COURT: Absolutely. And I'll certainly note your

1 exception to the Court not charging that.

2 MR. MCEACHIN: Thank you, judge.

3 THE COURT: And we'll mark this as Court's Exhibit,  
4 the State's request that the Court did not charge.

5 MR. MCEACHIN: Thank you.

6 (Whereupon, the charge was marked as Court's Exhibit  
7 No. 1 for identification purposes only at this time.)

8 THE COURT: Anything further, Mr. McEachin?

9 MR. MCEACHIN: That would be it from the State, Your  
10 Honor.

11 THE COURT: And anything, any objections or  
12 exceptions of the charge?

13 MRS. PRATT: None from the defense, Your Honor.

14 THE COURT: All right. If y'all, two of y'all please  
15 get with Keshia. Go through and make sure that everything  
16 is, is here that needs to be here. The only thing that,  
17 that I'm not gonna allow back with the jury is the  
18 shotgun. But everything else will go back. While y'all  
19 are doing that, I think their food is here. We're gonna  
20 go ahead and send their food back.

21 (Whereupon, the alternate juror was dismissed at this  
22 time, and the jury began deliberations at 1:05 p.m.)

23 THE COURT: Okay. I have I think three questions  
24 that the jury has sent out, although they've kind of  
25 couched it like four, but I think it's three.

1       The first one is why did they go to the house to  
2       arrest Brayboy, and then I think they expounded on that by  
3       saying how did the police know to go to the residence  
4       where Mr. Brayboy was found.

5       Two, second wallet, was it ever recovered.

6       Three, why not arrest him on December 6<sup>th</sup> or 7<sup>th</sup>.  
7       why wait till January to arrest him.

8       Now, those are all questions of fact that I can't  
9       answer for the jury and I'll say this. Y'all can tell me.  
10      I don't know that those were ever discussed throughout the  
11      case.

12      MR. MCEACHIN: Your Honor, Investigator Gainey  
13      addressed -- well, I'll take them in, in this order. As  
14      far as why they went to the house---

15      THE COURT: How they knew that Mr. Brayboy was at the  
16      house he was at. That's basically their question.

17      MR. MCEACHIN: Right.

18      THE COURT: Cause he wasn't, apparently was not found  
19      at his house.

20      MR. MCEACHIN: Right. Officer Graham testified he  
21      received a phone call, and as a result of that phone call  
22      he went to this house that he went to.

23      THE COURT: Okay. Why wasn't he arrested on December  
24      the 6<sup>th</sup> or 7<sup>th</sup> and why was it until January.

25      MR. MCEACHIN: Well, I don't know that that was ever



1 necessarily addressed, expressly addressed.

2 THE COURT: I don't know either. This is -- my, my  
3 point in all of this is, is simply this. All I can tell  
4 them I think is that these are all questions regarding --  
5 well, they're, they're questions that I, I, I can't give  
6 you the answer to because I, obviously I'm not allowed to,  
7 to testify. I can, I can allow you to rehear testimony if  
8 you feel that would be of any help. But, but I can't give  
9 you these answers.

10 MR. MCEACHIN: I think that's the only thing you can  
11 do, Judge.

12 MRS. PRATT: I agree, Your Honor. It would be an  
13 improper comment on the facts.

14 THE COURT: Now, don't get me wrong, I'm very  
15 hesitant to tell a jury you can re-listen to testimony  
16 cause sure enough they'll want to.

17 MRS. PRATT: I'm not sure that we could point them to  
18 where that would be, but especially---

19 THE COURT: Well, I'm not gonna point them anywhere.

20 MR. MCEACHIN: I think they have to request---

21 THE COURT: All I can tell them is that, is that they  
22 are to decide the evidence, this case based on the  
23 evidence that was presented during the course of the  
24 trial. I can't comment on that evidence. I can allow  
25 them to rehear testimony if they wish to do that. But I

1 can't, you know, I can't comment on the evidence. I don't  
2 know what else to tell them.

3 MRS. PRATT: I agree.

4 MR. MCEACHIN: I think that's all you can, Judge.

5 THE COURT: All right. Ms. Joe, ask the members of  
6 the jury to join us if you would please.

7 (Whereupon, the jury returns to the courtroom at 1:52  
8 p.m.)

9 THE COURT: Ladies and gentlemen, I have received  
10 the, the questions that you've sent out, and all of your  
11 questions relate to the evidence that was presented during  
12 the course of the trial, and I'm not allowed to, to  
13 comment on the evidence. In other words, I'm not allowed  
14 to just answer these questions. You have to rely on your  
15 recollection of the testimony and the evidence that was  
16 presented during the course of the trial.

17 Now, I can tell you that if you feel it, feel it  
18 would be helpful, I can play back or Miss Reed can play  
19 back certain portions of testimony if you think it would  
20 help you in that regard. But as far as just simply  
21 answering these questions, I'm, I'm not allowed to comment  
22 on the evidence.

23 So, what I'm gonna ask you to do, if you would, is,  
24 is to return to your jury room to, to deliberate, and, and  
25 either, through your deliberations and your recollection

1 of the testimony, be able to resolve these, these  
2 questions or if, if you feel that it would be helpful you,  
3 for you to rehear a, a witness' testimony, if you'll let  
4 me know if you want to do that, and let me know which  
5 witness' testimony you would like to rehear, I can bring  
6 you out and replay that testimony for you if you think  
7 that would be helpful.

8       Okay. So, I'm gonna ask you, if you would, to then  
9 step back into your jury room and to continue with your  
10 deliberations.

11       (Whereupon, the following takes place outside the  
12 presence of the jury.)

13       THE COURT: All right. Any objections or exceptions  
14 to the Court's response to the jury?

15       MR. MCEACHIN: None from the State, Your Honor.

16       MR. MCEACHIN: Anything from the defense?

17       MRS. PRATT: None from the defense, Your Honor.

18       THE COURT: All right. I'm gonna mark this as a  
19 Court's Exhibit. This will be 2 I guess.

20       (Whereupon, the note from the jury was marked as  
21 Court's Exhibit No. 2 for identification purposes only at  
22 this time.)

23       THE COURT: All right. And we'll remain at ease with  
24 regards to this matter.

25       (Whereupon, the jury began deliberations again at

1 1:55 and returned with another question at 2:14.)

2 THE COURT: All right. Ladies and gentlemen, what  
3 we're gonna do, the first -- you, you've asked to hear the  
4 testimony of Mr. Turner, Mr. Brown, and Officer Graham.  
5 Miss Reed is gonna play that for you. The set-up she has  
6 here is she's got a couple of recorders, and as one gets  
7 to the end, the other kicks on. So, she may have to break  
8 and put another tape and whatever. So, there may be some  
9 overlap.

10 But if you have any problem hearing, raise a hand or  
11 wave at us, let us know. We're gonna amplify it with the  
12 microphone here and just let us know what you need to hear  
13 and then -- ask everyone in the courtroom to, as always,  
14 you know, try, try, let's try to keep things down so that  
15 everyone can hear well because peripheral noise can  
16 sometimes really interfere.

17 But having said that, Miss Reed.

18 (Whereupon, the testimony was played for the jury at  
19 this time.)

20 THE COURT: All right. Ladies and gentlemen, those  
21 are the three things you asked for. We'll ask, if you  
22 would, please return to your jury room and continue with  
23 your deliberations. If you need anything while you're in  
24 there, drinks, snacks, let us know.

25

1       (Whereupon, the following takes place outside the  
2       presence of the jury.)

3       THE COURT: All right. Well, then, anything we need  
4       to take up from the State?

5       MR. MCEACHIN: Nothing from the State, Your Honor.

6       THE COURT: Any from the defense?

7       MRS. PRATT: No, Your Honor.

8       (Whereupon, the note from the jury was marked as  
9       Court's Exhibit No. 3 for identification purposes only at  
10      this time.)

11      THE COURT: All right. We'll remain at ease then  
12      while the jury continues with deliberations.

13      (Whereupon, the jury began deliberations at 4:04 and  
14      returned with a verdict at 5:01.)

15      THE COURT: Ms. Joe, if you would ask the members of  
16      the jury to join us please.

17      (Whereupon, the following takes place within the  
18      presence of the jury.)

19      THE COURT: Mr. Foreman, has the members of the jury  
20      reached a unanimous verdict, sir?

21      FOREMAN: We have, Your Honor.

22      THE COURT: All right. If you would please pass that  
23      to Mrs. O'Hare.

24      (Foreman complies.)

25      THE COURT: Thank you very much, sir.

1           Ms. O'Hare, if you would please publish the verdict  
2 of the jury.

3           THE CLERK: The State of South Carolina versus Larry  
4 Bradley Brayboy, as to armed robbery, we, the jury, find  
5 the defendant, Larry Bradley Brayboy, guilty of armed  
6 robbery.

7           As to kidnapping, we, the jury, find the defendant,  
8 Larry Bradley Brayboy, guilty of kidnapping.

9           As to assault and battery high and aggravated nature,  
10 we, the jury, find the defendant, Larry Bradley Brayboy,  
11 guilty of assault and battery of a high and aggravated  
12 nature.

13           Members of the jury, if this is your verdict, please  
14 raise your right hand.

15           (Whereupon, all jurors raise their hands at this  
16 time.)

17           THE CLERK: That's all of them, Judge.

18           THE COURT: All right.

19           (Whereupon, the jury was dismissed at this time.)

20           THE COURT: At this time I'll be happy to entertain  
21 any, any motions post-verdict.

22           MRS. PRATT: Thank you, Your Honor.

23           Your Honor, at this time I would make a motion in  
24 arrest of judgment in regards to this matter. It is clear  
25 to me that the jury's decision was made as a result of, of

1 passion and prejudice. I'm very concerned about the very  
2 last thing that they listened to, which I made a motion  
3 about on the first day of trial, had to do with the  
4 argument about flight and hiding and whether or not that  
5 could be considered as an, evidence of his guilt. And  
6 while I understand the Court's case law and the ruling, I  
7 would make that ruling a part of my motion in arrest of  
8 judgment.

9 The evidence that was possible or presented in this  
10 case was testimony of two convicted felons, and that's  
11 basically all that was there to put my client in that  
12 place. While I understand that that is the province of  
13 the jury, that evidence, coupled with the other rulings  
14 that were made, I believe have meant that my client  
15 received a verdict from the jury that did not speak the  
16 truth, but was actually one of passion and prejudice  
17 without a consideration of all the due factors.

18 Because of that, Your Honor, I would be asking, and a  
19 renewal of every other objection that I made as a part of  
20 this motion, I would be asking that you take this away  
21 from the jury and either order a not guilty verdict or a  
22 new trial.

23 THE COURT: All right. I certainly understand your  
24 position, Mrs. Pratt. The, the jury, again, as far as the  
25 evidence goes, whether it be -- I think, I think it did

1     boil down to a, a matter of credibility or believability.  
2     whether the co-defendants were believable or not was an  
3     issue for the jury to decide, and it was apparent that  
4     they, after much deliberation, decided that, that they  
5     were credible. Being a convicted felon doesn't make you  
6     not credible. It doesn't make you a liar. It certainly  
7     just -- it means you've got a prior criminal record, and  
8     the jury's entitled to do with that which they will.

9             They received this case somewhere around, and I  
10     usually look and I didn't, but it was somewhere around one  
11     o'clock and it is now five o'clock, and they took some  
12     additional testimony. They took the time to hear  
13     additional testimony. So, apparently they worked  
14     diligently and, and apparently covered everything they  
15     felt was necessary.

16            I don't find that their verdict, it doesn't appear  
17     that their verdict was the result of anything other than  
18     responsible and deliberate deliberations. And so, I'm  
19     gonna respectfully deny your motion for an arrest of  
20     judgment.

21            Anything further, ma'am?

22            MRS. PRATT: No, Your Honor.

23            THE COURT: State ready to proceed to sentencing?

24            MR. MCEACHIN: State is ready, Your Honor.

25            MRS. PRATT: Do you want any of these people who wish



1 to speak on his behalf to come around, Your Honor, or may  
2 they stand where they are?

3 THE COURT: Here's, here's what I'm gonna do. I'm  
4 gonna hear from the State as far as sentencing and, and  
5 their position, and then, of course, Mrs. Pratt, I'll,  
6 I'll hear from you and I'll be happy to hear from anyone  
7 who wishes to address the Court, and it might be easier,  
8 as, as long as they, as they speak loudly where Miss Reed  
9 can, can hear them, it, it would be fine with me if they  
10 would just like to stand where they're at to address the  
11 Court regarding sentencing.

12 MRS. PRATT: Thank you, Your Honor.

13 THE COURT: All right. Solicitor, be happy to hear  
14 from you with regards to sentencing.

15 MR. MCEACHIN: Thank you, Your Honor.

16 May it please the Court.

17 I'm handing up to Your Honor three separate  
18 sentencing sheets. One for armed robbery, one for  
19 kidnapping, and one for assault and battery of a high and  
20 aggravated nature. These are all on Indictment No.  
21 2009-GS-21-398. Your Honor, on today's date, which is  
22 August 26<sup>th</sup>, 2009, the defendant was found guilty by jury  
23 trial on all three counts of the indictment.

24 Your Honor, the defendant's only prior record appears  
25 to be a breach of trust from 2006, and that is a

1 magistrate's level breach of trust, Your Honor.

2 Your Honor, also up here with me are the victims in  
3 the case, Chappell McMillian and Gary McClary, Your Honor.  
4 I would ask, at, at the appropriate time, they give, be  
5 given an opportunity to speak if they wish to.

6 THE COURT: Absolutely. And I will be more than  
7 happy to hear from them. If I, if I may, let me, let me  
8 first turn my attention to, to Mrs. Pratt, and, ma'am,  
9 I'll be happy to hear from you and then, like I said, any,  
10 anyone who wishes to address the Court on Mr. Brayboy's  
11 behalf.

12 MRS. PRATT: Thank you, Your Honor.

13 Your Honor, my client is 26 years old. He graduated  
14 high school. He has a welding certificate. He has a son  
15 who is two years old. He has no criminal record. He, in  
16 spite and respectfully, denies committing this crime. He  
17 respects the jury's verdict obviously and the process, but  
18 he has maintained his innocence of the actual armed  
19 robbery throughout.

20 And, Your Honor, he is not of the character of this  
21 kind of crime. I understand how hard, how horrible this  
22 crime would be for victims. As the Court may know, we had  
23 an armed robbery at my husband's restaurant, and I know  
24 that it's very telling on victims. But Larry Brad Brayboy  
25 is not that kind of person.

1       He is very caring of his family. You've seen his  
2       family members here every day. You've seen the support of  
3       his pastor, the support of one of the local  
4       representatives. People that know the family that know  
5       who they are and who Larry is or Brad as I've been calling  
6       him and as I know him.

7       I would ask the Court to be as lenient as the Court,  
8       the Court possibly can. And I understand that you have to  
9       give respect and, and credence to the jury's verdict. I,  
10      I completely respect that. And to the victim's family of,  
11      these victim's feelings. But I hope that the Court will  
12      consider, first of all, that he has no record, that he is  
13      a productive member of society, that he has, you know, a  
14      good job at Honda before he was laid off from there with a  
15      welding certificate. So, he's been, you know, a tax  
16      paying good member of society, and I hope that that will  
17      affect the Court's decision in sentencing.

18      MR. MCEACHIN: Beg the Court's, beg the Court's  
19      indulgence for just a moment.

20      (Pause.)

21      MRS. PRATT: And I, and I appreciate. The solicitor  
22      has reminded me of something I was going to ask, that you  
23      make a finding, because of the kidnapping, that this was  
24      not a sexual, sexually motivated matter so that there  
25      would be no sex offender registry involved in this case.

1           THE COURT: Absolutely. And, and before we go any  
2 further and, I, and I forget or allow that to pass, let me  
3 go ahead and put that on the record right now that, that  
4 there is absolutely no indication that this was a crime  
5 of, of, of any type of sexual matter, and, and I would  
6 specifically find that, that Mr. Brayboy will not be  
7 required to fall under that, that rule or that, that  
8 having to register.

9           So, anyone else wish to address the Court, Mr.  
10 Brayboy, anyone else on his behalf, and, if I may, anyone  
11 who wishes to address the Court, I'm happy to hear from  
12 you. Before you speak, if you would please give me your  
13 name for the record.

14          MRS. BRAYBOY: My name is Mary Brayboy.

15          THE COURT: Yes, ma'am.

16          MRS. BRAYBOY: And I'm his mother.

17          THE COURT: Yes, ma'am.

18          MRS. BRAYBOY: I never thought that I would be at  
19 this point in this place right now. I honestly know in my  
20 heart that Brad did not do this, and if the police  
21 department just would of done the fingerprints and the  
22 D.N.A. But now we're gonna have to go on and on spending  
23 money when it all could of been taken care of by something  
24 simple. With that in mind, I would plead with you for a  
25 minimum sentence for my son.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Mrs. Brayboy.

3 MR. BRAYBOY: Your Honor, I'm his father.

4 THE COURT: Yes, sir.

5 MR. BRAYBOY: I turned 50 years old yesterday. I've  
6 never been in jail in my life. I haven't raised my  
7 children that way. My son didn't do this and I know it.  
8 Have mercy on him for me. He's a good fellow.

9 THE COURT: And, Mr. Brayboy, I apologize.  
10 Could I get your name for the record, sir?

11 MR. BRAYBOY: Larry Brayboy.

12 THE COURT: Larry Brayboy. Okay. Thank you, sir.  
13 Yes, sir.

14 MR. DELL: Your Honor, my name is Timothy Dell. I'm  
15 the pastor of the Lake City P.H. Church. I've been Brad's  
16 pastor for about a year, almost a year and a half now, and  
17 all I can say about him is that none of this fits into his  
18 nature. He is one of the most gentle young men I've ever  
19 met. I can't imagine him pertaking anything that would be  
20 violent.

21 He's faithful to the church. He comes every Sunday.  
22 He works when we do community events. Just recently we  
23 had an event where we clothed a thousand people and Brad  
24 came and worked for days on that event. Have pictures of  
25 him working with people, passing out clothes. Nothing

1 that has been shown here lines up with the character and  
2 the nature that I know Bradley to be.

3 THE COURT: Thank you very much, pastor. I  
4 appreciate you being here.

5 Yes, ma'am.

6 MRS. ANDERSON: Your Honor, my name is Christine  
7 Brayboy Anderson. I am the aunt of Larry Bradley Brayboy  
8 and he always refers to me as his second mom.

9 Larry Bradley Brayboy is a good child, you know. You  
10 know, if they having things that normally in young kid's  
11 life -- nobody is perfect. We all was kids at one time or  
12 another. But Larry Bradley Brayboy is a good child. He's  
13 a good father. You know, he takes care of his child. He  
14 babysits. You know, he'll stay at home and take care of  
15 that child when the mother will not take care of that  
16 child, and I just ask this Court to be as lenient as  
17 possible, you know, when sentencing him.

18 Thank you.

19 THE COURT: Thank you, ma'am.

20 MRS. ANDERSON: And I pray our strength in the Lord.

21 MRS. PRATT: I believe that would be the defendant's  
22 showing.

23 THE COURT: All right. Mr. Brayboy, I -- you're not  
24 required to, sir, but I'm more than happy to hear from you  
25 if you do wish to address the Court. You're not required

1 to, but if you would like to I'd be happy to hear from  
2 you.

3 THE DEFENDANT: I'm standing here today saying that I  
4 wasn't, I was not guilty, and even doing it, it was heard  
5 on the tape, even she say it wasn't true that you were  
6 there with the shotgun and took the wallet, the boy said  
7 yeah, and I realized he messed up and tried to change it.  
8 I mean I want to live to see my kids. I got another  
9 daughter on the way due in November, and I don't do  
10 nothing but be a good father to my kids and work.

11 I had a good job, but I got laid off due to the  
12 economy. I been looking for another one. And like  
13 everybody say, I participate in the church. I mean I  
14 don't even do that type of stuff. I mean, and the victims  
15 they have, I'm sorry it happened to them. But I can't say  
16 I did it to them cause I didn't.

17 THE COURT: All right, sir. All right. Thank you  
18 very much, Mr. Brayboy.

19 Mr. -- yes, sir, I'm sorry.

20 THE DEFENDANT: But if I have to get any time or  
21 something, you think maybe I could get house arrest or  
22 anything or something?

23 THE COURT: Well, I don't know, I don't know what I'm  
24 gonna do. Mr. Brayboy, I can tell you though that the law  
25 regarding armed robbery, that the sentence on that charge

1 is a mandatory ten to thirty years. So, so, if I, if I  
2 was to show you absolutely every piece of mercy I could  
3 possibly show, you'd have to get, at least get a ten year  
4 sentence.

5 But anyway, Mr. McEachin, be happy to hear from  
6 anyone who, the victims, if they wish to address the  
7 Court, but they don't have to.

8 MR. MCEACHIN: And, Your Honor, thank you. I've  
9 spoken with both Mr. McClary and Mr. McMillian and neither  
10 of them would like to address the Court in this matter.

11 THE COURT: All right.

12 MR. MCEACHIN: They, they were here earlier this week  
13 and have seen everything that's transpired.

14 THE COURT: Sure.

15 Gentlemen, at least let me convey to you how sorry I  
16 am you've had this experience, and I appreciate your  
17 cooperation with the State in its investigation and taking  
18 your time to be here. I certainly understand that this is  
19 not easy for either one of you, and I'd like to say I, I  
20 understand exactly how you feel. I don't because I've  
21 never been through what you've been through. But I  
22 certainly can understand how difficult it was for you.

23 So, thank you very much for your presence here this  
24 week.

25 I'm not gonna belabor the, the point. I know



1 everyone's been here and it's been a long time, but, but  
2 it's a very serious matter. I'm gonna take a few minutes  
3 to step back in my chambers to reflect on this and it will  
4 not be long. It will be a few minutes, and, and then  
5 I'll, I'll, I'll return.

6 So, Court just be in recess for a little bit while I  
7 take this matter under advisement.

8 MRS. PRATT: Thank you, Your Honor.

9 MR. MCEACHIN: Thank you, judge.

10 (Whereupon, a short break was taken at this time.)

11 THE COURT: Let me, let me say that, that this, this  
12 is difficult because it's hard to understand how someone  
13 can, can have all the support and love that, that  
14 Mr. Brayboy clearly has and whatever advantages that, that  
15 lends a person and, and still find themselves in this  
16 situation.

17 Let me, let me first speak to this situation. I, I  
18 sat in here and heard all the evidence just as all of  
19 y'all did. And with all due respect, Mr. Brayboy, and the  
20 respect to your family, there's some things in this case  
21 that, that don't point to anyone other than you as being  
22 the person with the sawed-off shotgun, and, and I realize  
23 that your family supports you and, and does not believe  
24 you were involved in this.

25 But you got two, two young men who one knows you very

1 well. One knows you not very well. They're, they're  
2 caught at the scene. They're put in separate police cars.  
3 They're taken separately. And on separate occasions they  
4 both give you as the third guy. They've both put the  
5 sawed-off shotgun in your hands, and I appreciate the, the  
6 theory that Mrs. Pratt put forward saying that we don't  
7 really know if they didn't get together and corroborate,  
8 but, you know -- and, and, Mrs. Pratt, you're an  
9 outstanding lawyer. I have all respect in the world for  
10 you. But, you know, it's hard to argue those two sides of  
11 that coin.

12       You're first -- at one, at one time you're trying to  
13 tell a jury you can't believe them because their stories  
14 don't match up, but yet you want the jury to believe that  
15 they got together and put their story together. So, that  
16 kind of conflicts.

17       Having, having said that, it doesn't matter what I  
18 believe because the jury has spoken, and, and, and the  
19 jury has found you guilty of these offenses. So, I look  
20 at sentencing, and I was talking with, with my law clerk  
21 in, in going over this.

22       The, the worst case scenario, and, and let me preface  
23 this by letting the family know, I'm not even considering  
24 this, I'm just letting you know that, that you, you face a  
25 possible 70 years in prison. Kidnapping carries a maximum

1 of thirty years, armed robbery carries a maximum of thirty  
2 years, and assault and battery of a high and aggravated  
3 nature carries a maximum of ten years. And, and I could  
4 sentence you to those maximum and run them consecutive,  
5 which would be a seventy year sentence. I don't intend to  
6 do that. But you do need to understand that this is your  
7 exposure and this is what the legislature has looked at  
8 these laws and, and these offenses and has set this.

9 Now, they set the parameter of a range. Kidnapping  
10 is zero to thirty. Armed robbery is ten to thirty.  
11 Assault and battery, zero to ten, and I, and I believe  
12 they have a range for a reason. And, and I believe it's  
13 because someone with a horrible prior record deserves to  
14 be on the other end of that scale. Someone with no prior  
15 record deserves that consideration. And so, I've taken  
16 that into consideration in, in deciding what is  
17 appropriate in this sentence.

18 So, in, in doing that, I've, I've, I've taken you  
19 away from that thirty years because I don't think it's  
20 appropriate because while it's not fair to say you have no  
21 prior record, you have a breach of trust, but you have no  
22 significant prior record. And so, I give you credit for  
23 that.

24 One of the issues that, that concerned me greatly  
25 about this case is I see armed robberies a lot. I see

1    them all the time. And on the vast majority of them that  
2    I see, it's an armed robbery where either weapons are  
3    displayed and money is taken or items or the threat of  
4    weapons is made and items and things are taken. But  
5    rarely do I see a situation where it's an armed robbery  
6    that involves violence where the victims are actually  
7    assaulted for no reason.

8           In this case, neither, neither -- there was no  
9    testimony whatsoever from these gentlemen that they did  
10   anything other than comply with the request that were  
11   being made. But the evidence showed that you went in and  
12   you, for no reason, assaulted this young man. And so,  
13   I've taken all that into consideration and I guess my  
14   point being this. I don't think you deserve to be on the  
15   far end of that thing, but I'm also not gonna impose the  
16   minimum sentence because I don't believe it's appropriate  
17   either.

18           I am -- I will tell you that I am running all of  
19   these sentences concurrent. In other words, together.  
20   They'll all run together. You're to be given credit for  
21   any time that you have served.

22           I appreciate the fact -- I appreciate your pastor  
23   being here and hearing that you are active in your faith.  
24   If that's true, Mr. Brayboy, if that faith is real, then  
25   the Lord will help you through this period that you're

1 gonna to have to go through. If it's show, if it's not,  
2 then, then it will be what it is. I hope, I hope it is  
3 real and I hope that you'll take it with you.

4 There are, there are good things in the Department of  
5 Corrections and there are bad things. I hope and pray  
6 that you'll gravitate yourself toward the good things that  
7 are there and avoid the bad.

8 With regards to Indictment 2009-GS-21-398, with  
9 regards to the Count One of armed robbery, Sentence of the  
10 Court is that you be committed to the State Department of  
11 Corrections for a period of 18 years.

12 On Count Two, kidnapping, the Sentence of the Court  
13 is that you be committed to the State Department of  
14 Corrections for a period of 18 years.

15 And on Count Three, assault and battery of a high and  
16 aggravated nature, Sentence of the Court is that you be  
17 committed to the State Department of Corrections for a  
18 period of ten years.

19 Those are all to run concurrent and you're to be  
20 given credit for any time that you have served on these  
21 matters.

22 Good luck to you, sir.

23 MRS. PRATT: Thank you, Your Honor.

24 MR. MCEACHIN: Thank you, Judge.

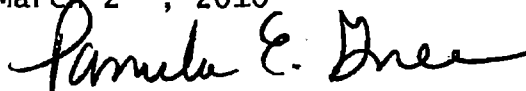
25 END OF REQUESTED TRANSCRIPT

## C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 24<sup>th</sup> through 26<sup>th</sup> day of August, 2009, as reported by Keshia Reed, and transcribed by myself.

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

March 2<sup>nd</sup>, 2010



---

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

LARRY BRADLEY BRAYBOY,

APPELLANT

---

FINAL BRIEF OF APPELLANT

---

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

|                                   |   |
|-----------------------------------|---|
| TABLE OF CONTENTS.....            | 1 |
| TABLE OF AUTHORITIES.....         | 2 |
| STATEMENT OF ISSUE ON APPEAL..... | 3 |
| STATEMENT OF THE CASE .....       | 4 |
| ARGUMENT .....                    | 5 |
| CONCLUSION.....                   | 9 |



TABLE OF AUTHORITIES**Cases**

|                                                                               |      |
|-------------------------------------------------------------------------------|------|
| <u>State v. Elmore</u> , 368 S.C. 230, 628 S.E.2d 271 (Ct.App. 2006).....     | 6, 7 |
| <u>United State v. Boyce</u> , 611 F. 2d 530 (4 <sup>th</sup> Cir. 1979)..... | 7    |

STATEMENT OF ISSUE ON APPEAL

In an armed robbery case involving a shotgun and a pistol, did the judge err in limiting defense counsel's questioning of a co-defendant about a prior conviction for possession of a firearm when the actual prior conviction was for possession of a sawed off shotgun, finding that the prejudicial affect of the prior conviction for possession of a sawed off shotgun outweighed any probative value?

STATEMENT OF THE CASE

In April of 2009, the Florence County Grand Jury indicted Brayboy in a three count indictment for armed robbery, kidnapping and assault and battery of a high and aggravated nature, indictment #09-GS-21-398. On August 24, 2009, Brayboy proceeded to jury trial before the Honorable Thomas A. Russo. The jury returned verdicts of guilty. Judge Russo sentenced Brayboy to 18 years for armed robbery, 18 years concurrent for kidnapping and 10 years concurrent for assault and battery of a high and aggravated nature. A timely notice of intent to appeal was filed on September 3, 2009. This appeal follows.

ARGUMENT

In an armed robbery case involving a shotgun and a pistol, the judge erred in limiting defense counsel's questioning of a co-defendant about a prior conviction for possession of a firearm when the actual conviction was for possession of a sawed off shotgun, finding that the prejudicial affect of the prior conviction for possession of a sawed off shotgun outweighed any probative value.

According to the State's theory of the case, Brayboy, Robin Turner and Quennell Brown robbed the Pizza Hut in Lake City. Both Turner and Brown testified against Brayboy at trial. In exchange for their testimony, all state charges were dismissed against Turner and Brown's charge was reduced to attempted armed robbery. (R. 167, lines 7 – p. 168, lines 1-3; R. 205, lines 18 – p. 206, lines 1-4). Turner testified that he, Brayboy and Brown robbed the Pizza Hut wearing stocking masks (R. p. 180, lines 21 – p. 181, lines 1-17). Turner testified that he had a pistol, Brayboy had a shotgun and Brown was not armed. (R. 178 – 182). Turner denied having a shotgun during the robbery. (R. 199, lines 2-19).

One of the employees inside the Pizza Hut at the time of the robbery testified that only two people robbed the restaurant, one armed with a shotgun and one armed with a pistol. (R. 17, lines 1 – p. 18, lines 1-3). Turner and Brown were arrested at the scene. Brayboy was arrested almost a month later. The State offered no forensic evidence linking Brayboy to the robbery of the Pizza Hut.

Prior to the testimony of Turner and Brown, the State sought to settle their prior records. (R. 135, lines 6-23). Counsel for Brayboy argued that she should be able to question Turner about a February 11, 1998, conviction for possession of a sawed off shotgun. (R. 138, lines 9-15). Turner received a sentence of two years suspended upon the service of three years probation. (R. 140, lines 5-7). The State argued that the

conviction was outside of the ten year time limit provided by Rule 609(b), SCRE, and argued that the prejudicial effect outweighed any probative value. (R. 140, lines 3-23). The State argued that if the case came within the time limit of Rule 609(b), that the conviction should be referred to as simply a weapons conviction rather than a conviction for possession of a sawed off shotgun. (R. 140, lines 23 – p. 141, lines 1-2).

Counsel for Brayboy noted that on December 8, 1998, Turner's probationary sentence for possession of a sawed off shotgun was revoked and Turner received a two year active sentence, bringing the charge within the ten year time limit of Rule 609(b). (R. 143, lines 15-18). The judge agreed. (R. 143, line 19). The State again argued that allowing the specific charge was more prejudicial than probative. (R. 143, lines 20 – p. 144, lines 1-11). Counsel for Brayboy noted that there was a difference between defendants and witnesses in regard to impeachment evidence. (R. 144, lines 24 – p. 145, lines 1-8).

After reviewing impeachment evidence as it applies to defendants, the judge stated:

“And, and, so, I, I feel that allowing Mr. Turner to be questioned that he has a prior conviction for possession of a sawed off shotgun, with that being a direct issue involved in this case, is highly prejudicial to a jury in determining, in determining someone's credibility. I think they can determine the same credibility by understanding that he was convicted of a weapons charge. Whether he's convicted of a weapons charge or whether he's convicted of possession of a sawed off shotgun shouldn't have any affect regarding his credibility as a witness.”

(R. 151, lines 17 – p. 152, lines 1-2). The State cited State v. Elmore, 368 S.C. 230, 628 S.E.2d 271 (Ct.App. 2006) in support of the judge's ruling. Counsel for Brayboy again argued that Rule 609 makes a distinction between witnesses and the accused. (R. 155, lines

12 – p. 156, 157, lines 1-6). Alternatively, counsel for Brayboy asked that she be allowed to refer to the conviction as a firearm conviction rather than simply a weapons conviction. (R. 157, lines 3-6). The judge, relying on Elmore and United State v. Boyce, 611 F. 2d 530 (4<sup>th</sup> Cir. 1979), ruled that the conviction could only be referred to as an unlawful possession of a firearm rather than unlawful possession of a sawed off shotgun as the specific charge was similar and too prejudicial. (R. 158, lines 19 – p. 159, 160, lines 1-13) The judge erred. During cross examination, counsel was limited to asking Turner about an unlawful possession of a firearm charge. (R. 193, lines 1-20).

Rule 609(a), SCRE provides that for the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. Pursuant to Rule 609(a), the balancing of probative value verses prejudicial affect only applies when the State seeks to impeach the accused with conviction of a crime. There is no such requirement for witnesses other than the accused, as argued by trial counsel. (R. 155, lines 14-23). Turner was a witness other than the accused and counsel for Brayboy should have been able to question Turner about his specific conviction for possession of a sawed off shotgun.

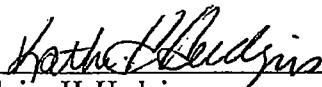
The State admitted during argument that Elmore was not directly on point because that case involved prior convictions of the defendant. (R. 152, lines 17-25). The Boyce case also involved prior convictions of the defendant. The judge erred in relying on these cases

because the rule distinguishes the requirements of impeachment evidence for witnesses other than the accused, like Turner, and the accused. Brayboy was prejudiced by the erroneous limitation on cross examination because the only evidence linking Brayboy to the robbery was the testimony of Turner and Brown, the two co-defendants who received substantial benefit from their testimony.

CONCLUSION

Based on the above argument, Brayboy's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of March, 2011.



## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

  
KATHRINE H. HUDGINS  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
1330 Lady Street, Suite 401  
Post Office Box 11589  
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Florence County  
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

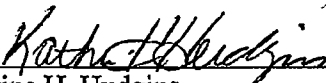
V.

LARRY BRADLEY BRAYBOY,

APPELLANT

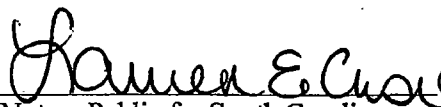
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201; and on Larry Bradley Brayboy, # 336486 at Perry Correctional Institution, this 21st day of March, 2011.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 21st day of March, 2011.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: August 23, 2014.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

LARRY BRADLEY BRAYBOY,

APPELLANT.

## FINAL BRIEF OF RESPONDENT

ALAN WILSON  
Attorney General

JOHN W. MCINTOSH Chief  
Deputy Attorney General

SALLEY W. ELLIOTT Assistant  
Deputy Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

EDGAR LEWIS CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit

180 N. Ivey St. MSC Q Room 1101  
Florence, SC 29501 (843) 665-  
3091

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

|                                   |   |
|-----------------------------------|---|
| TABLE OF CONTENTS .....           | 1 |
| TABLE OF AUTHORITIES .....        | 2 |
| STATEMENT OF ISSUE ON APPEAL..... | 3 |
| STATEMENT OF THE CASE .....       | 4 |
| ARGUMENT .....                    | 5 |
| CONCLUSION .....                  | 9 |

**AUTHORITIES CITED**

**Cases:**

|                                                                               |      |
|-------------------------------------------------------------------------------|------|
| <u>Bowman v. Bowman</u> , 357 S.C. 146, 591 S.E.2d 654 (Ct. App. 2004) .....  | 6    |
| <u>State v. Bryant</u> , 369 S.C. 511, 633 S.E.2d 152 (2006) .....            | 7, 8 |
| <u>State v. Cooper</u> , 312 S.C. 90, 439 S.E.2d 276 (1994) .....             | 8    |
| <u>State v. Elmore</u> , 368 S.C. 230, 628 S.E.2d 271 (Ct. App. 2006) .....   | 8    |
| <u>State v. Ferguson</u> , 300 S.C. 408, 388 S.E.2d 642 (1990) .....          | 8    |
| <u>State v. Morris</u> , 376 S.C. 189, 656 S.E.2d 359 (2008) .....            | 7    |
| <u>State v. Patterson</u> , 324 S.C. 5, 482 S.E.2d 760 (1997) .....           | 6-7  |
| <u>State v. Tillman</u> , 304 S.C. 512, 405 S.E.2d 607 (Ct. App. 1991) .....  | 8    |
| <u>State v. Williams</u> , 380 S.C. 336, 669 S.E.2d 640 (Ct. App. 2008) ..... | 8    |

**Statutes and Rules:**

|                      |      |
|----------------------|------|
| Rule 403, SCRE ..... | 7    |
| Rule 609, SCRE ..... | 5, 7 |

STATEMENT OF ISSUE ON APPEAL

**The trial judge properly limited Appellant's impeachment of a co-defendant pursuant to Rules 609 and 403, SCRE.**

STATEMENT OF THE CASE

Appellant was indicted in April 2009 in Florence County for armed robbery, kidnapping, and assault and battery of a high and aggravated nature ("ABHAN") (R. p. 344-46). On August 24-26, 2009, he proceeded to trial before the Honorable Thomas A. Russo. (R. p. 1). The jury found Appellant guilty, and Judge Russo sentenced him to eighteen years for armed robbery, eighteen years, concurrent, for kidnapping, and ten years, concurrent, for ABHAN. (R. p. 328, lines 3-12; p. 343, lines 8-21). A timely notice of appeal was served and filed.

## ARGUMENT

### Background

Appellant sought to impeach his co-defendant, Turner, with a prior conviction from 1998 regarding possession of a sawed-off shotgun. (See App. p. 138-45). The trial judge first determined that this conviction fell within the 10-year time frame contemplated by Rule 609(b), SCRE; therefore, it was generally admissible under section (a)(1) of that rule. (See App. p. 138; 142-43; p. 146, lines 14-15). However, the judge pointed out that, because Appellant's trial involved one of the robbers having a sawed-off shotgun, the admission of Turner's prior conviction involving that same weapon carried the danger of misleading the jury into concluding that since Turner had a shotgun in 1998, he was the robber with the shotgun in this case.<sup>1</sup> (See App. p. 107, lines 2-17; p. 145, lines 14-25; p. 150-51). For that reason, Turner's conviction for a sawed-off shotgun would be "highly prejudicial" to the jurors since they were supposed to use the prior conviction solely to determine Turner's credibility and believability. (See App. p. 151, lines 10-22). The judge reiterated that the whole purpose of admitting a witness's prior convictions was to impeach the witness's credibility. (See App. p. 150-54; p. 159-160). The judge stated that the jury should decide Appellant's case based upon the facts and not based upon an improper propensity inference. (See App. p. 150-51).

The judge concluded that the jury could determine Turner's credibility just the same by hearing he had a 1998 conviction for possession of a "weapon" rather than a "sawed-off shotgun," but without being misled into an improper propensity inference. (See App. p. 151; p. 159-60). Appellant's counsel agreed with the judge's comments and

---

<sup>1</sup> Co-defendant Turner and co-defendant Brown testified that Appellant had a shotgun and Turner had a



balancing test, but requested that the court allow her to refer to the 1998 conviction as a “firearm” conviction rather than a “weapon” conviction so that the jury would understand that the weapon involved was a gun. (See App. p. 156, line 13 – p. 157, line 6). The judge agreed and permitted her to do so. (App. p. 158, line 19 – p. 160, line 13; see p. 193, lines 4-5). No further exceptions were raised. (See App. p. 157-60).

Thereafter, during Turner’s testimony, Appellant’s counsel impeached him with the following prior convictions: unlawful possession of a firearm, common law robbery, possession of stolen goods, possession or receiving stolen goods, and possession of a stolen vehicle. (App. p. 193, lines 1-15). Turner also admitted that he had a pending federal charge for possession of a firearm, and that in exchange for his testimony at Appellant’s trial, he was receiving a plea agreement regarding the federal charge and dismissal of all state charges. (App. p. 190-92; p. 191, lines 2-13; see also p. 194, line 21 – p. 195, line 13). Upon further questioning by Appellant’s counsel, he acknowledged that he “always” carried an unlicensed gun. (App. p. 197, lines 1-21). He also acknowledged that he had previously lied to the police numerous times regarding the facts of this case. (See App. p. 197-201).

**The trial judge properly limited Appellant’s impeachment of a co-defendant pursuant to Rules 609 and 403, SCRE.**

First, Respondent submits that since Appellant’s counsel agreed with the judge’s reasoning, and then received what she requested - to be allowed to refer to the conviction as a “firearm” conviction - the issue raised on appeal is not preserved. (See App. p. 156, line 13 – p. 157, line 6). See Bowman v. Bowman, 357 S.C. 146, 160, 591 S.E.2d 654, 661 (Ct. App. 2004) (a party cannot complain when he receives the relief for which he has asked); State v. Patterson, 324 S.C. 5, 16, 482 S.E.2d 760, 765 (1997) (no issue is

preserved where the party accepts the judge's ruling and does not contemporaneously make an additional objection) (*citing State v. Craig*, 267 S.C. 262, 227 S.E.2d 306 (1976)).

In any event, the admission or exclusion of evidence falls within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion. *See, e.g., State v. Morris*, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008). Rule 609(a)(1), SCRE, states that, for the purpose of attacking credibility, evidence that a witness other than an accused has been convicted of a crime shall be admitted, *subject to Rule 403*, if the crime was punishable by more than a year. Rule 403, SCRE, states that even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.

In this case, the trial judge did not abuse his discretion since he correctly analyzed the issue under the Rules and properly weighed the relevant considerations. (See App. p. 144-60). Contrary to Appellant's argument, the judge did recognize Rule 609's distinction between a defendant and a witness, and he properly conducted a Rule 403 balancing test as instructed by Rule 609(a)(1). (See App. p. 150-60; see also p. 154, line 12 – p. 155, line 3). Inasmuch as Turner's conviction for possession of a "sawed-off shotgun" was not probative on the issue of truthfulness, the conviction was highly prejudicial because it was misleading as to a disputed issue at trial while having virtually no relevance on the issue of impeachment. *See State v. Bryant*, 369 S.C. 511, 517, 633 S.E.2d 152, 156 (2006) (firearms violations are not generally probative of truthfulness). Accordingly, the judge properly concluded that the prejudice and misleading nature of the particular conviction could be remedied, while still retaining the same impeachment

value, by substituting the word "firearm" for "sawed-off shotgun." (See App. p. 158-60). See State v. Elmore, 368 S.C. 230, 239, 628 S.E.2d 271, 276 n. 5 (Ct. App. 2006) (*citing* United States v. Boyce, 611 F.2d 530, 531 n.1 (4<sup>th</sup> Cir. 1979)).

Moreover, even if the trial court had erred, Turner was thoroughly impeached with other similar matters such that the slight limitation regarding the 1998 conviction was harmless. See State v. Cooper, 312 S.C. 90, 92, 439 S.E.2d 276, 277 (1994); State v. Tillman, 304 S.C. 512, 520, 405 S.E.2d 607, 612 (Ct. App. 1991); State v. Williams, 380 S.C. 336, 345, 669 S.E.2d 640, 645 (Ct. App. 2008) (any error in exclusion of a prior conviction for impeachment is harmless where the witness was already thoroughly impeached with other convictions and where his credibility was clearly called into question through other admissions). Turner was impeached with several other, more probative convictions, as well as a pending federal firearm conviction, and he admitted that he always carried a gun and had no qualms about lying to police. (See App. p. 189-201). He also admitted that he was receiving dismissal of all of his state charges in exchange for his testimony at Appellant's trial. (App. p.167, lines 5-25; p. 191-92). The judge's minor limitation on Turner's 1998 prior conviction could not possibly have affected the outcome of the case, especially considering that firearm convictions are not probative for truthfulness in any event. See State v. Bryant, *supra*; State v. Ferguson, 300 S.C. 408, 411, 388 S.E.2d 642, 644 (1990) (refusal to allow certain impeachment evidence is not reversible error when the particular evidence would not have had a meaningful impact on the witness's credibility).

CONCLUSION

Based upon the foregoing, Respondent requests that this Court affirm Appellant's convictions and sentences.

Respectfully submitted,

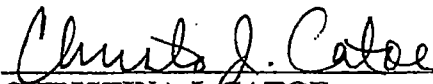
ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General

EDGAR LEWIS CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit

  
CHRISTINA J. CATOE

Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

**ATTORNEYS FOR RESPONDENT**

February 8, 2011

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

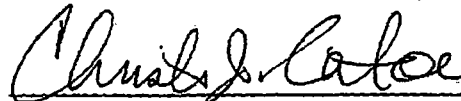
v.

LARRY BRADLEY BRAYBOY,

APPELLANT.

AFFIDAVIT OF SERVICE

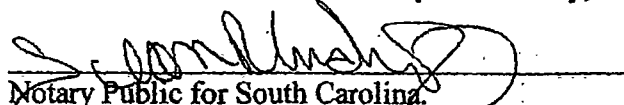
The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **Kathrine H. Hudgins**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this 8<sup>th</sup> day of February, 2011.



CHRISTINA J. CATOE  
Assistant Attorney General

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3737

SWORN to before me this 8<sup>th</sup> day of February, 2011.



Notary Public for South Carolina.

My Commission Expires: My Commission Expires  
January 30, 2013

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Larry Bradley Brayboy, Appellant.

Appellate Case No. 2009-138127

---

Appeal From Florence County  
Thomas A. Russo, Circuit Court Judge

---

Opinion No. 5060  
Heard September 10, 2012 – Filed December 12, 2012

---

**AFFIRMED**

---

Appellate Defender Kathrine H. Hudgins, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy  
Attorney General John W. McIntosh, Senior Assistant  
Deputy Attorney General Salley W. Elliott, and Assistant  
Attorney General Christina J. Catoe, all of Columbia, and  
Solicitor Edgar Lewis Clements, III, of Florence, for  
Respondent.

---

**SHORT, J:** Larry Bradley Brayboy appeals his convictions of armed robbery, kidnapping, and assault and battery of a high and aggravated nature (ABHAN), arguing the trial court erred in limiting his ability to impeach a witness with evidence of a prior conviction. We affirm.

## **I. FACTS/PROCEDURAL BACKGROUND**

Late in the evening of December 6, 2008, intruders entered the Pizza Hut in Lake City, South Carolina. The men wore stocking caps and dark clothing. One man held a pistol, and another man had a shotgun. The man with the shotgun hit an employee in the head with the gun and ordered him to open the cash register. The man with the pistol hit another employee on the head with the gun. The employees were told to take off their clothes and surrender their wallets, cell phones, and keys. After the intruders could not open the cash register and realized the police were en route, they fled.

Investigator Jerry Gainey of the Lake City police department testified he was at the gas station across the street during the robbery. Two employees, who had been outside smoking when the robbery began, ran to him and told him what was happening. Gainey radioed for backup and circled to the back of the Pizza Hut. Gainey and his fellow officers caught Quennell Brown and Robin Turner, two of the perpetrators. Gainey collected evidence at the scene including a shotgun that was "like a sawed-off . . . shotgun."

Brown and Turner admitted their involvement in the crime, indicated Brayboy was the third participant, and agreed to plead to lesser charges and testify against him. Subsequently, a Florence County grand jury indicted Brayboy for armed robbery, kidnapping, and ABHAN.

Prior to Turner's testimony, the trial court heard arguments concerning the admissibility of Turner's prior convictions, especially his prior conviction for possession of a sawed-off shotgun. Brayboy argued the conviction was more probative than prejudicial, and Turner was merely a witness, not a co-defendant. The State argued the conviction was highly prejudicial. Specifically, the State maintained its admission would tend to inappropriately imply Turner's conformity in this case with his prior conviction rather than impeach him. The State agreed to the admission of the conviction itself to be used for impeachment, but it requested the conviction be referred to as a "weapons" conviction.

The trial court opined:

The issue that was the more interesting issue and the more questionable issue that I have is . . . that of the conviction for the possession of a sawed-off shotgun. And the reason obviously that [it] is an issue that is of higher concern is because . . . that is a very issue in this case. I have absolutely no question that if it [was] a conviction that Mr. Brayboy had and he was facing this dilemma, it wouldn't be a dilemma. I would not allow you to ask regarding the sawed-off shotgun.

So, whether that protection extends to a witness . . . is questionable . . . . I'm trying to think to . . . [its] logical conclusion and . . . why do we not want the jury to hear that type of impeaching . . . evidence[?] And the reason is . . . because we expect and we want the jury to base [its] decision solely on the facts that are presented during the course of this trial . . . and not on some issue that occurred in a previous conviction.

The purpose of impeachment is simply to determine whether or not someone is believable or not, and it should have nothing to do with ["]they did it once, they must [have] done it again.["]

....

And . . . I feel that allowing Mr. Turner to be questioned that he has a prior conviction for possession of a sawed-off shotgun, with that being a direct issue involved in this case, is highly prejudicial to a jury in determining . . . someone's credibility.

The court permitted further discussion, and the State argued that *State v. Elmore*, 368 S.C. 230, 628 S.E.2d 271 (Ct. App. 2006), although not on point because it involved the admissibility of a prior conviction against a defendant, was instructive. In *Elmore*, this court discussed the heightened prejudicial effect of the



admission of a similar prior crime against the defendant. *Id.* at 238-39, 628 S.E.2d at 275. This court noted:

One permissible approach, advocated by the United States Fourth Circuit Court of Appeals, is to allow the prosecutor to ask the witness about the existence of a prior similar conviction under Rule 609(a)(1)[, SCRE] without disclosing to the jury the nature of the prior offense. *See United States v. Boyce*, 611 F.2d 530, 531 n. 1 (4th Cir. 1979). The *Boyce* approach was approvingly referenced by our supreme court in *Green v. State*, 338 S.C. 428, 433 n. 5, 527 S.E.2d 98, 101 n. 5 (2000). The *Boyce* approach still requires a meaningful balancing of the probative value and prejudicial effect before admission of the prior conviction, although the prejudice occasioned by the similarity of the prior crime to the crime charged is removed.

*Id.* at 239 n.5, 628 S.E.2d at 276 n.5.

The State argued the prejudicial nature of a similar prior crime "goes not so much for impeachment, but more so to . . . show action and conformity therein." Brayboy argued "Rule 609 makes a distinction between witnesses and the accused . . . The defendant, when he takes the stand, is a different kind of witness . . . . [T]he higher duty to a defendant, which we also see . . . in Rule 404(b)[, SCRE,] and *Lyle* situations[,], as well about a prior bad act, is different with a witness. . . . [T]he duty is higher when it may implicate the due process rights of a defendant." Brayboy requested that if the trial court "determine[d] that the word sawed-off shotgun should not be used, . . . that the [c]ourt consider using the word firearm rather than just weapon."

After further discussion, the court stated the reference to a sawed-off shotgun would "take[] a jury away from simply [evaluating] the credibility of the witnesses" and ruled the prior conviction could be admitted only as the unlawful possession of a firearm conviction. Turner and Brown testified, implicated Brayboy, and the jury found him guilty as charged. The trial court sentenced Brayboy to concurrent eighteen-year terms of imprisonment for the armed robbery and kidnapping charges and a concurrent ten-year term for the ABHAN charge. This appeal followed.

## II. LAW/ANALYSIS

Brayboy argues the balancing test between probative value and prejudicial effect found in Rule 609(a), SCRE, only applies when the State seeks to impeach the *accused* with a prior conviction. Because Turner was not the defendant in this case, Brayboy argues he should have been permitted to specifically question Turner about the shotgun conviction. Brayboy maintains the trial court erroneously relied on cases that apply only to impeach a defendant. Finally, Brayboy submits he was prejudiced because the only evidence linking him to the crime was the testimony of Turner and Brown. We find no reversible error.

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Anderson*, 386 S.C. 120, 126, 687 S.E.2d 35, 38 (2009) (quoting *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *Id.*

[E]vidence that a witness other than an accused has been convicted of a crime shall be admitted, subject to Rule 403, [SCRE,] if the crime was punishable by death or imprisonment in excess of one year . . . and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused . . . .

Rule 609(a)(1), SCRE. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." Rule 403, SCRE.

The analysis for the admissibility of impeachment evidence differs depending on whether its admission is sought against a witness or a criminal defendant. Warren Moise describes the difference as follows:

Rule 609(a)(1) addresses a conviction with a potential sentence of greater than one year. In civil trials, and in criminal trials for all witnesses other than the accused, a

conviction "shall" be admitted under 609(a)(1) subject to the balancing test under Rule 403. The language of proposed Rule 609 initially did not favor admissibility, providing that a prior criminal conviction "is admissible *but only if* . . . punishable by death or imprisonment in excess of one year . . . or involved dishonesty or false statement regardless of the punishment." The imperative "shall" ["must" in Fed. R. Evid. 409(a)(1)] was added later after extensive debate and reflected a decision by Congress to emphasize admissibility. Because admissibility of criminal convictions under the common law was discretionary with the trial judge, Rule 609(a)(1) represents a subtle but clear change for both the federal and South Carolina courts. Now admissibility is mandatory . . . in the first instance. Discretion may be applied to *exclude* the criminal conviction "subject to Rule 403", and then, in accord with the rules' liberal thrust toward admissibility, only if the probative value of the conviction is *substantially* outweighed by countervailing factors. Thus, criminal convictions of a party or witness, other than the accused in a criminal trial rarely should be excluded under Rule 403.

### **Special rules for the criminal defendant**

When the *accused* is sought to be impeached under Rule 609(a)(1), Rule 403 is not used. Instead, the rule is construed . . . pursuant to *State v. Colf*, 337 S.C. 622, 525 S.E.2d 246 (2000) and *Green v. State*, 338 S.C. 428, 527 S.E.2d 98 (2000). Under . . . *Colf* and *Green*, the court neither *per-se* excludes nor always allows a criminal defendant's prior convictions into evidence; instead, a factor-based approach is used in determining whether the prosecution has met its burden in establishing that the probative value of the accused's prior conviction outweighs any prejudice, a test set forth in Rule 609(a)(1) itself. Although the burden is on the prosecution to meet the test in Rule 609(a)(1), it is not required to prove that the conviction's prejudicial effect *substantially* outweighs

its probative value. If the prosecutor's burden has been met, the conviction shall be admitted.

Warren Moise, *Criminal Convictions*, 14 S.C. Law., March 2003, at 11, 11-12 (internal citation omitted).

Because Turner was a witness rather than the accused, the trial court was required to conduct a Rule 403 balancing test. Rule 403's balancing test is applied when the conviction is offered to impeach a witness who is not the defendant. Rule 609(a)(1), SCRE. To exclude the conviction, the court was required to find the probative value was *substantially* outweighed by the danger of unfair prejudice, not merely outweighed by the danger of prejudice. Rule 403, SCRE. Although the trial court relied on *Elmore* and *Boyce*, and it did not specifically cite the Rule 403 balancing test, the trial court considered these issues in its analysis: (1) "because we . . . want the jury to base their decision solely on the facts that are presented during the course of this trial . . . and not on some issue that occurred in a previous conviction"; (2) "[t]he purpose of impeachment is simply to determine whether or not someone is believable or not, and it should have nothing to do with ["]they did it once, they must [have] done it again.["]"; and (3) "allowing Mr. Turner to be questioned that he has a prior conviction for possession of a sawed-off shotgun, with that being a direct issue involved in this case, is highly prejudicial to a jury in determining . . . someone's credibility." We find the court indicated its consideration of whether the probative value of the conviction was substantially outweighed by the danger of unfair prejudice. Accordingly, we find no reversible error. *See State v. King*, 349 S.C. 142, 157, 561 S.E.2d 640, 647 (Ct. App. 2002) (finding no error in the admission of the defendant's prior bad acts despite the trial court's failure to perform the required Rule 403 balancing test on the record when the court's comments on the record indicated it was cognizant of the evidentiary rule); *Hunter v. Staples*, 335 S.C. 93, 102, 515 S.E.2d 261, 266 (Ct. App. 1999) (affirming the trial judge's exclusion of a prior conviction based on its finding that the conviction was not relevant and its prejudicial effect outweighed its probative value despite the trial court's failure to "specifically enunciate the factors involved in reaching his ultimate decision" because it was "evident the judge considered Rule 609(a)(1) in conjunction with the Rule 403 balancing analysis").

In addition, we find if the trial court erred, it was harmless beyond a reasonable doubt. "Whether an error is harmless depends on the circumstances of the particular case." *State v. Thompson*, 352 S.C. 552, 562, 575 S.E.2d 77, 83 (Ct. App. 2003). Error is deemed harmless if it could not reasonably have affected the

result of the trial. *Id.* "Where a review of the entire record establishes the error is harmless beyond a reasonable doubt, the conviction should not be reversed." *Id.*

Turner was impeached with multiple convictions: (1) unlawful possession of a "firearm"; (2) common law robbery; (3) possession of a stolen vehicle; and (4) receiving stolen goods. He was also questioned about his pending charges and plea agreement with the State, the terms of which would result in a ten-year federal sentence and the dismissal of all state charges. Furthermore, the other co-defendant, Brown, also testified Brayboy was the third perpetrator and maintained he was with Brayboy when Brayboy purchased the shotgun. Based on a review of the record as a whole, we find any error was harmless.

## **CONCLUSION**

For the foregoing reasons, Brayboy's convictions are

**AFFIRMED.**

**KONDUROS, J., concurs. LOCKEMY, J., concurring in result only.**

**LOCKEMY, J.:** I concur in result only. I would hold that limiting Brayboy's ability to question Turner, one of only two witnesses testifying against him, about Turner's sawed-off shotgun conviction was a violation of Rule 609(a)(1), SCRE, and was error. Furthermore, I do not agree with the majority's determination that the trial court conducted a Rule 403, SCRE, balancing test. In my view, after a proper Rule 403, SCRE, analysis, Brayboy should have been permitted to introduce Turner's shotgun conviction into evidence. Additionally, I am concerned Brayboy's inability to cross-examine Turner regarding his conviction for possession of a sawed-off shotgun is a violation of the Confrontation Clause of the Sixth Amendment to the United States Constitution. However, I agree with the majority that any error by the trial court was harmless because Turner was impeached with multiple convictions, and Brown testified Brayboy was the third perpetrator. For these reasons, I respectfully concur in result only.

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

THE STATE,

RESPONDENT,

V.

LARRY BRADLEY BRAYBOY,

APPELLANT

---

Appeal from Florence County

Thomas A. Russo, Circuit Court Judge

---

Opinion No. 5060

---

PETITION FOR REHEARING

---

Pursuant to Rule 221(a), SCACR, counsel for Larry Brayboy petitions the Court for rehearing. Counsel respectfully submits that the Court misapprehended the trial judge's analysis for excluding a prior conviction of a witness as meeting the requirements of Rule 609(a)(1) and Rule 403, SCRE. Specifically, counsel submits that the trial judge overlooked the emphasis on admissibility contained in Rule 609(a)(1), SCRE. Additionally, the trial judge failed to conduct a balancing test pursuant to Rule 403, SCRE, to determine if the probative value of the prior conviction was **substantially** outweighed by the danger of unfair prejudice.

The trial judge erred in limiting the cross examination of a State's witness about a prior conviction for possession of a sawed off shotgun. According to the State's theory of the case,

Brayboy, Robin Turner and Quennell Brown robbed the Pizza Hut in Lake City. Both Turner and Brown testified against Brayboy at trial. In exchange for their testimony, all state charges were dismissed against Turner and Brown's charge was reduced to attempted armed robbery. (R. 167, lines 7 – p. 168, lines 1-3; R. 205, lines 18 – p. 206, lines 1-4). Turner testified that he, Brayboy and Brown robbed the Pizza Hut wearing stocking masks (R. p. 180, lines 21 – p. 181, lines 1-17). Turner testified that he had a pistol, Brayboy had a shotgun and Brown was not armed. (R. 178 – 182). Turner denied having a shotgun during the robbery. (R. 199, lines 2-19).

One of the employees inside the Pizza Hut at the time of the robbery testified that only two people robbed the restaurant, one armed with a shotgun and one armed with a pistol. (R. 17, lines 1 – p. 18, lines 1-3). Turner and Brown were arrested at the scene. Brayboy was arrested almost a month later. The State offered no forensic evidence linking Brayboy to the robbery of the Pizza Hut.

Prior to the testimony of Turner and Brown, the State sought to settle their prior records. (R. 135, lines 6-23). Counsel for Brayboy argued that she should be able to question Turner about a February 11, 1998, conviction for possession of a sawed off shotgun. (R. 138, lines 9-15). Turner received a sentence of two years suspended upon the service of three years probation. (R. 140, lines 5-7). The State argued that the conviction was outside of the ten year time limit provided by Rule 609(b), SCRE, and argued that the prejudicial effect outweighed any probative value. (R. 140, lines 3-23). The State argued that if the case came within the time limit of Rule 609(b), that the conviction should be referred to as simply a weapons conviction rather than a conviction for possession of a sawed off shotgun. (R. 140, lines 23 – p. 141, lines 1-2).

Counsel for Brayboy noted that on December 8, 1998, Turner's probationary sentence for possession of a sawed off shotgun was revoked and Turner received a two year active sentence, bringing the charge within the ten year time limit of Rule 609(b). (R. 143, lines 15-18). The judge agreed. (R. 143, line 19). The State again argued that allowing the specific charge was more prejudicial than probative. (R. 143, lines 20 – p. 144, lines 1-11). Counsel for Brayboy noted that there was a difference between defendants and witnesses in regard to impeachment evidence. (R. 144, lines 24 – p. 145, lines 1-8).

In discussing the admission of the prior conviction the judge stated:

And, and, so, I, I feel that allowing Mr. Turner to be questioned that he has a prior conviction for possession of a sawed off shotgun, with that being a direct issue involved in this case, is highly prejudicial to a jury in determining, in determining someone's credibility. I think they can determine the same credibility by understanding that he was convicted of a weapons charge. Whether he's convicted of a weapons charge or whether he's convicted of possession of a sawed off shotgun shouldn't have any affect regarding his credibility as a witness."

(R. 151, lines 17 – p. 152, lines 1-2). The State relied on State v. Elmore, 368 S.C. 230, 628 S.E.2d 271 (Ct.App. 2006) to exclude the prior conviction. (R. pp. 152 – 153). Counsel for Brayboy again argued that Rule 609 makes a distinction between witnesses and the accused. (R. 155, lines 12 – p. 156, 157, lines 1-6). Alternatively, counsel for Brayboy asked that she be allowed to refer to the conviction as a firearm conviction rather than simply a weapons conviction. (R. 157, lines 3-6). The judge, relying on Elmore and United State v. Boyce, 611 F. 2d 530 (4<sup>th</sup> Cir. 1979), ruled that the conviction could only be referred to as an unlawful possession of a firearm rather than unlawful possession of a sawed off shotgun as the specific charge was similar and too prejudicial. (R. 158, lines 19 – p. 159, 160, lines 1-13). The judge erred. During cross examination, counsel was limited to asking Turner about an unlawful possession of a firearm charge. (R. 193, lines 1-20).



Rule 609(a), SCRE provides that for the purpose of attacking the credibility of a witness, evidence that a witness other than the accused has been convicted of a crime **shall** be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law which the witness was convicted. Rule 403, SCRE, provides that although relevant, evidence **may** be excluded if its probative value is **substantially** outweighed by the danger of unfair prejudice. As noted by this Court, “Because admissibility of criminal convictions under the common law was discretionary with the trial judge, Rule 609(a)(1) represents a subtle but clear change for both the federal and South Carolina courts. Now admissibility is mandatory . . . in the first instance. Discretion may be applied to *exclude* the criminal conviction ‘subject to Rule 403’, and then, in accord with the rules’ liberal thrust toward admissibility, only if the probative value of the conviction is *substantially* outweighed by countervailing factors. Thus, criminal convictions of a party or witness, other than the accused in a criminal trial rarely should be excluded under rule 403.” State v. Brayboy, Op. No. 5060 (S.C. Ct.App. filed December 12, 2012).

The admissibility of the prior conviction for possession of a sawed off shotgun was mandatory unless the probative value of the conviction is substantially outweighed by the risk of unfair prejudice. The judge did not properly analyze the admission of the prior conviction. Instead, the judge relied on State v. Elmore, 368 S.C. 230, 628 S.E.2d 271 (Ct.App. 2006) and United State v. Boyce, 611 F. 2d 530 (4<sup>th</sup> Cir. 1979), cases involving a prior conviction of the accused. The judge failed to make specific findings that the probative value of the conviction for possession of a sawed off shotgun was substantially outweighed by the risk of unfair prejudice.

In affirming the conviction this Court wrote:

Although the trial court relied on *Elmore* and *Boyce*, and it did not specifically cite the Rule 403 balancing test, the trial court considered these issues in its analysis: (1) “because we ... want the jury to base their decision solely on the facts that are presented

during the course of this trial ... and not on some issue that occurred in a previous conviction"; (2) "[t]he purpose of impeachment is simply to determine whether or not someone is believable or not, and it should have nothing to do with ["]they did it once, they must [have] done it again.["]"; and (3) "allowing Mr. Turner to be questioned that he has a prior conviction for possession of a sawed-off shotgun, with that being a direct issue involved in this case, is highly prejudicial to a jury in determining ...someone's credibility." We find the court indicated its consideration of whether the probative value of the conviction was substantially outweighed by the danger of unfair prejudice. Accordingly, we find no reversible error.

State v. Brayboy, Op. No. 5060 (S.C. Ct.App. filed December 12, 2012). Respectfully, petitioner submits that there is no evidence in the record to support the proposition that the trial judge considered whether the probative value of the prior conviction for possession of a sawed off shotgun was **substantially** outweighed by the risk of unfair prejudice, as required with Rule 609(a)(1) and Rule 403, SCRE, as they apply to witnesses other than the accused.

The error in limiting the cross examination of Turner was not harmless. Brayboy was prejudiced by the erroneous limitation on cross examination because the only evidence linking Brayboy to the robbery was the testimony of Turner and Brown, the two co-defendants who received substantial benefit from their testimony. Based on the above arguments, petitioner seeks rehearing.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

This 27th day of December, 2012.